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The Attitudes of the European Union and China Towards Foreign Direct Investment: Implications for Bilateral Relations

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Abstract

The aim of this paper is to discuss new trends that have occurred in the policies of the EU and China towards foreign direct investment (FDI), to examine some implications of the EU-China Comprehensive Agreement on Investment (CAI) – which is currently being negotiated – for their bilateral relations, and to assess the role which China's "*One Belt One Road*' (OBOR) initiative might play in its relations with the new EU Member States. The EU established freedom of capital movement with third countries; however, the introduction of the common investment policy has encountered some obstacles. These are related to investor protection and ISDS issues. In turn, China is carrying out an independent state policy towards foreign investment with limited liberalization of FDI flows. The negotiated EU-China CAI is expected to create conditions conducive to bilateral foreign investment flows, and it might bring positive effects for their economies in the future. However, the progress made thus far in the negotiations is still limited. The relations between China and the new EU Member states (CEE countries) are characterized by common interests in the field of FDI flows. The new EU countries are interested in attracting Chinese FDI and seem not to show the fears that have arisen in the old EU countries.

Keywords: EU-China relations, policy towards foreign direct investment (FDI), the EU-China Comprehensive Agreement on Investment (CAI), "*One Belt One Road*' initiative

JEL: F15, F21, K00

Introduction

The European Union (EU) belongs to the largest net exporters of capital in the form of foreign direct investment (FDI) in the global economy, and China, as the net importer, remains one of the top prospective FDI destinations, also for European investors. At the same time, China is investing abroad, taking 3rd place on the list of the top 20 home economies for FDI (UNCTAD 2018, p. 6). Both the EU and China carry out their own policies towards foreign investment and regulate bilateral investment flows. As global regulations related to FDI are limited, internal and bilateral regulations are still of great importance for the state of FDI flows and the protection of investors as well as the parties' own interests.

In this context, the aim of this paper is to:

- analyze new trends in the policies of the EU and China towards foreign direct investment,
- examine the potential influence of the EU-China Comprehensive Agreement on Investment (CAI) on their bilateral FDI flows,
- evaluate the importance of investment protection issues and investor-state-dispute-settlements (ISDS) in relations between the EU and China,
- assess the role of China's "*One belt one road'* strategy for the relations with the new EU Member States.

Policies of the EU and China towards foreign investors – recent changes in the European Union

According to the Maastricht Treaty (1992), capital movement, including FDI, is fully liberalized within the EU and in relations with third countries (Art. 56). The Lisbon Treaty (2009) confirms the provisions of the Maastricht Treaty related to the liberalization of capital movement and payments (Art. 63 of the Treaty on the Functioning of the European Union (TFEU)). The objective of the freedom of capital movement is to ensure openness towards the other Member States and non-EU countries. Article 63 of the TFEU prohibits all restrictions on capital movement and payments.

However, this openness is not unconditional, as the TFEU provides the possibility to restrict capital movement under specific conditions. The EU Member States can introduce some restrictions that include:

- national measures to prevent infringements of national laws and regulations in the field of taxation,
- the prudential supervision of financial institutions,
- and measures justified on the grounds of public policy or public security (Art. 65 1(b)), and other overriding reasons in the general interest as recognized by the Court of Justice of the European Union (CJEU).

The exceptions provided in the TFEU must not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments (Art. 65.3). All measures must be suitable and proportionate.

As for foreign investment in the pre-Lisbon Treaty period, the EU Member States had the right to carry out their own policies towards foreign investors. Nevertheless, at that time, the EC developed its own form of investment policy through the negotiation of norms on the establishment of service providers (the "minimum platform on investment for EU FTAs') (Weiniger, Croisant 2017, p. 2).

The entering into life of the Lisbon Treaty changed the competences of the EU institutions and the Member States in this field. The Lisbon Treaty:

— gives the EU institutions new external competences, including foreign direct investment (FDI), in the common trade policy (Art. 206),
— confirms the delimitation of the competences between the Union and the Member States (Art 207) (OJ of the EU 2012).

This provisions were treated as significant and enhancing the competence of the EU in the field of external investment, but at the same time it was perceived as: "*…only a half way success toward a full common investment policy (CIP)'* (Shan and Zhang 2011, p. 1049). The problems which the establishment of the common EU investment policy has encountered seem to be:

1) investment protection issues,
2) pre-entry national treatment/pre-establishment guarantees,
3) mixed agreements.

Standards of investment protection and the issue of resolving investment disputes (ISDS) stirred up strong public concerns in Europe during the negotiations on TTIP between the EU and the USA. The ISDS mechanisms used thus far are perceived as a threat to the states' right to regulate their public interests; they lack appellate mechanisms and doubts occur about the impartiality of arbitrators. Further criticism of ISDS is related to the lack of consistency, transparency, high costs and bypassing domestic courts (European Parliament 2018).

Criticism of the existing ISDS system in the context of ongoing negotiations between the EU and the USA, Canada, and Singapore has encouraged the EU Commission (EC) to formulate a proposal to establish an investment court system (ICS) (EC 2015). The ICS would be used as a bilateral solution in trade and investment agreements concluded by the EU on behalf of the Member States. However, this proposal has encountered critical opinions expressed by, among others, the Society of German Lawyers and the Greenpeace organization (February 2016) because of the inconsistency of the ICS's case law with that of the EU courts (Deutscher Richterbund 2016; Greenpeace 2016) and some official actions undertaken to question the validity of introducing the ICS into the Comprehensive Economic and Trade Agreement between the Europan Union and Canada (CETA) (the protest of the *Wallon Region* of Belgium 2017) (Weiniger, Croisant 2017, p. 2).

A response to all these developments is a new proposal of the EC related to the establishment of a new system for resolving disputes between foreign investors and states,

announced on 13 September 2017. A Multilateral Investment Court (MIC) would replace existing solutions, and in the EC's opinion, it would avoid their weaknesses. The new Court would be permanent, independent, predictable, comprehensive, cost-effective, and transparent (EC 2017).

The possible establishment of the MIC depends on the results of the negotiations carried out under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). The European Commission has been authorized by the Council to negotiate a convention establishing the MIC on behalf of the EU. The Negotiating Directives adopted by the Council on 20 March 2018 comprise the mandate for the Commission with instructions on the most important issues related to the functioning of the MIC (European Parliament 2018).

It is worth noting that the EU has partly exclusive and partly shared competences in the area of investment protection. Any reform of investment dispute settlements needs to be supported by both the EU and the Member States. As the EU is not a member of UNCITRAL and the Member States are, progress towards the creation of the MIC will require full coordination of their positions in these negotiations. The Negotiating Directives stipulate that the Member States should exercise their voting rights in accordance with these directives and previously agreed EU positions. It is expected that Member States will support and advance the European Commission's proposal of the MIC within the discussions in the UNCITRAL Working Group III (Cannon, Ambrose, Naish 2018).

The proposal to establish an MIC does not, however, remove previous concerns about investment arbitration. In the opinion of the European Parliament, some opponents fear that the perceived threat to a state's right to regulate would continue to exist under the MIC. Investors could still claim massive compensation from states in arbitral proceedings. In addition, the compatibility of the MIC proposal with EU law has been questioned, in particular with the principle of autonomy of the EU's legal order. Finally, several of the EU's major trading partners, among them the USA and Japan, have not expressed support for the establishment of an MIC (European Parliament 2018).

In this context, the EC proposal on the establishment of an MIC still seems to face serious obstacles.

Pre-entry national treatment means that foreign investors have the same market access as domestic investors (European Parliament 2018). In the newly negotiated free trade agreements with Singapore (2015), Canada (2016), and Vietnam (2016), the EC implemented comprehensive pre-establishment guarantees for investors. It means that the EU trade partners cannot introduce any limitations on the number of enterprises carrying out an economic activity in their economies, or the total value of assets that can be transferred into the partner countries, although some exceptions exist. The EU distinguishes pre-establishment guarantees from post-establishment protections given to foreign investors (e.g., fair, equitable treatment). In the case of violations of the new guarantees on market access, however, the enforceability of the EC's approach will depend on the goodwill of governments to bring complaints through state-to-state dispute-settlement mechanisms (Beaumier, Quellet 2018, pp. 1–2).

The impact of Brexit on the EU's common investment policy could be either slight or bring the reluctant acceptance of international investment agreements (IIAs) as mixed agreements by the European institutions. Mixed agreements require the approval of both the EU and its member states. An example of such an agreement can be the FTA with Canada. The EU's acceptance of such a procedure was linked with Britain's referendum at that time (Beaumier, Quellet 2018, p. 2).

Bearing in mind that:

— in May 2017, the EU Court of Justice confirmed that any EU IIAs featuring ISDS fall outside the EU's exclusive competence, and they require ratification by each member state (Opinion 2/15 of the Court 16 May 2017; E. Borovikov, A. Crevon-Tarassova, B. Evtimov 2017; Chaisse, Vaccaro-Incisa 2018, p. 1),
— the above-mentioned opinion of the CJEU is seen as complicating the emergence of a unified EU investment policy, including ICS, delaying the entry into force of the IIAs already concluded or being finalized (Chaisse, Vaccaro-Incisa 2018, p. 1),
— on 6 September 2017, Belgium duly requested the CJEU's opinion on the compatibility of CETA's ICS with the EU law; the CJEU's opinion on the legality of the ICS is expected to arrive in early 2019 (Weiniger, Croisant 2017, p. 2; European Parliament 2018),
— problems related to Brexit can change the hitherto reluctant attitude of the EC towards expectations of the Member States as for their impacts on ratification processes of new agreements,

the final form and scope of the EU common investment policy have still not been definitively established.

The EU's policy towards FDI faces another problem, which is the establishment of a common mechanism for the screening of FDI projects from third countries. The EU proposal of regulating the framework for FDI screening is justified by:

— the increasing amount of foreign investment in the form of mergers and acquisitions (M&As) in some strategic sectors of the EU economy (growing interests of foreign investors in high-tech sectors, defense technology, energy infrastructure, telecommunications, and access to sensitive information, etc.),
— the fact that foreign companies – larger than average – may be owned and controlled by the states of third countries; acquiring assets in the EU may allow the states in question to use them to put at risk the EU's technological potential as well as its security or public order,
— the usage of screening mechanisms by the EU's key international partners (Australia, Canada, China, India, Japan, and the USA), in order to address risks of FDI,
— the need to unify screening mechanisms introduced by 12 of the EU Member States that differ in their design and scope (EC 2017a).

The EU declares that the screening framework will be transparent, non-discriminatory and predictable. The criteria for the screening are clearly defined as is the division of responsibility between the EC and the Member States for activities in this field (EC 2017a).

Policies of the EU and China towards foreign investors – recent changes in China

China's policy towards foreign investment has undergone radical changes since the first joint venture law entered into force in 1979 and they have been the subject of numerous analyses (Cheng 2005, pp. 46–118; China's New Tax 2008; Li 2010, pp. 117–119; Hale, Long 2012, pp. 1; Wang 2017, pp. 1–7). The evolution of China's policy embraces some important phases:

— The initial phase (1979–1985) was characterized by experimentation with FDI and FDI policy (the establishment of Special Economic Zones and their development – "open coastal cities,' "economic and technological development zones,' "open coastal economic areas, zones'; restrictions on investment – limited access to the domestic market, foreign exchange balancing requirement, restrictions on national identity of senior administrations of joint ventures).

— The second phase (1986–1991) – there was a preferential policy towards FDI (the introduction of measures to address the difficulties faced by foreign investors and to improve the general business environment; extension of the preferential policy to new geographical areas, e.g., the establishment of the Pudong New Zone in Shanghai in 1990).

— The third phase (1992–1997) began with a re-affirmation by Deng Xiaoping to build "a socialist market economy' in China; regulations on FDI (encouragement or discouragement rules) are the same for foreign investors in the entire country, not just in the coastal area; government policy began to focus on linking FDI to domestic development priorities (agriculture, energy, transportation, telecommunications, basic raw materials, and high-technology industries).

— The fourth phase (1998–2000) – modification of China's FDI policy after the Asian Financial Crisis (a greater focus on FDI originating from the advanced economies, especially by leading MNCs; introduction of incentives).

— The fifth phase (2001–2007) – substantial changes in China's FDI policy after its accession to the WTO in 2001; a tendency towards unifying the treatment of domestic and foreign firms; China opened up more sectors for FDI, including retail, wholesale, and banking; at the same time, China intensively encouraged projects that took advantage of the rich natural resources and relatively low labor costs in the central and northwestern regions of the country. A political decision was taken in 2001 about organizing and supporting Chinese investment abroad – the "Going Global' Policy.

— The sixth phase (2008–2012) – the unification of China's tax base; many of the previous tax incentives for attracting foreign investment into the country dried up; some tax incentives were available through discounts or occasional rebates, but not pure tax holidays; the central government indicated the availability of tax incentives in certain industries (high tech).

— The seventh phase (2013, ongoing) – the introduction of an outward-looking strategy after the new leadership came to power; the establishment of Pilot-Free Trade Zones (Shanghai, Tianjin, Guangdong and Fujian) where the risks of relaxing foreign investment regulations were tested; further opening of the Chinese economy to foreign investment; the negotiations on high-standard bilateral investment treaties (BITs) with its main trading partners (USA, EU); acceptance of the pre-establishment national treatment rule combined with a negative list model in the administration of FDI; relaxed market access for foreign investors to the Chinese economy.

As for Chinese outward foreign investment, at the turn of the 20th and 21st centuries, China's *"Going Global'* policy was an important driving force. The success of Chinese companies in this field is related to financial and political support offered by the government (the financial support includes loans below market rates, and providing investment for infrastructure and aid for the governments of states exploiting natural resources; the political support boils down to summit meetings between the Chinese leaders and their counterparts, and the involvement of China's leaders in negotiations on some projects, etc.) (Li 2010, pp. 125–127).

China has negotiated over 100 bilateral investment agreements (BIAs) since the reforms and the opening up of its economy in the late 1970s. Almost all of these BIAs are aimed at the protection of investors' rights after investing in a host country. The new generation of BITs negotiated by China also includes provisions related to market access rights (pre-establishment guarantees with negative lists). Such guarantees are expected to have a positive impact on Chinese outward FDI through lowering barriers to its investments abroad (Wang 2017, p. 3).

The analysis presented above shows that the EU and China are carrying out different models of policy towards foreign investment. The EU is in the process of introducing a common investment policy which would enhance its negotiation position. The new screening framework for FDI could play the same role. China is in the process of reducing restrictive measures towards FDI, and it has introduced new legislation enhancing market access. However, the openness of China's economy and investment opportunities are still limited.

The EU-China Comprehensive Agreement on Investment – the main problems in the negotiations

During the 15th EU-China Summit in 2012, both parties agreed to launch negotiations for a Comprehensive Agreement on Investment (CAI). In October 2013, the Council adopted the negotiating mandate for the Commission, and the launch of the negotiations was announced at the 16th EU-China Summit in November 2013. The first round of talks started in January 2014 (European Parliament 2018a).

The main provisions and topics that were negotiated included (EC 2017a):
- Expropriation,
- The observation of written commitments under the so-called umbrella clause,
- National treatment-related exceptions such as general exceptions, sectoral exclusions, special formalities, and information requirements,
- Transparency, including procedural fairness during competition procedures,
- Sustainable development,
- Financial services.

After the 19th round of negotiations for the EU-China Investment Agreement which took place in Beijing on 29–30 October 2018, the European Commission stated that the negotiating parties had provided their formal feedback on the markets offers for the first time. Additionally, some progress was made on investment protection-related provisions, such as expropriation and compensation for losses. The negotiations also confirmed the progress made on both state-to-state and investor-to-state dispute settlements, although additional technical follow up is required in this field. The negotiations on other topics are either in the phase of clarifying the understanding of the parties (sustainable development with special reference to the investment-related aspects of environment and labor) or require further substantial follow up (fair and equitable treatment, as well as national treatment and its related provisions) or are at the initial stage (transfer and capital movement provisions) (EC 2018).

According to independent evaluations, the progress of the negotiations thus far has been relatively slow, and some political risks might occur in the future. Some reasons for this have been perceived as follows (Shan, Wang 2015, pp. 261–265; Ewert 2016, pp. 1–5; Góralczyk 2016; Wang 2017, pp. 3–4; Garcia 2017, pp. 4–7):
- limits of the EU competences, i.e., the shared exclusive competence of the EU in concluding bilateral investment treaties (perceived problems with the ratification processes),
- lack of coordination among Member States, which was confirmed by the individual decisions about joining the Asian Infrastructure Investment Bank in 2015,
- the recent politicization of trade policies in Europe – public opinion and civil society groups reject investment and trade agreements as a form of globalization,
- the idea of market access for investors, accepted by both parties, has encountered some practical barriers on the EU side, i.e., who would be responsible for answering the claims of investors and paying potential compensation in the case of breaching market access commitments: the EU or the Member States,
- the change in expectations related to the principle of reciprocity in market access; this issue is less urgent for China as the EU market is relatively open to foreign investment,

— at the same time, European industries insist on Chinese pre-establishment guarantees, but concerns arise regarding China's increasing investment in Europe, especially in technological companies,
— China does not fulfill the EU's criteria for a market economy system, according to the WTO protocol, but any decision undertaken by the EU could negatively influence the negotiations on the CAI,
— the discrepancies in interests/preferences occurring among the EU Member States: the developed Member States give priority to the protection of their investment in China, while the new EU Members from Eastern and Central Europe are trying to attract investment from China.

As for investment dispute settlement mechanisms, both parties seem to agree that reforms of investor-state dispute settlements (ISDS), as well as State-to-State arbitration, are necessary. It is worth pointing out, however, that the ISDS cases in the relations between the EU and China thus far have rather been a rare phenomenon. According to the UNCTAD database, only two such cases occurred between China and the EU Member States in the years 2011–2017 – see Box 1 (UNCTAD 2017).

Box 1. ISDS cases/ EU investors – China

(1) China as a respondent state – 3 cases in 2011–2017;
Home states of investors: Malaysia, Republic of Korea, Germany – 2017 (the case pending).
(2) China as a home state of investors: 5 cases in 2007–2017;
Respondent states: Lao People's Democratic Republic, Yemen, Belgium – 2012 (the case decided in favor of the State)**, Mongolia, Peru.**
(3) 2 cases only in relations with the EU.

Source: UNCTAD (2017), Investment Dispute Settlement Navigator, https://investmentpolicy hubold.unctad.org/ISDS/ (accessed: 8.05.2019).

EU–China bilateral investment – the potential impact of the Comprehensive Agreement on Investment

China is the EU's second largest trade partner while the foreign direct investment stocks and flows between them remain modest in absolute and relative terms. The total FDI position of the EU in China (including Hong Kong) reached €304 billion at the end of 2016, i.e., 4% of FDI stocks held by the EU in the rest of the world (Eurostat 2017). In turn, China's FDI stocks located in the EU amounted to €136 billion, and was equal to 2.2% of FDI stocks held by the rest of the world in the EU. The EU as a whole remains a net exporter of capital in the form of FDI.

With these results, China is in 5th place as a partner for the EU, after the USA, Switzerland, Brazil, and Bermuda. As for the share of FDI stocks held by the rest of the world in the EU, China is in 9th place (Eurostat 2017). These observations seem to sup-

port the assessment related to the EU–China FDI stocks that: "*…the Chinese footprint (the FDI stock) in the European Union is very small…*' (Clegg, Voss 2016, p. 85).

Between 1995 and 2017, Chinese investors were especially involved in M&As in the EU, which is confirmed by the ranking of extra-EU countries by the total stock of their acquisitions of European companies (EC 2018a, pp. 20–21). China, including Hong Kong, was ranked second, after the USA, among non-EU countries with the highest disclosed value of acquisitions in the EU. At the same time, China took sixth place in the ranking by the number of transactions. It indicates that Chinese investors take part in fewer M&A transaction but with higher average values.

As far as FDI flows are concerned, global and regional flows are characterized by high volatility (UNCTAD 2018, pp. 184–187). This is true for the EU as well. In the context of the EU-China bilateral capital flows, a surge in Chinese FDI flows into the EU was observed during the global financial crisis and post-crisis periods. The explanation of this phenomenon is possible by discussing the push and pull factors influencing the investment decisions of Chinese investors.

Among the reasons for investing in the EU, Chinese companies were driven by internal motives such as the "*Going Global*' strategy, decreasing returns on domestic investment, and demand for the EU's technologies and market. Apart from that, the global financial crisis offered Chinese investors the opportunity to invest in the EU at relatively lower costs/to find economic bargains. The sovereign debt crisis of the EU Member States also created favorable opportunities for foreign investors, including China, and caused low political resistance to their FDI flows into the EU. The competition among the EU Member States to attract FDI could also be a factor that stimulated Chinese investment while at the same time there were no particular screening mechanisms implemented (Meunier 2014, pp. 283–302; Ying 2014, pp. 51; Garcia-Herrero, Xu 2017, p. 3, 5).

The Comprehensive Agreement on Investment which is currently being negotiated between the EU and China is perceived as bringing potential positive effects for both partners in the long term. For the EU, these would be the improvement of the legal certainty regarding the treatment of EU investors in China, better protection of EU investments, reductions in investment barriers, and increases in bilateral investment flows. The condition for achieving the above-mentioned effects is the inclusion of substantial market access for European investors in the CAI (Ewert 2016, p. 2).

For China, these effects would include improving its position as an EU trading and investment partner, creating EU-wide uniform protection for Chinese investment, an increase in the legal certainty regarding the treatment of Chinese investments, a guarantee for the existing openness of the EU economies to Chinese investment, an increase in Chinese investment in the EU as well as paving the way for the signing of a free trade agreement (FTA) in the future (Ewert 2016, p. 3; Garcia-Herrero, Xu 2017, p. 6).

The Role of China's *"One Belt one Road'* Initiative for the New EU Member States

In 2012, China proposed a series of diplomatic initiatives, among them "new type of great power relations' and "one belt, one road,' which are perceived as having significant implications for the EU (Zheng 2017, p. 1162). Some facts related to China's *"One Belt one Road'* (OBOR) initiative are as follows:

— In 2013, President Xi Jinping started the initiative to build the *Silk Road Economic Belt* and the *21st-Century Maritime Silk Road* during his visits to Central Asia and Southeast Asia.
— In 2015, China presented the principles, framework, and co-operation priorities and mechanisms in its OBOR initiative.
— The initiative aims to "*...promote orderly and free flow of economic factors, highly efficient allocation of resources and deep integration of markets by enhancing connectivity of Asian, European and African continents and their adjacent seas*" (The State Council, The People's Republic of China, 2015).

The OBOR initiative has subsequently evolved through three stages, i.e., from a development strategy for Asia, mainly China's periphery countries, to Asia, Africa, and Europe and now all countries. It is argued that both of the above-mentioned strategies suffer from the problem of "*…over-generalization, and have thus lost the persuasiveness of their strategic narratives*' (Zheng 2017, p. 1163).

Nevertheless, under the OBOR initiative, two new emerging trade corridors connecting the Far East and Europe have been built. One is the China-Europe Sea Express Line (CESEL), and the other is the New Eurasian Land Bridge (NELB). Massive investments in these infrastructure networks have already been made. By April 2018, eighteen Chinese cities had opened direct railway container services to European cities. Furthermore, the Port of Piraeus in Greece is being transformed with Chinese capital into an important hub port as an element of the oceangoing route (Yang, Jiang, Ng 2018, p. 190).

Central and Eastern European Countries (CEECs) started playing a role in the OBOR initiative when the Joint Document of China-CEEC Ministerial Meeting on Promoting Trade and Economic Cooperation was launched in 2014. Representatives of the countries declared that China and the CEECs should seize the opportunities arising from the OBOR initiative (Zheng 2017, p. 1170). Some infrastructure projects in CEECs seem to confirm the implementation of this idea. For example, China has cooperated with CEECs in the construction of railways linking Budapest and Belgrade, the capital cities of Hungary and Serbia, respectively. This connection should significantly reduce the travel time between these two regions in Europe after its completion (Yang, Jiang, Ng 2018, p. 190).

The attitude of the Central and Eastern European EU Member States towards the initiative of the Chinese Government seems to be positive. This high acceptance might be connected with the establishment of the special initiative between China and the

“new’ EU Member States, as well as Balkan countries, in 2012 in order to intensify and expand economic co-operation (the 11+6 format) (Garcia-Herrero, Xu 2017, p. 4; Le 2017, pp. 1–2). Apart from that, the existing shortage of capital in the new EU Member States, and the volatility of FDI inflows to their economies, might impel them to attract Chinese investment. The high dependence of the new EU Member States on FDI inflows coming from the “old’ EU countries might create the need to diversify the origin of the investors in case of crises. The limited capital involvement of the USA in the CEE region, perceived as the “marginalization’ of these countries, encourages them to seek out new sources of capital in the global economy as well.

The main characteristics of the Chinese FDI in the new EU Member States (CEECs) thus far show that Chinese investments in these countries are still relatively small. They are geographically concentrated in a handful of countries, mainly in Poland, Bulgaria, and Hungary. Some changes in the sectoral structure of FDI have been observed, i.e., the shift from road construction and port building to local production, assembling, distribution, and logistics. The combination of China’s relative advantages and the real needs of the new EU Member States from CEE constitutes conditions conducive to bilateral investment (Ying 2017, pp. 49–51).

One might expect that implementing the OBOR initiative should enhance further co-operation between China and the CEECs. Such expectations could be supported by the achievements made thus far under the strategy mentioned above. At the same time, some strategic problems might occur at the level of the EU if the Member States continue competing among each other for Chinese investment.

Conclusions

1. The EU, as an integration grouping, established freedom of capital movement with third countries; however, the introduction of a common investment policy has encountered some obstacles. They are related to investor protection and ISDS issues.
2. In turn, China is carrying out an independent state policy towards foreign investment with limited liberalization of FDI flows. Its policy developed from being permissive in certain areas, then encouraging and incentives-based, to being unified to a certain degree for both domestic and foreign firms and accepting pre-establishment market access for foreign investors, combined with the negative list.
3. The negotiated CAI between the EU and China is expected to create conditions conducive to bilateral foreign investment flows, and it might bring positive effects for their economies.
4. The hitherto limited progress in the negotiations on the EU-China CAI seems to be caused by legal obstacles in establishing an EU common investment policy as well as the specificity of Chinese policy towards foreign investment.

5. The most difficult problems in the negotiations on CAI seem to be the reciprocity in market access, investor protection, a screening framework for FDI, and the special position of Chinese state-owned enterprises (SOEs), which represent a risk of unfair competition in both China and Europe.
6. The introduction of the EU framework for screening FDI projects from third countries may limit the inflow of Chinese FDI into strategic sectors of the EU.
7. The relations between China and the new EU Member states (CEECs) are characterized by common interests in the field of FDI flows. The new EU countries are interested in attracting Chinese FDI, and they do not show the same fears that arise in the old EU countries.

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Streszczenie

Podejście Unii Europejskiej i Chin do bezpośrednich inwestycji zagranicznych: implikacje dla wzajemnych stosunków

Celem artykułu jest analiza nowych tendencji w polityce Unii Europejskiej (UE) i Chin wobec bezpośrednich inwestycji zagranicznych (BIZ), dyskusja nad niektórymi implikacjami Wszechstronnej Umowy o Inwestycjach, negocjowanej między UE i Chinami, dla ich wzajemnych stosunków oraz ocena roli chińskiej inicjatywy „*One Belt One Road'* (OBOR) w odniesieniu do nowych krajów członkowskich UE. Unia Europejska ustanowiła swobodny przepływ kapitału w stosunkach z krajami trzecimi, jednak

wprowadzenie wspólnej polityki wobec inwestycji zagranicznych napotyka na przeszkody, które są związane z kwestiami ochrony inwestorów i rozstrzygania sporów między inwestorami a państwem (ISDS). Chiny prowadzą natomiast niezależną politykę wobec inwestycji zagranicznych, z pewnymi posunięciami liberalizacyjnymi wobec BIZ. Oczekuje się, że negocjowana umowa między UE i Chinami o inwestycjach może stworzyć korzystne warunki dla wzajemnych przepływów BIZ oraz w przyszłości pozytywne efekty dla całych ich gospodarek. Jednakże dotychczasowy postęp w negocjacjach jest ciągle jeszcze ograniczony. Stosunki między Chinami i nowymi krajami członkowskimi UE cechują się obopólnymi interesami w sferze bezpośrednich inwestycji zagranicznych. Nowe kraje członkowskie są zainteresowane przyciąganiem chińskich BIZ, nie okazując obaw, jakie ujawniają się wobec chińskich inwestycji w „starych” krajach członkowskich.

Słowa kluczowe: stosunki między UE a Chinami, polityka wobec bezpośrednich inwestycji zagranicznych (BIZ), Wszechstronna Umowa o Inwestycjach (CAI) między UE i Chinami, inicjatywa „Nowy Jedwabny Szlak” (Inicjatywa Pasa i Szlaku)