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Inter-regional cooperation and FDI flow: one step too far? – preconditions and prospects*

Abstract: The inter-regional cooperation between the European Union (EU) and its Southern and Eastern neighbours (currently covered by the European Neighbourhood Policy) was developed with the objective of strengthening the prosperity, stability and security of all the countries involved. In this context, foreign direct investment (FDI) should be regarded as one of the most important tools to be used in order to fulfil the aim of strengthening the prosperity of the cooperating countries, including in particular the development of the less developed EU neighbours. This paper explores the question of whether the inter-regional cooperation between the EU and its Southern and Eastern neighbours resulted in the creation of an institutional (legal) framework conducive to the FDI inflow to the ENP partner-countries.
Keywords: FDI, EU, ENP, inter-regional cooperation, institutional frameworks

Introduction

The inter-regional cooperation between the European Union (EU) and its Southern and Eastern neighbours (currently covered by the European Neighbourhood Policy) was developed with the objective of strengthening the prosperity, stability and security of all the countries involved. In this context, foreign direct investment (FDI) should be regarded as one of the important tools to be used in order to ful-

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fil the aim of strengthening the prosperity of the cooperating countries, including in particular the development of the less developed EU neighbours. This is mainly because the incoming FDI constitutes a source of additional investment capital resources (which are usually scarce in developing countries), as well as it can help the receiving countries stimulate economic development by enabling the transfer of technology, knowledge and managerial know-how. For this reason, the inflow of FDI to the EU's neighbouring countries should be perceived as highly desirable.

The objective of this paper is to address the question of whether the inter-regional cooperation between the EU and its Southern and Eastern neighbours has led to the creation of effective institutional (legal) framework for the inflow of FDI to the countries coming from (1) the Middle East and North Africa (MENA) and (2) Eastern Europe. The argument is structured as follows. First, the discussion focuses on issues related to the promotion and protection of foreign investments, covered by the bilateral agreements concluded between the EU (European Communities) and their member states and the aforementioned neighbouring countries. Second, the argument seeks to find out whether the formal institutional solutions implemented by the EU member states together with the neighbouring countries in order to stimulate FDI flows on bilateral state-to-state basis constituted a good precondition for such flows – i.e. made the MENA and Eastern European regions more attractive in the eyes of foreign investors (in comparison to other potential FDI host regions and/or countries). Finally, conclusions regarding the prospects of a further development of the FDI inflows to the MENA and Eastern European countries are drawn.

1. The institutional framework of inter-regional cooperation

The conditions for the FDI flows between the EU and its Southern and Eastern neighbours, currently covered by the ENP, have been originally shaped by formal institutional (legal) arrangements, concerning the promotion and protection of foreign investments. These arrangements were included in various types of agreement concluded between the EU (European Communities) and their member states, on the one hand, and each individual EU's neighbour country, on the other hand. In theory, formal institutional arrangements stimulate FDI flows. This is because they may, for instance, create incentives necessary for the creation of an investment-friendly environment and establishment of special facilities for mutual investments. As a result, investments become more attractive in comparison to investment cooperation with other potential countries and/or regions. For this reason, the first question to be answered in this paper is whether the provisions related to the promotion and protection of investments contained in the agreements concluded by the EU with the MENA and Eastern European countries, have had any considerable positive impact on FDI inflows.

The ENP can be regarded as an umbrella agreement in that it offers a framework of cooperation for the EU's neighbours with the East, i.e. Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine, and the EU's Southern neighbours, i.e. Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian National Authority, Syria, Tunisia. Nevertheless, a clear differentiation exists between these two groups of countries as regards the specific institutional (legal) arrangements that the EU employs to promote and protect investments. This differentiation stems from the following. First, the ENP was designed to complement (but not replace) the already existing cooperation frameworks between the EU and the neighbouring countries. Second, as a result of the launch of the ENP, further differentiation in the EU's approach towards its neighbours was introduced. Specifically, in July 2008, the *Southern dimension* of the ENP was enhanced by the "Union for the Mediterranean"[1]; the *Eastern dimension* was enhanced by the "Eastern Partnership" in May 2009.

1 The "Union for the Mediterranean" builds on the EU Mediterranean Policy, the Barcelona Process and the Euro-Mediterranean Partnership, and in fact at the time of its launch constituted an attempt at revamping the EU's relations with its Southern neighbours (Eds).

Table 1. Bilateral agreements concluded between the European Union (European Communities) and its member states and the EU's Southern and Eastern neighbours

	EU's Southern neighbouring countries
Types of agreements	▪ Bilateral The Euro-Mediterranean agreements, concluded in the period 1998-2005, between the European Communities and their member states, of the one part, and Tunisia, Morocco, Israel, Jordan, Egypt, Algeria and the Lebanese Republic, of the other part; ▪ Cooperation Agreement between the European Economic Community and the Syrian Arab Republic, which entered into force in 1978 (as Syria did not conclude the Euro-Mediterranean agreement, its so-called 'first generation' agreement still remains relevant); ▪ Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, which entered into force in 1997.
Main objectives of association/cooperation, laid down in the agreements concluded by the MENA/Eastern European countries with the EU and its member states	▪ Development of (close) political relations and regional cooperation in order to strengthen peaceful coexistence and economic and political stability; ▪ Promotion and development of economic and social relations and thus fostering in the partner countries economic activity, increased productivity, financial stability, as well as the improvement of living and employment conditions; ▪ Promotion and expansion of trade, including gradual liberalisation of trade in goods, services and capital; ▪ Facilitating (especially the administrative procedures for) human exchanges; ▪ Promotion of cultural cooperation and cooperation in all other areas which are of reciprocal interest.
Promotion and protection of foreign investments in the agreements concluded by the MENA/Eastern European countries with the EU	▪ The parties aim at creating favourable climate for investment flows, and in particular they commit themselves to: establish harmonised and simplified procedures and methods of identifying and providing information on investment opportunities; promote co-investments and establish legal framework to promote investment by conclusion of bilateral (that is, between individual MENA countries and EU member states) investment protection agreements, as well as agreements preventing double taxation; ▪ The parties commit themselves to ensure free circulation of capital for direct investments that are made in companies formed in accordance with the laws of the host country, and the liquidation or repatriation of these investments (and of any profit stemming therefrom); ▪ The parties commit themselves to provide technical assistance to schemes promoting and guaranteeing national and foreign investments.

Source: The Author's own arrangement, based on: C. Nowak, *Legal Arrangements for the Promotion and Protection of Foreign Investments Within the Framework of the EU Association Policy and European Neighbourhood Policy*, [in:] M. Bungenberg, J. Griebel, S. Hindelang (eds.), *International Investment Law and EU Law*, *Special Issue to the European Yearbook of International Economic Law*, Heidelberg 2011, p. 105-138; Euro-Mediterranean Agreements establishing an association between the European Communities and their Member States, of the one part, and, respectively: the People's Democratic Republic of Algeria, the Arab Republic of Egypt, the Hashemite Kingdom of Jordan, the State of Israel, the Kingdom of Morocco and the Republic of Tunisia (individual Euro-Mediterranean Agreements are available at: http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r14104_en.htm); Cooperation Agreement between the European

<table>
<tr><th>EU's Eastern neighbouring countries</th></tr>
<tr><td>
Bilateral partnership and cooperation agreements, concluded in the period 1998-1999 between the European Communities and their member states, of the one part, and Ukraine, Moldova, Georgia, Armenia and Azerbaijan, of the other part.
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Development of (close) political relations;
Promotion of trade, investment and harmonious economic relations in order to support sustainable economic development;
Supporting the development of democracy in the Eastern partner countries, as well as the economic development of their economies in order to complete the process of transition of these countries into market economies;
Providing frameworks for legislative, financial, scientific, technological, civil, social and cultural cooperation.

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The parties are aware of the necessity to promote investment in individual Eastern neighbour countries and they are conscious of the need to improve conditions affecting business and investment;
The parties commit themselves to establish a favourable climate for (domestic and foreign) investment, especially through better conditions for investment protection, the transfer of capital and the exchange of information on investment opportunities (regarding trade fairs, exhibitions, etc.); moreover, the parties aim at: avoiding double taxation; creation of favourable conditions for attracting foreign investments into the economies of Eastern EU's neighbours; establishing stable and adequate business law and conditions, as well as exchange information on laws, regulations and administrative practices in the field of investment;
The parties commit themselves to ensure free movement of capital relating to direct investments;
The parties undertake to ensure that natural and legal persons of the other party have access (free of discrimination in relation to their own nationals) to the courts having jurisdiction and the competent administrative organs of the parties to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property.

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Economic Community and the Syrian Arab Republic (available at: http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=255); Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part (available at: http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=254); Bilateral Partnership and Cooperation Agreements concluded between the European Communities and their member states, of the on part, and Ukraine, Moldova, Georgia, Armenia and Azerbaijan, of the other part (individual Partnership and Cooperation Agreements are available at: http://investmentpolicyhub.unctad.org/IIA/CountryOtherIias/78#iiaInnerMenu).

The above differentiation can be reflected, *inter alia*, in: (1) the types of bilateral agreements concluded between the aforementioned parties, (2) the official objectives of their cooperation and (3) the provisions concerning promotion and protection of foreign investments. The UE's bilateral relations with almost all its Eastern neighbours are formally shaped by the partnership and cooperation agreements, concluded in the period 1998-1999. These agreements contain partly identical and party differing statements and provisions concerning the promotion and protection of foreign investments (briefly described in table 1). Unlike the Eastern European neighbours, the MENA countries signed various kinds of agreements (including trade-related interim, association and/or so called Euro-Mediterranean agreements) that contain statements dealing with promotion and protection of foreign investments.[2] Bilateral Euro-Mediterranean agreements were concluded in the period from 1998-2005 between the EU (European Communities) and its member states, on the one hand, and Tunisia, Morocco, Israel, Jordan, Egypt, Algeria and the Lebanese Republic, on the other hand. These agreements replaced cooperation agreements which were concluded in the 1970s; only Syria did not sign a new Euro-Mediterranean agreement, and its 'old' agreement signed in 1978 remains valid. Moreover, the relationships between the EU and the Palestinian Authority are shaped by an interim association agreement which entered into force in 1997 (see table 1).

Carsten Nowak[3] provides a detailed, comparative analysis of the provisions related to promotion and protection of foreign investments in the bilateral agreements, concluded between the EU (European Communities) and its member states and the two aforementioned groups of countries, and he aptly sums up that these provisions – despite the existing differences between them – show rather clearly that the contracting parties hitherto assumed that the legal protection of foreign investments was not so much subject matter either of the partnership and cooperation agreements or of the Euro-Medi-

2 For more details see: C. Nowak, *Legal Arrangements for the Promotion and Protection of Foreign Investments Within the Framework of the EU Association Policy and European Neighbourhood Policy* [in:] M. Bungenberg, J. Griebel, S. Hindelang (eds.), *International Investment Law and EU Law, Special Issue to the European Yearbook of International Economic Law*, Heidelberg 2011, p. 105-138.

3 Ibidem, p. 122-126, 130-133.

terranean agreements, but rather a concern of the EU member states to be organised bilaterally.[4] In other words, the Euro-Mediterranean agreements and the partnership and cooperation agreements do not contain provisions which can be regarded as a factor *de facto* stimulating the flow of FDI to the EU's neighbouring countries. These formal institutional arrangements seem to intentionally leave a lot of room for individual countries to regulate promotion and protection of foreign investment on bilateral state-to-state levels.

The decision to regulate protection and promotion of foreign investments flowing between the EU member states and their neighbouring countries on bilateral state-to-state levels made the parties concerned focus more on one of the most popular (and – according to the United Nations – the most important[5]) tools for the protection of FDI, that is, on bilateral investment treaties (BITs). As a consequence, the individual EU member states concluded numerous BITs with the EU's Southern and Eastern neighbours (for details see table 2).

Theoretically, the inter-regional cooperation between the MENA and the Eastern European countries could involve the implementation of detailed regulations concerning the promotion and protection of foreign investments, and these regulations could even help to distinguish the EU's neighbours (as potential FDI host economies) from other EU's partner regions and countries. However, the EU member states, together with the MENA and Eastern European neighbours, decided to regulate the promotion and protection of foreign investments on bilateral levels and used BITs in this regard. For this reason, there is a question whether such a solution *de facto* increased the investment attractiveness of the MENA and the Eastern European countries (in comparison to other countries and/or regions), and – as a consequence – whether BITs should be regarded as an important formal institutional stimulator for FDI flows between the EU and its neighbours.

4 Ibidem, p. 126, 133.
5 United Nations (2000), Bilateral Investment Treaties: 1959-1999, http://unctad.org/en/docs/poiteiiad2.en.pdf, p. 1.

Table 2. The number of BITs concluded by the European Union member states and the EU's neighbours

European Union			EU's neighbours covered by the ENP		
Country	Total BITs	BITs concluded with Southern and Eastern neighbours	Country	Total BITs	BITs concluded with the EU's member states*
Austria	62 (59 in force)	13 (13 in force)	***Eastern Dimension***		
Belgium	93 (68 in force)	13 (12 in force)	Armenia	42 (35 in force)	17 (17 in force)
Bulgaria	68 (59 in force)	15 (14 in force)	Azerbaijan	47 (32 in force)	19 (17 in force)
Croatia	57 (47 in force)	9 (6 in force)	Belarus	60 (49 in force)	23 (18 in force)
Cyprus	28 (22 in force)	9 (9 in force)	Georgia	32 (29 in force)	17 (17 in force)
Czech Republic	79 (77 in force)	12 (12 in force)	Republic of Moldova	41 (38 in force)	23 (23 in force)
Denmark	55 (48 in force)	6 (5 in force)	Ukraine	74 (56 in force)	25 (24 in force)
Estonia	27 (24 in force)	7 (4 in force)	***Southern Dimension***		
Finland	72 (66 in force)	12 (12 in force)	Algeria	47 (28 in force)	15 (15 in force)
France	104 (96 in force)	15 (14 in force)	Egypt	102 (73 in force)	25 (25 in force)
Germany	134 (131 in force)	16 (16 in force)	Israel	38 (34 in force)	14 (11 in force)
Greece	43 (39 in force)	12 (12 in force)	Jordan	54 (41 in force)	20 (18 in force)
Hungary	58 (56 in force)	9 (7 in force)	Lebanon	50 (41 in force)	18 (17 in force)
Ireland	0	0	Libya	36 (19 in force)	13 (11 in force)

Italy	91 (79 in force)	14 (14 in force)
Latvia	44 (44 in force)	8 (8 in force)
Lithuania	54 (53 in force)	8 (8 in force)
Luxembourg	93 (68 in force)	13 (12 in force)
Malta	22 (21 in force)	3 (3 in force)
Netherlands	96 (92 in force)	11 (11 in force)
Poland	62 (60 in force)	9 (9 in force)
Portugal	55 (43 in force)	7 (6 in force)
Romania	82 (79 in force)	14 (13 in force)
Slovakia	55 (48 in force)	10 (7 in force)
Slovenia	37 (34 in force)	4 (3 in force)
Spain	82 (70 in force)	14 (14 in force)
Sweden	69 (66 in force)	11 (11 in force)
United Kingdom	104 (95 in force)	11 (11 in force)
Morocco	63 (46 in force)	22 (19 in force)
Occupied Palestinian territory	3 (2 in force)	1 (1 in force)
Syria	42 (34 in force)	10 (10 in force)
Tunisia	54 (34 in force)	20 (19 in force)

* BITs concluded with the Belgium-Luxembourg Economic Union are counted as 2 separate treaties, as the purpose to indicate the number of EU member states covered by such treaties.

Source: The Author's own arrangement, based on UNCTAD data, http://investmentpolicyhub.unctad.org/IIA/IiasByCountry#footnote

2. Bilateral investment treaties as a precondition for FDI flows to the UE's Southern and Eastern neighbours

BITs are instruments designed to provide a predictable legal framework to investors of the involved parties in order to stimulate FDI flows between them. This means that countries conclude BITs in order to (1) promote outgoing FDI by providing protection for their foreign investors and/or (2) attract incoming FDI by reducing investment risks related to foreign investments in their territory (such a tool is perceived to be particularly important for developing countries that lack strong domestic institutions and thus are persuaded as high-risk investment destinations). While concluding the BITs, the contracting parties usually commit themselves to grant foreign investors with the rights that reduce uncertainty concerning the entry and exit conditions, post-entry regulations, profit remittances and dispute settlement.

There is a huge number of BITs concluded by countries all over the world. The first BIT was signed in 1959[6], and since then there has been a proliferation of BITs. It is possible to observe three "waves" of their development:[7]

- The first one lasted from 1959 until the late 1980s; during this time the number of newly signed treaties was increasing at a moderate rate (hardly ever exceeding 20 treaties per year), and the adoption of a BIT seemed to reassure foreign investors by offsetting weak and unstable domestic institutions in host countries;
- During the second wave (that took place in the 1990s), over 100 treaties were signed annually, increasing the density of BIT coverage from about 2 percent of all existing country dyads in 1990 to nearly 10 percent in 2000; during this period the majority of BITs were signed by pairs of developing countries;[8]

6 The first countries to sign such a treaty were Germany and Pakistan, and the treaty concluded between them came into force in 1962.

7 The description of the waves of BITs development is based on: S. Jandhyala, W. J. Henisz, E. D. Mansfield, *Three Waves of BITS: The Global Diffusion of Foreign Investment Policy*, "Journal of Conflict Resolution", vol. 55, 2011, issue 6, p. 1048-1050.

8 "The motivation for such behavior could be a rational cascade, in which countries sign such treaties because peer states are doing so. A complementary explanation is that developing countries began to join an increasing number of these treaties in order to demonstrate adherence to what had become a global standard or norm about the treatment of FDI by host countries" (ibidem, p. 1049).

- The third wave of BITs development, that started in 2001, is characterised by a sharp drop in the number of new BITs, due to more rational calculation of the potential costs and benefits of such treaties by countries (before many countries signed BITs in order to gain legitimacy and acceptance of potential investors, without full understanding of the costs and benefits of BITs, but once the cost-benefit analysis became clearer, the decisions to conclude BITs started to be driven by rational calculation).

The proliferation of BITs raises expectations that they are highly effective in increasing FDI flows between given contracting countries. The hypothesis of a positive impact of BITs on such flows has been verified in a lot of empirical research, examples of which are presented below.

M. Hallward-Driemeier – who analysed twenty years of bilateral FDI flows from the OECD to developing countries – found little evidence that BITs had stimulated additional investment.[9] According to him, the "countries with weak domestic institutions, including protection of property, have not gotten significant additional benefits; a BIT has not acted as a substitute for broader domestic reform. Rather, those countries that are reforming and already have reasonably strong domestic institutions are most likely to gain from ratifying a treaty."[10] In the above quote, Hallward-Driemeier points out an important problem which is closely related to the effectiveness of BITs, that is, the relationship between these instruments and the development of domestic institutions in FDI host countries. His research findings indicate that BITs act as more of a complement than a substitute for domestic institutions, and this means that the countries benefiting from BITs "are arguably the least in need of a BIT to signal the quality of their property rights."[11] R. Desbordes and V. Vicard also suggest that BITs and good domestic institutions are complementary in attracting FDI.[12] Hence, in the light of the research findings presented

9 M. Hallward-Driemeier, *Do Bilateral Investment Treaties Attract FDI? Only a bit… and they could bite*, World Bank, June 2003, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=636541, p. 22.

10 Ibidem, p. 22-23.

11 Ibidem, p. 23.

12 R. Desbordes, V. Vicard, *Foreign Direct Investment and Bilateral Investment Treaties: An International Political Perspective*, "Journal of Comparative Economics", vol. 37, 2009, issue 3, p. 375.

above, the institutionally weak countries which usually find it difficult to attract FDI may be – at the same time – the least likely to gain advantages by concluding BITs, as these instruments do not seem to be able to replace weak domestic institutions.

On the contrary, T. Ginsburg's empirical analysis of BITs shows that such international commitment devices can substitute for, rather than complement, domestic institutions; however, such substitution may lead to reductions in governance quality.[13] The danger of negative influence of BITs on domestic institutions development appears especially when a BIT includes provisions on international dispute settlement. "If governments and foreign investors can turn to external sources of dispute resolution, they have little incentive to make marginal investments in improving local judicial quality. In some circumstances, this dynamic might allow domestic court structures to become captured by corrupt local coalitions. Unless domestic judiciaries internalize the benefits of institutional quality, they will not be concerned with the loss of 'business' to international competitors such as arbitral bodies."[14] Besides, Ginsburg points out also another potential negative influence of BITs on FDI host countries. He argues that most BITs restrict performance requirements imposed by the government of the country hosting FDI, but allow positive performance incentives – *inter alia* – tax breaks and simplified regulatory procedures. "This means that in fact, domestic investors face both competitive and institutional disadvantages in the investment climate."[15]

3. Rethinking the BITs' influence on FDI

Taking into account the fact that the incoming foreign investments are meant to stimulate the development of their host country's economy, there is a question of whether concluding a BIT would not interfere (in the long run) with this aim through a negative influence on the development of domestic institutions. Strong domestic institu-

13 T. Ginsburg, *International Substitutes for Domestic Institutions: Bilateral Investment Treaties and Governance*, "International Review of Law and Economics", vol. 25, 2005, p. 107.

14 Ibidem, p. 121.

15 Ibidem, p. 122.

tions are crucial as they are necessary for the development of domestic enterprises, and thus – for further development of a given country's economy. In this context, it is desirable for BITs not only to attract FDI but also to support (or at least enable) development of domestic institutions at the same time. However, this desirable effect – in the light of Ginsburg's research – cannot be taken for granted, as BITs can sometimes interfere with the development of domestic institutions.

As far as the studies confirming the effectiveness of BITs in stimulating FDI flows are concerned, Egger and Pfaffermayr – using a large panel of OECD data on stocks of outward FDI – find a significant and positive impact of ratified BITs on outward FDI.[16] In the case of a BIT that is only signed (and not ratified), some positive impact of such BIT on FDI flows may be observed. However, the magnitude of this effect is smaller (than that associated with the ratification of an existing treaty) and in most specifications insignificant.[17]

One may expect that the influence of a BIT on FDI flows between given countries would depend not only on whether the BIT is ratified or not, but also on the protections it offers – especially the question whether the treaty guarantees investors' access to international arbitration for dispute resolution or not. The treaties guaranteeing access to international arbitration (so-called strong BITs) provide a solution to the problem of credible commitment, as they not only establish the formal rules but also create and implement a judicial system that will impartially enforce them.[18] In this view, a strong BIT could be expected to attract more FDI flows, especially to countries with weak judicial systems. However, this is not reflected in the available research findings. J. W. Yackee – in order to explore whether the formally strongest BITs are statistically associated with greater investment – analysed a dataset that recorded the strength of dispute settlement provisions of approximately 1000 BITs between developing and ma-

16 P. Egger, M. Pfaffermayr, The Impact of Bilateral Investment Treaties on Foreign Direct Investment, "Journal of Comparative Economics", vol. 32, 2004, no. 4, p. 788-804.

17 Ibidem, p. 790.

18 This refers to the D.C. North theory concerning the institutional solutions for the problem of credible commitment – for details see: D. C. North, *Institutions and Credible Commitment*, http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/3711/9412002.pdf?...1, p. 21.

jor capital exporting countries.[19] His statistical analysis suggests that the formally strongest treaties (that is, those that theoretically should be most likely to promote FDI) are not associated with increased investment.[20]

R. Desbordes and V. Vicard point out another factor that may influence the potential effectiveness of BITs in attracting FDI, that is, the impact of the quality of interstate political relations.[21] As they emphasise, multinational enterprises (MNEs) face two kinds of political risk when investing abroad: (1) systemic risk (related to the quality of domestic institutions and common to all investors) and (2) an idiosyncratic risk (resulting from interstate political relations and specific to each pair of home and host countries). They find that "BITs have a greater effect when implemented between countries with political tensions while they have no significant effect between friendly countries."[22] They confirm that BITs work as commitment device, and that the host government's credible commitment not to expropriate foreign investors is more valuable when MNEs face risks related to interstate political tensions. The fact that BITs do promote FDI flows to developing countries has been also confirmed by E. Neumayer and L. Spess[23] and by M. Busse, J. Königer and P. Nunnenkamp[24]. The authors indicate as well that BITs may function as substitutes for weak domestic institutions. However – according to Neumayer & Spess – there is limited evidence in this regard.[25]

Summing up, under certain circumstances BITs may have positive impact on attracting FDI flows, even if this positive effect cannot be taken for granted. For this reason, the BITs concluded between the EU member states and their Southern and Eastern neighbours should be regarded as an institutional factor stimulating FDI flows. However, it is crucial to remember that the countries from the MENA and

19 J. W. Yackee, *Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law: Do BITs Promote Foreign Direct Investment?*, "Law & Society Review", vol. 42, 2008, no. 4, p. 806.

20 Ibidem, p. 807.

21 R. Desbordes, V. Vicard, *Foreign Direct Investment and Bilateral Investment Treaties*, p. 372-386.

22 Ibidem, p. 383.

23 E. Neumayer, L. Spess, *Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries?*, 2005, http://eprints.lse.ac.uk/627/

24 M. Busse, J. Königer, P. Nunnenkamp, *FDI Promotion through Bilateral Investment Treaties: More than a Bit?*, "Review of World Economics", vol. 146, 2010, issue 1, p. 147-177.

25 E. Neumayer, L. Spess, *Do Bilateral Investment Treaties Increase Foreign Direct Investment*, p. 27.

Eastern Europe regions were not the only ones to conclude BITs with the EU member states. Therefore, the BITs were not a very strong (distinguishing) factor for the potential investors' point of view. As the data presented in Table 2 indicate, the EU member states are active global players and hence BITs have been concluded with countries all over the world. This has created a wide range of institutionally similar investment opportunities for the EU investors, extending beyond the MENA and the Eastern Europe regions. Therefore, on the one hand, the institutional (legal) solutions chosen by the EU to promote and protect investments in its neighbouring countries were not enough to direct to these countries really considerable FDI flows (in comparison with other countries and/or regions), and on the other hand – the MENA and Eastern European countries needed to compete for the FDI coming from the EU also by means of other factors.

At present, the EU neighbourhood is politically and economically unstable. The lack of stability discourages investors and makes it difficult for the EU neighbours to counteract economic recession. As the main aim of the ENP is to strengthen prosperity, stability and security, the EU has to undertake new actions in all the above fields in order to make the ENP more efficient. It also includes the need of new institutional regulations concerning the promotion and protection of foreign investment. It would be desirable if the new institutional framework contained unique solutions that would allow to distinguish (in a positive way) the EU's neighbouring regions from other potential FDI destinations and hence make them more attractive to foreign investors.

Following the entry into force of the Treaty of Lisbon, FDI is included in the common commercial policy, and – for this reason – the EU has exclusive competence with respect to FDI. Although BITs concluded by the EU member states before the entry into force of the Treaty of Lisbon remain binding on the member states under public international law, they will be progressively replaced by agreements of the EU. Therefore there will be an opportunity to renegotiate their provisions. However, even the best legal framework will not help in attracting FDI to the EU's Southern and Eastern neighbours if the regions lack security and stability, i.e. the most important preconditions for FDI inflows.

Conclusions

The agreements concluded by the EU (European Communities) and its member states with its Southern and Eastern neighbours, i.e. the Euro-Mediterranean agreements and the Partnership and Cooperation Agreements (PCAs)) contain only very general provisions concerning the promotion and protection of foreign investments, leaving at the same time a lot of room for further, detailed regulations on bilateral state-to-state levels. Hence, the need for an institutional framework supporting FDI flows between the EU member states and their non-EU neighbours made most of the countries concerned conclude BITs. Although the effectiveness of BITs in inducing higher FDI inflows to the less developed EU neighbouring countries cannot be taken for granted, research findings show that, under certain circumstances, BITs can attract FDI, and thus – in a historical perspective – they (among other factors) played the role of FDI preconditions in the EU's neighbourhood.

The role of BITs has been changing together with their proliferation. Once they became commonly used, most MNEs gained the ability to choose the destination of their investment among many countries which have already concluded BITs with the given MNEs' country of origin. Hence, the proliferation of BITs resulted in their diminished role as a factor positively distinguishing a given country from other potential FDI destinations. This is especially true in the case of investors from the EU countries. This is because the EU member states are active global players which have concluded numerous BITs not only with their Southern and Eastern neighbours but also with many other countries all over the world. This means that, on the one hand, the EU's MNEs had a wide range of possibilities regarding the potential location for their investments. On the other hand, the MENA and Eastern European countries needed to compete for the FDI flows coming from the EU also by means of other factors.

The formal institutional framework created by the EU member states and their Southern and Eastern neighbours should be perceived as an initial stimulus for the FDI flows between the involved countries. However, such a stimulus needs to be accompanied by other factors, including for it to be efficient, in particular secure, stable and investment-friendly environment. These factors are deficient in the majority of the EU neighbour countries. Moreover, prospects for considerable improvement in the above mentioned areas are uncertain.

To sum up, it was clearly one step too far to expect that the inter-regional cooperation between the EU and its member states and their Southern and Eastern neighbours would lead to exceptionally high FDI inflows to the MENA and Eastern European countries, and – in consequence – would have considerable impact on the development of their economies. The formal institutional framework that was developed between the EU and its partner countries for the purpose of investment promotion and protection could be regarded as one of important preconditions for FDI flows. However, as the EU member states developed similar frameworks with numerous other countries, the MENA and Eastern European countries needed to compete with each other in order to attract FDI from the EU. Although there is nothing wrong in such a competition, it means that the FDI flows were more dependent on the actions (especially reforms) undertaken by the neighbouring countries rather than on the formal institutional conditions for foreign investments created due to the inter-regional cooperation.

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