

Opening Note of the Slovak Republic

No. XXX

The Ministry of Foreign and European Affairs of the Slovak Republic presents its compliments to the Embassy of the Republic of Austria in Bratislava and, with reference to the Judgment of the Court of Justice of the European Union in Case C-284/16, Slovak Republic v. Achmea BV of, 6 March 2018, has the honour to propose the conclusion of the following

”Agreement between the Slovak Republic and the Republic of Austria on the Termination of the Agreement between the Czech and Slovak Federative Republic and the Republic of Austria for the Promotion and Protection of Investments as amended by the exchange of notes of 22 December 1993 and 14 January 1994 (hereinafter referred to as the “Termination Agreement”)

1. The Agreement between the Czech and Slovak Federative Republic and the Republic of Austria for the Promotion and Protection of Investments as amended by the exchange of notes of 22 December 1993 and 14 January 1994 (hereinafter referred to as the “Investment Protection Agreement”) shall be terminated in accordance with the provisions set out in this Termination Agreement.
2. For greater certainty, the Parties expressly agree that Article 11 Paragraph 3 of the Investment Protection Agreement, which extends the protection of investments made prior to the date of termination, shall also be terminated and thus shall not produce any legal effects.
3. The Parties herewith confirm that Article 8 of the Investment Protection Agreement on Investor-State dispute settlement by arbitration is contrary to the EU Treaties and thus inapplicable. Consequently, since 1 May 2004 on which the Slovak Republic became a Member State of the European Union, Article 8 cannot serve as a legal basis for arbitration proceedings.
4. The Parties confirm that, notwithstanding Paragraph 3 above, this Termination Agreement shall not affect concluded arbitration proceedings. Those proceedings shall not be reopened.”

The Ministry of Foreign and European Affairs of the Slovak Republic proposes that in case the Republic of Austria accepts the abovementioned proposal, this note verbale together with the note verbale received in reply from the Republic of Austria shall constitute the Termination Agreement, which is authentic in the English language only.

The Termination Agreement shall enter into force on the first day of the second month following the date of the receipt of the latter of the notifications by the Parties that the

respective internal procedures for the entry into force of the Termination Agreement have been fulfilled.

The Ministry of Foreign and European Affairs of the Slovak Republic avails itself of this opportunity to renew to the Embassy of the Republic of Austria in Bratislava the assurances of its highest consideration.

Bratislava, XX 2020

Note of Reply of the Republic of Austria

No. XXX

The Embassy of the Republic of Austria in Bratislava presents its compliments to the Ministry of Foreign and European Affairs of the Slovak Republic and with reference to the **note verbale of the Ministry No. XXX of XX 2020**, has the honour to inform that the Republic of Austria agrees to conclude the following

”Agreement between the Republic of Austria and the Slovak Republic on the Termination of the Agreement between the Republic of Austria and the Czech and Slovak Federative Republic for the Promotion and Protection of Investments as amended by the exchange of notes of 22 December 1993 and 14 January 1994 (hereinafter referred to as the “Termination Agreement”)

1. The Agreement between the Republic of Austria and the Czech and Slovak Federative Republic for the Promotion and Protection of Investments as amended by the exchange of notes of 22 December 1993 and 14 January 1994 (hereinafter referred to as the “Investment Protection Agreement”) shall be terminated in accordance with the provisions set out in this Termination Agreement.
2. For greater certainty, the Parties expressly agree that Article 11 Paragraph 3 of the Investment Protection Agreement, which extends the protection of investments made prior to the date of termination, shall also be terminated and thus shall not produce any legal effects.
3. The Parties herewith confirm that Article 8 of the Investment Protection Agreement on Investor-State dispute settlement by arbitration is contrary to the EU Treaties and thus inapplicable. Consequently, since 1 May 2004 on which the Slovak Republic became a Member State of the European Union, Article 8 cannot serve as a legal basis for arbitration proceedings.
4. The Parties confirm that, notwithstanding Paragraph 3 above, this Termination Agreement shall not affect concluded arbitration proceedings. Those proceedings shall not be reopened.”

The Republic of Austria accepts that the **note verbale No. XXX of XX 2020 of the Ministry** of Foreign and European Affairs of the Slovak Republic and this note verbale shall constitute the Termination Agreement, which is authentic in the English language only.

The Termination Agreement shall enter into force on the first day of the second month following the date of the receipt of the latter of the notifications by the Parties that the respective internal procedures for the entry into force of the Termination Agreement have been fulfilled.

The Embassy of the Republic of Austria in Bratislava avails itself of this opportunity to renew to the Ministry of Foreign and European Affairs of the Slovak Republic the assurances of its highest considerations.

Bratislava, XX 2020