

Belgium Requests CJEU Opinion on Application of Energy Charter Treaty in Intra-EU ISDS Disputes



On 2 December 2020, Belgium submitted a request for an Opinion to the Court of Justice of the European Union (the **CJEU**) regarding the compatibility, with EU Law, of intra-EU Investor-State disputes (**ISDS**) conducted pursuant to the Energy Charter Treaty (**ECT**).

As we know, in [Achmea](#) (Case C-284/16), the Court of Justice of the European Union found that intra-EU bilateral investment treaties (**intra-EU BITs**) and ISDS disputes initiated pursuant to those intra-EU BITs, were incompatible with EU law because they violated the principle of autonomy of the EU legal order and jeopardized the effectiveness, primacy and direct effect of EU law and the principle of mutual trust between the EU Member States. However, it remains unresolved whether the findings of the CJEU in *Achmea* extend to intra-EU arbitration proceedings conducted pursuant to the ECT.

As readers of this blog may remember, two weeks ago I published [an article](#) on the exact same topic and, in

particular, on the view expressed on this issue by Advocate General Saugmandsgaard Øe in his conclusion in Joined Cases C-798/18 and C-799/18, *Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie) e.a.*

According to the [press release](#) published by the Belgian Ministry of Foreign Affairs, “Belgium does not wish to defend a pre-established opinion on the matter but considers that, in view of the uncertainties and divergences which have arisen between Member States on whether or not the lessons of the Court’s *Achmea* judgment apply to the Treaty in question, a clear legal response is necessary to prevent any complications which might arise from possible subsequent legal challenges”.

Needless to say, we will keep you posted on any further development.

Copyright © 2016 International Litigation Blog.

All Rights Reserved.

Reproduction totale ou partielle interdite.