POLAND
IN THE EUROPEAN UNION

Report 2022

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EXECUTIVE SUMMARY

'Poland in the European Union. Report 2022' is now the second annual report prepared by the Department of European Integration and Legal Studies at the Collegium of World Economy, the SGH Warsaw School of Economics. It covers selected issues related to economic and legal dimensions of Poland's membership in the European Union. The Report was prepared based on data available as of January 2022.

In the First Chapter, Elżbieta Kawecka-Wyrzykowska discusses the *Proposal for the EU Carbon Border Adjustment Mechanism as an Instrument of the European Green Deal: Possible Implications for Poland*. The Carbon Border Adjustment Mechanism (CBAM) proposal is one of the instruments in the EU Green Deal strategy to reach carbon neutrality by 2050. It provides for a levy on imports based on the amount of carbon emissions resulting from the production of certain products. It introduces a mechanism establishing a level playing field between foreign goods and those produced within the EU internal market in terms of the cost of carbon emissions associated with the production of these goods. In this way, the CBAM would compensate EU producers for the cost of allowances within the ETS and prevent 'carbon leakage'. This means re-allocation of production abroad, to countries with less ambitious climate goals. Application of the CBAM should also encourage non-EU countries to follow the EU climate policy aimed at reducing GHG emissions and fighting climate warming. The paper elaborates on the concept of the Commission's proposal and critically assesses it, from the economic point of view (who will lose and who will gain) and in legal terms (compatibility with WTO rules). Also, it identifies possible implications of the CBAM proposal for the Polish and the whole EU economy, as well as for third countries. The carbon border adjustment mechanism will increase prices of imported products subject to this instrument as the cost of CO_2 emissions (reflected in carbon certificates) will be added to the prices of products imported into the EU. The introduction of an additional import levy would affect not only imports, but all sectors in the EU that use or process products subject to the CBAM, thus increasing the cost of final goods produced. The final bill would be borne by consumers and exporters. The first estimates revealed that the overall CBAM effects on average consumer prices would be small. Instruments for the reduction of GHG emissions, however costly, are indispensable, both to protect the environment and human life. New instruments addressing the issue of climate protection should be assessed not only in terms of an additional burden, but also as an opportunity to create new jobs and income in industries producing environmentally friendly devices, installations, offering new types of services, etc.

The next chapter, prepared by Adam A. Ambroziak, is on *Poland's State Aid Policy During the COVID-19 Outbreak*. The COVID-19 pandemic hit the European Union at the end of the first quarter of 2020, leading EU Member State governments to introduce widespread economic lockdown. An analysis of state aid granted in connection with the COVID-19 pandemic in Poland shows that support was granted to those industries which really needed it. This is indicated by its sectoral distribution in relation to the share of particular industries in the Gross Value Added. The highest value of aid granted, and consequently a very strong aid impulse, was recorded in Q2 2020, but in subsequent quarters in 2020 and 2021 a significant decline in the value of aid was observed, primarily due to funds provided for in the existing programmes being consumed. Taking into account changes in added value with a simultaneous steady increase in the number of enterprises, the recorded reduction in employment in this same period of time resulted not so much from the crisis as from restructuring in the face of a potential crisis. On the other hand, the constant increase in the number of enterprises may have resulted partly from the desire to get engaged in business activities exhibited especially by employees laid off at the beginning of the pandemic. COVID-19 state aid significantly changed the structure of aid granted in Poland – as a rule, relatively, the greatest amount of aid was received by entrepreneurs who had previously benefited the least from state support.

Since pursuing the 17 Sustainable Development Goals (SDG), which were officially introduced in the United Nations' 2030 Agenda, became a priority for the European Commission, the aim of chapter 3 on *Economy That Works for People: Is Poland on Track to Achieve the Economy-Related Sustainable Development Goals by 2030?* by Michał Schwabe is to evaluate Poland's performance in achieving the economy-related sustainable development goals, and to evaluate its circular economy performance by analyzing the circular economy indicators in reference to the EU average. The analysis reveals that although Poland seems to be capable of becoming a sustainable and circular economy by 2030, there seem to be certain issues that need to be addressed, should the country remain on track to complete the sustainable development goals within the indicated timeframe.

In the next chapter 4 on *Legal Framework of Poland's Relations with Its Neighbours and Poland's Neighbourhood Policy (Law and Policy) – Selected Issues*, Jerzy Menkes examines the legal framework of Poland's relations with its neighbors, the implementation of norms and policies determining neighborly relations. The analysis is conducted in the context of the EU and US laws and neighbourhood policies. The author focuses on Poland's relations with states and regions of crucial importance from the perspective of the Polish raison d'état. Poland's relations with its neighbours are not good and, additionally, are quite turbulent. Poland does not use the opportunities arising from the importance attributed to the relations with non-EU states in the European Neighbourhood Policy and does not benefit from potential close cooperation with EU members. The author identifies one reason for this state of neighbourhood relations as being treating foreign policy as a function of internal policy. This depreciation of foreign policy harms the choice of objectives and methods of implementation of the neighbourhood policy.

Chapter 5 is dedicated to *Poland and Other EU Members' Trade Relations with Asian Economies* by Magdalena Suska. The European Union is aiming at expanding its presence in Asia, considering the increasing economic significance of this part of the world and proceeding globalisation processes. Hence, the EU is entering into RTAs/FTAs with rapidly developing individual Asian countries creating new opportunities for European suppliers and consumers and simultaneously promoting cooperation and multilateralism. The main objective of the study is to present the trade relations of Poland and other EU members with Asian countries. In the study, the role of trade in goods between the EU and Asia has been examined, including the intra- and extra- regional flows. Additionally, the EU and Asia's involvement in global value chains (GVCs) is investigated, measured in terms of foreign value added (FVA) embodied in exports, and domestic value added (DVA) embodied in foreign exports. The study also analyses the intensity of regional flows between Poland and other EU members and individual Asian countries. Asia has become the global engine of global growth and the most dynamic region in world trade, with China playing the leading role. China is the EU's most important trading partner as far as imports are concerned, and ranks second, after the USA, with regard to exports. Although the EU's involvement in the global value chain has currently decreased at global level, Poland's and other EU countries' share in the GVC has increased. The EU's foreign value added embodied in Asian exports has grown, which indicates that the EU has become more important for Asian partners, and that the EU is gaining significance as a source of foreign value added for Asian countries. Although Poland has become more backward and forward-integrated in the GVCs, individual Asian countries' share in Poland's foreign value added embodied in exports is still relatively low.

In chapter 6 on *Polish Bilateral Investment Treaties After the Lisbon Treaty*, Łukasz Dawid Dąbrowski notes that bilateral agreements for the promotion and reciprocal protection of investments (BITs) were commonly concluded by states within the EU and between EU Member States with non-EU countries. Since the Treaty of Lisbon was signed on 13 December 2007 and the judgment of the Court of Justice of the European Union of 6 March 2018 in *Achmea* (C-284/16), the legal status of BITs in the EU has changed. The situation varies depending on whether bilateral investment agreements were concluded between EU states (intra-EU BITs) or with countries outside the

EU (extra-EU BITs). The goal of the chapter is to present the legal actions of the Polish Government undertaken on the grounds of EU regulations and the CJEU judgment, and the legal position of investors protected by Polish BITs. It is found that the Polish Government has undertaken actions in line with EU regulations and the CJEU judgment leading directly to elimination of intra-EU BITs from the EU legal system. Nonetheless, because of different ways in which Polish intra-EU BITs were terminated, the situation of investors could be different. In turn, extra-EU BITs remain binding on the Member States and will be progressively replaced by agreements of the Union relating to the same subject matter, and the conditions for their continuing existence and their relationship with the Union's investment policy require appropriate management.

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PROPOSAL FOR THE EU CARBON BORDER ADJUSTMENT MECHANISM AS AN INSTRUMENT OF THE EUROPEAN GREEN DEAL: POSSIBLE IMPLICATIONS FOR POLAND

Introduction

The world is facing a profound climate crisis. More and more people are aware of the fact that it poses a huge challenge to the whole globe. Every year brings catastrophic consequences of global warming, with droughts, storms and other weather extremes on the rise all over the world. The increase in global temperature is having a devastating impact on nature, causing irreversible changes to many ecosystems. Without fast and effective measures, it may soon be too late to halt climate changes and prevent catastrophes. Simultaneously, it is obvious that addressing the climate change challenges requires international cooperation that will strengthen individual countries' climate measures.

Fighting climate warming and encouraging partners to take similar actions is one of the EU's several priorities. The European Union seeks to contribute effectively to the achievement of the goals of the Paris Agreement of December 2015, i.e. keeping the global average temperature increase well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels (Article 2(1)(a) of the Paris Agreement). At the very beginning of her term, in December 2019, Ursula von der Leyen, the President of the new Commission, presented the concept of the European Green Deal (EGD) (European Commission, 2019), making it the top political priority. At the heart of the European Green Deal and in line with the EU's commitment to global climate action under the Paris Agreement, the objective is to achieve a climate-neutral EU by 2050, i.e. an EU economy with net zero greenhouse gas (GHG) emissions.[1]

On 14 July 2021, a more ambitious legislative package was proposed in keeping with the EGD, called *Fit for 55* and envisaging numerous measures aimed at reducing GHG emissions faster and making the climate cleaner. The Carbon Border Adjustment Mechanism (CBAM) is an important element of this, a measure that should adjust the price of carbon dioxide in imported products to the corresponding price in the EU and support the EU's increased climate protection target, while ensuring WTO compatibility.

The first objective of this paper is to critically assess the Commission's proposal, from the economic point of view (who will lose and who will gain) and in legal terms (compatibility with WTO rules). The second objective is to identify possible implications of the CBAM proposal for the Polish and EU economies.

This chapter is organised as follows. It starts with a brief review and assessment of the recent Commission's proposal *Fit for 55*, aimed at speeding up and extending the implementation of the European Green Deal. Against this background, the arguments for the CBAM are discussed, supplemented by the theoretical justification of the CBAM and a discussion on CBAM compatibility. Next, the main elements of the EU CBAM proposal are analysed, followed by the presentation of the expected CBAM implications for the whole EU and for Poland in particular. The conclusions address the research objectives formulated above, whereas the research method applied is a critical review of international reports and EU documents.

1. The Commission's proposal *FIT for 55* – a brief assessment

As mentioned above, on 14 July 2021, the European Commission presented a very ambitious package of legislative proposals (the *Fit for 55* package) to speed up and extend EU activities aimed at making the EU EGD a reality. In general terms, the new package should make the EU's climate, energy, land use, transport and taxation policies fit for reducing net greenhouse gas (GHG) emissions by at least 55% by 2030[2] compared to the 1990 levels (see Box 1) and result in a climate-neutral EU by 2050. If adopted, the new laws would fundamentally transform the EU economy. They touch upon almost every area

1 More precisely, carbon neutrality (or net zero emissions) refers to an economy that does not emit more greenhouse gases than the quantity captured. Thus, carbon neutrality means that any remaining emissions are offset by negative emissions – for example, by forests absorbing CO_2 from the atmosphere.

2 Hence the name *Fit for 55*.

of economic activity – from how citizens heat their homes and commute to an upheaval of manufacturing practices. The general objective is to effectively reduce greenhouse emissions, while mitigating transitional costs of the transformation.

Box 1. The way towards the *Fit for 55* package

In September 2020, after a few months of public consultations, the 2030 Climate Target Plan was announced by the Commission to increase climate ambitions, as, according to new projections, simply continuing to implement the legislation then in force would see the EU achieving a 60% rather than 100% reduction of greenhouse gas emissions by 2050. Therefore, the previous EU climate target for 2030 of at least a 40% reduction in greenhouse gas emissions was increased to at least 55%, compared to 1990 emission levels, to make the EU climate neutral by 2050. That more ambitious goal became legally binding under the new regulation of 30 June 2021.

Source: Regulation (EU) 2021/1119.

The *Fit for 55* package includes 13 draft legislative proposals which update existing EU laws on climate protection and extend the environmental goals.[3] As the energy sector accounts for 75% of the EU's greenhouse gas emissions,[4] the new proposals mostly cover areas related to energy production and consumption, including reduction in emissions from industry, buildings, transport and land use (Box 2). A strong price signal to reduce energy use and increase the share of renewable energy will come first of all from the strengthened EU Emissions Trading System due to its extension to cover aviation, buildings and fuels,[5] limiting the overall emission cap and increasing its annual rate of reduction combined with the phasing out of free allowances. These changes are to be gradually introduced from 2023 to 2025.

3 Modifications are proposed with regard to: the revision of the EU Emission Trading System (EU ETS); the revision of the Land Use, Land Use Change and Forestry (LULUCF) Regulation; the revision of the Effort Sharing Regulation (ESR); the amendment to the Renewable Energy Directive (RED); the amendment to the Energy Efficiency Directive; the revision of the Alternative Fuels Infrastructure Directive; the amendment to the regulation setting CO_2 emission standards for cars and vans; the revision of the Energy Taxation Directive. New legislative proposals include: the new EU forest strategy; the carbon border adjustment mechanism (CBAM); a Climate Action Social Facility; ReFuelEU Aviation – on sustainable aviation fuels; FuelEU Maritime – on greening Europe's maritime space; see: https://cor.europa.eu/en/news/Pages/FIT-FOR-55-PACKAGE.aspx (accessed: 01.10.2021).

4 https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_3544 (accessed: 01.10.2021).

5 The ETS currently applies to electricity and heat generation, and energy-intensive industry sectors, including oil refineries, steel works, the manufacture of iron, aluminium, metals, cement, lime, glass, ceramics, pulp, paper, cardboard, acids and bulk organic chemicals. It also covers commercial aviation within the European Economic Area. The remaining 60%, including emissions from transport, buildings and agriculture, are currently excluded from EU-wide carbon pricing, but only subject to EU-wide minimum rates for energy taxes, set by the Energy Taxation Directive; see Box 1 and: https://www.bruegel.org/2021/03/carbon-price-floors-an-addition-to-the-european-green-deal-arsenal/ (accessed: 01.10.2021).

Box 2. The most important *Fit for 55* proposals

- a significant increase in minimum tax rates for heating and transport fuels;
- more ambitious targets for expanding renewable energy to produce 40% of energy from renewable sources by 2030;
- faster renovation of buildings that are not deemed energy efficient;
- the planting of 3 billion trees by 2030, in an effort to remove a portion of the carbon from the atmosphere;
- carbon-neutral land use by 2035;
- the phasing-out of free emission allowances for aviation;
- a tax on aviation fuel;
- the inclusion of maritime sector and aviation emissions in the ETS.

Source: European Commission, 2021e.

Regulatory measures also include instruments aimed at increasing energy efficiency (e.g. through new production technologies and replacement of traditional cars with electric and hybrid vehicles, possibly by 2035) and at much greater use of renewable energy. Both types of measures directly reduce emissions, air pollution, and dependency on fossil fuels and are key to decarbonising the EU economy. An important new instrument serving to reduce GHG emissions in the EU and in other countries should be the Carbon Border Adjustment Mechanism (CBAM), proposed by the Commission within the *Fit for 55* package.

Regulatory proposals are accompanied by various financial instruments. The Commission proposed to create a new Social Climate Fund, worth EUR 72.2 billion, for the period 2025–2032. It would reduce social costs related to implementing the package by addressing the social impacts of the extension of emissions trading to cover new sectors.[6] The proposal supplements a number of already existing financial instruments (Box 3) to support energy restructuring, especially to support lower-income EU Member States, usually much more dependent on fossil fuels than developed countries.

The *Fit for 55* programme, including elements already adopted (Regulation (EU) 2021/1119, the European Climate Law), makes the EU's climate neutrality target legally binding and increases the ambitions for 2030 by setting a target of at least 55% net emission reductions by 2030 compared to 1990. The package is, however, criticised by both

6 The funding would be mostly offered for investments aimed at reducing reliance on fossil fuels. It could serve, for instance, increased energy efficiency of buildings, and the decarbonisation of the heating and cooling of buildings. According to the proposal, the Social Climate Fund would be financed by the EU budget and the money would come from the expected revenues of Member States resulting from the emissions trading for building and road transport fuels (25% of the revenue). The respective amendment to the present MFF would be necessary; https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3542 (accessed: 25.09.2021).

supporters and opponents of the fight against the effects of climate warming. Proponents argue that the adopted mechanism of GHG emission reductions may delay energy transition in the Member States and is not sufficient to achieve the Union's climate neutrality objective by 2050. The reason is that the existing laws, including the 2020 Commission Implementing Decision on the annual emission allocations of the Member States for 2021–2030 and the 2021 Regulation on achieving climate neutrality, provide that the emission reduction target is not binding at the national level.[7] Furthermore, they warn that as it stands, *Fit for 55* will shift the cost of pollution from the actual perpetrators to the end consumers if construction and transport are included in the ETS. Proponents of faster climate-friendly changes also stress that the most stringent climate measures are postponed until 2030 and later. For example, free allowances for industry will not end until 2036, the kerosene tax will only fully apply as of 2030, and the internal combustion engine will be phased out as late as 2035. Presumably, the longer periods have been proposed in order to reduce the opposition from countries and sectors which produce the largest emissions.

Box 3. Financial instruments to support energy restructuring

A few years ago, the EU established a fund (NER300) to support low-carbon innovation. In 2021, (the beginning of the fourth phase of the ETS), the NER300 was replaced by the Innovation Fund. Moreover, a new Modernisation Fund was established to help lower-income Member States to modernise their energy systems. The ten Member States with 2013 incomes below 60% of the EU average are Bulgaria, the Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia.
Being aware of the different circumstances in individual EU Member States, the Commission proposed a number of new measures to finance the necessary adjustments. These include the Just Transition Fund and targeted funds in the MFF. Moreover, the proceeds from auctioning ETS allowances can be used.

Source: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3542 (accessed: 25.09.2021).

Opposition to the majority of *Fit for 55* proposals comes from Member States such as Poland, relying heavily on coal. In this case, the main problem is the huge cost involved in achieving ambitious climate objectives. Those countries argue that for them, the adoption of the programme would be relatively more costly, even with transitional periods

7 According to Commission Implementing Decision (EU) 2020/2126, the richest Member States would cut their emissions relatively more than the poorest countries. Moreover, the 2021 Regulation states that '[t]he Union-wide 2050 climate-neutrality objective should be pursued by all Member States collectively', although 'both the Union and the Member States contribute to the global response to climate change' (recitals 20 and 8 to Regulation (EU) 2021/1119).

and EU financial support from a special Climate Fund and other sources. In fact, the costs of investing in the transformation of energy systems will be high for the whole Union. The costs have been estimated by the Commission at EUR 392 billion more each year than was the case in the period 2011–2020, mostly in renewable energy sources and energy efficiency. Critics also stress that the EU *Fit for 55* proposal could 'dramatically increase energy costs for low-income Europeans.'[8] They add that gains in energy efficiency will be offset by the proposed extension of the EU ETS programme to include buildings and transport.

2. The CBAM proposal

Rationale

According to the Commission's proposal, the CBAM (European Commission, 2021d), being part of the European Green Deal package, would adjust the price of carbon dioxide in imported products to the corresponding price in the EU. It should contribute to the decarbonisation of the economy, while ensuring that cheaper foreign products do not threaten the competitiveness of EU output. Without a carbon border adjustment mechanism, there is a risk of carbon leakage and the relocation of production outside the EU. Carbon leakage occurs when production is transferred from the EU to other countries with lower emission reduction ambitions or when EU products are replaced by more carbon-intensive imports.[9] In the latter case, carbon-intensive imports replace domestic production because they come from countries that have more carbon-intensive production processes and looser requirements relating to GHG emissions, thus being cheaper than their EU equivalents. Carbon leakage undermines the EU strategy to efficiently reduce greenhouse gas (GHG) emissions (mostly CO_2 emissions), implemented within the Emission Trading System since 2005. So far, the EU has managed to counter this problem by granting free emission allowances to entities from energy-intensive sectors (e.g. cement or steel producers). This system is not without flaws, however.[10]

8 https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_3544 and https://www.commondreams.org/news/2021/07/14/critics-warn-eu-fit-55-proposal-could-raise-energy-bills-europes-poor (accessed: 21.10.2021).

9 https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_3724 (accessed: 21.10.2021). It can also be defined as 'the ratio between the increase in emissions abroad the decrease in domestic emissions caused by the introduction of the domestic climate policy'; see: Horn, Sapir, 2013.

10 First of all, it reduces the incentives to cut emissions (although only the most efficient installations receive full support). Further, it does not efficiently prevent carbon leakage, especially in view of the increasing use of energy. One additional factor that cannot be disregarded is that the CBAM will generate extra proceeds.

The CBAM seeks to address the risk of carbon leakage in a different way, namely by ensuring equivalent carbon pricing for like imported and domestic products.

Due to the CBAM, prices of imports (from countries applying looser climate policy rules) will more accurately reflect their carbon content and the EU ETS/climate goals will not be undermined at the same time.[11] Furthermore, the new instrument is to prompt producers in the EU and in non-EU countries to make their production processes green and to encourage foreign governments to introduce greener policies for their industries. Given the size of the European market, the CBAM can become a powerful incentive to improve production efficiency also in third countries. It may encourage them to introduce climate-friendly systems modelled on the ETS.

Box 4. The EU Emission Trading System

A key element of the ETS is the maximum (cap) amount of GHG that can be emitted in the Member States by the sectors covered. Producers have been given a gradually decreasing cap on their emissions. They buy emission allowances from ETS auctions or from secondary markets to cover their emissions. Some sectors receive free allowances, especially those which are considered to face carbon leakage risk, in order to ensure that EU industry is not at a competitive disadvantage as compared to imports from countries with fewer controls on emissions. The share of free allowances has been gradually reduced.

The total number of allowances issued (cap) determines the supply of emission allowances and provides certainty about the maximum emissions of GHG. The carbon price is determined on the market by the amount of supply and demand. During the fourth trading period (2021–2030), the total number of EUAs and of free allowances will be reduced by 2.2% each year, i.e. by the same annual reduction factor. According to the European Commission, around 43% of the overall number of allowances were allocated to installations for free from 2013 to 2020. Part of the revenue from the sale of ETS allowances goes to national budgets. 50% of the ETS proceeds should be earmarked by Member States for climate-related activities. The EU ETS governs more than 40% of the EU's total greenhouse gas emissions since the transport sector (excluding aviation), agriculture and small-scale producers are not included in the ETS.

Source: Kawecka-Wyrzykowska, 2020, pp. 199–200 and https://ukcop26.org/wp-content/uploads/2021/11/COP26-Presidency-Outcomes-The-Climate-Pact.pdf (accessed: 01.10.2021).

While contributing to the protection of the climate, this instrument would also raise additional revenue. According to the Commission's estimates, the border carbon levy could generate around EUR 2.1 billion in 2030 (European Commission, 2021c, p. 22; European Commission, 2021d, p. 48). The CBAM is not expected to generate revenue in

11 If the EU taxed only domestic producers' carbon dioxide emissions, foreign producers would be put at an advantage over domestic producers, whether they are efficient or not.

the transitional period from 2023 to 2026. During its definitive stage, namely from 2026, yearly CBAM revenues will depend on the market price of ETS allowances, on the degree of the phase-out of free allocations, and the respective phase-in of the border measure.

How this revenue will be used is an open question. According to the proposal for a Regulation establishing the CBAM and the 2020 Decision on own resources for 2021–2027 (European Commission, 2021d, p. 11 and Council Decision 2020/2053, p. 1), most revenues generated by the CBAM would be collected as an EU own resource (go to the EU budget). In this way, the *double dividend* would be achieved, as in the case of the plastic levy and other environmental taxes, i.e. financing the EU budget and climate protection. In line with the July 2020 European Council Conclusions, this revenue should finance the repayment of the debt incurred by the Commission to provide exceptional financial assistance to the Member States (within the Next Generation EU instrument) to cope with the COVID-19 pandemic. However, specialists argue that – in order to be WTO-compatible – this instrument should be used exclusively for the purpose of financing the climate policy objectives (for more see Section 5).

The carbon leakage issue

One of the main rationales for the CBAM proposal is the alleged carbon leakage, and this needs to be examined more closely. There is extensive literature arguing for the existence of carbon leakage or rejecting this opinion. Some analyses are ex-ante and some – ex-post studies. The ex-ante studies, using simulation models, usually find that unilateral carbon pricing leads to international carbon leakage (see for example Böhringer, Carbone, Rutherford et al., 2018, pp. 183–210). The authors of this study estimate average carbon leakage at between 10% and 30%. This percentage indicates the share of saved domestic emissions that are offset by increased emissions in other parts of the world. Branger and Quirion (2014, pp. 29–39) estimate a typical range of carbon leakage between 5% and 25%. At present, the carbon leakage issue is addressed in the EU by the system of free allocation of emission certificates: the fourth period carbon leakage list includes over 50 sectors receiving free allocations which accounted for 37% of ETS emissions in 2015 – i.e. with more than one third of relevant emissions not priced. With the CBAM, all CO_2 emissions – including those embedded in imports – could be priced according to the certificate prices based on the EU ETS (Holzhausen, Zimmer, 2020).

Ex-post studies, basing on trade flows and embodied GHG emissions, usually do not confirm substantial levels of carbon leakage from existing mechanisms such as the EU ETS (European Commission, 2021c, p. 7 and Annex III). Branger and Quirion (2014, pp. 29–39) found usually modest carbon leakage, relying on a meta-analysis of 25 studies and altogether providing 310 estimates of the carbon leakage ratio according to different assumptions and models. Similarly, Naegele and Zaklan (2019, pp. 125–147) and Bruegel experts (Zachmann, McWilliams, 2020, p. 4) concluded that there was no significant evidence of carbon leakage in European manufacturing following the implementation of the EU ETS. However, as the OECD (2020, p. 11) argues, '[t]his literature, however, has been, by definition, based on *past* climate policies, which have not embodied the same level of ambition that is now being put forward by some countries. Thus, while carbon leakage and competitiveness effects of climate policies have been very modest so far, increased policy stringency divergence in the future may amplify these issues.'

3. Theoretical justification of the CBAM

The CBAM has solid theoretical foundations. Its concept follows the idea first presented by Pigou (1920) that taxes could address the adverse side effects (referred to by other economists as *negative externalities*[12]) of individuals' or businesses' activities excluded from the product's market price. Such a tax is sometimes called a 'Pigouvian tax'. Examples of negative externalities include environmental pollution, tobacco products, and plastic bags. The starting point for Pigou's deliberations was to distinguish between private (individual) and social costs of production. Social costs include the private cost and external cost, being much higher than the private cost. The difference between social and private costs is the external effect. Pigou argued that producers aim at maximising their own marginal private interest. This may diverge from the external marginal social cost of the negative externalities (Pigou, 2013).

It is the perpetrator ('producer') of the negative externality (cost) that avoids incurring it and transfers the cost to others. Such a 'producer' of negative effects gains an advantage by charging others the costs of obtaining it. Where negative externalities exist, the perpetrator of the negative externality has no financial incentives to reduce this cost. As a result, the social cost of a given market activity is not covered by the private cost of the activity. This means also that the market outcome is inefficient and may lead to over-consumption of the product and inefficient allocation of resources. Pigou suggested that a tax imposed on a producer of goods or services creating adverse side effects for society was intended to correct that situation (to internalise those external costs), by equalising the external marginal cost of the negative externalities. In this

12 The concept of externalities was introduced into economic theory by Marshall in the late 19th century. Nordhaus (1979), the co-winner of the Nobel Prize in Economic Sciences in 2018, also considers a carbon tax to be a more effective emission reduction mechanism than for example bans or similar restrictions.

way, by internalising the external costs and assigning them to a specific entrepreneur who generated them, such a tax would reflect the real environmental cost of the activity. That cost would be built into private sector decision-making.

4. How will the CBAM work in practice?

So far, no country in the world has an operational CBAM, but the idea of such a mechanism is not new.[13] Moreover, a solution similar to the CBAM is already in place in California, where an adjustment is applied to certain imports of electricity.[14] A number of countries such as Canada and Japan are planning similar initiatives (Lowe, 2019).

In the EU, introducing a CBAM has been debated for years.[15] The discussion accelerated with the European Green Deal and a new level of green ambitions. According to the Commission's legislative proposal of July 2021, the CBAM is neither a tax nor an import tariff. It is a mechanism (a levy) that establishes a level playing field between goods produced in the EU and imported goods in terms of the cost of GHG emissions associated with the production of those goods. Nowadays, the price of products originating in the EU reflects, within the ETS, the price of their carbon content, whereas the CBAM will reflect the carbon content of imported products. It is intended to be an alternative to free allowances that address the risk of carbon leakage in the EU's Emissions Trading System. It is meant to avoid a situation where the emissions reduction efforts of the Union are offset by increasing emissions outside the Union through the relocation of production or increased imports of less carbon-intensive products. Without such a mechanism, carbon leakage could result in an overall increase in global emissions (European Commission, 2021d, p. 1). The carbon content of products is an essential element of the

13 The source of the idea of a carbon footprint tax can be found in Sweden, where such a mechanism was introduced in the early 1990s. At that time, it was EUR 27 per tonne of CO_2 emitted. By 2009, that tax rate had reached EUR 108. The Border Carbon Tax idea emerged when the US President George W. Bush blocked the ratification of the Kyoto Protocol in 2001, followed by attempts to draft such a tax in the EU after the failed negotiations on the global climate agreement in Copenhagen in 2009. President Chirac presented a similar proposal in 2007; see: Wąsiński, 2019 and https://www.euractiv.com/section/energy/news/eu-carbon-border-tax-how-a-french-idea-ended-up-in-the-limelight/ (accessed: 21.10.2021).

14 The system requires electricity importers to purchase carbon permits for the carbon content of imported electricity if the state from which the electricity was purchased does not have a carbon pricing system linked to California's ETS; see: Acar, Aşıc, Yeldan, 2021, p. 8. Pauer (2018, pp. 39–45) argues, however, that the Californian system has not reduced carbon leakage.

15 In the EU, the first step towards implementing a Border Carbon Adjustment (BCA) was Directive 2008/101/EC, which extended the EU ETS to include aviation. The directive was similar to a BCA, as it required airlines, when taking off from or landing at an EU airport, to submit ETS allowances. That requirement applied to pollution from the whole flight, including emissions in non-EU airspace. However, many countries opposed that proposal and the EU decided to postpone its implementation. It started to be applied only to flights within the European Economic Area (for more see: Horn, Sapir, 2013).

CBAM, as it indicates the GHG emissions (expressed as a carbon dioxide, 'CO_2', equivalent) that are released during production of the products abroad. The carbon content should ensure that imported products are not discriminated against (as they should be treated no less favourably than domestic products of EU ETS installations). The quantity of carbon emissions, as expressed as a carbon dioxide equivalent, i.e. 'CO_2' emitted, will be a proxy for the carbon content.[16] This carbon content of products will be multiplied by the reference carbon price to determine the financial obligation under the CBAM.

According to the Commission's proposal, the CBAM will be based on certificates at prices corresponding to the carbon dioxide emissions embedded in imported goods. Prices will be calculated on the basis of the weekly average auction price of EU ETS allowances, (expressed in EUR/tonne of CO_2 emitted) in order to avoid daily movements. Accordingly, the level of the CBAM levy will fluctuate according to the changes in price of CO_2 allowances within the emission trading scheme. Importers will need to buy certificates. Thus, carbon certificates will correspond to the carbon price that would have been paid had the goods been produced under the EU's carbon pricing rules. This solution seems to be crucial to ensure that the levy is compatible with WTO rules, as in this way foreign exporters would be placed on an equal footing with European producers. At the same time, importers will not bear the cost of certificates if they prove that a carbon price has been paid for the emissions embedded in the imported goods (e.g. once a non-EU producer/exporter shows that they have already paid a price for the carbon used in the production of a given product).

In order to ensure that imported products are not treated worse than domestic products, data on carbon intensity should be presented individually by specific suppliers to the EU and for specific products. In all cases where no information on the actual emission level is available, the Commission proposes to apply default values on CO_2 emissions to determine the number of certificates necessary to purchase a given foreign product.[17] The exception is electricity, covered by a slightly different system. Thus, the CBAM, as proposed, would use the EU ETS price as the default value for comparing and adjusting prices at the border. Default values will be determined based on the best available data referring to EU installations, in accordance with the methods set out

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16 Thus, carbon content does not refer to carbon physically contained in a product in any chemical state, but rather to the GHG emissions released during the production of the material or product subject to the CBAM, or during the production of electricity used in the process. It will be calculated indirectly, on the basis of the carbon content (CO_2 emitted in production), which is a proxy for the carbon emissions; see European Commission, 2021b, p. 18.

17 The CBAM Regulation proposal provides that default values 'can be adapted to particular areas, regions of countries where specific characteristics prevail in terms of objective factors such as geography, natural resources, market conditions, energy mix, or industrial production' and to exporters offering products containing lower emissions (European Commission, 2021d, Annex III).

in Annex III. If such data are not available, default values will be based on the average emission intensity of the 10% worst performing EU installations for that type of goods. They will be revised periodically.

Importers will have to register with national authorities, where they can also buy CBAM certificates. Moreover, importers will have to declare, by 31 May of each year, the quantity of goods and the emissions embedded in those goods imported into the EU in the preceding year. All of this means that the system will introduce new obligations for national authorities. They will authorise the registration of declarants in the CBAM system and be responsible for reviewing and verifying declarations as well as for selling CBAM certificates to importers.

The plan is that the new system will gradually come into effect, fully in 2026, which will coincide with the entry into force of the reinforced Emissions Trading System (also part of the *Fit for 55* programme). At the same time, for the CBAM sectors, the free allowances will gradually be phased out (by 2035 at the earliest). The transitional period will be 2023–2025, to ensure time to prepare for the final CBAM system to be put in place. In simple terms, until free allowances allocated under the ETS are completely phased out in 2035, the CBAM will only apply to the proportion of emissions that does not benefit from free allowances under the EU ETS. In the transitional period, importers will not be charged using the CBAM instrument. Instead, they will solely be obliged to report emissions embedded in their goods. During the transitional period, the CBAM will apply to a selected number of imported goods at high risk of carbon leakage: cement, iron and steel, aluminium, fertilisers and electrical energy generation (with a few minor exceptions). These five target sectors are the *carbon-intensive upstream industries*. It is assumed that also downstream industries, such as automobiles and machinery, will be targeted in the future. Importantly, the new instrument will cover not only the above-mentioned goods, but also processed products from those goods (European Commission, 2021d, Article 2 and Annex I). In terms of country coverage, it is most likely that some of the EU trading partners would be exempt from the CBAM: non-Member States of the European Union that participate in the ETS (Iceland, Liechtenstein and Norway) and those that have similar cap-and-trade systems linked to the ETS (e.g. Switzerland).

On 15 March 2022, the Council reached an agreement on the EU Commission's proposed Carbon Border Adjustment Mechanism, however with some modifications. The agreed approach covers products of the same sectors already proposed by the Commission in its proposal in July 2021: iron and steel, cement, fertilizers, aluminium, and electricity generation. The new registry of CBAM declarants (importers) is to be centralised at EU level. Also, stricter reporting requirements were added to ensure proper functioning of the CBAM with a view to the extending its coverage in the future. At the same time, the proposed Regulation does not include any timetable for the phasing-out of the free allowances established by the EU ETS directive. It says only that the CBAM '(...) will progressively become an alternative to the (...) allocation of allowances free of charge' (Draft Regulation, 2022, Article 1). The Council also introduced a minimum threshold due to which consignments with a value of less than EUR 150 are exempt from CBAM obligations. This measure would reduce administrative complexity. An issue that needs to be agreed separately is how revenues from the sale of CBAM certificates are to be used. The Commission proposed using them for financing the EU's own resources, in accordance with the Interinstitutional Agreement of 16 December 2020. However, as explained in Section 5, such a solution may violate GATT/WTO rules.

5. Compatibility with GATT/WTO[18] rules

Apart from the economic and technical challenges of the new instrument, compatibility with General Agreement on Tariffs and Trade (GATT) rules is also important. Breach of these rules and the resulting losses suffered by partners may give those partners the right to introduce retaliatory measures. Various efforts have been made in literature to examine the compatibility of earlier proposals for CBAMs with World Trade Organisation (WTO) law (Marcu, Mehling, Cosbey, 2020; Lowe, 2019). The majority of those studies are not very useful nowadays as they were formulated before the most recent concept of July 2021 was released by the Commission, and they did not encapsulate the details of this proposal. Some elements of these opinions are, however, still valid. Several GATT Articles are relevant to CBAMs, first of all those covering non-discrimination and contained in Articles I and III of the GATT.

GATT Article I (General Most-Favoured-Nation Treatment, or MFN) prohibits discrimination on the basis of the country of origin (providing for non-discriminatory treatment among all foreign partners, Members of the WTO) and covers 'customs duties and charges of any kind' (Article I:1). The CBAM seems to satisfy this requirement, as it is supposed to apply to all countries (albeit to a limited number of products). Experts have noticed, however, another problem related to compatibility of the CBAM with Article I. Lowe (2019) argues that the EU CBAM is unfair because it does not offer any relief to the poorest countries, even though they are eligible for different privileges under the Paris Agreement. The rationale for these privileges is the fact that the least developed countries have historically contributed to global emissions far less than developed countries. On the other hand, Monjon and Quirion argue that in line with the most-favoured-nation

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18 The GATT has been in force since 1948, and in 1995, as a result of the Uruguay Round negotiations, became part of the World Trade Organisation (WTO) system.

principle, it would not be possible to exempt any countries, including the least developed countries (LDCs) (Monjon, Quirion, 2011, p. 5).

With regard to the lack of relief for the LDCs, the Commission admits that 'preferential treatment for LDCs is an established procedure in other areas of trade policy', but adds that 'it raises questions in the case of a CBAM'. It argues that with any exemptions from a CBAM, LDCs would be encouraged 'to increase their level of emission and run counter to the overarching objective of the CBAM'. Moreover, any exemptions would be temporary in nature and future adaptation costs for LDCs would be higher (European Commission, 2021b, p. 30). At the same time, in order to avoid the argument raised by LDCs that 'the introduction of a CBAM will be a disproportionate burden for them', assistance for those partners should be offered. It 'could take the form of technical assistance, technology transfer (…) and financial support'. Also, 'to ease the transition, a gradual phasing in of the CBAM could be considered for existing production capacities in LDCs' (European Commission, 2021b, p. 30).

The GATT provision on non-discrimination also states that imports cannot be taxed in excess of the domestic rates of like products (non-discriminatory tax treatment of foreign products as compared to domestically produced 'like' products). This is the so-called *National Treatment*, regulated by Article III of the GATT. The core commitment under Article III is that any imported product should receive treatment no less favourable than the like domestic product. It governs, among other things, 'internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale' (Article III:1). Paragraph 2 is crucial, and states that no domestic measure can impose a heavier burden on imports than on domestic products.[19] The Commission argues that by proposing that importers pay the same carbon price as domestic producers under the EU ETS, the CBAM will ensure equal treatment for products made in the EU and those imported.

This opinion is not so obvious, however. Foreign partners subject to the CBAM could probably question whether their products are charged exactly the same per tonne amount as would have been charged under the ETS and whether the carbon intensity is properly calculated (at the firm level, separately for each country, as several companies producing, for example, cement in a given country may use different technologies and produce different amounts of CO_2 emissions). Further, measuring the average carbon intensity of electricity at the country (or region) rather than at the producer level, as proposed by the Commission (European Commission, 2021d, Annex III), might violate the WTO national treatment principle. In order to avoid such situations, the Regulation envisages

[19] It provides that '[t]he products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly (…) ' (Article III:2).

the possibility of the exporter correcting the information. Efficient foreign producers would have a strong incentive to do this and should be ready to collaborate with domestic authorities (as they collaborate to prove safety standard compliance). However, this would mean additional paperwork, both for exporters and importers. To sum up this part, it is impossible to assess ex-ante what the GATT panel's decision could be in the case of a formal complaint submitted by a foreign producer under Article III of the GATT.

A CBAM should also fulfil the obligations laid down in Article III:4 of the GATT, clearly prohibiting the discrimination of foreign products in comparison with 'like' products of national origin. The word 'like' is crucial, as two products (for example a wire), one produced at home (in a 'green policy' country with low carbon emissions) and the other one imported (from a 'brown' country), can be largely similar in terms of function but very different in carbon content. It is not clear whether or not the two types of wire would be considered 'like' products in terms of GATT law.[20] Some researchers argue that '[a]ny effective BCA would almost inevitably breach GATT's provisions on non-discrimination, because it is by definition meant to differentiate between low- and high-carbon goods that are otherwise comparable, or 'like' (Marcu et al., 2020, p. 4). At the same time, the fact that the CBAM applies to both European (indirectly, through the ETS system) and imported products is a favourable element from the point of view of WTO compatibility.

Most authors agree that if a CBAM proposal should be difficult to justify under GATT Article I or III, there would still be a chance to defend such an instrument making recourse to GATT Article XX: General Exceptions (Monjon, Quirion, 2011). This provision provides for several exceptions to the general rules of the GATT, e.g. to the non-discrimination principle. Exceptions allowed under Article XX (g) include those 'relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'.[21] Thus, it would be necessary to demonstrate that the proposed CBAM addresses climate change, to prove that there is a close connection between this instrument and the goals to be

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20 Commissioner Frans Timmermans, who is in charge of the overall green policy (including the European Green Deal), said 'we stand ready to discuss the CBAM in the context of the WTO and at the COP26', which might suggest that the Commission expected some problems; see: https://ec.europa.eu/commission/presscorner/detail/en/speech_21_3724 (accessed: 21.10.2021).

21 The term 'exhaustible natural resources' (Article XX (g)) was formulated more than 50 years ago. It should be interpreted from today's perspective and take into account people's concerns about the protection and conservation of the environment. Those concerns were already noticed during the most recent GATT negotiations (the Uruguay round) and reflected in the preamble of the WTO Agreement (this preamble refers to all WTO agreements which entered into force on 1 January 1995), explicitly acknowledging 'the objective of sustainable development'; see: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=73422,41121,42468&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True (accessed: 14.10.2021).

achieved, i.e. climate change mitigation (Marcu et al., 2020, p. 19). Hence, the aim of the CBAM should be an environmental (reduction in GHG emissions) rather than a fiscal one or improved competitiveness.

The easiest way to demonstrate environmental motivations of the CBAM would be to use the generated funds for 'the conservation of exhaustible natural resources'. Several academic papers suggest that revenues should be earmarked for international climate funds or disbursed to third countries to prove its non-protectionist character and to obtain support from international partners.[22] It remains to be seen what the Commission will suggest in that regard, as the CBAM proposal only refers to the 2020 European Council Conclusions, and states that the CBAM 'will provide the EU with necessary means to address the challenges posed by the COVID-19 pandemic and, therein, support investment in the green and digital transitions' (European Commission, 2021d, p. 11). Of course, it can be argued that CBAM proceeds can go to the EU budget and be earmarked for 'green' investments, while other revenue (e.g. the GNI-based resource) will be used to repay the debt. Allocating funds to concrete expenses is possible, however, in theory only, as in practice the EU budgetary procedure does not allow expenditures to be linked to revenue in this way.

To sum up, under Article XX of the GATT, it is possible to argue that a CBAM is necessary, even though it violates the MFN or national treatment principle, in order to preserve exhaustible natural resources. However, ex ante, it is not obvious that the EU CBAM proposal is GATT compatible and will not provoke conflicts with trading partners.

6. Possible effects of the CBAM on third countries and on the EU Member States

It is very likely that the CBAM, as proposed by the Commission, would reduce GHG emissions and improve the climate inside and outside the EU. It would create market incentives to curb (or eliminate) imports of carbon-intensive products into the EU. At the same time, the system would force foreign suppliers to strive for reduction in their emission levels below the EU reference point. This could be the first step to introduction of the EU ETS by the EU trading partners. Therefore, there is a chance that the CBAM would contribute to reducing emissions worldwide.

However, the implementation of the system will not involve a costless transition. First of all, the carbon border adjustment will increase prices of imported products sub-

22 https://www.e3 g.org/wp-content/uploads/E3G-Briefing_Politics_Border_Carbon_Adjustment.pdf (accessed: 14.10.2021).

ject to this instrument, as the cost of CO_2 emissions (reflected in carbon certificates) will be added to the prices of products imported to the EU. The scale of CBAM transmission to prices will depend on several factors, such as the allowance price per tonne of CO_2 equivalent, on the scale of allowances transferred to emitters free of charge, the level of carbon intensity, etc. Those factors vary between countries due to their historical development paths, economic policies, higher or lower standards of climate protection, etc. The common factor of the cost of CBAM transmission to domestic prices will be the most probably increasing prices of ETS allowances. Those increases will be fuelled by more ambitious carbon reduction targets, the gradual phasing out of free ETS allowances (planned until 2035), and the intensification of other EU efforts to achieve climate neutrality by 2050 (as seen in the *Fit for 55* proposal) (Krenek, 2020, p. 2).

Certainly, the introduction of an additional import levy would affect not only imports, but all sectors in the EU that use or process products subject to the CBAM, thus increasing the cost of final goods produced. This could pose a threat to competitiveness of EU goods. The final bill would be borne by consumers and exporters. Experience has shown that costs of rising carbon prices are unevenly distributed across different groups in society. Price increases first affect lower-income countries and regions in developed countries. Poorer people bear a relatively higher cost of such increases, as they tend to spend a greater share of their incomes on fossil energy- or carbon-intensive goods compared to higher-income households (therefore, carbon pricing is considered to be regressive).[23]

Another problem with the implementation of the CBAM is that while European firms included in the EU ETS are obliged to submit data on their emission levels, a similar obligation can hardly apply to foreign suppliers who will need to provide that information to EU customers (importers who are responsible for delivering certificates) (Monjon, Quirion, 2011, p. 4). There is no guarantee of obtaining such information, although foreign suppliers producing their products with actual emissions lower than the default value would have an interest in delivering the relevant information in order to avoid higher carbon assessment by the importer.

Moreover, considerable administrative challenges arise from the fact that when introducing the CBAM, the EU has no legal competence over foreign companies to ensure accurate measurement of emissions and verification of measurements. Therefore, adequate monitoring, reporting and independent verification of emissions is essential to the proper functioning of this mechanism.

23 One way to counter the adverse effects of ETS/CBAM costs on households would be to use the revenue obtained from allowance auctions to compensate those who incur losses e.g. by lowering their energy bills or co-financing projects aimed at energy cost reduction, in the form of photovoltaics. Such solutions are applied in Quebec. Any such solution in the EU must, however, be compatible with the state aid rules (Haug, Eden, de Oca, 2018, pp. 10–12, 28–29).

Also, the CBAM seems to generate a lot of additional paperwork related to selling certificates, reporting and verifying emission levels, etc. In this context, some researchers argue that a strong price mechanism in the form of the CBAM should encourage private agencies (carbon rating agencies) to offer required information, to monitor compliance and report information accuracy – in fact, numerous consultancies already provide such services (Wolff, 2019). Such a solution would probably appear on the market and help importers to collect necessary documents, but it would involve extra costs. This would be a problem especially for SMEs, placing them at a disadvantage towards to larger companies. It has already been suggested that administrative costs of the new system should be borne by the EU. For example, Wolff (2019) from the Bruegel think tank argues that '[t]o address this criticism, the EU could even agree to pay the price of certification.' A similar option was suggested earlier by Lowe (2019). 'The EU should take on board much of the financial and administrative burden, particularly for small and medium-sized companies. (…) Some of this money would be recouped from BCA tax revenues' (Lowe, 2019, p. 5).

The CBAM proposal (and the majority of associated instruments) has already caused a wave of criticism from the governments of some EU Member States listed as those potentially most negatively affected by this instrument (see Section 1). There is also the ambiguous assessment by European industries as expressed in public consultations.[24]

Alongside the flaws listed above, there are some positive elements of the system. A favourable aspect of the CBAM proposal is that the mechanism provides for a gradual implementation of the new instrument, thus allowing the industrial sectors involved and authorities time to adapt. Still, representatives of the industries affected claim that the transitional period (until the end of 2026) will be too short to meet the new climate obligations. The same aspect, i.e. a gradual implementation of the programme, has been criticised by opponents as too long (see the comments listed in Section 1). Another positive element is the proposal for creating a Social Climate Fund to promote climate transition and, in particular, to support incomes of less wealthy households and investments of small businesses. From the macroeconomic point of view, a crucial advantage of the CBAM (and the resulting higher import prices) is that it will send all producers (in the

[24] The majority of the respondents participating in those consultations were in favour of the border adjustment mechanism, but worried about the impact on the current domestic measures to address carbon leakage and the functioning of the EU Emissions Trading System (ETS) at large. The stakeholders were concerned about the design of the mechanism, the risk of the CBAM's triggering retaliation measures by partners and impacting the competitiveness of trade-intensive sectors. Many indicated very high implementation costs, especially at the beginning; see: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12228-Carbon-Border-Adjustment-Mechanism/public-consultation_en and https://ercst.org/wp-content/uploads/2021/08/20201125-BCA-Public-Consultation-Summary-v.7-final.pdf (accessed: 21.10.2021).

EU and outside the bloc) a price signal to lower their emissions by switching to more efficient processes or to cleaner fuels. Further, the progressive phasing-out of free allowances (possible due to the CBAM) will stimulate EU producers to launch energy-saving installations and to switch to green energy sources. Importantly, the actual effects of the CBAM will also depend on the implementation of the Commission's other climate-friendly proposals (see Box 3). Moreover, the CBAM should induce foreign producers to follow this strategy in order to remain competitive on the EU market as compared to other, more efficient foreign suppliers. Without that, their output will not be competitive to those suppliers who provide cheaper energy (e.g. solar energy) and energy-based products. First of all, however, the CBAM should contribute to carbon leakage reduction in the EU and encourage other countries to follow the EU system in order to remain competitive on the EU market.

As the CBAM proposal was released quite recently (in mid-July 2021), there are not many quantitative estimates of its implications. The most comprehensive analysis was presented by the Commission in the Impact Assessment Report enclosed in the CBAM Regulation proposal. It was based on the general Regulation proposal, but analysed several scenarios reflecting different detailed options of the CBAM that can be finally adopted. In all the scenarios, the introduction of a CBAM and other measures needed to reach the EU's increased climate ambitions would substantially reduce carbon leakage risks. However, the measures adopted could lead to a minor GDP contraction for the EU-27, by 0.22% by 2030 (European Commission, 2021a, p. 3; European Commission, 2021b, p. 46). The overall CBAM effects on consumer prices would be very small but regressive: the poorest households would often be those most adversely affected. The impacts would differ, however, across sectors. In general, the macroeconomic effects under the different CBAM options were found to be limited. The main reason for the result was that the sectors covered by the CBAM – despite their high shares in total emissions – represented a relatively small part of the EU economy. Furthermore, compliance costs for businesses and authorities, while significant, are expected to be proportionate, and manageable in light of the environmental benefits of the measure (European Commission, 2021c, pp. 23–24). The impact of the CBAM on trade flows was relatively high, especially for the main suppliers of products to be covered by the CBAM (European Commission, 2021b, pp. 64–67). Import levels of all those products were lower, which reflected the elimination of carbon leakage. The most ambitious scenario involved an average 11% fall in the imports in question, but in individual cases the reduction estimate was higher. The countries that would potentially be most exposed to the CBAM included Russia, Ukraine, and Turkey[25], as well as Belarus, Albania and several North

[25] For a more detailed analysis of effects on the Turkish economy see Acar et al., 2021.

African partners (Egypt, Algeria and Morocco). The reason is that the countries concerned are relatively significant suppliers of the CBAM products.

Box 5. Quantitative studies of potential effects of different CBAM proposals presented in literature

Many quantitative studies have analysed potential effects of a CBAM. A literature overview of such investigations is presented, for example, in a 2021 UNCTAD study. The study (using a general equilibrium model) also estimates potential effects of CBAM implementation in the EU on international trade, carbon dioxide emissions, and income and employment, with a special focus on developing countries. Research assumptions relating to the CBAM concept reflect the preferences of a CBAM presented in the European Parliament's resolution of March 2021, before the proposal was released by the European Commission in July 2021. The study confirms that the introduction of carbon pricing coupled with a CBAM helps reduce carbon emissions, inside and outside the EU. International trade patterns change in favour of countries where production is relatively carbon efficient, generally resulting in declining exports in developing countries.

Source: UNCTAD, 2021.

Another quantitative study was conducted to analyse the impact of the CBAM on the economies of EU Member States, e.g. on price levels, the values of output and trade, as well as on several macroeconomic indicators (Pyrka, Boratyński, Tobiasz, Jeszke, Sekuła, 2021). The calculations were performed before the Commission's official document was presented and therefore they were based on precepts slightly different but similar to those adopted. The authors assumed a 55% greenhouse gas (GHG55) emission reduction in the EU by 2030 compared with the 1990 emission levels. In that scenario, the CBAM covered imports into the EU from the following EU ETS sectors: oil, ferrous metals, non-ferrous metals, chemical products, paper products, and non-metallic minerals (significantly exposed to carbon leakage). According to the analysis, the implementation of the CBAM could cause an increase in prices of products imported from non-EU countries in the sectors covered by the adjustment (by an average of 1.6% in 2030) and, at the same time, a decline in the value of more expensive imports (by 3.4%). The other sectors of the economy would grow (by an average of 0.3%), as a result of developments such as substitution for products covered by the adjustment. The changes will be slightly different in individual EU Member States, primarily due to the different sectors covered by the border tax adjustment. The authors estimated a decrease in the value of exports from EU Member States to non-EU regions at 1.1%. This would result from two trends: (a) an increase in prices of imports and domestically produced goods, including those for exports; (b) an increase in output for the

EU internal market, with simultaneously falling imports from non-EU regions. Again, the estimated changes differed between EU Member States, partly depending on the imports of products covered by the border tax adjustment from outside the EU, on the role of energy-intensive products in exports of a given Member State, and on the share of exports that a Member State sends to third countries (outside the EU). The introduction of the border tax adjustment would cause an increase of 0.4% in the output of the sectors covered by that adjustment. As a result of those different trends, the net impact on EU GDP relative to the scenario without the adjustment (GHG55)[26] would be close to zero, since the increase in the value of the output covered by the adjustment would be offset by the decline in the output in the other sectors. Therefore, the implications would not be very substantial. As expected, there would also be a reduction in global GHG emissions (Pyrka et al., 2021, pp. 5–24).

The estimates of the Polish team and the Commission's assessment of the CBAM implications for the EU countries, although based on slightly different assumptions, are similar in their results. They indicate that the negative macroeconomic implications of the CBAM should not be very significant, which does not of course exclude greater implications in individual cases. In this context, it seems justified to cite the general opinion expressed indirectly on the CBAM by Wolff (2019): 'Overall, addressing carbon leakage, while politically difficult, is feasible. Not addressing it would partially undermine the benefits of domestic carbon taxation in reducing emissions and would certainly result in a backlash from the companies and workers that would see their jobs displaced.'

7. Possible implications of the CBAM from Poland's perspective

The general implications of a CBAM for the Polish economy will be similar to those mentioned above. However, the scale of costs for Polish citizens will be relatively higher than in wealthier countries, because of the regressivity of this mechanism (for more see Section 6). The higher costs of Poland's climate-friendly transition will also result from a highly unfavourable energy mix, inherited from the former planned economy system and based on huge resources of relatively cheap coal at that time. Thus, in order to understand the magnitude of the impact of the CBAM, Poland's position needs to be described briefly in terms of carbon intensity of the economy and the resulting implications for the costs that need to be borne.

26 The GHG55 scenario includes additional GHG emission reductions in the EU by 2030, with no change in energy policy which would require for example higher energy efficiency or reduced consumption of fossil fuels. Thus, all changes in fuel consumption are caused by the introduction of a more stringent emission reduction target in the EU (Pyrka et al., 2021, p. 13).

CO_2 emissions are a major contributor to global warming, accounting for 81% of all EU greenhouse gas emissions in 2019 (European Environmental Agency, 2021, p. 67). In 2018, Poland's share in the EU-28's total CO_2 emissions was at 10%, the third highest after Germany (22%) and the UK (11%) and almost the same as in Italy and Spain, despite the fact that all those economies were much larger than the Polish one. Thus, decarbonisation is crucial for Poland in order to contribute to climate protection and to mitigation of the warming effect in the EU.

A huge challenge to Poland is its high dependence on coal, used mostly in electricity generation, as for years the country has registered the highest share of fossil fuels, a highly significant source of CO_2 emissions, in total power generation. In 2020, that share amounted to 83% in Poland, whereas the EU average was 37%. Beside Poland, the countries with the largest shares of fossil fuels in electricity generation were the Netherlands (72%), Greece (64%), Ireland (59%), and Italy (57%); these shares resulted from high dependence on gas (Redl et al., p. 15).

The other side of the picture is that in 2020 Poland was one of the two Member States (the other being the Czech Republic) with the shares of fossil fuels in electricity generation more than four times higher than the respective proportions for renewables. In 2020, only 12% of Poland's total electricity was generated from renewable sources (whereas Slovakia, the Czech Republic, Hungary and Bulgaria recorded even lower shares),[27] which confirms that Poland's transition from coal to clean energy sources will be very long. In the whole of the EU, the 2020 share of renewables in electricity generation was 38% on average, for the first time exceeding fossil-fired generation, of which the share fell – as mentioned above – to 37%.

The high dependance on coal in Poland reflects not only differences in the historical starting position, but also the fact that Poland has been lagging behind in reducing coal generation. In 2015–2020, the share of hard coal and lignite generation only decreased by 18%, while the average decline in the EU was 48% over the same period. As a result of such different trends, in 2020, Poland became the EU's largest coal generator for the first time ever and electricity is now the dirtiest in the EU (Redl, Hein, Buck, Graichen, Jones, pp. 12–13, 16). Total emissions in Poland have been gradually increasing since 2014, contrary to the EU's general downward trend. In recent years, emissions have grown substantially in the building and transport sectors, in contrast to declining emissions in the energy industry. Despite the significant progress in reducing coal dependence since the early 1990s, in 2017 – as already mentioned – Poland remained the European Union's third most carbon-intensive economy (Engel, Purta, Speelman,

27 The highest share of renewables (wind and solar energy) in electricity generation was noted by Denmark (62%), almost twice as high as that for the second-best performer, i.e. Ireland, with 35% (Redl et al., p. 8).

Szarek, van der Pluijm, 2020, p. 6). In view of this situation, much stronger measures are necessary if Poland is to meet the 2050 climate goals (by the autumn of 2021, Poland had not declared it a national goal).

The biggest challenges are those faced by power generation. This opinion is formed not only due to the significant dependence of this sector on coal, but also from the fact that Poland's power-generation stock is ageing: according to the McKinsey report, about two thirds of Poland's installed coal capacity is more than 30 years old. With a possible life span of up to 60 years, those assets would need to be replaced by 2050. Moreover, new investments in power generation are necessary in order to meet the expected increase in demand for electricity.

The authors cited (Engel et al., 2020, p. 10) estimated that in the business-as-usual (BAU) scenario (with no decarbonisation measures), Poland would need to spend EUR 1,200 billion to EUR 1,300 billion on the five sectors analysed (power, buildings, transport, industry and agriculture) to replace infrastructure and add new assets. If full decarbonisation is taken into account (which assumes the transformation of energy sources as well as upgrading energy infrastructure and buildings stock), this cost increases by EUR 380 billion (from 2020 to 2050). Per year, this would be an average of around EUR 10 billion to EUR 13 billion. At the same time, operational costs are expected to decrease by EUR 75 billion. Those additional annual investments would be equivalent to 1–2% of Polish GDP and to 10–12% of Poland's annual investments in the economy during the next 30 years! (Engel et al., 2020, p. 2). Thus, the challenge to find the resources for financing such changes is huge. The main conclusion is that '[t]o become a net-zero-emissions economy by 2050, the year of EU emissions targets and the primary reference year in the Paris Agreement, Poland will have to triple its rate of decarbonization over the next decade compared with the previous 30 years. It must then further accelerate from 2030 to 2050' (Engel et al., 2020, p. 2). This is a huge challenge to the economy, the society and policymakers.

Conclusions

The European Union has been pursuing an ambitious policy on climate protection, in particular targeted at elimination of GHG emissions. The Regulation of 2021 established a binding commitment of the Union to achieve a reduction in GHG emissions of at least 55% below 1990 levels by 2030. This is to be a step towards an emission-free EU economy by 2050, as envisaged by the European Green Deal strategy. The proposed CBAM is a new instrument to achieve this goal. The main goal is reduction of carbon leakage risk and re-allocation of domestic (EU) emission-intensive production to countries with lower climate ambitions, which would allow lower production costs. Also, this should allow a gradual departure from free allocation of ETS allowances, which weakens the price signal that the ETS provides for the installations receiving it compared to full auctioning of ETS allowances, and thus affects the incentives for investment in further abatement of emissions.

The agreement on the CBAM achieved in March 2022 by the Council follows the Commission's proposed Carbon Border Adjustment Mechanism of July 2021, however with some modifications. It makes implementation of the CBAM in 2023 very realistic. The CBAM would compensate for differences in carbon prices between domestic and imported products. Initially, it is foreseen for several groups of imported goods which are the *carbon-intensive upstream industries*. The carbon border adjustment will increase prices of imported products subject to this instrument, as the cost of CO_2 emissions (reflected in carbon certificates) will be added to the prices of products imported to the EU. The introduction of an additional import levy would affect not only imports, but all sectors in the EU that use or process products subject to the CBAM, thus increasing the cost of final goods produced. The final bill would be borne by consumers and exporters. As previous experience shows, the costs of rising carbon prices are unevenly distributed across different groups in society. Price increases affect first of all lower-income countries and regions in developed countries, as poorer people tend to spend a greater share of their incomes on energy and basic products compared to higher-income households. However, the first estimates revealed that the overall CBAM effects on average consumer prices would be very small. The main reason for this assessment was that the sectors covered by the CBAM – despite their high shares in total emissions – represented a relatively small part of the EU economy. The estimates relating to the CBAM effects on Polish economy were similar in their results. They indicated that the negative macroeconomic implications of the CBAM should not be very significant, which does not of course exclude greater adverse effects in individual cases. Instruments for the reduction of GHG emissions, however costly, are indispensable, to protect both the environment and human life.

In order to mitigate the adjustment costs of EU Member States' transition to low-emission economies, the EU has offered several types of financial support. These include a proposal for a new Social Climate Fund, establishment of the Modernisation Fund, and more money for the Innovation Fund, for the Just Transition Fund and targeted funds under the Multiannual Financial Framework, as well as under the extraordinary New Generation EU Program.

New climate policy instruments should be assessed not only in terms of the additional burden, but also as an opportunity to create new jobs and incomes in industries producing environmentally friendly devices and installations, offering new types of services, etc.

Even if the final decisions on radical climate-protecting measures, such as those in the *Fit for 55* proposal, should be less ambitious, everyone must be aware that the direction of climate policy changes is irreversible. The very fact of the Commission's presenting an ambitious climate plan, including the CBAM, has made it clear to all that the EU has been consistently striving to implement the European Green Deal and its update in the form of the *Fit for 55* package. The CBAM discussion undeniably increases the awareness of international climate action needs. The Member States that have the most to do in terms of reducing pollution emissions and improving energy efficiency can count on substantial financial support from European funds, but on the condition of compliance with EU law and an effective (visible) contribution to the activities of the entire Union.

In November 2021, the UN Climate Change Conference (COP26) was hosted by the United Kingdom in Glasgow and attended by world leaders, government representatives, and businesses and civil society groups. Its goal was to assess progress since the 2015 Paris climate conference towards limiting global warming to well below 2 degrees – in addition to strengthening climate action across the public and private sectors. As a result of the negotiations, the Glasgow Climate Pact was adopted, containing new commitments to mitigating warming effects and to working together more closely to deliver climate goals faster.[28] However, these are declarations, and time will tell which of them can be implemented. Looking at the climate disasters in recent years, especially those in 2021 (unprecedented flash floods, droughts, fires, etc.), one may hope that the leaders of participating countries, companies and various communities will take concrete measures to effectively mitigate climate change and prevent a global climate catastrophe. The CBAM proposal seems to be one such measure, although it has various limitations. The latest approval of the general concept of the CBAM by the Council (on 15 March 2022) makes possible its final adoption by the EU by the end of 2022 and its entry into force at the beginning of the next year.

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28 https://ukcop26.org/wp-content/uploads/2021/11/COP26-Presidency-Outcomes-The-Climate-Pact.pdf (accessed: 14.10.2021).

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POLAND'S STATE AID POLICY DURING THE COVID-19 OUTBREAK

Introduction

The COVID-19 pandemic hit the European Union (EU) at the end of the first quarter of 2020. The lack of knowledge about the disease's ichthyology, prevention, and treatment, meant that virtually all governments worldwide, including those of the EU Member States, introduced numerous restrictions on the movement and close contacts of people. In addition, bans were introduced on certain economic activities which, by their very nature, made it most difficult to maintain social distancing (tourism, hotels, restaurants and cafes).

As a result, the losses that entrepreneurs began to suffer were not due to their bad business decisions, failure to adapt to the competition, or failure to foresee the effects of changes in consumer needs and expectations. It is therefore difficult to find fault with the business community. The market situation also failed to meet the basic premises of the market failure concept. From a theoretical point of view, it is assumed that this market failure occurs when the market mechanism does not lead to efficient allocation of resources. For many researchers, but also for the European Commission, this continues to be a premise for accepting public interventions in the EU. However, these premises do not include decisions to freeze economies in whole or in part in response to COVID-19. In this case, we are dealing with two types of state intervention: the first in the form of preventing certain entities from doing business in certain industries, and the second in the form of payment of funds to those who incurred losses.

Therefore, COVID-19 state aid eludes the standard analysis of economic or social premises for intervening on the market, which in literature mainly include market failures (Bator, 1958). This second type of state intervention, in the form of payments made under aid schemes, results not from the need to eliminate the market failure, but from the earlier state intervention that restricted legitimate business operations. Under such circumstances, competition in the single European market could be seriously distorted, as all decisions concerning business continuity and profitability in specific economic areas would be taken by the state, not by the entrepreneur. Thus, in the EU Member States, we would be dealing not so much with a free market economy, but with a centrally planned economy such as those existing in communist times.

In the context of ongoing liberalisation processes evolving in the EU aimed at eliminating individual barriers in the single market, additional burdens or requirements introduced by some Member States, as well as subsidies granted to entrepreneurs, have become tools for improving the competitiveness of domestic companies. In order to eliminate this approach at the EU level, the European Commission, on the basis of the Treaty on the Functioning of the European Union (TFEU), is equipped with exclusive competence in the area of competition protection. As a result, Member States are obliged to obtain approval from the Commission before granting aid, which was also the case during the COVID-19 pandemic. By working out guidelines or even adopting (Commission) regulations, the Commission offers administrative support to the Member States in the drafting of national aid schemes.

Even before the pandemic, the TFEU enabled the Member States to notify either 'aid to make good the damage caused by natural disasters or exceptional occurrences' (art. 107.2.b TFEU), 'aid to (…) remedy a serious disturbance in the economy of a Member State' (art. 107.3.b), or 'aid to facilitate the development of certain economic activities (…), where such aid does not adversely affect trading conditions to an extent contrary to the common interest' (art. 107.3.c) to the European Commission.

At the outset of the pandemic in March 2020, the Commission developed a Temporary Framework for state aid measures to support the economy during the COVID-19 pandemic (European Commission, 2020r). This Temporary Framework was subsequently amended several times to clarify, but more importantly, to introduce new forms of permissible state aid. This allowed Member States, including Poland, to develop their own aid schemes on the basis of the Temporary Framework, which, however, did not violate the treaty prohibition of state aid.

Meanwhile, the drafting of aid schemes and obtaining approval from the Commission means only that these schemes comply with the prerequisites and legal requirements rather than the real needs of entrepreneurs. Therefore, the first objective of this study is to verify the intensity of sectoral distribution of COVID-19 state aid (both from the point of view of size and sector of economic activity) in groups of enterprises that were most affected by the negative effects of freezing the economy. It should be stressed that during the pandemic, in addition to COVID-19 state aid, i.e. aid provided in connection with lockdowns, Member States, including Poland, continued their policy of public intervention under the existing legislation, granting general state aid. Given the fact that the COVID-19 state aid was granted under a legal framework that significantly liberalised financial state intervention, the second objective of the study is to verify whether COVID-19 state aid changed the structure of distribution of general state aid in Poland.

To achieve the first objective, we analysed the value of COVID-19 state aid granted in comparison to the performance of companies within each section of the PKD (Polish Classification of Activities) in terms of Gross Value Added (GVA), Average Paid Employment (APE) and the Number of Companies. For the sake of the second objective, we carried out a comparative analysis of the structure of overall state aid in Poland (excluding COVID-19 state aid) and aid granted in previous reference periods (i.e. Q2 2018 – Q2 2019).

From a sample of all companies surveyed in Poland, only section 'A' (agriculture and fisheries) was eliminated, as aid schemes for this section were notified separately. Also, the conditions of permissible aid were slightly different here than in other sections. However, the data on COVID-19 state aid did not include the aid granted on the basis of separate aid schemes to PLL LOT, as well as regional airports, as specific entities related to air transport. On the other hand, data on general state aid did not include support for Idea Bank SA BFG, representing the banking sector as an extraordinary case that occurred in the period covered by the study.[1]

Aid schemes in connection with COVID-19 have been notified to the European Commission since March 2020. By accepting the schemes drafted on the basis of the Temporary Framework, the Commission allowed provision of aid within the timeframe specified therein. This timeframe was dictated by the duration of the Temporary Framework. When subsequent amendments were made, including on the basis of the sixth amendment, it was extended until June 2022. In response, Member States, including Poland, usually requested an extension of the validity periods of their aid schemes, especially since not all funds were used in the first year of the COVID-19 pandemic. As a result, the schemes that had been notified to the European Commission in 2020 were also in force in 2021.

Hence, the statistical analysis of granted COVID-19 state aid covers the period of the second, third and fourth quarters of 2020 and the first two quarters of 2021 (due to limited availability of data for later periods). Thus, any analysis of granted COVID-19 state aid covers the five-quarter period Q2 2020 – Q2 2021. To ensure comparability, both the available data on Gross Value Added, Average Paid Employment and the Number of Companies, as well as those on general state aid granted in previous years in Poland, were

1 Due to the financial distress suffered by the Idea Bank S.A., Bankowy Fundusz Gwarancyjny (Bank Guarantee Fund) launched its mandatory restructuring. The Bank was taken over by the Bank Pekao S.A. on 3 January 2021. The procedure resulted in the agreement that guaranteed the coverage of Idea Bank's losses to the amount of EUR 2.7 bn.

recalculated for those five quarters. In the last case, the control period was Q2 2020 – Q2 2021, while the reference periods were Q2 2018 – Q2 2019, Q2 2016 – Q2 2017, Q2 2014 – Q2 2015, Q2 2012 – Q2 2013, Q2 2010 – Q2 2012, and Q2 2008 – Q2 2010.

The first part of the study is an analysis of aid schemes notified to the European Commission in connection with the COVID-19 pandemic and measures taken to reduce the negative effects of the freezing of economies. This is followed by statistical analysis of the COVID-19 state aid granted in the surveyed period Q2 2020 – Q2 2021, taking into account the sector – of economic activity represented by aid beneficiaries and their respective size. Further, potential change in the structure and possibly intensity of general state aid (excluding COVID-19 state aid) during the COVID-19 pandemic in Poland is identified. The conclusions are presented at the end.[2]

1. Temporary Framework and COVID-19 state aid schemes in Poland

In its first communication on the COVID-19 pandemic of March 2020, the European Commission encouraged Member States to use instruments that would not constitute state aid (European Commission, 2020d). The aim was that each EU Member State would use those economic policy instruments that would distort competition to the least possible extent. Notably, especially during periods of crisis, when the existing principles of state intervention in the economy are relaxed, the level playing field in such an integrated area as the EU internal market is seriously undermined together with public finances which, as a rule, are subject to restraints designed to ensure sustainability of the economic and monetary union (EMU).

However, it soon turned out that this formula would not work in the case of a crisis manifesting itself in the loss of liquidity by entire industries and sectors of the economy. Then the Commission adopted a separate document referred to as the *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* (European Commission, 2020 r, for more see: Rosiak and Przybyszewska, 2020, Kopeć, 2021, Kubera 2021). This document initially provided for the possibility of granting the following types of state aid until the end of December 2020:

- Aid in the form of direct grants, repayable advances or tax advantages not exceeding EUR 800, 000 per undertaking to address its urgent liquidity needs (3.1 according to the Temporary Framework).

2 There is also an Annex to the results of studies titled ‘Poland towards a new approach to state aid policy after accession to the European Union’ presented in the previous report ‘Poland in the European Union. Report 2021’. It is an annual supplement to the results of analyses based on the recent data presented by the European Commission in Scoreboard 2020.

- Aid in the form of guarantees on loans to ensure banks keep providing loans to the customers who need them (3.2);
- Aid in the form of subsidised interest rates for loans (3.3);
- Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions to assist companies in covering immediate working capital and investment needs (3.4);
- Aid for short-term export credit insurance with some additional flexibility on how to demonstrate that certain countries are not-marketable risks (3.5).

Due to the changing circumstances and demand in the Member States, the document was amended several times. The first amendment was made even in early April 2020, when, in addition to extending the forms of support, the following five permissible aid categories were added to the existing list (European Commission, 2020a):

- Aid for COVID-19-relevant research and development (3.6).
- Investment aid for testing and upscaling infrastructures (3.7). In both cases, the idea was to stir up the interest of businesses in research activities up to first industrial deployment prior to mass production. Aid was intended to cover medicinal products (including vaccines) and treatments, medical devices, hospital and medical equipment (including ventilators and protective clothing and equipment as well as diagnostic tools), disinfectants, and data collection/processing tools for data useful in fighting the proliferation of the virus.
- Investment aid for the production of COVID-19-relevant products (3.8). Aid was designed to mobilise the Member States to collaborate and support entrepreneurs representing different Member States engaged in the development of infrastructure related to the combating of COVID-19.
- Aid in form of deferrals of tax and/or of social security contributions (3.9). This category targeted all companies struggling to maintain liquidity and, at the same time obliged to pay all mandatory contributions and charges (including social security). The intended effect was to reduce the rate of lay-offs.
- Aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak (3.10).

As entrepreneurs were reducing their equity capital, due to which they also limited their ability to borrow from the markets, the next amendment to the Temporary Framework in May 2020 provided for two additional aid categories (European Commission, 2020b):

- Aid in form of recapitalisation, to be applied only when no other aid measures could be used. Such aid, which consists in the acquisition of a company by the state through recapitalisation, should be provided only if the objective of preventing social hardship and market failure due to potential substantial job losses, market exit of an innovative firm, or loss of a business of systemic or strategic importance, would be achieved (3.11).

- Aid in form of subordinated debt granted on preferential terms. This concerned debt instruments subordinated to ordinary senior creditors in the case of insolvency proceedings (3.12).

In October 2020, the European Commission decided to extend the temporary arrangements until June 2021, with the exception of recapitalisation measures, which were extended until 30 September 2021. (European Commission, 2020f). In addition, a new permissible form of aid was added in connection with the COVID-19 pandemic: support for uncovered fixed costs of companies. This was aid designed to contribute to the fixed costs of beneficiaries that are not covered by the income generated. In addition, the already existing permissible category of aid for the exit of the state from recapitalisation of companies in which the state was a shareholder (i.e. before the recapitalisation) was modified. Moreover, in the absence of sufficient private sector capacity to provide insurance cover, the temporary removal of all countries from the list of 'marketable risk' countries from the Communication on short-term export-credit insurance was extended until 30 June 2021 (European Commission, 2020c, 2020e).

Ten months after the adoption of the Temporary Framework, in the absence of any clear indication of an end to COVID-19 restrictions, the Commission decided to extend it further until 31 December 2021 (including the removal of the list of 'marketable risk' countries), with the exception of recapitalisation measures, which could be granted until 30 September 2021 (European Commission, 2020e).

Changes were also made to increase the existing aid ceilings. The Commission, at the request of Member States, further relaxed aid rules with regard to the simplest aid in the form of direct grants, repayable advances or tax advantages by raising the threshold from EUR 800 thousand to EUR 1.8 million per enterprise. It is worth noting at this point that this support could be combined with *de minimis* aid, which means that a company could receive up to EUR 2 million. This ceiling also became the maximum aid received by an enterprise in connection with the introduction of the possibility to transform the applied repayable instruments in the form of guarantees, loans, or repayable advances into grants, for instance. In addition, the ceiling on coverage by the state of a portion of the fixed costs in the case of enterprises particularly affected by the coronavirus crisis was raised from EUR 3 million to EUR 10 million. Such ceilings, on the one hand, make it possible to significantly support undertakings experiencing problems resulting from COVID-19, but on the other hand, they may constitute a serious source of distortion of competition on the market. Nevertheless, the European Commission, after almost eighteen months of the Temporary Framework being in force, is in favour of extending it until June 2022.

The Temporary Framework referred to above provided the foundation for aid schemes drafted by Poland. At the end of March 2020, i.e. only two weeks after the announcement of the COVID-19 pandemic in Europe, Poland notified the first aid scheme, which was a series of the *Crisis Shields*. In the surveyed period Q2 2020 – Q2 2021, the European Commission approved 26 state aid schemes submitted by Poland in response to COVID-19, which provided for 60 financial instruments offered to entrepreneurs (Table 1). Many more decisions were issued by the Commission, as some of them concerned either modification of the existing schemes by increasing the amount, clarification of conditions and criteria for the identification of beneficiaries, or extension of the validity period due to extension of the Temporary Framework for the following months of 2021.

Polish COVID-19 state aid schemes provided primarily for the granting of state aid under paragraph 3.1 of the Temporary Framework. This was due to the fact that this very provision was the fastest way to ensure that aid was granted to companies without meeting any criteria (apart from proving the damage in connection with COVID-19).

Along with these aid categories, aid schemes were also created offering support in the form of tax and social contribution deferrals (point 3.9 of the Temporary Framework), as well as wage subsidies (3.10). These were driven by the wish to put in place mechanisms that would support employment. In both cases, the goal was to help entrepreneurs maintain jobs and stop them from laying off workers due to COVID-19-related losses. Thus, these instruments were used to directly subsidise or refund the cost of employment to employers and, at the same time, they reduced the scale of lay-offs and potential increases in the unemployment rate (European Commission, 2020h). When it comes to tax deferrals, a legal basis for the tax administration was introduced to i) postpone the deadline of a tax payment or divide tax payment into instalments, and ii) postpone (or divide the tax payment into instalments) the payment of tax arrears or of interest (for late payment or lack of return) (European Commission, 2020l).

These aid schemes were supplemented by support offered in the form of repayable advances for micro companies, as well as repayable advances for SMEs that would cover a portion of the uncovered fixed costs of those undertakings for which the COVID-19 outbreak resulted in the suspension or reduction of their business activity (European Commission, 2020o).

Aid schemes designed to provide guarantees on loans (3.2) and subsidised interest rates for loans (3.3) were clearly much less numerous and had smaller budgets. Subsidised interest rates for loans were primarily financed from the EU funds or were addressed to large undertakings (European Commission, 2020g, 2020j).

Table 1. COVID-19 state aid schemes adopted by the European Commission in Q2 2020-Q2 2021 r. based on the Temporary Framework

No.	Date of the decision	Title of the decision	Budget (in ths EUR)	3.1	3.2	3.3	3.6	3.7	3.8	3.9	3.10	3.11	3.12
1	3.04.2020	**SA.56876** (2020/N) – Poland. COVID-19: Liquidity guarantee fund	4 800 000		X								
2	8.04.2020	**SA.56896** (2020/N) – Poland. COVID-19: anti-crisis measures in the form of loans and guarantees financed from EU funds	1 020 000		X	X							
	27.10.2020	**SA.58848** (2020/N) – COVID-19: Amendment of SA.56896 (2020/N) – anti-crisis measures in the form of loans and guarantees financed from EU funds											
3	10.04.2020	**SA.56979** (2020/N) – Poland. COVID-19: Interest rate subsidy scheme	115 000	X									
4	22.04.2020	**SA.57065** (2020/N) – Poland. COVID-19: anti-crisis measures in the form of loans and guarantees financed from the re-use of resources returned from 2007–2013 financial instruments	110 000		X	X							
	27.10.2020	**SA.58849** (2020/N) – Amendment of SA.57065 (2020/N) – anti-crisis measures in the form of loans and guarantees financed from the re-use of resources returned from 2007–2013 financial instruments			X	X							
5	23.04.2020	**SA.56922** (2020/N) – Poland. Polish anti-crisis measures – direct grants, repayable advances, tax and payments advantages, tax deferrals and wage subsidies schemes related to COVID-19	15 184 600	X						X	X		
	3.09.2020	**SA.58481** (2020/N) – Amendment of the scheme SA.56922 (2020/N) concerning Polish anti-crisis measures – direct grants, repayable advances, tax and payments advantages, tax deferrals and wage subsidies schemes related to COVID-19		X									
6	13.05.2020	**SA.57282** (2020/N) – Amendment to the scheme SA.56922 (2020/N) – Polish anti-crisis measures – direct grants, repayable advances, tax and payment advantages, tax deferrals and wage subsidies schemes related to COVID-19	17 510	X									
7	24.04.2020	**SA.57015** (2020/N) – Poland. State aid in the form of grants or repayable assistance under operational programmes for 2014–2020 to support the Polish economy in connection with the occurence of the COVID-19 pandemic outbreak	800 000	X									
8	27.04.2020	**SA.56996** (2020/N) – Poland. COVID-19: repayable advance scheme for micro, small and medium-sized enterprises	16 600 000	X									
	17.12.2020	**SA.59758** (2020/N) – Poland. Amendment to SA.56996 (2020/N) as prolonged by SA.59715 – COVID-19: repayable advance scheme for micro, small and medium-sized enterprises		X									

No.	Date of the decision	Title of the decision	Budget (in ths EUR)	3.1	3.2	3.3	3.6	3.7	3.8	3.9	3.10	3.11	3.12
9	11.05.2020	**SA.57191** (2020/N) – Poland. State aid in the simplified repayable form from financial engineering instrument resources subject to re-use and from financial instruments under operational programmes for 2014–2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak	470 000	X									
10	25.05.2020	**SA.57306** (2020/N) – Poland. COVID-19: Financial shield for large enterprises: Liquidity loans	2 200 000			X							
	1.03.2021	**SA.59872** (2020/N) – Poland. COVID-19: Second amendment of SA.57306 (2020/N) Financial shield for large enterprises: Liquidity loans				X							
11	11.06.2020	**SA.57055** (2020/N) – The Polish anti-crisis measures – COVID-19 – equity instruments	1 650 000	X									
12	18.06.2020	**SA.57519** (2020/N) – Poland. R&D aid for COVID-19 relevant research and development, investment aid for the construction and upgrade of relevant testing and upscaling infrastructures, and investment aid for investments into production facilities for the production of COVID-19 relevant products	449 000				X	X	X				
13	23.07.2020	**SA.57452** (2020/N) – Poland. COVID-19: Guarantees on Factoring	2 600 000		X								
14	28.07.2020	**SA.57726** (2020/N) – Poland. COVID-19: State aid in the form of reduction of the annual fee for perpetual usufruct and relief in rent, lease and usufruct fees to support entrepreneurs affected by the COVID-19 pandemic outbreak	122 800	X									
	11.12.2020	**SA.59915** (2020/N) – Amendment to SA.57726: State aid in the form of reduction from the annual fee for perpetual usufruct for 2021 or conversion fee for 2021.											
15	28.09.2020	**SA.58102** (2020/N) – COVID-19 – Poland. COVID-19 support to tour operators and other undertakings active in tourism and culture	784 770	X									
	2.06.2021	**SA.62231** (2021/NN) – Poland. COVID-19 – Amendments of SA.58102 and aid in the form of limited amounts of aid (Section 3.1 TF)											
16	29.10.2020	**SA.58185** (2020/N) – Poland. COVID-19: Polish anti-crisis measures – State aid granted by the State Forests	13 000	X									
17	13.11.2020	**SA.57172** (2020/N) – Poland. COVID-19: Anti-crisis measure – tax deferrals	264 000							X			
18	14.12.2020	**SA.58238** (2020/N) – Pan-European Guarantee Fund in response to COVID-19	-										
	15.12.2020	**SA.59715** (2020/N) – Poland. COVID-19: Modifications to SA.56876, SA.56922, SA.56979, SA.56996, SA.57015, SA.57054, SA.57055, SA.57191, SA.57306, SA.57452, SA.57519 and SA.57726	-										

No.	Date of the decision	Title of the decision	Budget (in ths EUR)	3.1	3.2	3.3	3.6	3.7	3.8	3.9	3.10	3.11	3.12
20	23.12.2020	**SA.59763** (2020/N) – Poland. COVID-19: The Financial Shield for SME 2.0	2 900 000	X									X
	12.01.2021	**SA.60940 (2021/N)** – Poland. COVID-19: Modification of SA.59763 (2020/N): The Financial Shield for SME 2.0											
21	20.01.2021	**SA.60376** (2020/N) – Poland. Support to undertakings affected by restrictions applied to industries whose activities may contribute to the spread of the COVID-19 pandemic	1 900 000	X									
22	9.02.2021	**SA.61173** (2021/N) – Poland. Subsidy schemes to non-governmental organisations, other entities engaged in public benefit work and religious entities affected by the COVID-19	94 600	X									
23	11.03.2021	**SA.61825** (2021/N) – Poland. Subsidy schemes to industries affected by the COVID-19	1 088 000	X									
	21.06.2021	**SA.62885** (2021/N) – Poland. Amendment of the aid scheme SA.61825 'Subsidy schemes to industries affected by the COVID-19'	4 089 100	X									
24	16.03.2021	**SA.62078** (2021/N) – Poland. Prolongation of SA.56876, SA.56896, SA.56922, SA.56996, SA.57015, SA.57054, SA.57055, SA.57065, SA.57172, SA.57191, SA.57452, SA.57519, SA.59763 and SA.60376	-										
25	6.05.2021	**SA.62472** (2021/N) – Poland. COVID-19: Leasing guarantees combined with the Pan-European Guarantee Fund in response to COVID-19	300 000	X									
26	24.06.2021	**SA.62603** (2021/N) – Poland. COVID-19: Support to bus operators	139 700	X									

Source: Own calculations based on OCCP data.

In addition to the Temporary Framework briefly outlined above, the Commission, given the link between the COVID-19 pandemic and the consequences for entrepreneurs, considered Article 107.2b TFEU, which concerns aid to make good the damage caused by exceptional occurrences, to be appropriate for assessing support to enterprises in industries particularly affected by the epidemic. The second legal basis for the European Commission in assessing measures notified under the Treaty was Article 107.3.b, which allows 'aid to facilitate the development of certain economic activities (...), where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. In both cases, the European Commission accepted that the COVID-19 pandemic could be considered an exceptional occurrence because of its exceptional and unforeseeable nature and its significant impact on not one, but many areas of the economy. Moreover, it found that the beneficiaries of the support were entrepreneurs who had liquidity problems resulting from the market situation and needed urgent assistance.

At the same time, the Commission stressed that the aid in question must compensate for damage directly caused by the restrictions on economic activity imposed by Member State governments. Such aid should not be intended to preserve or restore the viability, liquidity or solvency of an institution or entity. These conditions and limitations are far from clear. Therefore, the Commission stated that individual aid schemes would be assessed on a case-by-case basis, based on the jurisprudence of the Court of Justice of the European Union and considering previous decisions that take into account criteria such as: unpredictability or difficulty in prediction, significant scale and economic impact, and extraordinariness.

Table 2. COVID-19 state aid schemes adopted by the European Commission in Q2 2020 – Q2 2021 based on art. 107.3.b of the TFEU

No.	Date of the decision	Title of the decision	Budget of the measure	Legal basis under the TFEU
1	29.05.2020	**SA.57054** (2020/N) – Poland. COVID-19: The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak	1 600 000	Art. 107.2.b
2	1.06.2021	**SA.59800** (2021/N) – Poland. COVID-19: Receivables insurance	800 000	107.3.b
3	17.06.2021	**SA.62752** (2021/N) – Poland. COVID-19 – The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak 2.0, and amendments to schemes SA.57054 and SA.57306	1 650 000	107.3.b

Source: Own calculations based on OCCP data.

As mentioned above, the main objective of coronavirus-related aid instruments offered in Poland in the examined period from the beginning of Q2 2020 until the end of Q2 2021 was to address the problem of maintaining financial liquidity of undertakings in connection with the restrictions and, ultimately, the freezing of certain areas of economic activity. The closure of one area of the economy, through a domino effect, caused problems for sub-suppliers, recipients, business counterparties, and ultimately consumers. This resulted from different channels through which the introduced restrictions influenced the economy. Firstly, difficulties were expected as a result of broken supply chains both from outside the EU and within the single market. While the Commission took measures to limit the negative consequences of the restrictions, e.g. at the internal borders of the EU, this did not apply to individual decisions made by entrepreneurs and obstacles in international trade (Ambroziak, 2021a). Secondly, consumer demand changed dramatically. On the one hand, many industries were directly affected by the freezing of their activities and inability to offer products, especially services, as they were unable to ensure physical distance (e.g. tour operators, events, fitness, restaurants). On the other hand, the pandemic situation in individual Member States forced the sudden development of other services, such as transport or e-commerce and courier services (delivery of goods to individual consumers). Thirdly, uncertainty about the future stopped investment among both businesses and consumers.

Consequently, following the requirements specified in the Temporary Framework (European Commission, 2020r), aid schemes adopted in Poland in 2020 initially targeted all entrepreneurs who reported losses related to the freezing or restriction of certain business activities in connection with COVID-19. Therefore, the aim was to identify entrepreneurs and industries the most affected by the restrictions, regardless of the industries they represented. This is why at the beginning of the pandemic, these aid schemes were definitely more of a horizontal rather than an industry-specific nature, with the exception of the support scheme for cultural institutions and agencies, including artists (European Commission, 2020p) as well as for tour operators and other undertakings active in tourism and culture, including: land transport, tourist agents, tour pilots and tour guides, artists performing at events, activities supporting the organization of events, renting and leasing of other machines and devices, and other entertainment business activity, as well as organization of fairs, exhibitions and congresses, hotels and similar forms of accommodation, other entertainment business activity, and renting and leasing of other machines and devices (European Commission, 2020n).

In the next calendar year of the COVID-19 pandemic, Poland drafted and implemented more aid schemes targeting specific industries, including:

- The Financial Shield for SME 2.0, which covered for instance retail trade, tourist agencies, catering, accommodation, and photographic, physiotherapy, and fitness services, as well as entertainment parks, cinemas and museums, and also, printing and advertising services, retail sale of flowers, plants, seeds, fertilisers, pets and pet food in specialised stores, as well as advertising agencies (European Commission, 2020o, 2020p);

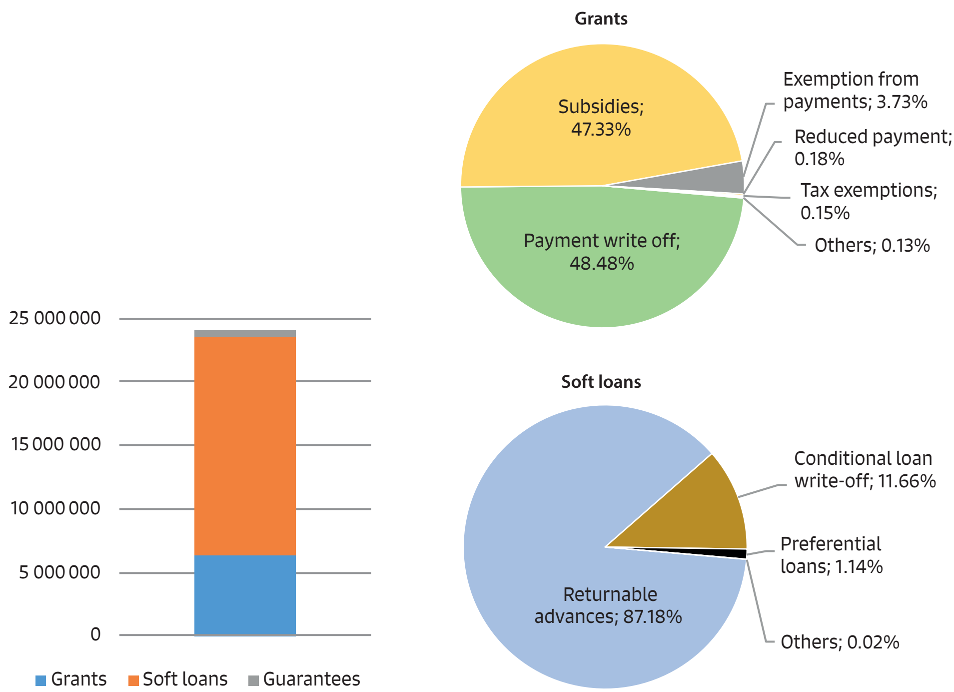
- COVID-19 support to tour operators and other undertakings active in tourism and culture (European Commission, 2020q);
- Support to undertakings affected by restrictions applied to industries whose activities may contribute to the spread of the COVID-19 pandemic such as catering, fitness, fairs, stage, film, entertainment and recreation, photography, and physiotherapy (European Commission, 2021a);
- Subsidy schemes for industries affected by COVID-19 were opened to sectors of the tourism industry, in particular hotels, camping sites, tour agents and tour operators, retail sale, taxi operations, hotels, restaurants, education, and the paramedical, sport and entertainment sector (European Commission, 2021b, 2021c);
- Support to bus operators (European Commission, 2021d).

Also, schemes were prepared which excluded specific industries, such as credit institutions, activities in commercial property and real estate developers, certain transport services, and transport infrastructure (European Commission, 2021e).

The COVID-19 state aid schemes notified to the European Commission can be divided into three groups from the point of view of the forms of state aid, and two groups taking into account their relation to the budget. The first three groups include grants and subsidies, soft loans, guarantees and warrants. In the second case, we can distinguish instruments transferring financial resources from public budgets (central and local) to entrepreneurs and tools reducing or completely eliminating public financial obligations of companies towards the aforementioned budgets (Figure 1) (Ambroziak, 2021a).

Polish aid schemes used the existing channels of the distribution of funds and introduced new ones at different levels: from central to regional and local authorities (Table 3). In the first calendar year of the pandemic, the government offered support instruments created on the basis of European funds, both those from the previous financial perspective and the one for 2014–2020 (European Commission, 2020j, 2020k). This meant that, in reality, certain interventions were only shifted from pro-development measures co-financed with European funds, which were reflected in the respective operational programmes, to anti-crisis measures. In this case, the main sources of support, apart from Bank Gospodarstwa Krajowego, the Polish Agency for Enterprise Development, and other institutions implementing European funds, were financial intermediaries, including state and commercial banks. Mechanisms were therefore used which made it possible to use channels familiar to both aid donors and entrepreneurs for distributing public funds to the economy. They did not require drafting new procedures and creating structures to finance companies. These measures included both guarantees and so-called *liquidity loans*, which could be redeemed at a later stage if the criteria, concerning above all job retention, were met. In the latter case, although this concerns repayable instruments, in most cases the ultimate effect was as a minimum the transfer of funds to entrepreneurs for at least the duration of the scheme.

Figure 1. COVID-19 state aid granted in Poland between Q2 2020 – Q2 2021 by form



Source: Own calculations based on OCCP data.

The instruments of the Polish Development Fund that had been allocated to small and medium enterprises even by the end of April 2020 (European Commission, 2020i) are particularly noteworthy. Financing for this group of undertakings was based on interest-free financial advances (which, if certain conditions are met, can be seen as subsidies) available from selected commercial and cooperative banks. This measure aimed to adjust the amount of financial support to the scale of potential loss of income due to a decrease in revenues caused by COVID-19. A separate scheme was prepared for large enterprises (European Commission, 2020m). In this case, the aid scheme provided for aid in the form of a loan granted at subsidised interest rates and was limited to four years. In addition, the arrangement was provided as non-repayable financing, which was intended to cover a maximum significant part of the damage suffered by the company as a result of COVID-19 (for more see Ambroziak, 2021b). In this case, the funds came from a bond issue, the total value of which could reach PLN 100 billion (EUR 22.7 billion). On the basis of the agreement on the implementation of the government programmes 'Financial Shield of the Polish Development Fund for small and medium-sized companies', adopted by the Resolution of the Council of Ministers No. 50/2020 of 27 April 2020, and the 'Financial Shield of the Polish Development Fund for large companies', adopted by the Resolution of the Council of Ministers No. 51/2020 of 27 April 2020, the PFR offers support to undertakings affected by the COVID-19 pandemic, broken down as follows: EUR 5.7 billion each to go to micro and large enterprises, and over EUR 11.4 billion to small and medium-sized enterprises (PFR, 2021).

Another group of aid schemes offered various types of allowances, including exemptions from the obligation to pay contributions, as well as additional 'work suspension' benefits offered by the Social Insurance Institution in subsequent lockdowns in connection with COVID-19 (especially at the end of 2020). Voivodeship and poviat (county) labour offices also became an important donor of support, offering, above all, subsidies to cover current costs of running a business for micro- and small enterprises from the Labour Fund and to protect jobs from the Guaranteed Employee Benefits Fund. In this way, attempts were made to limit lay-offs of workers and prevent an increase in the unemployment rate in Poland.

Separate benefits were offered by the State Fund for Rehabilitation of Disabled People (Polish abbr. PFRON), in accordance with its competences (with regard to subsidies to salaries and wages of disabled employees and workers for employers in economic distress and refunds of costs of adapting workstations to the needs of employees with disabilities, employment of assistants to employees with disabilities, and training of employees with disabilities). In this case, these instruments are still offered by PFRON, which means that in reality only the objectives and criteria were reformulated, taking into account the crisis faced by entrepreneurs, and no new funds were generated to tackle the pandemic.

The wide range of tools at the disposal of regional and local authorities (voivodeship governors, starosts, mayors, heads of villages and municipal councils) is particularly noteworthy. They were mainly available in the first year of the pandemic – 2020, and envisaged the possibility of both granting subsidies and offering relief from liabilities to entrepreneurs. In the first case, it was mainly a question of subsidising some of the costs of (a) running a business for entrepreneurs who were natural persons without employees, (b) employees' salaries and social security contributions for SMEs, and (c) employees' salaries and social security contributions for NGOs and public benefit organisations. Another important instrument of support for entrepreneurs was the exemption from real estate tax offered by local government units, as well as the reduction of fees for long-term lease, and the non-collection of rent and lease and of user fees. Apart from the tools reducing revenues to the local budgets, a certain type of crediting of entrepreneurs by local authorities was also envisaged through the allowances in liabilities towards them, which meant deferral and division into instalments of the aforementioned payments (real estate tax, rent and lease fees or civil law liabilities). It is worth noting at this point the lack of any compensation mechanism on the part of the central budget for local government units, which in many cases clearly limited their possibilities to offer support at the regional and local level.

Table 3. COVID-19 state aid granted in Poland in Q2 2020–Q2 2021 by type

State aid category	Amount of aid	Share (in %)	Measures (subsidies or grants) provided for in COVID-19 state aid schemes	Share in a given category (in %)
Payment write-off (contribution, payment, debt)	3 092 208.8	48.48	Allowances in payments of the rent/long-term lease/use (JST), allowances in civil law liabilities (JST), exemption from unpaid social security contributions to ZUS (ZUS)	100.00
Subsidies	3 018 982.7	47.33	Subsidising a portion of running costs of a business for sole proprietorships which do not have employees (JST), subsidising a portion of employees' remuneration and social security contributions for SMEs, NGOs, and of public benefit organisations (JST), monthly subsidies to disabled employees' remuneration to entrepreneurs in economic distress (PFRON)	49.94
			Subsidies under operating programmes for 2014–2020 (Financial intermediaries)	16.60
			Benefits for 'work suspension' (economic work stoppage) (ZUS), Subsidies to cover the current running costs of a business for micro- and small entrepreneurs from the Labour Fund (PUP), benefits for job retention schemes (subsidy) from the FGŚP (WUP)	11.73
			Subsidies to cover the current running costs of a business for micro- and small entrepreneurs from the Labour Fund (sectoral) (WiPUP), benefits for job retention schemes (subsidy) from the FGŚP (sectoral) (WiPUP), one-off extra benefit for 'work suspension' and exemption from social security contributions for 2020 (ZUS)	10.11
			'Work suspension' benefit repeated once or twice and exemption from the obligation to pay social security contributions (ZUS), subsidy to cover the current running costs of a business for micro- and small entrepreneurs from the Labour Fund, subsidy granted for job retention schemes from the FGŚP (PUP and WUP)	7.89
			Subsidies to institutions of culture (MKiDN)	2.68
			Exemption from property tax (JST)	0.64
			Aid for R&D activities related to the COVID-19 pandemic, investment aid for infrastructure used in testing and preparations for mass production of products that serve the containment of the COVID-19 pandemic and investment aid for the production of products to fight the COVID-19 pandemic granted under operational programmes for 2014–2020 (Institutions implementing EU funds)	0.41

<table>
<tr><th>State aid category</th><th>Amount of aid</th><th>Share (in %)</th><th>Measures (subsidies or grants) provided for in COVID-19 state aid schemes</th><th>Share in a given category (in %)</th></tr>
<tr><td rowspan="3">Exemptions from payment</td><td rowspan="3">237 891.4</td><td rowspan="3">3.73</td><td>'Work suspension' benefit and exemption from the obligation to pay social security contributions (ZUS)</td><td>99.45</td></tr>
<tr><td>Exemption from the obligation to pay unpaid social security contributions (ZUS)</td><td>0.55</td></tr>
<tr><td>One-off exemption from the obligation to pay social security contributions (ZUS)</td><td>0.01</td></tr>
<tr><td rowspan="2">Reduced payments</td><td rowspan="2">11 709.1</td><td rowspan="2">0.18</td><td>Reduced payments for long-term lease, suspension of the collection of rent and long-lease payments, as well as payments for use, reduced transformation fee for 2021 (JTS, AMW, KOWR)</td><td>91.20</td></tr>
<tr><td>Reduced payments for long-term lease, suspension of the collection of rent and long-lease rent, as well as payments for use (JST), reduced rate for long-term lease (JST)</td><td>8.80</td></tr>
<tr><td>Tax exemptions</td><td>9 804.2</td><td>0.15</td><td>Additional benefits for 'work suspension' (economic work stoppage) and exemption from the obligation to pay social security contributions, health insurance contributions, contributions to the Labour Funds, Solidarity Fund, Guaranteed Employee Benefits Fund or Bridging Pensions Fund (ZUS)</td><td>100.00</td></tr>
<tr><td>Other, including:</td><td>8 297.1</td><td>0.13</td><td colspan="2"></td></tr>
<tr><td colspan="3">~ write-off (contributions, payments, debt)</td><td colspan="2">Cancellation, in whole or in part, of the following debt: (1) statutory interest; (2) compensation for recovery costs, and (3) contractual penalties (LP)</td></tr>
<tr><td colspan="3">~ interest rate subsidies for bank loans (directly to entrepreneurs)</td><td colspan="2">Interest rate subsidies (Banks)</td></tr>
<tr><td colspan="3">~ refunds</td><td colspan="2">Refunding costs of adapting a workplace to the needs of disabled employees for entrepreneurs in economic distress (PFRON), refunding costs of hiring employees who assist disabled employees for employers in economic distress (PFRON), refunding costs to ZCHP (entities which employ disabled employees and workers) in economic distress (PFRON), refunding costs of training disabled employees to employers in economic distress (PFRON)</td></tr>
<tr><td colspan="3">~ rent waivers</td><td colspan="2">Waived rent and long-lease rent, as well as waived rents for use, allowances in payments for rent/long-lease/use (JST)</td></tr>
<tr><td colspan="3">~ write-off of interest-rates for overdue payments (contributions, payments, debt)</td><td colspan="2">Allowances in civil law liabilities (JST)</td></tr>
<tr><td colspan="3">~ tax deductions</td><td colspan="2">Allowances in fees for rent/lease/use (JST)</td></tr>
<tr><td colspan="3">~ reductions or allowances resulting in reduced tax base or tax due</td><td colspan="2">Allowances in fees for rent/lease/ use (JST)</td></tr>
<tr><td colspan="3">~ tax waiver</td><td colspan="2">Waived real estate tax (JST)</td></tr>
<tr><td colspan="3">~ write-off of interest rate for unpaid tax</td><td colspan="2">Write-off of unpaid tax together with interest for real estate tax</td></tr>
</table>

cont. Table 1

State aid category	Amount	Share (in %)	Measures (subsidies or grants) provided for in COVID-19 state aid schemes	Share in a given category (in %)
Returnable advances	14 981 647.9	87.18	Financial Shield for micro-, small and medium-sized enterprises (PFR)	100
Conditional loan write-off	2 004 114.3	11.66	Redeemable loans to cover the running costs of a business for micro-entrepreneurs (JST)	99.84
			Aid in the form of a loan to cover the running costs of a business for NGOs and public benefit organisations and subsidies for employee remuneration for public ecclesiastical juridical persons (PUP)	0.16
Preferential loans	196 141.4	1.14	Liquidity loans (Shield for large enterprises) (PFR)	39.33
			State aid in the form of loans financed from the EU funds (Financial intermediaries)	38.43
			Preferential loans (Shield for large enterprises) (PFR), write-offs of preferential loans (Shield for large enterprises) (PFR)	9.13
			State aid granted in the form of loans financed from financial engineering instruments that can be reused with a view to supporting the Polish economy (Financial intermediaries)	8.10
			Loans to tour operators (Shield for tourism industry) – the 'first measure'	5.00
			Repayable assistance under operational programmes for the period 2014–2020 (Financial intermediaries)	0.01
			State aid granted in the form of guarantees financed from financial engineering instruments that can be reused to support the Polish economy (Financial intermediaries)	0.01
Other, including:	3 646.30	0.02		
~deferral of tax payment			Deferrals of tax payment granted based on the Tax Ordinance Act (JST), Extension of real estate tax deadline (for instalment payments) (JST)	
~ unpaid taxes plus interest rates paid by instalments			Allowing unpaid taxes plus interest rates on overdue payment to be paid by instalments (JST)	
~ deferrals of payment of unpaid taxes with interest rates			Tax instalment deferral granted based on the Tax Ordinance Act (JST); Real estate tax deferrals (JST)	
~ tax paid by instalments			Allowing tax to be paid by instalments based on the Tax Ordinance Act (JST)	
~ deferral of payment (contribution, remittance)			Allowances in civil law liabilities (JST), allowances in fees for rent/lease/use (JST)	
~ payment by instalments (contribution, remittance)			Extension of deadline for the payment of real estate tax instalments (JST), allowances in civil law liabilities (JST), allowances in fees for rent/lease/use (JST)	
~ deferrals of payment of overdue liabilities (contribution, payment, fine) or payments (contribution, payment, fine) with interest			Allowances in fees for rent/lease/use (JST)	
~ overdue charges (contributions, payments, penalties) with interest paid by instalments			Tax instalment deferrals and payment by instalments granted based on the Tax Ordinance Act (JST)	

Aid category	Amount of aid	Guarantees provided for in COVID-19 state aid schemes	Share in a given category (in %)
Guarantee	391 337.3	Aid in the form of loan guarantees (BGK)	91.45
	36 594.9	Polish anti-crisis measures – COVID-19 – Factoring guarantees (BGK)	8.55

Abbreviations explained:
BGK – Bank Gospodarstwa Krajowego (Bank of National Economy)
FE implementing institutions – Institutions implementing the European funds
JST – local government units
MKiDN – Ministry of Culture and National Heritage
PFR – Polish Development Fund
PFRON – State Fund for Rehabilitation of Disabled People
PUP – County Labour Offices
WiPUP – Regional and County Labour Offices
ZUS – Social Insurance Institution
KOWR – National Support Centre for Agriculture
AMW – Military Property Agency

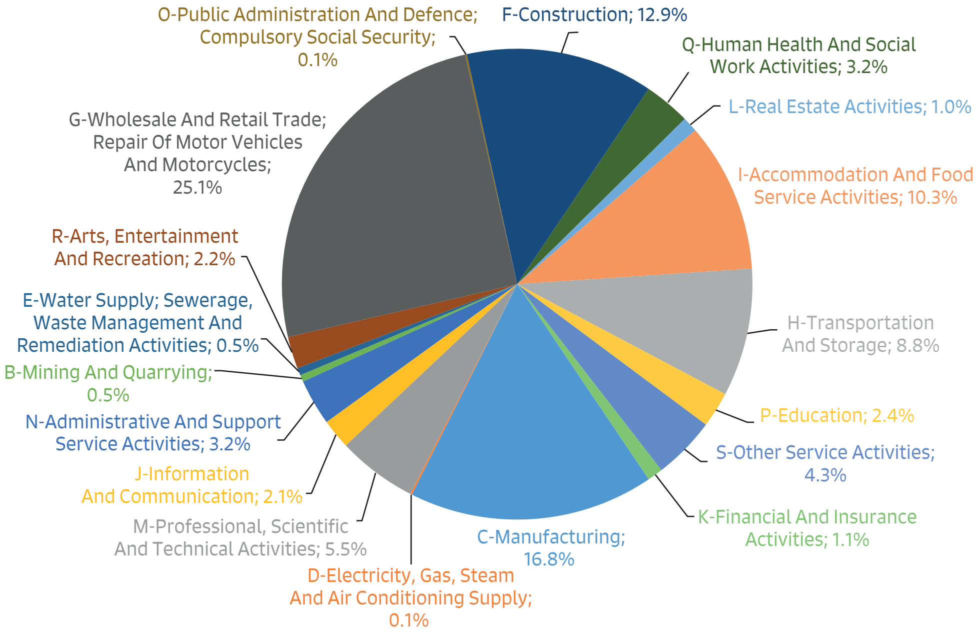
Source: Own calculations based on data from the Office of Competition and Consumer Protection.

2. COVID-19 state aid in Q2 2020 – Q2 2021

In accordance with regulations adopted under the Temporary Framework, as well as Polish aid schemes, beneficiaries of this aid were required to demonstrate a causal link between the lockdown of their respective economies and losses they suffered. Hence these losses had to be reflected in negative changes to Gross Value Added, the size of Average Paid Employment, and the Number of Companies over the examined period Q2 2020 – Q2 2021. Thus, the amount of granted COVID-19 state aid was compared to the dynamics of changes in the three above-mentioned indicators taking Q1 2018 or Q1 2019 as a base reference period. However, if necessary for the purpose of the analysis, other reference periods will also be used. As already indicated, certain industries may have suffered losses as a result of lockdown and shut down of selected economic activities, however others may have benefited, as demand for some products increased. For this reason, the comparative analysis mentioned above does not focus exclusively on aggregate data for the entire economy, but uses data for individual PKD 2007 (Polish Classification of Activities) sections.

The total value of COVID-19 state aid, i.e. aid granted exclusively in connection with the pandemic, granted over the examined period between Q2 2020 and Q2 2021, reached almost EUR 24 bn. The biggest beneficiaries of COVID-19 state aid in Poland in that period were the following sections: wholesale and retail trade (25.1%), manufacturing (16.8%) and construction (12.9%). Also on the list were industries such as: accommodation and food service activities (10.3%) and transport and storage (8.8%) (Figure 2).

Figure 2. Sectoral distribution of COVID-19 state aid in Q2 2020 – Q2 2021 / Q2 2020 – Q2 2021



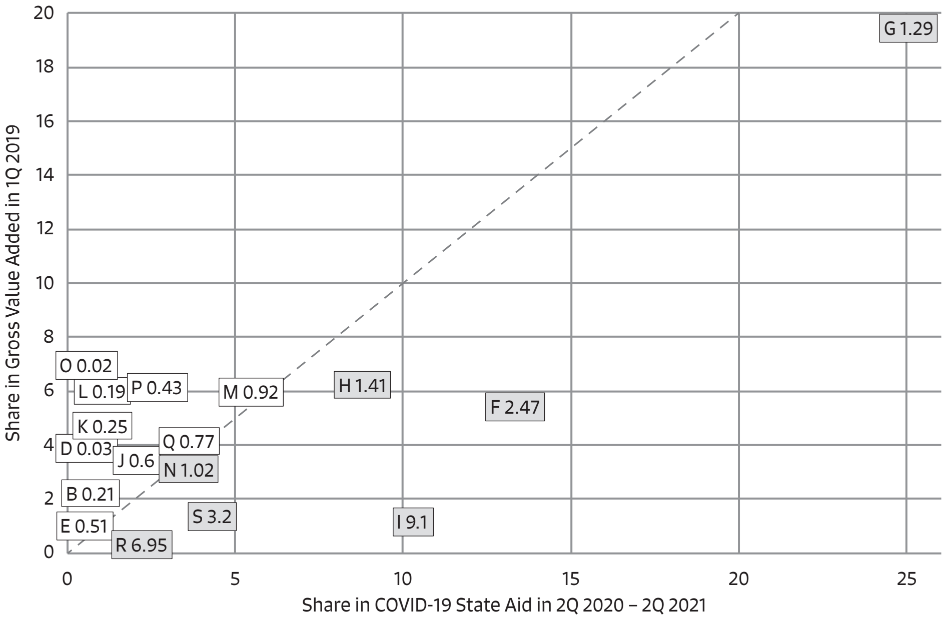
Source: Own calculation based on OCCP data.

In order to grasp the relative distribution pattern of COVID-19 state aid, the share of individual sectors of economic activities in aid granted over the entire examined period Q2 2020 – Q2 2021 was compared to their share in the creation of the Gross Value Added in Q1 2019. To ensure relative adequacy of data, it would be ideal to take Q1 2020, however, this quarter would include more than a dozen days of the first restrictions imposed in Poland mainly on the HORECA sector. Hence, an analogous period of the preceding year was selected. Quotients obtained as a result of such comparison assumed values above or below 1. Whenever the quotient was higher than 1, aid intensity was considered overvalued, while below 1 it was interpreted as undervalued.

The highest overvalued COVID-19 state aid intensity in Poland between Q2 2020 – Q2 2021 (compared to Q1 2018) was reported for Accommodation and Food Service Activities (9.1%), Arts, Entertainment and Recreation (6.95%), and other service activities (3.2%) (Figure 3). Importantly, these industries were the first to be covered by decisions on the freezing of the economy; they also felt the effects of restrictions for the longest time and most often were subjected to restrictions and exemptions in subsequent waves of the pandemic. Overvalued intensity of COVID-19 state aid was also identified for sectors such as construction (2.47%), transportation and storage (1.41%)

and wholesale and retail trade (1.29%). These are industries whose activities were either limited or subject to self-restrictions due to government decisions to freeze them or restrictions resulting from activities of other countries (e.g., border closures), which would lead to disruption for example of supply chains.

Figure 3. Share in COVID-19 state aid and GDP in Poland in Q2 2020 – Q2 2021 (in %)



Source: Own calculations based on OCCP and Statistics Poland data.

In principle, COVID-19 state aid was available in Poland over the entire examined period, however, it was of varying intensity. More than two thirds (69.1%) of aid resources had been transferred to entrepreneurs in the first quarter of the pandemic (Q2 2020), while in the subsequent quarters of the examined period the share ranged between 4.1% and 12% of total COVID-19 state aid in the period in question. This means that in fact during the first wave of the pandemic, due to lack of knowledge about how to fight the virus, resulting in frequent changes to decisions on imposed restrictions, the scale of support was huge. To capture aid intensity, the value of aid was related to Gross Value Added[3] generated by the discussed industries in Q1 2019. Thus, estimated COVID-19 state aid intensity in Q2 2020 reached 15.7%, while in the previous years total general

3 Gross value added accounts for the portion of output manufactured in industry that remains after deducting the value of intermediate consumption.

state aid intensity in relation to GDP ranged between 0.78 and 1.16. In the next quarter, it dropped to 2.7% to reach only 0.9% in Q2 2021 (Table 4).

At the peak of COVID-19 state aid before the end of the first half of 2020, Gross Value Added (GVA) decreased by almost 7% compared to the previous quarter, but it remained slightly higher than in the analogous period of the previous year. This confirms serious negative economic effects of restrictions and bans on economic activity. However, in subsequent quarters (Q3 2020 – Q2 2021) the path of changes to GVA ran above the value of changes reported in the reference period two years earlier (Q3 2018 – Q2 2019). A meaningful drop was observed for Average Paid Employment[4] (by 2.2% in relation to the previous quarter), although also in this case the number was higher than the reference value adopted in early 2018. The number of active companies evolved slightly differently. Restrictions imposed on business could be expected to lead to significant drops in the total business population as the number of closures should exceed the number of start-ups. However, this was not the case, as in Q2 2020 the number of companies increased by 0.9% compared to the previous quarter and by 5% in relation to the number of businesses registered in the base quarter Q1 2018.

Obviously, these trends follow from indicators registered in individual sectors. Therefore, we can distinguish several groups of them in terms of their behaviour pattern in the discussed period (Figure 4). Firstly, the largest drops in GVA (by 75.6%) combined with a drop in average employment (by 9.4%) in Q2 2020 compared to Q1 2018 were recorded in accommodation and food service activities. At the same time, in order to mitigate these negative phenomena, businesses in this industry received, relatively, the most aid in the first quarter of the pandemic in relation to GVA: 74.5% in relation to GVA generated in Q1 2020, which accounted for 291.4% of GVA created in Q2 2020. In subsequent quarters, despite another significant intervention in the form of COVID-19 state aid in Q1 2021 at 383% of GVA, the value of GVA created was well below the reference values of two years before (Q2 2018 – Q2 2019). This support seems so insufficient that at the same time in Q1 2021 there was another, after Q2 2020, quite deep reduction in employment at the level of 15.8% compared to the previous quarter.

Arts, entertainment and recreation activities is another sector that reported a particularly high intensity of aid accompanied by a significant decrease in GVA by 16.3% in the first quarter of the pandemic compared to the previous quarter. The average intensity of 35.8% in relation to GVA over the entire period under review was most influenced by the very high intensity in Q1 2021 at 193.6% and 47.4% in Q2 2020. In this case, since the beginning of the pandemic, the value added has been clearly below the data for the

[4] The average paid employment rate for the analysed period (e.g. month, quarter, year), based on the employment rate in the books. The average paid employment in the surveyed period takes into account full- and part-time employees recalculated as the number of full-time employees.

reference period Q2 2018 – Q2 2019, with much smaller increases during the summer, when restrictions were relaxed.

Leaving other services aside, the next sector in terms of COVID-19 state aid intensity during the examined period Q2 2020 – Q2 2021 was construction services (7.3% of GVA). Construction companies experienced the peak of the intervention in the first two quarters of the pandemic, when, respectively, 27.8% and 5.4% of the GVA generated at that time were recorded. Due to this support, GVA reported in subsequent quarters was only slightly below the path set for the reference period two years before. In contrast, however, the Average Paid Employment indicator behaved differently and, despite some increases in the quarters when businesses in this industry received COVID-19 state aid, it steadily declined to eventually drop to the level close to that of two years before.

The other two PKD sections that responded similarly to both COVID-19 state aid and the freezing of the economy were wholesale and retail trade and transportation and storage. The overall COVID-related aid intensities for these sectors in the period under review, at 6.0% and 5.4% respectively, were primarily influenced by the funds distributed in the first quarter of the pandemic (intensities at 27.0% and 20.5% respectively in Q2 2020). In both cases, Gross Value Added plunged in the first quarter of the pandemic (by 16.3% and 11.4% compared to the previous quarter), but GVA oscillated around the values in the reference period Q2 2018 – Q2 2019 during the rest of the examined period. Businesses in these industries reacted slightly differently with regard to employment: there was a similar reduction by 2.5% in Q2 2020 compared to the previous quarter and a very slow path back to pre-pandemic levels.

In addition to the construction sector, which has been ambiguously affected by the COVID-19 restrictions, special attention should be paid to manufacturing. This industry recorded aid intensity of 20.7% in the first quarter of the pandemic (2.7% in the next), but it should be stressed that at the same time GVA fell by 27.1% compared to the previous quarter. The increase in Gross Value Added in subsequent quarters continued until 2021, when it began to decline again. The Average Paid Employment indicator behaved slightly differently, declining by 0.9% in Q2 2020 compared to Q1 2018 and then continuing to rise, although still failing to reach pre-pandemic levels in Q2 2021. At this point, attention should be paid to similar trends in the financial and insurance activities, as well as real estate activities sectors, which resulted in a significant reduction of employment, especially in 2021.

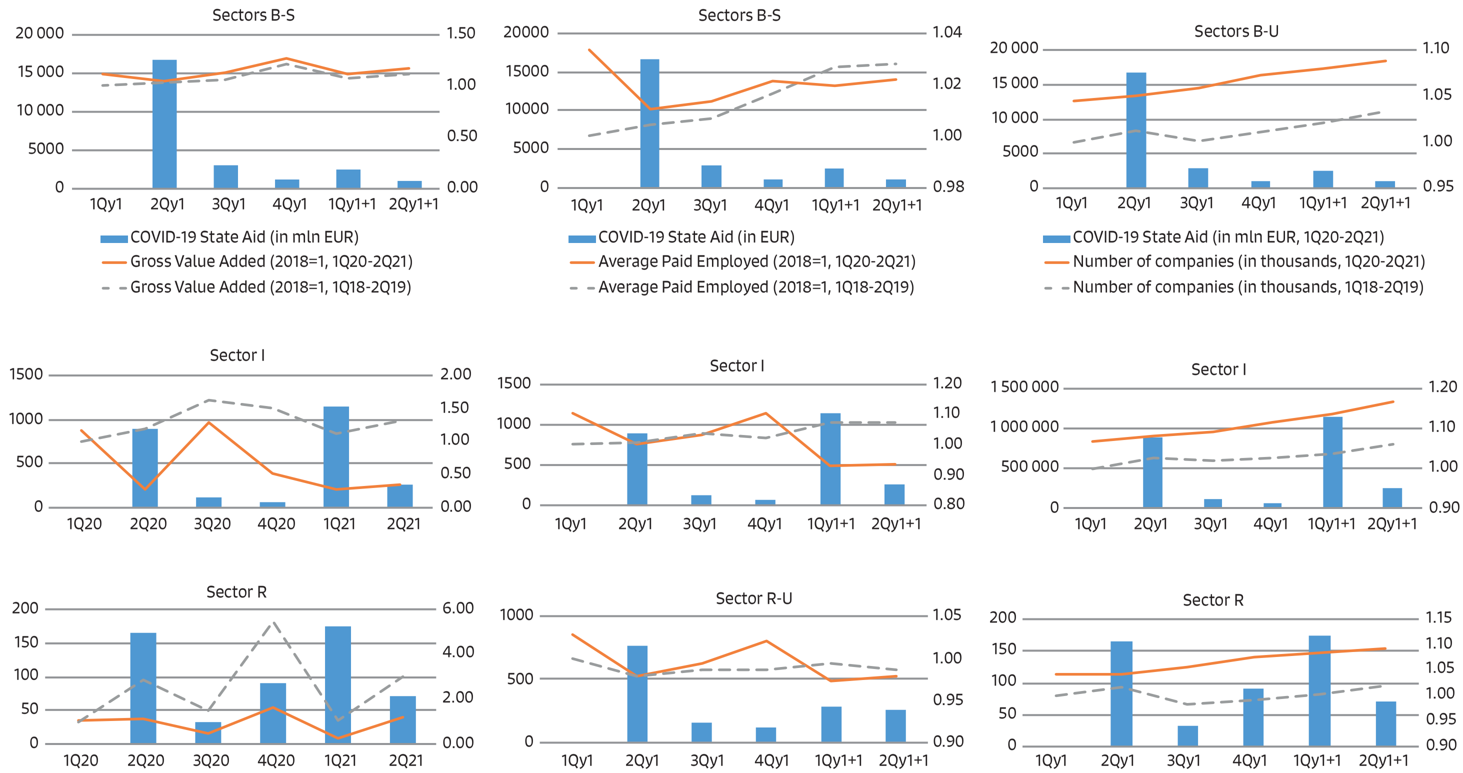
Each of the discussed sections reported a significant and continuous increase of the number of surveyed entrepreneurs. This means that the number of new enterprises exceeded those closing down. During the crisis, the opposite tendency could have been expected, however, apparently both the financial shield in the form of COVID-19 state aid, and prospects for growth, could have encouraged the development of entrepreneurship, and thus the opening of new companies. This is significant in that the number of firms in each of the quarters of the examined period Q2 2020 – Q2 2021 grew above the growth path of the reference period Q2 2018 – Q2 2019.

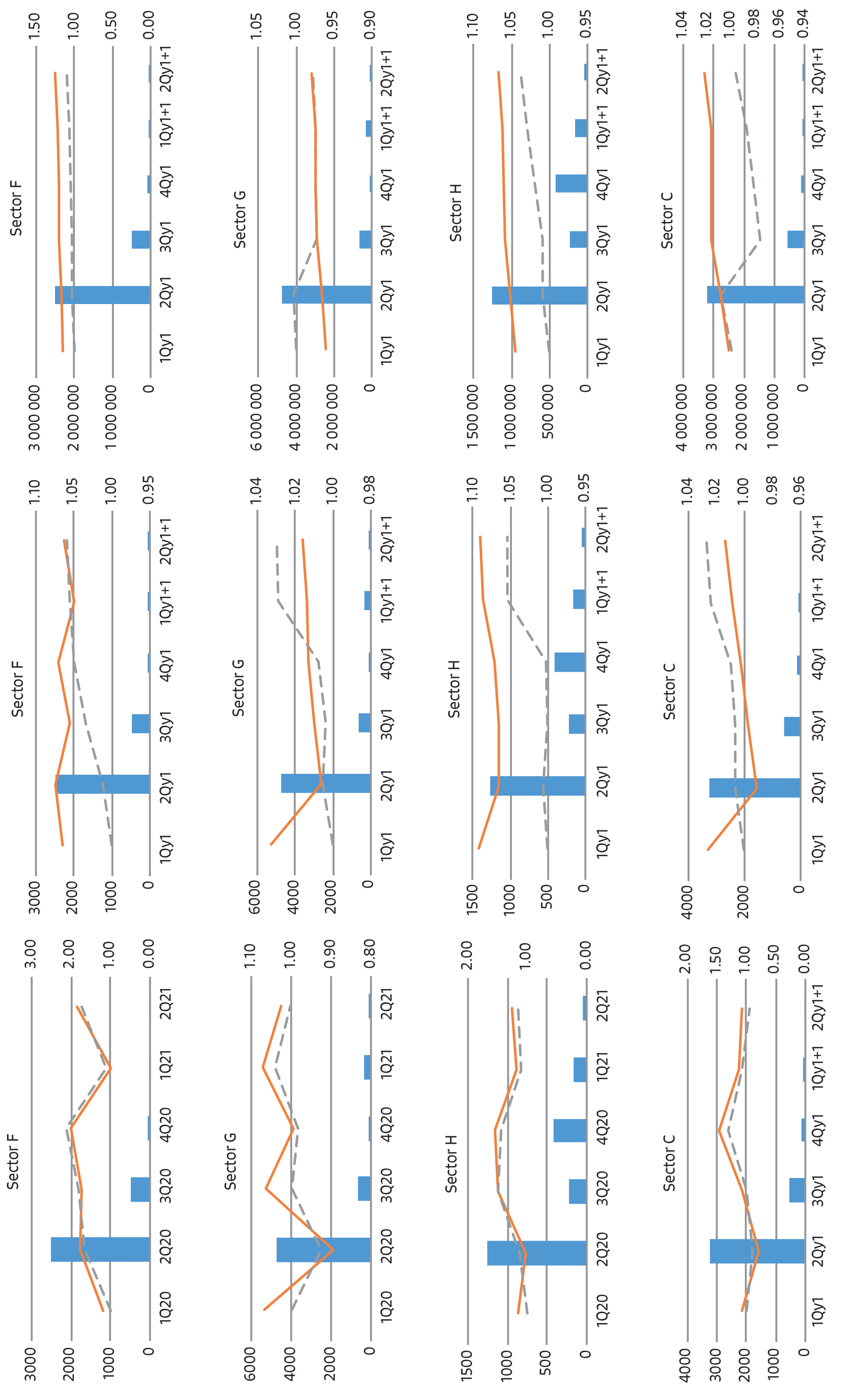
Table 4. COVID-19 state aid intensity in Q2 2020 – Q2 2021 (COVID-19 state aid as a percentage of GVA)

	Q2 2020	Q3 2020	Q4 2020	Q1 2021	Q2 2021	Q2 2020-Q2 2021
B-S	16.3	2.6	0.9	2.2	0.9	4.3
I	291.4	9.0	11.9	383.0	68.5	85.0
R	47.4	20.6	17.8	193.6	18.6	35.8
S	59.9	14.0	3.6	22.6	18.6	25.8
F	27.8	5.4	0.7	0.7	0.3	7.3
G	27.0	3.2	0.6	1.6	0.6	6.0
H	20.5	2.6	4.4	2.3	0.7	5.4
N	11.2	2.9	1.4	4.0	1.0	4.3
C	20.7	2.7	0.4	0.4	0.2	3.7
M	12.1	2.6	0.6	1.2	0.3	3.4
Q	10.7	2.0	0.3	1.1	0.5	2.8
P	6.6	1.8	0.2	1.7	1.1	2.1
J	7.3	1.4	0.2	0.5	0.3	1.9
E	5.6	1.8	0.1	0.1	0.1	1.3
B	2.0	0.5	1.6	0.0	2.0	1.2
K	4.3	0.9	0.1	0.1	0.1	1.1
L	2.6	0.5	0.1	0.1	0.0	0.7
D	0.8	0.2	0.1	0.0	0.1	0.2
O	0.3	0.2	0.0	0.0	0.0	0.1

Source: Own calculations based on OCCP data.

Figure 4. Change in the total value of COVID-19 state aid and Gross Value Added, Average Paid Employment, and the Number of Companies in Poland in Q1 2020 – Q2 2021 as compared to Q1 2018 – Q2 2019





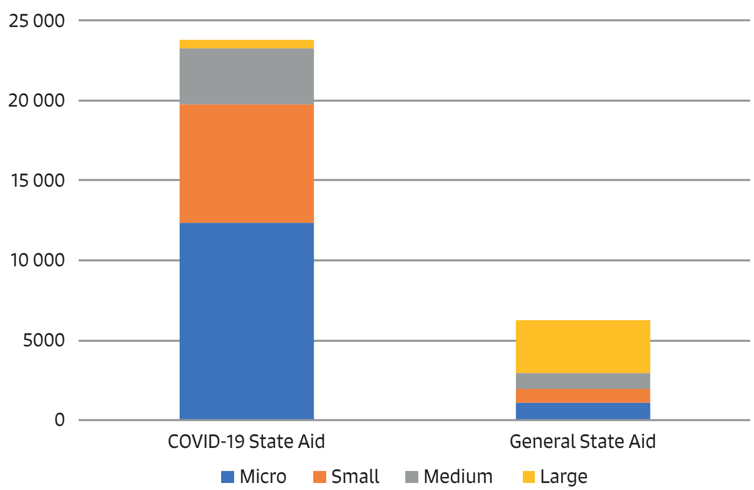
Source: own calculation based on OCCP and Statistics Poland data

3. COVID-19 State aid in comparison to general State Aid in Q2 2018 – Q2 2019

In the discussed period of the COVID-19 pandemic, aid was granted not only on the basis of new EU regulations such as the Temporary Framework. There were also aid schemes previously designed for instance for the financial perspective 2014–2020 or national programmes. However, while the value of granted COVID-19 state aid amounted to EUR 24.1 billion, the aid granted on general terms amounted to only EUR 6.2 billion in the examined period of Q2 2020 – Q2 2021. This illustrates the scale of public financial intervention carried out in relation to the pandemic, which was four times higher compared to general state aid.

As opposed to general state aid schemes, micro enterprises received, relatively, the greatest support under the COVID-19 state aid scheme (52.1%) (Figure 5). Almost one third of crisis aid went to small businesses, and ca. 14.8% to medium-sized ones. A clearly reversed structure was observed for general state aid, where almost 53% was allocated to large companies, and the distribution across micro, small and medium-sized companies was relatively equal (over a dozen percent each).

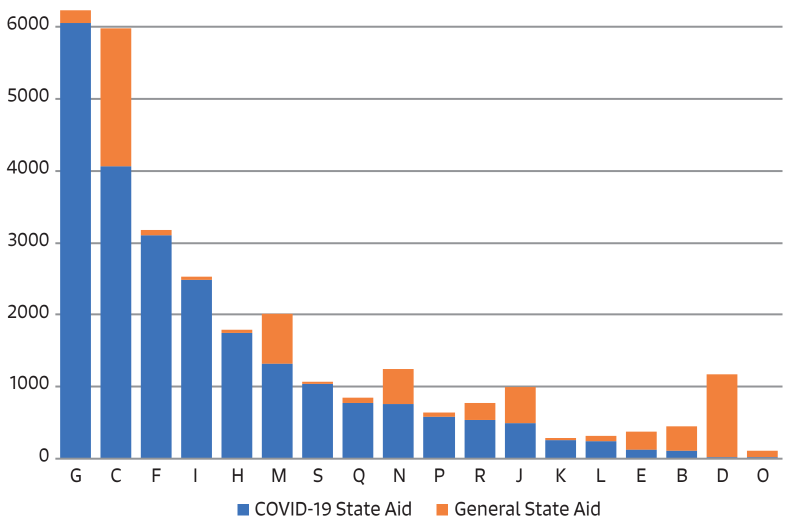
Figure 5. Value of state aid granted to companies by size in Poland in Q2 2020 – Q2 2021 (in mln EUR)



Source: Own calculation based on OCCP data.

In the examined period, the greatest beneficiary of the general and COVID state aid were the wholesale and retail trade sector (20.7%), as well as manufacturing (19.9%), although their position was influenced by COVID-19 state aid in a different way – much greater in the former case (97.2%), although also significant in the latter (67.9%) (Figure 6.). They were followed by sectors such as construction (10.6%), HORECA (8.4%) and transportation (6.0%), as well as business-related services (6.7%), where the share of COVID-19 state aid ranged from 65.6% to 98.1%. Importantly, COVID-19 state aid, with the exception of manufacturing and professional services, science and technical activities, was received by entrepreneurs in industries that had not been the main beneficiaries of public interventions up until that time.

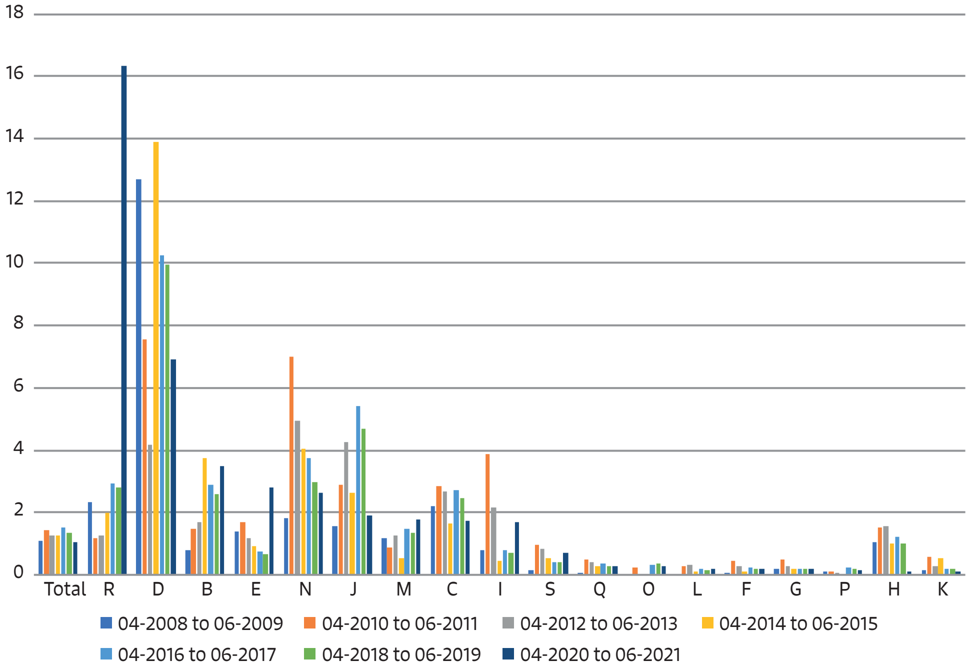
Figure 6. State aid components in Poland in Q2 2020 – Q2 2021 (in mln EUR)



Source: Own calculation based on OCCP data.

Although general state aid continued to be granted under the previously existing rules, the pandemic slightly changed the position of entrepreneurs representing individual sectors on the list of beneficiaries of public financial intervention in Poland in terms of its intensity (except for COVID-19 state aid) (Figure 7.). A particularly high increase in aid intensity (calculated with reference to the generated Gross Value Added) was noted in the arts, entertainment and recreation, water supply and waste management, as well as accommodation and food service industries. This means that entrepreneurs in these industries, in parallel to COVID-19 state aid, benefited from other aid schemes helping them to reduce the resulting financial losses and ensure financial liquidity (for instance investment aid). Still relatively high aid intensity was reported in electricity, gas, steam, and air conditioning supply, followed by mining and quarrying, administrative and support services, and information and communication, although the intensity of this support in comparison with previous reference periods further decreased.

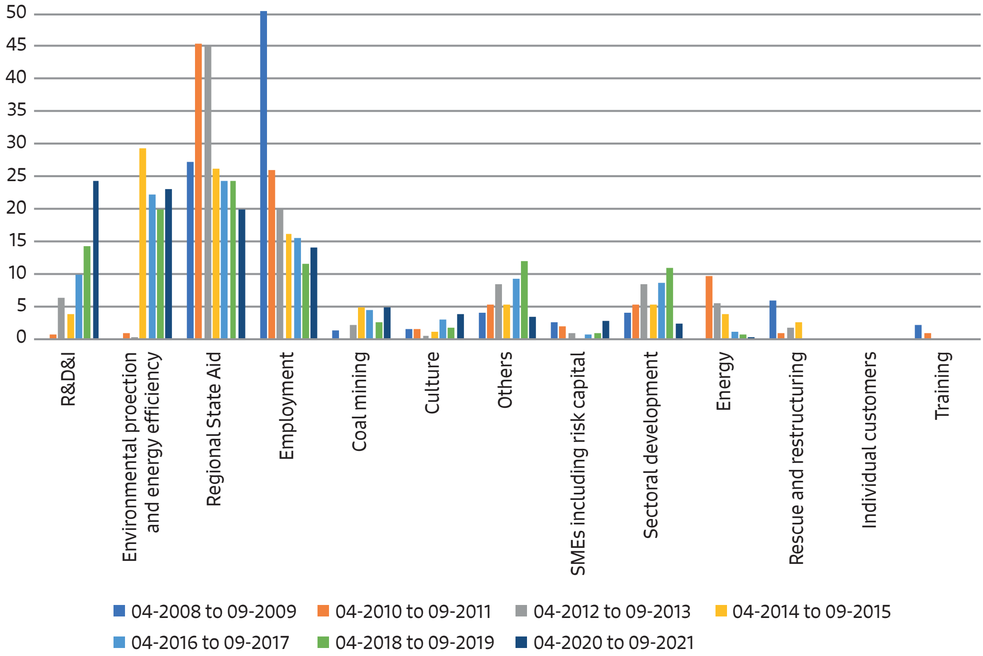
Figure 7. General state aid intensity in seven consecutive periods prior to and during the COVID-19 pandemic in Poland (in %)



Source: Own calculation based on OCCP data.

Significant, albeit long-awaited changes occurred in the structure of general state aid by category. In the examined period of Q2 2020 – Q2 2021, the share of regional aid – the previous leader – decreased to 20.0% (from 24.4% estimated for the reference period Q2 2018 – Q2 2019) (Figure 8.). The previous focus on regional investment aid, which was supposed to ensure the mere inflow of investment projects without requiring them to bring in new technologies, to help mitigate climate change or successfully face digital challenges, was assessed critically (Ambroziak, 2020; 2021c). On the other hand, the share of aid allocated for research, development and innovation increased by 10 percentage points (compared to the previous period) reaching 24.4%, and the share of aid for environmental protection and energy efficiency increased by 3.1 percentage points to 23.1%. These two areas became the main categories of state aid in Poland during the first five quarters of COVID-19 state aid.

Figure 8. State aid by category in seven consecutive periods prior to and during the COVID-19 pandemic in Poland (in %)



Source: Own calculation based on OCCP data.

Conclusions

The analysis of state aid granted in connection with the COVID-19 pandemic shows that due to its sectoral distribution in relation to the share of particular industries in the Gross Value Added, support was granted to those industries that really needed it. This primarily concerned entrepreneurs representing such sectors as: Accommodation and Food Service Activities and Arts, Entertainment and Recreation, as well as Construction, Transportation and Storage, and Wholesale and Retail Trade. In terms of the size of beneficiaries, micro, small and medium-sized enterprises received the most support in descending order. In fact, some aid schemes, especially those implemented in 2021, were industry-specific, while studies conducted for 2020 demonstrate that undertakings that could have suffered the most as a result of closing specific economic activities even at that time received, relatively, the highest support in the form of COVID-19 state aid.

The highest value of aid granted, and consequently a very strong aid impulse, was recorded in Q2 2020, but in subsequent quarters a significant decline in the value of aid was observed, which was primarily due to funds provided for in the existing programmes being consumed. Also, in subsequent months, further aid schemes were launched with much smaller budgets, but sometimes targeting specific industries affected by selective lockdowns.

The change in employment shows that many industries made staff reductions. This concerned sectors such as Manufacturing, but also Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles, Transportation and Storage, as well as Accommodation and Food Service Activities. Notably, similar trends were observed in the financial and insurance activities, as well as real estate activities sectors, which resulted in significant reductions in employment, especially in 2021.

Taking into account changes in added value with a simultaneous steady increase in the number of enterprises, the recorded reduction in employment resulted not so much from the crisis as from restructuring in the face of a potential crisis. On the other hand, the constant increase in the number of enterprises may have resulted partly from the desire to get engaged in business activities, exhibited especially by employees laid off at the beginning of the pandemic. This was especially true for sectors that registered a decline in APE. Another explanation may be the proliferation of entrepreneurial spirit, i.e. the will to run a business despite adversity such as the COVID-19 pandemic. However, the revealed relationships require data to be collected over a longer period of time and more in-depth research.

COVID-19 state aid has significantly changed the structure of aid granted in Poland – as a rule, relatively the greatest amount of aid was received by entrepreneurs who had previously benefited the least from state support. At the same time, the hitherto largest beneficiaries of financial aid, with the exception of the manufacturing sector, received, relatively, less COVID-19 state aid. This means that in the period covered by the study, the structure of aid beneficiaries changed significantly, both in terms of their size and the PKD sections that they represent. At the same time, the study indicates that just as in general state aid (not including COVID-19 state aid) mainly went to large companies, in the case of COVID-19 state aid it went to micro and small enterprises.

Moreover, the above-described changes coincided with a fairly significant change in the structure of the allocation of general state aid in Poland. This is because even in 2019, the then noted weak trend of decreasing importance of regional aid in favour of aid for research, development and innovation and for environmental protection and energy efficiency was confirmed. The latter category of aid is currently the most frequently used in the EU due to the need for entrepreneurs to adapt to climate change and transformation. Poland's actions so far have been clearly insufficient in this respect.

It seems that this reorientation towards support for environmental protection and R&D was not directly influenced by the COVID-19 pandemic. The proper designation of operational programmes and the mechanism of allowable aid categories exempt from the duty to notify pursuant to the GBER, and the exhaustion of EU funding for simple investment projects in regions lagging behind, had a greater impact. On the other hand, the COVID-19 outbreak called into question the resilience of businesses to external changes not only internationally but also domestically. This includes, for example, the implementation of new technologies with the support of state aid as a response to uncertainty about the availability of workers (e.g. in the face of the pandemic), which is forcing not only automation but also robotisation. These linkages, however, require much greater research.

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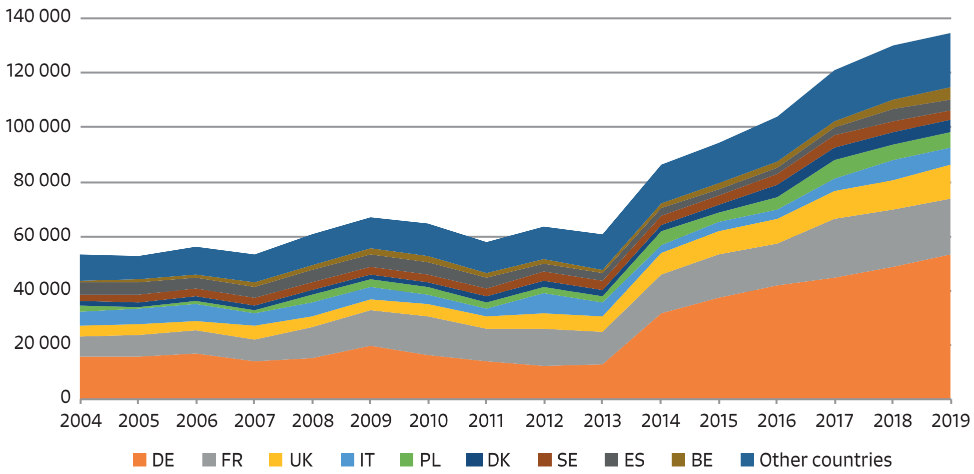
ANNEX
State aid in Poland 2004–2019[5]

1. State aid value

The overall value of state aid granted in the period of 2004–2019 grew dramatically from EUR 53.3 bn to EUR 134.4 bn (Figure 1). Following a significant increase in 2014 compared to the previous year, the dynamics slightly decreased, and in 2019, the value of state aid in the EU increased by 3.4% compared to 2018. This occurred mainly thanks to the UK (increase by 22.1%) and Germany (increase by 8.7%). In the case of Poland, there was another decrease of 2.7% in the value of aid granted, although it still remained the fifth country in terms of the size of financial interventions. This was linked not so much to the reduction of public intervention in Poland as to the exhaustion of European funds.

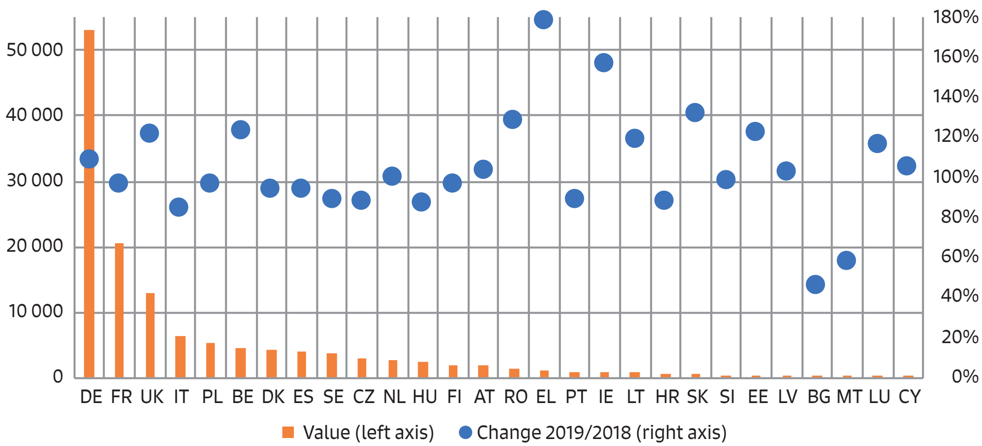
[5] Annex to the results of research titled *Poland towards a new approach to state aid policy after accession to the European Union* published in the previous report *Poland in the European Union. Report 2021* (ed. Adam A. Ambroziak), SGH House Press, Warsaw 2021. This is a state aid synopsis of analyses published annually based on the latest data presented by the European Commission in Scoreboard 2020.

Figure A1. State aid in the EU Member States in 2004–2019 (in mln EUR)



Source: DG COMPET, European Commission.

Figure A2. Changes in the value of state aid in the EU Member States in 2018–2019 (percentage)



Source: DG COMPET, European Commission (EC_State_Aid_Scorebord_2021-10-07).

2. Revealed State Aid Intensity

In order to ensure the comparability of state aid across the EU Member States, the European Commission calculated the value of support from public coffers as a percentage of the GDP for all the EU Member States. However, due to many limitations and shortcomings of the index used by the European Commission, we introduced a new index into the previous Report: a Relative State Aid Intensity Index (RSAI) (Table A1, Figure 4). In the following year of the study, Malta replaced Hungary in first place in the aid intensity ranking. Poland's intensity decreased slightly in 2019, maintaining this trend from 2017. A similar situation can be observed among other Central and Eastern European countries, for which EU funds from successive financial perspectives are a particularly important source of financial support for entrepreneurs. In contrast, the level of intensity in the large and richer Member States remains at its current level, either quite high (Germany), slightly lower (France) or very low (Spain).

Table A1. Relative State Aid Intensity index (RSAI)

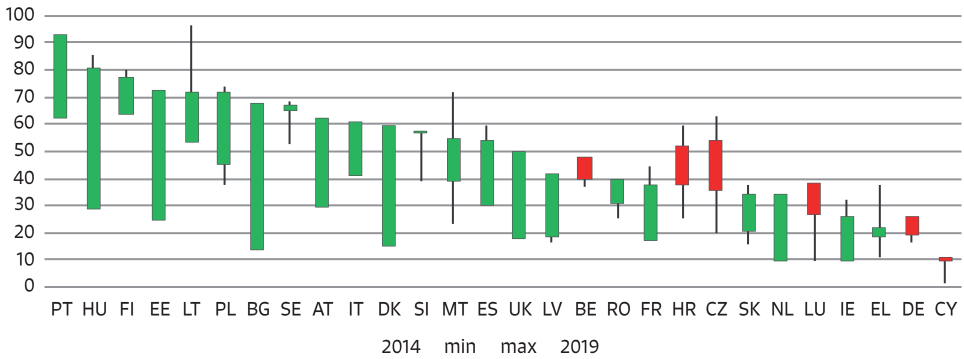
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
MT	0.74	0.74	0.67	0.66	0.56	0.49	0.36	0.50	0.49	0.55	0.20	0.16	0.00	0.15	0.21	0.37
HU	0.34	0.47	0.48	0.46	0.62	0.49	0.59	0.37	0.35	0.47	0.44	0.34	0.53	0.54	0.43	0.37
LT	–0.53	–0.53	–0.37	–0.41	–0.51	–0.29	–0.26	–0.08	–0.11	–0.20	–0.50	0.10	0.07	0.16	0.22	0.33
DE	0.17	0.20	0.20	0.14	0.10	0.17	0.10	0.06	–0.05	–0.03	0.26	0.30	0.31	0.27	0.29	0.30
DK	0.25	0.25	0.22	0.30	0.24	0.28	0.28	0.36	0.37	0.37	0.22	0.33	0.41	0.34	0.35	0.29
HR										–0.12	–0.14	–0.02	0.21	0.25	0.36	0.26
CZ	–0.19	–0.07	0.03	0.14	0.17	–0.05	0.07	0.23	0.27	0.35	0.23	0.27	0.28	0.26	0.32	0.22
EE	–0.69	–0.58	–0.71	–0.73	–0.68	–0.74	–0.65	–0.38	–0.30	0.10	0.14	0.19	0.07	0.12	0.14	0.18
LV	–0.18	0.13	0.11	0.62	0.03	–0.01	0.24	0.40	0.80	0.67	0.66	0.67	0.55	0.37	0.14	0.11
PL	0.37	–0.07	0.00	0.02	0.23	0.16	0.22	0.12	0.09	0.11	0.30	0.09	0.20	0.31	0.13	0.10
BE	–0.27	–0.17	–0.11	0.00	–0.05	0.06	0.09	–0.01	–0.11	–0.08	–0.19	–0.14	–0.07	–0.20	0.02	0.08
FR	–0.02	0.01	0.01	0.04	0.12	0.13	0.17	0.16	0.18	0.14	0.06	0.08	0.02	0.12	0.04	0.04
SE	0.27	0.34	0.33	0.36	0.29	0.21	0.22	0.26	0.23	0.26	0.11	0.05	0.08	0.10	0.10	0.01
FI	–0.08	–0.04	–0.04	–0.02	–0.01	–0.02	–0.02	0.21	0.14	0.23	0.13	0.12	0.09	0.06	0.23	0.01
SI	0.04	–0.01	0.01	–0.09	–0.02	0.19	0.23	0.40	0.40	0.44	0.28	0.27	0.08	0.05	0.07	0.01
RO					–0.40	–0.61	–0.54	–0.22	–0.03	0.13	0.05	0.07	–0.06	–0.23	–0.19	–0.13
SK	0.15	0.17	0.02	0.01	–0.02	–0.20	–0.20	–0.36	–0.52	–0.33	–0.25	–0.14	–0.24	–0.46	–0.26	–0.17
EL	–0.20	–0.15	–0.12	–0.07	0.17	0.24	0.24	0.45	0.31	0.56	0.26	0.38	–0.16	–0.44	–0.40	–0.17
UK	–0.43	–0.44	–0.45	–0.34	–0.40	–0.42	–0.34	–0.34	–0.31	–0.27	–0.30	–0.32	–0.30	–0.29	–0.35	–0.24
CY	0.43	0.46	0.03	0.11	–0.01	–0.18	–0.01	0.16	0.03	0.21	0.03	0.04	–0.03	–0.18	–0.24	–0.26
PT	0.51	0.35	0.34	0.53	0.35	0.28	0.27	0.34	0.06	–0.24	–0.16	–0.12	–0.27	–0.18	–0.25	–0.27
AT	–0.09	–0.09	0.19	–0.07	–0.02	0.13	0.07	0.03	0.04	0.05	–0.23	–0.12	–0.16	–0.23	–0.26	–0.29
BG				–0.64	–0.83	–0.75	–0.82	0.28	0.26	0.39	0.57	0.36	0.30	0.26	0.13	–0.32
NL	–0.33	–0.27	–0.22	–0.24	–0.28	–0.29	–0.21	–0.15	–0.22	–0.24	–0.33	–0.38	–0.36	–0.40	–0.37	–0.40
IT	–0.15	–0.10	–0.08	–0.18	–0.21	–0.31	–0.46	–0.45	–0.02	–0.22	–0.55	–0.57	–0.57	–0.54	–0.44	–0.41
ES	0.04	0.06	–0.09	–0.05	–0.06	–0.11	–0.12	–0.13	–0.22	–0.29	–0.38	–0.51	–0.53	–0.50	–0.40	–0.45
LU	–0.53	–0.53	–0.57	–0.54	–0.55	–0.38	–0.48	–0.42	–0.50	–0.27	–0.36	–0.34	–0.39	–0.53	–0.55	–0.53
IE	–0.27	–0.10	–0.04	–0.02	0.00	–0.10	0.04	–0.09	–0.23	0.00	–0.34	–0.65	–0.69	–0.67	–0.70	–0.61

Source: Own calculation based on DG COMPET data, European Commission.

3. GBER

The currently binding rules on exemption from the obligation of state aid notification entered into force in 2014 (European Commission, 2014), which should ensure that state aid is granted in line with the idea of harmonious development of the EU. In the analysed period 2014–2019, it is clear that the share of state aid granted under the GBER Regulation has been significantly increasing in the EU Member States, although in 2019, compared to 2018, it decreased by 2.31 percentage points (Figure A3). A similar drop was reported by Lithuania (−1.95 p.p.), Spain (−1.55), but also France (−6.75), the Czech Republic (−5.5), Malta (−17.28), and Greece (−11.61).

Figure A3. State aid granted under GBER as a percentage of total state aid granted in 2014–2019



Source: DG COMP, European Commission.

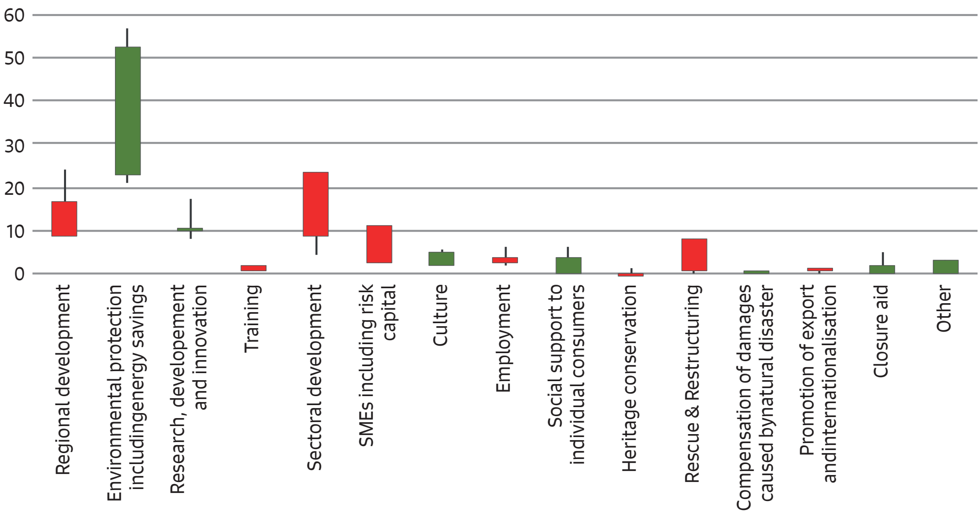
4. State Aid Similarity

At the EU level, environmental and energy efficiency aid has enjoyed by far the largest share for several years (52.32% in 2019, slightly down from 55.2% in 2018). Aid for research, development and innovation (up from 9.2% to 10.6% in 2019), as well as regional (8.8%) and sectoral (8.3%) aid ranked by far lower on the list (Figure A4).

This is mainly due to the launching of the climate transformation in the EU and the need for businesses to incur significant costs to change the energy sources they use. This is also evidenced by a rather significant increase in aid for mine closures (by 79.6% in 2019 compared to 2018), as well as a decrease in simple regional aid, sectoral aid, and aid to support small and medium-sized enterprises.

The existing structure of state aid in Poland has been criticised rather strongly. To map Poland's position vis-à-vis other EU Member States in terms of state aid objectives, we introduced in the previous report the State Aid Similarity Index. In 2019, Poland recorded an increase from 56.5% to 57.7% of the EU level, however it was still among the countries with a state aid structure the least similar to that of the EU (Spain, Croatia, Latvia, Hungary, Malta, and Portugal). A common pattern among those countries was a relatively low share of state aid granted for environmental projects and energy efficiency in their total state aid landscape. At the other end of the ranking there were many countries (Czechia – 86.1%, Greece – 85.8%, Finland 83.5%) that ranked extremely high in that state aid category (Table A2). However, the problem of poor adjustment of the Polish state aid structure was largely due to the predominance of regional investment aid, which, due to relatively easier conditions to fulfil, was quite often used in Poland. On the other hand, other categories of state aid were much less frequently reported.

Figure A4. Changes in shares of selected state aid categories in the EU in 2004–2018



Red denotes a decrease; green – an increase in the share of selected state aid categories in the EU in 2004–2018.

Source: European Commission, DG COMP.

Table A2. State Aid Similarity Index in 2004–2019 (EU = 100)

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
CZ	66.00	43.63	53.07	53.30	50.95	57.53	59.65	57.43	54.73	65.60	62.91	53.03	86.67	83.51	83.95	86.09
EL	51.55	57.22	58.79	54.73	51.21	55.53	32.23	26.99	22.83	33.34	29.96	22.40	36.69	32.05	65.75	85.76
FI	69.24	79.75	80.69	78.34	72.91	70.78	70.69	65.21	63.41	65.36	73.25	76.29	83.23	79.92	72.90	83.48
MT	35.66	27.37	25.55	27.52	25.79	40.93	45.64	46.10	53.24	41.60	42.75	33.62	25.22	34.59	35.11	78.92
SE	39.36	42.00	42.84	41.82	40.97	43.24	40.57	39.61	40.65	42.25	63.30	67.13	70.98	79.71	79.50	78.84
AT	57.55	62.24	60.92	53.52	54.59	58.84	52.13	56.36	54.25	55.78	69.14	66.82	76.72	74.36	77.25	78.60

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
DE	77.66	79.27	77.39	80.07	82.53	85.79	82.89	84.24	80.19	83.40	65.82	62.90	70.02	68.04	73.31	76.99
NL	66.85	62.06	63.98	67.29	59.83	52.77	54.12	54.26	52.83	55.94	66.11	68.16	77.34	75.86	79.84	76.58
LV	43.77	45.28	44.12	38.21	56.06	39.89	51.28	49.15	22.29	20.84	32.20	29.54	28.37	30.89	46.66	75.97
IE	64.27	59.20	60.01	63.03	63.47	70.22	67.56	69.11	56.15	50.56	55.61	60.76	75.91	81.41	80.76	75.39
DK	45.61	44.06	45.03	46.59	41.25	41.21	39.25	39.88	47.60	48.15	52.01	69.94	74.37	68.90	75.04	71.44
SK	47.40	42.18	41.62	54.40	59.52	69.39	56.91	51.63	55.49	62.64	51.49	47.26	38.79	55.55	68.83	71.18
FR	68.64	60.19	63.51	68.75	75.13	78.96	75.67	73.33	76.96	74.76	60.44	54.25	61.86	60.95	69.07	70.76
LT	37.52	55.15	66.92	58.67	41.35	59.50	51.30	48.62	47.10	46.01	54.38	61.07	48.79	57.51	62.37	70.19
LU	48.57	51.15	48.42	50.42	54.71	45.32	46.73	57.09	45.15	50.20	66.99	67.63	79.00	77.53	74.00	69.87
SI	58.67	61.84	58.41	65.08	57.91	64.68	72.74	79.66	68.02	74.26	75.02	65.58	74.55	73.88	71.80	69.67
RO	34.62	31.61	29.81	48.04	63.05	65.82	61.42	47.60	47.08	53.81	68.49	71.25	71.19	71.84	76.20	67.93
BE	54.95	56.35	78.56	73.74	67.77	67.34	69.02	76.72	67.75	68.87	44.06	30.35	43.01	45.41	64.94	66.48
UK	68.53	79.00	76.49	75.92	73.23	65.31	70.50	77.39	74.07	74.68	76.61	64.80	68.41	72.32	70.88	66.41
EE	41.11	55.15	52.57	55.07	52.34	39.86	55.83	56.79	58.02	64.19	82.01	73.77	72.85	70.74	72.04	66.30
PL	**42.85**	**63.96**	**56.86**	**56.38**	**60.04**	**61.72**	**68.19**	**48.20**	**46.21**	**40.62**	**56.93**	**59.61**	**57.47**	**61.45**	**56.51**	**57.71**
BG	12.78	7.77	16.92	38.74	39.48	44.63	49.25	27.90	32.18	36.25	62.23	64.58	67.44	65.22	65.84	57.70
IT	62.33	74.36	72.66	70.99	74.38	76.49	67.80	73.61	53.55	59.81	59.60	47.33	44.67	63.44	57.09	56.40
HR											50.78	73.94	70.18	36.10	46.73	55.88
CY	35.80	36.03	36.54	35.67	32.14	31.34	28.56	37.82	39.51	50.24	64.60	63.91	72.56	63.58	61.62	54.34
ES	66.79	63.28	70.99	69.28	77.76	84.99	82.70	75.31	73.38	54.81	56.60	47.34	56.26	44.43	53.06	54.21
HU	63.17	58.30	59.12	55.16	58.97	64.33	50.92	52.24	54.24	54.72	35.86	32.58	37.37	35.64	41.70	45.14
PT	34.54	33.32	32.44	30.77	39.89	39.28	48.07	28.20	54.31	46.47	35.72	15.62	24.47	23.37	30.61	26.24

Source: Own calculation based on DG COMPET data, European Commission.

Table A3. Differences in state aid structure by objectives in Poland in comparison to the EU-28 average in 2004–2019

	Regional development	Employment	Research and development including innovation	Heritage conservation	Rescue & Restructuring	Compensation of damages caused by natural disaster	Training	Promotion of export and internationalisation	SMEs including risk capital	Other	Closure aid	Social support to individual consumers	Culture	Social support to individual consumers	Environmental protection including energy savings
2004	−7.4	8.0	−9.4	0.5	49.3	−0.1	−1.5	−0.5	−10.4	0.0	−0.1	0.1	−1.6	0.1	−22.1
2005	1.8	25.6	−7.2	2.1	1.0	0.0	1.1	−1.2	−2.4	−0.3	0.0	0.2	−2.3	0.2	−24.1
2006	13.1	27.2	−9.7	1.2	−1.6	0.0	2.8	−1.2	−3.2	−0.1	0.0	0.2	−2.0	0.2	−24.8
2007	3.6	31.0	−11.9	1.5	3.1	0.0	3.3	−0.7	3.4	0.0	0.0	−1.5	−2.6	−1.5	−23.0
2008	−2.9	22.4	−13.7	0.7	6.3	0.0	−0.6	−0.5	−8.6	−0.2	0.0	−1.4	−2.4	−1.4	−11.7
2009	−2.0	21.6	−14.8	0.5	−0.2	0.0	2.4	−0.4	−8.3	−0.4	0.0	−1.6	−2.3	−1.6	−8.7

	Regional development	Employment	Research and development including innovation	Heritage conservation	Rescue & Restructuring	Compensation of damages caused by natural disaster	Training	Promotion of export and internationalisation	SMEs including risk capital	Other	Closure aid	Social support to individual consumers	Culture	Social support to individual consumers	Environmental protection including energy savings
2010	3.7	20.6	−14.5	0.3	0.9	0.3	0.6	−0.4	−5.8	−0.7	0.0	−3.2	1.5	−3.2	−8.6
2011	2.6	25.6	−16.0	0.3	−0.9	0.2	3.2	−0.5	−6.0	−0.3	−4.9	−5.7	−3.2	−5.7	−14.8
2012	11.7	27.3	−10.8	0.4	−2.9	0.0	1.5	−0.4	−6.0	−0.4	−2.3	−5.0	−3.7	−5.0	−22.6
2013	14.6	29.6	−11.6	0.5	−4.1	−0.4	2.0	−0.4	−5.6	−0.5	−2.5	−5.3	−4.3	−5.3	−25.3
2014	22.6	12.3	−5.3	−0.1	1.8	−0.5	−0.3	−0.2	−4.2	−0.4	−1.2	−6.1	−3.3	−6.1	−23.1
2015	9.6	18.1	−3.5	0.6	−0.7	−0.4	−0.8	−0.1	−4.8	−0.6	1.9	−5.9	−4.9	−5.9	−21.4
2016	19.8	13.1	−0.2	0.4	−0.2	−0.6	−0.5	−0.1	−4.1	−0.2	4.5	−3.8	−3.9	−3.8	−33.8
2017	18.5	8.9	8.7	0.3	−4.0	−0.5	−0.4	−0.7	−2.5	4.3	4.3	−3.3	−0.6	−3.3	−35.0
2018	17.3	13.5	6.8	0.4	−0.4	−0.6	−0.5	−0.8	−2.0	10.5	0.5	−3.7	−2.0	−3.7	−35.6
2019	20.9	11.5	9.9	0.3	−0.4	−0.4	−0.5	−0.8	−1.3	−1.5	−1.6	−3.5	−3.4	−3.5	−26.6

Source: Own calculation based on DG COMPET data, European Commission.

The previously mentioned increase in the State Aid Similarity Index reflects small but welcome changes in the structure of state aid in Poland. In 2019, regional aid in Poland was still the highest and significantly above the EU average, however, it is worth noting the trends for three other categories of state aid (Table A3). The role of simple employment aid has declined significantly in favour of a small convergence in the share of aid for environmental protection and energy efficiency in Poland towards the EU average. At the same time, the share of aid for R&D&I slightly increased and exceeded the figures for the EU-28 as a whole. This means that Poland has embarked upon a path of modification of the state aid structure set by other EU Member States. The above trends indicate a shift that Poland is making towards the structure in EU Member States as it was in the early 21st century, when a knowledge-based economy provided foundations for development and growth. Nowadays, the main objective is to counteract climate change and facilitate climate transformation, for which measures are required that already fulfil the characteristics of innovation. It would therefore be better to move beyond this phase of R&D&I fascination towards the pursuit of current economic and social policy objectives in the EU.

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ECONOMY THAT WORKS FOR PEOPLE: IS POLAND ON TRACK TO ACHIEVE THE ECONOMY-RELATED SUSTAINABLE DEVELOPMENT GOALS BY 2030?

Introduction

The efforts of the United Nations aiming at implementing the sustainable development agenda, which presently seem to be among the top priorities for global leaders, have been intensified in recent years. This sparked vivid interest in the topic among European researchers, resulting in numerous research papers and reports on the topic of sustainability. While observing the growing amount of research work in this area in recent years, it should be recognized that the first works regarding the harm done by human activity on the natural environment date back to the beginnings of the 18th century. At the end of that century, the issue of resource scarcity was a central topic of works by T. Malthus (1798), who questioned the capacity of our planet to provide resources at a pace adequate to the population growth rate. T. Malthus' reasoning was that while the world's population tended to grow on geometric progression, the growth in supply in resources, taking place due to technological progress, was subject to arithmetical progression – hence the gap between those two was likely to widen. However, environmental research did not become very popular among economists in the subsequent years, as the research focus was rather on gaining competitive advantage either in absolute or comparative terms stemming from easy access to resources (Leamer, 1995) or maximizing profits from exploitation of non-renewable natural resources (Hotelling, 1931; Clark, 1990).

The world's population and global consumption grew dynamically from the end of World War II. The pace of that growth accelerated significantly due to the industrial and urban transformation of Asian economies (especially of China) at the end of the 20th century. By then it had become obvious that the demand for natural resources, as well as for food needed to feed the growing global population, would increase, and that it would be challenging to satisfy this demand in the long run. The academic, as well as political debate, began to evolve around major issues connected to sustainable development, including insufficient food production and CO_2 emissions resulting in climate change, as well as to the growing amount of non-recyclable waste cluttering our planet.

Moreover, the digital revolution sparked the demand for minerals, used for manufacturing different types of electronic devices, including mobile phones and personal computers (such as lithium, aluminum, gold, silver, copper, zinc, cobalt or nickel). A report by Pew Research Center of 2019 revealed that the number of mobile device users was 5 billion globally in 2019, with half of the devices being smartphones (Taylor, Silver, 2019). According to another report by the United Nations Environment Program (UNEP), this demand for electronic devices had a significant impact on the natural environment, as global material extraction had tripled since 1970, whereas the global population doubled over this period. In 2010, nearly 30 billion tons of raw materials were extracted and used to produce 10 billion tons of directly traded goods (*Global Material Flows and Resource Productivity*, 2016). At the same time, in 2019 the world generated 53.6 megatons of e-waste, an average of 7.3 kg per capita (Forti et al., 2020), with smartphones alone contributing to c.a. 10% of this amount (Chatterji, 2021).

All these facts drew researchers' attention to the sustainable development and circular economy, as it was clear that the linear economic model was no longer feasible. The research in these areas gained traction at the end of the 20th and at the beginning of 21st century, when the issue of natural resources scarcity and climate change became a priority area for policymakers. In 2015, the United Nations' 2030 Agenda introduced 17 sustainable development goals (SDGs), which were intended to be universal and applicable to all countries globally. The European Commission has adopted those goals and prioritized them on the European Union's agenda.

The aim of this chapter is to evaluate Poland's performance in achieving the economy-related sustainable development goals relative to other EU countries, and to evaluate its circular economy performance by analyzing the circular economy indicators, as defined by the European Commission, in reference to the EU average.

1. The concept of sustainable development and its implementation in the European Union

Numerous definitions of the term 'sustainability' can be found in literature (Johnston et al., 2007). Although there are entire research papers dedicated exclusively to discussing the definition and measurement of sustainability due to the broad capacity of this notion (Kuhlman, Farrington 2010), the definition used for the needs of this paper is the one adopted by the United Nations and derived from the so-called Brundtland Report (*Our Common Future*, 1987), according to which sustainability can be defined as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs' ('Sustainability', no date). Although at first glance this definition might seem quite broad, it reflects very well the entire idea, and hence whenever the notion of *sustainability* is used in this chapter, it will refer to the definition quoted above.

Pursuing the above 17 Sustainable Development Goals (SDG),[1] which were officially introduced in the United Nations' 2030 Agenda, became a priority for the European Commission. At the 2019 SDG summit, the Commission clearly stated that 'sustainable development is at the very heart of the European Union and that every EU initiative is aimed at improving citizens' lives, on a healthier planet, and with a sustainable future' (*EU delivering on the UN 2030 Agenda. SDG Summit 2019*, 2019).

Taking the above into account, attempts began to identify broader categories to group the SDGs. For instance, in the Report of 2020, IEEP and SDSN (*The 2020 Europe Sustainable Development Report: Meeting the Sustainable Development Goals in the face of the COVID-19 pandemic*, 2020) identified the six following priority SDG transformations for Europe:

- *Education, Skills and Innovation* – aimed at ensuring top quality education and foster investments in innovations in strategic technologies and industries,
- *Sustainable Energy* – aimed at promoting green energy, decarbonizing industry and achieving the north star of zero-carbon power generation,
- *Sustainable Communities, Mobility and Housing* – aimed at promoting sustainable mobility, and renovating housing while introducing sustainable building standards,
- *Sustainable Food Production, Healthy Diets, and Biodiversity Protection* – aimed at ensuring sustainable farming and ocean use, promoting healthy food for all EU citizens, and ensuring biodiversity protection,

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1 The 17 SDGs are: 1. No poverty; 2. Zero hunger; 3. Good health and well-being; 4. Quality education; 5. Gender equality; 6. Clean water and sanitation 7. Affordable and clean energy; 8. Decent work and economic growth; 9. Industry, innovation and infrastructure; 10. Reduced inequalities; 11. Sustainable cities and communities; 12. Responsible consumption and production; 13. Climate action; 14. Life below water; 15. Life on land; 16. Peace, justice and strong institutions; 17. Partnerships for the goals.

- *Clean and Circular Economy with Zero Pollution* – aimed at minimizing the environmental impact of EU industry and reducing pollution and material consumption along with increased material reuse, by introducing a circular economy philosophy,
- *Digital Transformation* – aimed at addressing the need for investments in digital infrastructure and technology innovation, for EU enterprises to be able to lead digital transformation globally.

Meanwhile, the European Commission introduced the official approach to sustainable development (*EU holistic approach to sustainable development*, 2019), aimed at presenting the European Union's approach to implementing the UN's 2030 Agenda for Sustainable Development. The European Commission has introduced six priority areas (*European Commission Priorities*, 2021), which grouped the UN's 17 SDGs into the following six categories:[2]

- European Green Deal
- Economy that works for people
- Europe fit for the digital age
- European way of life
- Stronger Europe in the world
- European democracy

The highest number of SDGs (12 out of 17) was assigned to the set of policy initiatives referred to as the *European Green Deal* (*What is the European Green Deal?*, 2019), which not only groups the highest number of goals, but also seems to draw the greatest media attention. The explanation behind including as many as 12 SDGs into the European Green Deal initiative might be that a transition to a climate-neutral economy affects a wide array of topics and implies a necessity to coordinate numerous initiatives across the EU member states.

The Green Deal outlines four major commitments of the EU, which are (a) to become climate – neutral by 2050, (b) to protect humans, animals, and plants by reducing pollution, (c) to support companies in becoming world leaders in clean products and technologies, and (d) to help ensure fair and inclusive transition.

Although these goals reveal the European Commission's ambition for the European Union to become a global leader in terms of green economy by 2050, it seems that achieving the green economy status by that date might be challenging. Knowing that the production and utilization of energy is responsible for 75% of EU's greenhouse gas emissions, the means of achieving the first two goals is clearly connected to decarbonizing the energy sector. This made the European Commission adopt a set of proposals in 2021 aimed at reducing greenhouse gas emissions by at least 55% by 2030 (hence the

2 Please note that some of the SDGs fall into more than one category.

name of the initiative *Fit for 55*). To achieve the third goal, leaders of European industry should not only adopt, but be driven by the circular economy framework, and move away from the linear economy model. Meanwhile, it is a fact that EU industry used a mere 12% of recycled materials in 2020. The fourth area is more connected with the social aspect, including the necessity of changing labour market regulations, so that the transition to a green and digital economy does not affect the European Union's workforce, which might prove problematic, judging by the pace of digital transformation.

2. Poland's overall performance related to achieving sustainable development goals

Before going into detail regarding Poland's performance in pursuing the economy-related SDGs, it is worth noting that, according to the 2020 Europe Sustainable Development Report by IEEP (*The 2020 Europe Sustainable Development Report: Meeting the Sustainable Development Goals in the face of the COVID-19 pandemic*, 2020), none of the EU countries achieved any of the SDGs as of the time of the beginning of the COVID-19 pandemic. Moreover, according to the authors of the report, none of the European countries was on track to have achieved all the SDGs by the end of 2030. The highest-ranked EU countries that achieved an SDG index score of over 80, were Finland, Sweden and Denmark, whereas the worst-performing economies in that regard, with respective index values lower than 60, were Romania and Bulgaria.

According to the quoted report, Poland was ranked 16th among the European countries in terms of its overall SDG completion index value of 69.6, with the major challenges identified in two areas, i.e. SDG 13 (*climate action*) and SDG 14 (*life below water*). Although, like the other EU countries, Poland has not reached any of the SDGs yet, the areas where identified challenges were neither major nor significant, (i.e. where Poland's performance can be assessed as relatively satisfactory), were the following goals: SDG 1 (*no poverty*), SDG 3 (*good health and well-being*), SDG 4 (*quality education*) SDG 6 (*clear water and sanitation*), SDG 8 (*decent work and economic growth*), and SDG 17 (*partnership for the goals*).

In terms of overall trend assessment, the authors of the report found that Poland was generally on track to meet the goals, while revealing issues with regard to (i.e., moving away from) only one of the goals, which was SDG 13 (*climate action*). On the other hand, Poland's performance seemed to be on track with regard to meeting SDG 1 (*no poverty*) and SDG 6 (*clear water and sanitation*).

A slightly different picture of Poland's performance with reference to reaching the SDGs emerges from the latest monitoring report by Eurostat (*Sustainable Development* *in the European Union. Monitoring Report on Progress towards the SDGs in an EU Context. 2020 Edition*, 2020), according to which Poland is progressing towards achieving all 17 SDGs except one, SDG 5 (*gender equality*).

The difference in the assessment between the two reports may be due to numerous reasons. First of all, there are differences in analyzed periods – while the report by IEEP (*The 2020 Europe Sustainable Development Report: Meeting the Sustainable Development Goals in the face of the COVID-19 pandemic*, 2020) does not go beyond 2018, the beforementioned Eurostat report covers the period up to 2020. Second, there are differences in indicators taken into consideration by different evaluation reports. Although, as shown in Table 1, these differences between the reports by IEEP and Eurostat are not profound in the case of evaluating countries' performance in SDG 5, the datasets used by other evaluation reports may vary in a more substantial manner – as for example in the case of the report by the Polish Ministry of Economic Development and Technology (*Monitorowanie realizacji Celów Zrównoważonego Rozwoju w Polsce*, 2021).

Table 1. Differences in indicators used to evaluate progress in terms of reaching SDGs, based on the example of SDG 5 (gender equality)

Indicator	IEEP	Eurostat	Polish Ministry of Economic Development and Technology
Unadjusted gender pay gap	+	+	+
Gender employment gap	+	+	+
Gender gap for inactive population due to caring responsibilities	+	+	–
Seats held by women in national parliaments	+	+	–
Positions held by women in senior management	+	+	+
Women who feel safe walking alone at night in the city or area where they live	+	–	–
Physical and sexual violence towards women	–	+	–
Children aged between 1 and 3 subject to institutional care	–	–	+
Employment of women with the youngest child aged below 5	–	–	+
Female/male early leavers from education and training	–	+	–
Gender gap for tertiary educational attainment	–	+	–

Source: Own work based on IEEP and SDSN, Eurostat, and the Polish Ministry of Economic Development and Technology.

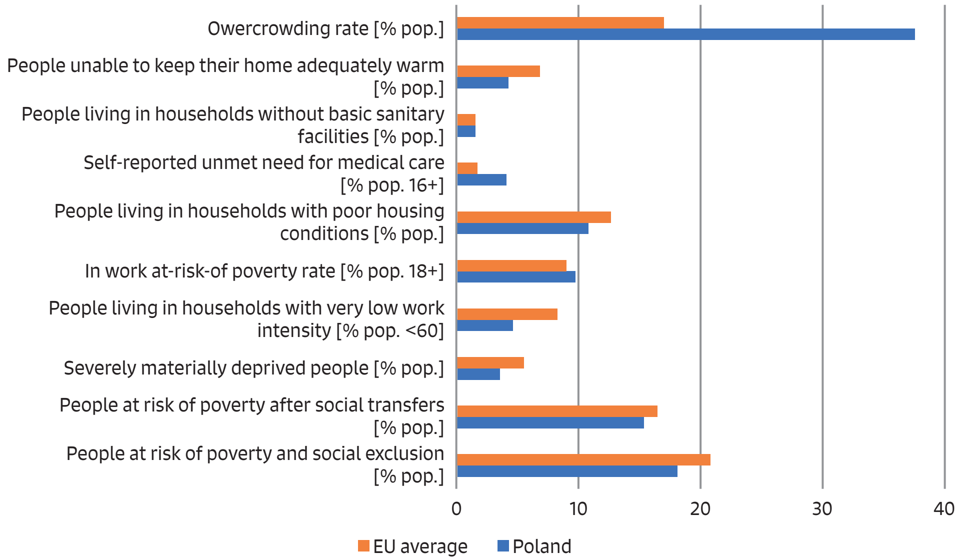
3. Poland's performance in the *Economy that works for people* priority

Economy that works for people priority groups 6 SDGs: SDG 1 (*no poverty*), SDG 3 (*good health and well-being*), SDG 4 (*quality education*), SDG 5 (*gender equality*), SDG 8 (*decent work and economic growth*), SDG 9 (*industry, innovation, and infrastructure*) and SDG 10 (*reduced inequalities*). Inclusion of such a wide array of goals in this single priority, as well as combining the economy-related indicators with those related to the human aspect (as per the priority name), indicates how the European Commission regards the sustainable economy. With this approach, the assessment of this priority not only is based on purely macroeconomic indicators (as for example in the case of SDG 8), but also focuses on equality, access to quality education, and high living standards for all EU citizens.

The dataset used for the purpose of this section, including the selection of evaluation indicators, was based in the Eurostat approach (*Sustainable development in the European Union. Monitoring report on progress towards the SDGs in an EU context. 2020 Edition*, 2020), as it comprises the most thorough indicators used for evaluating the economy – related goals, based on reliable datasets. The analysis presented below focuses on Poland's performance related to each of the six goals included in the *Economy that works for people* priority, with reference to the EU average values.

The idea behind **SDG 1** is that the threat of poverty is eliminated, and basic standards of living as well as social protection are ensured for each citizen. It is not surprising that the SDG related to poverty is top on the United Nations list. Although poverty is not an issue in the wealthiest European economies, it is a fact that even in the EU, the threat of poverty persists, and for some of the EU regions it still tends to be a serious challenge. Although the overall number of EU citizens at risk of poverty has been gradually diminishing since 2012, still over 20% of the EU population was at risk of poverty or social exclusion as of 2019, of which the vast majority was at risk of income-related poverty. Moreover, in 2019, nearly 13% of the EU population lived in poor dwelling conditions, and over 17% lived in overcrowded households. The indicators used to measure performance within this SDG were divided into two groups – those related to poverty, and those related to ability to satisfy human beings' basic needs. The former group embraces indicators such as the share of people at risk of poverty or social exclusion (including those at risk of poverty after social transfers), people materially deprived, those living in households with very low work intensity, and those in work at the risk-of-poverty rate. The latter group focuses on different indicators related to housing conditions and meeting needs in terms of medical care, for example. The overall goal for SDG 1 is to reduce the EU population subject to poverty by 2030 by half. According to official data, the EU is on track to achieve this goal within the indicated timeframe. As previously mentioned, SDG 1 is the goal where Poland's performance can be assessed relatively positively – according to the IEEP report, Poland is on track to meet the goal by 2030. The areas for improvement, where there still a relatively large discrepancy between Poland's performance and the EU average can be seen, are the overcrowding rate indicator (PL = 37.6% vs. EU = 17.1%), and the self-reported unmet need for medical care (PL = 4.1%, EU = 1.7%). However, the overall assessment of Poland's performance in pursuing this goal can be positive, as in the majority of the assessed indicators, Poland's performance is relatively better than the EU average (see Figure 1).

Figure 1. Poland's performance in relation to the EU average in reaching the SDG 1: *no poverty* as of 2020

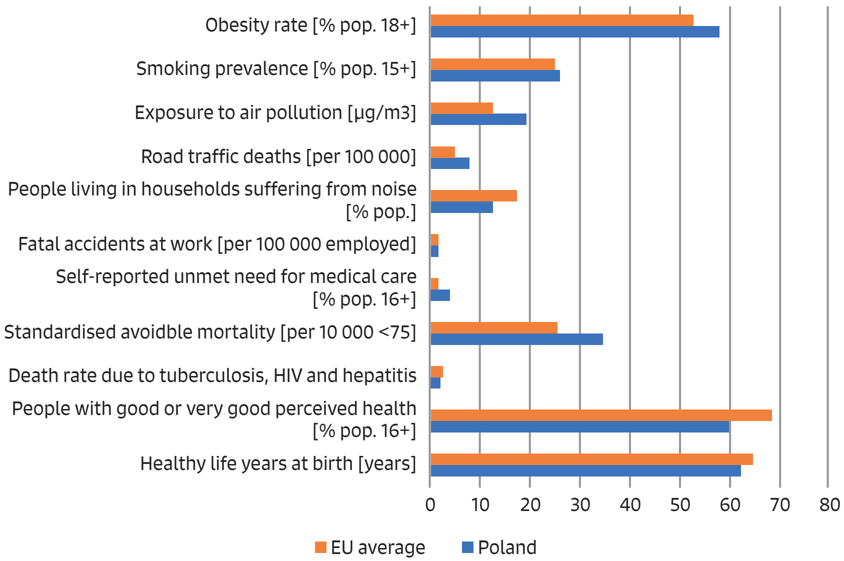


Source: Own work based on Eurostat data.

The second of the SDGs grouped under the *Economy that works for people* priority was **SDG 3**: *good health and well-being*. As mentioned, this was one of the SDGs where no major issues in terms of Poland's performance have been identified. SDG 3 seems to have been incorporated into the economy-related priority for a reason: health and well-being is strongly linked to all other areas related to sustainable development, as well as economic growth. Healthy lifestyle and access to medical care would translate into a more efficient workforce due to a lower absence rate. Maintaining good health of the EU workforce until retirement age is also important for the EU member states' governments, due to EU society aging. As claimed by the Ageing Europe report (*Ageing*

Europe – Looking at the lives of older people in the EU – 2020 edition, 2020), even despite the ongoing automation of numerous processes and tasks, the EU might face a labor shortage in the near future – hence it is very important that employees are able to perform their work in an efficient manner until retirement age.

Figure 2. Poland's performance in relation to the EU average in reaching SDG 3: *Good health and well-being* as of 2020

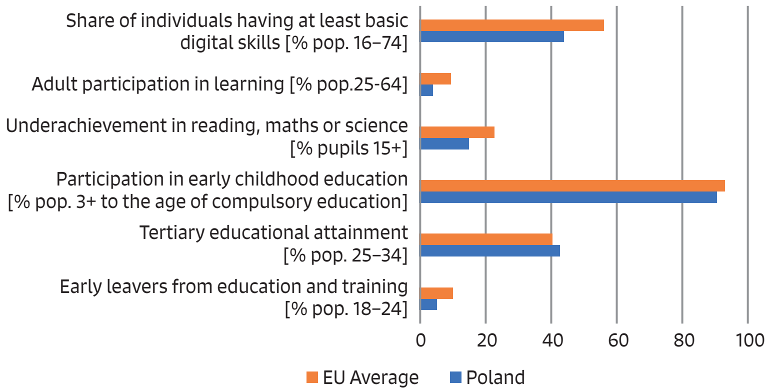


Source: Own work based on Eurostat data.

On average, the EU is moving towards reaching the SDG 3 at a satisfactory pace, except road traffic deaths, where the short-term tendency, measured in the last five years, was assessed as insufficient progress towards reaching the target, as there were 5.1 road traffic deaths per 100 000 inhabitants. This seems to be an even more worrying issue in Poland, where this value is c.a. 50% higher at 7.7 deaths per 100 000 inhabitants. To address this issue, in 2021 the Polish government initiated a discussion on profound legal changes to road traffic law, including higher fines and penalties as well as insurance premiums for reckless drivers. Other indicators, where Poland's performance can be assessed as inferior to the EU average, and where discrepancies between indicator values for Poland and the EU average are relatively large, are the aforementioned *unmet need for medical care*, as well as *exposure to air pollution* (see Figure 2). According to the *Air Quality in Europe 2020 Report* (*Air quality in Europe – 2020 report*, 2020), Poland had the most polluted air among all of the EU member states in 2020. Two main factors which contributed to this result were low-quality fuels used to heat homes, and the country's reliance on coal. According to the report's findings, air pollution in Poland contributed to nearly 50,000 premature deaths in 2018. Hence air pollution is one of the main concerns for Poland in terms reaching SDG 3 by 2030.

The third of the SDGs taken into consideration while assessing the *Economy that works for people* priority, was **SDG 4**: *quality education*. This is another SDG where Poland performs relatively well compared to the EU average. In Poland, there are fewer early leavers from education and training among the population aged between 18 and 24 years (5.4%), than the average for the EU (9.9%). Moreover, Poland was rated more highly in terms of students' performance in reading, math, and science, which was reflected by the lower rate of students (14.7%), who were assessed as underachievers in those fields, relative to the EU average (22.5%). However, an area of concern for Poland could be the indicator related to life-long learning. The share of population aged between 25 and 64 participating in adult learning was, according to Eurostat, lower in Poland than in the entire EU by c.a. 60% (see Figure 3). This discrepancy should raise concern among Polish policymakers, as the ability to acquire new skills seems to be essential for individual competitiveness in the era of digital transformation. It is highly unlikely that the skills acquired by employees in the course of their university education, or in the early stage of their professional careers, will be sufficient for those employees to remain competitive on the labour market throughout their professional life. Moreover, if this indicator is juxtaposed with the share of individuals having at least basic digital skills, where Poland's results were also inferior to the EU average (44% of the population aged 16–74 in Poland vs. 56% in the EU), it can be concluded that the majority of the Polish workforce is not yet ready to face the labour market-related challenges that will emerge in the course of the digital transformation.

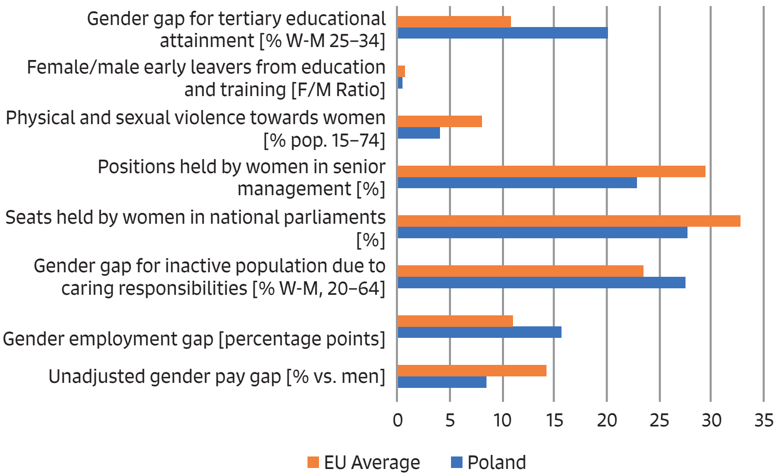
Figure 3. Poland's performance in relation to the EU average in reaching SDG 4: *quality education* as of 2020



Source: Own work based on Eurostat data.

When it comes to assessment of the fourth SDG included in the *Economy that works for people* priority, i.e. **SDG 5**: *gender equality*, it needs to be remembered that it was the only SDG, where Eurostat assessed Poland's overall performance as unsatisfactory. However, analyzing the indicators taken into consideration for SDG 5, Poland is not very far behind the EU average. Moreover, some of the indicator values are more promising in Poland than in the entire EU. These are for example the gender pay gap, percentage of women subject to violence, and female early leavers from education. Although Poland is rated higher in some of the areas subject to analysis within SDG 5, it is a fact that for most of the indicators it does fall behind the EU average. This discrepancy is especially visible in the gender gap in tertiary educational attainment, in positions held by women in national parliaments, and positions held by women in senior management (see Figure 4). The fact that Poland is underperforming in those categories relative to the EU average is even more worrying, considering that in both these cases even the EU average progress towards reaching these objectives was unsatisfactory.

Figure 4. Poland's performance in relation to the EU average in reaching SDG 5: *gender equality* as of 2020



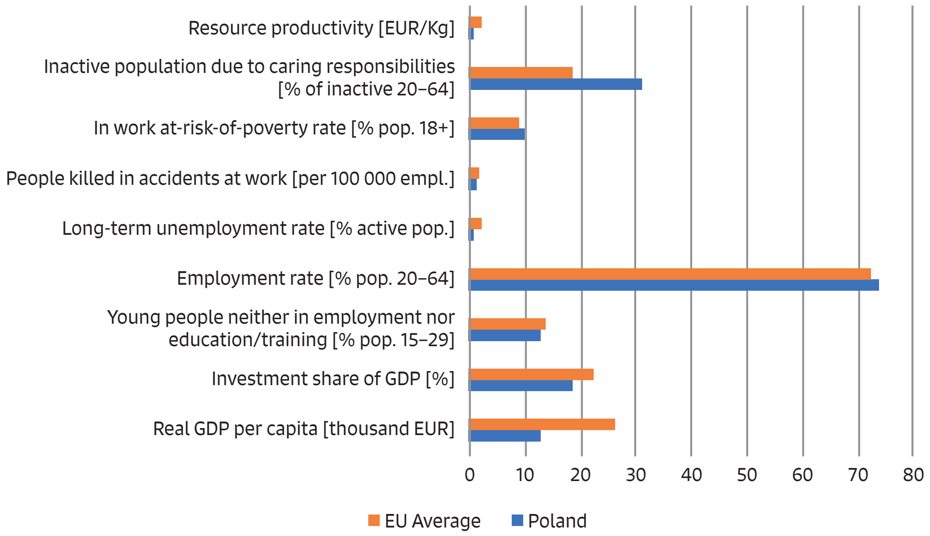
Source: Own work based on Eurostat data.

Analyzing the assessment of the EU trend in reaching SDG 5 can partially explain Poland's negative evaluation: according to the quoted report, the EU underperforms in progressing towards SDG 5 as a whole. The short-term trend for the EU in terms of reaching the goal were assessed negatively in the case of three indicators out of the total number of seven. Moreover, in the case of two indicators (the gender gap for early leavers from education and training and the gender gap for inactive population due to caring responsibilities) it was concluded that the EU is moving away rather than progressing towards this target. The fact that in the first of these cases, Poland performs even worse than the EU average, which contributes to Poland's negative evaluation in this regard, is cause for concern.

The next SDG used to evaluate the *Economy that works for people* priority is **SDG 8**: *decent work and economic growth*. This goal combines economy- and labour market--related indicators, including some which have been already elaborated upon in analysis of the previously mentioned SDGs (e.g. inactive population due to caring responsibilities). When it comes to SDG 8, the highest discrepancies between Poland's and the EU's average performance can be seen in real GDP per capita, as well as in resource productivity. The respective values for Poland are significantly lower than the EU average, which is worrying for a number of reasons. First of all, the per capita real GDP reflects the 'average' wealth in the economy, and, at least to some extent, can be a fairly good indicator of the average quality of living – especially in the EU, where social inclusion policies are in place. The value for this indicator places Poland in the lower half of the EU ranking, with its value even below 50% of the EU average. This raises questions in terms of Poland's ability to reach this goal by 2030. Another worrying matter is the significantly lower resource productivity in Poland than in the EU (0.75 vs. 2.1). This indicator presents the amount of GDP generated per unit of direct material consumed. The lower value of this indicator can be explained as lower GDP generation from the unit of materials directly used by the economy. For Poland, this indicator value translates into the necessity to increase resource productivity to decouple economic growth from the natural resource consumption, which is one of the fundamental assumptions of a circular economy. Poland's unsatisfactory progress towards reaching SDG 8 is also reflected by other indicators used to evaluate countries' performance against this goal. One example can be the previously mentioned inactive population due to caring responsibilities (this SDG was analyzed without division between males and females), where the respective value for Poland was 12 p.p. lower than the one for the EU. Another indicator for which Poland falls behind the EU average (by nearly 4 p.p.) is share of investments in GDP (see figure 5).

SDG 9: *industry, innovation and infrastructure* refers to countries' ability to build a resilient and sustainable infrastructure and transform their industries to become inclusive and sustainable. This SDG is interconnected with the European Green Deal, and embarks on the notion of a circular economy, which will be described in more detail in the next section of this chapter. According to Eurostat, some issues with pursuing this goal are to be observed in the entire EU, especially when it comes to the assessment of the short-term trend. Those identified issues relate to gross domestic expenditure on R&D, as well as to CO_2 emissions from new passenger cars. It was assessed that in the case of both these indicators, the EU is *moderately* moving away from the SD objective. The assessment of the share of buses and cars in total passenger transport, and share of rail and inland waterways in total freight transport was even worse, where the EU was assessed as moving away from these objectives. At the same time, Poland's issues related to SDG 8 seemed to be even more profound than those of the entire EU. While Poland has no significant advantage over the EU average in any of the indicators used to evaluate progress in achieving SDG 8, in some cases the discrepancies in favor of the EU are substantial. This seems to be the case especially with two of the indicators.

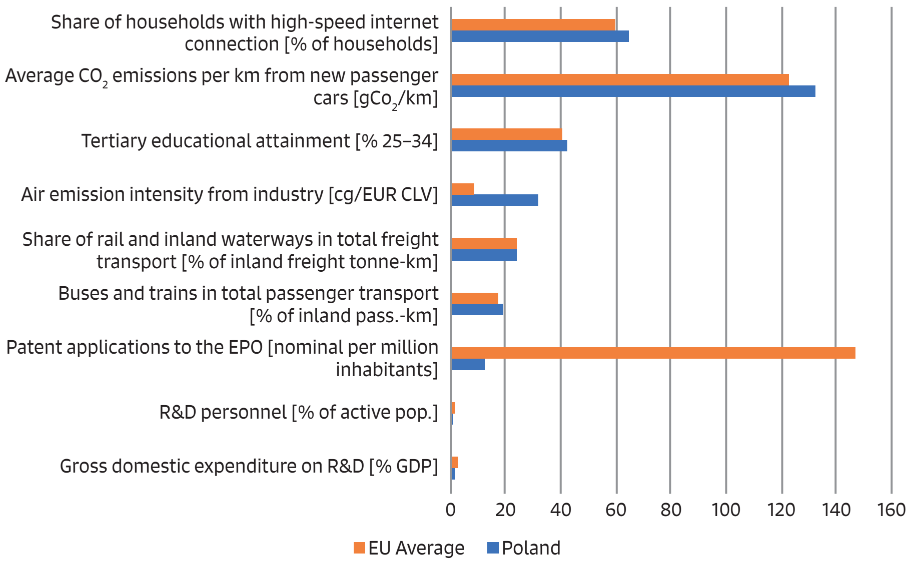
Figure 5. Poland's performance in relation to the EU average in reaching SDG 8: *decent work and economic growth* as of 2020



Source: Own work based on Eurostat data.

The first relates to the patent claims submitted to the European Patent Office (EPO), measured as the nominal number of patents per million inhabitants per year. The value of this indicator for Poland was over ten times lower than in the entire EU. The second problematic area is the air emission intensity from industry, which in Poland was found to be four times higher than the respective average value for the EU27 (see Figure 6). The discrepancies between Poland's and the EU's average values of these two indicators might raise concerns. Falling significantly behind other EU countries in terms of patent applications, with lower R&D outlays and fewer employees working as R&D personnel, indicates that Poland is definitely not ahead of the innovation curve, which can affect a country's progression to gain a competitive advantage in the digital economy. Moreover, air emission intensity from industry indicates that a higher percentage of Polish industry is based on outdated technologies, and this is affecting the natural environment to a larger degree than it does in the EU.

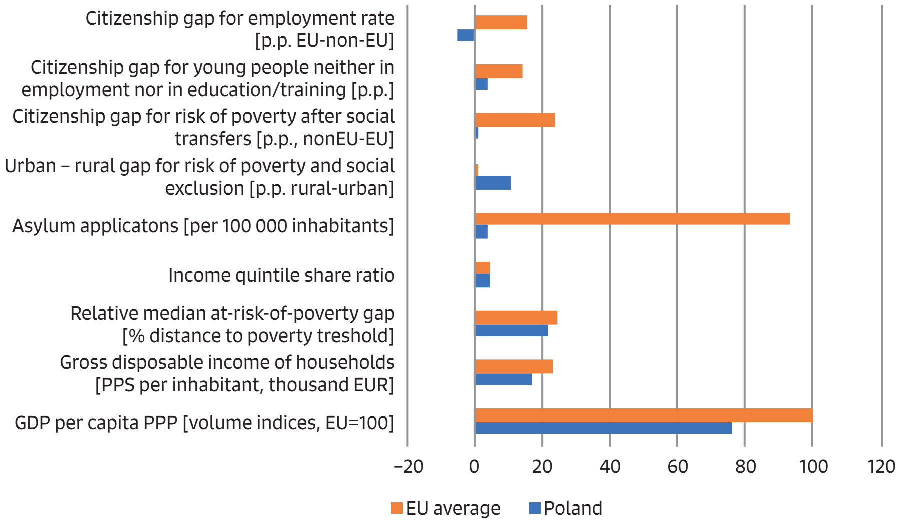
Figure 6. Poland's performance in relation to the EU average in reaching SDG 9: *industry, innovation and infrastructure* as of 2020



Source: Own work based on Eurostat data.

The last SDG included in the *Economy that works for people* priority is **SDG 10**: *reduced inequalities*. As previously mentioned, for the European Commission, equality is one of the vital components of economic growth. From this standpoint, including this SDG in the discussed priority seems to be rational. Although this priority is related to economy, the dimensions of inequality that are subject to the European Commission's attention reach beyond income inequality, and include *age, sex, disability, race, ethnicity, origin, religion or economic (or other) status*. Hence the number of indicators taken into consideration when analyzing countries' progress towards reaching SDG 10 is relatively high. According to the authors of the report, the most problematic issues are those connected with the citizenship gap (concerning inferior performance of individuals who do not hold EU citizenship in relation to those who do), especially relating to drop-outs from the educational system, individuals remaining neither in employment, nor in education or training, and those unemployed. All these three categories are cause for concern in terms of the short-term trend, which was assessed as moving away from the SDG 10 objective. Interestingly, Poland performed significantly better than the EU average in all these three areas. Moreover, in the case of Poland, the citizenship gap for the employment rate was negative, which can be interpreted as a lower unemployment rate among non-EU than among EU citizens. This might be related to the fact that Poland is not as attractive as other Western countries for individuals who aim to rely on welfare, and instead attracts those (especially citizens of the former Soviet republics), who are able and willing to work. Moreover, Poland's government does not seem to be perceived as prone to grant asylum, which is reflected by the number of asylum applications. For Poland, this number is over 20 times lower than the EU average (see Figure 7).

Figure 7. Poland's performance in relation to the EU average in reaching SDG 10: *reduced inequalities* as of 2020



Source: Own work based on Eurostat data.

4. Poland's journey towards the circular economy

Although the concept of a circular economy has been mentioned in this chapter in the description of the European Green Deal and some of the SDGs included in the evaluation of the *Economy that works for people* priority, it deserves more thorough commentary, as it imposes profound changes on the economic activity of the vast majority of EU-based enterprises and the EU inhabitants' mindset.

A circular economy can be defined as a 'regenerative system in which resource input and waste, emissions, and energy leakage are minimized by slowing, closing, and narrowing material and energy loops, which can be achieved through long-lasting design, maintenance, repair, reuse, remanufacturing, refurbishing, and recycling' (Geissdoerfer et al., 2017).

Although the interrelation between sustainability and a circular economy is not straightforward, the research results show that these two notions are undoubtedly interrelated. The conceptual framework for a circular economy implies that the interrelation between these two concepts can be viewed as (1) conditional (2) beneficial or (3) a trade-off for some of its elements (Geissdoerfer et al., 2017). Moreover, a circular economy is thought to create synergy with numerous dimensions of sustainability. The circular economy and sustainable development are believed to *exhibit a subset relationship*, (Schöggl, Stumpf and Baumgartner, 2020), and the most compelling view of this relationship is one of a circular economy as a condition and tool for sustainability (Millar, McLaughlin and Börger, 2019).

To understand the concept of a circular economy, the appropriate way to begin the reasoning is to focus on the antonym – i.e., the linear economy. The linear economy model implies that natural resources are used for production and converted into waste, leading to deterioration of our natural environment (Garcés-Ayerbe et al., 2019). According to P. Lacy and J. Rutqvist (Lacy and Rutqvist, 2015), this waste can be classified in four categories:

a) wasted resources – i.e. materials and energy that once consumed cannot be regenerated,
b) products with wasted lifecycles – i.e. products that have artificially short lives or are being disposed of despite demand from other users,
c) products with wasted capability – i.e. those products whose potential is not fully utilized, and that are idle for most of their lifespan,
d) wasted embedded values – i.e. components that are not recovered from disposed products and hence not put back to use.

Hence, the fundamental concept of a circular (understood as non-linear) economy is based on the 4Rs rule: Reduce, Reuse, Recycle and Recover (Garcés-Ayerbe et al., 2019) and include the following five new business models (Lacy and Rutqvist, 2015):

- *Circular supply chain* – introducing biodegradable, recyclable or renewable materials that can be used in numerous life cycles,
- *Recovery and recycling* – reviving waste for other uses,
- *Product life extension* – keeping products viable for as long as possible (through repairs, upgrades, remanufacturing etc.),
- *Sharing platforms* – ensuring that devices are used most efficiently throughout their life cycle, which should reduce consumption (i.e., car sharing platforms),
- *Product as a service (PAAS)* – switching to regular payment for using a device rather than owning it (which should enforce companies' investments in durability of products).

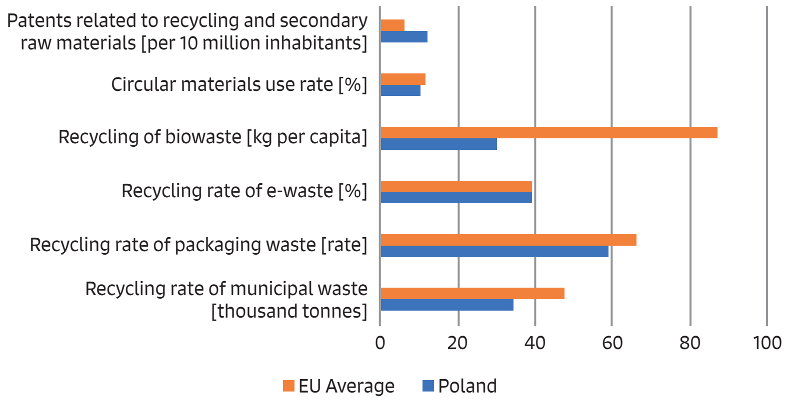
Analyzing selected indicators used to measure EU countries' performance in terms of circular economy, as per the methodology adopted by Eurostat, Poland's relatively good performance in the circular economy ranking results primarily from the relatively low municipal waste production (see Figure 8). Although there are numerous circular economy indicators related to recycling of different product groups, the general rule is quite simple – the less waste a country produces, the less effort it needs to recycle this waste. Hence, producing less waste should be treated as a priority for EU countries on the road to a circular economy. This fundamental truth, which is reflected by the maxim *reduce before reuse,* can be regarded as step one of each EU member state on the road to being a circular economy.

Figure 8. Production of municipal waste in Poland vs. EU average as of 2020 (kg per capita / year)

Source: Own work based on Eurostat data.

Going into details on Poland's performance in transformation to a circular economy, the highest discrepancy relative to the EU average can be seen in recycling of biowaste, where Poland is significantly behind the EU. Minor discrepancies in favor of the EU were also revealed in the rate of recycling of packaging waste (incl. paper, plastic, wooden, metallic and glass packaging), as well as in the circular material use rate. On the other hand, Poland seemed to perform slightly better than the EU average in recycling of municipal waste and e-waste. Surprisingly, Poland exceeded the EU average in the number of patent claims related to a circular economy. This can be perceived as ambiguous, taking into account the statistics quoted earlier in this chapter, where a significant discrepancy was revealed between the number of patents submitted to the EPO by Poland compared to the EU average (12.72 vs. 147.2 per million inhabitants). However, it seems that Poland's R&D personnel are focused on the innovation related to a circular economy, and although the overall number of Polish patent claim submissions is lower than the EU average, Poland performs relatively better than the EU average in those patent submissions linked directly to a circular economy (see Figure 9).

Figure 9. Poland's performance in a circular economy relative to the EU average as of 2020



Source: Own work based on Eurostat data.

Despite numerous areas in which Poland's performance is inferior to the EU average, in Politico's circular economy ranking, Poland did unexpectedly well, being ranked 6th among the 28 EU member states in 2018 (Hervey, 2018). As mentioned above, this high position of Poland was the result of relatively low municipal waste production per person (2nd lowest in the EU), a relatively high number of patents related to the circular economy (3rd), and relatively private investments in that sector (7th). Moreover, Poland was also ranked relatively high (6th in the EU) in the material reuse rate category.

Another report taking into consideration a relatively broad spectrum of indicators measuring countries' performance in the circular economy, is the report by Ecopreneur (*EU Circular Economy Update. Overview of circular economy in Europe*, 2019). This combines the CE Monitoring Framework of the European Commission with other rankings, databases, and available reports. Although the report does not provide the overall ranking of the EU countries as per their general performance on the road to becoming a fully circular economy, it does provide a ranking for each of the indicators separately. Even though the report's findings confirm Poland's satisfactory performance in per capita municipal waste production (2nd), as well as relatively good performance in the circular materials use rate (9th), for the vast majority of the analyzed indicators Poland was in the second half of the EU country ranking. Moreover, for two of the analyzed indicators, Poland's score was marked in red, denoting highly unsatisfactory performance. The highest challenge for the Polish economy, according to the report, seems to be connected with the eco-innovation index (26th), which is the European Commission's composite indicator, obtained by taking an unweighted average of the 16 indicators included in the measurement framework, aiming to measure the effects of eco-innovation on improved resource productivity. In the case of this indicator, only one EU country (Bulgaria) performed worse than Poland in 2021 (*Eco-innovation at the heart of European policies*, 2021). Another indicator where Poland clearly underperforms and does not meet the minimum target value, as per the *Packaging Waste Directive* (*Directive (EU) 2018/852 of The European Parliament and of The Council of 30 May 2018,* 2018), was the packaging recycling rate. Hence, improving Poland's performance in these two areas should be a priority for policymakers and needs to be addressed for the transformation to the circular economy to be successful.

Conclusions

The introduction of 17 Sustainable Development Goals by the United Nations in 2015 was followed by the European Commission's declaration that it was highly committed to the Agenda. It became clear that the European Commission would like to position the European Union as a global leader in sustainability and the circular economy. This commitment, along with the opinion that the EU should be leading the global sustainability race, resulted in numerous initiatives at EU level. These initiatives, along with priorities and programs, were accompanied by indicators used to measure countries' progress in achieving the SDGs. Since the sustainability topic gained a lot of attention within the EU, the monitoring activities were performed on an ongoing basis and included different dimensions of the analyzed phenomenon. Progress in reaching the sustainable development goals is monitored by Eurostat, as well as other independent think tanks and institutions, whose primary focus is sustainability and circular economy. For the purpose of this chapter, the main source of data used for analyzing countries' performance was data published by Eurostat. However, data from other sources were also used, in order to provide the full picture of the analyzed phenomena. The main goal of the chapter was to assess Poland's performance in the *Economy that works for people* priority, grouping economy-related SDGs, as well as Poland's road to becoming a fully circular economy. As the name suggests, the European Commission perceives economy not only in terms of growth-related indicators, but also through the prism of equality and quality of living. This seems to be reflected by the SDGs included in that priority, which are not only linked to economy, but also related to poverty eradication, access to education, gender equality, and reducing other inequalities in general. An attempt at summarizing Poland's performance in *Economy that works for people* is quite challenging, as the country's performance is not consistent and depends on the analyzed indicator. Poland's performance can be assessed positively in the case of the goal related to poverty elimination (SDG 1), with scores better than the EU average in the case of a majority of the indicators, as well as in the case of the goal related to quality education (SDG 4). In reference to pursuing these goals, Poland seems to be ahead of the EU in general, except in the case of two indicators (participation rate in adult learning and the percentage of population having at least basic digital skills). The value of the latter indicator could be a cause of concern in the era of digital transformation, where life-long learning might be a necessity to remain competitive in the labor market, subject to digitalization processes. The third goal, where Poland's overall performance can be assessed positively, relates to inequalities. Apart from the number of asylum applications, where Poland is far behind the EU average, as well as from the GDP per capita (PPP) value, where Poland's performance is also below the EU average value, Poland is thought to perform relatively well in pursuing this goal.

On the other hand, Poland scores below the EU average in almost all of the indicators, when it comes to assessment of the goal related to quality of health and well-being (SDG 3). The major issues faced by Poland in obtaining this goal were identified as exposure to air pollution, as well as road traffic deaths, where Poland significantly exceeds the EU average.

Another goal where Poland's assessment was unambiguously negative (the only case where Poland's performance was assessed as *moving away from the objective*), was the goal related to gender equality (SDG 5). This is due for instance to the gender employment gap, gender gap in tertiary educational attainments, lower percentage of women on management boards, a lower percentage of women serving as members of parliament, and significantly higher share of women inactive professionally due to caring activities. Despite the fact that Poland performed better than the EU average in some of the indicators (e.g. gender pay gap), it was not sufficient for assessing Poland's performance in pursuit of this SDG as positive, or at least neutral.

The indicators related more directly to economy reveal even more concerns. In the case of the goal related to decent work and economic growth (SDG 8), there is a significant discrepancy between the EU and Poland not only in terms of the per capita GDP, but also in terms of resource productivity, and (again) inactive population due to caring responsibilities. On the other hand, Poland performed better than the EU average in keeping the long-term unemployment at a satisfactory (low) level.

The outlook regarding analysis of the SDG related to industry, innovation and infrastructure (SDG 9), which overlaps with the circular economy, is more pessimistic. Here Poland performed worse than the EU average in a majority of indicators, with the highest discrepancies in the number of patent claims submitted to the EPO relative to the country's total population, as well in the air emission intensity from industry.

When it comes to the assessment of Poland's road to becoming a circular economy, Poland's performance was assessed relatively well, which was reflected by its relatively high overall ranking (6^{th} position in the EU, according to Politico). This high position in the ranking seems to be result of – first and foremost – relatively low municipal waste production (2nd lowest in the EU). Interestingly, Poland also performed relatively well in the indicator pointing to the number of patents related to innovations in a circular economy (as opposed to overall patent claims, where it is behind the EU average).

To sum up, as of 2021, it still seems that Poland is capable of becoming a sustainable and circular economy in 2030, being ranked overall as 16th in the EU in terms of sustainability, and 6th in the EU in the circular economy ranking. However, there seem to be some issues that need urgent attention, should the country remain on track to complete the sustainable development goals within the indicated timeframe. Among the most problematic issues faced by Poland are those related to air pollution, road traffic accidents, per capita GDP measured with PPP, and professional inactivity due to caring responsibilities (including the gender gap in this category). Also worrying is the relatively low number of patents submitted to the EPO, as well as relatively low lifelong learning participation rate.

All these areas in which Poland's performance is inferior to the EU average require the attention of Polish policymakers. Otherwise, Poland's ability to reach the sustainable development goals as of 2030 will be in doubt.

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LEGAL FRAMEWORK OF POLAND'S RELATIONS WITH ITS NEIGHBOURS AND THE POLISH NEIGHBOURHOOD POLICY – SELECTED ISSUES

Introduction

The aim of this report is to examine the legal framework of Poland's relations with its neighbours, the implementation of legal norms, and the policy that determines these relations. The elements presented should allow the reader to gain insight into Poland's relations with its neighbours and Poland's neighbourhood policy, and on this basis to draw conclusions and assessments that can be confronted with those put forward by the author. The reader is offered access to the complete set of data used in this report.

As a preliminary step in this investigation, the following four 'matrices' of neighbourhood regimes were developed: the general international law matrix; the United States matrix; the European matrix, which is treated as synonymous with the European Union matrix; and the Polish matrix. The next step consists in a comparative analysis of these matrices, with the Polish matrix serving as the point of reference.

The report closes with conclusions that attempt to assess Poland's law and policy as they interact with the laws and policies of Poland's partners in various groupings, as well as the law and policy of those groupings. This assessment focuses on cohesion, to the exclusion of praxeological aspects of policies and their implementation. This self-limitation is due to scholarly requirements for this investigation; the effectiveness of the policies can be evaluated only on an *ex-post* basis, while the present research consists in an analysis of ongoing events, of a process in progress, and of the events contributing to shaping that process.

The Polish vantage point of this study has predetermined the relative importance attributed to specific policies, resulting in the greatest significance being attributed to relations with the European Union's eastern neighbours, despite the fact that, when judged from the perspective of both the entire EU and its principal members, its southern neighbourhood (both on the southern perimeter of the Mediterranean Sea and in the Balkan region) is, at the very least, equally important as its eastern neighbourhood, and the experience in managing the subregion located on the southern perimeter of the Mediterranean is incomparably greater than in the case of the Eastern or Southern European subregions, and even more so in the case of the Caucasus.

1. Prologue

Poland's effective statehood during the interwar period[1] was marked by two caesuras; the beginning of statehood was marked by victories in two armed conflicts with large neighbours to the east and the west (these were the Polish-Bolshevik war fought with Russia, and the three Silesian uprisings and the Greater Poland uprising against Germany), while its end was brought by two wars lost to those same neighbours (Nazi Germany's aggression took place on 1 September 1939, which was joined by its ally, Communist Russia, on 17 September[2]). Those armed conflicts had a decisive impact on the existence of the Polish state, but those were not Poland's only conflicts with its neighbours.

A hot war, which subsequently turned into a cold war, with Lithuania persisted during the entire inter-war period of both countries' existence. It began with the annexation (by Poland) of the Vilnius region,[3] and from that time on these states did not maintain

1 I distinguish the factual existence from both the country's legal existence, granted as the right to self-determination in the form of a state under the League of Nations Pact, and its ideal existence, namely the Polish narrative, according to which the nation regained its independence under the *ius postlimini* formula after having been partitioned for two centuries.

2 Joint war operations – that aggression represented the first stage in the implementation of the Ribbentrop-Molotov Pact, followed by the conquest and annexation of the territories of Poland, Estonia, Finland, Lithuania, and Latvia. ('1. In the event of a territorial and political rearrangement in the areas belonging to the Baltic States (Finland, Estonia, Latvia, Lithuania), the northern boundary of Lithuania shall represent the boundary of the spheres of influence of Germany and the U.S.S.R. In this connection, the interest of Lithuania in the Vilna area is recognized by each party. 2. In the event of a territorial and political rearrangement of the areas belonging to the Polish state the spheres of influence of Germany and the U.S.S.R. shall be bounded approximately by the line of the rivers Narew, Vistula, and San.' (Ribbentrop-Molotov Pact I and Ribbentrop-Molotov II).

3 Formally, the annexation was confirmed in April 1922. It was preceded by a 'mutiny' of military formations commanded by General Lucjan Żeligowski (September 1922), organised by Poland; the 'mutinied' units occupied Vilnius in order to detach that region from Lithuania. The Polish-Lithuanian border, the question of territorial affiliation of 'Central Lithuania (including Vilnius) ' was to be settled by diplomatic means, without use of force; more on this in Krajewski, 1996, Łossowski, 1996.

diplomatic relations. The situation changed after diplomatic relations were established under Polish pressure (an ultimatum and the threat of armed aggression) in March 1938[4] (Łosowski, 1985). In 1918, the Lithuanians rejected a proposal to create a federation.[5]

Similar hostility characterised relations with Czechoslovakia, which began (Kamiński, 2001) and ended with the use of force, and were marked by a territorial dispute (Gawron, 2015, pp. 47–78). The culmination of those relations was the Polish demand in September 1938 that Zaolzie (the Trans-Olza River Silesian Region) be incorporated into Poland, which Czechoslovakia accepted following the experience of the Munich Pact (Tomaszewski, 1996, pp. 43–59).

Thus, Poland engaged in disputes with four out of the six states with which it had common borders. Poland had friendly relations with Romania, cemented by a defensive alliance,[6] while relations with Latvia were neutral (Łossowski, 1990; Jēkabsons, 2018). Yet, it was not only the simple ratio of 2:4 (and indeed 1:1:4) that prevented the potential for forming alliance/neutral relations to counterweigh the superiority of the neighbouring countries that were hostile to or resentful of the Polish state. This was the case despite the fact that Poland was unable to prevent aggression from counter-systemic states (i.e. Germany and Russia) with the foreign policy instruments available to it, or to repel such aggression with military force. Despite the country's inability to construct an effective trilateral defence alliance, the institution of collective self-defence (Poland – France – England), or a system of collective self-defence with the participation of other neighbours. There is no critical analysis of the missed opportunities to build good neighbourly relations with the countries that accepted the League of Nations order in Polish discussions about the twenty-year inter-war period. The absence of such an analysis makes it harder to internalise the value of good neighbourliness with the states and nations on the other side of the political border. In creating and implementing its (national) neighbourhood policy, Poland disregards the experience and forgets the lessons of the past.

2. Neighbourliness – general issues

The term 'neighbourliness', which is used in combination with the adjective 'good' when referring to international relations as defined by a normative framework, appears primarily in the legal language (that is the language in which lawyers express them-

4 They were re-established on 5 September 1991.

5 This proposal reflected the idea of restitution of the federal state which had existed between 1569 and 1795.

6 However, following the aggression of 1939, Poland chose not to request military assistance (Łojek, 1990).

selves) and, to a lesser extent, in the language of legislation (the language in which legal texts are composed). The purpose of the norms and practice of good neighbourliness is to generate good neighbourly ties between neighbouring (?) countries. This aim shapes, or should shape, the activities of the authorities, and primarily of the executive power, in international relations as well as in law-making and in social contacts. However, states (and the EU) were established to ensure, above all, the security of people (citizens and residents) and this is the starting point and reference for all their activities. While seeking to provide security, the state may create enduring and deep ties with its neighbours. Such ties may reach a level that eliminates the possibility of using force in the case of a dispute or a similar situation. States may thus build a 'security community'. The precursor of this policy in modern times had for many years been Prussia under the leadership of Chancellor Otto von Bismarck, which was also successful in its pursuit of the policy of the unification of Germany. The contemporary manifestation of this policy is the EU's preferred method for regulating relations with neighbouring states.

A. General international law matrix. In relations governed by general international law between and with the participation of states and integrative international organisations, good neighbourliness is a general clause, a vague expression that makes a reference to something outside the system of international law (Wróblewski, 1964, pp. 3–22; Nowacki, 2003; Wronkowska, Ziembiński, 2001, pp. 223–226). The entities forming part of the communities that create international law use the term *good neighbourliness* in the sense of a legal standard. The good neighbourhood standard sets out objectives to be attained for the international community. This standard falls within the sphere of *policies* (under Dworkin's conception), of the law in action.

Good neighbourliness as a desired standard of conduct was cited by the UN founders in the Preamble and in Article 74 of the UN Charter. However, a historic interpretation of the Charter suggests that this term is devoid of any legal content (Kelsen, 1951, pp. 12–13). On the other hand, in light of its linguistic construction, the norm consists in the duty to live together in peace. Nor are there any grounds to claim that the Charter proclaimed or established a 'good neighbourliness principle'. The exhaustive list of principles in Article 2 of the Charter indicates that the 'good neighbourliness principle' is not known in general international law. The UN Charter does not specify who is a neighbour, and nor does its contextual construction provide any explanation. The interpretation of the Preamble leads to the conclusion that the obligation to practice tolerance and live together in peace is a directive addressed to each state, while the qualification '… as good neighbours' sets out a standard of conduct. Each UN member is obliged, with respect to each and every member of the international community, to act in a tolerant manner, to live together with each and all other members, to cooperate in resolving economic, social, cultural or humanitarian issues, and to engage in international economic and social cooperation.

The conclusions drawn from the interpretation of the Preamble must be partially modified by the interpretation of Article 74 of the Charter. However, Article 74 expands the relations to which the directive of good neighbourliness applies beyond the relations between states with common borders. Article 74 of the Charter directs (all) UN members, 'and in particular those that have responsibility for non-self-governing territories,' to pursue, in respect of such territories, a policy 'based on the general principle of good-neighbourliness,' with the proviso that the policy pursued should 'take into account the interests and welfare of the rest of the world.' There is no point in interpreting Article 74 (establishing its normative content and addressees of rights), even though this article is in force, since 1994[7] no territory has been dependent and is not a protectorate, and consequently no state is responsible for such territory or administers the protectorate. Article 74 of the Charter was not repealed solely because UN members do not have the political power to amend the UN Charter.

The good neighbourliness principle has been recognised as being of a legal nature in the case of relations governed by the norms included in particular branches of international law, for example, in relations governed by international law for the environment. Within such branches of international law, the good neighbourliness standard is a legal norm, has normative content, binding force, states its addressee, and has the status of a legal principle.

B. United States matrix. The precursor to the rhetoric of a new 'Good Neighbour Policy'[8] in international inter-state relations was President Woodrow Wilson (Wilson, 1913). However, Wilson not only failed to fulfil his declaration, but even betrayed this idea by continuing an interventionist policy in relation to the countries south of the Rio Grande. Wilson's good neighbourliness idea was just words, with his actions contradicting those words (Stuart, 1942, pp. 211–216). It was President Herbert Hoover who actually laid the foundations of a good neighbour policy in the practice of relations with the USA's neighbours, though its structure was developed by his successor, Franklin D. Roosevelt. In his first inaugural address (4 March 1933), President F.D. Roosevelt gave good neighbourliness the rank of an axiological directive of U.S. policy and a proposal addressed to other states (Roosevelt, 1933). While the circle of the policy's addressees was not specified in that speech, subsequent statements by Roosevelt and other U.S. representatives indicate that the good neighbour policy was proclaimed as a regional political-legal norm, meaning that the United States would no longer rely

7 During that year, the last such territory, namely Palau, achieved independence as the Republic of Palau (a state associated with the USA) and became a member of the UN.

8 As the previous one was the policy of interventionism.

on interventionism in its relations with the countries of Central and South America. It remained a policy focused on maintaining the sphere of influence but employing a new set of tools and methods of policy implementation. The crucial change consisted in the abandonment of interventions, prohibition of intervention. This prohibition of intervention in states' internal and external affairs became a norm of (American) Regional International Law under Article 8 of the Convention on the Rights and Duties of States (Montevideo Convention, 1933). However, the content of that norm remained unclear. The effects of the new policy included the end of occupation of Haiti, and treaty-based regulation of relations with Cuba and of the dispute (resulting from the nationalisation of U.S. oil assets) with Mexico. The abandonment of intervention as a tool in relations between the USA and the countries of Central and South America survived until the onset of the Cold War, when the application of that tool was deemed acceptable in reaction to the challenge posed by the USSR.

In U.S. law and practice, the good neighbour policy is a policy that reflects and preserves power relationships between neighbours. At the same time, due to the fact that the USA is a global power, a global super (hiper) power, the good neighbour policy was internally incorporated as a component of U.S. global policy. In its global policies, the USA does not declare that it seeks to build an empire. However, the rest of the world expects the USA to be active in regional and global dimensions. International relations actors, primarily states, consider that the activism, and even, according to some, the leadership of the USA is desirable and that, *a contrario*, American isolation is a threat to peace and security and, above all, to international stability (Kupchan, Vinjamuri, 2021). The 'world' wants the USA to conduct a policy of internationalism (both in line with the U.S. leadership formula and in the form of multilateralism).[9] Among the countries that seek to encourage the U.S. to be active in unilateralist and multilateralist formulas, with a U.S. presence outside its own territory/region, are members of the EU and NATO. U.S. engagement is firmly supported by Poland.

C. European matrix: neighbourhood in European law and policy. The European neighbour policy – in contrast to its U.S. variant – is based on an acceptance of the desirability of the balance of power in relations between powers. Europe seeks to protect the balance of power whenever it exists, and where it is missing it seeks to create it. As an example, the French policy of *bon voisinage* aims to generate cooperation, while combining this objective with the conviction that good neighbourliness is not a self-standing norm of international law. Another foundation of the French policy is its acceptance of geopolitical determinism; this is founded on Napoleon's view that

9 While being fearful of expansionism (Fensterwald, 1958 I, pp. 111–139; Fensterwald, 1958 II, pp. 280–309).

'*La politique d'un pays est dans sa géographie*' (Napoleon as cited after Defay, 2005, p. 9; Bühler, 2013, pp. 143–162).

In its relations with third countries, the EU aims to implement its values and achieve its interests. All such relationships – given the global nature of the EU (and the EU is a 'indispensable global superpower'; the 'world' needs the EU in bi-, pluri- and multilateral relations) – are seen through the prism of global international law and are good neighbourly relations. The EU also narrows the scope of the content of neighbourliness, by inserting in its policy towards relations with specific countries or groups of countries the content defined by the 'European Neighbourhood Policy, or the ENP' (Kalicka-Mikołajczyk, 2021).

The European Neighbourhood Policy is based on standards laid down in Article 8 of the Treaty on European Union, Title V, and Articles 206–207 and 216–219 of the Treaty on the Functioning of the European Union. The values that the EU protects in its relations with those countries, and seeks to spread, are the same as the values protected and propagated in its universal relations (including its internal relations). These values are: the rule of law, good governance, democracy, human rights and freedoms, the market economy, and sustainable development. In exchange, the EU offers privileged relationships; such privileges are granted conditionally (the implementation of the values being the condition) and are introduced in accordance with the 'more for more' principle. The EPS is pursued in two interdependent formulas: under the bilateral formula of relations between the EU and Algeria/Armenia/Azerbaijan/Egypt/Georgia/Israel/Jordan/Lebanon/Libya/Marocco/Moldavia/Palestine/Syria/Tunisia/Ukraine, and in two plurilateral initiatives of regional cooperation: the Eastern Partnership and the Union for the Mediterranean.

D. Polish matrix and the result of superimposing the matrices. In pursuing its neighbourhood policy (which is a mix of an independently defined policy and the European and NATO policies), Poland attributes varied weightings to individual policies or their addressees, which includes different weightings of EU neighbourhood policies. In itself, this differentiation of weightings is rational, especially in the case of a medium-sized state. A medium-sized state has a limited economic potential/economic impact. Given its social, cultural, and political potential for shaping or influencing relations in these areas, such a state should manage its resources, activity, and time rationally, by resisting the temptation of counter-productively attempting to manage and focus on everything.

It is also generally reasonable to give greater priority to states/regions that are geographically more proximate to Poland, where such states/regions outside the EU and NATO are sources of potential benefits and threats that are comparatively more important to Poland than to (all of) EU, NATO and its allies. At the same time, Poland – just as any other state with comparable geo-political and geo-economic characteristics – should integrate its own foreign policy with the policies of its alliances and allies. When seen in this perspective, Poland's policy is still rational, although its implementation is controversial (Nowakowski and others, 2019). Poland is often too eager to support and join in the implementation of individual US actions which are a part of the US global policy (it does not have the assets necessary to be a strategic partner of the US). Such 'hyperactivity' makes cooperation with European partners difficult and is harmful to the country's image. As a result, on the one hand, various countries see Poland as a 'Trojan horse of the USA', while on the other, opponents of the USA who are too weak to challenge the USA directly, attack Poland, even though it was only an executor of American policy. An illustration of this can be found both in EU internal relations (e.g., with France) and in relations with non-EU and non-NATO countries. For example, Poland was excessively eager to act as an executor of U.S. policy in the Near East, which resulted in the loss of assets/influence among Muslim countries in that region, without receiving any benefits in return.[10] Despite the passage of time, there are no known benefits that Poland derived from organising the Ministerial Conference to Promote the Future of Peace and Security in the Middle East in Warsaw on 13–14 February 2019. By organising that conference, Poland acted at the behest of the USA. For the USA, that conference was a tactical move, an element of a political strategy, namely Trump's plan for the Near East. From the U.S. perspective, the conference brought some benefits[11] by reinforcing the process of conclusion of political and economic agreements between Israel and Arab countries and overcoming the boycott of Israel and isolating Palestine.[12] As for Poland, the conference reinforced the image of Poland as an executor of U.S. policy, caused a deterioration in its relations with Iran, and strengthened amongst its European partners the perception of Poland as a state incapable of showing solidarity within the EU in the CFSP area.[13]

The only defence of Poland's agreement to play host in the case of this Conference is the tradition of acting as a state that firms up US unilateral actions, helping to give them the camouflage of multilateralism. Already in 2000, Warsaw was the site of the first Ministerial Conference under the U.S. Community of Democracies (CofD) initiative. The only 'benefit' for Poland of fronting the organisation of the CofD meeting was a crisis in its relations with France, which did not participate in that conference.

10 These unnecessary losses will not be compensated by relations with either Israel or Turkey, especially as achieving closer relations with these partners did not require an either/or decision, which is the choice between Israel/Turkey and the Muslim states of the Near East.

11 This is the author's opinion.

12 Here I am not assessing the correctness of that policy, but rather the effectiveness of its implementation.

13 Trump's policy towards Iran differed from the EU policy, but also from the policies of the previous (of President Obama) and current (President Biden) American administrations.

The USA achieved its tactical objective of setting up a new auxiliary body of the UN General Assembly, i.e. the UN Human Rights Council, in place of the UN Commission on Human Rights. In that particular case, the success turned out not to be worth the effort,[14] since the anti-Western body that supported/protected regimes that violated human rights, as was the case with the Commission, was replaced by a body that quickly reverted to being an unchanged version of the former.[15] The hopes of setting up an organisation resembling the UN, but which could be a forum for cooperation among democratic states, remained unrealised. It seems that it was a propaganda move in any case. The U.S. administrations and American isolationists depict the UN and the UN system within the USA and in the world as a 'white elephant'. Yet, contrary to such claims, the system and its institutions provide significant benefits, and it could even be dangerous to give up on them, whereas there is no convincing justification for setting up the CofD organisation.

There are also rational considerations that justify the exclusion of relations with Russia from this analysis, in this case with regard to the stratification of this investigation. The decisive factor in this regard is that Russia, out of proportion to its actual power and capabilities, continues to consider itself a superpower, or a global power at the very least, overestimating its ability to pursue a global policy. Under this policy, Russia's allies/rivals may be the USA, China and (perhaps) the EU, but no other state or other actor. Russia cooperates with or opposes individual states without recognising them as partners in bilateral relations, but rather perceiving them as pawns on the global chessboard on which Russia is playing its imaginary global game.[16] As such, Russia is neither interested in nor capable of establishing/maintaining partner-like relations with neighbouring Poland. On its part, Poland correctly believes that only USA-NATO and/or the EU can be actors in relations with Russia. However, it attributes to itself, without having any substantive grounds to do so, the ability to shape the decisions and actions of those actors, aspiring to the role of a *primus inter pares* in the shaping and implementation of policy in relation to Russia.[17] Polish politicians also want to explain Russia to the West. Neither of these roles is feasible. In addition, in recent years Poland has closed channels of communication with Russia (with influential groups in its society).[18] The ruling

14 The United States quickly became aware of this situation and tried to stop that process; after the council was appointed in 2006, the U.S. refused to participate in its work.

15 Members of the Council for the 2020–2022 term include, for example, Libya and Venezuela, which have replaced Somalia (the 2019–2021 term) or Nigeria and Pakistan (the 2018–2020 term).

16 Despite bad experience, losses etc., Russia has given support to the bloody regime in Syria not because it expects to benefit from it economically or otherwise, but because it decided that this would allow it to return to the global game against the West in the Near East. Russia pursues a policy it cannot afford in order to obtain benefits that are impossible to achieve.

17 It also accepts as its equals exclusively the USA, Germany, France, and Great Britain.

18 Ambassador Stefan Meller, and the Embassy under his direction, were able to attract cooperation from Russia's cultural elites, thereby increasing Poland's influence through the use of soft power. The activities

elites, both in Poland and in Russia, treat the other side as a convenient enemy. In each of these states, it is easy to arouse hostile sentiments in nationalist and populist circles towards the neighbour, thus additionally confirming one's own patriotism. Thus, the elimination of Poland-Russia relations from this field of investigation follows from the recognition that their actual bilateral component is of little importance. Accordingly, in my examination I focus on the Eastern Partnership and the policy towards the Western Balkans.

a. The Eastern Partnership. The Eastern Partnership (EP) was established at a summit meeting in Prague in 2009 (Menkes, 2010, pp. 29–48). In May 2009, representatives of Armenia, Azerbaijan, Belarus, Georgia, Moldavia and Ukraine came to Prague at the invitation of the European Council. Representatives of the EU and its Member States participated in the meeting as the hosts. The participants were represented by their highest authorities, i.e. heads of state or government, or their equivalents. At the meeting, the Common Declaration was adopted, placing the EP within the European Neighbourhood Policy and providing an Eastern dimension to that policy (Declaration 2009).

The EP widened the area of the EU's direct engagement, its sphere of influence,[19] but without expanding its membership. The declared aim of the EP was to deepen the EU's political and economic cooperation with its 'partners' with the expected feedback to consist in those partners reforming their internal social, political, and economic relations. Another objective was to improve the cohesion between the EU and the 'partners', and among the 'partners' themselves. The declaration did not include any commitment on the part of the EU to admit the partners into the EU, while the announced 'EU approximation' (in the words of the declaration) represented a soft (political) promise. The EP moved the borders of the West – both from the west and the south-east – to the sharp (direct) border with Russia, by including in the EP territories that Russia considers its 'near abroad'.[20] This strengthened Russia's fears of Western expansion, of an

of Minister Daniel Rotfeld, for example in his role as co-chairman of the Polish-Russian Difficult Issues Group (Chucherko, 2011, pp. 13–24; Mironiuk, Żęgota, 2016, pp. 139–159), have brought similar results.

19 The EP was intended to enhance the 'stability, security and prosperity of the European Union, partner countries and indeed the entire European continent.'

20 This is suggested by such elements in the Commission's drafts as: 'In particular, in the framework of the pacts the EU should: – Help partners establish **high-standard border management** procedures at the external borders; – Assist them in setting up an **effective data protection regime** which would allow them to share **operational information** with Europol and Eurojust in the context of bilateral agreements; – Grant partners special status in relevant **EU agencies**, where feasible; – Support them in adopting and effectively implementing national strategies in line with EU standards to **fight vigorously against organised crime**, **trafficking** and **high-level corruption,** and to prevent money laundering and financing of terrorism, which need to be tackled effectively at an early stage. (…) **4.3. Flagship initiatives.** The objectives of the EaP may also be advanced through selected flagship initiatives providing visibility and focus to multilateral cooperation. (…) The Commission considers that they could include an *Integrated Border Management Programme* (…); and cooperation on *Prevention of, preparedness for, and response to natural and man-made disasters*.' (Communication 2008/1).

encirclement of Russia or the trimming of Russia by 'salami tactics' (Zagorski, 2011). In the Russian perception of reality, the EP is another action in the conspiracy against Russia aimed at Russia's downfall. The secession of the Baltic states initiated the collapse of the USSR. It was the work of Russia's internal and external enemies. Then it was deprived of the 'near abroad' (dissolution of the Warsaw Pact and Comecon, collapse of the Eastern Bloc). The inclusion of the Black Sea countries into the EP is – from this perspective – included in this anti-Russian plan.

Russia's sentiments and actions do not stop the EU, which itself wants to abate Russia's fears.[21] At the same time, Russia has demonstrated that it has a variety of resources at its disposal to slow down (or even paralyse) the achievement of the EP's aims; evidence for this include the halting of the westernisation of Ukraine and its destabilisation over many years and military aggression, the self-exclusion of Belarus from the EP, and the politics of Azerbaijan.[22] The development of cooperation among the 'Three' within the EP, and of the EP itself, also brings the EU closer to a confrontation with Iran (the West is moving closer to the Muslim world[23]), which the EU does not want, and harms relations with Turkey (according to the logic that 'the enemy of my friend is my enemy', i.e. Azerbaijan and Turkey v. Armenia).

The adoption of the EP by the European Union was Poland's political success. However, the benefits of this success proved short-lived because of the (self-) destruction of its capacity to play a role in European and trans-Atlantic politics that might be thought of as typical for middle-sized states of the Western hemisphere, namely of an initiator/co-creator of political projects to deepen institutional cooperation or in support of the EU (and NATO) in cooperation with the surrounding states. Poland came out with the EP initiative as a 'normal' (from the point of view of its potential) member state of the EU (and NATO), and one that is active in the European neighbourhood policy. At the same time, Poland proclaimed its own success, not so much by stressing the fact that the invited actors joined the EP, but rather its own 'authorship'[24] of that initiative (Borkowski 2009). This attitude was understandable on one hand, but on the other it had some risks. The complacency of a new EU member on account of its demonstrated ability to gain acceptance for a project was not surprising. Nevertheless, this manner

21 The EU obviously wants to prevent such fears on the part of Russia by announcing that 'The Eastern Partnership will be pursued in parallel with the EU's strategic partnership with Russia' (Communication 2008/2).

22 In this case, there was not only a souring of relations with a neighbour and EP partner, but also the creation of an alliance with Turkey, which is dangerous for the region and for NATO, and remarkably increasing the significance of Russia in that region.

23 This is noticeable in, for example, the E Declaration: 'Shared values including democracy, the rule of law, and respect for human rights will be at its core, as well as the principles of market economy, sustainable development and good governance.'

24 It seems that Minister Radosław Sikorski's ambitions, who was a candidate for, among other posts, the position of Secretary General of NATO, played a decisive role in this respect.

of self-presentation contributed to its image as a state with limited team spirit, or ability to cooperate in coalitions. In respect of the authorship of the EP, Poland displayed inconsistency by stressing in turn its independent role and the importance of cooperation with Sweden (‘*non-paper*’[25]).

On the plus side, Poland avoided the temptation to highlight U.S. interest in the states invited to join the EP. This made it possible to camouflage the depth of cooperation with the USA, and the role of a ‘proxy country’ performed by Poland. However, the fact of earlier consultations regarding the EP was confirmed by the Polish Foreign Ministry itself, when it indicated that ‘the Eastern Partnership is intended to contribute to the achievement of one of the key aims of Polish foreign policy, or the approximation and integration of Eastern European states with the European Union. The EP brings a new quality to relations between the EU and the states encompassed by the progressive and gradual integration of these states and their societies with the European Union and to the support for the ambitions of Eastern European countries to deepen the ties and integration with the European Union.’[26] By indicating a geographical area of interest, Poland reduced the meaning of the EP, since the declaration does not focus on geography. Even from a geopolitical perspective Armenia, Azerbaijan and Georgia are not part of Eastern Europe. Poland’s terminology differed, and continues to differ, from that of the Union. With regard to the EP, the EU acts use such terms as ‘Eastern flank’ or ‘EU Eastern border’, or ‘Eastern Europe and Southern Caucasus’ (EU Commission) and ‘Eastern neighbourhood’ or ‘Eastern partners’ (European Council). However, the key problem is not terminology. By including the Southern Caucasus in the EP, the EU proclaimed, on the one hand, its aspirations to become a global actor, while on the other it weakened the relative significance of the EP in relation to the cooperation with the Mediterranean (the EU does not have any important strategic interest in the Southern Caucasus region, neither does it have any significant instruments for action. It remains reluctant, and rightly so, to engage in disputes and the situation in that subregion, thus avoiding any antagonisation of Russia). It is the USA (NATO) that has strategic interests in the South Caucasus. It is NATO that has failed to achieve a consensus with regard to that region.[27] Through the EP, the USA pursues an institutional neo-multilateralist policy, or even that of engagement *per procura*. The U.S. involvement in the EP and the concertation of the EU neighbourhood policy with the NATO policy and the transregional cooperation among allies encompassing the Indo-Pacific was confirmed by the creation of an informal institution called the ‘Eastern Partnership Information and Coordination Group (initially called Group of Friends) of the EP’ comprising, among others,

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25 Joint Proposal 2008.

26 http://www.msz.gov.pl/Partnerstwo,Wschodnie,19887.html.

27 Turkey’s policy is different from that of the other Allies.

the USA, Japan, Canada, Norway, Switzerland and Turkey, and also international institutions (Natorski, 2016).

Poland's aspirations to play a leading role in the EP ignored the country's actual potential; Ukraine is considerably larger, and the social and economic needs of Belarus exceeded Poland's capabilities, just as its ability to engage in cooperation by reacting to the needs of Armenia, Azerbaijan, Georgia or Moldavia was limited. Poland has neither the economic nor the political potential that would make it an attractive ally (in bilateral relations) or an important protector. The EP is a long-term project of admitting new members to the EU, while simultaneously deepening their integration – such a *iunctim* results from the conditionality of the EP (Eastern Partnership, 2009).

In July 2021, the presidents of Georgia (Salome Zurabishvili), Moldavia (Mai Sandu) and Ukraine (Volodimir Zelensky), appearing jointly with Charles Michel, the president of the European Council,[28] announced the Cooperation Declaration on the path towards EU membership.[29] All the states-parties of the declaration are bound with the EU by association agreements and comprehensive free trade agreements. This Cooperation Declaration deepens the internal divergence within the Eastern Partnership, which since June 2021 has not included Belarus.[30]

The objective of the European states (among others[31]) that cooperate with the EU under the neighbourhood policy framework is accession to the EU. The path towards accession has been formally opened (by virtue of Article 49 of the TEU) and the criteria are the European values specified in Article 2 of the Treaty and in the 'Copenhagen Criteria'. However, since 2013, i.e. since the admission of Croatia, no progress has been made in this respect. Negotiations with Montenegro, Serbia and Turkey are ongoing, Albania and the Republic of North Macedonia are candidates, while Bosnia and Hercegovina and Kosovo are 'potential candidates'. The need to enhance the stability and security in the EU environment, across the world and within individual countries, as well as to implement common European values in these countries, argues in favour of admitting states from the Balkan region and Turkey to the EU. The arguments against it include fears that these countries would bring instability and the absence of the rule of law, democracy, and good governance into the EU, thus repeating the scenario of the enlargements since 2004, a limited capacity of the EU for enlargement, and (to put it as gently as possible) weak support among the citizens of the Member States for these admissions, for the accession of these particular states. Thus, the negotiations with candidates continue, while negotiations with 'potential candidates' will be initiated.

28 *Speech by President Charles Michel at the Batumi*.
29 *Batumi Summit Declaration.*
30 Following Belarus' decision to withdraw from cooperation.
31 Includes Middle East region countries as well.

However, while their outcome can be largely predicted (i.e. it is likely that the admissions will take place), their timing and duration of the admissions process is completely unpredictable.[32] Iceland, Norway and Switzerland are excluded from this group; the only real precondition for these states to be admitted into the EU is their own political will, and social acceptance of accession (currently, this will/acceptance does not exist). For these countries, meeting the conditions for admission is a mere formality, while support for their accession within the EU is high.

The implementation of the EP confirms that the EU's strategy toward the region is rational. The EP complements the EU's Eastern policy well, as it broadened the circle of cooperation partners while preserving the flexibility of policy formulas.

b. Western Balkans/Three Seas. One of the regions encompassed by the EU enlargement and neighbourhood policy/policies is the Western Balkans. The countries that the EU considers part of this region are: Albania, Bosnia and Hercegovina, Montenegro, Kosovo, North Macedonia, and Serbia. The basis for including these states in a single region is their shared past, as all of them are former communist states. However, this classification is very general and does not explain the reality, while partially obscuring the differences. The common characteristic of Albania and the countries of the former Socialist Federalist Republic of Yugoslavia (SFRY) was the absence of democracy, the rule of law and abuses of basic human rights and freedoms, even if the scale of such abuses differed from country to country. The social, political, and economic systems of these states are characterised by diverse parameters. A further element common to the Western Balkans is that, with the exception of Albania, these states were created as a result of the dissolution of the SFRY (with Montenegro[33] and Kosovo[34] emerging as a consequence of the disintegration of the 'second stage', i.e. the states created from the disintegration of the former SFRY). The separate definition of the Western Balkan subregion was due to the real geo-political/geo-economic factors that 'unite' the states in this subregion. Unquestionably, the common feature of the region's states are ethnic conflicts within each and between those states, creating a hate filled 'pot', which is far removed from the 'melting pot' stage. Each individual 'pot', as well as the single, collective 'pot', could be liable to explode at any moment, threatening their inhabitants, societies, the Western Balkan states, and their neighbours. An additional factor hindering the region's stabilisation and serving as a catalyst for a possible explosion are the regional activities or policies pursued by Russia and China. These two states, as part of their strategic game against (rivalry with) the West, are interested in both extending or maintaining their spheres of

32 Negotiations with Turkey have been ongoing since 2005; Turkey was granted candidate status in 1999 and submitted its membership application in 1987.

33 Following the dissolution of the SFRY, it first formed a federation with Serbia, which it left in 2006 to declare its independence.

34 This occurred in 2008 as a result of a bloody secession.

influence in the Western Balkan subregion and in keeping it unstable. The EU is conducting accession negotiations with the following (selected) Western Balkan states: Albania (negotiations contingently opened) and North Macedonia. It is sponsoring bilateral negotiations that are intended to lead to the normalisation of relations between Serbia and Kosovo, which is treated as a precondition for accession. The EU is also negotiating with the 'Six' as a whole; in May 2021, the heads of state and government of the Member States of the EU held a conference with the leaders of the Six. The government of Chancellor Angela Merkel declared that the admission of the Six to the EU is the EU's aim, which follows from its 'absolute geostrategic interest'.[35] However, that firm German declaration did not find official support among the other Member States, and neither was it obvious that the new German government would continue to uphold it. Meanwhile, the specified conditions (establishment of the rule of law, democracy, pluralism, and civil society) are so far from being met that the promise of admission costs nothing.

The neighbourhood policy towards the Western Balkan region cannot be separated, in geo-political and geo-economic terms, from the Three Seas Initiative (also called the Baltic, Adriatic, Black Sea Initiative – BABS). Participating in the BABS initiative are 12 EU Member States (Austria, Bulgaria, Croatia, Czechia, Estonia, Lithuania, Latvia, Poland, Romania, Slovakia, Slovenia, and Hungary). Its aim is to promote economic cooperation in the areas of energy generation, logistics and transport, as well as information technology and telecommunications (Kowal, Orzelska-Stączek, 2019). In the Bucharest Declaration (Joint Declaration, 2018), these cooperation areas were grouped in declaring that they are to boost economic development. This economic goal was supplemented with two political goals. The political objectives were defined as:

– strengthening the cohesion of the European Union. The co-authors of this goal were, paradoxically, or maybe due to *double think*, Hungary and Poland, namely the states that oppose the increased integration orientation dominant within the EU;
– enriching the transatlantic tie – which was proposed by neutral Austria. Attaining economic objectives requires money. The group's declared financial assets, however, amount to EUR 500 million (Tri Seas Fund). The Fund defines its potential, which differs from the intentions. In Polish political propaganda, the BABS is presented as the most important manifestation of Poland's activeness and evidence of the country's rank in international politics. The reality of the BABS should be based on assessment of its capabilities, whereas the problematic claim regarding the 'Polishness' of the Initiative is attested, to some degree, by the fact that its first meeting was held in New York City (in 2015). At the same time, the BABS was characterised from the outset by a lack of political instinct; China's minister of foreign affairs, Liu Halxin,

[35] See the remarks of Chancellor Merkel at the press conference held with the President of Serbia Aleksandar Vucic on 13 September 2021.

was invited to the first summit at Dubrovnik, where he invited the BABS to join the Belt and Road Initiative, which was received positively by the participants. The necessary condition for attaining the BABS's objectives is the availability of money and support for the project from major states (which must come from outside the circle of its participants, since no major countries participate in the BABS). All of this requires cooperation with the EU and inside the EU, as well as cooperation with the USA (the administration of President Biden). Currently, the BABS participants have only limited capacity to obtain the necessary cooperation.

3. Money is not everything, but… there is nothing without money

The result of the long and arduous work of the EU bodies and Member states is the approval – in March 2021 – of the new Neighbourhood, Development, and International Cooperation Instrument (NDICI) – Global Europe. Under the NDICI, the EU has EUR 79.5 billion at its disposal to implement a new development policy (in every aspect).[36] The NDICI introduces many changes to the manner on which aid is financed.

Consolidation is one of the immediately apparent changes. The NDICI was established in lieu of the 10 existing financial instruments and special funds forming an inconsistent and vague set. The following are combined into the NDICI format: the European Development Fund (EDF), the European Neighbourhood Instrument (ENI), the Development Cooperation Instrument (DCI), the European Instrument for Democracy and Human Rights (EIDHR), the Instrument contributing to Stability and Peace (ICSP) and the Partnership Instrument (PI), as well as the Guarantee Fund for External Actions.

For the purposes of a broadly construed policy towards its neighbours, the EU will have the following at its disposal: the EDF, which will finance cooperation with the ACP (African, Caribbean and Pacific)[37] countries; and the ENI; the beneficiaries of the funds will be the EU's neighbouring countries (Regulation 2021/947).

Through the NDICI, a global European Fund for Sustainable Development Plus (EFSD+) was established, making the External Action Guarantee available to it. The EFSD+ combined the Guarantee Fund for External Actions, the guarantee for the European Investment Bank (EIB), with the Instruments of the European Fund for Sustainable Development guarantee. This change is radical; the potential benefits derive from both synergies and a simplification of the system.

36 The scale of future spending is evidenced by the fact that the EU is third largest (following the US and Germany) donor of development aid, and administrator of the second (after the World Bank) pool of funds allocated on the basis of term grants.

37 It will replace the seven existing ones.

The *modus operandi* will also change with regard to the distribution of funds. Generally, the primary stream of NDICI funds – as planned – is to be directed to the EU's eastern and southern neighbours and to Sub-Saharan Africa. However, not only the addressees, but more significantly the method of financing has changed. The EU is moving away from funding specific programmes to funding specific countries-regions, and only under such an arrangement of programmes will the NDICI allocate 75% of the funds to programmes pre-targeted to a specific country-region. This, in absolute terms, means earmarking EUR 60 out of EUR 79.5 billion. The optics, focusing on the recipient and subsequently on its needs, rather than on the needs as such, can be seen when estimating an increase in spending by EUR 2 billion on 'neighbours' to EUR 19.3 billion, while maintaining the level of funds addressed to Sub-Saharan African countries.[38]

EUR 8.5 billion will remain in the non-geographically allocated pool, with those funds being allocated to the management of 'global challenges'. In addition, the EU excluded EUR 9.5 billion for emergency challenges as well as thematic programmes (EUR 6.4 billion)[39] and 'rapid response actions' (EUR 3.2 billion), leaving EUR 9.5 billion in reserve. The sum of the funds allocated to 'rapid response actions' and in reserve indicates the lessons learned from the experience of the COVID-19 pandemic. Taking similar future challenges into account, the EU wishes to have the financial means to respond adequately to the challenges.

The funds collected in the NDICI envelope were distributed into smaller envelopes, based on various criteria.

While assessing the amount, method, and directions of financing for the indicated activities, I am aware that the EU did not enjoy (nor does any country or institution) full freedom of decision. A significant portion of the expenditure (and eligibility of expenditure) is rigid; it includes, for example, expenses resulting from commitments arising under the Paris Agreement on Climate Change, or from the commitment to provide 0.2 per cent of GNI for aid to least developed countries (LDCs). Also 'rigid' is the way in which the transferred aid is qualified, namely 93 per cent of EU development assistance is set to qualify as Official Development Assistance (ODA).

If the assessment of institutional changes is generally positive, those changes are also a source of risks. These risks are numerous and varied; the risk of consequences of inconsistency between the 'annual nature of the EU budget' and the multiannual framework for extra-budgetary spending is the first easily noticeable risk. The cooperation fund, e.g. with the ACP, is a multiannual rolling fund. This may result in the

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38 EUR 29.2 billion will be channelled to the region of Sub-Saharan Africa, EUR 8.5 billion to Asia and the Pacific, and EUR 3.4 to the countries of America and the Caribbean region.

39 They will cover the following programmes: human rights, civil society organisations; peace, stability and conflict prevention; and global challenges.

disbursement rate becoming a more important factor than the quality of actions. There may be a number of consequences of that inconsistency. The EU can – 'forcefully' select 'year-long' projects to be carried out, otherwise funds not used in a particular year will be forfeited, or projects that are multiannual by their nature will not be undertaken.

The assessment of the measures introduced by the EU into the NDICI is not as positive as that of institutional change. Here the increase in funds (at constant prices) is minor, as is their share in the EU budget.[40] This can be a source of frustration and criticism of the EU/Member States. However, those funds – as always disproportionately less than required– come from the 27 members of the EU, i.e. post-Brexit. Not only was the expenditure maintained, but it was increased in relation to that implemented by the EU 28 (including the United Kingdom), and the gap in the budget following Brexit was filled by the other members.

In the EU's long-term budget, the aforementioned funds in individual envelopes were put into a collective envelope of the External Action budget of EUR 123 billion, which consists of the NDICI EUR 79.5 billion indicated above, followed by the Instrument for Pre-accession Assistance (EUR 14.5), the Humanitarian Aid Instrument – ECHO (EUR 1.1), the Common Foreign and Security Policy – CFSP (EUR 3), Cooperation overseas and territories incl. Greenland – OCTs (EUR 0.5), European Investment for Nuclear Safety – EINS (EUR 0.3) and the European Peace Facility – EPF (EUR 10.5).

In conclusion, I believe that the reform is a result of mature reflection and balancing of interests. Its implementation at this particular time, with the accumulation of factors hindering reforms (the challenges of the COVID-19 pandemic, Brexit and intra-EU disputes, among other things) and the amount of designated funds prove the vitality of the EU (the institutional formula for the integration of European nations). At the same time, that reform – like any other reform (and also like stagnation) is coupled with risks. Those risks that could have been eliminated and could have been avoided, were in fact eliminated. The EU must manage other risks, and a rational assessment of the effectiveness of EU action will be made on the basis of the results of risk-threat management.

A subjectively assembled and ranked catalogue of threats includes the following threats:

- systemic threats. In the NDICI implementation formula, the weightings between the Commission and Parliament in the management of the NDICI have changed. The NDICI will be managed by the Commission on an exclusive basis, so the Commission will in fact manage the Neighbourhood Policy. This is a 'favourable' change for the Commission, and one that was undoubtedly supported by pragmatism and

40 Increase from 8.7% to 9.16%.

an expectation of efficiency and agency in action. However, the weakening of the Parliament's position and the limitation of its competences is of a systemic nature. The second systemic threat is a retroactive effect of decisions; regardless of the arguments in favour of such law-making, it always weakens the rule of law and good governance (for the future);

- political threats. The modification of the weightings attributed to the priorities in the form of assigning the highest priority to Sub-Saharan Africa and the Eastern Partnership (its participants) is an assertive response to the current challenges. The countries of those regions are threatened by a challenge posed by the EU's strategic rivals, i.e. China and Russia. The NDICI is a necessary response to China's 'Belt and Road Initiative (BRI) '. However, it results in a limited presence in the Asia-Pacific, America and Caribbean regions. Such self-limitation – adjusting ambitions to the possibilities – is rational, subject to close cooperation/coordination with non-European and non-EU NATO allies, i.e. the USA, Canada, the United Kingdom and Norway, as well as democratic Indo-Pacific countries outside NATO (including, but not limited to Australia, India, Japan, South Korea, Taiwan and New Zealand). If such cooperation is ensured, then on the one hand, efforts and expenditures will not be duplicated, while on the other, challenges/threats will not be ignored. Otherwise, there may be a cooperation void on the part of countries or subregions whose legitimate needs will not be met, in which the West will not be sufficiently present;
- economic threats. Expanding guarantee funds facilitate leveraging investments. The experience of using the 'leverage mechanism' shows the extent and scale of risks (Berent 2013). This group also includes risks posed due to breaking of the EIB's (and the EU's) guarantee monopoly;
- managerial threats. These comprise multiple components and are associated for instance with the consequences of the fact that actions under the Neighbourhood Policy will be undertaken in conditions of unpredictability, which condemns them to a permanent confrontation with European budgeting rules (namely, predictability and consistency of funding and flexibility). In addition, paradoxically contrary to the previous assessment, consolidation can be a source of risk in the form of 'absorption' of the funds allocated in previous periods to specific objectives, or all of them, by the most efficient financing objective(s).

4. Epilogue

Poland's international relations assets in 2021 include relations with Hungary, Turkey[41] and Brazil.[42] This classification is prompted by acknowledging the fact that each cooperation is an *ars longa vita brevis* asset (while its authors/actors pass away).

It is difficult to assess the value (and the prospects of institutionalisation) of the 'Kaczyński – Orbán – Le Pen – Salvini' cooperation, which is in fact more extensive, involving 16 parties, as it includes the two parties ruling in Poland (Jarosław Kaczyński and Law and Justice) and in Hungary (Viktor Orbán and Fidesz), the opposition Italian 'League' – (Matteo Salvini)[43] and the 'Italian Brothers', who are in opposition to the government and the opposing League – headed by Giorgia Meloni,[44] the French National Rally (Marie Le Pen), Spanish Vox under the leadership of Santiago Abascal, Austria's Freedom Party of Herbert Kicki, Belgium's Flemish Interest, the Bulgarian National Movement, the Danish People's Party, the Estonian Conservative People's Party, the Finns Party, the Greek Solution, the Electoral Action of Poles in Lithuania, the Dutch JA21 and the Romanian National Christian Democratic Peasants' Party. The bloc is created on the foundation of protest against the operation and evolution of European integration in the EU formula. In the 'Joint declaration on the future of the European Union'[45] signed on 2 July 2021, the party leaders presented their position on the work of the *Conference on the Future of Europe*. They spoke out against enhancing European integration (and indeed in favour of reversing integration), in defence of exclusive competences of the Member States and in favour of requiring unanimity of the Member States in decision-making. Those parties describe themselves as far-right (right-wing).[46] Their political power is limited, as is their ability to cooperate, and even in the European Parliament

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41 During President Andrzej Duda's visit to Turkey (May 2021), the presidents pointed out that the countries have a strategic partnership.

42 After the meeting (IX/2021) of the presidents of Poland and Brazil during the session of the UN General Assembly, President Duda announced a visit by President Jair Bolsonaro to Poland in 2022 (https://www.polskieradio24.pl/5/1223/Artykul/2811849, Jair-Bolsonaro-przyjedzie-do-Polski-Andrzej-Duda-Brazylia-to-partner-gospodarczy-Polski). It is difficult to assess the credibility of the announcement since an identical one was made in 2020 as an arrangement during the visit of the Minister of Foreign Affairs to Brazil (announced for 2020) – a failure to implement arrangements may be associated with the COVID-19 pandemic (which pandemic Bolsonaro belies).

43 He is the defendant in a criminal trial.

44 Matteo Salvini and Giorgii Meloni fiercely compete at national level and are unable to cooperate at a local level.

45 Text in English https://fidesz.hu/int/news/joint-declaration-on-the-future-of-the-european-union (accessed: 3.10.2021); in the Polish version http://pis.org.pl/aktualnosci/wspolna-deklaracja-europejskich-partii (accessed: 3.10.2021).

46 It was indicated directly: 'The cooperation of European nations should be based on tradition, respect for the culture and history of European states, respect for Europe's Judeo-Christian heritage and the common values that unite our nations, and not on their destruction.'

they are part of different factions (*European Conservatives and Reformists*[47] and *Identity* and *Democracy*[48]). The differences between the parties, and their inability to reach a consensus, are also shown by the differences between the English, Polish and French versions of the declaration. In the French version, the following paragraph was omitted: 'The process of integration has done much to create lasting structures of cooperation and to maintain peace, mutual understanding and good relations between states. This work must be maintained as an epoch-making value.'

The German Alternative for Germany (AfD) and the Dutch Freedom Party (Geert Wilders' party), whose programmes provide for withdrawal from the EU, did not sign and were not invited to sign the declaration. Discontinuing cooperation with the AfD makes it possible to cooperate with the other parties in Germany (any government), as they separate themselves from the AfD by a '*cordon sanitaire*'; unfortunately, with respect to France, those cooperating with Marie Le Pen and the National Rally that she leads[49] deprived themselves of that opportunity.

If the parties to the declaration gain or maintain power in their countries and continue cooperation, the initiative will be evidence of the leaders' prophetism ('Kaczyński – Orbán – LePen – Salvini'), otherwise it will be detrimental to the cooperation/contacts of those of the parties that will be the ruling parties (and the countries they govern), with the winners being the ruling parties. Reality quickly and negatively verified counting on the wave of populist victories. Marie Le Pen lost the presidential election. And demonstrations of support from Poland during the election campaign and harsh statements by President Macron deepen the drift between Poland and France[50].

On the liabilities side, there are relations with the countries of the Western hemisphere, i.e. all the 'old' members of the EU, EEA and NATO (including France and Germany, as well as the USA and Great Britain) and Israel, as well as with Russia and Belarus.

The catalogue of sources is diverse:

– the old EU and EEA members were united in their refusal to cooperate with regions (and the state) that declared their 'opposition to the introduction of 'LGTB' into (local) communities' (e.g. the Declaration of 2019 No. 1/19 of the Małopolskie Voivodeship Regional Assembly of 29 April 2019) on opposition to the introduction of the 'LGBT'

47 It groups national conservatives and right-wing populists.

48 It groups right-wing populists and radicals.

49 Jacques Chirac, a rival in the presidential election, refused to debate Le Pen's father on television, which won the approval of voters and contributed to his victory. (Jacques Chirac 'la banalisation de la haine et de l'intolérance de Le Pen'); she was supported by antifascists.

50 Without underestimating the danger of the political presence of the far-right, it seems that Marie Le Pen continues her father's political activity: always present and always losing, for this reason, a friendship policy with her is the kiss of death.

ideology into local government communities[51]). In the face of threats to withhold[52] or cancel[53] financial grants, the regional assemblies (of the Małopolska, Lubelszczyzna, Podkarpacie, Świętokrzyskie and Łódzkie regions), have been gradually repealing their declarations on LGTB (adopted in 2019 by several dozen local governments of various levels), but this is unlikely to change (in the near future) the perception of Poland and its right-wing, i.e. PiS ruling party at the central level and in many voivodships.[54] Both the resolutions of the regional assemblies (content and *modus operandi*)[55], and the obvious, financial reason for their withdrawal, say more about the rulers and their voters than they would like to say about themselves;

– the conflict with Israel (and with the USA), which reached the level of the mutual withdrawal of ambassadors as a result of requests for the departure/withdrawal of ambassadors for consultations, was a direct reaction to the amendment (IX/2021) to the Code of Administrative Procedure, stating that administrative decisions under which Jews, including victims of extermination, were deprived of property or where the deprivation of property was sanctioned, are incontestable after thirty years. With this amendment, the practice of abandonment, causing Poland – as the only country in Europe – to fail to ensure the right of victims to recover the property of descendants, was given the status of law. The U.S. sided with Israel. The dispute with Israel was partly triggered by the government's desire to knock the weapon out of the right-wing party's hand. Groups of extreme nationalists in Poland campaigned under the slogan of defence against the American 'Act 447'[56] (a campaign equally anti-Semitic and anti-American). This is another conflict with Israel after the – withdrawn – amendment to the Act on the Institute of National Remembrance (2018). Of course, none of the changes in the law were actually directed against Jews, Israel or, to a far lesser extent, the USA. It was a defence against the takeover of part of the right-wing, anti-Semitic electorate by nationalist parties, taking that electorate away from PiS. They were inward-facing actions with no real effect; however, the result, in the form of Israel's and the USA's reactions, was predictable and obvious;[57]

51 https://bip.malopolska.pl/umwm,a,1594074, deklaracja-nr-119-sejmiku-wojewodztwa-malopolskiego-z-dnia-29-kwietnia-2019-r-w-sprawie-sprzeciwu-wo.html (accessed: 21.10.2021).

52 For example, from the 2014–2020 Regional Operational Programme under the REACT-EU mechanism.

53 For example, Podkarpacie did not receive EUR 1.7 million in non-refundable assistance for the promotion of the Carpathians from EEA and Norway Grants.

54 This generalisation is so harmful that the Voivodship Administrative Courts in most cases invalidated resolutions due to unlawful interference with human rights and freedoms, and due to their discriminatory nature, and violation of dignity based on sexual orientation and gender identity, considering the resolutions contrary to the Constitution, for example, the Voivodship Administrative Court in Kielce in the judgment of 11/IX/2020, file ref. no. II SA/Wed 382/20.

55 Opposing the 'LGTB ideology' was a defence against 'changes in social life'.

56 *Justice for Uncompensated Survivors Today* Act.

57 It can be assumed that this was not accidental. Among the sponsors of the amendment to the Act on the Institute of National Remembrance were people associated with Russia.

– with Germany and the USA. Bilateral relations with these countries have deteriorated as a result of the failure to grant *agrément* to ambassadorial candidates. The reasons given by the Polish Government were either not true or, if true, demonstrate an organic inability to conduct foreign policy. In 2020, the nomination of Arndt Freytag von Loringhoven to the post of German ambassador was blocked for three months; it was motivated by the military service of the candidate's father during World War II (he was, among other things, aide-de-camp to Heinz Guderian) (Czaputowicz, 2020; PAP 2020 PAP interview with the German Ambassador; Fritz, 2020). After a year, similar actions were taken against President Biden's candidate to the post of American ambassador to Poland. With respect to the USA, the consent to Mark Brzeziński's accreditation was blocked for a long time in view of the Polish authorities' claims about the candidate's dual US and Polish citizenship. The demand for official renunciation of the alleged Polish citizenship by the ambassadorial candidate was not accepted by the American authorities. Finally, after many months, the Mazovian Voivode issued a decision stating that Mark Brzeziński was not a Polish citizen, and Brzeziński declared that he would not appeal against that decision. On 29/VII/2021 *agrément* was granted. Cases of a delay in granting *agrément,* or a refusal to grant it, are neither contrary to legal or political norms, nor are they exceptional. What countries avoid in international relations is disclosing a refusal to grant an agreement, breaking with the customary, common practice of confidentiality. Disclosing this information to the public indicates either a 'game of conflict' or a weakness in the state's institutions, its inability to protect classified information. Both candidates were professional, highly qualified and experienced diplomats. Neither of the events separately, nor taken together, affect the current bilateral relations, but each individually and taken together create a bad climate in those relations between the countries of the 'West'[58] and Poland. Perhaps in both cases the dispute was indeed intergovernmental (and not another manifestation, a show of force addressed to its own electorate). The Polish government took Trump's defeat – Biden's electoral victory – badly. The Polish government is unable to cooperate with the German government. However, in the end, the dispute was detrimental to the Polish Cabinet, because the final granting of *agrément* to the contested candidates was a defeat. The conflict damaged Poland's relations with its strategic partners, and the failure damaged Poland's image;
– with the Baltic States (Estonia, Lithuania, and Latvia) as well as the Czech Republic and Slovakia. By closing its borders in response to the COVID-19 pandemic, Poland did not allow citizens of the Baltic States (families, mothers with children, etc.)

58 The Polish Ministry of Foreign Affairs decided that Brzezinski has American and Czech citizenship.

to cross the border. On humanitarian grounds, Germany launched a ship transport, allowing people to return by bypassing Poland, and Hungary also created a humanitarian corridor. Poland 'humiliated its neighbours' and demonstrated 'a lack of solidarity in the face of a hybrid threat' (Czaputowicz, 2021);

– with respect to relations with Ukraine and Lithuania, an important source of problems is the fact that Poland's foreign policy is primarily a function of internal policy; it is a product of interaction between internal factors and is directed to the inside of the state, as the objectives of the implemented foreign policy are internal.[59] Stakeholders operating in Poland fuel anti-Ukrainian feeling. Referring to the past facilitates a failure to consistently and comprehensively settle the past, which is defined by the memory of genocide in Volhynia and other acts underpinned by hatred. As a result, every attempt at Polish-Ukrainian rapprochement is attacked and those who undertake it are paralysed by the fear of being accused of failing to remember the victims. It is impossible to overestimate the damage that erection of a 'Volyn Massacre' (the official name) monument by Andrzej Pityński in the Jarocin municipality at *Via Carpatia* ('S19' route) will cause. The central component of the work of the 'sculptor' will be a figure of a child impaled on a three-pronged trident. The monument will be surrounded by a fence with three children's heads impaled on it. That monument and mausoleum will welcome those arriving in Poland's Podkarpackie region from Ukraine (Surowaniec, 2021). The Russian invasion on February 24, 2022, radically changed Polish-Ukrainian relations. Polish society shows solidarity with Ukraine as a victim of armed aggression and provides help to people who have been affected by the war. Society forced activists and anti-Ukrainian (or pro-Russian) organizations to stop their anti-Ukrainian activities. Poland participates in the activities of 'the West' (EU and NATO) and international institutions whose goal is to restore the territorial integrity and independence of Ukraine, prevent future Russian aggression, and punish the perpetrators of the crime.

Poland's policy towards Lithuania is – to a considerable extent – to 'hold hostage' Lithuanian citizens of Polish nationality and, perhaps above all, their organisations. Some of them, certain representatives and some organisations, did not support the aspiration of Lithuanians to independence and leaving the USSR, and now they often cooperate with pro-Russian organisations or parties, as well as with Russia itself. Such an attitude systematically antagonises internal relations in Lithuania, dividing Lithuanian society on the basis of nationality and weakening its integrity – the state's ability to meet security challenges. In addition, organisations grouping Lithuanians of Polish

[59] The extreme view is expressed that 'the foreign policy of PiS is completely subordinated to domestic policy (Gdula 2021)'.

nationality are internally conflicted (Sobczak, 2010). It does not help matters that some Polish Ambassadors to Lithuania, do not always act as accredited representatives to the president of Lithuania, as they often act as if they believed that their main mission is contact with the Polish diaspora. This can be positive where the focus on the diaspora serves its integration, and rapprochement with Poland and integration of Poles – Lithuanian citizens[60] in Lithuanian society; Ambassador Eufemia Tejchmann pursued such objectives during her term of office. However, there were other, less welcome cases – the greatest achievement of one of the ambassadors can be considered the fact that he did not bring about such a deterioration of interstate (Polish – Lithuanian) relations as he did within the diaspora.

The problem of Poland's patronage over the organisations of Poles – Lithuanian citizens – has elements important for the security of Lithuania and the Baltic states. The Electoral Action of Poles in Lithuania is actually a political party and contacts with the authorities of another country – i.e. Poland, go beyond courtesy contacts of Polish authorities. From the point of view of international law, this could be considered unacceptable interference with internal affairs of the state. In addition, the EAPL, and its leader Waldemar Tomaszewski, are not an 'ordinary' Lithuanian party, and he is not an 'ordinary' Lithuanian politician. The actions of the EAPL and its leaders fit into the scenario of Russia's actions against Lithuanian independence. Let me describe the actions taken by various people or groups of people that harm interstate relations between Poland and Ukraine/Lithuania by recalling an assessment by Prime Minister Jarosław Kaczyński of the actions of M. Jurek, an MP and Speaker of the Sejm, who caused a political crisis around the amendments to the constitution in line with the ideas of the '*pro-life* movement'. On 14 April 2014, Kaczyński stated that Jurek is, 'either a madman or an agent (Jurek, 2007).'

Political and economic relations between Poland and Lithuania reveal a lack of communication skills (discussing objectives, setting boundaries, etc.) resulting in misreading of intentions or actions of the parties and damaging relations. This is illustrated by two examples: the 'Mažeikiai refinery' and the inclusion of Lithuania [61] in the European energy transmission system (Plzeň, 2016, pp. 182–198).

Poland (formally 'Orlen') bought Mažeikiai in 2006 from the bankrupt Yukos, preventing Russia from buying the refinery.[62] The purchase was a rational but challenging

60 I treat the term as equivalent to the term Lithuanians of Polish origin.

61 As well as Estonia, Latvia and Finland.

62 It was the only refinery in the Baltic States. A component of the economic and military complex of the former USSR, oil supplies were carried out by the 'Druzhba' pipeline system, the installations were adapted to the processing of Russian oil and the processing capacity exceeded the demand of the Baltic States because the refinery supplied submarines in Liepaja, Latvia.

activity in the area of security policy.[63] There was no economic justification for the purchase[64], and its feasibility was limited due to the refinery's dependence on supplies from Russia. The purchase was in the direct interest of the security of Lithuania (and the Baltic States), the EU, NATO, and Poland, but Poland was unable to cooperate with Lithuania on the political and communication level with respect to the purchase and the economic and social follow-up. For many years, the investment generated losses for a number of reasons. Russia sabotaged the refinery by suspending oil supplies in July 2006. Russia falsely explained the reasons for the interruption of deliveries as caused by the breakdown. These were hostile actions. In 2008, the Lithuanian railway operator closed 19 km of track (the shortest route), extending the product transport route by approximately 130 km. All those circumstances (as well as a fire at key refinery facilities) hindered the common objective of Poland, the Baltic States, and the EU, which should be to stop Russia's expansion in a sector that was strategic for security, and merely increased the costs involved.

The long-declared mutual objective of integrating the energy systems of Lithuania Estonia and Latvia through an 'energy bridge'[65] was not achieved in a timely manner, despite political and legal obligations. This left the three countries still heavily dependent on Russia, which threatened their security. Cooperation was intermittent at best, and non-existent at times with decisions reached and then changed.[66] Another determinant of the difficulties in this area of cooperation is the construction of a gas interconnector between Poland and Lithuania. The Poland-Lithuania interconnector is a component of the infrastructure enabling gas transmissions between the CEE countries and, above all, along the north-south axis. The Polish government (PO-PSL) delayed the implementation of that project in order to obtain higher, external financing of the investment (from the EU); this shows the dilemma related to setting and implementing security cost priorities (X 2019). However, in relation to the Poland-Lithuania gas

63 Previously a 'feasibility study', in the 'reconnaissance by fire' formula, the project of removing Russia from the refinery was undertaken by (American) Williams International, which purchased the controlling stake in the refinery in 1999. In response, Russia blocked oil supplies to refineries, forcing purchases to be made from other suppliers and then oil to be transported by sea and rail. This caused losses to the owner; neither the US, NATO nor the EC decided to assist the owner to finance the defence of the Baltic States as regards energy security. Williams International sold the refinery, but Mikhail Khodorovsky (Yukos company) defended Mažeikiai before it was taken over by Russia by buying it in 2001. The purchase of Mažeikiai by Khodorovsky was a component of a political project, i.e. combatting 'Putin', with Putin being the victor. By buying back Mažeikiai, Poland overestimated its own capabilities, and was unable to build a coalition with Lithuania, the other Baltic States, the US and NATO, and the EU.

64 It is part of a sequence of purchases by Poland (Orlen) in the oil sector, initiated by the 2003 purchase of almost 500 fuel stations in Germany from BP (Aral chain). In subsequent years, the investment generated losses. There was no economic or political interest behind that purchase, it was a manifestation of megalomania and entrusting power at PKN Orlen to people without qualifications.

65 In parallel, a Lithuania-Sweden 'energy bridge' was provided for.

66 For example, in relation to cooperation in the construction and use of a nuclear power plant in Lithuania.

interconnector and pipeline, the implementation of the project is nearing the desired end. In October 2021, work on the gas pipeline was completed with the launch planned for 2022. The pipeline will make it possible to connect the Baltic States with the EU gas transmission system. The way in which those projects were carried out, contrary to the intentions of the parties, and often contrary to the facts, only deepened the distrust. The project was completed at the beginning of 2022, which significantly strengthened the energy security of Lithuania (and Poland) and made them more resistant to threats from Russia, the attempt of economic coercion;

- in 2021, relations with Belarus reached an all-time low since the creation of an independent Belarus following the collapse of the USSR. Terror against its own citizens, electoral fraud, the hijacking of a passenger plane, and other incidents prompted the EU to extend sanctions against A. Lukashenko holding power in Belarus, and against regime officials. In response, Belarus, in cooperation with Russia, committed many acts of aggression against Poland and the Baltic States. These acts of aggression constitute a hybrid war, a component of which has been the transfer of migrants to the Polish border. Poland introduced a state of emergency in the border zone in order to stop illegal immigration. However, at a press conference at the headquarters of the border guards, the Deputy Minister for Security – Jarosław Kaczyński – confused the state of emergency with martial law and Belarusian officers with Ukrainian ones (Kaczyński, 2021) – those errors in speech seem to be a Freudian slip;
- conflict with the Czech Republic. This conflict is bilateral by nature and derives from the treatment of law, i.e. disregard for the law in Poland (both in domestic and foreign policy). However, it has broader strategic significance. In the Foreign Policy Strategy, Poland's catalogue of 'tasks to be carried out' included: 'Striving to increase the export volume of Polish raw materials, in particular hard coal. Working towards the creation of international agreements with the countries of South Asia, South America, the Middle East and Australia based on common goals in the use of raw materials, in particular hard coal. (2017–2021 Strategy).' This may be both a declaration of servitude to the mining lobby and also an outright rejection of the environmental policy of the 'West'. The level of bilateral relations with the Czech Republic has reached another low, and relations are rapidly nearing rock bottom. The current stage of that deterioration is a political and judicial dispute over the mine in Turów. On the one hand, there is no doubt as to the negative impact of the operation of the mine (coal mining) on the neighbouring environment. This detrimental effect on a neighbour and degree of cross-border damage is prohibited by law and, if it arises, it should be ceased and compensated for. The mine in Turów harms not only its neighbours in the Czech Republic, but also those immediate ones in Poland. On the other hand, the operation of the mine is a 'legacy' of the

times when the hierarchy of needs and values was perceived in a different manner. Obtaining energy raw materials and energy self-efficiency prevailed over human rights, the environment, and related obligations. The mine is a living fossil of that policy. In addition, the Polish mine is not the only one in the region and is not the only source of ecological damage. It has been obvious for many years that the mine would have to be wound down as a consequence of implementing Polish-European and international environmental law. The problem was, of course, the timing of the closure of the mine (and other mines)[67] and the socio-economic costs of the energy transition, as well as the restoration of the environment to the necessary condition. However, Poland decided to accelerate the conflict, which seems to have been prompted by ignorance, a lack of imagination, and disregard and arrogance towards the Czechs. Poland needlessly extended the licence for the operation of the mine by more than the legally permissible six years.[68] It did so without first submitting the application for the extension of the licence for mining environmental impact assessment; Poland thereby breached the procedure under EU Directives 2011/92/EU and 2014/52/EU. A failure to observe the procedures and breach of law gave the Czechs a starting point for initiating a dispute and taking legal action. The merits of the dispute, namely the negative impact of the use on the level of groundwater in the Czech Republic, was confirmed by the Polish party. Poland (Polska Grupa Energetyczna) is building an anti-filtration screen to protect the waters in the Czech Republic;[69] which proves that Poland acknowledges a cause-and-effect relationship between extraction and the disappearance of groundwater. The screen construction plan was approved in 2019 and accepted by the Czech side. The Czech Republic first submitted a complaint to the Commission (on 30/IX/2020) and then, after the Commission had issued a reasoned opinion accusing Poland of a number of infringements of the law (on 17/XII/2020), brought an action before the Court of Justice of the European Union (on 26/XII/2021). The complaint is awaiting the 'final judgment' in Case C-121/21. The dispute may be withdrawn should an agreement between the Czech Republic and Poland be reached, or it may be adjudicated on its merits. The substantive resolution is relatively easily predictable, since the CJEU will hold that the mine is detrimental to the environment, violates human rights to live in a healthy environment, and that, by extending the licence, Poland broke the law. The impact of the substantive adjudication of the dispute, and in fact the

67 They also operate in the Czech Republic and Germany. The mine in Turów is one of the smaller ones.

68 The operator held a mining licence obtained in 1994, valid until 2020. Under Polish law, the licence could be extended once for six years without an environmental impact assessment, solely on the basis of the economic rationality criterion. However, at the request of the operator in 2019, the license was extended until 2044 without the environmental impact being examined.

69 Work has been delayed.

statement of reasons for the judgment, on the pace of the EU's energy transition and the related social and economic issues, is unpredictable. The EU's ability to achieve energy transition 'momentarily' and its ability to bear the costs, especially during and after the COVID-19 pandemic, is not self-evident, nor is its ability to manage the compulsory retraining of those made redundant at mines, power plants and surrounding establishments. Everyone needs an agreement between Poland and the Czech Republic, but the parties are escalating the situation (conflict) related to the dispute. Pending the judgment, the Czech Republic requested that the CJEU deliver a decision on interim measures in the form of an 'order to immediately cease mining operations' and it obtained such a decision on 21 May 2021. Poland failed to comply with the decision and, at another request from the Czech Republic to penalise Poland, the Vice President of the CJEU, Rosario Silva de Lapuerta, ordered Poland to pay the Commission EUR 500,000 per day as a penalty. In the course of the proceedings, Poland first:

- failed to exercise due diligence to 'duly' demonstrate that 'the cessation of lignite mining operations at the Turów mine would indeed threaten to interrupt the supply of heat and drinking water in the area of Bogatynia and Zgorzelec, causing a threat to the health and life of residents; and subsequently
- requested that the order for interim measures be set aside, contrary to Article 163 of the Rules of Procedure. In its request, Poland did not argue 'changes in circumstances' and reiterated previous arguments.

Poland, i.e. its institutions established to act on behalf of the state before courts and tribunals in Poland, in the EU and abroad, once again demonstrated the lack of legal qualifications necessary to appear in court or arbitration proceedings. Poland is paying for its own mistakes, including the most serious one, namely its contempt for the law and courts, with sweeping negative consequences for Poland; a prevailing perception of social reality in Poland is that it is the 'king' and not the 'law' that rules. Ultimately, Poland accepted the Czech Republic's demands, which ended the court stage of the dispute. The costs of the dispute incurred by Poland exceeded the original claim many times over. The political damages of the dispute and the disregard of the law demonstrated by Poland cannot be estimated. The above examples are not exhaustive of Poland's list of liabilities and missed opportunities in international relations. The wider catalogue also includes:

- the Weimar Triangle (Committee for the Promotion of French – German – Polish Cooperation). The Triangle Group was established in August 1991 and expressed the willingness of Western partners to include Poland in the reconciliation and the French-German partnership crucial for European integration (Kuźnar, Menkes, 2020, pp. 41–54). The establishment of the Triangle meant acceptance of Minister

Geremek's formula of 'intelligent politics'. Meetings of foreign ministers were held annually (with a two-year break between 2005 and 2007, during the period of the '1st' PiS government and another one between 2016 and 2020, during the period of the '2nd' PiS government). Since 2013, no meetings of heads of state have been held; meetings of Ministers of Defence took place only twice (2006 and 2007) and Ministers of European Affairs just once in September 2015, i.e. before the appointment of the '2nd' PiS government. On the one hand, the hibernation of the Triangle reflects Poland's deteriorating relations with France and Germany and Poland's diminishing standing in the EU. On the other, it strengthens the indicated conditions and is detrimental to relations. It is difficult to overestimate the damage and its permanence as a result of the PiS government terminating the contract for the purchase of H225 Caracal helicopters[70] from the Airbus group (France is the leader of the consortium). The tender for the purchase of helicopters was announced in 2012, and the selection was made in 2015. The contract was terminated after PiS took power, and both the procedure of terminating the contract and the manner in which the decision was made were contrary to good customs and the law (Budalska, 2016). In response to criticism from France, the constitutional minister of the Polish government announced fake news about the sale of Mistral class ships by France to Russia, in violation of the embargo. In a 'secret' transaction, Egypt was said to be a substitute buyer, and in fact an intermediary. The Minister of National Defence – Antoni Macierewicz – stated in the Sejm that the ships had been handed over to Russia by Egypt for USD 1 (Macierewicz, 2016). The government has never officially retracted the lie or apologised to France;

- Visegrad Group (the Czech Republic, Hungary, Poland, Slovakia – the V4). Established in 1991, the institution was to be a forum for cooperation between neighbouring countries seeking accession to NATO and the EU (then EC) of the former Eastern Bloc. Cooperation was intended to facilitate the achievement of those objectives. Cooperation is dictated by geographical proximity, but there are political differences in the phases of government[71] and has been a lack of loyalty. In the accession negotiations, government representatives failed to perform their solidarity obligations. They co-created or participated in cooperation formats that were intended to facilitate their accession to the EU (then EC) without Poland. These were successively created from the Quadragonale[72] through the Pentagonale[73] to the Hexagonale –

70 Purchase price PLN 11.8 billion.
71 The political orientation of the V4 governments varies, and politicians have been unable to create a culture of cooperation putting aside differences.
72 With the participation of Austria, Yugoslavia, Hungarian and Italy (1989).
73 After the accession of Czechoslovakia (1990).

(Central European Initiative) following Poland's accession in 1991. These formats, evocative of the political formula of Austria-Hungary, were to convince the EC to admit small states, i.e. a 'cheap' extension (without Poland). In the opinion of the countries of the former Eastern Bloc, they aroused hopes of a quick admission and of fostering an alliance within the EC. For Austria and Italy, they seemed to create hope for a new weighting of powers in the EC, as the resulting group of states would be at least the third/fourth force in the EC, alongside Germany, France, and the United Kingdom. Systematically in the EU and NATO, in various institutions and on various forums, the V4 Group countries have demonstrated selfishness and a willingness to use the tool of mutual resentment. The only measurable result of cooperation is the establishment of the International Visegrád Fund. Cooperation within the Group is frozen, so this is the second – after the Weimar Triangle – case of missed opportunities. The short and medium-term outlook for cooperation is pessimistic. The Group's governments have failed to cooperate, even when three out of the four of them (the Czech Republic, Poland, and Hungary) had populists in power. The kleptocratic Babiš regime in the Czech Republic was unable to cooperate with the Polish government. The change of government in the Czech Republic does not herald a revival of cooperation.

Conclusions

The analysis prompts a number of conclusions:

- first, the obligation in general international law to 'act like good neighbours' is an imperative devoid of normative content. However, the principles of the UN Charter prohibit certain actions that are contrary to neighbourliness;
- the 'Western' countries and the EU, guided by national interest:
  - shape relations with their neighbours in compliance with the prohibitions provided for in international law:
    - those actors seek to foster good neighbourly relations, convinced that this serves peace, security and stability;
    - their policy towards neighbours is aimed at protecting and disseminating (their own) values: the rule of law, democracy, human rights and freedoms, good governance, the market economy and identifying the respect of those values with a guarantee of the absence of war;
- the neighbourhood (both directly bordering and non-bordering states) on Earth is a factual condition. This implies a need for coherence of laws and policies for

peace, security, sustainable development and protection, as well as the promotion of European values;

- in principle, Poland accepts the above conclusions in law and politics. However, the current relations between Poland and its neighbours are not good; there are disputes and situations resulting from differing approaches to the law and the choices of tools through which to pursue interests. Turbulence in Poland's relations with its Western neighbours results from the fact that Poland (along with certain other CEE countries) frequently treat disputes or the status of foreign policy as a function of internal policy;
- if, from the perspective of an approach to values, Poland and its neighbours (former communist countries) remain in the Western hemisphere, both current and future disputes and situations between them can be relatively easily managed by the non-disruptive cohesion of the Western community of values. They therefore pose no threat to the parties, the EU and NATO, or to a functional community of values;
- with respect to disputes and situations with counter-system states (Belarus, Russia, etc.) and counter-system groupings, those threats are existential and the possibility of managing them with instruments of law and neighbourhood policy is very limited. In its relations with those actors, Poland can protect itself against the threats of a bad (but necessary) neighbourhood by acting as a loyal ally in the institutions of the Western security community.

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POLAND AND OTHER EU MEMBERS' TRADE RELATIONS WITH ASIAN ECONOMIES

Introduction

At the current stage of the functioning of the world economy, two processes are clearly visible – globalisation and regionalisation. The first process results in the creation of a global market for goods, services, and capital, whereas the second one is reflected by an increase in the importance of the cooperation and links of intra-regional character in different parts of the world. Regionalisation in the world economy is characterised by entering into bilateral/regional trade agreements – known as 'preferential trade agreements'. Regional economic integration has practically embraced all continents; however, this process is considerably dynamic in Asia (measured in growth of the share in intra-regional trade).

In the first decade of the 21st century, regional integration in Asia was dominated by bilateral RTA/FTAs. In the region of East Asia 20 intra-regional and 80 extra-regional RTA/FTAs were concluded, which accounts for 27% of all world RTA/FTAs[1] (WTO, 2021), whereas over the next ten years a growth of plurilateral regional agreements within and between East and South-East Asia was recorded[2]. This 'spaghetti bowl' effect is one of the main reasons for recent attempts at rationalising the vast number of bilateral trade agreements into regional frameworks, such as US-led Trans-Pacific Partnership (TPP),

1 For example, China-Korea (2015), China-New Zealand (2008), China-Singapore (2009); Japan-Australia (2015); Japan-Singapore (2002); Japan-Thailand (2007), Japan-Vietnam (2009), Korea-Australia (2014); Korea-New Zealand (2015), Korea-Singapore (2006), Korea-USA (2012), Korea-Vietnam (2015). Other APEC economies also started to actively engage in RTA/FTAs (WTO, 2021).

2 For example, the six ASEAN+1 RTAs: ASEAN-China FTA (2005), ASEAN-Japan FTA (2008), ASEAN-Australia and New Zealand FTA (2010), ASEAN-Korea FTA (2010), ASEAN-India FTA (2010) and ASEAN-Hong Kong FTA (2019) (WTO, 2021).

which was not ratified, and the ASEAN-driven Regional Comprehensive Economic Partnership (RCEP) signed on 20 November 2020 (Kayro, 2020). There have been various attempts to foster regional integration in Asia, while the significant outcomes of these efforts are the establishment of the Association of South-East Asian Nations (ASEAN) and the Asia-Pacific Economic Cooperation (APEC). In the 1990s, there were calls for the creation of a more tightly integrated regional entity, which finally led to the creation of the regional free trade zone – ASEAN Free Trade Agreement (AFTA), of which the ultimate aim is the complete elimination of tariffs among the ASEAN members.

While the European integration processes are characterized by treaties and legally binding commitments, the Asia-Pacific countries applied 'a non-legalistic approach to inter-governmental co-operation based on soft institutions, open regionalism, co-operative security, non-binding decision-making, and convention and consensus-building' (Dent, Dosch, 2012, p. 5). An example of open regionalism in the Asia Pacific is APEC, including the largest world economies (the USA, China and Japan) as well as newly industrialised economies of South-East Asia and other countries (Canada, Russia). The regional integration within APEC contributes to the reduction of protectionist barriers, improvement of the investment climate, and more effective use of resources.

The European Union (EU) has also shown an interest in closer trade links with Asian economies. Although contacts between the EU and ASEAN were established even at the beginning of the 1970s, official diplomatic relations were created in 1977. With the end of the Cold War, the processes of integration progressed at different rates in each region. Hence, at the beginning of the 1990s, there emerged a necessity to foster relations between the EU and East and South-East Asia. Both regions are aware of the power and significance of their partner, aiming at increasing mutual trade flows. Since 2000, the EU has entered into a serious of FTAs with individual Asian countries – with Japan (2019), Korea (2011), Singapore (2019), and Vietnam (2020). The EU has also been engaged in a number of on-going FTA negotiations with other countries in the Asia-Pacific region, such as India, Malaysia, Thailand, and New Zealand, as well as investment agreement negotiations with China (European Parliament, 2020).

The objective of this study is to present the trade relations between Poland as well as other EU members and Asian countries. The study examines the role and significance of trade in goods between the EU and Asia. Additionally, the EU and Asia's involvement in global value chains (GVCs) is investigated, measured in terms of foreign value added (FVA), embodied in exports, and domestic value added (DVA), embodied in foreign exports. The chapter also aims at analysing the intensity of regional trade flows between Poland and other EU members and individual Asian countries. In the study, the method of a descriptive and comparative analysis as well as a statistical method are applied. The data used for the empirical analysis are taken from official statistical databases such as Eurostat, the World Bank and OECD TiVA, and they principally cover the period from 1999 to 2019 and 2021 (except for the statistics concerning the trade in value added (TiVA) for which the latest available data are from 2015).

1. Significance of Asia in the European Union's international trade

In recent years, Asia has become a major engine of global growth. As statistics show, between 1999–2019, the economy of East Asia and the Pacific[3] grew by an average of 3.9% a year as compared to the USA – 2.2% and the EU – 1.6% (World Bank, 2021). Consequently, Asia has substantially increased its regional share in world GDP over the past two decades in comparison to other world regions. In 2019, the East Asia and the Pacific's share in the world GDP was 30.7% (in the case of the USA – 24.5% and EU – 17.8%) (World Bank, 2021).

This increasing dynamism of Asian economies is expected to continue in future (OECD, 2019). According to the Asian Development Bank's (2015) forecast, the Asian share in world GDP is to increase to 29.4% in 2030 (from 22.6% in 2014) and the shares of Western Europe and the USA are projected to decrease to 25% (from 33% and 28.5% respectively). Within Asia, all countries except for Japan are expected to increase their weighting in world GDP.

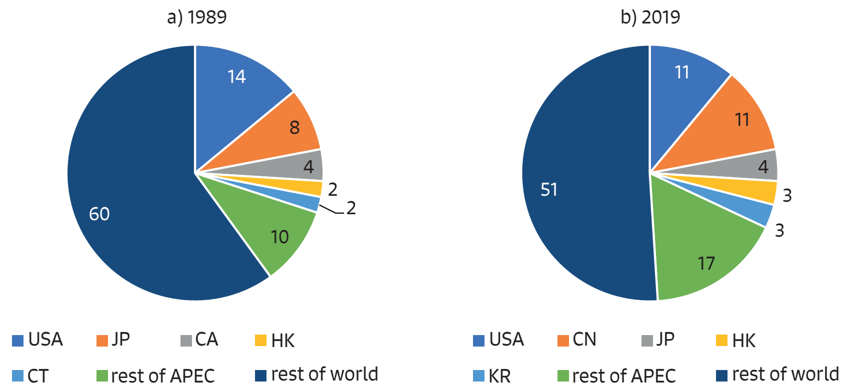
Asia has also become the most dynamic region in world trade, partially due to increasing significance of China. China is the largest exporter in the world. The country's exports totalled USD 2.498 trillion in 2019, which was a marginal 0.2% increase from USD 2.494 trillion recorded in 2018. China is the second largest importer worldwide. According to statistics, its imports amounted to USD 2.06 trillion in 2019, which was a 3.1% decrease in comparison to the previous year, when China imported goods worth USD 2.13 trillion (Export Genius, 2021).

Since the 1970s, the vast majority of world trade has gradually shifted from the Atlantic to the Pacific, and currently the 21 economies of the largest trans-Pacific grouping – APEC – account for nearly half of global trade. Between 1989 and 2019, APEC's share of world trade increased from approximately 41% to 47%. Three of the five largest APEC traders in 1989 – the USA, Japan, and Hong Kong, were still among the top five in 2019, but they have also been joined by China and Korea. Together, the

[3] East Asia and the Pacific comprises: American Samoa, Australia, Brunei, Cambodia, China, Fiji, French Polynesia, Guam, Hong Kong (China) Indonesia, Japan, Kiribati, Korea, Lao PDR, Macao (China), Malaysia, Marshall Islands, Micronesia, Mongolia, Myanmar, Nauru, New Caledonia, New Zealand, Northern Mariana Islands, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Thailand, Timor-Leste, Tonga, Tuvalu, Vanuatu, and Vietnam (World Bank, 2021).

USA, China and Japan accounted for more than one quarter of global trade. However, over the last two decades, Japan has been declining in significance in global trade, and China, together with the USA, have become the largest world trading countries (Figure 1). The gravity of intra-APEC trade has changed over the last decades – the links between the two sides of the Pacific have weakened as the share of USA-Asia trade decreases – the share of US exports in APEC decreased by over 9% (1989–2019), whereas US intra-APEC imports fell by almost 10%. Asian countries are gaining in significance as intra-APEC exporters and importers, with China becoming the largest trading country (APEC, 2019; APEC, 2020).

Figure 1. APEC's share in world trade, 1989 and 2019 (%)



Note: USA – United States of America; JP – Japan; CA – Canada; CN – China; HK – Hong Kong; CT – Chinese Taipei (Taiwan); KR – South Korea

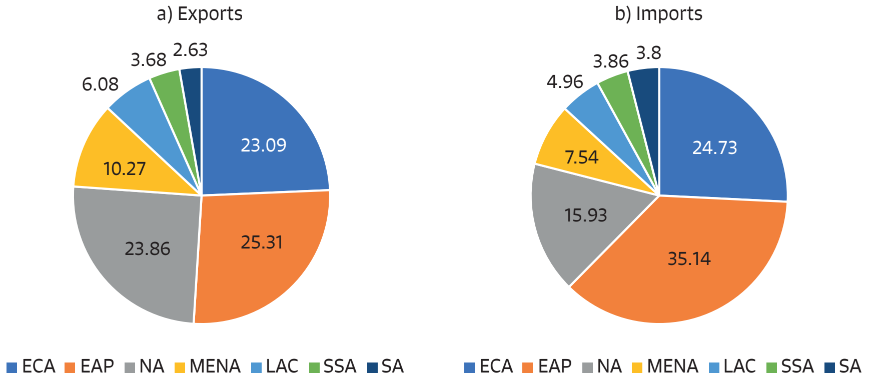
Source: APEC (2019); APEC (2020).

Asian trade is growing in significance not only in the global economy. Asian countries have also become important for the EU's international trade. In 2019, the EU's major trading partner region for exports and imports was East Asia and the Pacific (Figure 2). The EU exports to East Asia and the Pacific accounted for 25% of the total EU international trade and the EU imports to East Asia and the Pacific equalled 35% of the total EU's international trade, which reflects the growing significance of the Asian economies for the EU. However, trade with South Asia is less intense; EU exports and imports to the countries of this region oscillate around 3–4% (WITS World Bank, 2021).

Particularly, the EU trade with the ASEAN countries considerably increased between 2010 and 2019. Exports to the ASEAN countries grew from EUR 54 billion in 2010 to EUR 85 billion in 2019. The EU imports from ASEAN rose even more from EUR 72 billion in 2010 to EUR 125 billion in 2019. However, as statistics show, both exports and imports fell in 2020 due to the COVID-19 pandemic; exports decreased by

EUR 16 billion and imports – by EUR 5 billion (Eurostat Statistics Explained, 2021a). Among Asian economies, China especially has gained in importance as the EU's strategic trading partner. While analysing the EU's five most significant trading partners (outside the EU), with regard to EU exports China ranks second (with a share of 11%) behind the USA (22%), and is followed by such countries as Switzerland, Russia, and Turkey. As far as the extra-EU imports in concerned, China is the first supplier of goods to the EU (the share is approximately 20%), followed by the USA (14%) and Russia (7%) (WITS World Bank, 2021).

Figure 2. EU's trading partner regions, 2019 (%)



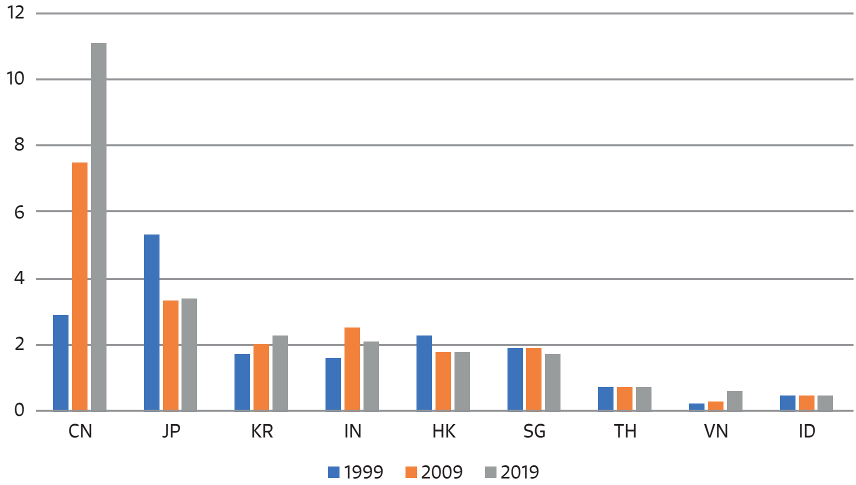
Note: ECA – Europe and Central Asia; EAP – East Asia and the Pacific; NA – North America; MENA – Middle East and North Africa; LAC–Latin America and Caribbean; SSA – Sub-Saharan Africa; SA – South Asia

Source: Own work based on WITS World Bank (2021).

It is worth noting that since 1999, EU exports to China have increased almost four times – from 2.9% (1999) to 11.1% (2019), whereas EU imports from China grew nearly three times between 1999 and 2019, from 7.1% to 29.5%. Except China, other Asian economies with quite significant trading relations with the EU are Japan, South Korea, and India. Additionally, Hong Kong, Indonesia, Singapore, Thailand, and Vietnam can be counted among the EU's relevant trading partners. Other East and South-East Asian economies play a marginal role in the EU's international trade.

In the researched period, South Korea, India, and Vietnam considerably increased their shares in extra-EU exports. However, Japan has been declining in importance in the EU's international trade – its share in extra-EU exports fell from 5.3% to 3.4%. Japan's share in extra-EU imports also dropped from 10.2% to 3.6%, whereas South Korea and India have been gaining in importance as far as the EU imports are concerned (Figures 3 and 4).

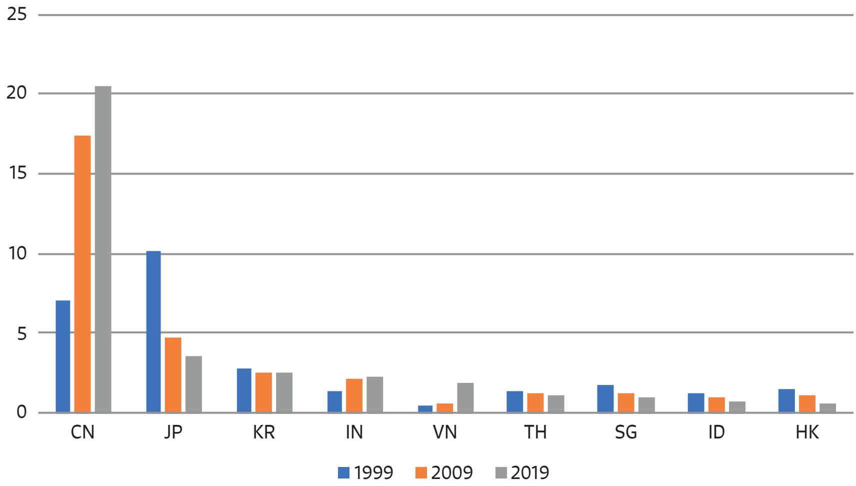
Figure 3. EU exports to selected Asian countries, 1999, 2009 and 2019 (% of extra-EU exports)



Note: The selected Asian countries include trading partners relevant for the EU from East and South-East Asia, including India. In this region, other Asian countries' shares in EU international trade are quite small or practically non-existent. The data come from the period when the UK was a member of the EU.
CN – China; JP – Japan; KR – South Korea; IN – India; HK – Hong Kong; SG – Singapore; TH – Thailand; VN – Vietnam; ID–Indonesia

Source: Eurostat (2021).

Figure 4. EU imports from selected East and South-East Asian countries, 1999, 2009 and 2019 (% of extra-EU exports)

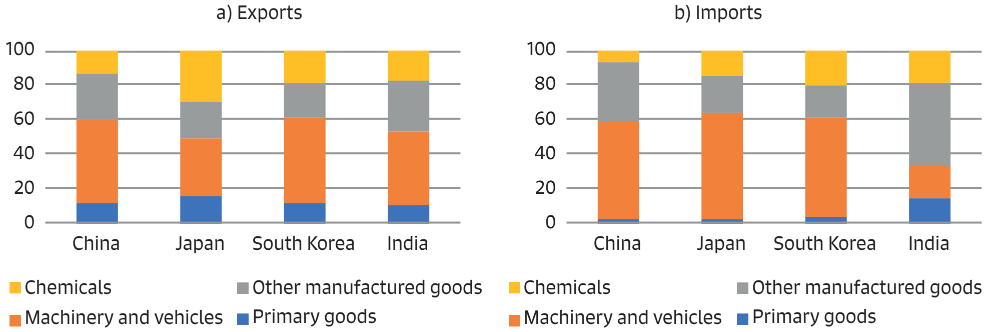


Note: The selected Asian countries include the trading partners relevant for the EU from East and South-East Asia, including India. In this region, other Asian countries' shares in EU international trade are quite small or practically non-existent. The data come from the period when the UK was a member of the EU.
CN – China; JP – Japan; KR – South Korea; IN – India; HK – Hong Kong; SG – Singapore; TH – Thailand; VN – Vietnam; ID–Indonesia

Source: Eurostat (2021).

As far as the commodity structure of the EU's trade is concerned, mainly manufactured goods are exported to Asian countries by the EU, whereas primary goods represent a small percentage of the exported goods. Also, the share of manufactured goods in EU imports is much higher than the share of primary goods. For example, in 2021, the EU exports of manufactured goods to China amounted to 86% of the total exports, whereas the primary goods – 12%. The most exported manufactured goods were machinery and vehicles (52%), followed by other manufactured goods (20%) and chemicals (15%). Also, the share of manufactured goods (98%) from China in EU imports was higher than the share of primary goods (2%). The most imported manufactured goods were machinery and vehicles (56%), followed by other manufactured goods (35%) and chemicals (7%) (Eurostat Statistics Explained 2021b) (Figure 5).

Figure 5. EU trade to selected Asian countries by product group, 2021 (%)



Source: Own work based on Eurostat Statistics Explained (2021b; 2021c; 2021d; 2021e).

Similarly, the share of manufactured goods in EU exports to Japan and South Korea (80% and 87% respectively) was higher than the share of primary goods (15% and 11% respectively). In both countries, the most exported manufactured goods were machinery and vehicles. In 2021, The EU imports of manufactured goods from Japan and South Korea amounted to 97% and 94%, out of machinery and vehicles ranked as the most imported goods (Eurostat Statistics Explained 2021c; d). In turn, the EU exported to India 84% of manufactured goods and 9% of primary goods. The most exported manufactured goods to India included machinery and vehicles (41%), followed by other manufactured goods (27%) and chemicals (16%). The share of manufactured goods in EU imports (86%) from India was also higher than the share of primary goods (14%). The most imported manufactured goods were other manufactured goods (47%), followed by machinery and vehicles (19%) and chemicals (19%) (Eurostat Statistics Explained, 2021e).

2. Role of global value chains for Asia and the European Union

Asia has not only considerably increased its regional share in world trade over the past years in comparison to other world regions, but it has also expanded its involvement in the global value chains (GVCs)[4], around which world trade and production are ever more structured.

The significance and diffusion of the GVCs have been growing over the past years, which is particularly visible in the case of Asia. The GVC participation index is analysed to illustrate this, based on the use of foreign inputs embodying foreign value added in the domestic production of exported goods and services. This indicates the extent to which a country is engaged in a vertically fragmented production process (De Backer, Miroudot, 2014; Koopman et al., 2014). The engagement measured using this index, in this type of organisation of production, has generally increased in Asia since 1995. For example, between 1995–2015[5], the GVC participation index (the backward participation index plus the forward participation index)[6] for all ASEAN countries rose from 40.1% to 45.9%. China (and consequently the region of Eastern Asia[7] and East and South-East Asia[8]) is an exception, where the index has been steadily declining since 2000 (from 47% in 2000 to 34.9% in 2015). The expansion of the index was particularly significant between 1995 and 2005. In 2010, a decline of the index was recorded in some countries (Cambodia, Indonesia, Malaysia, Singapore, Thailand), which was a result of the international crisis and trade collapse in 2009, later followed by a rebound. The European Union's involvement in the global value chain at global level decreased between 1995–2015; the GVC participation index generally declined for the EU-28 from 33.6% in 1995 to 26.9% in 2015. (Table 3).

4 A value chain is the 'full range of activities that firms and workers do to bring a product from its conception to its end use and beyond' (Gereffi, Fernandez-Stark, 2011). It usually includes activities such as design, production, marketing, distribution, and support to the final consumer, which can be performed within the same or among different companies. The fact that these activities are increasingly spread over several countries indicates its global character.

5 The data concerning the trade in value added are taken from the 2018 edition of the TIVA database covering the period from 2005 to 2015 (for some cases to 2016). These are the latest available data concerning trade in value added.

6 Engagement in GVC is traditionally measured by the sum of two indicators – the share of foreign value added (FVA) embodied in a county's export (FVX, backword indicator) and the share of domestic value added (DVA) of a given country embodied in the export of another country or the rest of the world (DVFX, forward indicator). In principle, a country downstream in a production chain will display a high value of the FVX index, whereas upstream countries will have a high value of the DVFX index.

7 According to OECD TiVA (2018) Eastern Asia (EASIA) comprises Japan, Korea, China, Hong Kong and Taiwan.

8 East and South-East Asia (ZASI) comprises Japan, Korea, Brunei, China, India, Cambodia, Malaysia, Philippines, Singapore, Thailand, Taiwan and Vietnam (OECD TiVA, 2018).

Table 1. GVC participation index, 1995–2015 (%)

	1995	2000	2005	2010	2011	2012	2013	2014	2015
ASEAN	**40.1**	**52.1**	**48.5**	**46.7**	**47.4**	**47.1**	**47.1**	**47.1**	**45.9**
Brunei	28.2	37.9	37.3	39.9	43.6	43.9	48.3	47.2	46.5
Cambodia	30.6	46.5	45.4	41.6	42.8	45	44.3	45.1	45
Indonesia	28.4	40.1	43	40.4	43.1	41.7	41.4	40.5	37.1
Malaysia	46	63.5	61	57.9	57.6	56.4	56.5	56	55.6
Philippines	42.6	51.7	46.4	46.9	46	45.4	44	43.2	44.4
Singapore	54.4	63.6	63.7	61.9	62.8	62.8	62.4	63.5	61.9
Thailand	36.2	46.9	53.8	50.9	52.9	52.3	51	50.4	47.3
Vietnam	34.2	46.7	50.6	53	54.5	53.3	54	54.4	55.6
EASIA	**33.6**	**42.2**	**32.7**	**33.5**	**35.1**	**34.4**	**34.1**	**33.8**	**31.6**
China	40.9	47	41.9	37.2	38.4	37.1	32.5	36.3	34.9
Hong Kong	37	38.7	45.3	47.4	47.8	46.9	45.7	45.1	42.3
Japan	29.2	37.2	36.6	37.8	40.1	39.1	39.7	40.2	37.6
Korea	39.1	50.3	53.3	56	58.4	58.4	56.5	55.1	51.7
Taiwan	46.2	53.3	59.9	62	62.7	62.2	61.4	60.4	56.8
ZASI	**34.2**	**42**	**28.7**	**28.9**	**30.4**	**30**	**29.7**	**29.3**	**27.3**
India	22.9	29.7	35.4	39	40.8	40	39.5	37.9	34
EU-28	**33.6**	**41.4**	**26.8**	**28.1**	**29.7**	**29.9**	**29**	**28.1**	**26.9**
USA	30.8	37	33.3	32.9	35.2	34.5	33.7	33.4	31.7

Note: The boxes in green show the highest values and the boxes in orange – the lowest.

Source: Own work based on the OECD TiVA (2018) database.

As a region, ASEAN's backward participation in the GVC, i.e., the foreign value added (FVA) embodied in exports as a percentage of gross exports (FVX index), has been growing between 1995 and 2015, moving from 27.6% in 1995 to 28.9% in 2015 and reaching the highest value of 36.3% in 2000. In Eastern Asia as well as East and South-East Asia, the FVX index fell by 2 pp and 7 pp respectively, also recording the top value in 2000 (20.9% for Eastern Asia and 24.9% for East and South-East Asia) (Table 2).

At global level, the EU backward participation in GVC (considering flows outside the EU)[9] measured in terms of FVA embodied in exports, increased between 1995–2000 from 19.2% in 1995 to 23.6% in 2000, but in 2015 it decreased to 12.2% (Table 2). Nevertheless, the FVX index for the EU is higher for example than for the USA (9.5%).

9 For regions, the FVA index excludes intra-regional trade (e.g., for the EU-28, exports to non-EU-28 countries are only taken into account). Intra-region value added flows (e.g., Polish value added in German exports) are treated as domestic value added (DVA). In other words, a region is treated as a single economy (OECD TiVA, 2018).

Table 2. Backward and forward participation in GVC, 1995–2015 (%)

	Backward participation (FVX)					Forward participation (DVFX)				
	1995	2000	2005	2010	2015	1995	2000	2005	2010	2015
ASEAN	**27.6**	**36.3**	**31.4**	**28.4**	**28.9**	**12.5**	**15.8**	**17**	**18.3**	**17**
Brunei	7.3	5.4	7.5	7.5	5.4	20.9	32.6	29.8	32.4	41.1
Cambodia	12.7	37	29.5	26.6	26.9	17.9	9.5	15.9	15	18
Indonesia	12	17	18.4	12.5	12.9	16.4	23.1	24.6	27.9	24.1
Malaysia	30.4	47.7	45	40.6	36.9	15.5	15.9	16	17.3	18.7
Philippines	29.8	33	26.3	23.9	22	12.8	18.6	20.1	23	22.4
Singapore	42.1	45.3	42.8	41.3	40.9	12.3	18.3	20.9	20.6	20.9
Thailand	24.2	31.9	38.4	36	33.6	12	15	15.4	14.9	13.8
Vietnam	21.6	27.2	36.1	40.5	44.5	12.6	19.5	14.5	12.5	11.1
EASIA	**15.7**	**20.9**	**14.5**	**16.4**	**13.5**	**17.9**	**21.3**	**18.2**	**17.1**	**18.1**
China	31	35.9	26.3	21.1	17.3	9.9	11.1	15.6	16.2	17.5
Hong Kong	21.6	15.6	27.7	31.6	26.6	15.4	23.1	17.7	15.8	15.7
Japan	5.6	7.4	10.2	12.2	13.2	23.6	29.8	26.4	25.6	24.4
Korea	22.3	29.7	32.7	38.2	32.6	16.8	20.6	20.6	17.8	19.1
Taiwan	30.7	32.2	37.1	41.5	32.4	15.5	21.1	22.8	20.5	24.4
ZASI	**19.1**	**24.9**	**13.9**	**14.4**	**12.3**	**15.2**	**17.1**	**14.8**	**14.4**	**15**
India	9.3	11.3	18.8	23.7	19.1	13.6	18.4	16.6	15.4	14.9
EU28	**19.2**	**23.6**	**10.4**	**12.8**	**12.2**	**14.4**	**17.9**	**16.4**	**15.3**	**14.7**
USA	**11.4**	**12.5**	**10.8**	**11.1**	**9.5**	**19.3**	**24.5**	**22.5**	**21.9**	**22.2**

Note: The boxes in green show the highest values and the boxes in orange – the lowest.

Source: Own work based on the OECD TiVA (2018) database.

As far as individual Asian countries are concerned, the FVX index for China significantly decreased from 31% in 1995 to 17.3% in 2015, while it especially grew for Malaysia, Thailand, Vietnam, Korea, and Taiwan, showing that for these countries, the FVA embodied in their exports constituted more than 30% of the total value of gross exports. This indicates that these countries are quite important in downstream production phases, such as assembly and export platforms for other countries. Japan shows a substantial increase in the FVX index as well, but this is generally at a much lower level.

In Table 2, the forward participation in GVCs measured by the domestic value added (DVA) embodied in foreign exports as the percentage of gross exports (the DVFX index, forward indicator) is also presented. This index tends to be relatively high for countries exporting large amounts of raw materials and commodities that enter the downstream manufacturing production, and therefore, in some cases, it cannot be directly interpreted as a sign of participation in GVCs, as such. This applies in the case of Brunei (the DVX index was 41.1% in 2015) and to some extent in Indonesia (24.1%). Leaving these countries aside, the DVFX index is relatively high and growing for most industrialised countries in Asia, first of all for Japan, but also for newly industrialised economies – Taiwan, Singapore and South Korea. For ASEAN as a whole (excluding within area flows), upstream involvement in the GVCs, i.e., Asian value added in foreign export at global level, increased from 12.5% to 17% between 1995 and 2015. For East and South-East Asia (excluding intra-area trade), the DVFX index remained rather constant at around 15%. However, the position of individual Asian countries has substantially changed. In the same period, Chinese value added embodied in foreign exports increased from 9.9% to 17.5% (which are still relatively low rates). The Japanese and Taiwan DVFX index reached 24.4%, and for the Philippines – 22.4%, indicating the diffusion of the GVCs among individual countries of the region. In addition to this group, there is India, whose forward participation slightly grew from 13.6% to 14.9% in the researched period.

The reasons for these changes vary, and they are related to the partial geographical reorganisation of the GVCs. While considering Asia as a whole, the choice of Asian partners in production sharing on the part of developed countries (Europe, the USA, Japan) has changed over time, moving partially from China towards smaller and less developed countries in the region (compare the backward participation index in Table 2). Some countries have increased their role as recipients of inputs, receiving production phases previously delocalised from developed countries to other countries in the region (e.g., Vietnam). Simultaneously, there has also been a process of delocalisation of the stages of production within the region, partially moving from the newly industrialised countries toward the relatively less developed ones, e.g., Malaysia, Vietnam (compare Table 2 indicators). Asian countries, such as South Korea and Taiwan, started themselves to delocalise production abroad and thus saw an increase in foreign value added in their exports.

As statistics show, Europe is less backward and forward integrated than Asia. Backward integration in East and South-East Asia was, in 2015, slightly higher than in the European Union (excluding intra-area trade) and the USA (respectively, 12.3% for East and South-East Asia versus 12.2% for the EU-28 and 9.5% for the USA). In turn, forward integration is also slightly higher for East and South-East Asia (15%) than in the EU-28 (14.7%), but lower than in the USA (22.2%).

For India, the level of backward integration considerably increased between 1995–2015 but is still lower than that of other dynamically developing Asian countries, and higher than in China. India is also less forward integrated than the majority of other countries in the region.

As far as the intensity of regional flows is concerned, countries in the region are the main source of foreign value added in exports of Asian countries (Table 3). In 2005–2015, the main country in Asian GVCs was Vietnam. For example, in 2015, Vietnam accounted for 4.6% of ASEAN, 24.8% of Eastern Asia, and 14.1% of China's FVA embodied in exports. Comparing Vietnam to China, China represented 1.8% of ASEAN and 5.3% of Eastern Asia's FVA embodied in exports. The position of China and Japan as the key source of foreign value added in the region is declining in significance, whereas Vietnam, Thailand, Taiwan, South Korea, and Singapore are gaining in importance as a source of FVA for other countries.

Table 3. FVA in exports (geographical distribution), by value added origin country, 2005 and 2015 (%)

Exporter	**ASEAN**		**EASIA**		China		Japan		India		**EU-28**	
	2005	2015	2005	2015	2005	2015	2005	2015	2005	2015	2005	2015
ASEAN	**0**	**0**	**11.7**	**12.7**	**2.9**	**6.2**	**5.2**	**3.3**	**0.7**	**0.9**	**5.4**	**4.1**
Singapore	4.2	4.6	7.5	9.4	1.2	2.3	4.1	4.4	1.2	1.8	8.1	7
Thailand	4.4	3.8	13.5	13.6	3.2	7	7.1	4.3	0.5	0.6	4.4	3.4
Vietnam	5.6	4.6	16.3	24.8	4.9	14.1	4	3.3	0.6	0.8	3.6	3.6
EASIA	**2.1**	**2**	**0**	**0**	**0**	**0**	**0**	**0**	**0.3**	**0.3**	**3.2**	**2.6**
China	2.4	1.8	10.9	5.3	0	0	4.6	1.6	0.4	0.3	3.5	2.4
Japan	1.1	1.6	2.1	3.4	1.2	2.5	0	0	0.1	0.2	1.6	1.8
Korea	2.6	2.5	11.1	11.1	3.7	6.9	6	2.9	0.3	0.4	4.1	4.2
Taiwan	3.2	3.6	14.6	11.1	3.5	5.4	8.2	4.1	0.3	0.4	3.5	2.4
ZASI	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0.4**	**0.4**	**3.7**	**2.9**
India	2.6	2.8	2.5	3.8	1.8	1.4	0.6	0.5	0	0	3.1	2.4
EU-28	**0.5**	**0.7**	**1.9**	**2.6**	**0.6**	**1.5**	**0.7**	**0.5**	**0.2**	**0.3**	**0**	**0**
USA	**0.3**	**0.4**	**2.5**	**2.7**	**0.9**	**1.8**	**1.1**	**0.5**	**0.1**	**0.2**	**2.5**	**1.9**
Rest of the world	**0.5**	**0.7**	**1.9**	**2.8**	**0.7**	**1.7**	**0.6**	**0.5**	**0.4**	**0.5**	**4.5**	**3.7**

Note: The boxes in green show the highest values and the boxes in orange – the lowest.

Source: Own work based on the OECD TiVA (2018) database.

Although the FVX index determining the EU's involvement in GVCs has currently decreased at global level, the foreign value added embodied in Asian exports generally grew between 2005–2015, although the values still stand at a relative low level. For example, for ASEAN, 0.7% of the foreign value added embodied in exports originated in the EU in 2015, as compared to 0.4% in 1995 (higher than the 0.4% that originated in the USA). For Eastern Asia, 2.6% of the FVX originated in the EU in 2015, in comparison to 1.9% in 1995 (slightly lower than 2.7% of the USA) (Table 3). Hence, the production links with Asia confirm the EU's growing involvement in GVCs. The EU countries are becoming more important partners for Asia in these GVCs, and their significance as the source of foreign value added for Asian countries is increasing. However, simultaneously, an increase in the value added that originates in the rest of the world has been recorded over recent years, which may weaken the role of the EU.

As far the percentage composition of the EU's FVA in exports is concerned, in 2005–2015 there was a recorded decrease in the relative contribution of the majority of Asian partner countries. Even if Singapore remains the largest contributor, its share has dropped from 8.1% to 7%. Japan and Korea slightly increased their shares; nevertheless, the East and South Asian share fell from 3.2% to 2.6%, mainly due to the reduction in other Asian countries' shares (China and Taiwan). In turn, for the EU-28, 4.1% of foreign value added embodied in EU exports originated in ASEAN, and 2.6% – in Eastern Asia in 2015.

According to statistics, Taiwan stands out in terms of forward links for many countries, strengthening its position as an assembly point for the region (Table 4). In 2015, Taiwan represented 4.1% of ASEAN, 13.8% of Eastern Asia, and 10.7% of China's DVA embodied in foreign exports.

Table 4. DVA in foreign exports (geographical distribution), by foreign exporting country, 2005 and 2015 (%)

Country of origin	**ASEAN**		**EASIA**		China		Japan		India		**EU-28**	
	2005	2015	2005	2015	2005	2015	2005	2015	2005	2015	2005	2015
ASEAN	**0**	**0**	**5.7**	**5.7**	**3.5**	**4**	**1.4**	**1.2**	**0.5**	**0.7**	**1.7**	**2**
Singapore	5.1	3.8	6.8	6.1	3	2.8	0.8	0.6	0.3	0.5	5.5	7.5
Thailand	3.8	3.3	5.7	5	2.9	3.1	0.9	0.7	0.2	0.3	2.5	2.1
Vietnam	4.7	2.2	3.9	4.4	1.6	2.2	0.9	0.8	0.1	0.2	2.7	2
EASIA	**4.3**	**4.4**	**0**	**0**	**0**	**0**	**0**	**0**	**0.3**	**0.3**	**2.4**	**2.5**
China	2.4	3.2	4.3	3.9	0	0	1.2	0.8	0.2	0.5	3.9	4
Japan	4.6	5.4	11.2	9.5	5	4.8	0	0	0.1	0.3	4.8	4.4
Korea	2.8	3.2	9.7	8.7	6.7	7.1	1	0.7	0.2	0.3	3.5	2.9
Taiwan	3.9	4.1	11.8	13.8	8.9	10.7	1	0.7	0.2	0.2	3.1	2.8
ZASI	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0.3**	**0.5**	**2.7**	**3**
India	2.6	2.8	3.5	2.8	1.8	1.4	0.3	0.3	0	0	5	4.5
EU-28	**1.5**	**1.5**	**2.5**	**2.8**	**1.4**	**1.9**	**0.6**	**0.5**	**0.3**	**0.4**	**0**	**0**
USA	**2.3**	**2**	**4.3**	**4.3**	**1.5**	**2.1**	**0.8**	**0.6**	**0.2**	**0.3**	**6.8**	**7.7**
Rest of the world	**3.1**	**3.7**	**6.3**	**8.7**	**1.8**	**3.5**	**1.2**	**1.2**	**0.5**	**1.6**	**8.8**	**8.4**

Note: The boxes in green show the highest values and the boxes in orange – the lowest.

Source: Own work based on the OECD TiVA (2018) database.

Among the large countries, the role of India in the region seems less relevant; its backward and forward links with the rest of the Asian countries appear weaker. Simultaneously, excluding intra-regional flows, foreign value added coming from the rest of the world increased between 2005 and 2015, indicating that production ties with other regions have expanded.

In turn, the European Union is more relevant with regard to forward links with Asia than backward links (Table 4). As a foreign recipient of Asian value added, the EU's share was 1.5% of ASEAN's and 2.8% of Eastern Asia's value added in 2015 (lower than the USA – respectively 2% for ASEAN and 4.3% for Eastern Asia).

In turn, as a foreign recipient of European value added, ASEAN's share was 2% of the EU's value added and Eastern Asia's share – 2.5%, as compared to the US 7.7% of the EU's value added. In 2015, Singapore represented 7.5% of the EU's DVA embodied in foreign exports, India – 4.5%, Japan – 4.4% and China – 4%.

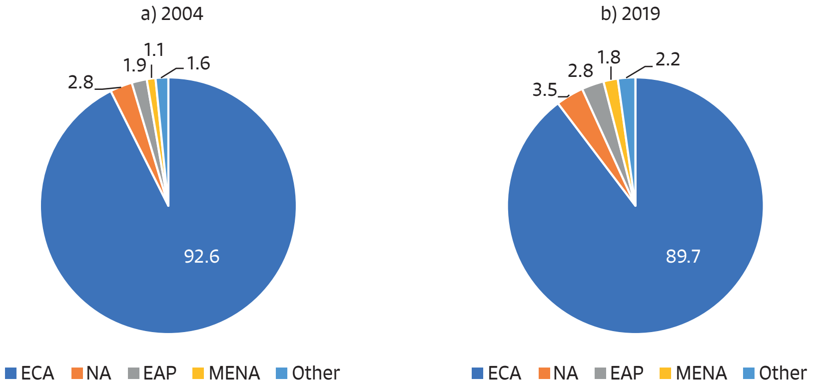
3. Poland's trade relations with Asian economies

For Poland, the majority of trade flows occur within the European Union. Since Poland's accession to the EU, Poland's intra-EU exports and intra-EU imports have accounted for nearly 2/3 of total trade. However, between 2004–2019 a decrease was recorded in Poland's intra-EU trade. Polish intra-EU exports fell from 80.6% to 79.9% (of the total exports), and intra-EU imports fell from 75.4% to 69% (of the total imports). Simultaneously, in the researched period, Polish extra-EU exports grew from 19.4% to 20.1%, and Polish extra-EU imports rose from 24.6% to 31%. (Suska, 2021).

As statistics show, the weighting of Asia in Polish trade has increased since Poland's accession to the EU. In particular, the region of East Asia and the Pacific has gained in significance in Polish trade outside the EU – Polish exports to this region have increased from 2.8% to 3.5%, and imports form this region have grown from 9.9% to 19.4% (Figures 6 and 7). Nevertheless, Europe and Central Asia still remain the key region for Poland's international trade (although, as the data indicate, it is currently slightly declining in significance). Other regions are practically irrelevant/marginally relevant for Poland's trade exchange outside the EU.

As far as Poland's trade relations with individual Asian countries are concerned, China is the key trading partner in terms of Polish exports and imports outside the EU. Poland's exports to China increased from 3.9% in 2004 to 5.5% in 2019, whereas imports from China more than doubled, going from 13.1% in 2004 to 28% in 2019. Other Asian countries, like Japan, India, or South Korea, are less important trading partners for Poland, with exports of approximately 1.3% – 1.4% of the Polish total extra-EU exports. In turn, Poland's imports from South Korea accounted for 5% of Polish total imports outside the EU, whereas imports from other Asian countries are less relevant (Figures 8 and 9).

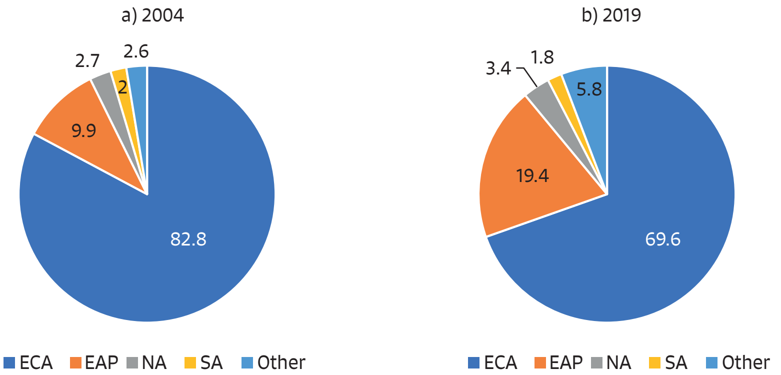
Figure 6. Poland's exports, by region, 2004 and 2019 (% of total exports)



Note: ECA – Europe and Central Asia; NA – North America; EAP – East Asia and the Pacific; MENA – Middle East and North Africa

Source: Own work based on WITS World Bank (2021).

Figure 7. Poland's imports, by region, 2004 and 2019 (% of total imports)



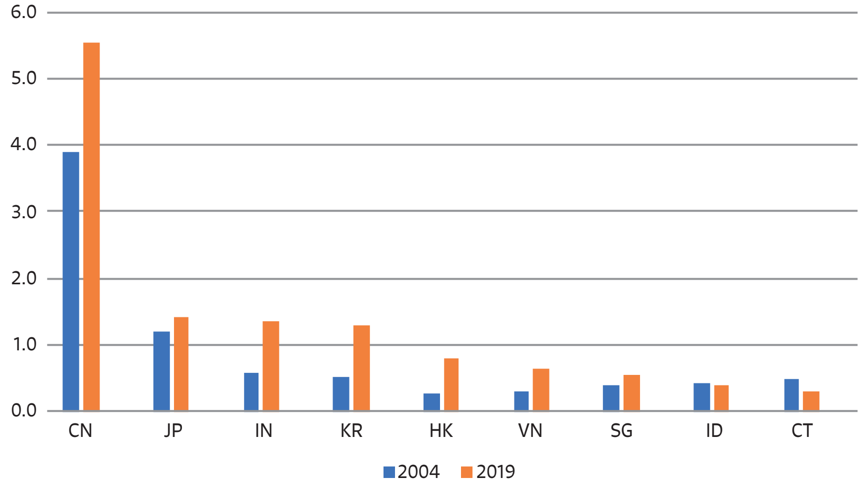
Note: ECA – Europe and Central Asia; EAP – East Asia and the Pacific; NA – North America; SA – South Asia

Source: Own work based on WITS World Bank (2021).

The importance of China as a trading partner in extra-EU trade is also visible while comparing the trade data of individual EU Member States. Germany's exports to China accounted for 17.4% of all German extra-EU exports, Slovakia's – 13.9% and the UK's – 11.9% (2019). For Poland, exports to China are lower in comparison with other EU countries (Table 5).

In terms of imports, China is a particularly important trading partner for Visegrad countries (V4) – in 2019, Slovakia's imports from China accounted for 38.8%, Poland – 28% and Hungary – 26.4%. South Korea and Vietnam were also significant in Slovakia's extra-EU imports in the researched period (Table 6).

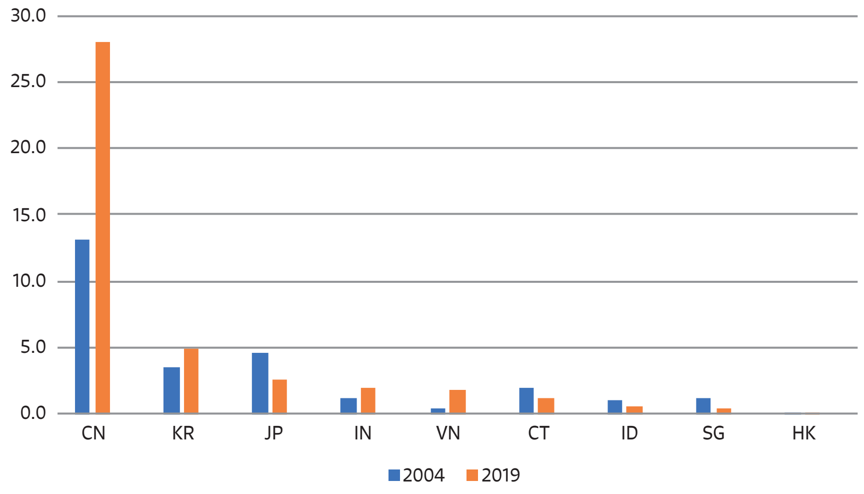
Figure 8. Poland's exports to Asian selected countries, 2004 and 2019 (% of total extra-EU exports)



Note: CN – China; JP – Japan; IN – India; KR – South Korea; HK – Hong Kong; VN – Vietnam; SG – Singapore; ID–Indonesia; CT – Chinese Taipei

Source: Eurostat (2021).

Figure 9. Poland's imports to Asian selected countries, 2004 and 2019 (% of total extra-EU imports)



Note: CN – China; JP – Japan; IN – India; KR – South Korea; HK – Hong Kong; VN – Vietnam; SG – Singapore; ID–Indonesia; CT – Chinese Taipei

Source: Eurostat (2021).

Table 5. Poland's exports to Asia in relation to selected EU members, 2019 (% of extra-EU exports)

	CN	HK	IN	JP	KR	SG	TH	VT
DE	17.4	1.1	2.2	3.8	3.2	1.3	0.9	0.8
FR	9.8	2.7	2.7	3.6	2.4	4.2	0.8	0.8
UK	11.9	4.4	2.3	3.3	1.9	2.7	0.6	0.3
IT	6.2	2.7	1.9	3.7	2.3	1.0	0.7	0.6
ES	6.8	0.9	1.3	2.7	2.3	0.9	0.7	0.4
PL	5.5	0.8	1.4	1.4	1.3	0.6	0.4	0.6
CZ	7.5	1.3	2.0	3.1	1.4	1.1	0.5	0.2
HU	7.2	1.4	1.1	2.1	1.6	0.9	0.8	0.4
SK	13.9	0.4	0.8	1.2	2.4	0.2	0.2	0.2

Note: In the table, the selected EU countries include the five greatest EU economies in terms of GDP at PPP in 2015 (2015 is the reference point in the research of this section) – Germany, France, the UK, Italy and Spain and the countries of the Visegrad Group (V4) – Poland, the Czech Republic, Hungary, and Slovakia. The data stem from the period when the UK was a member of the EU. The boxes in green show the highest values, and in orange – the lowest.

Source: Eurostat (2021).

Table 6. Poland's imports to Asia in relation to selected EU members, 2019 (% of extra-EU imports)

	CN	HK	IN	JP	KR	SG	TH	VT
DE	21.0	0.4	2.1	4.6	2.6	1.0	1.2	2.0
FR	17.1	0.4	2.8	3.3	1.8	1.7	1.0	2.1
UK	18.6	1.4	2.8	3.5	1.5	0.8	1.1	1.8
IT	18.4	0.2	3.0	2.4	2.2	0.2	0.9	1.8
ES	17.9	0.3	2.9	2.6	2.1	0.3	0.7	1.8
PL	28.0	0.1	1.9	2.6	5.0	0.4	0.7	1.8
CZ	38.8	5.4	1.3	4.0	5.9	1.1	2.1	0.6
HU	26.4	0.1	1.6	4.8	10.3	0.8	1.7	1.7
SK	18.8	0.1	0.9	1.2	22.9	0.1	1.2	6.6

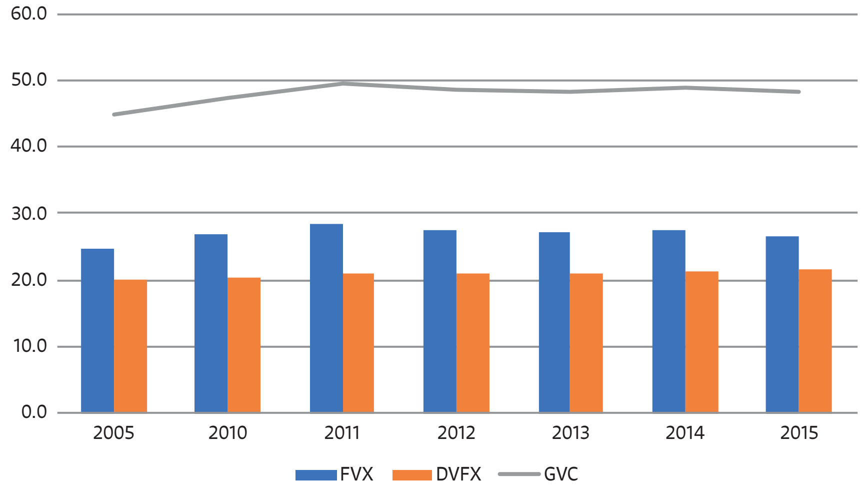
Note: In the table, the selected EU countries include the five greatest EU economies in terms of GDP at PPP in 2015 (2015 is the reference point in the research of this section) – Germany, France, the UK, Italy and Spain and the countries of the Visegrad Group (V4) – Poland, the Czech Republic, Hungary, and Slovakia. The data stem from the period when the UK was a member of the EU. The boxes in green show the highest values, and in orange – the lowest.

Source: Eurostat (2021).

Poland is not only strengthening its trade relations with Asia, but also reinforcing its position in the global value chains. Since Poland's accession to the EU, its GVC participation index has increased from 44.7% to 48.1% (Figure 10). However, in comparison to other EU members, Poland comes 12th among the EU-28 countries in this regard (Figure 11). The highest value of the GVC participation index was recorded by Luxembourg

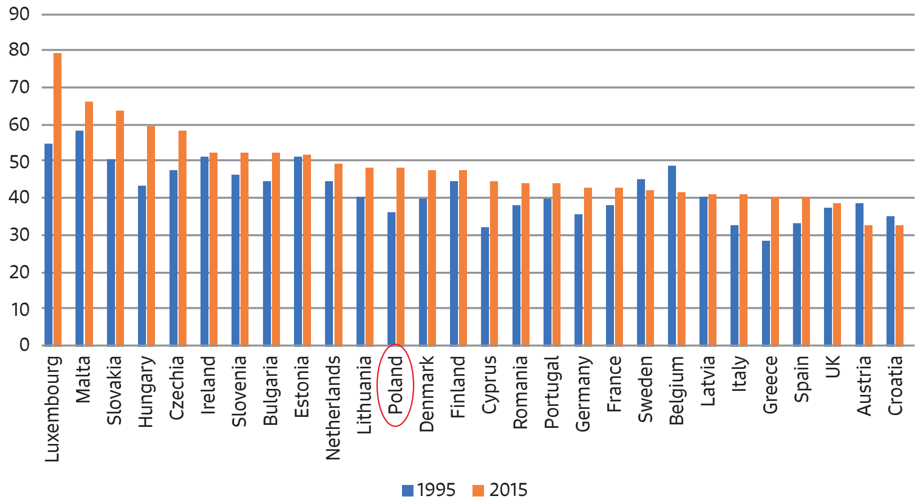
(80%), Malta (66%) and Slovakia (64%), and the lowest – Austria (32.9%) and Croatia (32.4%). In principle, Central and Eastern European countries record greater involvement in GVCs than West European economies.

Figure 10. Poland's participation in backward and forward integration in GVCs, 2005–2015 (%)



Source: Own work based on the OECD TiVA (2018) database.

Figure 11. GVC participation index for Poland and the EU-28, 1995 and 2015 (%)



Source: Own work based on the OECD TiVA (2018) database.

Between 2005–2015, Poland became more forward and backward integrated in the global value chain (GVC). The Polish FVX index increased from 24.7% in 2005 to 26.6% in 2015, reaching the highest value – 28.4% in 2011, which means that the value of the FVA embodied in Polish exports has been growing (Figure 13). Poland's DVA embodied in foreign exports slightly increased in the researched period.

When it comes to trade flows among individual EU and Asian countries, in 2015 Asian countries had the greatest share in Germany's foreign value added embodied in exports. Singapore and Korea accounted for 1.4% of Germany's FVA embodied in exports, Thailand – 1%, and Vietnam and Taiwan each 0.9%. Singapore represented the greatest share in the UK, Germany, and France's FVA embodied in exports. The share of Asian countries in FVA embodied in exports of the V4 countries (Poland, the Czech Republic, Hungary, and Slovakia) is almost non-existent or very low. ASEAN, EASIA and ZASI accounted for 0.1% of Poland's foreign value added embodied in exports in the researched period (Table 7).

Table 7. FVA in exports (geographical distribution), Poland and selected EU-28 members, 2015 (%)

	Germany	UK	France	Italy	Spain	Poland	Czechia	Hungary	Slovakia
ASEAN	**1**	**0.8**	**0.5**	**0.3**	**0.1**	**0.1**	**0**	**0**	**0**
Singapore	1.4	1.7	0.9	0.3	0.2	0.1	0	0	0
Thailand	1	0.5	0.4	0.3	0.1	0.1	0	0	0
Vietnam	0.9	0.4	0.4	0.4	0.2	0.1	0	0	0
EASIA	**0.9**	**0.4**	**0.3**	**0.2**	**0.1**	**0.1**	**0**	**0**	**0**
China	0.8	0.3	0.3	0.2	0.1	0	0	0	0
Japan	0.5	0.3	0.2	0.1	0.1	0	0	0	0
Korea	1.4	0.7	0.5	0.3	0.2	0.1	0	0	0
Taiwan	0.9	0.4	0.3	0.2	0.1	0.1	0	0	0
ZASI	**0.9**	**0.4**	**0.4**	**0.2**	**0.1**	**0.1**	**0**	**0**	**0**
India	0.6	0.5	0.3	0.2	0.1	0	0	0	0
USA	**0.5**	**0.3**	**0.3**	**0.2**	**0.1**	**0**	**0**	**0**	**0**
Rest of the world	**0.7**	**0.5**	**0.5**	**0.4**	**0.2**	**0.1**	**0.1**	**0**	**0**

Note: In the table, the selected EU countries include the five greatest EU economies in terms of GDP at PPP in 2015 (2015 is the reference point in the research of this section) – Germany, France, the UK, Italy and Spain and the countries of the Visegrad Group (V4) – Poland, the Czech Republic, Hungary, and Slovakia. The data stem from the period when the UK was a member of the EU. The boxes in green show the highest values, and in orange – the lowest.

Source: Eurostat (2021).

As far as individual EU countries are concerned, Germany stands out in terms of domestic value added embodied in foreign exports. In the period researched, ZASI represented 1.3% of Germany's DVA embodied in foreign exports, EASIA – 1.2% and ASEAN – 0.7%. As statistics show, the rest of the world is gaining in importance in Western Europa's DVA embodied in foreign exports. In the case of the V4 countries, EASIA and ZASI accounted for 0.3% of Poland's DVA embodied in foreign exports as compared to the Czech Republic – also 0.3%, and Hungary and Slovakia – 0.2%, each (Table 8).

Table 8. DVA in foreign exports (geographical distribution), selected EU-28 members, 2015 (%)

	Germany	UK	France	Italy	Spain	Poland	Czechia	Hungary	Slovakia
ASEAN	0.7	0.3	0.3	0.2	0.2	0.1	0.1	0.1	0.1
Singapore	1	0.3	0.4	0.2	0.1	0.1	0.1	0.1	0
Thailand	0.4	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0
Vietnam	0.5	0.2	0.2	0.2	0.1	0.1	0.1	0	0.1
EASIA	1.2	0.5	0.5	0.4	0.3	0.3	0.3	0.2	0.2
China	0.9	0.4	0.4	0.4	0.3	0.2	0.2	0.1	0.1
Japan	0.9	0.4	0.4	0.2	0.2	0.1	0.1	0.1	0.1
Korea	0.5	0.2	0.2	0.2	0.1	0.1	0.2	0.1	0.3
Taiwan	0.8	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1
ZASI	1.3	0.5	0.6	0.5	0.3	0.3	0.3	0.2	0.2
India	0.8	0.5	0.4	0.4	0.3	0.2	0.1	0.1	0.1
USA	1.2	0.7	0.8	0.4	0.3	0.1	0.1	0.1	0.1
Rest of the world	1.3	0.5	0.9	1	0.8	0.2	0.2	0.1	0.2

Note: In the table, the selected EU countries include the five greatest EU economies in terms of GDP at PPP in 2015 (2015 is the reference point in the research of this section) – Germany, France, the UK, Italy and Spain and the countries of the Visegrad Group (V4) – Poland, the Czech Republic, Hungary, and Slovakia. The data stem from the period when the UK was a member of the EU. The boxes in green show the highest values, and in orange – the lowest.

Source: Eurostat (2021).

Conclusions

Asia is increasingly significant in the world economy and is predicted to become even more important. Over the past two decades, Asia has had the highest GDP growth in comparison to other regions. Moreover, Asia has developed into a leading region and a hub in trade; there has been a shift in the share of trade from the Atlantic towards the Pacific. APEC accounts for nearly half of global trade. This is partly due to the exceptional performance of China and its impact on the region. China has become the second largest economy worldwide after the USA. China is also the largest country in the world and the second largest importer. However, other countries of the region are also increasing their GDP and trade dynamics. Japan, South Korea, and India maintain quite significant trading relations with the EU. Additionally, Hong Kong, Indonesia, Singapore, Thailand, and Vietnam can also be recognised as quite important EU partners in terms of exports and imports. However, other East and South-East Asian countries play a marginal role in the EU international trade. In particular, South Korea and India have considerably increased their shares in extra-EU trade. However, Japan has been declining in importance in the EU international trade – its share in the extra-EU exports and imports fell in the researched period.

ASEAN countries have expanded their backward integration in GVCs – their FVX index has increased, which indicates that they are quite important downstream production phases. Additionally, the value of the FVA embodied in EU's exports has grown over the researched period. For ASEAN members, also upstream involvement in GVCs has risen, whereas for East and South-East Asia it is rather stable. In principle, forward participation in GVCs is relatively high for Japan, as well as Asian newly industrialised countries. As far as the intensity of regional flows is concerned, the countries of the region are the main source of foreign value added embodied in exports of Asian countries; however, China and Japan are currently declining in significance in this respect. Although the EU's involvement in GVCs measured by the FVX index has decreased at global level, the FVA embodied in Asian exports has generally increased. Thus, in terms of production sharing and creation of value added, European companies' links with Asian producers are becoming ever more important and their significance as the source of FVA for Asian countries has increased. As the existing data indicate, Asia has started to play a strategic role for the EU. Nevertheless, the EU has been generally less active in cultivating economic ties in the area compared with countries of other regions. The number of EU free trade agreements in the region of East and South-East Asia is relatively small, especially in comparison to the activism of Asian countries in this respect.

The significance of Asia in Polish trade in goods outside the EU has increased since Poland's accession to the EU. In particular, the region of East Asia and the Pacific has become important – both Poland's exports and imports have increased in this region, although Europe and Central Asia still remain the core region for Polish foreign trade. As far as Poland's trade relations with individual Asian countries are concerned, China is the key trading partner in terms of Polish exports and imports outside the EU. Other Asian countries like Japan, India or South Korea are less important trading partners for Poland.

Poland has also been strengthening its engagement in the global value chains (GVCs) since its accession to the EU. Poland has become more forward and backward integrated in the GVCs – Polish foreign value added (FVA) embodied in exports increased during the researched period. Also, there has been slight growth in Polish domestic value added (DVA) embodied in foreign exports. As far as the intensity of regional flows is concerned, individual Asian countries' share in Poland's foreign value added embodied in exports is quite low, for example East and South-East Asia accounts for only 0.1% of Poland's FVA embodied in exports in the researched period. Also, East and South-East Asia accounts for only 0.3% of Poland's DVA embodied in foreign exports.

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POLISH BILATERAL INVESTMENT TREATIES AFTER THE LISBON TREATY

Introduction

Bilateral agreements for the promotion and reciprocal (mutual) protection of investments are commonly known as BITs (Bilateral Investment Treaties). In the EU, around 200 BITs have been concluded between the EU states, and hundreds adopted between EU Members States and non-EU countries (Dispute settlement, 2012, p. 45). Since the Treaty of Lisbon was signed on 13 December 2007, and the judgement of the Court of Justice of the European Union in the case of *Achmea* (C-284/16) was adopted, the situation of BITs in the EU has changed. The new situation is different depending on whether bilateral investment agreements were concluded between EU states (intra-EU BITs) or were concluded with countries outside of the EU (extra-EU BITs).

The main goal of this chapter is presentation of the legal actions of the Polish Government undertaken on the grounds of EU regulations and CJEU judgments in respect to intra-EU BITs. The secondary objective is describing the legal situation of investors who, in the general meaning, should be protected when BITs are terminated for a period specified in the BITs (*survival clause*).

The paper argues that the Polish Government's actions are in line with EU regulations and CJEU judgments that directly eliminate intra-EU BITs from the EU legal system. Nonetheless, because Polish intra-EU BITs are terminated in different ways, the situation of investors might vary. The basic method used in this chapter is the formal-dogmatic method. The contribution focuses mainly on the analysis of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Regulations of the European Parliament and of the Council regarding BITs, and the judgment of the Court of Justice of the European Union in the *Achmea* case, but also on selected Polish BITs concluded with European states and third countries, and actions of the Polish Government based on EU law and policy.

Consequently, the study consists of sections containing an overview of the Polish BITs and synthesis of the regulations of common commercial policy in the Treaty of Lisbon, followed by two parts of the study on the EU's and the Polish Government's actions as a consequences of EU legal regulations and CJEU judgments, in respect to extra-EU BITs and intra-EU BITs. Final remarks are provided at the end.

1. Overview of the Polish Bilateral Investment Treaties

BITs concluded by Poland do not differ from other investment treaties commonly entered into by other states. The main goal of Polish BITs is to create favorable and equitable conditions for investments by investors of one contracting party in the territory of the other contracting party (Vandevelde, 2010, pp. 43–106). In other words, BITs should reduce legal barriers to trade (Vandevelde, 2017, p. 37) between Poland and other contractors. BITs provide major benefits, including national treatment, 'most-favored nation' treatment, protection from expropriation, reparation of investments, protection against unlawful activities, and protection against legal changes leading to unjustified harm to investors (Dąbrowski, 2021, p. 247). All BITs contain definitions of basic terms such as 'investments', 'investor', 'returns' and 'territory'. Some BITs contain additional terms such as 'freely convertible currency', for example the Agreement between the Government of the Republic of Poland and the Government of Mongolia concerning the encouragement and reciprocal protection of investments drawn up in Warsaw on 8 November 1995, and 'freely usable currency', for example the Agreement between the Government of the Republic of Poland and the Government of Malaysia for the promotion and protection of investments drawn up in Kuala Lumpur on 21 April 1993. Both of those agreements slightly differ in wording but the meaning of these terms is the same. Additionally, the Agreement between the Government of the Republic of Poland and the Government of the Kingdom of Thailand for the promotion and protection of investments drawn up in Bangkok on 18 December 1992 (Article 1, point 7) contains a definition of the term 'expropriation'. The broadest array of definitions is found in the Agreement between the Republic of Poland and the State of Kuwait for the Promotion and Protection of Investments drawn up in Kuwait on 5 March 1990, which additionally defines the terms 'own' ('control') and 'associated activities' (Article 1, point 9), and the Treaty between the United States of America and the Republic of Poland Concerning Business and Economic Relations drawn up in Washington on 21 March 1990, which additionally defines for example the term 'commercial activity' (Article 1, paragraph 1, point i).

Generally, BITs also contain regulations to promote and allow investments. Examples are the Agreement between the Government of the Republic of Poland and the Government of Ukraine on the reciprocal promotion and protection of investments drawn up in Kyiv on 12 January 1993, and the Agreement between the Government of the Republic of Poland and the Government of the Republic of Albania on the reciprocal promotion and protection of investments drawn up in Warsaw on 5 March 1993, according to which, in general, each party should promote investments by the investor of the other party and allow such investments in accordance with its laws and regulations (Articles 2).

BITs sometimes contain additional regulations, such as Agreement between the Republic of Poland and Australia on the reciprocal promotion and protection of investments signed in Camber on 7 May 1991, which provided for special regulations for entry and sojourn of personnel (Article 5). In Polish BITs regulations of this kind are unusual.

Similarly, not all BITs contain regulations about consultation on the interpretation or application of the agreement, and about exchange of information between the parties about the impact of the laws, regulations and decisions which might affect investments covered by BITs. An example in this area is the Agreement between the Republic of Poland and the Macedonian Government on the encouragement and reciprocal protection of investments drawn up in Skopje on 28 November 1996 (Article 10), and the Agreement between the Republic of Poland and the Hashemite Kingdom of Jordan on the reciprocal promotion and protection of investments drawn up in Amman on 4 October 1997 (Article 10).

BITs sometimes regulate in a separate article the issue of the 'Scope of application'. Not all BITs contain this kind of regulation, as in general these regulations limit the scope of BITs, for example the Agreement between the Government of the Republic of Poland and the Government of the Republic of Azerbaijan on reciprocal promotion and protection of investments drawn up in Warsaw on 26 August 1997 (Article 2). This agreement provides that the agreement can apply to investments in the territory of a contracting party made in accordance with its laws and regulations by investors of the other contracting party regardless of whether it was made before or after the entry into force of the contract. In contrast, the Agreement between the Republic of Poland and the Socialist Republic of Vietnam for the promotion and reciprocal protection of investments drawn up in Warsaw on 31 August 1994 states that it can apply to investments made after the entry of the agreement into force. In a different way, but with the same effect, the Agreement between the Republic of Poland and the Republic of Uzbekistan on the reciprocal promotion and protection of investments drawn up in Warsaw on 11 January 1995 (Article 2) stipulates that the agreement can apply to investments made after 1 September 1992 (the date of entry into force of the Agreement). Sometimes regulations in this respect are more specific. The Agreement between the Government of the Republic of Poland and the Government of the Republic of Chile on the reciprocal promotion and protection of investments drawn up in Warsaw on 28 November 1995 contains regulations according to which the agreement can apply to all investments made prior to and after the entry into force of the agreement. Nevertheless, it further specifies that 'it shall however not be applicable to disputes which arose prior to its entry into force or to disputes directly related to events which occurred prior to its entry into force' (Article 2).

Additionally, BITs give investors accessed to a neutral investor-state dispute settlement mechanism (arbitration) when a problem arises with the host government (Dąbrowski, 2020, p. 316). Not all BITs contain investor-state arbitration provisions (Vandevelde, 2005, p. 188), for example the Investment guarantee Agreement between the Government of the Polish People's Republic and the Government of the United States of America drawn up in Warsaw on 13 October 1989, which contains only regulations about settlement of disputes between contracting parties (Article 6)[1]. Nevertheless, regulations on settlement of disputes between a state and investor are a key issue of investor protection and BIT regulations.

BITs sometimes provide for arbitration only for a limited scope of claims, typically compensation for expropriation (Pohl, et al., 2012, p. 16). An example is the Agreement between the Government of the Polish People's Republic and the Government of the People's Republic of China on the reciprocal encouragement and protection of investments drawn up in Beijing on 7 July 1988 (Article 10). Similarly, in the Agreement between the Government of the Republic of Poland and the Government of Turkey on the Promotion and Protection of Investments drawn up in Ankara on 21 August 1991, arbitration is also limited but not only to expropriation, and also covers repatriation of investments and returns (Article 8). On the other hand, the Agreement between the Government of the Republic of Poland and the Government of the Russian Federation for the Promotion and Reciprocal Protection of Investments drawn up in Warsaw on 2 October 1992 does not provide for any limitation in this regard (Article 10).

BITs provide that all disputes should first be settled in an amicable way, and when this solution does not work, international arbitration is usually the next step (Investor-State Disputes, 2005, p. 3). The Agreement between the Republic of Poland and the People's Republic of Bangladesh on the reciprocal promotion and protection of investments drawn up in Warsaw on 8 July 1997 (Article 7) and the Agreement between the Government of the Polish People's Republic and the Government of the Republic of

1 In the Treaty between the United States of America and the Republic of Poland Concerning Business and Economic Relations, Washington, 21. 03.1990, Article IX concerns Settlement of Disputes Between a Party and an Investor of the Other Party.

Korea for the Promotion and Reciprocal Protection of Investments drawn up in Seul on 1 November 1989 (Article 8) state that dispute can be submitted to arbitration within six months from the date either party requests amicable settlement. The period of six months is most commonly used in agreements. The period allowed for instigating arbitral proceedings can be shorter, and in the case of the Agreement between the Government of Poland and the Government of the State of Israel for the Promotion and Reciprocal Protection of Investments drawn up in Jerusalem on 22 May 1991, the period is three months (Article 8, point 2). The period for instigating arbitral proceedings can also be longer, and in the case of the Agreement between the Republic of Poland and the Republic of Bialorus on the Reciprocal Protection and Protection of Investments drawn up in Warsaw on 24 April 1992 it is 12 months (Article 8).

Like other BITs, a majority of Polish BITs provide for several rules which investors may use in arbitration proceedings (Dispute settlement, 2012, p. 8). The most frequently mentioned are: 1) the rules of the International Center for the Settlement of Investment Disputes (ICSID), 2) the rules of the Institute of Arbitration at the Chamber of Commerce in Stockholm, and 3) the rules of the International Chamber of Commerce in Paris. In the case of Polish BITs, for instance, the Agreement on reciprocal promotion and protection of investments between the Government of the Republic of Poland and the Government of the Islamic Republic of Iran drawn up in Teheran on 2 October 1998, and the Agreement between the Government of the Republic of Poland and the Government of Canada for the Promotion and Reciprocal Protection of Investments drawn up in Warsaw on 6 April 1990 specify only the Arbitration Rules of the United Nations Commission for The International Trade Law (UNICITRAL). In turn, the Agreement between the Republic of Poland and the Republic of Moldova on the reciprocal promotion and protection of investments drawn up in Warsaw on 16 November 1994 specify only the rules of the International Chamber of Commerce in Paris (Article 10, point 4). Besides the rules mentioned above, other rules like the Rules of the Singapore International Arbitration Center are specified in BITs very rarely (Pohl, et al., 2012, p. 20). An example is the Agreement between the Government of the Polish People's Republic and the Government of the Republic of Singapore on the promotion and protection of investments drawn up in Warsaw on 3 June 1993.

Some BITs, such as the Poland-Singapore BIT (Article 13, point 2) and the Agreement between the Government of the Republic of Poland and the Government of the United Arab Emirates for the promotion and protection of investments drawn up in Abu Dhabi on 31 January 1993 (Article 9 point 3d) also specify the grounds for the arbitration decision as: 1) the investment treaty itself, 2) the national law of the contracting Party, 3) the rules relative to conflicts of law, or 4) the rules and the universally accepted principles of international law. Unlike in the Treaty between the Government of the United

States of America and the Oriental Republic of Uruguay concerning the encouragement and reciprocal protection of investments drawn up in Mar del Plata on 4 November 2005[2] and Treaty between the Government of the United States of America and the Government of the Republic of Rwanda concerning the encouragement and reciprocal protection of investments drawn up in Kigali on 19 February 2008[3], Polish BITs do not contain provisions stating that claims are time-barred, limiting accessed to arbitration if a claim has not been brought within a specified period of time.

In general BITs contain special *survival clauses* concerning the 'termination of the agreement', under which each agreement may be terminated subject to a period (for example 6 months) with written notice. However, with regard to investments made prior to the expiry of individual agreements, the agreements remain in force for a subsequent period of time. This additional period of time can be ten years, as in the case of the Agreement between the Republic of Poland and the Republic of Bialorus on the Reciprocal Protection and Protection of Investments drawn up in Warsaw on 24 April 1992, and the Agreement between the Government of the Polish People's Republic and the Government of the People's Republic of China on the reciprocal encouragement and protection of investments drawn up in Beijing on 7 July 1988; or fifteen years, as in the case of the Agreement between the Government of the Republic of Poland and the Oriental Republic of Uruguay on the encouragement and reciprocal protection of investments drawn up in Montevideo on 2 August 1991, and the Agreement between the Government of the Republic of Poland and the Government of Turkey on the Promotion and Protection of Investments drawn up in Ankara on 21 August 1991; or 20 years from the expiry date, as in the case of the Agreement between the Republic of Poland and the State of Kuwait for the Promotion and Protection of Investments drawn up in Kuwait on 5 March 1990. *Survival clauses* provide protection for investors who make investments on the basis of a contractual prohibition on adverse or unfair governmental measures, in the event that the host country terminates the agreement (Voon, et al., 2014, p. 466).

2. The Lisbon Treaty regarding BITs

The Treaty of Lisbon was signed in Lisbon on 13 December 2007 and entered into force on 1 December 2009. The agreement amended the Treaty on European Union and the Treaty establishing the European Community providing for the reform of the institu-

2 The USA-Uruguay BIT (2005) states that claims are time-barred three years from when an investor has 'acquired knowledge or should have acquired knowledge of the alleged breach'.

3 The USA-Rwanda BIT (2008) states that claims are time-barred three years from when an investor has 'acquired knowledge or should have acquired knowledge of the alleged breach'.

tions of the European Union. The Lisbon Treaty also contains some changes in aspects of investment cooperation between states.

Following the entry into force of the Treaty of Lisbon (Article 2 B, point e), Foreign Direct Investment was included in the list of matters falling under the common commercial policy. Respectively, in accordance with Article 3 point 1e of the Treaty on the Functioning of the European Union, the European Union has exclusive competence with respect to common commercial policy (Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47–390). According to Article 2 point 1 of the TFEU, when the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts. In a situation like this, the Member States are able to do so themselves only if so empowered by the Union or for the implementation of Union acts. This means that only the European Union may legislate and adopt legally binding acts within that area.

Under Article 207 of the TFEU, 'The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action' (respectively Article 188 C of the Treaty of Lisbon). Accordingly, only the Union may legislate and adopt legally binding acts within that area. The Member States are able to do so themselves only if so empowered by the Union. The Lisbon Treaty made the EU rather than the individual Member States responsible for negotiating investment agreements. For the Member States, BITs were seen to be crucial instruments for establishing trade relations with third countries. The Member States were in charge of negotiating and executing BITs with third countries on their own. This created a very complex BIT 'pool' in the EU and with third countries, including an extensive investment definition and multibranched investor protection clauses (Ünüvar, 2012, p. 9). Furthermore, some of those agreements may include provisions affecting the common rules on capital movements laid down in Chapter 4 of Title IV of Part Three TFEU[4].

The common commercial policy must be implemented in the context of the principles and objectives of the Union's external action. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure,

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4 Additionally, Chapter 4 of Title IV of Part Three of the Treaty on the Functioning of the European Union lays down common rules on the movement of capital between Member States and third countries, including in respect of capital movements involving investments. Those rules can be affected by international agreements relating to foreign investment concluded by Member States.

adopt measures defining the framework for implementing the common commercial policy (Article 207(2) TFEU). Where agreements with one or more third countries or international organizations need to be negotiated and concluded, the crucial role is played by the Commission and Council. Article 218 TFEU provides for a detailed procedure for the Commission and Council when agreements between the Union and third countries or international organizations have to be negotiated and concluded. Some special provisions in respect of foreign direct investment are also included in Article 207 TFEU[5].

At the time of the entry into force of the Treaty of Lisbon, Member States maintained a significant number of bilateral investment agreements between EU states (intra-EU BITs) and with third countries (extra-EU BITs). The TFEU does not contain any explicit transitional provisions for such agreements, which come under the Union's exclusive competence since the Lisbon Treaty took effect. Although bilateral investment agreements remain binding on the Member States under public international law, the situation looks slightly different depending on whether intra-EU BITs or extra-EU BITS are at stake.

3. Extra-EU BITs

In the range of bilateral investment agreements concluded between EU states and third countries (extra-EU BITs) the most relevant are two regulations: the Regulation of 6 April 2011 on the future European international investment policy (OJ C 296E, 2.10.2012, pp. 34–40) and Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries (OJ L 351, 20.12.2012, pp. 40–46). The regulation has been in force since 9 January 2013.

In the first regulation, the Parliament decides that future investment agreements concluded by the EU should be based on the best practices drawn from Member State experiences and include the following standards: 1) non-discrimination (national treatment and most favored nation), 2) fair and equitable treatment, and 3) protection against direct and indirect expropriation. The Parliament stresses that future investment agreements concluded by the EU must respect the capacity for public interven-

[5] The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.
The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

tion. In this respect, all future agreements should have specific clauses laying down the right of parties to regulate, *inter alia*, in the areas of protection of national security, public health, workers' and consumers' rights, and industrial policy and cultural diversity. Regarding social and environmental standards, the Parliament stresses that the EU's future policy must also promote investment which is sustainable, respects the environment (particularly in the area of extractive industries) and encourages good quality working conditions in the enterprises targeted by the investment and in this respect future agreements should refer to the updated OECD Guidelines for Multinational Enterprises and the corporate social responsibility. Regarding a dispute settlement mechanism and EU responsibility, changes must be made to the present dispute settlement regime, in order to include greater transparency, the opportunity for parties to appeal, the obligation to exhaust local judicial remedies where they are reliable enough to guarantee due process, the possibility to use amicus curiae briefs, and the obligation to select one single place of investor-state arbitration.

In the second regulation, the European Parliament and the Council decide that bilateral investment agreements remain binding on the Member States under public international law, unless they are replaced by agreements of the Union relating to the same subject matter. As long as the BITs are not replaced, the conditions for their continuing existence and their relationship with the Union's investment policy require appropriate management. Implementing those assumptions, the Regulation addresses the status of bilateral investment agreements of the Member States signed before 1 December 2009[6] and also concluded and/or signed between 1 December 2009 and 9 January 2013[7]. Within the range of those dates, BITs can be maintained in force, or enter into force, in accordance with the Regulation. Simultaneously, Member States are required to take the necessary measures to eliminate incompatibilities with Union law (if they exist), contained in bilateral investment agreements that they conclude with third countries (points 1–11)[8].

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6 The Lisbon Treaty entered into force.

7 A Parliament and Council regulation entered into force.

8 Where a Member State intends to enter into negotiations with a third country in order to amend or conclude a bilateral investment agreement, it shall notify the Commission of its intentions in writing. The Commission shall authorise the Member States to open formal negotiations with a third country to amend or conclude a bilateral investment agreement unless it concludes that the opening of such negotiations would: be in conflict with Union law or Union's principles and objectives for external action, be superfluous, because the Commission is going to start the negotiations with that third country (article 8, 9), or constitute a serious obstacle to the negotiation or conclusion of bilateral investment agreements with third countries by the Union. The Commission should be informed of the progress and results of the negotiations and may request to participate in the negotiations concerning investment between the Member State and the third country. Before signing a bilateral investment agreement by the Member State Commission shall make an assessment as to whether the negotiated bilateral investment agreement is consisted with the Regulation. In the event of refusal of authorisation the State is informed thereof and state the reasons therefor.

According to the list of bilateral investment agreements referred to the Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries (Article 4 point 1, OJ C 147, 11.5.2017, pp. 1–105[9]) about one thousand four hundred extra-EU BITs[10] have been concluded in the EU. The Regulation aims to ensure a smooth transition from the current system of bilateral investment treaties (BITs) between EU countries and non-EU countries to a system under which BITs are negotiated by the European Commission[11].

As mentioned above, the Regulation provides for two different statuses of extra-BITs depending of the date on which a BIT is signed. BITs signed before 1 December 2009, i.e. before the Treaty of Lisbon entered into force, can, upon authorization by the Commission, 1) be maintained in force or enter into force under the conditions of the regulation until a BIT between the EU and a non-EU country comes into force, 2) be amended (including to address an inconsistency between the BIT and EU law) or a new agreement can be concluded subject to the conditions set out in the Regulation. In turn, BITs signed between 1 December 2009 and 9 January 2013, i.e. BITs signed between entry into force the of the Treaty of Lisbon and entry into force of Regulation No 1219/2012, are maintained in force or enter into force if, in the view of the Commission, they do not conflict with any other EU law, are not inconsistent with the EU's principles, and are not deemed superfluous in view of Commission negotiations with that non-EU country. Additionally, if the conditions of the regulation are fulfilled, the Commission may authorize an EU country to enter into negotiations with a non-EU country concerning a new BIT or to sign and conclude a new BIT if the negotiation result is in line with the requirements of the regulation. The Commission has been given implementing power to ensure that the regulation is implemented uniformly and is assisted by the Committee for Investment Agreements.

Regulation (EU) No 912/2014 of the European Parliament and of the Council of 23 July 2014 establishing a framework for managing financial responsibility linked

Similar rules apply to agreements signed between 1 December 2009 and 9 January 2013. The Commission shall present to the European Parliament and the Council a report on the application of this Regulation by 10 January 2020.

9 List of the bilateral investment agreements referred to in Article 4(1) of Regulation (EU) No 1219/2012 of the European Parliament and of the Council establishing transitional arrangements for bilateral investments agreements between Member States and third countries (2018/C 149/01).

10 According to the Article 3 of Regulation No 1219/2012, without prejudice to other obligations of the Member States under Union law, bilateral investment agreements notified according to Article 2 of this Regulation may be maintained in force, or enter into force, in accordance with the TFEU and this Regulation, until a bilateral investment agreement between the Union and the same third country enters into force.

11 Available at Https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=LEGISSUM%3A4314900 (accessed: 12.10.2021).

to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party (OJ L 257, 28.8.2014, pp. 121–134) has also been adopted, but concerns specifically the narrow issue of BITs, namely settlement of investment disputes. Investment agreements between Member States are not covered by the above regulations.

To conclude, the extra-EU BITs remain in force until they are replaced by EU-wide international investment agreements between the EU itself and non-EU countries (Rogers, et al., 2017, pp. 24–27). As in the case of the Polish-Singapore BIT, which will be replaced by the EU-Singapore investment protection agreement, and in the case of the Polish-China BIT, which will be replaced by the EU-China Comprehensive Agreement on Investment (30 December 2020) if it enters into force. In this respect, no additional notice of termination is required. According to Article 4.12 paragraph 3 a) of the EU-Singapore investment protection agreement, 'Upon the entry into force of this Agreement, the agreements between Member States of the Union and Singapore listed in Annex 5 including the rights and obligations derived therefrom, shall be terminated and cease to have effect, and shall be replaced and superseded by this Agreement.' Annex 5 contains a list of BITs concluded between the EU and Singapore. In turn, according to Article 15 (Relation with other agreements) of the EU-China Comprehensive Agreement on Investment, 'Previous agreements between the Member States of the European Union and/or the European Community and/or the European Union and China are not superseded or terminated by this Agreement.' Additionally, 'the present Agreement shall be an integral part of the overall bilateral relations as governed by the Trade and Economic Cooperation Agreement or a future Framework Agreement.'

4. Intra-EU BITs

Unlike in extra-EU BITs, in the range of bilateral investment agreements concluded between EU states (intra-EU BITs) the most relevant are not regulations but a judgment of the Court of Justice of the European Union. On 6 March 2018, the CJEU ruled in the *Achmea* case (C-284/16) that the BITs violated EU law because they allowed an arbitral tribunal to interpret provisions of EU law in a dispute between investors and (Member) States, while such interpretation could not be effectively challenged via the domestic court process[12].

[12] Achmea, an undertaking belonging to a Netherlands insurance group, acting in Slovakia, suffered damage because of amendment to Slovak law. Achmea brought arbitration proceedings against Slovakia, and Germany was chosen as the place of arbitration. German law applies to the arbitration proceedings concerned, and the arbitral tribunal ordered the Slovak Republic to pay Achmea damages in the principal amount of

In accordance with the CJEU judgment, arbitral tribunals acting based on the regulations of BITs take account in particular of the law in force of the contracting party concerned and other relevant agreements between the contracting parties. This means that arbitral tribunals may be called on to interpret or apply EU law, particularly the provisions concerning the fundamental freedoms, including freedom of establishment and free movement of capital. Additionally, an arbitral tribunal is not part of the judicial system of any state, and thus it is not situated within the judicial system of the EU, which means that its decisions are not subject to mechanisms capable of ensuring the full effectiveness of the rules of the EU. It follows that a tribunal such as that referred to in a BIT cannot be regarded as a 'court or tribunal of a Member State' within the meaning of the TFEU, and is not therefore entitled to make a reference to the Court for a preliminary ruling[13]. Moreover, the arbitral tribunal is obliged to determine its own procedure and, in particular, is itself to choose its seat and consequently the law applicable to the procedure governing judicial review of the validity of the award by which it puts an end to the dispute before it. The decisions of the arbitral tribunals are final. The judicial review can be exercised by the national court only to the extent that national law permits. Generally, that law provides only for limited review, concerning in particular the validity of the arbitration agreement under the applicable law and the consistency with public policy of the recognition or enforcement of the arbitral award. Consequently, the mechanism for settling disputes can prevent those disputes from being resolved in a manner that ensures the full effectiveness of EU law, even though they might concern the interpretation or application of that law (points 41–56).

After the CJEU ruling of 6 March 2018, the Declaration of the Member States of 15 January 2019 on the legal consequences of the *Achmea* judgment and on investment protection was adopted. In this Declaration, EU Member States made a commitment, *inter alia*, to terminate all bilateral investment treaties concluded between them. Additionally, on 25 May 2020, the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union was signed (OJ L 169, 29.5.2020, pp. 1–41). In this way, the future of Polish intra-EU BITs was already decided (see Dąbrowski, 2021, p. 256). As BITs are not compatible with EU law, those agreements have mostly been terminated or are currently in the period of termination.

EUR 22.1 million. The Slovak Republic brought an action to set aside that arbitral award before the German court. The court requested a preliminary ruling on whether the regulation on arbitration procedure in a BIT is compatible with EU law.

13 The factors to be taken into account in assessing whether a body is a 'court or tribunal' include, *inter alia*, whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent – Judgment of 16 February 2017, Margarit Panicello, C-503/15, EU:C:2017:126, paragraph 27 and the case-law cited, Judgment 27 February 2018 In Case C-64/16, (point 38).

The Polish Government firstly started to terminate the intra-EU BITs. On the other hand, there were a number of bilateral agreements regarding the continuation of the intra-EU BITs. The most significant differences between these two options concern the *survival clause*.

In cases of termination, the Polish Government first stated that the termination of intra-EU BITs was a result of the incompatibility between intra-EU BITs and the Treaty on the Functioning of the European Union, which was confirmed in the judgment in the *Achmea* case[14]. The notices of termination stated additionally that according to *survival clause*s when BITs expire investments made before the expiry of the BITs remain covered by its provisions for some specific time (depending on the BIT – ten or fifteen years). Comparable statements were issued for the termination of a dozen contracts:

Table 1. List of terminated BITs without excluding *survival clause*s.

1	Agreement between the Government of the Republic of Poland and the Government of the Republic of Finland on the Promotion and Protection of Investments, Helsinki, 25 November 1996 (Journal of Laws 1998, item 342, Government Statement of 9 April 2019, Journal of Laws 2019, item 938)[15].
2	Agreement between the Government of the People's Republic of Poland and the Government of the United Kingdom of Great Britain and Northern Ireland on the Encouragement and Reciprocal Protection of Investments, signed in London on 8 December 1987 (Journal of Laws 1988, item 93, Government Statement of 22 March 2019, Journal of Laws 2019, item 781)[16].
3	Agreement between the People's Republic of Poland and the Republic of Austria on the Promotion and Protection of Investments, done at Vienna on 24 November 1988 (Journal of Laws of 1989, item 321, Government Declaration of 22 March 2019, Journal of Laws 2019, item 763)[17].
4	Agreement between the Government of the People's Republic of Poland and the Government of the French Republic on the promotion and mutual protection of investments, signed in Paris on 14 February 1989 (Government Declaration of 22 March 2019, Journal of Laws 2019, item 792)[18].

14 In its notifications Poland stated that in accordance with Article 30(3) of the Vienna Convention on the Law of Treaties, 23 May 1969, and with customary international law, the arbitration clause contained in the BITs, which is an earlier treaty, cannot be applied from 1 May 2004, that is from the date of accession of the Republic of Poland to the European Union, because it is not compatible with the Treaty on the Functioning of the European Union, which is a later treaty. The incompatibility of arbitration clauses contained in intra-EU BITs with the Treaty on the Functioning of the European Union was confirmed in the judgment in the Achmea case. In light of the above, the arbitral tribunals established under the BIT do not have jurisdiction to hear the cases due to the lack of a valid arbitration agreement.

15 In accordance with the declaration of Article 11(3) of the Agreement, with respect to investments made before the effective date of termination of the Agreement, i.e. before 16 October 2019, the provisions of Articles l to 11 of the Agreement shall remain in force until 16 October 2039.

16 According to the third sentence of Article 13 of the Agreement, with regard to investments made while the Agreement is in force, i.e. before 22 November 2019, its provisions shall remain in force until 22 November 2034.

17 According to Article 11(3) of the Agreement, with respect to investments made before the expiry date of the Agreement, i.e. before 16 October 2019, the provisions of its Articles 1 to 10 shall remain in force until 16 October 2029.

18 According to the fourth sentence of Article 12 of the Agreement, investments made while the Agreement is in force, i.e. before 19 July 2019, will benefit from the protection guaranteed by the provisions of the Agreement until 19 July 2034.

cont. Table 1

5	Agreement between the Republic of Poland and the Republic of Cyprus on the promotion and mutual protection of investments, drawn up in Warsaw on 4 June 1992 (Journal of Laws of 1993, item 521, Government Declaration of 18 December 2018, Journal of Laws 2019, item 204)[19].
6	Agreement between the Republic of Poland and the Kingdom of Spain on the mutual promotion and protection of investments, drawn up in Madrid on 30 July 1992 (Journal of Laws of 1993, item 563, Government Declaration of 11 April 2019, Journal of Laws 2019, item 961)[20].
7	Agreement between the Republic of Poland and the Kingdom of the Netherlands on the Promotion and Reciprocal Protection of Investments, drawn up in Warsaw on 7 September 1992 (Journal of Laws 1994, item 235, Government Statement of 18 December 2018, Journal of Laws 2019, item 206)[21].
8	Agreement between the Republic of Poland and the Republic of Hungary on Mutual Promotion and Protection of Investments, drawn up in Budapest on 23 September 1992 (Journal of Laws of 1995, item 542, Government Statement of 11 April 2019, Journal of Laws 2019, item 951)[22].
9	Agreement between the Republic of Poland and the Republic of Lithuania on Mutual Promotion and Protection of Investments, drawn up in Warsaw on 28 September 1992 (Journal of Laws of 1993, item 543, Government Declaration of 11 April 2019, Journal of Laws 2019, item 942)[23].
10	Agreement between the Republic of Poland and the Republic of Greece on the Promotion and Reciprocal Protection of Investments, done at Athens on 14 October 1992 (Journal of Laws of 1995, item 275, Government Declaration of 9 April 2019, Journal of Laws 2019, item 940)[24].
11	Agreement between the Government of the Republic of Poland and the Government of the Republic of Bulgaria on Mutual Promotion and Protection of Investments, drawn up in Warsaw on 11 April 1994 (Journal of Laws of 1995, item 322, Government Statement of 8 July 2019, Journal of Laws 2019, item 1486)[25].
12	Agreement between the Republic of Poland and the Republic of Slovenia on Mutual Promotion and Protection of Investments, drawn up in Ljubljana on 28 June 1996 (Journal of Laws of 2000, item 1119, Government Declaration of 11 April 2019, Journal of Laws 2019, item 949)[26].
13	Agreement between the Republic of Poland and the Republic of Croatia on Mutual Promotion and Protection of Investments, drawn up in Warsaw on 21 February 1995 (Journal of Laws of 1996, item 126, Government Declaration of 24 May 2019, Journal of Laws 2019, item 1164)[27].

19 According to Article 13(3) of the Agreement, its provisions shall remain in force until 17 January 2029 with respect to investments made before the termination takes effect, i.e. before 17 January 2019.

20 According to Article 12(3) of the Agreement, with regard to investments made or acquired before the expiry date of the Agreement, i.e. before 16 October 2019, the provisions of Articles l to 11 thereof shall remain in force until 16 October 2029.

21 According to Article 13(3) of the Agreement, its provisions shall remain in force until 2 February 2034 for investments made before the date of termination of the Agreement, i.e. before 2 February 2019.

22 According to Article 12(2) of the Agreement, for investments made before the notification of termination of the Agreement, i.e. before 16 October 2018, the provisions of Articles 1 to 11 of the Agreement shall remain in force until 16 June 2030.

23 According to Article 13(2) of the Agreement, for investments made before the effective date of the notice of termination, i.e. before 6 August 2023, the provisions of the Agreement shall remain in force until 6 August 2033.

24 According to the fourth sentence of Article 13(2) of the Agreement, for investments made before the expiry date of the Agreement, i.e. before 16 October 2019, the provisions of Articles l to 12 of the Agreement shall remain in force until 16 October 2039.

25 According to Article 13(2) of the Agreement, for investments made before the effective date of termination, i.e. before 9 March 2025, the provisions of the Agreement shall remain in force until 9 March 2035.

26 According to Article 13(2) of the Agreement, with respect to investments made prior to the effective date of termination, i.e. prior to 31 March 2020, the provisions of the Agreement shall remain in force until 31 March 2030.

27 According to Article 13(2) of the Agreement, with regard to investments made before the effective date of termination of the Agreement, i.e. before 18 October 2019, its provisions shall remain in force until 18 October 2029.

14	Agreement between the People's Republic of Poland and the Italian Republic on the Promotion and Protection of Investments, drawn up in Warsaw on 10 May 1989 (Journal of Laws of 1994, item 157, Government Declaration of 13 January 2017, Journal of Laws 2017, item 603)[28].
15	Agreement between the People's Republic of Poland and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investments, drawn up in Warsaw on 10 November 1989 (Journal of Laws of 1991, item 116, Government Declaration of 22 March 2019, 2019, item 775)[29].
16	Agreement between the Government of the Republic of Poland and the Government of the Portuguese Republic on the Promotion and Reciprocal Protection of Investments, drawn up in Lisbon on 11 March 1993 (Journal of Laws 1995, item 90, Government Statement of 6 December 2017, Journal of Laws 2018, item 18)[30].
17	Agreement between the Government of the People's Republic of Poland and the Government of the Kingdom of Belgium and the Government of the Grand Duchy of Luxembourg on the Promotion and Reciprocal Protection of Investments, Warsaw, 19 May 1987 (Journal of Laws 2001, Item 153 and 2015, Item 1562, Government Statement of 22 March 2019, Journal of Laws 2019, item 790)[31].

Source: own work based on the Internet Treaty Base of the Ministry of Foreign Affairs Republic of Poland (2022).

Despite the *survival clause*, it seems no longer possible for investors to undertake any actions against the Polish or other governments, even though the agreement allows such action for next 5–10 years. The Court's decision, which was in line with previous statements of the European Commission, argued that most BITs provisions are superseded by EU law and applying them could lead to discrimination between EU States (Rogers, et al., 2017, pp. 24–27).

As part of the termination of the intra-EU BITs, a number of agreements were also reached regarding the continuation of the BITs. The agreements stated that 'in respect of investments made prior to the date when the BITs terminates, none of its provisions remains in force.' This means that the investors cannot count on further protection under the BITs. In this case the *survival clause* does not work. So far, five such agreements have been concluded (see Table 2).

28 According to Article 14(2) of the Agreement, with respect to investments made before the date of expiry of this Agreement, the provisions of Articles l to 12 thereof shall remain in force for a period of five years, starting from the date of expiry of the Agreement, i.e. until 9 January 2018.

29 According to Article 14(3) of the Agreement, for investments made before the expiry of the Agreement, i.e. before 18 October 2019, the provisions of Articles 1 to 13 of the Agreement shall remain in force until 18 October 2039.

30 According to Article 11(3) of the Agreement, the provisions of Articles 1 to 10 of the Agreement shall remain in force until 3 August 2029 with respect to investments made prior to the effective date of termination, i.e. before 3 August 2019.

31 It is stated that after the expiry of the validity of the agreement on 2 August 2021, it is in accordance with Article 10(2) of the agreement that investments made before the expiry of the validity of the agreement, i.e. before 2 August 2021, remain covered by its provisions until 2 August 2031.

Table 2. List of terminated BITs with exclusion of the *survival clause*s.

1	Agreement of 16 October 2017 (Journal of Laws 2019, Item 191) on the termination of the Agreement between the Government of the Republic of Poland and the Government of the Kingdom of Denmark on the promotion and mutual protection of investments, Copenhagen, 1 May 1990, (Journal of Laws 1992, item 122)[32].
2	Agreement of 19 March 2018 (2019, Item 264, Government Declaration of 27 December 2018, Journal of Laws 2019, Item 265) on the validity on termination of the Agreement between the Republic of Poland and the Republic of Estonia on mutual support and protection of investments, Warsaw, 6 May 1993 (Journal of Laws 1995, item 196)[33].
3	Agreement of 28 December 2017 (Journal of Laws 2019, Item 65, Government Statement dated 29 November 2018, Journal of Laws 2019, Item 66) on the validity on the termination of the Agreement between the Government of the Republic of Poland and the Government of the Republic of Latvia on mutual support and protection of investments, Warsaw, 26 April 1993 (Journal of Laws 1993, item 549)[34].
4	Agreement of 18 June 2018 (Journal of Laws 2019, Item 793, Government Declaration of 15 March 2019, Journal of Laws 2019, Item 794) on the validity of the Agreement between the Government of the Republic of Poland and the Government of Romania on the promotion and mutual protection of investments, Warsaw, 23 June 1994 (Journal of Laws of 1995, item 386)[35].
5	Agreement of 18 June 2020 (Government Declaration of 22 March 2019, Journal of Laws 2019, Item 765) on the legal effects of the termination of the Agreement between the Government of the People's Republic of Poland and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investments, Warsaw, 13 October 1989 (Journal of Laws of 1990, item 218)[36].

Source: own work based on the Internet Treaty Base of the Ministry of Foreign Affairs Republic of Poland (2022).

The fifth case was a little different. The Agreement between the Government of the People's Republic of Poland and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investments was terminated. In accordance with the Government Declaration of 22 March 2019 and Article 11 point 3 of the BIT, with respect to investments made before the date of termination of the BIT, i.e. before 16 October 2019, the provisions of Articles 1 to 10 thereof were to remain in force until 16 October 2039 (*survival clause*). Nevertheless, in July 2021 the parties concluded an agreement according to which 'Article 11 point 3 is terminated and shall thus not produce legal effects'[37].

32 According to paragraph 1 of the Agreement, the BIT will expire on 14 February 2019.

33 According to point 2 of the Agreement, with regard to investments made before the Agreement ceased to be in force, i.e. before 7 March 2019, no provision of the Agreement remains in force.

34 According to paragraph 2 of the Agreement, with regard to investments made before the Agreement ceased to be in force, i.e. before 19 January 2019, no provision of the Agreement remains in force, including Article 13(2).

35 According to paragraph 2 of the Agreement, with regard to investments made before the date on which the Agreement ceases to be in force, i.e. before 21 May 2019, no provision of the Agreement remains in force.

36 Available at https://traktaty.msz.gov.pl/umowa-4 (accessed: 12.10.2021).

37 Available at https://traktaty.msz.gov.pl/umowa-4 (accessed: 12.10.2021).

Conclusions

Depending on whether bilateral investment agreements were concluded between EU states (intra-EU BITs) or were concluded with countries outside of the EU (extra-EU BITs), Member States are required to take different necessary measures. In cases of extra-EU BITs, they should eliminate incompatibilities in BITs, where they exist, with Union law. Although extra-EU BITs remain binding on the Member States under public international law and will be progressively replaced by agreements of the Union relating to the same subject matter, the conditions for their continuing existence and their relationship with the Union's investment policy require appropriate management. That relationship will develop further as the Union exercises its competence.

In cases of intra-EU BITs, Member States should eliminate the agreements from the EU legal system. In the interest of investors and their investments in EU countries, and in accordance with the certainty of legal order, BITs that specify and guarantee the *survival clause principle* should be maintained in force to protect investors and their investment made prior to notice of termination. Meanwhile, in termination of Polish intra-BITs there are two differences depending on whether they were unilaterally terminated or there was a bilateral agreement regarding the continuation of the BITs. In the first case the *survival clause* survived, while in the second option this was not the case. Nevertheless, in the first option, it is explicitly thematized that the arbitral tribunals established under the BITs did not have jurisdiction to hear the cases due to the lack of a valid arbitration agreement. It can be assumed that the elimination of the *survival clause* from the legal system is much stronger in case of a bilateral agreement regarding the continuation of the BITs. In the first case, a statement is unilateral, and additionally a lot may depend on the court (including an arbitration court)[38].

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38 In this respect, the Judgment of the Swedish Court of Appeal in Stockholm, 22 February 2019, in the R*epublic of Poland v. PL Holdings S.á.r.l.* case, is noteworthy. The Court considered that the conclusion from the *Achmea* ruling is that EU regulations would not, as such, preclude Poland and PL Holdings from entering into an arbitration agreement and participating in arbitral proceedings regarding an investment-related dispute. According to the Court, in BITs a Member State is obligated to accept subsequent arbitral proceedings with an investor. The court noted that the *Achmea* judgment would not as such preclude entry into an arbitration agreement and participating in arbitral proceedings regarding an investment-related dispute. According to EU law, Member States cannot conclude agreements where one Member State is obligated to accept arbitral proceedings with an investor. This is not allowed, because in this way Member States establish a system where they have excluded disputes from the possibility of requesting a CJEU preliminary ruling. In turn, EU law does not preclude arbitration agreements between a Member State and an investor in a particular case. The participation in the proceedings is based on party autonomy, which means that the State is free to enter into an arbitration agreement with an investor regarding the same dispute at a later stage, e.g. when the investor has initiated arbitral proceedings (The Judgment of the Swedish Court, 2019, pp. 43, 44). This means that 'an arbitration agreement and arbitral proceedings between an investor and a Member State is therefore as such not in violation of the EU law' (see Dąbrowski, 2021, p. 250).

The conclusion for Poland – as a member of the EU – resulting from the study is that the Polish Government's actions are in line with EU regulations and CJEU judgments that directly eliminate the intra-EU BITs from the EU legal system. Because Polish intra-EU BITs are terminated in different ways, the position of investors might vary – depending on whether bilateral agreements were concluded concerning cancelation of the *survival clause*. The conclusion for the EU arising from the study is that the termination of intra-EU BITs, and replacement of extra-EU BITs with common agreements without the existing regulations concerning arbitration activity, affects the nature of the investment treaties – modification of conditions for dispute resolutions affect the core of BITs, which is arbitration. Action aimed at establishing one institution or appeal body, or far-reaching unification, may deprive the institution of arbitration of its characteristic features – flexibility and individuality (Dąbrowski, 2021, p. 259).

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