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DRAGON AT THE GATES OF BELMONT: OBSTACLES TO USING POLAND AS A GATEWAY FOR THE RAIL COMPONENT OF THE BELT AND ROAD INITIATIVE IN LIGHT OF GEOPOLITICAL DEVELOPMENTS AND SHIFTING EUROPEAN UNION POLICY TOWARDS CHINA

SMOK U BRAM BELMONTU: PRZESZKODY W WYKORZYSTANIU POLSKI JAKO BRAMY DO EUROPY DLA KOLEJOWEGO KOMPONENTU INICJATYWY PASA I SZLAKU W ŚWIETLE ROZWOJU SYTUACJI GEOPOLITYCZNEJ ORAZ ZMIENIAJĄCEGO SIĘ PODEJŚCIA UNII EUROPEJSKIEJ WOBEC CHIN

An important element of the Belt and Road Initiative (BRI) involves the construction of rail links between China and the European Union (EU). Despite the geopolitical fallout from the ongoing war in Ukraine, the route through Russia, Belarus, and onward to Poland presently constitutes the only viable overland route from China to the EU. In this context, this paper aims to answer the question of whether such actions by Member States may constitute a breach of obligations arising from membership in the European Union, and consequently whether EU law may pose an obstacle to the development of individual trade relations with China by Member States outside the institutional and legal framework of the Union. In this study, on the one hand, programme documents and EU law relevant to the issue presented were analysed, and on the other hand, the geopolitical and operational considerations of rail links between the EU and China were examined. The authors, being aware of the politicization of the subject, concluded that EU State aid law instruments could successfully be used to block infrastructure investments designed to facilitate the reception of Chinese freight traffic if such an impulse were to arise at the political level.

Keywords: Poland; China; European Union; Belt and Road; geopolitics

Istotnym elementem Inicjatywy Pasa i Szlaku jest budowa połączeń kolejowych między Chinami a Unią Europejską. Pomimo geopolitycznych utrudnień wynikających z trwającej wojny na

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Ukrainie, trasa przez Rosję, Białoruś i dalej do Polski stanowi obecnie jedyną realną trasę lądową umożliwiającą transport towarów między Państwem Środka a krajami Europy Środkowej i Zachodniej. W tym kontekście niniejsze opracowanie ma na celu odpowiedź na pytanie, czy takie działania państw członkowskich mogą stanowić naruszenie zobowiązań wynikających z członkostwa w Unii Europejskiej, a tym samym czy prawo UE może stanowić przeszkodę w rozwoju poza instytucjonalnymi i prawnymi ramami indywidualnych kontaktów handlowych państw członkowskich z Chinami. W artykule analizie poddane zostały z jednej strony dokumenty programowe i prawo UE w obszarze relewantnym dla przedstawianego zagadnienia, a z drugiej – geopolityczne i operacyjne uwarunkowania połączeń kolejowych między UE a Chinami. Autorzy, mając świadomość polityczyzacji opisywanej problematyki, doszli do wniosku, że instrumenty prawa pomocy publicznej UE mogą zostać z powodzeniem wykorzystane do zablokowania inwestycji infrastrukturalnych służących recepcji chińskiego ruchu towarowego, jeżeli taki impuls zapadnie na poziomie politycznym.

Słowa kluczowe: Polska; Chiny; Unia Europejska; Inicjatywa Pasa i Szlaku; geopolityka

I. INTRODUCTION

The Belt and Road Initiative (BRI) was launched by China in 2013 and already includes 65 countries with almost 70% of the world's population, nearly 55% of the world's GNP and 75% of global resources (Choroś-Mrozowska, 2019). Included in the BRI is the project of constructing transport infrastructure connecting Chinese markets with those in Eastern and Western Europe. As the largest European Union (EU) country in Central and Eastern Europe, Poland remains one of the most strategically important participants in the Belt and Road Initiative (BRI).[1] It potentially stands as a gateway between the EU and China, which provides Poland with important economic and political advantages. Nevertheless, the changed geopolitical situation on Poland's eastern borders has brought into question the viability of Poland's participation in the BRI. The ongoing military conflict in Ukraine; worsening diplomatic relations between Belarus and Poland; and sanctions imposed against Russia have all made the transport of goods from China, via Russia, Ukraine and Belarus, to Poland and onward to the EU more difficult.

For the above reasons, the Chinese dragon finds itself in a position similar to that of Bassanio in Shakespeare's *The Merchant of Venice*, standing at the gates of Belmont. Behind them lies an extensive and lucrative EU internal market. However, the gates require opening through investments, allowing Chinese goods to enter in an economically acceptable manner. Poland, with its rail links, serves as such a gateway to EU markets. However, while the EU has not reacted negatively to the Belt and Road Initiative (BRI) and the latest

[1] In this paper we use the concept of Central and Eastern Europe as it is generally understood in China. This is framed in geographical and political terms, and includes those former Communist countries from the eastern part of Europe which, apart from the Balkan countries, did not belong to the former USSR.

renewed efforts to rejuvenate it, it has responded in a lukewarm manner and adopted a more hostile attitude towards Chinese economic expansion. The gateways to the EU internal markets are thus far from secure.

Several key factors shape the broader context of the discussed issue. Firstly, in light of the difficulties facing the Belt and Road initiative, such as the resignations from the project by countries like Italy and the Philippines, China is striving to rejuvenate its momentum in the post-pandemic era. Secondly, the current geopolitical landscape, especially the conflict in Ukraine, has necessitated a reconfiguration of overland cargo routes connecting China and Europe. Thirdly, despite potential political entanglements, European nations may find compelling economic incentives in accommodating the increasing influx of imports from China via rail links. Fourthly, the European Union remains cautious of China's attempts to engage with specific Member States outside the established EU institutional framework and thus might lean towards containing Chinese influence. Fifthly, China's political and economic ties with Russia are becoming increasingly politically problematic in light of attempts to halt Russian aggression in Ukraine.

Despite these difficulties, many EU Member States have an economic interest in deepening their economic ties with China and incorporating themselves into the BRI. The endeavours of individual EU Member States to accommodate Chinese rail trade, including the construction of dedicated infrastructure, could potentially affect a broad spectrum of EU policies, having simultaneous positive and negative effects on their implementation. In addition, these national efforts may involve measures on the face of it regarded as remaining outside the sphere of EU competencies. Given these factors, EU law lacks readily executable direct methods to counter these efforts should the political stance at the EU level become harder. Therefore, we would like to present the following hypothesis and arguments: If the EU were to confront China, EU State aid law would offer a very convenient method to block Chinese expansion. This risk is completely overlooked because rail infrastructure investments are typically considered as being safe from a State aid perspective. However, we contend that a compelling case could be made for the legal and practical feasibility of employing EU State aid law against China's expansion into the EU via the BRI. If this were to happen, then rail infrastructure development in Poland, connected to the BRI, could be severely hampered.

These interconnected factors collectively contribute to a combined political and legal risk that, in the authors' opinion, has not yet been thoroughly explored. In this paper, we aim to partially fill this gap by analysing the challenges associated with the transportation of goods between China and the EU via rail links that pass through Poland, within the framework of the BRI. We focus on two important elements of Poland's rail infrastructure connected to the BRI: the Małaszewicze rail terminal and the Łódź rail logistics hub. To analyse this topic, we will try to answer the following research questions:

1. How has the changed geopolitical situation affected the transport of goods by rail from China through Poland?

2. Will this changed geopolitical situation place further obstacles to the development of rail transport links between China and Poland as part of the Belt and Road Initiative?

3. To what extent may EU State law be deployed to halt or slow down the development of rail transport between China and Poland?

In this paper, we start by explaining the importance of the BRI and its expansion into the European Union. We then explain how Poland has emerged as one of the most important destinations for Chinese goods passing into the EU, particularly via rail transport. We show how the expansion of this rail trade through Poland has been partially hampered by the outbreak of the war in Ukraine, although Poland has benefited from the closure of alternative routes such as through Ukraine itself. We then explain how the connection of the EU and China, via Poland, has important strategic importance for the EU. The development of rail links through Poland has concentrated on two main areas: the Małaszewicze rail terminal and the Łódź rail hub. We analyse the development of the infrastructure in both these areas and consider the challenges that this faces. We then turn to look at the legal risks connected to the funding of infrastructure and State aid within the context of EU law. We outline the scenarios for State aid and consider whether these may become a means in the future to halt the expansion of the BRI-related rail infrastructure in countries such as Poland, particularly if geopolitical tensions worsen.

II. RAIL COMPONENT OF THE BELT AND ROAD INITIATIVE

1. China-Europe trade: Rail and its alternatives

The existence of efficient and streamlined logistics chains, supplying intermediate goods and allowing for the distribution of final products, is a crucial factor impacting economic efficiency in an interconnected global economic environment (Thürer et al., 2020). This is particularly important for EU-China trade, as goods and components must be transported over large distances, which adds to the operating costs (Rastogi & Arvis, 2014). Although seaborne container transport offers the lowest unit costs, this only becomes advantageous once large volumes of goods are transported. For lower volumes, being transported more frequently, rail transport offers the most cost-effective means of transport over long distances and is an important element of the BRI (Jakóbowski et al., 2018; Pomfret, 2021; Rodemann & Templar, 2014).

Although rail transport between China and the EU only made up around 0.6 per cent of Chinese exports in 2021, these rail links are of strategic importance for both China and the EU and for the further development of the BRI (Jakóbowski, 2022). They have taken on increased importance during the military conflict in Ukraine, as greater restrictions have been placed on the maritime and road transport of goods through Russia.

The European Union has closed its ports to Russia's entire merchant fleet (excluding energy, pharmaceutical products, humanitarian aid, nuclear fuel and coal) and has prohibited the maritime transport of Russian crude oil and petroleum products (Council of the European Union, 2025). Disruptions in sea freight have resulted in the suspension of sea services to Russian ports or the complete withdrawal of some shipowners operating in the Baltic (e.g. Maersk). This has halted the transit from China to the EU through the ports of the Kaliningrad region, which was one of the most important ports of entry for Chinese goods to the EU (Jakóbowski, 2022). The EU has imposed a series of sanctions on Russia since the outbreak of the war, which have restricted the entry of Russian and Belarusian lorries into the EU, including transit transport (Council of the European Union, 2025). These sanctions have severely impacted the transport of cars and vehicles. In 2021, the quantity of cars registered by Russian hauliers reached 4.3 million tonnes across the border with Finland, 2.2 million tonnes with Germany, 1.3 million tonnes with Lithuania and 1.1 million tonnes with Poland (Przybylski, 2022).

The outbreak of military hostilities in Ukraine resulted in a sharp fall in rail transit between China and the European Union. The cargo volume transported between China and the EU has fallen significantly over the past year and a half. The Eurasian Rail Alliance Index (ERAI) measures volumes crossing through the New Eurasian Land Bridge: through Kazakhstan, Russia, and Belarus. According to their statistics, in the first quarter of 2023, a total of 59,956 twenty-foot equivalent units[2] were transported through this route, which was almost 54 per cent less than during the first quarter of 2022. In April 2023, 18,498 TEU were registered, which is around 34 per cent below the level in April 2022 on this rail link (index1520.com, 2023).

At the beginning of the Russia-Ukraine war, there was a large shift towards the Trans-Caspian corridor, which runs via Baku-Tbilisi-Kars (BTK route) and into the southern EU Member States (Akçay & Changgang, 2023). Although, in theory, it takes approximately the same time to reach the EU border as through the northern overland route, there are significant capacity restrictions. These mainly concern port facilities since this route necessitates crossing the Caspian Sea and therefore such a low transit time is often practically unrealistic (Keuper, 2022; Papatolios, 2022). The rise in volume along this route, due to the geopolitical circumstances, has increased the length of time it takes to cross it. Therefore, whilst it had been predicted that it would take 40–45 days, this rose to almost 60 days. This is around five times longer and twice as expensive as transporting goods through the northern route (Walczak, 2022).

[2] Twenty-foot equivalent unit (TEU), is a unit of volume used in maritime and rail transport statistics, equivalent to a 20-foot ISO container.

2. China-Poland rail connections

Due to the restrictions outlined above, Poland has become an essential entry point for freight rail links between China and the EU since the outbreak of the Russia-Ukraine war. The small eastern Polish town of Małaszewicze has established itself as the main point of entry to the EU for goods from several centres in China: Chengdu, Xi'an, Hefei, Wuhan, Changsha, Suzhou, Zhengzhou, Xiamen, and Yiwu. Four Trans-Siberian corridors, which carry goods trains from the PRC, end at the Polish-Belarusian border. These are:

1) via the Sino-Kazakh Alashankou-Dostyk crossing,
2) via the Sino-Kazakh Horgos crossing,
3) via the Sino-Mongolian Erenhot crossing,
4) via the Sino-Russian Manzhouli-Zabaykalsk crossing (Chen et al., 2021).

All of these routes reach Poland through the Terespol-Brest crossing with Belarus, where the port of Małaszewicze is located. Transhipment takes place there, and the goods are then transported further into Poland and Western Europe (Patyk, 2021). Just before the start of the military conflict in Ukraine, and as COVID restrictions were ending in Europe, the freight turnover passing through Małaszewicze rose at an unprecedented rate. According to the infrastructure management company Cargotor, wagon turnover noted a double-digit increase in January 2022, compared to the first month of 2021, with traffic on broad-gauge infrastructure growing more strongly (by 25%) than on normal track (11%). As the company points out, this was the largest annual increase in traffic during its eight-year history (Cargotor, 2022).

Alongside the fall in maritime freight, many logistical rail ports along the New Silk Road have lost much of their trade. The German logistical hubs have particularly suffered as they tend to import high-end products such as cars. The biggest negative impact on freight dynamics is caused by decisions to withdraw from transit through the territory of the Russian state by end customers, mainly large industrial concerns from Europe. This especially applies to the exports of the German automotive sector, traditionally one of the most important users of rail transport and served mainly at the German hubs in Duisburg and Hamburg (Jakóbowski, 2022). Also, the war in Ukraine (and worsening diplomatic relations between China and Lithuania from 2021) has led to the effective closure of many previous points of entry for Chinese goods into the EU. This has resulted in Małaszewicze standing as virtually the only viable entry point for goods being transported by land into the EU from China (Jakóbowski, 2022). Małaszewicze rose as the major border crossing for China-EU rail transhipments from 2017, whilst other crossings (particularly through the Russian region of Kaliningrad) grew as competitors from the second quarter of 2020. However, by the second quarter of 2022, Małszewicze stood as the only major border crossing for China-EU rail transhipments.

Despite these relative advantages, the volume of cargo passing through Małaszewicze fell sharply in 2023. The volume of cargo from China to Małaszewicze shrank by 34.19% (from 165,772 TEU to 109,086 TEU); whilst that from Małaszewicze to China slumped by 67% (from 10,782 TEU to 3,532 TEU). This can largely be attributed to the destination shift of BRI trains departing China to destinations in Russia, such as Moscow and St. Petersburg, which could signal a long-term strategic shift in China towards prioritizing Russian markets. This decline was also due to the growth in the volume of cargo from China going to the Koper seaport in Slovenia, which is positioned on the Adriatic Sea and has good rail connections to cities in Central and Eastern Europe. Investment in the Koper port's infrastructure and the redirection of cargo transportation, due to the war in Ukraine, meant that in the first half of 2023, the volume of cargo going through the Koper port reached 554,949 TEU, after exceeding 1 million TEU in 2022 (Portal Morski, 2023; Zając, 2024).

III. EUROPEAN UNION POLICIES TOWARDS TRADE WITH CHINA: THE NEXUS BETWEEN INTERNAL AND EXTERNAL EU POLICIES

1. EU policy priorities towards Chinese economic expansion

The initial European response to the Chinese Belt and Road initiative was cautious yet not openly hostile. During the EU-China summit on 29 June 2015, Jean-Claude Juncker, then President of the European Commission, advocated for aligning his European Fund for Strategic Investments (EFSI) with China's Belt and Road (European Council, 2015). However, the situation has evolved since then. A growing number of scholars and policymakers have expressed concerns regarding Chinese investments in Europe. They see infrastructural investments as a tool for Chinese economic expansion, especially given the lack of reciprocal access for European companies in the Chinese market, in contrast to the access Chinese companies enjoy in Europe. This has led to calls for greater conditionality in EU-China trade relations (Oertel, 2020). The ongoing economic and political ties between China and Russia are increasingly seen as problematic, given the concerted efforts of the EU and the US to halt Russian aggression in Ukraine.

The European response towards Chinese trade expansion has two major vectors: external and internal. Externally, the launch of the Global Gateway initiative[3] in October 2023 aims to offer European-backed infrastructural investments in developing nations as an alternative to Chinese projects, often perceived as entrapments leading to debt (e.g. Casarini, 2024; Le Corre, 2017; Van der Made, 2022). Internally, escalating worries over predatory practices aimed at acquiring technological know-how and unfair competitive advantages through Chinese-subsidized goods have prompted the enactment of two significant regulations (Du & Zhang, 2022): the FDI Regulation and FS regu-

[3] Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank The Global Gateway, JOIN/2021/30 final.

lations, adopted in March 2019 and July 2023, respectively.[4] Notably, while these regulations target anticompetitive Chinese expansions, they do not extend to the infrastructural developments that facilitate such expansions. Nevertheless, their existence, coupled with EU policy statements, underscores a profound wariness toward Chinese imports, viewed as potentially politically and economically exploitative (cf. Babič & Dixon, 2020 *with* Reilly, 2017, p. 173; Fratscher, 2020; e.g. Pacheco Pardo, 2018).

While the discussed investments naturally fall within the scope of the EU's external and trade policy, the fact that they are carried out within EU territory means that they also fall within the full ambit of all EU internal policies – a circumstance often overlooked in academic discourse on EU-China trade relations (e.g. Bossuyt et al., 2020; Michalski & Nilsson, 2019).[5] This importance stems from the distinction between EU external policy, which is politically oriented and constrained by the requirement for unanimity among Member States as per Article 31(1) of the Treaty on the Functioning of the European Union (TFEU),[6] and European policies directed inward, particularly those related to the internal market, which fall within the realm of EU exclusive competences set out in Article 2 TFEU (Kellerbauer et al., 2019, pp. 361–367; Rosas, 2015, p. 159). Member States, bound by the principle of loyal cooperation, must not only refrain from interfering with EU objectives but also take active steps to maintain the effectiveness of EU policies, which are primarily inward-oriented (*Commission v. Luxembourg* 2005).[7] Naturally, the EU enjoys full enforcement powers in those areas of its exclusive competences (Klamert, 2014).

2. International rail trade and EU policies

The relevance of EU policies, even those not directly related to external trade and seemingly unrelated to railways, stems from the fact that the catalogue of European Union objectives set out in Article 3 of the Treaty on European Union (TEU)[8] lacks a hierarchy. Consequently, no EU policy supersedes others. Instead, Article 7 TFEU mandates ensuring consistency among various EU policies and, by extension, with their associated objectives (Engrbink, 2017; Kellerbauer et al., 2019; Klamert, 2014). Consistency, in this context, is understood both negatively, as avoiding duplications and contradictions be-

[4] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, [2019] OJ L 79I/1; Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, [2022] OJ L 330/1.

[5] Throughout this paper, the term *policy* will be understood based on its semantic definition, comprising three main components: first, the political determination of priorities and objectives, which are then translated into legal acts – the second component – and the third component is the application of existing rules in line with established objectives (Bähr, 2016).

[6] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/1.

[7] *Commission v. Luxembourg (Inland Waterway)* (Case C-266/03), ECLI:EU:C:2005:341.

[8] Consolidated version of the Treaty on European Union [2012] OJ C326/47.

tween policies, and positively, as the duty to consider the objectives of other policy areas when taking action within a specific policy field (Kellerbauer et al., 2019, p. 381). However, the Court in *Front Polisario* (2015, para. 153) has rejected the justiciability of Article 7 TFEU, which means one cannot successfully challenge EU institutions by claiming that they incorrectly balanced various policy objectives.[9] Therefore, the need to balance between these, often conflicting, objectives, given the breadth of EU goals, is apparently obvious. How this balancing will be done at the EU level is not in itself controllable (see Nic Shuibhne, 2013).

When referring to the steps taken by the Member States to accommodate incoming rail trade from China, transport policy should rather be understood as an umbrella term comprising an amalgamation of many other policies (Ortiz-Blanco & van Houtte, 2017). Transport, due to its vital role in the economy's circulatory system, should be viewed as a fundamental enabler for pursuing other policies, rather than solely within the context of its objectives in isolation from this broader perspective.[10]

At the most general level, the foundations and overarching imperatives of EU policies towards transport can be derived from the provisions of Article 3(3) TUE, which encapsulates the objectives and principles of the Internal Market (Ortiz-Blanco & van Houtte, 2017). Transport, like every branch of the economy, contributes to GDP generation – and this sphere falls within the ambit of the broader EU competition policy (see, e.g. Rabinovici, 2016), including State aid rules (see, e.g. de Broca et al., 2014) – but its primary role lies in facilitating other economic activities and directly serving the non-economic needs of societies by enhancing connectivity and thus fostering social and territorial cohesion. While there is debate in academic circles concerning the exact impact of transport on various socio-political aspects, as well as methodologies for measuring and assessing it, there is a consensus that such impact exists and is positive (e.g. Lakshmanan, 2008; Vickerman, 1991 and sources quoted therein). In this latter area, transport also became relevant to EU cohesion policy.[11] In addition, rail transport is viewed by the EU as a promoted mode that should become a more feasible alternative to road transport, and in this sense, projects also fall within the scope of the EU environmental policy (Green Deal, 2019 section 2.5.1 and earlier EC 2011, annex I).

Due to this synoptically outlined wide cross-sectoral and often indirect impact of transport, there is no EU law provision or soft law document containing *numerus clausus* objectives for Union policies directed at transport. Instead,

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[9] *Front Polisario v. Council* (Case T-512/12), ECLI:EU:T:2015:953.

[10] This approach is how it is seen in economic sciences (e.g. Greene & Jones, 1997) and thus has been transplanted into the field of the EU competition law (e.g. Bishop & Walker, 2010, p. 32; Jones & Sufrin, 2022, p. 47).

[11] It has been recognized initially in Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 14 January 1999: 'Cohesion and Transport' COM(1998)806 final and restated in, e.g. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Harnessing talent in Europe's regions, COM(2023)32 final.

policies aimed at specific modes of transport may simultaneously serve the goals of other EU policies. In the same vein, policies directly concerning other areas of EU activities may also fulfil objectives related to transport, all in accordance with the imperative of ensuring consistency between EU policies set out in Article 7 TFEU (Sauter & Langer, 2017). Therefore, the following list of goals and objectives, while comprehensive, should not be viewed as absolutely exhaustive, but rather as enumerating those policy-derived factors that may play a role in constructing rail infrastructure to accommodate incoming trade from China. These factors must be taken into account independently of considerations regarding external trade policy with China.

The objective of integrating the transport system through the elimination of existing barriers between Member States features prominently in this context (Ortiz-Blanco & van Houtte, 2017). This objective is generally derived from the Treaties imperative of the integration of the internal market (cf. Kellerbauer et al., 2019, pp. 31–34 *with* Lenaerts et al., 2011, p. 7-0006). It is also inherently linked with the Treaty objective of constructing and integrating trans-European networks – here, transport networks (TEN-T).[12] Both Małaszewicze and Łódź transport hubs lie on the TEN-T rail corridors.

Efforts to revitalize railways in Europe, which have been steadily losing ground to road transport, must be understood as part of the objective of promoting the modal shift (Takman & Gonzalez-Aregall, 2024). This shift entails a transition to the most eco-friendly forms of transport, primarily railways for inland transportation (Dyrhauge, 2021; Hancher et al., p. 664). The overarching imperative of protecting the environment, set out in Articles 3, 6, and 191 of the TFEU, is a prominent factor in transport-related policies, as transport ranks as the second most polluting sector in Europe, following energy generation (Eurostat, 2024). Addressing climate deterioration emerged as a key priority in EU transport-related policies as far back as 2011, prompted by the policy outlined in the 2011 White Paper. This focus gained momentum and was broadened with the adoption of the European Green Deal, signalling a commitment to transition the EU economy to a net-zero status by 2050.[13] By promoting the use of eco-friendly transport modes, such as railways, the EU

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[12] European Commission (2011) White Paper Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system Brussels, COM(2011)144 final; European Parliament (2018) Modal shift in European transport. A way forward: research for TRAN Committee, Policy Department for Structural and Cohesion Policies Directorate-General for Internal Policies PE 629.182 – November 2018; Objective of building TEN-T network is set out in Article 3 TFEU while the details are outlined in Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU, [2013] OJ L348/1.

[13] European Commission (2019) Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM(2019)640 final; 50. European Commission (2021) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Fit for 55’: delivering the EU’s 2030 Climate Target on the way to climate neutrality, COM(2021)550 final.

would simultaneously reduce its dependence on fossil fuels. This shift not only aligns with environmental goals but also carries strategic implications, particularly in the current context of reducing reliance on resources from Russia (Hancher et al., 2017, p. 664).

Promoting modes of transportation that minimize negative externalities is a closely linked objective (as outlined in, e.g. 2011 White Paper and the 2019 Green Deal communication[14]). Negative externalities refer to costs associated with transport use, borne by society as a whole rather than transport operators, including noise pollution, environmental degradation, and landscape changes (Verhoef 1994 and the literature quoted therein). This objective is pursued by promoting modal shifts towards railways, particularly from road transport, and improving the technical quality and interoperability of railway operations, which would also ultimately translate into consumer welfare, a key objective of EU competition law *sensu largo* and thus linked with the internal market. Notably, such an understanding of consumer welfare in the EU acquis is not limited to passenger operations, which have direct contact with end-users. Ensuring efficient and eco-friendly logistical chains for goods is also seen as serving consumers in two ways: by providing a better choice of goods, potentially at better prices – including those imported from China – and by eliminating negative externalities associated with these operations.

While the outlined internal policy objectives, concerning rail transportation services, offer a significant counterbalance to political and external trade policy concerns related to Chinese rail trade expansion, these concerns may also be amplified by the predominantly internal competition policy, especially its constituent part, the State aid law. Competition law belongs to the sphere of EU exclusive competencies as an inseparable component of the EU internal market.[15] Unlike passenger operations, cargo rail transport is fully liberalized and thus falls fully within the ambit of competition rules.

The State aid law stands out as a European peculiarity without direct counterparts elsewhere (Bacon, 2017, p. 4). While the debate regarding its objectives, and whether it should be considered a part of broader competition law or rather as a self-contained regime within EU law, falls beyond the scope of this paper, it is pertinent to emphasize a particularly relevant objective: ensuring a level playing field (Biondi, 2010; Hancher et al., 2017; Parcu et al., 2020). This objective, within the acquis, serves as a certain overarching raison

[14] E.g. White Paper – European transport policy for 2010: time to decide, COM/2001/0370 final; European Commission (2006) Communication from the Commission to the Council and the European Parliament. Keep Europe moving – Sustainable mobility for our continent: Mid-term review of the European Commission's 2001 Transport White Paper, SEC(2006)768 final.

[15] For the purpose of subsequent discussion, *state aid* will be understood according to the existing vast acquis as measures originating from the state and involving state resources, that confer unmarketlike advantage to selected underakings and it is at least liable of distorting trade and competition between Member States. The existing acquis has been quasi-codified in Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, [2016] OJ C262/1, but the notice does not introduce new elements; it merely compiles earlier case law. However, due to its compilatory nature, it serves as good reference material.

d'être as well as a somewhat aspirational postulate for transnational subsidy discipline in Europe.[16]

The term, from the realm of political economy rather than purely a legal category, is generally understood in case-law as a desired situation where all undertakings have equal entry conditions and can therefore compete fairly.[17] In other words, when entry conditions are equal, all outcomes would arise from market forces and undertakings' decisions rather than external pre-existing factors (Bacon, 2017, p. 10; Coppi, 2011, p. 76; de Cecco, 2012, p. 42). The CJEU stated that while balancing chances to compete by compensating for structural disadvantages within a Member State may not give rise to State aid, compensating for similar domestic disadvantages vis-à-vis other Member States will confer an advantage within the meaning of Article 107(1) TFEU.[18] In other words, Member States should not take proactive steps in achieving the level playing field.[19] Instead, they must only observe the relevant State aid rules – notify aid when needed, conduct due diligence in self-assessment – and the decision of how exactly the level playing field should look like will be decided at the EU level.

The implications of such an understanding of State aid control objectives in the context of investment projects described below – largely overlooked in then existing literature – are as follows: If it turns out that public funding of infrastructure would confer disproportionately larger advantages to selected undertakings, this can be regarded as distorting the level playing field and potentially giving rise to State aid. If such 'unmarketlike' advantages do occur, Member States would not be able to successfully shield themselves by claiming that these projects are merely designed to balance some existing underdevelopments. The investment projects in both the Małaszewicze rail terminal and the Łódź rail hubs should thus be seen through the lens of these considerations.

[16] European Commission (2012) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU State Aid Modernisation (SAM), COM(2012)0209 final.

[17] *Deufil GmbH & Co. KG v Commission of the European Communities* (Case 310/85), ECLI:EU:C:1987:96, para. 8; *Banco de Crédito Industrial SA, now Banco Exterior de España SA v. Ayuntamiento de Valencia* (Case C-387/92), ECLI:EU:C:1994:100, para. 12; *Air Liquide Industries Belgium SA v. Ville de Seraing and Province de Liège* (Cases C-393/04 & C-41/05), ECLI:EU:C:2006:403, para. 27; *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v. Commission of the European Communities* (Cases T-228/99 & T-233/99), ECLI:EU:T:2003:57, paras. 178, 206, 243, & 322; *P & O European Ferries (Vizcaya), SA and Diputación Foral de Vizcaya v. Commission of the European Communities* (Cases T-116/01 & T-118/01), ECLI:EU:T:2003:217, para. 111; *Kingdom of Belgium v. European Commission* (Case T-538/11), ECLI:EU:T:2015:188, para. 62; *Orange v. European Commission* (Case C-211/15 P), ECLI:EU:C:2016:798, para. 17.

[18] A view consistently expressed by the Court: *France v. Commission* (Case C-11/69) [1969] ECLI:EU:C:1969:68, para. 21; *Italy v. Commission* (Case 173/73), ECLI:EU:C:1974:71, paras. 12, 17; *Heiser* (Case C-172/03), ECLI:EU:C:2005:130, paras. 52–54; *Comitato "Venezia vuole vivere" and Others v. Commission* (Case C-71/09 P), ECLI:EU:C:2011:368, para. 95; *Germany v. Commission* (Case T-47/15), ECLI:EU:T:2016:281, para. 56.

[19] Additionally, research shows that balancing the negative effects of subsidies through own subsidies is not practically feasible to achieve precise equilibrium (Mestelman, 1986, p. 522).

IV. INVESTMENT PROJECTS FACILITATING EU-CHINA RAIL TRADE IN POLAND

1. Małaszewicze terminal expansion plans

The Małaszewicze terminal's position within the BRI faces combined opportunities and threats. The terminal needs significant infrastructural investment to secure its position as the main train freight border crossing into the EU on the New Silk Road. This includes the requirement to invest in the infrastructure at the Małaszewicze terminal, as well as constructing new border crossings and an alternative bridge over the Bug River (PITD, 2022). The government plans to modernize the Małaszewicze terminal, which will result in it having the capacity to receive trains of more than 1 km in length running on broad gauge. This means the possibility of running on tracks with a 'European gauge': 1520 mm. In addition, the dry port will also accept trains with a length of 750 metres in the normal gauge system, which is with a gauge of 1435 mm. The trains will be able to travel at a maximum speed of up to 40 km/h from the 20 km/h currently allowed (Kobylarz, 2022). The project aims to upgrade the rail tracks from the current UIC49 standard to UIC60. This upgrade will significantly enhance the capacity of the Małaszewicze hub, allowing for a total cargo handling capacity of 55 trains within a 24-hour period (Cargotor, 2021).

Such plans to modernize the Małaszewicze rail border crossing were put on hold for several years, as the Polish government attempted to gain EU funding to partially finance the project. As the terminal operator, Cargotor applied for 50 per cent funding from the EU CEF2 fund, which is specifically dedicated to the construction and modernization of infrastructure forming parts of the Trans-European Transport Network (TEN-T).[20] Cargotor does not currently possess the necessary funds estimated at PLN3,386,300,000 gross to carry out the project. According to the business plan, the investment would allocate PLN1.1 billion to laying additional rail tracks and adjusting their current layout. Approximately PLN687 million is planned to be spent on systems that manage rail traffic, while around PLN233 million is earmarked for increasing warehousing capacity. Furthermore, approximately PLN233 million will be used for electricity installations, and approximately PLN186 million will be invested in the associated road network. The European Union decided not to fund the modernization of the Małaszewicze transhipment area, instead prioritizing improving the rail connectivity between Ukraine and the EU, including the country's inclusion in the Trans-European Transport Network (index1520.com, 2023).

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[20] CEF – Connecting Europe Facility is a European Union co-financing programme managed by the European Commission. It seeks to implement the EU Trans-European Networks policy. Its curent framework is established by Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014, OJ L 249, 14.7.2021, p. 38–81.

In March 2023, the Polish government announced that it would fund the modernization of the Małaszewicze terminal and the development of rail crossings between Poland and Belarus, which will be led by PKP Polskie Linie Kolejowe (PKP PLK), the Polish state company responsible for Poland's railway infrastructure (Kaźmierczak, 2023). To facilitate the investment using only domestic funds, the Polish government has adopted a dedicated legal framework that allows for the allocation of public funds of the so-called Railway Fund (*Fundusz Kolejowy*) for the project.[21] As part of this initiative, the current operator, Cargotor, will be integrated into the structure of PKP PLK, the national State-owned railway infrastructure operator. This strategic move will enable the project to access all available funds for this specific type of infrastructure.[22] According to the government's associated impact assessment, the anticipated doubling or even tripling of the capacity of the Małaszewicze hub, coupled with the expected increase in traffic volume from China, is projected to significantly boost budget revenues from associated duties and taxes (Cargotor, 2021). However, investments in the Małaszewicze infrastructure have consistently been delayed, partly due to the war in Ukraine, including the transfer of EU funds to develop rail links between Ukraine and Poland. However, in August 2023, the Polish parliament passed a bill to ensure funds for modernizing the Małaszewicze hub, with more than PLN3 billion, in the form of bonds, provided to PKP Polish Railway Lines from the State Treasury. Despite this provision of funds, the infrastructure development has not yet begun, with the situation further complicated by the change of government in Poland in the autumn of 2023.

2. Łódź Rail Logistics Hub in Poland: A general overview

Poland became one of the first EU countries to participate in the BRI after the opening of a freight rail line between Łódź and the Chinese city of Chengdu in 2013. Since this time, the Łódź-Chengdu railway connection has been extended to Xiamen, with the Łódź terminal also included in the Łódź Special Economic Zone. Łódź's location in the centre of Poland has made it an ideal destination for its incorporation into the BRI and potentially making the city an important hub for trade between Europe and China. The number of trains travelling between Łódź and China doubled from 250 in 2016 to nearly 500 in 2022. This rail line is the fastest direct freight route between the two regions, currently taking 10 to 12 days for goods to arrive in Łódź from China and another one or two days to reach other destinations in the EU.

The Rail Logistics Hub in Poland does not refer to a single company, but to the whole Łódź Special Economic Zone – which covers the Łódź Voivodeship and part of the Mazowieckie and Greater Poland Voivodeships. Importantly,

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[21] RM-0610-53-23 Druk nr 3277, Warszawa, 19 maja 2023 r.: projekt ustawy o zmianie ustawy o publicznym transporcie zbiorowym oraz niektórych innych ustaw [Draft Act Amending the Act on Public Collective Transport and Certain Other Acts].

[22] UD18 Ocena Skutków regulacji załącznik do Druku nr 3277, RM-0610-53-23.

it has an extensive cargo rail network, including the above-mentioned Poland-China railway connection, running from Łódź to Chengdu. Łódź is centrally located, with relatively well-developed road and rail infrastructure, which helps facilitate the further distribution of goods throughout the European Union. It is also worth noting that the Łódź terminus lies in the relative vicinity of several Trans-European Network transport corridors (TEN-T) – primary transport arteries linking the whole of Europe.

The major investment in the BRI rail infrastructure in the Łódź Voivodship has been the construction of a transhipment terminal in the Karsznice railroad district of Zduńska Wola. The terminal, which opened in November 2023, is expected to provide logistic services for container connections between China and Europe, as well as for those from the Baltic ports to the south of Poland and other regions in Central and Eastern Europe. The intermodal terminal has a storage space of 33,000 m^2 and is equipped with intelligent systems to optimize work, including an automatic container identification system and an order processing system. The construction of the terminal was led by the State-owned PKP Cargo Terminale (a company of the State-owned PKP CARGO group), which signed an agreement with the local government of the Łódź Vovodeship and received an EU grant of EUR51,7 million, which covered around half of the eligible costs of the project (Rail Target, 2022).

V. INFRASTRUCTURE FUNDING AND THE EU STATE AID

1. The nature of the legal risks

When viewing the projects mentioned above in the context of policy balancing between their pros and cons and their alignment with EU interests, the fact that such balancing is uncertain is rather clear. Previous analysis has shown several valid arguments supporting both positions: advocating for these projects to be supported at the EU level as eco-friendly modes of transport and enablers for business, or considering them to run contrary to EU interests due to the political and economic baggage associated with facilitating Chinese expansion. If the latter option were to gain traction, there is no practically feasible way to halt the investment solely on the grounds of Member States acting against their obligations stemming from EU membership. Although Article 258 TFEU explicitly permits Member States to be held accountable for such actions (see, e.g. Kellerbauer et al., 2019, pp. 1774–1784; Klamert, 2014, pp. 236–238), the issue, in this case, is more practical than purely legal.

The investment projects themselves – ‘the brick-and-mortar part’ – are neutral with regard to their direct impact on EU interests linked with external and trade policies. While they may facilitate trade with China and entail associated undesired political implications, the infrastructure remains largely neutral. This is because, regardless of the persuasiveness and factual accuracy of arguments suggesting that the projects are dedicated to facilitating trade with China (and not, for example, purely internal or inter-European trade), the formal argument that this may or may not materialize always remains a valid counterpoint.

Only the subsequent trade activities with the associated political implications through the use of such infrastructure may constitute a violation of obligations stemming from EU membership.[23] This, coupled with the interpretive approach where rail infrastructure projects are considered 'safe' from a State aid perspective at the surface level, seems to foster a sense of complacency. However, the authors believe that based on the existing acquis, there are valid grounds to at least challenge (whether successfully is a different matter altogether) these projects on the grounds of State aid law. Even if the interpretation is not bulletproof in this regard, it is certainly defensible on the grounds of existing case law. When seen in the context of the political baggage associated with the discussed projects, one may reasonably expect them to face closer scrutiny, and the State aid angle may be a feasible way to defend EU interests in this area, particularly in light of the mentioned difficulties with utilizing Article 258 TFEU in this regard.

According to a well-established interpretative template, infrastructure subjected to open access requirements is generally not considered State aid for its operator, which should, prima facie, alleviate any concerns regarding State aid.[24] While this interpretation is valid and may thus lead to a sense of complacency, it fails to fully acknowledge the distinctive role played by the specific rail infrastructure under consideration. On the one hand, it undeniably offers accessibility to all potential users while integrating with the broader national rail network. On the other hand, and this is where its distinctiveness becomes apparent, this infrastructure is particularly economically tied to undertakings engaged in EU-China rail trade. These undertakings manage warehouse terminals and sidings, exclusively catering to certain operators whose economic viability relies entirely on the adjacent rail network (Cargotor, 2021). In this respect, it is similarly firmly established in case law that if infrastructure is employed for commercial purposes or serves the economic requirements of specific undertakings, the utilization of public funds in its construction generally qualifies as State aid.[25]

The apparent neglect of indirect State aid in discussions regarding these projects is somewhat puzzling because this issue is by no means terra incognita (see e.g. Werner & Verouden, 2017, pp. 490–491; Ruechardt, 2018). The European Commission's soft law Notice, endeavours (in the authors' opinion, not entirely successfully) to elucidate the notion of indirect advantage, which arises 'if the measure is designed in such a way as to channel its secondary

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[23] This may involve a number of specific scenarios, such as those related to the use of infrastructure (*Commission v. Slovenia* (Case C-627/10), ECLI:EU:C:2013:511) or infringements concerning free movement rules (*Austria v. Germany* (Case C-591/17), ECLI:EU:C:2019:504).

[24] E.g. *Netherlands v. Commission* (Case C-164/02), ECLI:EU:C:2004:54, para. 7; Commission Decision SA.18246 *Coras Iompair Eireann (CIE)* [2006] OJ C207/2, paras. 24–34.

[25] *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v. Commission* (Case C-288/11 P), ECLI:EU:C:2012:821, para. 40.

effects towards identifiable undertakings or groups of undertakings'.[26] In EU law, State aid is recognized as the so-called objective concept (Bacon, 2017, p. 19 and cases quoted therein). The key consideration revolves around evaluating whether its criteria set out in Article 107(1) TFEU, are fulfilled for every prospective beneficiary, whether they are direct or indirect beneficiaries. Consequently, the analysis must be undertaken anew in each separate instance.[27] As long as public funds have been allocated to finance infrastructure, for potential indirect aid the question of whether State aid was provided to the direct beneficiary is irrelevant.[28]

2. Scenarios for State aid case

In light of the above, the following situations may give rise to State aid: If the said railway infrastructure is constructed by private undertakings.[29] Then, even if the subsequent operation is non-economic, State aid may occur if the contractor is receiving remuneration for construction works higher than it would have received under normal market conditions, or when the given infrastructure exclusively serves the economic needs of specific undertakings (Quigley, 2022, pp. 99–100). This is the case with railways sidings, which even although they are linked with the broader national rail network, are nevertheless not subject to access requirements and have no economic utility aside from economic needs of a specific business.[30] In addition, notably in this context, there may be a situation when infrastructure is formally open to all users, but due to operational circumstances, only one undertaking may benefit from it. For example railway connection to the company's terminal/sidings, which is part of the national network, but does not lead elsewhere nor have a transit function.[31]

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[26] European Commission (2016) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, [2016] OJ C262/1, para 116 *in medio*.

[27] This logically flow from the line of reasoning in, e.g., cases: *France v. Ladbroke Racing and Commission* (Case C-83/98 P), ECLI:EU:C:2000:248, para. 25; *BNP Paribas and BNL v. Commission* (Case C-452/10 P), ECLI:EU:C:2012:366, para. 100.

[28] This should not be confused with Article 107(2)(a) TFEU, which grants aid to undertakings but must also confer positive effects to final users (such as inhabitants of isolated regions or underprivileged groups). The latter positive effect is a compatibility criterion, not part of the definition of State aid, because measures fulfilling the needs of individuals who are not engaged in economic activity do not constitute aid within the meaning of Article 107(1) TFEU (Bacon, 2017, p. 96; Quigley, 2022, pp. 254–255).

[29] E.g. Commission Decisions SA.37578 *First-last mile infrastructures, intermodality* [2014] OJ C23/1; SA.34985 *Programm für die Unterstützung des Ausbaues von Anschlussbahnen sowie von Umschlagsanlagen des Intermodalen Verkehrs* [2013] OJ C43/1.

[30] E.g. Commission Decisions SA.35363 *Richtlinie zur Förderung des Neu- und Ausbaus sowie der Reaktivierung von privaten Gleisanschlüssen* [nyr]; SA.21878 *Prolongation of aid scheme for the development of private railway sidings* [2007] OJ C137/1.

[31] See *per analogiam* Commission Decision SA.46720 *Guidelines on the construction, extension and reactivation of private railway sidings* [2017] OJ C201/1.

However, a problematic issue arises due to the broader impact of infrastructure (not only railways), which generates a whole spectrum of positive effects. A wealth of analytical materials is dedicated to understanding the occurrence and extent of these direct, indirect, and induced benefits stemming from infrastructure. In other words, infrastructure serves as a key enabler, fostering the growth of other enterprises (Ashauer, 1991; Helm & Mayer, 2016; Lakshmanan, 2008; Vickerman, 1991). Consequently, the group of undertakings that could potentially benefit from such investments remains undefinable, open-ended, with each entity reaping varying degrees of advantage (Boarnet, 1998; Calderón & Servén, 2004 and sources quoted therein). In this context, it is unrealistic to expect ascertaining the existence of State aid for each of these potential, unidentified, beneficiaries. These overarching positive effects, not encompassed by State aid criteria, are termed 'secondary economic effects' in EU legal terminology (Commission Notice on the notion of State aid, para. 116). Their inclusion in the State aid acquis arises from the inherent limitations of the control mechanism (Gayger, 2016, p. 548; Nunez-Müller, 2016, p. 106).

Hence, the challenge specifically associated with the discussed infrastructure construction can be redefined not as differentiating between an advantage that constitutes State aid and the secondary economic effects, but rather as the task of identifying an advantage against the backdrop of these effects. If we were to reject the unrealistic assumption that infrastructure investment automatically results in State aid for all undertakings within its sphere of influence, the notion of a comparable legal and factual situation would evolve into a purely theoretical exercise. In such a scenario, the Commission would be faced with the methodologically challenging task of identifying all undertakings within the scope of the infrastructure's impact, presupposing that only they are in a comparable legal and factual position. State aid could then only be established if certain undertakings from this group received an advantage deemed 'greater' than that received by any other entity affected by the infrastructure (Kociubiński, 2024). Consequently, the remaining 'lesser' positive effects would be categorized as 'secondary economic effects'.[32] While this approach, due to being built upon a purely theoretical concept of comparability, is inherently incapable of capturing all non-market advantages, it may nevertheless be the only feasible option. However, it hinges on the problematic assumption that advantage for State aid purposes is gradable.

This aspect of gradeability is typically absent from State aid assessments.[33] While the advantage conferred by an aid measure must be appreciable, it need not necessarily be precisely quantifiable (*Comitato "Venezia vuole vivere"*

[32] See *per analogiam* Commission Decisions SA.36019 – *Road infrastructure measures in the vicinity of a real estate project – Uplace* [2016] OJ C46/1; SA.35418 – *Extension of Piraeus Port* [2013] OJ C256/2; SA.30381 — *Public financing of port infrastructure in Krievu Sala* [2015] OJ C215/19.

[33] The amount of advantage must be precisely ascertainable only for the recovery decision, which is irrelevant for the discussed issue and can be omitted.

and Others v. Commission, para. 63).[34] In numerous cases where measures are classified as selective due to their sectoral or regional focus, the resulting advantage is construed as arising from the fact that the measure's scope is narrower than the group of undertakings in comparable legal and factual situations obviating the need to evaluate whether all members of the privileged group indeed received an advantage and to what extent (Bacon, 2017, pp. 31–32; Werner & Verouden, 2017, pp. 66–67; Quigley, 2022, pp. 27–28).[35] This interpretation is founded on a dichotomous division within the group of comparable undertakings: one subgroup that could never benefit from the measure, and another subgroup where all members have the potential to receive at least some form of benefit.[36]

When applied to the realm of infrastructure projects, this concept calls for the establishment of a three-tier reference framework: The first category encompasses all undertakings; the second pertains to the group within the infrastructure's sphere of influence, and the third relates to those entities experiencing a 'greater' advantage. Removing the latter category would necessitate either an expansive interpretation, bordering on arbitrariness, which would effectively classify all secondary economic effects as an advantage within the scope of Article 107(1) TFEU, or conversely, adopting a restrictive interpretation that essentially prevents the identification of any indirect State aid. While there is an intuitive distinction between advantage and mere secondary economic effects, within the current interpretive approach, this blurs the lines between the two. In other words, alternative interpretations that label the effect as either an advantage or a secondary effect are equally plausible and justifiable under the existing acquis.

Firstly, drawing from the case law, one could assert that all undertakings utilizing rail transport in their operations are inherently comparable.[37] Therefore, if State-funded infrastructure leads to an increased throughput for specific undertakings' sidings and terminals located adjacent to the upgraded tracks, this would result in an advantage amounting to indirect State aid.[38] The argument here is that even though private entities would not typically be responsible for constructing generally accessible railways, the State's decision to enhance particular track segments effectively benefits only select compa-

[34] *Commission v. Netherlands* (Case C-279/08 P), ECLI:EU:C:2011:551, para. 65; *Freistaat Sachsen v. Commission* (Case T-357/02 RENV), ECLI:EU:T:2011:376, para. 31.

[35] See especially circumstances of the case 1999/99/EC: Commission Decision of 3 June 1998 concerning Sicilian Regional Law No 25/93 on measures to promote employment (Articles 51, 114, 117 and 119), [1999] OJ L32/1.

[36] This, in turn, raises questions because according to established case law, there is no need to define the relevant market or identify competitors (e.g. *CETM v. Commission* (T-55/99), ECLI:EU:T:2000:223, para. 102; Club *Hotel Loutraki and Others v Commission* (Case T-58/13), ECLI:EU:T:2015:1, paras. 88–89), so it is unclear by what methodology this normal yardstick is to be established.

[37] Case *Comunidad Autónoma de Galicia and Retegal v. Commission* (Case C-70/16 P), ECLI:EU:C:2017:1002 can provide a general analogy on this interpretation of comparability.

[38] There is no directly analogous case law, but depending on specific circumstances, this may be defensible on economic grounds (Porter, 2004 and sources quoted therein).

nies, like Cargotor in Małaszewicze or group companies running warehouses in Łódź terminal. Conversely, the second approach argues that, since no single company received exclusive access to the upgraded tracks, the positive effects are solely secondary economic effects.[39] In this interpretation, no company would bear the costs of rail tracks beyond their own sidings, and thus, no entity was relieved of any costs. Here, comparability becomes irrelevant in the absence of a discernible advantage. Despite leading to contradictory conclusions, both interpretations find solid grounding in the aforementioned case law and are equally defensible (Kociubiński, 2024). This introduces a significant factor of legal uncertainty into the equation.

VI. CONCLUSIONS

The Belt and Road Initiative is an important pillar of China's economic and foreign policy. It could potentially bring significant economic benefits and raise China's political profile and influence around the world. Poland has emerged as one of the most important players in China's expansion of the BRI into Europe, acting as a gateway in the transportation of goods between China and the European Union. The transportation of goods by rail through Poland has increased significantly over the past decade and counterintuitively has grown since the outbreak of the Russian-Ukraine war as some other alternative routes have been closed. This position is partially threatened, however, as China prioritizes exporting goods to other parts of the world and to the European Union via alternative routes such as through the Koper seaport in Slovenia.

Ongoing geopolitical tensions continue to threaten Poland's position as a major transport hub along the Silk Road. It is difficult to predict how events such as the Russia-Ukraine war or relations between the EU and China will develop during the coming years. The escalation of the Russia-Ukraine war (for example into Belarus) could further hamper or even halt the transport of Chinese goods by rail through Poland entirely. Moreover, either partner may decide unilaterally to at least partially suspend or end trade with the other for political reasons. As a member of the European Union, Poland may also find itself caught in a wider geopolitical battle that could be to the detriment of its own immediate economic interests.

Potential legal problems can be seen as – to use military terminology – the 'collateral damage' of this battle. There is an observable hardening of the EU's stance towards China with their technological drain, attempts to secure competitive advantage for their companies in the economic field, concerns over human rights and China's stance in the Russia-Ukraine conflict, and a 'divide and conquer' strategy towards EU Member States. For these reasons, one

[39] Case *Commission v. Hansestadt Lübeck* (Case C-524/14 P), ECLI:EU:C:2016:971, can provide a general analogy on this interpretation of comparability.

must at least assume the possibility that the EU may attempt, if not an outright block, then at least some restrictions on investments facilitating Chinese economic expansion into Europe. The authors believe that EU State aid law could provide a convenient and underappreciated tool in this regard. The convenience stems from the European Commission's discretionary competencies in this field, allowing for swift and unilateral actions. At the same time, since infrastructural investments are generally regarded as safe from the State aid standpoint, the possibility of successfully employing State aid law to block BRI investment is underappreciated. Yet, a convincing case could be made that the discussed projects, or at least certain investor and funding configurations related to them, constitute State aid. The existing EU acquis in this area is rather erratic and therefore, the possibility of a State aid case being pursued in the light of existing case law, adds an unpredictable dimension to the further opening of the EU market to trade with China, via Poland's participation in the Belt and Road Initiative.

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