

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2019 Nr. 16

A. TITEL

*Overeenkomst tussen het Koninkrijk der Nederlanden en de Republiek Polen inzake de bevordering en wederzijdse bescherming van investeringen, met Protocol;
Warschau, 7 september 1992*

Voor een overzicht van de verdragsgegevens, zie verdragsnummer 005083 in de Verdragenbank.

B. TEKST

De Republiek Polen heeft de Overeenkomst middels onderstaande nota van 19 juli 2018 opgezegd.

Nr. I

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF POLAND

Warsaw, 19 July 2018

DPT.2701.12.2018/6

The Ministry of Foreign Affairs of the Republic of Poland presents its compliments to the Embassy of the Kingdom of Netherlands in Warsaw and has the honor to inform that in accordance with Article 13 paragraph 2 of the Agreement between the Republic of Poland and the Kingdom of the Netherlands on encouragement and reciprocal protection of investments, done at Warsaw on September 7th 1992, the Republic of Poland denounces abovementioned Agreement. Termination of the Agreement between the Republic of Poland and the Kingdom of the Netherlands on encouragement and reciprocal protection of investments will take effect on 2nd February 2019.

The Republic of Poland declares that in accordance with Article 30 paragraph 3 of the Vienna Convention on the Law of Treaties concluded on 23rd May 1969 and customary international law the arbitration clause contained in Article 8 of the Agreement between the Republic of Poland and the Kingdom of the Netherlands on encouragement and reciprocal protection of investments which is an earlier treaty, is not applicable from 1 May 2004, i.e. the day of the accession of the Republic of Poland to the European Union, as it is not compatible with the Treaty on the Functioning of the European Union which is the later treaty. Lack of compatibility of the arbitration clauses contained in agreements on encouragement and reciprocal protection of investments between European Union Member States with the Treaty on the Functioning of the European Union was confirmed by the judgment of the Court of Justice of 6 March 2018 in Case C-284/16 Achmea. In light of the above, the arbitral tribunals constituted under the Agreement between the Republic of Poland and the Kingdom of the Netherlands on encouragement and reciprocal protection of investments lack jurisdiction to hear cases due to the absence of a valid arbitration consent.

The Ministry of Foreign Affairs of the Republic of Poland avails itself of this opportunity to renew the Embassy of the Kingdom of Netherlands in Warsaw the assurances of its highest consideration.

*Embassy of the Kingdom of Netherlands
in Warsaw*

Het Koninkrijk der Nederlanden heeft in onderstaande nota van 30 januari 2019 de beëindiging van de Overeenkomst bevestigd.

Nr. II

MINISTRY OF FOREIGN AFFAIRS
TREATIES DIVISION

The Hague, 30 January 2019

MINBUZA-2019.73190

The Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the Embassy of the Republic of Poland and has the honour to refer to the Ministry's Note, ref nr DPT.2701.12.2018/6 of 19 July 2018, terminating the Agreement between the Kingdom of the Netherlands and the Republic of Poland on encouragement and reciprocal protection of investments, signed in Warsaw on 7 September 1992 (hereinafter "Agreement").

(Zoals in Nr. I)

The Ministry has the honour to confirm, on behalf of the Kingdom of the Netherlands, the termination of the Agreement, which will take effect on 2 February 2019.

As the Achmea judgement only concerns European Member States and does not affect the Overseas Countries and Territories, the Kingdom of the Netherlands interprets the termination of the Agreement to entail that Article 13 (3) of the Agreement is not applicable in the relationship between the European part of the Kingdom of the Netherlands and the Republic of Poland, but is applicable in the relation between the Caribbean parts of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten and the islands of Bonaire, Sint Eustatius and Saba) and the Republic of Poland.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the Embassy of the Republic of Poland the assurances of its highest consideration.

*To the Embassy of the Republic of Poland
The Hague*

G. INWERKINGTREDING

De bepalingen van de Overeenkomst, met Protocol, zullen ingevolge artikel 13, tweede lid, op 2 februari 2019 buiten werking treden.

Wat betreft het Koninkrijk der Nederlanden, zal de Overeenkomst, met Protocol, die voor het gehele Koninkrijk geldt, voor het gehele Koninkrijk buiten werking treden.

Uitgegeven de *eerste* februari 2019.

De Minister van Buitenlandse Zaken,

S.A. BLOK