Poland's stance on CAI: no need for haste

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Abstract

Poland was among vocal critics of the acceleration and finalization of CAI talks by the end of 2020. Among the reasons were doubts about the timing and political circumstances in the EU such as the role of Germany as a driving force for CAI due to its economic dependence on China, and Commission mandate for talks that was granted several years ago in a very different situation both in China and Europe. Poland was also critical about bypassing the USA, in a sense of bringing CAI talks up to speed during the transition period, before Biden sworn. However, after finalization of the agreement, Polish government (as well as the biggest opposition party) presents a rather positive assessment of CAI and opts for ratification. Notwithstanding, all Polish MEPs have endorsed the European Parliament resolution to freeze ratification process.

Acceleration and then conclusion of CAI negotiations on 30 December 2020 was unexpected. After the EU-China on-line summit that was held in June 2020, and then the special EU and China leaders' meeting in September, the EU Commission sent signals that talks went dormant because the progress from the Chinese side was negligible. The EU presented its hard stance on CAI, calling for urgent progress on the deal¹ (in fact it highlighted the CAI stalemate), there were statements that the EU must be a player in relations with China, not a playing field² and remarks that China must convince the EU that CAI negotiations are worth concluding. All that meant the Union is committed to the substance of specific arrangements, not to the timing of the deal's conclusion. In that sense, finalization of talks on 30 December,

¹ "EU-China Summit: defending EU interests and values in a complex and vital partnership", 22 June 2020, <https://www.consilium.europa.eu/pl/press/press-releases/2020/06/22/eu-china-summit-defending-eu-interests-and-values-in-a-complex-and-vital-partnership/>

² "Remarks by President Charles Michel after the EU-China leaders' meeting via video conference", 14 September 2020, <https://www.consilium.europa.eu/pl/press/press-releases/2020/09/14/remarks-by-president-charles-michel-after-the-eu-china-leaders-meeting-via-video-conference/>

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despite setting up a deadline in joint communique after EU-China summit in April 2019,³ seemed unrealistic.

Poland was among vocal critics of the acceleration and finalization of CAI talks by the end of 2020. Eventually—as Polish MFA argues⁴—Poland has agreed for talks conclusion due to the fact that Commission has negotiation mandate and in that sense, there was no possibility to block the deal. Eventually, Poland’s position on CAI is twofold: open criticism during acceleration of talks in December, and rather positive assessment after the deal finalization but with some differences within the government and mixed views from the opposition.

Criticism of negotiations rush

Minister of Foreign Affairs Zbigniew Rau, on 22 December wrote on Twitter that “the EU should seek a fair, mutually beneficial CAI with China. We need more consultation and transparency bringing our transatlantic allies on board. A good, balanced deal is better than a premature one”.⁵ It was the first official remark on CAI given by the representative of the Polish government. At the same time at the Coreper, when the CAI was discussed, Polish ambassador expressed his criticism about the fact that the Commission did not unveil the text of the deal to the Member States and about the acceleration of talks.⁶

Then in the interview published in the Polish Diplomatic Review in January 2021, Minister Rau explained in details Poland’s position on CAI negotiations.⁷ There are three main arguments against prompt conclusion of CAI: 1) doubts about political (not legal) validity of the Commission mandate for negotiations; 2) the role played by the Commission and Germany; 3) and the lack of coordination with the USA.

When it comes to the mandate, minister claims that Commission was granted the mandate 7 years ago in a very different political circumstances both in the EU (e.g. under previous EU leadership and different governments in many member states) and China. As legally the mandate is valid, the fact that was given years ago may lead to a question about the democratic consensus on CAI among the EU members

³ “EU-China Summit Joint Statement, Brussels, 9 April 2019, <https://www.consilium.europa.eu/media/39020/euchina-joint-statement-9april2019.pdf>

⁴ Foreign Affairs Committee of the Polish Sejm, 10 March 2021, a meeting devoted among others, to the CAI, https://www.sejm.gov.pl/Sejm9.nsf/transmisje_arch.xsp?unid=CDB9792A3C8A876BC125868E005231C9

⁵ Zbigniew Rau’s Twitter account, post published on 22 December 2020, <https://twitter.com/RauZbigniew/status/1341454786747641859>

⁶ „Umowa UE-Chiny jest już gotowa? Polska sprzeciwiła się przyspieszeniu prac”, 28 December, 2020, <https://forsal.pl/swiat/unia-europejska/artykuly/8054443,umowa-ue-chiny-jest-juz-gotowa-polska-sprzeciwila-sie-przyspieszeniu-prac.html>

⁷ “Democratic foreign policy—a fundament of our common strength”—interview with Poland’s Foreign Minister Dr Zbigniew Rau, 14 January 2021, https://pism.pl/publications/Democratic_foreign_policy_a_fundament_of_our_common_strength_interview_with_Polands_Foreign_Minister_Dr_Zbigniew_Rau_

states. The fact that the rumors about the agreement and its content started to arise after the accelerated negotiations in December and then after talks conclusion undermines the EU's position vis-à-vis China. In that sense, the negotiation process was opaque. In a nutshell, the EU ended talks first, and launched the debate about the deal afterwards.

This leads to the second argument that Commission and Germany imposed this decision on member states using procedural tricks. Minister argues that “nothing would have happened if the talks were extended over the course of another two or three presidencies. Meanwhile, the European Commission and the German presidency brought upon Europe long-term problems organized in an extralegal format all for some quick media fireworks”. Also deputy minister of foreign affairs Marcin Przydacz in an interview about Poland's policy towards Asian countries, published in January 2021, underscores that Poland pays special attention to European cohesion to avoid being hijacked by the particular interests of individual states. Minister warns about the openness that goes too far, arguing that “the strong presence of foreign investments, on the one hand, and the opening up of the market, on the other, make the economy profoundly dependent. Subsequently, when there is a desire to change the political course, such dependence becomes a restriction”. Furthermore, China has evident advantages over smaller economies. These advantages can be eliminated through cooperation between these smaller economies, common stances between states, and consistent political signals. (...) Any smaller player, with the exception of the USA, Germany, and several other major countries, is in a weaker position versus China. Our strength is in unity and we must not haste”.⁸

The third argument tackles transatlantic cooperation. The example of CAI—as minister Rau said—“might have set precedent that will weaken Europe and the transatlantic community as a whole. For the United States and Canada, the European Union becomes a source of uncertainty, and that could develop into a lack of trust”.⁹ While minister Przydacz highlights that it is crucial to maintain transatlantic coherence, because the more we cooperate within the wider family of the Western world, the stronger we are. There is considerable scope for the Euro-Atlantic community to coordinate its approach in this context with both Washington and Brussels on an ongoing basis, to be able to react sometimes firmly, but above all always coherently, to actions that are unfavorable to us.¹⁰

⁸ “We're Stronger Together – an Interview with Minister Marcin Przydacz”, 7 February, 2021, <https://instytutboyma.org/pl/were-stronger-together-an-interview-with-minister-marcin-przydacz-2/>

⁹ “Democratic foreign policy—a fundament of our common strength”, op. cit.

¹⁰ We're Stronger Together – an Interview with Minister Marcin Przydacz, op. cit.

A rather positive assessment of concluded CAI

Differences within the Government

However, after conclusion of negotiations the governmental discourse about the agreement has slightly changed. The general assessment of the deal is positive mostly when it comes to the Chinese commitments.¹¹ Both Ministry of Economic Development, Labor and Technology (MEDLT) and MFA—that were responsible for CAI from the Polish side—share this assessment. However, there are also discernible differences between those two institutions: MEDLT presents optimism about CAI, while MFA is more critical.

MEDLT perceives CAI mostly through the prism of economic issues, arguing that Chinese concessions, if adopted, may bring many positive results for Poland. Ministry claims that during the negotiations many Polish demands have been met. Among them the most important is the market access when it comes to the air and maritime transport services that may reap benefits for Poland, e.g. in the multimodal transport—an important dimension of country's relations with China due to Poland's geographical location in the center of Europe and many Europe-China cargo trains that pass through the country.

Poland also positively assesses the lifting of joint ventures requirements especially in environmental and construction services. Beneficial might be also the openness of the EV sector as the Polish companies are taking part in the global value chains and the Polish economy is closely linked with Germany. At the same time, Poland is becoming more attractive for investors in automotive sector as a place where battery for electric cars are manufactured. It is also believed that Chinese promises, if kept, may narrow a huge trade deficit that Poland records with China as well as lift the non-tariff barriers to the Chinese market mostly when it comes to furniture, cosmetics and the agriculture products.

Aside from rather positive assessment of the deal content, the Ministry highlights weakness as well. It is argued that CAI does not secure the fully-fledged reciprocity which means that still the EU is more open to China than vice-versa. The Ministry argues that as the technical work is under way, the EU should strictly monitor the process to have the deal provisions that comply with the arrangements and Chinese promises achieved during the negotiations.

When MEDLT focuses mostly on the deal content and perceives it through the prism of economic dimension, MFA presents a slightly different view. Foreign office puts an emphasis mostly on political aspect of the agreement, especially the unexpected acceleration and moment of finalization of talks—during the change of the US administration and lack of coordination with the USA, despite its request: Jake Sullivan, National Security Advisor to President Biden, in an unprecedented tweet asked for cooperation with the USA¹² on this issue. For Poland transatlantic ties are

¹¹ Foreign Affairs Committee of the Polish Sejm, op. cit.

¹² Jake Sullivan's Twitter account, post published on 22 December 2020, <https://twitter.com/jakejsullivan/status/1341180109118726144>

crucial, so the push for political deal without paying attention to the USA is assessed critically.

The second argument tackles the format of the negotiations which means the mandate—the argument presented by Minister Rau—as well as the fact that Member States did not take part in it. Probably, but it was not voiced openly, also the participation of president Macron in the on-line meeting with Xi Jinping raises Poland's doubts.

The third argument is the normative issues such as China's human rights abuses, including the forced labour as elements that were not seriously taken into account in finalizing negotiations with a country whose leader is tightening his grip on Hong Kong, Xinjiang or Tibet and pursues more assertive, or even aggressive, foreign policy. MFA predicted a heated discussion about the deal in the European Parliament and argued that ratification is not certain. This assumption has been confirmed by the European Parliament resolution adopted on 20 May 2021 that “any consideration and discussion on the EP mandatory ratification by MEP's, have justifiably been frozen because of the Chinese sanctions”.¹³ All of the Polish MEPs voted in favour.¹⁴ It is also worth mentioning that one of the very vocal critic of CAI is Anna Fotyga, MEP from the European Conservatives and Reformists Group, also a member of the Poland's ruling party—the Law and Justice.

A rather positive assessment of the concluded CAI in the Polish government is becoming more apparent after minister Rau visit to China in late May. Minister argued that despite the fact that CAI is not an ideal solution because the deal does not secure a fully-fledged reciprocity, it is a step forward and Poland opts for ratification. However, after European Parliament has put CAI into the freezer with a condition that ratification process is possible only after lifting Chinese disproportionate countersanctions, the prompt resumption of ratification procedure is unlikely.¹⁵

Mixed views from opposition

The biggest opposition party, the Civic Platform, also assess the CAI positively. However, several doubts have been raised. First of all, it is believed that the deal is more beneficial to China than to the EU, while in the EU the biggest winner is Germany. Secondly, the most important weakness of the deal is the lack of investor-state dispute settlement (ISDS). The fact that CAI includes only a state-to-state dispute mechanism which is based on political will may mean that it would be beneficial and useful for influential member states like Germany and France. What is more, CAI is more beneficial for Chinese investors operating in the EU. In case of dispute,

¹³ “MEPs refuse any agreement with China whilst sanctions are in place”, 20 May 2021, [https://www.europarl.europa.eu/news/en/press-room/20210517IPR04123/meps-refuse-any-agreement-with-china-while-sanctions-are-in-place?xtor=AD-78-\[Social_share_buttons\]-\[twitter\]-\[en\]-\[news\]-\[pressroom\]-\[chinese-countersanctions-on-eu-entities-and-meps-and-mps\]](https://www.europarl.europa.eu/news/en/press-room/20210517IPR04123/meps-refuse-any-agreement-with-china-while-sanctions-are-in-place?xtor=AD-78-[Social_share_buttons]-[twitter]-[en]-[news]-[pressroom]-[chinese-countersanctions-on-eu-entities-and-meps-and-mps])

¹⁴ Results of the voting, https://www.europarl.europa.eu/doceo/document/PV-9-2021-05-20-RCV_FR.pdf, p. 265–266.

¹⁵ Author's conversation with Polish diplomats, June 2021, Warsaw.

they have access to the EU's independent courts. This is not the case when it comes to European entrepreneurs in the PRC. As a result, CAI is mostly about the market access than the protection of existing European investments in China. There are also doubts about the validity of the bilateral investment treaty (BIT) that should be replaced by CAI. Lack of ISDS makes CAI incomplete and raises questions if the BIT is operational as regard to the protection of Polish investors already present in China. Finally, lack of coordination with the U.S. may undermine building a united transatlantic front on China.¹⁶

At the same time, it is worth mentioning that one of the prominent politician and member of the Civic Platform, former minister of foreign affairs – Radosław Sikorski, currently a member of the European Parliament, is the main author of the EPP's first China paper. He argues that despite the fact that CAI does not solve all the problems, it is a step forward as China has made significant commitments and the deal should be ratified. He predicted that EPP would endorse the CAI. However, he also admitted that after China's retaliatory sanctions on the MPs, the ratification is not certain.¹⁷ Eventually, all the Polish EPP MPs voted in favour on resolution on freezing CAI ratification.

While the opposition left party talking about CAI that perceives rather negatively, focuses on the labour rights that are violated in China. The party is also concerned about the fact that the EU does not have enough capacities and instruments to have an impact on China.¹⁸

Conclusions

Poland's stance on CAI reflects the general country's policy towards China. Since 2017 Poland's attitude towards the PRC is rather cautious due to China's growing assertiveness and less prospect for country's liberalization. Poland's approach towards China goes in line with the EU's hardening stance since 2017 when the idea of introducing defensive mechanisms—the investment screening as the first one—to build the EU's resilience appeared for the first time. Also close cooperation with the US as security guarantor against Russia has an impact on Polish attitude towards China.

However, this does not mean that Poland has changed its main political and economic goals when it comes to China that are maintaining high-level bilateral political dialogue, expanding Polish exports to the PRC, attract Chinese high quality investments and cooperate with China if needed. The recent developments in Poland-China ties such as rather intensive political contacts in the last several weeks (e.g. two telephone conversations between Foreign Ministers, phone call between president Andrzej Duda and Xi Jinping and the FM Rau's visit in person to China), including Poland's hope for strengthening economic ties vindicate this premise.

¹⁶ Foreign Affairs Committee of the Polish Sejm, op. cit.

¹⁷ "Radosław Sikorski on EU's sanctions row with China and the transatlantic partnership", podcast, 31 March 2021, <https://merics.org/en/podcast/radoslaw-sikorski-eus-sanctions-row-china-and-transatlantic-partnership>

¹⁸ Foreign Affairs Committee of the Polish Sejm, op. cit.

To sum up, Poland is not against CAI as such. The government was rather critical about acceleration of talks and finalization of negotiations in December mostly to the political circumstances and doubts about China's last-minute concessions. As the deal has been eventually finalized there is a need to confirm and secure Chinese promises during the process of the legal scrubbing. What is more, observing the growing China's assertiveness, and constant or even increasing US-China tensions, Polish government advocates on the one hand to take into account the US arguments such as transatlantic cooperation on China to increase the leverage on the PRC, but on the other to keep channels open with China—following the EU's approach on Beijing—to avoid making the PRC more aggressive and build up an anti-Western coalition, especially with Russia.

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References

- Democratic foreign policy - a fundament of our common strength" - interview with Poland's Foreign Minister Dr Zbigniew Rau, 14 January 2021, https://pism.pl/publications/Democratic_foreign_policy_a_fundament_of_our_common_strength_interview_with_Polands_Foreign_Minister_Dr_Zbigniew_Rau_
- EU-China Summit: defending EU interests and values in a complex and vital partnership", 22 June 2020, <https://www.consilium.europa.eu/pl/press/press-releases/2020/06/22/eu-china-summit-defending-eu-interests-and-values-in-a-complex-and-vital-partnership/>
- "EU-China Summit Joint Statement, Brussels, 9 April 2019, <https://www.consilium.europa.eu/media/39020/euchina-joint-statement-9april2019.pdf>
- Foreign Affairs Committee of the Polish Sejm, 10 March 2021, a meeting devoted among others, to the CAI, https://www.sejm.gov.pl/Sejm9.nsf/transmisje_arch.xsp?unid=CDB9792A3C8A876BC125868E005231C9
- Jake Sullivan's Twitter account, post published on 22 December 2020, <https://twitter.com/jakejsullivan/status/1341180109118726144>
- "MEPs refuse any agreement with China whilst sanctions are in place", 20 May 2021, [https://www.europarl.europa.eu/news/en/press-room/20210517IPR04123/meps-refuse-any-agreement-with-china-while-sanctions-are-in-place?xtor=AD-78-\[Social_share_buttons\]-\[twitter\]-\[en\]-\[news\]-\[pressroom\]-\[chinese-countersanctions-on-eu-entities-and-meps-and-mps\]-](https://www.europarl.europa.eu/news/en/press-room/20210517IPR04123/meps-refuse-any-agreement-with-china-while-sanctions-are-in-place?xtor=AD-78-[Social_share_buttons]-[twitter]-[en]-[news]-[pressroom]-[chinese-countersanctions-on-eu-entities-and-meps-and-mps]-)
- "Radosław Sikorski on EU's sanctions row with China and the transatlantic partnership", podcast, 31 March 2021, <https://merics.org/en/podcast/radoslaw-sikorski-eus-sanctions-row-china-and-transatlantic-partnership>
- "Remarks by President Charles Michel after the EU-China leaders' meeting via video conference", 14 September 2020, <https://www.consilium.europa.eu/pl/press/press-releases/2020/09/14/remarks-by-president-charles-michel-after-the-eu-china-leaders-meeting-via-video-conference/>
- Results of the voting – name list, https://www.europarl.europa.eu/doceo/document/PV-9-2021-05-20-RCV_FR.pdf, p. 265–266.
- „Umowa UE-Chiny jest już gotowa? Polska sprzeciwiła się przyspieszeniu prac", 28 December, 2020, <https://forsal.pl/swiat/unia-europejska/artykuly/8054443,umowa-ue-chiny-jest-juz-gotowa-polska-sprzeciwi-la-sie-przyspieszeniu-prac.html>
- "We're Stronger Together – an Interview with Minister Marcin Przydacz", 7 February, 2021, <https://instytutboyma.org/pl/were-stronger-together-an-interview-with-minister-marcin-przydacz-2/>

Zbigniew Rau's Twitter account, post published on 22 December 2020, <https://twitter.com/RauZbigniew/status/1341454786747641859>

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