The Role of Sub-Regional Systems in Shaping International Investment Law-Making: The Case of the Visegrád Group

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Abstract The present chapter focuses on the role of the Visegrád group (or V4, comprising Slovakia, Hungary, Poland and the Czech Republic) in international investment law-making. The chapter starts with a brief overview of the V4 group as a sub-regional system in Europe, including its *modus operandi* and main achievements in the field of economic cooperation. Subsequently, it turns to the regulation of foreign direct investment (FDI), both at the level of each V4 state and at EU level—with particular regard to the implication of the EU's exclusive competence on FDI. Special attention is paid to the approach of the V4 countries towards the question of termination of intra-EU bilateral investment treaties (BITs)—including an overview of the related objections to jurisdiction that the four countries have raised over the years in investor-state arbitrations based on intra-EU BITs—and to the relationship of the V4 group with non-EU countries—especially with (selected) East Asian

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countries. The main question is whether—and to what extent—the V4 group as a sub-regional system has a role to play in international investment law-making. The chapter highlights the proactive and advocacy role that the V4 group has traditionally played in manifold subject-matters, including the promotion and protection of FDI, and supports the positive “soft power” the V4 may exercise in this respect.

1 Sub-regional Systems in Europe: The Case of the Visegrád Group and Its Role in International Investment Law-Making

Sub-regional formations among states geographically close to each other and with similar political, social, economic, cultural, and historical experiences have become more common since the late 1980s.¹ Within the European context, a number of sub-regional groupings of states exist, such as Benelux,² the Nordic Council,³ the Central European Initiative⁴ and the Baltic cooperation,⁵ to name just a few.⁶ Especially in Central and Eastern Europe, almost every country is involved in at least one sub-regional grouping; one of the most significant examples in this respect is the Visegrád group (or V4, among the Czech Republic, Slovakia, Hungary and Poland).⁷

This chapter focuses on the role of the V4 in the context of international investment law-making. The relevance of this topic is twofold: on the one hand, the four Visegrád countries attract foreign investments from around the world and, accordingly, it is important to understand how they shape their relationship with the home countries of their foreign investors; on the other hand, the four countries are also members of the European Union. Since the Treaty of Lisbon has included foreign direct investment (FDI) within the exclusive competence of the EU and the latter can now conclude international investment-related agreements with third

¹Gebhard (2013), p. 26.

²The Benelux Union includes Belgium, The Netherlands and Luxembourg. See the official website at <https://gouvernement.lu/en/dossiers/2018/benelux.html>.

³It includes 87 members, from Denmark, Finland, Iceland, Norway, Sweden, the Faroe Islands, Greenland and Åland. See the official website at <https://www.norden.org/en/nordic-council>.

⁴It is a regional organisation made up of 15 members: Albania, Austria, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Italy, North Macedonia, Poland, Romania, Slovakia, Slovenia and Ukraine. See the official website at <https://www.cei.int>.

⁵It includes Estonia, Latvia, and Lithuania. For more information, see <https://vm.ee/en/baltic-cooperation>.

⁶Rudka (1997), pp. 196–197.

⁷Gebhard (2013), p. 26.

countries,⁸ it is worth questioning whether the V4, as a sub-regional formation, may have—and to what extent—a role to play in this respect. Interestingly enough, while the V4 group tends to speak with one voice when promoting FDI from non-EU countries in the region, the four countries seem to adopt a member-specific approach on issues related to intra-EU FDI—as in the case of the question of the termination of intra-EU bilateral investment agreements (BITs).

The following paragraphs start with a brief overview of the *modus operandi* of the V4, which has a long-lasting tradition of cooperation in manifold topics, and examine its approach to economic cooperation (Sect. 2) and investment promotion and protection (Sect. 3) both within the EU (Sect. 3.1) and in the relations of V4 members with third countries (Sect. 3.2). Finally, the chapter offers some concluding remarks (Sect. 4).

2 Economic Cooperation in the V4: An Overview

On 15 February 1991, the heads of government of Czechoslovakia (now the Czech Republic and Slovakia), Hungary and Poland signed the Declaration of Visegrád, which marked the establishment of the Visegrád group as a forum for sub-regional cooperation.⁹ One of the first aims of the V4 was “full involvement in the European political and economic system”.¹⁰ The V4 is not institutionalised¹¹ but works according to the principle of cooperation through high-level political summits, expert and diplomatic meetings, activities of non-governmental associations in the region, think-tanks and research bodies.¹² Each V4 country holds the presidency for one year and prepares a one-year plan of action.¹³

⁸Article 206 of the Treaty on the Functioning of the European Union (TFEU). In this respect, it should be recalled that, as specified by the Court of Justice of the European Union (CJEU) in Opinion 2/15 of 16 May 2017, the EU and its member states share competences in concluding international investment agreements (IIAs) with non-EU countries, when they include provisions on portfolio foreign investment, investor-state dispute settlement and state-to-state dispute settlement relating to provisions regarding portfolio investment. See CJEU, Opinion 2/15, Opinion pursuant to Article 218(11) TFEU—Free Trade Agreement between the European Union and the Republic of Singapore, ECLI:EU:C:2017:376, para. 305; for a comment, see the study commissioned by the European Parliament, EU investment protection after Opinion 2/15: Questions of competence and coherence. PE 603.476 (March 2019) at <http://www.europarl.europa.eu/thinktank>.

⁹Wolek (2013), p. 88.

¹⁰Visegrád declaration, 15 February 1991, <http://www.visegradgroup.eu/documents/visegrad-declarations/visegrad-declaration-110412>.

¹¹The only organisation within the V4 platform is the International Visegrád Fund, which was established in 2000 with the aim to promote regional cooperation through grants, scholarships and artist residencies. See the official website at <https://www.visegradfund.org>.

¹²For information on the work and activities of the V4 group, see the official website <http://www.visegradgroup.eu>.

¹³See Aims and structure, Visegrád group, <http://www.visegradgroup.eu/about/aims-and-structure>.

V4 meetings may also take the form of the V4+ formula, when the V4 countries meet with representatives from other EU states and/or EU institutions,¹⁴ as well as from non-EU states.¹⁵ Moreover, the V4 cooperates with other sub-regional bodies, such as Benelux and the Nordic Council.¹⁶ The outcomes of these meetings can be political documents including remarks and reflections on EU legislative acts and proposals, joint declarations or other political statements¹⁷—like the common positions of the V4 on the issue of the Western Balkans¹⁸ or the Eastern Partnership.¹⁹ Worth recalling are also the joint declarations of the ministers of V4 countries on European Commission communications,²⁰ EU proposals for regulations,²¹ or EU directives.²² The V4 has also addressed letters to the European Commission.²³ The topics covered during meetings may range from agriculture and renewable energy, to migration, financial and labour issues, to name a few.²⁴

In the field of economic cooperation at the sub-regional level, it is worth recalling that the V4 countries signed the Central European Free Trade Agreement (CEFTA) on 21 December 1991, which came into force on 1 March 1993.²⁵ CEFTA aimed to create a free trade area in the region and to prepare the countries for their accession to the EU.²⁶ The EU has generally adopted a positive approach to this form of

¹⁴See most recently the Summit of the V4 Prime Ministers and German Chancellor that took place in Bratislava on 7 February 2019. See the outcome declaration at <http://www.visegradgroup.eu/documents/official-statements/declaration-of-the-190208>.

¹⁵E.g. the meetings on the Cohesion Policy. All the meetings and relevant outcomes, as well as all the documents of the V4 that are referred to in this chapter are available at <http://www.visegradgroup.eu/calendar>.

¹⁶See the relevant meetings listed on <http://www.visegradgroup.eu/calendar>.

¹⁷They all can be accessed (in English) here <http://www.visegradgroup.eu/documents/official-statements>.

¹⁸E.g. Joint Statement on the Western Balkans of 29 November 2016, issued at the annual meeting of the Ministers of Foreign Affairs of the Visegrád Group and the Western Balkans. The meeting was also attended by the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission Federica Mogherini and by representatives from Bulgaria, Croatia, Italy, Romania, and Slovenia.

¹⁹E.g. Joint statement on the 10th anniversary of the Eastern Partnership, 6 May 2019.

²⁰E.g. Joint declaration of the Ministers of agriculture of the Visegrád group and Croatia on the Commission Communication on the future of food and farming, 25 January 2018.

²¹E.g. Joint declaration of the Ministers of the interior on the proposal for a Regulation on the European border and coast guard, 16 October 2018.

²²E.g. Joint declaration of the agricultural Ministers of Visegrád group, Bulgaria and Romania on the renewable energy Directive after 2020, 21 September 2017.

²³E.g. Joint statement and Joint letter to EC prepared during the Summit of 22 June 2012; Joint Letter to High Representative Ashton and Commissioner Füle of 5 March 2013.

²⁴Strážay (2019), p. 67.

²⁵Central European Free Trade Agreement, signed on 21 December 1992, <http://www.worldtradelaw.net/fta/agreements/cefta.pdf.download>; amended in 2006, <http://cefta.int/legal-documents/#1463498231136-8f9d234f-15f9>.

²⁶Preamble of CEFTA (1992). See Rhodes (1998), p. 179 and Gizicki et al. (2014), p. 7.

economic sub-regional integration: indeed, good relations among neighbouring countries are a positive precondition to accession.²⁷ CEFTA has also served as a model of economic cooperation at the sub-regional level in order to prepare other states for accession to the EU;²⁸ after 1991, other Southeastern European countries acceded to the Agreement.²⁹ Upon accession to the EU on 1 May 2004, the V4 countries, along with Slovenia, withdrew from CEFTA, followed by Bulgaria and Romania (2007) and by Croatia (2013), when the latter acceded to the EU—and became bound to the EU common commercial policy.³⁰

At the international level, the V4 countries interact with other countries in international fora and have acceded to international economic organisations and treaties, like the Organisation for Economic Co-operation and Development (OECD),³¹ the International Monetary Fund (IMF),³² the World Bank³³ and the World Trade Organization (WTO)³⁴ and are all parties to the Energy Charter Treaty,³⁵ the Multilateral Investment Guarantee Agency,³⁶ and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards,³⁷ while all V4 countries, with the exception of Poland, are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).³⁸

²⁷See Balazs (1997), p. 92. The EU has had different approaches to sub-regional formations in the region; for a general account, see Zelenická (2010).

²⁸It should be noted that consensus has never been reached on a possible enlargement of the V4 group, since it would have “complicate[d] the process of decision-making, simply because there would be more opinions and interests to be taken into account. [...] The so-called V4+ formula has been used in order to intensify cooperation with other countries or groupings in selected areas of joint interest”. Strážay T (2011) Visegrád - arrival, survival, revival. Selected V4 Bibliography. Visegrád group, <http://www.visegradgroup.eu/documents/bibliography/visegradarrival-survival-120628>. See also Wieclawski (2016), p. 16 and Rhodes (1998).

²⁹Slovenia (1996), Romania (1997), Bulgaria (1998), Croatia (2003), the former Yugoslav Republic of North Macedonia in 2006, and Bosnia and Herzegovina, Serbia, Montenegro, United Nations Interim Administration Mission in Kosovo (UNMIK) on behalf of Kosovo, Albania and Moldova (2007). See the official website of CEFTA, <http://cefta.int>.

³⁰Article 51 of CEFTA. See Stiblar (2013), p. 50.

³¹See <https://www.oecd.org/about/members-and-partners>.

³²See <https://www.imf.org/external/np/sec/memdir/memdate.htm>.

³³See <https://www.worldbank.org/en/about/leadership/members>.

³⁴See https://www.wto.org/english/thewto_e/countries_e/org6_map_e.htm.

³⁵See <https://energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty>.

³⁶See <https://www.miga.org/member-countries>.

³⁷See <http://www.newyorkconvention.org/countries>.

³⁸See <https://icsid.worldbank.org/Pages/PageNotFoundError.aspx?requestUrl=https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.bak.aspx>.

3 The V4 Countries and V4 Group's Approach to FDI

The V4 countries attract foreign investments worldwide. According to Ernst & Young's 2018 European attractiveness survey, Central and Eastern Europe is perceived as the second most attractive region for foreign investors worldwide, right after Western Europe.³⁹ The V4 countries have concluded manifold international investment-related agreements (almost the 18% of the international investment-related agreements that are currently in force worldwide) and are often involved in investor-state dispute settlement (almost 12% of the currently known treaty-based investor-state arbitrations have involved either Slovakia, Hungary, Poland or the Czech Republic as respondents).⁴⁰

Nevertheless, V4 countries cannot be considered as a homogenous group in terms of their economic environment and attractiveness for FDI. There are still considerable differences among them. Suffice it to recall, for example, that Slovakia introduced the euro in 2009 and has been a member of the euro zone since then, while the three remaining V4 countries are still outside the euro zone.⁴¹

As already recalled, the introduction of the exclusive competence of the EU over FDI has reduced the leading and exclusive role of member states in this respect. Still, V4 countries play an active role, both at the national and at the sub-regional level: first, at the national level, each and every one of the V4 countries has its own national regulation of FDI;⁴² moreover, there have been actions to terminate intra-EU BITs, as detailed in the next paragraph, while there are still many BITs with non-EU third countries in force;⁴³ at the sub-regional level, the V4 group has issued political statements on FDI.

At the national level, each V4 country has developed its own investment promotion policy and the four countries appear quite diverse in this respect; the only common feature seems the willingness to attract FDI. Indeed, in recent years, the four countries have adopted policies aimed at increasing FDI in the region: Slovakia adopted the Act on Regional Investment Aid in 2018, providing new aids and incentives to investors;⁴⁴ the Czech Republic introduced in 2015 a new amendment

³⁹Ernst & Young (2018) European attractiveness survey, https://www.ey.com/en_gl/attractiveness.

⁴⁰For all the data see <http://investmentpolicyhub.unctad.org>.

⁴¹UNCTAD (2019), p. 152, Pawlas (2018), p. 99 and Yurchyshyn and Markevych (2015), p. 130.

⁴²See Su et al. (2018), p. 1959 and Yurchyshyn and Markevych (2015), pp. 117–137. A list of the most relevant national policy measures is available at <https://investmentpolicy.unctad.org/country-navigator>.

⁴³Slovakia has currently 41 BITs in force with non-EU third countries; Czech Republic, 69; Poland, 40 and Hungary, 41. For a general overview see Sandor (2019), pp. 457–493.

⁴⁴Slovakia adopted new law in the field of investment aid. UNCTAD Investment Policy Monitor, 1 April 2018, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3272/slovakia-slovakia-adopted-new-law-in-the-field-of-investment-aid>.

law on investment incentives;⁴⁵ Poland adopted a new law on the promotion of investment in 2018;⁴⁶ while in 2014 Hungary established an institutional triangle—comprising the Hungarian Investment Promotion Agency, the Hungarian Export Promotion Agency and EXIM Bank—in order to support the foreign trade-focused policy of the Hungarian Government, covering the fields of investment promotion, trade development and export financing.⁴⁷ Furthermore, Poland and the Czech Republic have created state-owned special economic zones, which are customs-free and offer fiscal incentives to foreign investors;⁴⁸ in 2018, Poland adopted a new law on the promotion of investment that extended the fiscal incentives of the special economic zones to its entire territory.⁴⁹ Both Poland and Hungary had also adopted FDI national review mechanisms⁵⁰ before the introduction at EU level in 2019 of

⁴⁵The Czech Republic adopted Act No. 84/2015, which entered into force on 1 May 2015, amending Act No. 72/2000 Coll. (Act on Investment Incentives). See Amendments to the Investment Incentives Act. UNCTAD Investment Policy Monitor, 1 May 2015, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/2829/czechia-amendments-to-the-investment-incentives-act>.

⁴⁶Poland adopted new law on the promotion of investments. UNCTAD Investment Policy Monitor, 10 May 2018, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3244/poland-poland-adopted-new-law-on-the-promotion-of-investments>.

⁴⁷For the relevant information see the report prepared by the Hungarian Investment Promotion Agency, Invest in Hungary. Hungarian Investment Promotion Agency, 2018, https://hipa.hu/images/publications/hipa-invest-in-hungary_2018_09_20.pdf. At the same time, it quite interesting that Hungary in 2012 introduced a permanent ban on foreign ownership of farmland. See Hungary extends ban on foreign farmland ownership. UNCTAD Investment Policy Monitor, 12 December 2012, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/2334/hungary-extends-ban-on-foreign-farmland-ownership>. Most recently, the CJEU found—in its Judgment of 21 May 2019 in *European Commission v. Hungary*, Case C-235/17—that this legislation was in breach of the EU Charter of Fundamental Rights. See Charlotin D, EU's top Court declines to award compensation to intra-EU investors in Greek bonds, but finds Hungarian legislation aimed at foreign investors to be in violation of EU charter. IA Reporter, 3 June 2019, <https://www.iareporter.com/articles/european-unions-top-court-declines-to-award-compensation-to-intra-eu-investors-in-greek-bonds-but-finds-hungarian-legislation-aimed-at-foreign-investors-to-be-in-violation-of-eu-charter>.

⁴⁸UNCTAD (2019), pp. 153–154.

⁴⁹See Poland adopted new law on the promotion of investments. UNCTAD Investment Policy Monitor, 10 May 2018, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3244/poland-poland-adopted-new-law-on-the-promotion-of-investments>.

⁵⁰Poland adopted the Act of 24 July 2015 on the control of certain investments. See Parliament adopts legislation concerning the control of investments in strategic sectors. UNCTAD Investment Policy Monitor, 24 July 2015, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/2740/poland-parliament-adopts-legislation-concerning-the-control-of-investments-in-strategic-sectors>. Hungary adopted the Law on the control of investments detrimental to the interests of Hungarian national security on 11 October 2018. See Hungary introduces national security review of foreign investments. UNCTAD Investment Policy Monitor, 11 October 2018, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3303/hungary-hungary-introduces-national-security-review-of-foreign-investments>.

Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union.⁵¹

Turning to the role of the V4 group, it should be noted that, in general, the V4 has always supported the promotion and protection of FDI in the region, as testified by relevant references in V4 Presidency programmes.⁵² There is also an official record of meetings that have been held at V4 level on the need for cooperation to exchange data on foreign investments⁵³ and to attract foreign investors in the region.⁵⁴ Some V4 Presidency programmes have also emphasised the need to present a common position with regard to negotiations of international investment agreements at EU level and at the bilateral level (among V4 countries) with non-EU third countries.⁵⁵ Finally, it is worth noting the advocacy role of the V4+ meetings in relation to non-EU third countries, aimed at, among others, reinforcing cooperation in trade and the promotion of investment. The following sections investigate in more detail the approach of the V4 countries to the question of termination of intra-EU BITs and their relationship with non-EU countries, in particular with (some selected) East Asian countries.

3.1 A Focus on the Question of Termination of Intra-EU BITs

In the aftermath of the introduction of the exclusive competence over FDI for the EU with the Lisbon Treaty, one of the debates has concerned the question of termination of BITs between member states (intra-EU BITs).⁵⁶ While it is beyond the scope of this chapter to enter into the details of the debate, it is worth recalling the milestone judgment that the Court of Justice of the European Union (CJEU) issued on 6 March 2018 in the *Achmea* case,⁵⁷ where the Court found that “the arbitration clause in the [intra-EU The Netherlands-Slovakia] BIT has an adverse effect on the autonomy of

⁵¹Regulation (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.

⁵²E.g. Slovak Presidency programme 2018/2019, Czech Presidency programme 2011–2012 and Polish Presidency programme 2008/2009.

⁵³E.g. Joint declaration of the Ministers of economic affairs on the future of economic cooperation, 19 April 2018.

⁵⁴E.g. Memorandum of understanding for regional cooperation in the areas of innovation and startups, 12 October 2015 and Bratislava declaration on the occasion of the 20th anniversary of the Visegrád group, 15 February 2011.

⁵⁵E.g. Czech Presidency programme 2015/2016 and Slovak Presidency programme 2014/2015.

⁵⁶For a general overview, see Dimopoulos (2011), pp. 63–93, Kokott and Sobotta (2016), pp. 3–19 and István Nagy (2018).

⁵⁷CJEU, *Slovakia v. Achmea*, Case C-284/16, Judgment, 6 March 2018.

EU law, and is therefore incompatible with EU law”.⁵⁸ This judgement was followed by Declarations of EU member states in January 2019.⁵⁹ All V4 countries signed the above mentioned Declarations and started to take actions in order to terminate their intra-EU BITs, even before the Declarations, also pushing for the conclusion of a multilateral agreement on the termination of intra-EU BITs.⁶⁰ In Hungary, the Prime Minister adopted a decision in December 2018 authorising the conclusion of an agreement to terminate intra-EU BITs,⁶¹ Poland also started to terminate its intra-EU BITs in April 2018,⁶² Slovakia supported the conclusion of a multilateral termination agreement in the immediate aftermath of the Declaration of January 2019,⁶³

⁵⁸CJEU, Press Release No 26/18, 6 March 2018, <https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/Achmea-ruling-ECJ.pdf>.

⁵⁹Declaration of the representatives of the governments of the member states on the legal consequences of the judgment of the Court of Justice in *Achmea* and on investment protection in the European Union, 15 January 2019, https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190117-bilateral-investment-treaties_en.pdf (which was signed by 22 EU member states; Hungary signed a separate Declaration on 16 January 2019, like Finland, Luxembourg, Malta, Slovenia and Sweden).

⁶⁰Slovakia, the Czech Republic and Poland signed the Declaration on 15 January 2019, while Hungary signed a separate Declaration on 16 January 2019. Though Hungary committed to terminate all its intra-EU BITs (like the other member states that had signed the Declaration on 15 January 2019), it had taken a different position on the consequences of investor-state arbitration claims under the Energy Charter Treaty: “Hungary declares that in its view, the *Achmea* judgment concerns only the intra-EU bilateral investment treaties. The *Achmea* judgment is silent on the investor-state arbitration clause in the Energy Charter Treaty (hereinafter ‘ECT’) [...] Hungary [...] considers that is inappropriate for a Member State to express its view as regards the compatibility with Union law of the intra/EU application of the ECT [...]”. Declaration of Hungary on the legal consequences of the *Achmea* judgment and on investment protection in the European Union, 16 January 2019, <https://www.kormany.hu/download/5/1b/81000/Hungarys%20Declaration%20on%20Achmea.pdf>, points 8–9. Instead, the Declaration of 15 January 2019 stated that “international agreements concluded by the Union, including the Energy Charter Treaty, are an integral part of the EU legal order and must therefore be compatible with the Treaties. Arbitral tribunals have interpreted the Energy Charter Treaty as also containing an investor-State arbitration clause applicable between Member States. Interpreted in such a manner, that clause would be incompatible with the Treaties and thus would have to be disapplied [...]”. The same position was also upheld by the European Commission in its Communication of 19 July 2018, Protection of intra-EU investment, COM/2018/547 final.

⁶¹As reported in Korom V, Sándor L, Hungary Gives the Green Light for the Conclusion of a Termination Agreement for Intra-EU BITs. Kluwer Arbitration Blog, 14 January 2019, <http://arbitrationblog.kluwerarbitration.com/2019/01/14/hungary-gives-the-green-light-for-the-conclusion-of-a-termination-agreement-for-intra-eu-bits>.

⁶²As reported in Orecki M, Foreign Investments in Poland in Light of the *Achmea* Case and “Reform” of Polish Judicial System. Catch 22 Situation?. Kluwer Arbitration Blog, 22 April 2018, <http://arbitrationblog.kluwerarbitration.com/2018/04/22/foreign-investments-poland-light-achmea-case-reform-polish-judicial-system-catch-22-situation>.

⁶³In the aftermath of the above mentioned 2019 Declaration, the Ministry of Finance of Slovakia stated that “[m]ember States are currently negotiating a multilateral Agreement on termination of intra-EU BITs and it should be signed by the end of this year. [...] In addition, in order to push forward implementation of the judgement, the Slovak Republic [...] initiated necessary steps for the bilateral termination of its intra-EU BITs”. See Declaration on the legal consequences of the

while the Czech Republic had already started to request of its EU member state investment treaty partners to terminate their BITs since 2009.⁶⁴

However, the V4 countries have not had the same approach to the question of the termination of intra-EU BITs. And indeed, while we can find an official record of meetings that were held at V4 level on the issue,⁶⁵ no official declaration has been issued at the V4 group level so far.

Confronting the objections to jurisdiction that the V4 countries have raised during the years in investment arbitration proceedings based on intra-EU BITs, it is possible to have a general idea of their approach to this issue. The Czech Republic, Poland and Slovakia⁶⁶ had questioned several times the validity of intra-EU BITs. In particular—and in some cases also before the *Achmea* judgment was issued—, objections to the jurisdiction of investment arbitral tribunals were raised not by virtue of the new exclusive competence of the EU on FDI after the entry into force of the Lisbon Treaty; rather, the argument had been that intra-EU BITs should be considered no more in existence after the countries' accession to the EU in 2004. Even though arbitral tribunals have always rejected such kind of objections to their jurisdiction, it is worth recalling the main arguments that the Czech Republic, Poland and Slovakia—as respondent states in the relevant investment arbitral proceedings—had made before arbitral tribunals.

The claims were generally grounded on the application of the Vienna Convention on the Law of Treaties (VCLT), on the one hand, and on the Treaty on the Functioning of the European Union (TFEU), on the other. More particularly, the respondent states objected to the jurisdiction of arbitral tribunals on the ground that: (1) the relevant intra-EU BIT had been implicitly terminated according to Article 59 of the VCLT⁶⁷—according to which the Accession Treaty to the EU had

judgment of the Court of Justice in *Achmea*. Ministry of Finance of the Slovak Republic, Press Department, 17 January 2019, <https://www.finance.gov.sk/en/press/declaration-on-legal-consequences-judgment-court-justice-achmea.html>.

⁶⁴As reported in Peterson LE, Denmark and Czech Rep to terminate BIT; but not all EU members agree with Czech view that intra-EU BITs are unnecessary. *IA Reporter*, 17 July 2009, <https://www.iareporter.com/articles/denmark-and-czech-rep-to-terminate-bit-but-not-all-eu-members-agree-with-czech-view-that-intra-eu-bits-are-unnecessary>.

⁶⁵E.g. Report of the Slovak Presidency 2014/2015.

⁶⁶On 18 June 2015, the Commission started infringement proceedings against five member states to terminate intra-EU BITs (Austria, Romania, Sweden, The Netherlands and Slovakia). See European Commission, Press release, 18 June 2015, http://europa.eu/rapid/press-release_IP-15-5198_en.htm. As regards Slovakia, it is reported that it had always claimed the non-validity of intra-EU BITs, including during bilateral meetings with the European Commission [interview of the author with a Legal Advisor of the Slovak Republic, Bratislava, 27 August 2019], and had raised objections to jurisdictions to investment arbitral tribunals, as illustrated in the chapter.

⁶⁷Article 59 of the VCLT provides: “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

superseded earlier BITs; and/or (2) the relevant intra-EU BITs have become incompatible with EU law—given that several provisions included in the EU Treaties have the same subject-matter as those of the relevant BITs—and, accordingly, they were no longer applicable under Article 30(3) of the VCLT;⁶⁸ and/or (3) according to Article 344 of the TFEU, the European judiciary has exclusive authority to adjudicate the disputes concerning the interpretation or application of EU law;⁶⁹ and Article 18 of the TFEU prohibits any form of discrimination between nationals of member states based on their nationality⁷⁰—and indeed, the relevant BITs would provide the right to arbitration only to investors from a particular member state, but not from other member states.

Before the entry into force of the Lisbon Treaty, these objections were raised by the Czech Republic in *Eastern Sugar v. Czech Republic*—commenced in 2004 on the basis of the Czech Republic-Netherlands BIT—and in *Binder v. Czech Republic*—commenced in 2005 on the basis of the Czech Republic-Germany BIT;⁷¹ by Poland in *PL Holdings v. Poland*—commenced in 2014 on the basis of the Belgium-Luxembourg Economic Union (BLEU)-Poland BIT;⁷² and by Slovakia in *Oostergetel v. Slovakia*—commenced in 2006 on the basis of the Netherlands-Slovakia BIT;⁷³ in *Achmea v. Slovakia*—commenced in 2008 on the basis of the Netherlands-Slovakia BIT,⁷⁴ and in *EURAM Bank v. Slovakia*—commenced in 2009 on the basis of the Austria-Slovakia BIT.⁷⁵

After the entry into force of the Lisbon Treaty, the same objections were raised by the Czech Republic in *WNC v. Czech Republic*⁷⁶ and *AIY v. Czech*

only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties”.

⁶⁸Article 30(3) of the VCLT provides: “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”.

⁶⁹Article 344 of the TFEU provides: “Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein”.

⁷⁰Article 18 of the TFEU provides: “Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”.

⁷¹*Binder v. Czech Republic*, UNCITRAL Case, Award on Jurisdiction, 6 June 2007, paras 7–20.

⁷²*PL Holdings v. Poland*, SCC Case No. 2014/163, Partial Award, 28 June 2017, paras 301–304.

⁷³*Oostergetel v. Slovakia*, UNCITRAL Case, Decision on Jurisdiction, 30 April 2010, paras 63–64, 82 and 103.

⁷⁴*Achmea v. Slovakia*, PCA Case No. 2008-13, Award, 7 December 2012, paras 57–59, 86–94.

⁷⁵*EURAM Bank v. Slovakia*, PCA Case No. 2010-17, Award on Jurisdiction, 22 October 2012, paras 55–105.

⁷⁶*WNC v. Czech Republic*, PCA Case No. 2014-34, Award, 22 February 2017, paras 64–68 and 294–300. The tribunal rejected the Czech Republic’s objection; however, it acknowledged that “EU law was modified by the Treaty of Lisbon, and the EC has been developing its views of the legal questions involved with intra-EU investment treaties; [. . .] The Tribunal recognizes that a different

*Republic*⁷⁷—both commenced in 2014 on the basis of the Czech Republic-United Kingdom BIT. As regards Hungary, it is interesting to note that, while before *Achmea* it had not contested the validity or application of intra-EU BITs in investor-state arbitral proceedings in which it appeared as respondent, after the *Achmea* judgment, it started to invoke the non-applicability of arbitration clauses included in intra-EU BITs as an objection to the jurisdiction of the investment arbitral tribunals.⁷⁸

After the *Achmea* judgment, parties to intra-EU BITs started to respond to invitations for submission by arbitral tribunals regarding the relevance of the *Achmea* case in the proceedings at stake. V4 countries had a similar approach in claiming that the *Achmea* judgment was applicable; accordingly, they requested the arbitral tribunals to declare that they lacked jurisdiction or, at least, that they should decline to exercise jurisdiction in the cases at hand.⁷⁹

view may eventually prevail”. See Hepburn J, Czech Republic defeats UK BIT claims over alleged failings in 2008 privatisation process; Griffith/Volterra/Crawford consider umbrella clause and MFN arguments. IA Reporter, 2 March 2017, <https://www.iareporter.com/articles/czech-republic-defeats-uk-bit-claims-over-alleged-failings-in-2008-privatisation-process-griffithvolterracrawford-consider-umbrella-clause-and-mfn-arguments>.

⁷⁷*AIIY v. Czech Republic*, ICSID Case No. UNCT/15/1, Decision on Jurisdiction, 9 February 2017, paras 153–163. See Hepburn J, Bohmer L, Newly-surfaced AIIY v. Czech Republic decisions reveal fortier-chaired tribunal’s reasoning on unusual umbrella clause, cooling-off periods and veil-piercing—as well as tribunal disagreements on application of MFN and objective criteria for investment. IA Reporter, 26 July 2018, <https://www.iareporter.com/articles/newly-surfaced-decisions-reveal-fortier-chaired-tribunals-reasoning-on-unusual-umbrella-clause-cooling-off-periods-and-veil-piercing-as-well-as-tribunal-disagreements-on-application-of-mfn-and-ob>.

⁷⁸See Korom V, Sándor L, Hungary Gives the Green Light for the Conclusion of a Termination Agreement for Intra-EU BITs. Kluwer Arbitration Blog, 14 January 2019, <http://arbitrationblog.kluwerarbitration.com/2019/01/14/hungary-gives-the-greenlight-for-the-conclusion-of-a-termination-agreement-for-intra-eu-bits>.

⁷⁹See *UP and CD Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, paras 207–279. Poland raised the same argument before the Swedish Supreme Court challenging the Final Award of 28 August 2017 in *PL Holdings Sàrl v. Poland*, SCC Case No. V 2014/163 (on 12 December 2019, the Swedish Supreme Court decided to request a preliminary ruling from the CJEU) and it is likely that Slovakia too will raise a similar argument in the ongoing *Spółdzielnia Pracy Muszynianka v. Slovakia*, UNCITRAL Case. See also the set of awards, which were all issued on 15 May 2019: *ICW Europe investments Ltd v. Czech Republic*, *Photovoltaic Knopf Betriebe GmbH v. Czech Republic*, *Voltaic Network GmbH (Voltaic) v. Czech Republic* and *WA Investments Europa Nova Ltd v. Czech Republic*. These UNCITRAL cases based on the Energy Charter Treaty and different intra-EU BITs, namely the Cyprus-Czech Republic BIT, Czech Republic-United Kingdom BIT and Czech Republic-Germany BIT, have been structured in the very same way as regards the relevant part on the question of jurisdiction. Indeed, in each one of them, the arbitral tribunal (which had the same composition in all the cases) invited the parties to submit detailed arguments on different aspects of the intra-EU jurisdictional objection, which was raised by the Czech Republic after the *Achmea* judgment. However, in all the awards, the tribunal did not directly address the intra-EU objection, considering that the Czech Republic had waived its right to submit the objection under the applicable Swiss procedural law (which was the law of the seat for all the above arbitrations). See *ICW Europe Investments Limited v. Czech Republic*, PCA Case No. 2014-22, Award. 15 May 2019, paras 396–418, *Photovoltaic Knopf Betriebe GmbH*

Most recently, an investment arbitrator has upheld—for the first time—the intra-EU jurisdictional objection in his dissenting opinion⁸⁰ attached to the jurisdictional decision in the *Adamakopoulos et al. v. Cyprus* case,⁸¹ disagreeing with the majority's conclusion that EU law and the BITs did not have the same subject-matter; he recalled the *Achmea* judgment, reaffirming that intra-EU BITs are incompatible with EU law and finding unconvincing the conclusions reached by other arbitral tribunals—in the *Wirtgen et al. v. Czech Republic*⁸² or *Magyar et al. v. Hungary*⁸³ cases—according to which BITs are more favourable than EU law and, in any case, they are not conflicting with each other.⁸⁴

However, the situation is now set to change. On 5 May 2020, 23 EU member states, including all V4 countries, signed an agreement for the termination of intra-EU bilateral investment treaties.⁸⁵ V4 countries are still respondents in a number of

v. Czech Republic, PCA Case No. 2014-21, Award, 15 May 2019, paras. 337–359, *Voltaic Network GmbH v. Czech Republic*, PCA Case No. 2014-20, Award, 15 May 2019, paras. 438–460 and *WA Investments Europa Nova Ltd v. Czech Republic*, PCA Case No. 2014-19, Award, 15 May 2019, paras. 438–460.

⁸⁰Statement of Dissent of Professor Marcelo G. Kohen in *Adamakopoulos and others v. Cyprus*, ICSID Case No. ARB/15/49, 3 February 2020, para. 68.

⁸¹*Adamakopoulos and others v. Cyprus*, ICSID Case No. ARB/15/49, Decision on Jurisdiction, 7 February 2020, para. 342.

⁸²*Wirtgen et al. v. Czech Republic*, PCA Case No. 2014-03, Final Award, 11 October 2017.

⁸³*Magyar et al. v. Hungary*, ICSID Case No. ARB/17/27, Award, 13 November 2019.

⁸⁴For a comment, see For the first time, an arbitrator declines jurisdiction under an intra-EU BIT—but majority disagrees. IA Reporter, 14 February 2020, <https://www.iareporter.com/articles/analysis-intra-eu-nature-of-claims-should-have-led-tribunal-to-decline-jurisdiction-in-adamakopoulos-v-cyprus-according-to-dissenting-arbitrator-marcelo-kohen>.

⁸⁵Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union, 5 May 2020, https://ec.europa.eu/info/files/200505-bilateral-investment-treaties-agreement_en. This Agreement is based on the previous Statement: EU Member States agree on a plurilateral treaty to terminate bilateral investment treaties, 24 October 2019, https://ec.europa.eu/info/publications/191024-bilateral-investment-treaties_en. The draft treaty text was circulated among member states on 10 October 2019 (See Revealed: Previously-unseen draft text of EU termination treaty reveals how intra-EU Bits—and sunset clauses—are to be terminated; Treaty also creates EU law-focused facilitation process designed to settle pending bit claims. IA Reporter, 4 November 2019, <https://www.iareporter.com/articles/revealed-previously-unseen-draft-text-of-eu-termination-treaty-reveals-how-intra-eu-bits-and-sunset-clauses-are-to-be-terminated-treaty-also-creates-eu-law-focused-facilitation-p>). However, member states still do not agree on the question of the compatibility with the EU law of the intra-EU application of the Energy Charter Treaty—and the Preamble of the Agreement of 5 May 2020 expressly states that “[...] this Agreement [...] does not cover intra-EU proceedings on the basis of [...] of the Energy Charter Treaty. The European Union and its Member States will deal with this matter at a later stage”. See Most EU member states agree on a plurilateral treaty to terminate intra-EU bilateral investment treaties, but differences still remain with respect to intra-EU applicability of Energy Charter Treaty. IA Reporter, 27 October 2019, <https://www.iareporter.com/articles/most-eu-member-states-agree-on-a-plurilateral-treaty-to-terminate-intra-eu-bilateral-investment-treaties-but-differences-still-remain-with-respect-to-intra-eu-applicability-of-energy-charter-treaty>.

pending investment arbitral proceedings.⁸⁶ It would be very interesting to follow their development also in light of the *Achmea* judgment and the multilateral agreement for the termination of intra-EU BITs.

3.2 *Forms of Economic Cooperation with Non-EU Countries: The Case of East Asia*

Over the years, the V4 group has developed significant relationships with non-EU countries.⁸⁷ The forms of cooperation of the V4 group with East Asia are particularly interesting, taking into account that the V4 region has hosted East Asian investment since the 1990s, e.g. the Japanese Suzuki in Hungary,⁸⁸ and have been shaped through the above mentioned V4+ meeting formula, as in the case of Japan and South Korea, or the 16+1 cooperation formula with China.⁸⁹

The V4+Japan meetings have covered various issues including security, development assistance for third countries, climate change and new energy, science and innovation, culture, and tourism. Top-level meetings of the leaders of the V4 countries and Japan were held, together with regular meetings at the level of Ministers of Foreign Affairs and Political Directors, working groups were constituted and seminars took place in selected areas of cooperation.⁹⁰ As regards South Korea, the V4+ South Korea meetings have increased more recently,⁹¹ with regular contacts especially at the level of Political Directors. They have also covered a wide range of issues, such as the North Korean nuclear programme and human rights situation, security issues, cybersecurity, development assistance for third countries, research and innovation, science and technology.⁹²

As regards economic cooperation, in some cases, the outcomes of the V4+ meetings have called for further promotion of the economic relationship with the EU, as in the case of the V4+ Japan Joint Statement of 2013, where

⁸⁶See most recently, the UNCITRAL case *Spółdzielnia Pracy Muszynianka v. Slovakia*, arising out of the Poland-Slovakia BIT. See Peterson LE, After ECJ ruling in *Achmea* case, a Kaufmann-Kohler chaired tribunal rejects a belated bifurcation bid in *Spoldzielnia Pracy "Muszynianka" v. Slovakia* case. IA Reporter, 10 May 2018, <https://www.iareporter.com/articles/after-ecj-ruling-in-achmea-case-a-kaufmann-kohler-chaired-tribunal-rejects-a-belated-bifurcation-bid> (31 October 2019).

⁸⁷Dubravčíková (2019), p. 21.

⁸⁸Economic relationships and FDI flows from East Asian countries have intensified in the last decades. See Éltető and Szunomár (2015).

⁸⁹Dubravčíková (2019), p. 22.

⁹⁰For a full list of these meetings, see the table in Dubravčíková (2019), p. 26.

⁹¹Dubravčíková (2019), p. 27.

⁹²For a comprehensive list of V4+Korea meetings, see Dubravčíková (2019), p. 30. See also Grešš (2015), p. 12.

[t]he V4 and Japan reaffirmed that a comprehensive Japan-EU Economic Partnership Agreement (EPA) / Free Trade Agreement (FTA) would improve access to markets for Japanese and V4's companies and thus strengthen economic relations between both sides.⁹³

In other cases, the V4+ has served as an opportunity to define the best conditions for implementing existing EU international trade agreements, as in the case of the Joint Statement during the First Summit with South Korea of 2015, according to which

The V4 and the ROK acknowledged the economic effects of the EU–Korea Free Trade Agreement (FTA) and affirmed their readiness to create favorable conditions for the economic development under the framework of the EU–Korea FTA.⁹⁴

In the East Asian context, it is also worth mentioning the relationship of the V4 group with China, which has not been developed through the V4+ formula but has been mainstreamed within the framework of the 16+1 cooperation and China's Belt and Road Initiative (BRI) project. Indeed, China has developed a strong economic relationship with Central and European Countries (CEE).⁹⁵ In the aftermath of the global financial crisis, China put in place the so-called 16+1 cooperation format,⁹⁶ with the first Economic and Trade Forum between China and CEE countries held in Budapest in 2011. Since then, the 16+1 cooperation developed through several economic projects and major investments from China in CEE countries. The 16+1 cooperation developed according to the Budapest Guidelines for Cooperation between China and Central and Eastern European countries of 28 November 2017⁹⁷ and the

⁹³Visegrád Group Plus Japan Joint Statement of 16 June 2013. The EU and Japan's Economic Partnership Agreement entered into force on 1 February 2019. See European Commission, EU-Japan Economic Partnership Agreement. In focus, 7 October 2019, <http://ec.europa.eu/trade/policy/in-focus/eu-japan-economic-partnership-agreement>.

⁹⁴Joint Statement on the occasion of the first summit with the President of the Republic of Korea of 3 December 2015.

⁹⁵This has also raised some political concerns among EU institutions and Western EU member states. See Matura T, China and CEE: 16+1 is here to stay. *Emerging Union – Opinion*, 7 May 2019, <https://emerging-europe.com/voices/china-and-cee-161-is-here-to-stay> and Matura (2019), pp. 388–407. During the 7th summit of Central and Eastern European countries and China that took place in Sofia from 29 June to 7 July 2018, the Bulgarian Prime Minister Boyko Borisov affirmed that “[t]he 16+1 initiative is not a geopolitical platform but a win-win cooperation based on the market laws”, while the Chinese Prime Minister re-stated that “[s]ome say that such a cooperation might divide the EU but it is not true”, as reported in Almássy F, China – Central Europe: an intensified rapprochement through the 16+1 initiative. *Visegrád Post*, 29 July 2018.

⁹⁶The 16 countries are Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Croatia, Romania, Bulgaria, Montenegro, Bosnia and Herzegovina, Albania, North Macedonia, Serbia. For an overview, Xin and Zhigao (2018) and Turcsanyi et al. (2014), pp. 127–141.

⁹⁷Budapest Guidelines for Cooperation between China and Central and Eastern European countries, 28 November 2017, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1514534.shtml.

subsequent Sofia Guidelines of 9 July 2018,⁹⁸ which reiterated the willingness of participant states to develop a “cross-regional cooperation platform”.

Moreover, in 2013 China put in place the so-called BRI project, which is aimed to connect 71 countries in Asia, Africa and Europe. The BRI is expected to cost more than \$1tn and it has raised a number of concerns as regards both the economic and political implications.⁹⁹ The BRI includes infrastructure projects (e.g. railways, energy pipelines or highways), as well as the establishment of commercial courts—in Shenzhen and Xi’an—that would deal with commercial disputes related to the BRI—ideally based on the model of the Dubai International Financial Centre Courts and the International Commercial Court in Singapore.¹⁰⁰

China has encouraged strong economic relationships with V4 countries,¹⁰¹ including by sending so-called “investment promotion delegations” to V4 countries and inviting officials in charge of foreign investment in V4 to China for exchanges and training.¹⁰² In March 2018, during a meeting with vice foreign ministers of the V4 countries in China, the Chinese State Councillor restated that “Visegrád countries are representatives of European emerging market countries and the most dynamic force within the EU”.¹⁰³ It is worth noting that, according to some scholars, this kind of cooperation between China and sub-regional groups could be regarded as a “testing ground” for further cooperation between China and the EU.¹⁰⁴

⁹⁸Sofia Guidelines for Cooperation between China and Central and Eastern European countries, 9 July 2018, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1577455.shtml.

⁹⁹The chapter does not go into detail on this particular topic, as it is outside its scope. In general, see Kuo L, Kommenda N, What is China’s Belt and Road initiative?. The Guardian, 30 July 2018 <https://www.theguardian.com/cities/nginteractive/2018/jul/30/what-china-belt-road-initiative-silk-road-explainer> and Chatzky A, McBride J, China’s Massive Belt and Road initiative. Council on Foreign Relations, Backgrounder, 21 May 2019, <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>.

¹⁰⁰Kuo L, Kommenda N, What is China’s Belt and Road initiative? The Guardian, 30 July 2018 <https://www.theguardian.com/cities/ng-interactive/2018/jul/30/what-china-belt-road-initiative-silk-road-explainer> and Chatzky A, McBride J, China’s Massive Belt and Road initiative. Council on Foreign Relations, Backgrounder, 21 May 2019, <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>.

¹⁰¹At EU level, it is worth recalling that the Council authorised the Commission to initiate negotiations for a comprehensive EU-China investment agreement on 18 October 2013. The most recent round of negotiations took place in Beijing in the week of 10 June 2019, as reported in the factsheet European Commission, Overview of FTA and other trade negotiations, July 2019, http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf. See also Liang Y, Challenges for the EU-China BIT negotiations. Columbia FDI Perspectives No 257, 29 July 2019, <http://ccsi.columbia.edu/publications/columbia-fdi-perspectives>.

¹⁰²Zuokui (2014), p. 31.

¹⁰³Reported in Blanchard B, China hosts Visegrád group, calls them ‘dynamic force’ in EU. Reuters—World News, 23 March 2018, <https://www.reuters.com/article/us-china-easteurope/china-hosts-visegrad-group-calls-them-dynamic-force-in-eu-idUSKBN1GZ0A9>.

¹⁰⁴As discussed in Vetrovcova (2017), p. 74.

4 Concluding Remarks

As members of the EU, and thus subject to the EU common commercial policy, V4 countries have had to face several challenges in the management of investment regulation, with special regard to the question of the termination of intra-EU BITs—in relation to which each V4 country seemed to have had its own approach, at least until the *Achmea* judgment—and the regulation of economic interests with non-EU countries, where instead the V4 group more often acts as a “solo” actor in promoting economic cooperation with third economic partners, as in the case of Japan, Korea and China. The V4 documents that have been examined in this chapter show that the V4 countries have a deep interest in FDI promotion and protection. And indeed, the V4 has played a proactive role in this regard, serving as a platform that has enabled the countries to cooperate¹⁰⁵ and also to express their concerns. In this respect, the V4 can act as an amplifier in reinforcing national positions at EU level. Today, the V4 has become a “recognised” voice in international fora: the Slovak Prime Minister Robert Fico in 2012 highlighted that the V4 had “become a *trademark* known in Europe, North Atlantic and beyond”.¹⁰⁶ Also EU institutions tend to mention increasingly the V4 countries in press releases that report some of their meetings.¹⁰⁷ The ability to talk with one voice through the V4 platform has been labelled the “soft power” of the V4;¹⁰⁸ also in the field of FDI regulation, the V4 may use its soft power to advocate sub-regional interests at EU level, as well as at the international level, in order to influence future international investment law-making in a way that takes (increasingly) into account (also) national concerns.

¹⁰⁵See also the 2004 Guidelines on the Future Areas of Visegrád Cooperation, according to which “future cooperation will be developed particularly: [...] Creating new possibilities and forms of economic co-operation within the European Economic Area”. Guidelines on the Future Areas of Visegrád Cooperation. Visegrád Group, 12 May 2004, <http://www.visegradgroup.eu/cooperation/guidelines-on-the-future-110412>.

¹⁰⁶Statement by H.E. Robert Fico Prime Minister of the Slovak Republic at GLOBSEC 2012, Bratislava Global Security Forum, 12 April 2012, <https://www.vlada.gov.sk/prejav-predsedu-vlady-sr-roberta-fica-na-fore-globsec-v-anglickom-jazyku>, emphasis added.

¹⁰⁷See e.g. the following press releases of the European Commission: Future of cohesion policy: Commissioner Hübner to address Visegrád group in Sopot, Poland. European Commission, Press releases database, 1 July 2009, https://europa.eu/rapid/press-release_IP-09-1067_en.htm and Commissioner Hahn in Bratislava in the run-up to the Eastern Partnership 10th Anniversary. European Commission, Press releases database, 3 May 2019, https://europa.eu/rapid/press-release_MEX-19-2390_en.htm.

¹⁰⁸Strážay T (2011) Visegrád - arrival, survival, revival. Selected V4 Bibliography. Visegrád Group, <http://www.visegradgroup.eu/documents/bibliography/visegradarrival-survival-120628>.

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