

European Legislation and Obligations under Public International Law

Legal Consequences of a Conflict between European Law and Member States' Bilateral Investment Treaties

Legal Opinion
by
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Executive Summary

This opinion addresses the possible conflict between European Law and the obligations of the EU Member States under their bilateral investment treaties (BITs) with the People's Republic of China, specifically in the context of the Cybersecurity Act (CSA) proposed by the European Commission (Commission).

Part I of the opinion provides a brief introduction.

Part II of the opinion provides an overview of the draft CSA proposed by the Commission on 20 January 2026, noting in particular that:

- (i) The draft CSA provides for far-reaching competences of the European Commission in the area of information and communication technology, including the power to exclude 'high risk suppliers' from European markets.
- (ii) Under the present proposal, the CSA is to be enacted through an EU regulation and will be binding and directly applicable in all EU Member States.
- (iii) At the same time, each of these Member States (with the exception of Ireland) has BIT in force with the People's Republic of China. Under these treaties, the States Parties undertake to guarantee far-reaching protections to investors and investments from the respective countries.

Part III of the opinion concerns the relationship between European Law and International Law. In this regard, the opinion notes that European Law may be considered (i) domestic law, or (ii) international law, specifically treaty law. Under either perspective, any potential obligations under the CSA would not exculpate Member States from violations of their BITs with the People's Republic of China. Under European Law, BITs of Member States with Third States, such as the People's Republic of China, are presently maintained in force. If there is a conflict between obligations under European Law and those BITs, the Member State concerned remains bound by both.

Part IV of the opinion outlines some common features of BITs, noting in particular that:

- (i) Provisions in several BITs between EU Member States and the People's Republic of China exclude the application of their most favoured-nation clauses to privileges granted to regional economic integration organizations. This does

not mean that the BIT as a whole is subordinate to European Law. These provisions merely ensure that additional rights guaranteed under the regional economic integration organizations are not transferred over to a Third State under a BIT. Therefore, these provisions do not eliminate the possibility of a conflict between obligations under European Law and under the relevant BITs.

- (ii) Individual BITs should not be interpreted in isolation, but within the broader context of international law. At the same time, transactions among third parties cannot affect the legal position of a party not privy to the transaction. Accordingly, it is not possible to harmonize China's BITs with European Law.
- (iii) Although BITs may be unilaterally terminated, they typically contain so-called "sunset clauses", which provide that investments existing at the time of the BIT's termination would continue to be protected by the terms of the BITs. Accordingly, the termination of BITs between EU Member States and the People's Republic of China would not constitute an effective strategy for avoiding conflicts between obligations under European Law and those arising under the Member States' BITs. This is likely to be true even in the improbable case that the Member States are able to secure China's agreement to terminate the BITs in question.

Part V of the opinion explains that while investors are not privy to BITs and have no say in their making, they nevertheless are beneficiaries of those treaties. All BITs between EU Member States and the People's Republic of China provide for arbitration between a Chinese investor and a European Member State in the event of an investment dispute, although the scope of the consent to arbitration varies considerably between treaties. In investment arbitration, if a tribunal determines that a breach of a treaty obligation has occurred, the remedy usually consists of monetary compensation. BITs thus provide effective mechanisms for ensuring compliance.

Part VI of the opinion provides a conclusion reiterating the key points set out in this document.

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I. INTRODUCTION

1. The law firm Gaillard, Banifatemi, Shelbaya Disputes have asked me for an opinion on the legal consequences of a possible conflict between European Law and Member States' obligations under their bilateral investment treaties (BITs), especially with the Peoples' Republic of China (China). More specifically, what would be the consequences, if any, of an alleged incompatibility between obligation flowing from the proposed Cybersecurity Act (CSA) proposed by The European Commission (Commission) and those stemming from applicable international investment treaties.
2. This Legal Opinion reflects my independent and sincere professional opinion. I have no personal interest in this matter.
3. A summary statement of my qualifications is attached to this opinion as Annex 1.

II. THE CSA DRAFT AND BILATERAL INVESTMENT TREATIES OF EU MEMBER STATES

A. THE DRAFT FOR AN AMENDED CYBERSECURITY ACT

4. The Proposal of 20 January 2026 for a Regulation of the European Parliament and the Council on the European Union Agency for Cybersecurity (ENISA), the European cybersecurity certification framework, and ICT supply chain security and repealing Regulation (EU) 2019/881 (The Cybersecurity Act 2), henceforth: 'CSA Draft', provides for far-reaching competences of the Commission. In particular, it authorises the Commission to exclude certain suppliers of information and communication technology (ICT) components (*i.e.*, the so-called "high-risk suppliers") from the EU market. A high-risk supplier is defined as:
 - (a) an entity established in a third country posing cybersecurity concerns designated in accordance with Article 100, or controlled by such third country, by an entity established in such third country, or by a national of such third country; (b) an entity designated in accordance with Article 103(7) and entities controlled by that entity.¹

¹ CSA Draft, Article 2(39).

5. Under the CSA Draft, a coordinated security risk assessment is to be conducted to establish whether there is a significant cyber threat for the security of the Union in relation to an ICT supply chain.² The Commission may conclude that a third country poses serious and structural non-technical risks to ICT supply chains.³ Under the CSA Draft, the Commission is empowered to identify high-risk suppliers by establishing a list that is to be updated regularly.⁴
6. Once high-risk suppliers are identified, they face extensive restrictions, including:
 - High-risk suppliers are excluded from cybersecurity certifications, from EU funding and from participating in public procurement procedures related to the provision of ICT components or components that include ICT components for use in key ICT assets as identified in the CSA Draft.⁵
 - Providers of mobile, fixed and satellite electronic communications networks shall not use, install or integrate, in any form, ICT components or components that include ICT components from high-risk suppliers in the operation of key ICT assets.⁶
 - ICT components, or components that include ICT components provided by high-risk suppliers, shall be phased out from the key ICT assets of mobile, fixed and satellite electronic communication networks.⁷
 - The Commission maintains oversight and may intervene in exceptional circumstances to prohibit the use of components from specific suppliers if a significant cybersecurity threat is identified.⁸
7. As a EU Regulation, the CSA is to be binding and directly applicable in all Member States. Member States are required to designate competent authorities responsible for supervisory and enforcement measures. Member State competent authorities are in turn

² CSA Draft, Article 99.

³ CSA Draft Art 99(2).

⁴ CSA Draft, Article 104.

⁵ CSA Draft, Article 100(4).

⁶ CSA Draft, Article 111(1). The definition of key assets includes all relevant 5G equipment components.

⁷ CSA Draft, Article 110(2).

⁸ CSA Draft, Article 103(6).

required to take the necessary supervisory and enforcement measures.⁹ These include requests to the Mobile Network Operators to list their suppliers, verify compliance, issue warnings of non-compliance and impose penalties.¹⁰

8. The competent authorities are required to observe confidentiality and professional and commercial secrecy.¹¹

B. BILATERAL INVESTMENT TREATIES OF EU MEMBER STATES WITH CHINA

9. All EU Member States, except for Ireland, have bilateral investment treaties (BITs) in force with China. These treaties contain guarantees for investors and investments from the respective countries. These guarantees include protection from uncompensated expropriation,¹² fair and equitable treatment (FET),¹³ protection and security,¹⁴ protection against arbitrary (unreasonable) and discriminatory treatment,¹⁵ most-favoured-nation treatment¹⁶ and national treatment.¹⁷ These obligations exist not only in the relations between the respective contracting States to these treaties. Investment treaties create rights and duties also for investors. This has also been recognized in arbitral practice (see section V.A. below). As set out in more detail below (see section V.B.), most BITs contain effective mechanisms for the settlement of disputes, not only between the contracting States but also between investors and States. These may lead to binding arbitral awards imposing damages.

⁹ CSA Draft, Article 114.

¹⁰ CSA Draft, Article 114.

¹¹ CSA Draft, Article 114(6).

¹² All BITs between China and EU Member States provide for protection against uncompensated expropriation.

¹³ All BITs between China and EU Member States, except Bulgaria (as amended by Protocol) and Slovakia, guarantee fair and equitable treatment.

¹⁴ All BITs between China and EU Member States, except Bulgaria (as amended by Protocol), Cyprus, Slovakia and Sweden guarantee protection (and security).

¹⁵ The BITs between China and the following EU Member States provide protection against arbitrary (or unreasonable) and discriminatory treatment: Belgium, Cyprus, Finland, Latvia, Luxembourg, Malta, Netherlands, Portugal, Spain.

¹⁶ All BITs between China and EU Member States provide for most-favoured-nation treatment.

¹⁷ All BITs between China and EU Member States, except Austria, Croatia, Denmark, Estonia, Greece, Hungary, Italy, Lithuania, Poland, Romania and Sweden provide for national treatment.

10. Only the China-Finland BIT contains a provision preserving the Parties' power to take action necessary for the preservation of their respective essential security interests.¹⁸ None of the other BITs between China and EU Member States contain such a provision.
11. The CSA, if adopted in line with the current draft, raises the question of a possible incompatibility of Member States' obligations under European Law and their obligations under the aforementioned BITs.

III. THE RELATIONSHIP OF EUROPEAN LAW AND INTERNATIONAL LAW

12. Practice has developed essentially two alternative approaches to the relationship of European Law to international law. One is to regard European Law in analogy to the domestic law of States. The other is to regard European Law as a form of international law, specifically treaty law.
13. In *Electrabel v Hungary*, the tribunal addressed the dual nature of EU Law. The tribunal said:
- EU law has a multiple nature: on the one hand, it is an international legal regime; but on the other hand, once introduced in the national legal orders of EU Member States, it becomes also part of these national legal orders.¹⁹
14. For a full appreciation of the relationship between EU law, as represented by a future CSA, and international law, as reflected in Member States' BITs, it is necessary to examine a potential clash of the two legal systems under both approaches. First, EU law will be considered on the assumption that it constitutes domestic law. Second, it will be analysed on the assumption that it forms part of international law. The first approach therefore requires an examination of the relationship between domestic law and treaties, whereas the second approach calls for an examination of the relationship of treaties

¹⁸ Article 3(5) of the China-Finland BIT provides: "Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations."

¹⁹ *Electrabel v Hungary*, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012, para 4.118. See also 4.119-4.127. See also *Green Power v Spain*, Award, 16 June 2022, paras 171-172.

entered into by different parties. A third perspective involves examining the treatment of Member States' BITs, specifically from a European Law standpoint.

A. EUROPEAN LAW AS DOMESTIC LAW

15. It is a well-accepted principle of international law that domestic law is subordinate to international law. A State may not invoke its national law, including its constitution, to justify its non-compliance with international law. A violation of international law will result in State responsibility even if the violation is permitted or mandated by national law.

16. In the *Treatment of Polish Nationals in Danzig* case, the Permanent Court of International Justice expressed this principle as follows:

a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force.²⁰

17. In the *Reparations for Injuries* case, the International Court of Justice said:

Compliance with municipal law and compliance with the provisions of a treaty are different questions. What is a breach of treaty may be lawful in the municipal law and what is unlawful in the municipal law may be wholly innocent of violation of a treaty provision.²¹

18. Similarly, in the *Applicability of the Obligation to Arbitrate* case, the International Court of Justice said:

It would be sufficient to recall the fundamental principle of international law that international law prevails over domestic law.²²

19. In its Declaration on Rights and Duties of States of 6 December 1949, the UN General Assembly adopted the following principle as Article 13:

²⁰ *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*, Advisory Opinion, PCIJ, Ser A/B, No 44, 4 February 1932, para 62.

²¹ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 14 April 1949, I.C.J. Reports 1949, p. 174, at p. 180.

²² *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 April 1988*, Advisory Opinion, 26 April 1988, I.C.J. Reports 1988, p. 12, para 57.

Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.²³

20. Article 27 of the Vienna Convention on the Law of Treaties (VCLT) reflects the principle that international obligations are superior to and independent of any provision of domestic law:

Article 27
Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.²⁴

21. This principle is an emanation of the maxim *pacta sunt servanda* [treaties must be observed] and applies irrespective of the rank the domestic norm may have internally.²⁵ This principle covers existing as well as future enactments under domestic law.
22. The same principle applies in the international law of State responsibility.²⁶ The international law governing the responsibility of States has been codified by the International Law Commission (ILC).²⁷ In 2001 the ILC adopted Articles on Responsibility of States for Internationally Wrongful Acts (ILC Articles on State Responsibility). The United Nations General Assembly commended the Articles on State Responsibility to the attention of Governments in Resolution 56/83 of 12 December 2001. It is widely accepted that the ILC Articles on State Responsibility

²³ Adopted by the International Law Commission, taken note of by the UN General Assembly in Resolution 375 (IV).

²⁴ Article 46 of the VCLT deals with provisions of internal law regarding the competence to conclude treaties.

²⁵ For detailed treatment see ME Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2009) pp 369-375; O Corten, P Klein, *The Vienna Conventions on the Law of Treaties A Commentary* (2011) pp 688-701; O Dörr, K Schmalenbach eds, *Vienna Convention on the Law of Treaties* (2018) pp 493-504.

²⁶ H Haeri, C Baró Huelmo, G Gasparotti, *International State Responsibility and Internal Law in Investment Arbitration: A Hierarchy of Sorts*, 37 *ICSID Review* (2022) 210-231.

²⁷ The International Law Commission was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13 (1) (a) of the Charter of the United Nations to “initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification”.

reflect customary international law. The International Court of Justice has made this clear.²⁸ This view is shared by investment tribunals.²⁹

23. Article 3 of the Articles on Responsibility of States for Internationally Wrongful Acts state:

ARTICLE 3

Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful under internal law.³⁰

24. In its Commentary to this provision the ILC explained:

a State cannot, by pleading that its conduct conforms to the provisions of its internal law, escape the characterization of that conduct as wrongful by international law. An act of a State must be characterized as internationally wrongful if it constitutes a breach of an international obligation, even if the act does not contravene the State's internal law—even if, under that law, the State was actually bound to act in that way.

first, ... the characterization of State conduct as internationally wrongful is governed by international law, and secondly by affirming that conduct which is characterized as wrongful under international law cannot be excused by reference to the legality of that conduct under internal law.³¹

25. Article 32 of the ILC Articles on State Responsibility provides similarly:

ARTICLE 32

Irrelevance of internal law

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part.

26. In its Commentary to this provision the ILC explained:

²⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports (2004) 136, para 140; *Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, 25 September 1997, ICJ Reports (1997) 7, 63, para 102.

²⁹ *Biwater Gauff v Tanzania*, Award, 24 July 2008, para 773; *Rumeli v Kazakhstan*, Award, 29 July 2008, paras. 576-580; *Chevron v Ecuador*, Interim Award, 1 December 2008, para 118; *Hamester v Ghana*, Award, 18 June 2010, para. 171; *Tulip v Turkey*, Award, 10 March 2014, para 281; *Quiborax v Bolivia*, Award, 16 September 2015, para 555; *Crystallex v Venezuela*, Award, 4 April 2016, para 848; *Almås v Poland*, Award, 27 June 2016, para 206; *Masdar v Spain*, Award, 16 May 2018, para. 167; *Gavrilovic v Croatia*, Award, 26 July 2018, para. 779.

³⁰ J Crawford, *The International Law Commission's Articles on State Responsibility* (2002), at p 86.

³¹ *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001), Article 3, Commentary (1) and (8).

Between them, articles 3 and 32 give effect for the purposes of State responsibility to the general principle that a State may not rely on its internal law as a justification for its failure to comply with its international obligations. Although practical difficulties may arise for a State organ confronted with an obstacle to compliance posed by the rules of the internal legal system under which it is bound to operate, the State is not entitled to oppose its internal law or practice as a legal barrier to the fulfilment of an international obligation arising under Part Two.

In short, international law does not recognize that the obligations of a responsible State under Part Two are subject to the State's internal legal system nor does it allow internal law to count as an excuse for non-performance of the obligations of cessation and reparation.³²

27. International tribunals have consistently held that in case of a conflict between international law and domestic law, international law prevails.³³ For instance in *Charanne v Spain*,³⁴ the Respondent contended that a finding that the Tribunal had jurisdiction would be contrary to the Spanish public order, particularly to the principle of equality under its Constitution, since it would favour Spanish citizens who are shareholders of the claimant over other Spanish citizens. The Tribunal rejected this argument in the following terms:

... the competence of this Arbitral Tribunal has to be assessed under the ECT [Energy Charter Treaty] and not in accordance with the national law of the Respondent. Therefore, the Spanish public order, although it may be taken into

³² Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Article 32, Commentary (1) and (3).

³³ *Amco v Indonesia*, Decision on Annulment, 16 May 1986, para 21; *Amco v Indonesia*, Resubmitted Case, Award, 5 June 1990, para 40; *Santa Elena v Costa Rica*, Award, 17 February 2000, paras 64-5; *Duke Energy v Peru*, Decision on Jurisdiction, 1 February 2006, para 162; *LG&E v Argentina*, Decision on Liability, 3 October 2006, para 94; *MCI v Ecuador*, Award, 31 July 2007, para. 218; *Liman Caspian Oil BV and NCL Dutch Investment BV v Kazakhstan*, Award, 22 June 2010, para. 326; *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v Argentina*, Decision on Liability, 30 July 2010, paras 64, 65; *AES v Kazakhstan*, Award, 1 November 2013, paras 430-432; *Renée Rose Levy de Levi v Republic of Peru*, Award, 26 February 2014, para 160; *Perenco v Ecuador*, Decision on Remaining Issues of Jurisdiction and Liability, 12 September 2014, paras 534, 583; *Venezuela Holdings, B.V., et al (case formerly known as Mobil Corporation, Venezuela Holdings, B.V., et al.) v Venezuela*, Award, 9 October 2014, para 225; *Charanne and Construction Investments v Kingdom of Spain*, Award, 21 January 2016, para 421; *Crystallex v Venezuela*, Award, 4 April 2016, para 474; *Vestey v Venezuela*, Award, 15 April 2016, para 254, Fn 234; *Pac Rim Cayman LLC v Republic of El Salvador*, Award, 14 October 2016, para 5.62; *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Fouad Mohammed Thunyan Alghanim v Jordan*, Award, 14 December 2017, paras 344-366; *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v Bolivarian Republic of Venezuela*, Award, 8 March 2019, para 88; *BayWa v Spain*, Decision on Jurisdiction, Liability and Quantum, 2 December 2019, para 569; *ESPF v Italy*, Award, 14 September 2020, para 403; *Cairn v India*, Final Award, 21 December 2020, paras 820, 1064, 1689; *Pawłowski v Czech Republic*, Award, 1 November 2021, paras 266-270; *Nachingwea v Tanzania*, Award, 14 July 2023, para 179.

³⁴ *Charanne and Construction Investments v Kingdom of Spain*, Award, 21 January 2016.

account in resolving a dispute in the merits stage, has little to do in determining the jurisdiction of this Tribunal under an international treaty to which the Kingdom of Spain is a contracting party.³⁵

28. In *Nachingwea v Tanzania*, the tribunal said:

The Respondent's argument that it is at liberty to enact laws as a sovereign state is, of course, true, but it does not change the Tribunal's conclusion. The fact is that the Respondent has international obligations which it accepted under the BIT, including obligations to protect the investments of UK nationals or companies and to submit to arbitration pursuant to the BIT and the ICSID Convention should it breach the BIT. As Article 27 of the VCLT provides, a state "may not invoke the provisions of its internal law as justification for its failure to perform a treaty." That Tanzania was entitled to enact its own laws as a sovereign state does not change its obligations under the BIT.³⁶

29. It follows from this well-established principle, reflected in the leading codifications of international law as well as in the consistent case law of the International Court of Justice and of international tribunals, that an international court or tribunal would give precedence to international law over domestic law to the extent that the latter was incompatible with the former.

30. This means that should the CSA be adopted in the form of the present draft, EU Member States would remain bound by their respective BITs with China in the event of a conflict between their obligations under the CSA and those arising under the BITs. The mere identification by the European Commission of a vendor of ICT components as a high-risk supplier would not trigger State responsibility, but the enforcement by Member States of such a decision may lead to State responsibility

31. Put differently, vis-à-vis China, EU Member States could not invoke European Law, including a decision by the Commission, as a justification for non-compliance with their obligations under the BITs. Accordingly, a breach of a BIT would entail State responsibility, even where such conduct is required by the CSA and a resulting decision of the Commission.

³⁵ At para 421.

³⁶ *Nachingwea v Tanzania*, Award, 14 July 2023, para 179.

B. EUROPEAN LAW AS INTERNATIONAL LAW

32. An alternative approach to the nature of European Law is to see it as international law.

The tribunal in *Vattenfall v Germany* had this to say about the role of European Law as international law:

Instead of excluding EU law from the purview of international law, tribunals that have considered the relationship between EU law and the ECT have attempted to resolve conflicts, if any, between them. They have done so, for example, by (i) endorsing a harmonious interpretation, (ii) prioritising international law over EU law, or (iii) finding that there is no conflict that requires resolution. In any event, there is no dispute in investment arbitration decisions, or in the Tribunal's mind, that EU law, to the extent that it is rooted in the EU Treaties, constitutes international law.³⁷

33. The acceptance of European Law as international law, specifically treaty law or secondary law derived from treaties, leads to the question of the relationship of obligations stemming from European Law and obligations stemming from other treaties. The legal basis for the CSA proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU). The CSA is intended to be a regulation, adopted through the EU's internal legislative procedures.

34. The law of treaties contains provisions for the application of successive treaties. Article 59 of the VCLT deals with the termination or suspension of the operation of a treaty implied by conclusion of a later treaty.³⁸ This provision requires that all the parties to an earlier treaty conclude a later treaty relating to the same subject-matter.³⁹ This is not

³⁷ *Vattenfall v Germany*, Decision on the *Achmea* Issue, 31 August 2018. Footnotes omitted.

³⁸ *Article 59 Termination or suspension of the operation of a treaty implied by conclusion of a later treaty*

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

³⁹ Arbitral tribunals have held that BITs and the EU Treaties do not share the same subject matter for the purposes of the VCLT. See, e.g., *Spółdzielnia Pracy Muszynianka v Slovak Republic*, PCA Case No. 2017-08/AA629, Award, 7 October 2016, para. 236 ("The Tribunal shares the views expressed in these decisions. Therefore, it comes to the conclusion that the BIT and the EU Treaties do not share the same subject matter for the purposes of the VCLT. For this reason, Articles 30 and 59 of the VCLT are inapplicable to the present case").

the case in the relationship of European Law and BITs concluded by individual Member States with China.

35. Article 30 of the VCLT deals with the application of successive treaties relating to the same subject matter.⁴⁰ Article 30(4)(b) provides:

as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

36. Applied to the relationship between European Law and bilateral treaties of EU Member States this means that the bilateral investment treaties of EU Member States and third countries apply. The BITs between EU Member States and China govern the mutual relationship between China and the respective countries.

37. The continuing obligations of EU Member States under their BITs with China do not affect their obligations under EU Law. Nor do the obligations of EU Member States under European Law affect their obligations towards China. *Dörr* and *Schmalenbach* have described this dilemma as follows:

If the implementation of one treaty implies violating the other treaty, State A has to decide which of the two treaties to comply with. In any case, the implementation of any treaty will ensure the responsibility of State A as a consequence of a breach of a treaty.⁴¹

⁴⁰ *Article 30 Application of successive treaties relating to the same subject matter*

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between States Parties to both treaties the same rule applies as in paragraph 3;

(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

⁴¹ O Dörr, K Schmalenbach eds, Vienna Convention on the Law of Treaties (2018) Article 30, para 27, p 550.

38. In case of an incompatibility between a future CSA and obligations under its BIT with China, an EU Member State will have to choose between violating one or the other. The Member State will not be able to point to the conflicting obligation as justification for the violation. Article 30(5) of the VCLT states that the provision providing for the validity of both treaty obligations is without prejudice

to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

39. *Dörr* and *Schmalenbach* comment on this provision as follows:

a conflict between colliding treaties may lead to the international responsibility of a State as a consequence of the breach of one of the treaties— especially in the cases falling under para 4 lit b. ... States which conclude a new treaty that is incompatible with an earlier treaty must be aware of the fact that such a step may not entail the invalidity of one of the treaties but of their international responsibility.⁴²

40. Article 30(4)(b) is an expression of the Latin maxim *pacta tertiis nec nocent nec prosunt* [agreements neither harm nor benefit third parties]. This rule can be traced to Roman contract law and has a long pedigree in international law. Today it may be regarded as customary international law.⁴³ The PCIJ said in the *Free Zones* case:

Article 435 of the Treaty of Versailles is not binding upon Switzerland, who is not a Party to that Treaty, except to the extent to which that country accepted it.⁴⁴

41. The International Court of Justice subscribed to the same principle in the *Anglo-Iranian Oil Co.* case:

A third-party treaty, independent of and isolated from the basic treaty, cannot produce any legal effect as between the United Kingdom and Iran: *it is res inter alios acta*.⁴⁵

42. The VCLT contain an explicit rule to this effect:

⁴² *Op. cit.* para 29 p 551. See also ME Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2009) pp 406-407; O Corten, P Klein, *The Vienna Conventions on the law of Treaties A Commentary* (2011) pp 798-799.

⁴³ ME Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2009), Article 34, para 12, p 472.

⁴⁴ PCIJ *Free Zones of Upper Savoy and the District of Gex*, PCIJ Ser A/B No 46, 141 (1932).

⁴⁵ ICJ *Anglo-Iranian Oil Co Case (Jurisdiction)*, 22 July 1952, [1952] ICJ Rep 93, 109.

Article 34
General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

43. Article 2(1)(h) of the VCLT defines “third State” as “a State not a party to the treaty”.

44. *ME Villiger* has commented upon this provision as follows:

A treaty binds solely its parties which cannot impose “their” treaty on non-parties (...). The latter are only bound if and to the extent that they have expressed their consent to the treaty (or part of it). ... Without such consent, the treaty remains simply *res inter alios acta* for third States.⁴⁶

45. Article 35 VCLT determines under what circumstance a treaty may give rise to obligations of third States:

Article 35
Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

46. These conditions would not be met in respect of China and the CSA. The CSA as European legislation cannot as such bind a non-Member State like China. For China European Law is *res inter alios acta* [a thing done among others].

47. The CSA may well be intended to work to the detriment and at the cost of China and Chinese investors.⁴⁷ An obligation for China would, however, only arise from an acceptance by China of the consequences that may flow from the CSA and a waiver to take any remedies. China has not consented to any obligations arising from a CSA and is unlikely to do so in the future.

48. The requirement under Article 35 VCLT of express acceptance in writing of the obligation in question would exclude the possibility of an implicit acceptance. This should put to rest any argument that by doing business in the EU, Chinese investors

⁴⁶ ME Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2009), Article 34, para 5, p 469. For qualifications to this principle, not relevant to the present legal opinion, see *op. cit.* Article 34, para 9, pp 470-471.

⁴⁷ For the distinction between obligations and adverse effects see O Dörr, K Schmalenbach eds, *Vienna Convention on the Law of Treaties* (2018) Article 34, para 6, pp 658-659 and paras 13-

have implicitly accepted unfavourable aspects of European Law and have waived the right to rely on the BITs with Member States.

49. It follows from the above, that Member States would be bound by obligations under the CSA as well as under their respective bilateral investment treaties with China. Obligations under the CSA would not exculpate Members from violations of their BITs. From China's perspective, European Law is *res inter alios acta* and not binding upon it. In the same vein, Member States could not rely on their BITs vis-à-vis the Commission to excuse non-compliance with obligations under the CSA and other parts of European Law.

C. THE EUROPEAN LAW PERSPECTIVE ON EXTRA-EU BITS

50. European Law distinguishes between intra-EU BITs and extra-EU BITs. Intra-EU BITs are concluded between States Members of the EU. Extra-EU BITs are concluded between a Member State of the EU and a non-Member.

51. In the *Achmea* case,⁴⁸ and in cases that followed in its wake, the Court of Justice of the European Union (CJEU) has decided that arbitration under intra-EU BITs is incompatible with European Law. The subsequent campaign against intra-EU BITs culminated in the so-called termination treaty of 5 May 2020 whereby 23 EU Member States terminated about 130 intra-EU BITs.⁴⁹ The fate of intra-EU BITs need not be further pursued here since the focus of this opinion is on Member States' BITs with China, a non-Member State of the EU.

52. Article 351 of the Treaty on the Functioning of the European Union (TFEU) (ex Article 307 TEC, ex Article 234 EC) allows Member States to maintain commitments under

⁴⁸ *Slovak Republic v Achmea*, CJEU, 6 March 2018, C - 284/16. The CJEU found that investment arbitration pursuant to a treaty between Member States of the European Union was incompatible with Articles 267 and 344 of the TFEU. See also Declaration of the Representatives of the Governments of the Member States, of 15 January 2019 on the Legal Consequences of the Judgment of the Court of Justice in *Achmea* and on Investment Protection in the European Union.

⁴⁹ Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, 5 May 2020,

treaties with third States. It does, however, distinguish between BITs concluded before and after accession to the EU. Article 351 provides in relevant part:

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

To the extent that such agreements are not compatible with the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

53. Article 351(1) TFEU applies only to pre-existing or pre-accession treaties. It allows EU Member States to honour treaty obligations under treaties concluded before their accession to the EU. The six founding Member States⁵⁰ all concluded their BITs with China after 1958, the year of the Community's foundation. Of the Member States that acceded to the Community after 1958, some had already concluded BITs with China by the time of their accession.⁵¹ Other States concluded their current BITs with China only after their accession to the Community.⁵² Therefore under Article 351(1) TFEU the BITs of Member States with China do not all enjoy the same status. In other words, the only extra-EU investment treaties which can benefit from the grandfather clause contained in Article 351 TFEU are those concluded by Member States with China prior to the date of their accession to the EU.

54. The second paragraph of Article 351 TFEU requires Member States to take all appropriate steps to remove any incompatibilities of these treaties with European Law. This includes an obligation to terminate treaties if that is possible under the terms of the respective treaties. As discussed below, so-called sunset clauses provide for the continued application obligations under treaties for long periods of time.

55. In 2009, after the Treaty of Lisbon,⁵³ the EU became exclusively competent for foreign direct investment (FDI). This was incorporated into the TFEU in Article 207. The

⁵⁰ Belgium, France, Italy, Luxembourg, The Netherlands and Germany.

⁵¹ Austria, Sweden, Cyprus, Estonia, Hungary, Lithuania, Slovakia, Slovenia, Bulgaria, Poland, Romania and Croatia.

⁵² Denmark, Greece, Portugal, Spain, Finland, Czech Republic, Latvia and Malta.

⁵³ Treaty of Lisbon, signed on 13 December 2007, effective 1 December 2009.

explicit reference to foreign direct investment means that FDI is now an exclusive competence of the EU, while foreign indirect investment is a shared competence. The Member States are prohibited from adopting acts, including treaties, that fall within the exclusive competence of the EU. This also means that a treaty concluded before the transfer of competence for FDI to the EU, is no longer a justification for derogation from European Law under Article 351(1) TFEU. Member States may only conclude new BITs if empowered by the Union.

56. The distinction between foreign direct investment and foreign indirect investment and the different dates of BITs in relation to accession, led to insecurity about the competence of Member States to keep existing BITs and to conclude new ones. To remove this insecurity, in 2012 the EU adopted a Regulation to clarify the legal status under European Law of existing extra-EU BITs and to clarify the power of Member States to conclude new BITs.⁵⁴ This so-called ‘grandfather regulation’ granted an authorization to maintain extra-EU BITs and even to conclude new ones.

57. Article 1(1) of the Regulation states:

Article 1

Subject matter and scope

1. Without prejudice to the division of competences established by the TFEU, this Regulation addresses the status of the bilateral investment agreements of the Member States under Union law, and establishes the terms, conditions and procedures under which the Member States are authorised to amend or conclude bilateral investment agreements.

2. For the purpose of this Regulation the term ‘bilateral investment agreement’ means any agreement with a third country that contains provisions on investment protection. This Regulation covers only those provisions of bilateral investment agreements dealing with investment protection.

58. The Regulation addresses the status under Union Law of extra-EU BITs signed before the transfer of competences to the EU on 1 December 2009 through the Treaty of Lisbon. It also lays down the conditions under which Member States are empowered to conclude new BITs after that date.⁵⁵

⁵⁴ 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.

⁵⁵ Regulation (EU) No 1219/2012, Preamble, paras (7), (8) and (9).

59. To this end, the Member States had to notify the Commission of all BITs with third countries, signed before 1 December 2009 or before the date of their accession, that they wished to maintain in force or permit to enter into force.⁵⁶

60. The core provisions of this Regulation are as follows:

Article 3

Maintenance in force

Without prejudice to other obligations of the Member States under Union law, bilateral investment agreements notified pursuant 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.

Article 7

Authorisation to amend or conclude a bilateral investment agreement

Subject to the conditions laid down in Articles 8 to 11, a Member State shall be authorised to enter into negotiations with a third country to amend an existing or to conclude a new bilateral investment agreement.

61. The Preamble to Regulation 1219/2012 recognizes that BITs of Member States with non-EU States remain binding under public international law but are to be progressively replaced by agreements of the EU with these States.⁵⁷

62. The Regulation is binding and directly applicable in all Member States.⁵⁸

63. In case of incompatibilities of European Law with obligations under BITs, the Regulation does not absolve Member States of their obligation to observe EU Law. The Preamble makes this clear:

Member States are required to take the necessary measures to eliminate incompatibilities, where they exist, with Union law, contained in bilateral investment agreements concluded between them and third countries. The implementation of this Regulation is without prejudice to the application of Article 258 TFEU⁵⁹ with respect to failures of Member States to fulfil obligations under Union law.⁶⁰

⁵⁶ Regulation (EU) No 1219/2012, Article 2.

⁵⁷ Regulation (EU) No 1219/2012, Preamble, paras (5) and (6).

⁵⁸ Regulation (EU) No 1219/2012, Article 17.

⁵⁹ Article 258 of the TFEU deals with the authority of the EU Commission to take legal action against a Member State for failing to fulfil its obligations under European Law.

⁶⁰ Regulation (EU) No 1219/2012, Preamble, para (11).

64. Therefore, the Regulation deals with the problem of the division of competences between Member States and the EU. It does not resolve the problem of substantive conflicts between European Law and BITs with Third States.
65. The EU is not bound by agreements to which it is not a party. Therefore, Member States' treaties with third States are not part of European Law unless these treaties are specifically imported into European Law.
66. It follows from the foregoing that, under European Law, BITs of Member States with Third States may be maintained in force.⁶¹ European Law does not, however, accord precedence to obligations arising under such BITs. In case of a conflict between obligations under European Law and those under extra-EU BITs, the Member State concerned remains bound by both. This may give rise to situations in which the Member State incurs liability irrespective of action taken. In other words, complying with EU law may result in international liability of the concerned Member State for breach of its extra-EU BIT obligations.

IV. FEATURES OF BILATERAL INVESTMENT TREATIES

A. BIT PROVISIONS ON REGIONAL ECONOMIC INTEGRATION ORGANIZATIONS

67. Treaties may provide for their subordination to other treaties. Article 30(2) of the VCLT provides:

When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

68. Therefore, it would be possible for a BIT to state that it is subordinate to another treaty.
69. A look at the BITs of EU Member States with China demonstrates that neatly all of them⁶² refer to regional integration organisations (RIO). A typical clause of this type is

⁶¹ See also *Moldova v Komstroy*, CJEU, Judgment, 2 September 2021, C-741/19; *Okuashvili v Georgia*, Partial Final Award on Jurisdiction and Admissibility, 31 August 2022, paras 226-251; *India v Deutsche Telecom*, German Constitutional Court, Decision, 31 July 2025, 2 BvR 85/24.

⁶² The China-Denmark BIT does not contain a provision to this effect.

Article 3(4) of the China-Germany BIT. After providing for fair and equitable treatment (FET), national treatment and most-favoured-nation (MFN) treatment, it states:

The provisions of Paragraphs 1 to 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of

(a) any membership or association with any existing or future customs union, free trade zone, economic union, common market;

70. This provision is of limited scope. It merely provides that privileges enjoyed by nationals of Member States of an economic integration organisation need not be extended to investors of third States by virtue of the BIT's provisions on non-discrimination. Chinese nationals will not enjoy the freedoms of EU nationals merely by virtue of the BIT's non-discrimination clause. RIO provisions in BITs do not subordinate the BIT to European Law but merely limit the application of one aspect of the BITs' provisions.

B. SYSTEMIC INTEGRATION AND HARMONIZING INTERPRETATION

71. The principle of systemic integration means that a treaty should be interpreted not in isolation but within the broader context of international law.⁶³ This principle finds expression in Article 31(3)(c) of the VCLT which directs that, in interpreting a treaty, account shall be taken, together with the context, of "any relevant rules of international law applicable in the relations between the parties".⁶⁴

72. The reference in Article 31(3)(c) of the VCLT to "relevant rules of international law" includes other treaties.⁶⁵ In the words of the International Law Commission:

⁶³ For detailed treatment see *C McLachlan*, *The Principle of Systemic Integration in International Law* (2024); *B Simma* and *T Kill*, *Harmonizing Investment Protection and International Human Rights: First Steps Towards a Methodology*, in: *C Binder, U Kriebaum, A Reinisch, S Wittich* (eds) *International Investment Law for the 21st Century* (2009) 678.

⁶⁴ VCLT Article 31(3)(c): "3. There shall be taken into account, together with the context: ... (c) any relevant rules of international law applicable in the relations between the parties."

⁶⁵ See also *C McLachlan*, *The Principle of Systemic Integration and Article 31(1)(c) of the Vienna Convention* 54 *Intl & Comparative LQ* (2005) 290; *B Simma* and *T Kill*, *Harmonizing Investment Protection and International Human Rights: First Steps Towards a Methodology*, in: *C Binder, U Kriebaum, A Reinisch, S Wittich* (eds), *International Investment Law for the 21st Century* (2009) 695; *R Gardiner*, *Treaty Interpretation* (2008) pp 261-263 with references to the VCLT's preparatory work as well as to subsequent practice.

Article 31(3)(c) deals with the case where material sources external to the treaty are relevant in its interpretation. These may include other treaties, customary rules or general principles of law.⁶⁶ ... Article 31(3)(c) also requires the interpreter to consider other treaty-based rules so as to arrive at a consistent meaning.⁶⁷

73. This leads to the question whether the principle of systemic integration calls for an interpretation of the BITs of Member States that harmonizes them with European Law. An examination of the text of Article 31(3)(c) of the VCLT reveals that this would not be appropriate. Article 31(3)(c) of the VCLT states specifically that the relevant rules of international law must be “applicable in the relations between the parties”. As pointed out above, European Law is not applicable in the relations between EU Member States and China. Therefore, European Law is not applicable to the interpretation of the BITs with China.

74. This conclusion is not the result of excessive formalism. Rather, it reflects the principle that transactions among third parties cannot affect the legal position of a party not privy to the transaction; a principle that applies not only to the conclusion of treaties but also to their interpretation. It follows that it is not possible to “harmonize” China’s BITs with European Law.

C. TERMINATION OF BILATERAL INVESTMENT TREATIES AND SUNSET CLAUSES

75. BITs are subject to termination. All BITs of EU Members with China contain provisions that permit unilateral termination. The China-Germany BIT provides in Article 15(2) and (3):

(2) This Agreement shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting Party twelve months before its expiration.

(3) After the expiration of the initial ten years period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least twelve

⁶⁶ ILC, Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission, Conclusions UN Doc A/CN.4/L702, 18 July 2006, Conclusion (18).

⁶⁷ *Loc. cit.* Conclusion (21).

month's written notice through diplomatic channels to the other Contracting Party.

76. This provision confirms the BIT's validity for the first ten years after its entry into force. Thereafter, either party may terminate the BIT subject to a twelve-month notice. The provision deals only with unilateral terminations. An agreement of both parties to terminate the BIT is possible at any time. States have terminated BITs, especially in Europe, in the intra-EU context. Some of these terminations were bilateral but the most important step was the so-called termination treaty of 5 May 2020 whereby 23 EU Member States terminated about 130 intra-EU BITs.⁶⁸
77. The termination of BITs of EU Member States with China, in case of a conflict with EU Law, specifically with the CSA, would be possible in principle. But it would carry serious disadvantages. New investments of investors from EU Member States in China would no longer be protected. Nor would new Chinese investments in the EU be protected by treaty. This would create insecurity in the markets in China as well as in the respective European States. The goals of legal stability and promotion of investment would be lost.
78. In addition, unilateral termination would not resolve the problem of conflicting obligations under European Law and BITs. BITs between China and EU Member States contain so-called sunset clauses. Sunset clauses are clauses in BITs providing for the continued effect of treaty provisions even after their termination for investments made during their validity.
79. In the China-Germany BIT the sunset clause is contained in Article 15(4):
- (4) With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 14 shall continue to be effective for a further period of twenty years from such date of termination.
80. Therefore, investments existing at the time of the BIT's termination would continue to be protected by the terms of the BITs. China and its investors could continue to insist on the observance of these protections. The potential conflict between obligations

⁶⁸ Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, 5 May 2020,

arising from European Law and the BIT – even if terminated – would continue for another twenty years.

81. All other BITs between China and EU Member States contain similar sunset clauses providing for the continued application of the BITs' protection for another 10, 15 or 20 Years.⁶⁹ It follows that the unilateral termination of existing BITs is not a solution to the dilemma of conflicting obligations.
82. An agreed termination of BITs would require China's assent. It is unlikely that China will agree to the withdrawal of protection for its investors to allow the operation of the projected CSA. It is also unclear whether an agreed termination of BITs would remove the operation of the sunset clause. The Termination Agreement of 2020 among EU Member States concerned intra-EU BITs. As part of this Agreement the Member States purported to terminate also the sunset clauses in these treaties.⁷⁰
83. It is by no means certain that investment tribunals will always accept an agreed termination of a BITs even if the mutual termination extends to the sunset clause of the treaty. The unqualified termination of an investment protection treaty is likely to have retroactive effect upon investments made while the treaty was still in force. The investor, having relied on treaty protection when making the investment, will find itself deprived of protection. Therefore, the question that tribunals will need to address is whether investors have vested rights that continue to remain in effect following the mutual termination of the relevant treaty, as well as whether the doctrine of vested rights is such a rule of customary international law that imposes on States obligations independently of the treaty to respect individual investors' rights acquired prior to the termination of the treaty.⁷¹

⁶⁹ The China-Italy BIT provides for a shorter period of five years.

⁷⁰ Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, 5 May 2020, Article 3: "Termination of possible effects of Sunset Clauses
Sunset Clauses of Bilateral Investment Treaties listed in Annex B are terminated by this Agreement and shall not produce legal effects, in accordance with the terms set out in this Agreement."

⁷¹ VCLT Article 43: "The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty".

84. In some cases, tribunals have found that undertakings towards investors, made through legislation or treaty, could not be withdrawn to the investors' detriment. For instance, in *Rumeli v Kazakhstan*, the tribunal found that a State may not simply repeal investor rights granted through legislation. The tribunal said:

... it is also well established in international law that a State may not take away accrued rights of a foreign investor by domestic legislation abrogating the law granting these rights.⁷²

85. In *Adria Group v Croatia*, the tribunal refused to recognize the consequences of an agreed termination of a BIT. The tribunal said:

if an investor of the Netherlands, acting in reliance on these guarantees, made a qualifying investment in the territory of Croatia, they were entitled to do so on the assumption that those guarantees would not be withdrawn in a manner not provided for in the BIT itself.⁷³

86. It follows that termination of the BITs between China and EU Member States would not constitute an effective strategy for avoiding conflicts between obligations under European Law, specifically the CSA, and those arising under Member States' BITs. Unilateral denunciations of these BITs would, in any event, trigger their sunset clauses, thereby prolonging the potential for conflicting obligations. Even in the unlikely case that Member States were able to secure China's agreement to terminate the BITs, there is no assurance that all obligations capable of conflicting with European Law would thereby be extinguished.

⁷² *Rumeli v Kazakhstan*, Award (29 July 2008) paras 333, 335. The FIL also contained a ten-year sunset clause.

⁷³ *Adria Group B.V. and Adria Group Holding B.V. v Croatia*, Decision on Intra-EU Jurisdictional Objection, 31 October 2023, para 243.

V. RESPONSIBILITY FOR BREACHES OF BILATERAL INVESTMENT TREATIES

A. INVESTOR RIGHTS

87. It is widely accepted, though not undisputed, that investment treaties create rights and duties not just between the contracting States but also for investors.⁷⁴ The most obvious evidence of this dual nature of investment treaties are the separate clauses for the settlement of disputes between the contracting States and for disputes between an investor of one contracting State and the other contracting State.

88. The United Kingdom Court of Appeal said in *Occidental v Ecuador*:

The fundamental assumption underlying the investment treaty regime is clearly that the investor is bringing a cause of action based upon the vindication of its own rights rather than those of its national State.⁷⁵

In addition, the Court of Appeal referred to

a Treaty intended by its signatories to give rise to rights in favour of private investors capable of enforcement, to an extent specified by the Treaty wording, in consensual arbitration against one or other of its signatory States.⁷⁶

89. In *Corn Products v Mexico*, the tribunal expressed the same principle with respect to a NAFTA claim:

In the Tribunal's view, the NAFTA confers upon investors substantive rights separate and distinct from those of the State of which they are nationals.... the Tribunal considers that the intention of the Parties was to confer substantive rights directly upon investors. That follows from the language used and is confirmed by the fact that Chapter XI confers procedural rights upon them.⁷⁷

⁷⁴ Z. Douglas, *The International Law of Investment Claims* (2009) p 10: "Where the contracting states to an investment treaty have agreed to a procedure for the judicial settlement of disputes between an investor and the host state, a claim advanced by the investor in accordance with such procedure is its own claim and the national contracting state of the investor has no legal interest in respect thereof." See also: M. Paparinskis, *Investment Treaty Arbitration and the (New) Law of State Responsibility*, 24 EJIL pp617-647 (2013); T.R. Braun, *Globalization-Driven Innovation: The Investor as a Partial Subject in Public International Law*, 15 *The Journal of World Investment and Trade* pp 73, 87-89 (2014); C McLachlan, L Shore, M Weiniger, *International Investment Arbitration Substantive Principles* (2nd ed. 2017) 3.114-3.126.

⁷⁵ *Occidental Exploration and Production Company v Republic of Ecuador*, Judgment, United Kingdom Court of Appeal [2005] EWCA 1116, 9 September 2005.

⁷⁶ At para 37.

⁷⁷ *Corn Products International v Mexico*, Decision on Responsibility, 15 January 2008, paras 167, 169. See also para 173. See also *Plama v Bulgaria*, Decision on Jurisdiction, 8 February 2005, para 141.

90. Also in *Adria Group v Croatia*, the tribunal spelled out that the rights bestowed upon investors in investment treaties were enjoyed by them directly and in their own name.

The tribunal said:

the BIT is not simply a matter of the bilateral rights and obligations of the two States. BITs are designed to confer rights upon investors (as defined in each BIT), entitling them to specified standards of treatment and giving them the power to bring claims to enforce that entitlement without being dependent upon their State of nationality.⁷⁸

91. This result is supported by the law of State responsibility. The ILC Articles on Responsibility of States for Internationally Wrongful Acts recognise the possibility of State responsibility towards non-State actors in Article 33(2):

This Part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

92. It follows that investment treaties create rights and duties not only between States. The commitments for the protection and promotion of investments made in these treaties are not just covered by the principle *pacta sunt servanda*. Investors who enjoy rights under them are not privy to these treaties and have no say in their making and termination.⁷⁹ But they are beneficiaries of these treaties. Even without the status of parties to the treaties, they are not entirely at the whim of the masters of the treaties.

B. INVESTMENT ARBITRATION

93. Under most modern BITs, investors have direct access to international arbitration against host States. In case of an investment dispute, the BITs offer arbitration to qualifying investors who may accept the offer thereby perfecting an investment agreement. All BITs between China and EU Member States contain provisions for the settlement of disputes between investors and host States.

⁷⁸ *Adria Group B.V. and Adria Group Holding B.V. v Croatia*, Decision on Intra-EU Jurisdictional Objection, 31 October 2023, para 227. See also paras 240, 241.

⁷⁹ T. Voon, A. Mitchell, J. Munro, Parting Ways: The Impact of Mutual Termination of Investment Treaties on Investor Rights, 29 ICSID Rev (2014) 451-473; A. Reinisch, S. Mansour Fallah, Post-Termination Responsibility of States? – The Impact of Amendment/Modification, Suspension and Termination of Investment Treaties on (Vested) Rights of Investors, 37 ICSID Rev (2022) 101-120.

94. The Germany-China BIT provides to this end:

Article 9

Settlement of Disputes between Investors and one Contracting Party

(1) Any dispute concerning investments between a Contracting Party and an investor of the other Contracting Party should as far as possible be settled amicably between the parties in dispute.

(2) If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the investor of the other Contracting State, be submitted for arbitration.

(3) The dispute shall be submitted for arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), unless the parties in dispute agree on an ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on the International Trade Law (UNCITRAL) or other arbitration rules.

(4) Any award by an ad-hoc tribunal shall be final and binding. Any award under the procedures of the said Convention shall be binding and subject only to those appeals or remedies provided for in this Convention. The awards shall be enforced in accordance with domestic law.

95. The parties to this form of arbitration are the host State and an investor of the other Contracting State to the BIT.

96. This dispute settlement clause offers several alternatives. The institution of choice is ICSID arbitration, but the parties may agree on *ad hoc* arbitration under the UNCITRAL Arbitration Rules.

97. The majority of BITs of China with EU Member States provide for arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).⁸⁰ ICSID provides a system of dispute settlement that is designed exclusively for investor-State disputes. It offers standard clauses for the use of the parties, detailed rules of procedure and institutional support.⁸¹ The institutional support extends not only to the selection of arbitrators but also to the conduct of arbitration proceedings.

⁸⁰ China's BITs with the following EU Member States provide for ICSID arbitration: Belgium, Cyprus, Czech Republic, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Spain, Sweden.

⁸¹ For a concise overview see L Reed, J Paulsson, N Blackaby, *Guide to ICSID Arbitration* (2d ed 2010). For a more detailed exposition see SW Schill *et al* (eds), *Schreuer's Commentary on the ICSID Convention* (3d ed 2021).

98. The jurisdiction of ICSID requires an investment dispute of a legal nature between a State party to the Convention and a national of another State that is also a party to the Convention.⁸² In addition, the two parties to the dispute (the host State and the investor) must have consented to ICSID's jurisdiction.⁸³ Consent is provided by the clause in the BIT and acceptance by the investor.
99. Proceedings under the ICSID Convention are self-contained. This means that they are not subject to the intervention of any outside bodies. In particular, domestic courts have no power to stay, to compel or to otherwise influence ICSID proceedings. Nor do domestic courts have the power to set aside or otherwise review ICSID awards.
100. Arbitration requires an agreement between the disputing parties. Consent to arbitration is formed through the arbitration clause in the BIT and its acceptance by the investor. It is established practice that an investor may accept an offer of consent contained in a treaty by instituting arbitration proceedings. Therefore, under a BIT of China with a Member State of the EU, a Chinese investor may simply start proceedings against the State without any further preliminary steps. But the investor may also express its consent at an earlier stage, even before a dispute arises, while the BIT is in force.⁸⁴ Once perfected, consent to arbitration may not be revoked unilaterally.
101. Not all arbitration agreements are identical. The scope of consent is determined by the offer of consent in the BIT. In the example given above, the investor-State arbitration clause in the Germany-China BIT refers broadly to "any dispute concerning investments".⁸⁵ Some BITs between China and EU Member States express consent more narrowly, covering only disputes relating to expropriations or to the amount of

⁸² China as well as all EU Member States, except Poland, are parties to the ICSID Convention.

⁸³ The ICSID Convention, Article 25(1), provides in relevant part:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.

⁸⁴ In some cases, investors have accepted offers of consent in BITs prior to the institution of proceedings: *ADC v Hungary*, Award, 2 October 2006, para 363; *Wintershall v Argentina*, Award, 8 December 2008, para 10; *Abaclat v Argentina*, Decision on Jurisdiction and Admissibility, 4 August 2011, para 446; *Saint-Gobain v Venezuela*, Decision on Liability and the Principles of Quantum, 30 December 2016, paras 359, 360.

⁸⁵ The following BITs between China and EU Member States contain broad consent clauses of this type: Belgium, Cyprus, Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Spain, Sweden.

compensation for expropriations.⁸⁶ Some tribunals have held that clauses referring to compensation for expropriation extend to the question of the existence of an expropriation⁸⁷

102. In addition to clauses dealing with disputes between host States and investors, BITs contain a second arbitration clause for disputes between the States Parties to the treaty. Although not often used, they offer the possibility to settle disputes between the two States concerning the application of the BIT.⁸⁸ For instance, the China-Germany BIT contains the following clause for the settlement of State-State disputes:

Article 8

Settlement of Disputes between Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through diplomatic channel.

(2) If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

103. All BITs of EU Member States with China provide for arbitration between the Parties to the BITs in case of disagreement about its interpretation or application.

104. Therefore, in addition to a claim in arbitration by an investor of China, an EU Member State may be exposed to a claim by China that may be enforced by an arbitral award.

C. REMEDIES

105. In investment arbitration, if a tribunal determines that a breach of a treaty obligation has occurred, the remedy usually consists of monetary compensation. Restitution in kind or specific performance is ordered infrequently. In some cases, tribunals have

⁸⁶ The following BITs between China and EU Member States contain narrow consent clauses: Austria, Bulgaria, Croatia, Denmark, Estonia, Greece, Hungary, Italy, Lithuania, Poland, Slovakia, Slovenia.

⁸⁷ *Tza Yap Shum v Peru*, Decision on Jurisdiction and Competence, 19 June 2009, paras 129–188; *Beijing Urban Construction v Yemen*, Decision on Jurisdiction, 31 May 2017, paras 50, 59–69, 74–108.

⁸⁸ See *Lucchetti v Peru*, Award, 7 February 2005, paras 7, 9; *Italy v Cuba*, Final Award, 15 January 2008; *Chevron and Texaco v Ecuador*, Partial Award on the Merits, 30 March 2010.

declined to order restitution as involving a disproportionate burden to the State concerned⁸⁹ or as interfering with the State's sovereignty.⁹⁰

106. In case of a breach of international law, the guiding principle is that reparation must, as far as possible, restore the situation that would have existed had the illegal act not been committed.⁹¹ Under this principle, damages for a violation of international law should reflect the damage actually suffered by the victim. If the illegal act results in deprivation of income, damages may have to include lost profits.⁹²

107. The calculation of compensation for a lawful expropriation follows different standards.⁹³ Expropriation is not illegal as such, but compensation is one of the requirements for a legal expropriation together with a public purpose. The China-Germany BIT provides to this effect:

Article 4
Expropriation and Compensation

(2) Investments by investors of either Contracting Party shall not directly or indirectly be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party (hereinafter referred to as expropriation) except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the investment immediately before the expropriation is taken or the threatening expropriation has become publicly known, whichever is earlier. The compensation shall be paid without delay and shall carry interest at the prevailing commercial rate until the time of payment; it shall be effectively realizable and freely transferable. Precautions shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and payment of such compensation. At the request of the investor the legality of any such expropriation and the amount of compensation

⁸⁹ Article 35 of the ILC's Articles on State Responsibility.

⁹⁰ *LG&E v Argentina*, Award, 25 July 2007, paras 84-87; *Occidental v Ecuador*, Decision on Provisional Measures, 17 August 2007, paras 66-86; *Antin v Spain*, Award, 15 June 2018, 631-637; *Masdar v Spain*, Award, 16 May 2018, paras 553-563.

⁹¹ *Factory at Chorzów*, Merits, 1928, PCIJ, Series A, No 17, p 47; Articles 31 and 36 of the ILC's Articles on State Responsibility.

⁹² *Amco v Indonesia*, Resubmitted Case: Award, 5 June 1990, paras 163-284; *LETCO v Liberia*, Award, 31 March 1986, 2 ICSID Reports 346, at pp 373-377; *Crystallex v Venezuela*, Award, 4 April 2016, paras 872-885.

⁹³ For decisions clearly distinguishing between compensation for expropriation and damages for an illegal act see: *Nycomb v Latvia*, Award, 16 December 2003, sec 5.1; *MTD v Chile*, Award, 25 May 2004, para 238; *ADC v Hungary*, Award, 2 October 2006, para 481, 483; *Siemens v Argentina*, Award, 6 February 2007, paras 349-352; *LG&E v Argentina*, Award, 25 July 2007, paras 29-58; *Magyar Farming v Hungary*, Award, 13 November 2019, paras 368-372.

shall be subject to review by national courts, notwithstanding the provisions of Article 9 [investor-State dispute settlement].

108. Damages for an illegal act look at the victim's subjective position. Compensation for expropriation, as expressed in the investment's fair market value, is an objective standard that looks at the amount that a willing buyer would normally pay to a willing seller in a free transaction, at arm's length. On the other hand, a market value will often be a fiction, especially where a market for large and complex investments does not exist. Therefore, market value is determined often on the basis of future prospects or earning capacity of the investment.

109. An award of damages or compensation normally includes interest.⁹⁴ The practice of tribunals shows a clear trend towards compounding interest.

110. The practice of tribunals on the attribution of costs is not uniform. Tribunals have shown a growing tendency to adopt the principle that costs follow the event. An award of costs against the losing party may be total or, more frequently, may cover a certain part of the overall costs in proportion to the parties' relative success. In other cases, the tribunals found that fees and expenses of the arbitration were to be shared equally and that each party had to bear its own expenses.

111. Arbitral awards are binding upon the parties and create an obligation to comply with them. The issues decided in awards are also *res judicata*. This means that the parties may not relitigate them before another tribunal or in a domestic court.

112. Awards rendered under the ICSID Convention are to be recognized as binding and their pecuniary obligations are to be enforced like final domestic judgments in all States parties to the Convention.⁹⁵ Therefore, recognition and enforcement may be sought not only in the host State or in the investor's State of nationality, but in any State that is a party to the ICSID Convention.

113. The enforcement of non-ICSID awards is subject to the New York Convention and to the national law of the place of enforcement.⁹⁶

⁹⁴ Generally, see JY Gotanda, 'Awarding Interest in International Arbitration' (1996) 90 *AJIL* 40.

⁹⁵ Article 54 ICSID Convention.

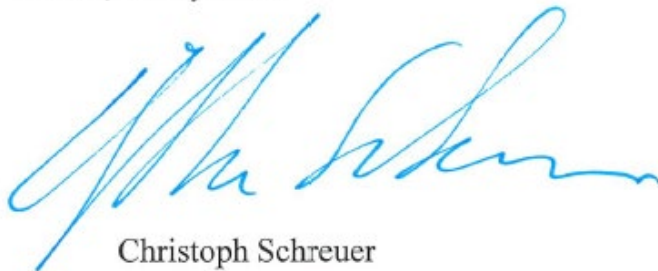
⁹⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), 330 UNTS 38.

VI. CONCLUSION

114. The EU Cybersecurity Act, if adopted, may lead to a conflict between obligations under European Law and those arising under bilateral investment treaties of EU Member States with third States, including China.
115. If European Law is characterised as domestic law in relation to international law, compliance with European legislation that results in breach of treaty obligations will engage State responsibility under international law. A State may not invoke its domestic law as justification for a failure to perform its international obligations.
116. If European Law is characterised as international law, it cannot be invoked vis-a-vis non-Member State of the EU. In relation to China, European Law, constitutes *res inter alios acta*. This may place Member States in a position of conflicting obligations under European Law and their treaty obligations towards third States, including China. Obligations under European Law would not release Member States of the EU from responsibility for their violations of their BITs with non-Member States.
117. Under European Law, Member States may, for the time being, maintain their BITs with third States pending the conclusion of EU-level agreements. This does not, however, absolve Member States of the obligation to comply with European Law. In the event of a material conflict, Member States may incur responsibility for any resulting breach.
118. References in BITs to regional economic organisation do not generally confer precedence on obligations arising from membership in such organisations. Therefore, they do not eliminate the possibility of a conflict between obligations under European Law and those under the relevant BITs.
119. A harmonizing interpretation of conflicting obligations under European Law and under extra-EU BITs does not provide a viable solution. The relevant provision in treaty law (Article 31(3)(c) of the VCLT) requires that the provision must be applicable in relation to the parties of the treaty. European Law does not meet this requirement in relations between an EU Member State and China.

120. Although BITs may, in certain circumstances, be terminated unilaterally, the effects of such termination are significantly limited by so-called ‘sunset clauses’, which extend treaty protections to existing investments for considerable periods of time.
121. Even an agreed termination of BITs, that includes ‘sunset clauses’, would not dispose of the problem of rights that investors may have acquired while the BITs were in force.
122. BITs provide effective mechanisms for ensuring compliance. Investors may initiate arbitration against host States for breaches of treaty obligations, and investment tribunals may award damages for losses suffered.
123. Investment arbitration is supported by an effective system of enforcement.

Vienna, 4 May 2026

A handwritten signature in blue ink, appearing to read 'C. Schreuer', is written over the printed name.

Christoph Schreuer

STATEMENT OF QUALIFICATIONS

Christoph Schreuer

- October 2009 to present **Independent Arbitrator and Expert**
- October 2000-September 2009 **University of Vienna, School of Law, Department of International Law and International Relations:** Professor of Law
- July 1992-June 2000 **School of Advanced International Studies, The Johns Hopkins University:** Edward B. Burling Professor of International Law and Organization; Director: International Law and Institutions
- September 1970-September 2000 **University of Salzburg, School of Law, Department of International Law:** Professor of Law (January 1978-Sept. 2000); Head of Department (October 1982 – June 1986); Universitätsdozent (Associate Professor) (June 1976 – January 1978); Universitätsassistent (Assistant Professor) (September 1970 – May 1976)

EDUCATION

- 1979 JSD Yale Law School
- 1976 Universitätsdozent (*venia legendi*) University of Salzburg
- 1972 Diploma in International Law University of Cambridge
- 1970 LLB University of Cambridge, redesignated LL.M. in 1986
- 1966 Dr iur University of Vienna

ARBITRATION EXPERIENCE

- Member, Permanent Court of Arbitration 2008-2014
- Member, ICSID Panel of Conciliators and Arbitrators
- Chairman, ILA Committee on the Law of Foreign Investment (2003-2008)
- Member, International Arbitration Institute
- Arbitrator in ICSID and UNCITRAL arbitrations
- Numerous legal opinions in ICSID and non-ICSID investment arbitrations
- Appointing authority in an UNCITRAL arbitration

PRINCIPAL PUBLICATIONS

- *Die Behandlung internationaler Organakte durch staatliche Gerichte* 381 pp (Duncker & Humblot, 1977).
- *Decisions of International Institutions before Domestic Courts* 407 pp (Oceana 1981).
- *State Immunity. Some Recent Developments*, 200 pp (Grotius, 1988).

- *Principles of International Investment Law* (with R. Dolzer) (Oxford University Press, 2008, second edition 2012, third edition (with U. Kriebaum) 2022).
- *The ICSID Convention: A Commentary*, 1466 pp (Cambridge University Press, 2001).
Second Edition with Loretta Malintoppi, August Reinisch & Anthony Sinclair, 1524 pp (Cambridge University Press, 2009).
Third Edition, SW Schill et al eds, *Schreuer's Commentary on the ICSID Convention*, 2025 pp (Cambridge University Press, 2022)
- Over 100 articles on a variety of subjects of international law.
Numerous articles on international investment law.

Annex
List of Bilateral Investment Treaties between the People’s Republic of China and the EU Member States

The below table lists all the bilateral investment treaties currently in force between the People’s Republic of China and the EU Member States.

No.	EU Member State	BIT	Signature	Entry into force	Link
1.	Austria	Agreement between the Republic of Austria and the People's Republic of China on the Promotion and Reciprocal Protection of Investments (with Protocol)	12 September 1985 (Amendment Protocol: 17 September 2012)	11 October 1986 (Amendment Protocol: 18 September 2015)	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/235/austria---china-bit-1985-
2.	Belgium	Agreement between the Belgium-Luxembourg Economic Union and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments	6 June 2005	1 December 2009	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/472/bleu-belgium-luxembourg-economic-union---china-bit-2005-
3.	Bulgaria	Agreement between the Government of the People's Republic of Bulgaria and the Government of the People's Republic of China Concerning the Reciprocal Encouragement and Protection of Investments	27 June 1989 (Amendment Protocol: 26 June 2007)	21 August 1994 (Amendment Protocol: 10 November 2007)	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/663/bulgaria---china-bit-1989-
4.	Croatia	Agreement between the Government of the People's Republic of China and the Government of the Republic of Croatia Concerning the Encouragement and Reciprocal Protection of Investments	7 June 1993	1 July 1994	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/886/china---croatia-bit-1993-
5.	Cyprus	Agreement between the Government of the People's Republic of China and the Government of the Republic of Cyprus for the Reciprocal Promotion and Protection of Investments	15 January 2001	29 April 2002	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/888/china---cyprus-bit-2001-
6.	Czechia	Agreement between the Czech Republic and the People's Republic of China on the Promotion and Protection of Investments	8 December 2005	1 September 2006	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/890/china---czech-republic-bit-2005-
7.	Denmark	Agreement between the Government of the People's Republic of China and the Government of the Kingdom of Denmark Concerning the Encouragement and the Reciprocal Protection of Investments	29 April 1985	29 April 1985	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/891/china---denmark-bit-1985-

No.	EU Member State	BIT	Signature	Entry into force	Link
8.	Estonia	Agreement between the Republic of Estonia and the People's Republic of China on the Promotion and Reciprocal Protection of Investments	2 September 1993	1 June 1994	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/896/china---estonia-bit-1993-
9.	Finland	Agreement between the Government of the Republic of Finland and the Government of the People's Republic of China on the Encouragement and Reciprocal Protection of Investments	15 November 2004	15 November 2006	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/899/china---finland-bit-2004-
10.	France	Agreement between the Government of the French Republic and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments	26 November 2007	20 August 2010	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/901/china---france-bit-2007- Link for English translation: https://edit.wti.org/document/show/7d16a9bd-031d-4ae5-9fb5-c844a64c44e0
11.	Germany	Agreement between the People's Republic of China and the Federal Republic of Germany on the Encouragement and Reciprocal Protection of Investments	1 December 2003	11 November 2005	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/905/china---germany-bit-2003-
12.	Greece	Agreement between the Government of the People's Republic of China and the Government of the Hellenic Republic for the Encouragement and Reciprocal Protection of Investments	25 June 1992	21 December 1993	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/907/china---greece-bit-1992-
13.	Hungary	Agreement between the Republic of Hungary and the People's Republic of China Concerning the Encouragement and Reciprocal Protection of Investments	29 May 1991	1 April 1993	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/910/china---hungary-bit-1991-
14.	Ireland	-	-	-	-
15.	Italy	Agreement between the Government of the People's Republic of China and the Government of the Italian Republic Concerning the Encouragement and Reciprocal Protection of Investments	28 January 1985	28 August 1987	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/916/china---italy-bit-1985-
16.	Latvia	Agreement between the Government of the People's Republic of China and the Government of the Republic of Latvia on the Promotion and Protection of Investments	15 April 2004	1 February 2006	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/928/china---latvia-bit-2004-

No.	EU Member State	BIT	Signature	Entry into force	Link
17.	Lithuania	Agreement between the Government of the Republic of Lithuania and the Government of the People's Republic of China Concerning the Encouragement and Reciprocal Protection of Investments	8 November 1993	1 June 1994	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/931/china---lithuania-bit-1993-
18.	Luxembourg	Agreement between the Belgium-Luxembourg Economic Union and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments	6 June 2005	1 December 2009	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/472/bleu-belgium-luxembourg-economic-union---china-bit-2005-
19.	Malta	Agreement between the Government of the People's Republic of China and the Government of Malta on the Promotion and Protection of Investments	22 February 2009	1 April 2009	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/936/china---malta-bit-2009-
20.	Netherlands	Agreement on Encouragement and Reciprocal Protection of Investments between the Government of the People's Republic of China and the Government of the Kingdom of the Netherlands	26 November 2001	1 August 2004	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/946/china---netherlands-bit-2001-
21.	Poland	Agreement between the Government of the People's Republic of China and the Government of the Polish People's Republic on the Reciprocal Encouragement and Protection of Investments	7 June 1988	8 January 1989	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/956/china---poland-bit-1988-
22.	Portugal	Agreement between the Portuguese Republic and the People's Republic of China on the Encouragement and Reciprocal Protection of Investments	10 December 2005	26 July 2008	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/958/china---portugal-bit-2005-
23.	Romania	Agreement between the Government of the People's Republic of China and the Government of Romania Concerning the Encouragement and Reciprocal Protection of Investments	12 July 1994 (Amendment Protocol: 16 April 2007)	1 September 1995 (Amendment Protocol: 1 September 2008)	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/961/china---romania-bit-1994-
24.	Slovakia	Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments	4 December 1991 (Amendment Protocol: 7 December 2005)	1 December 1992 (Amendment Protocol: 25 May 2007)	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/969/china---slovakia-bit-1991-
25.	Slovenia	Agreement between the Government of the People's Republic of China and the Government of the Republic of Slovenia Concerning the Encouragement and Reciprocal Protection of Investments	13 September 1993	1 January 1995	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/970/china---slovenia-bit-1993-

No.	EU Member State	BIT	Signature	Entry into force	Link
26.	Spain	Agreement between the People's Republic of China and the Kingdom of Spain on the Promotion and Reciprocal Protection of Investments	14 November 2005	1 July 2008	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/973/china---spain-bit-2005-
27.	Sweden	Agreement on the Mutual Protection of Investments between the Government of the Kingdom of Sweden and the Government of the People's Republic of China	29 March 1982 (Amendment Protocol: 27 September 2004)	29 March 1982 (Amendment Protocol: 27 September 2004)	https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/976/china---sweden-bit-1982-