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Business Environment of the European Union 2019/2020



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ACADEMY OF CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE

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Preface

China and the European Union are important players and shapers of the world's multi-polarisation and economic globalisation process. China-EU relationship is one of the most important bilateral relations in the world. China regards Europe as an important partner and one of the diplomatic priorities. Although its development has been affected by such events as the Brexit in recent years, the European Union has not changed its direction of integration and remained committed to advancing reforms and facing up to challenges. China has always supported the process of European integration.

In 2019, China-EU relations have maintained a momentum of solid and steady progress. The two sides concluded the negotiations on Geographical Indication, and signed two agreements on aviation cooperation. Smooth progress was made with regard to the Belt and Road Initiative and Eurasian connectivity. On the economic and trade front, there were also abundant achievements. In 2019, the value of China-EU trade amounted to 4.86 trillion RMB, up by 8 percent year-on-year; by the end of 2018, a total of more than 3,200 Chinese-invested firms had been established in the European Union, covering all Members States, hiring nearly 260,000 local employees. Chinese firms are contributing to the European Union's economic development in various differently forms.

The European Union and China committed in the *Joint Statement of the 21st China-EU Summit* to ensure equitable and mutually beneficial cooperation in bilateral trade and investment. Both sides reiterated their willingness to enhance bilateral economic cooperation, trade and investment and to provide each other with broader and more facilitated, non-discriminatory market access. However, the European Union and some Member States have continued to strengthen foreign investment screening, abuse trade remedy measures, discriminate against foreign investment in 5G and other fields, and disrupt business operations as a result of overregulation. On 12 February 2019, the European Commission published the *EU-China Strategic Outlook*, in which it sees China as “an economic competitor” and “a systemic rival”, and put forward 10 actions seeking to “rebalance” its relations with China. The various measures of the European Union have directly led to the decline of the Union's business

environment. Our survey shows that the share of respondents which chose the European Union as their primary investment destination in 2019 was only 24 percent, which was far lower than the 78.63 percent in 2018.

In order to help the European Union improve its business environment and to promote the further deepening of China-EU economic and trade cooperation, the Academy of China Council for the Promotion of International Trade (hereinafter referred to as the CCPIT Academy) has carried out a research project of *Business Environment of the European Union 2019/2020*. The project group researched 163 businesses operating in the European Union by making field visits at home and in the Union and organising discussion meetings in order to gain a full and accurate picture of their demand; and 500 questionnaires were sent out through different channels, and 268 valid responses were received. The survey finds that the European Union has been constantly raising its market access threshold, overregulation has led to rising operating risks for business, implicit discrimination has run counter to the principle of justice and fairness, the political and social environment has given rise to business anxiety, overprotection has increased operational costs for businesses and the confidence of foreign-invested enterprises in investing in the European Union has declined.

The year 2020 marks the 45th anniversary of the establishment of diplomatic relations between China and the European Union. It is also the first year in office of the new EU leadership. China and the European Union have broad space for cooperation in addressing climate change and expanding trade and investment. We hope that the European Union could take the demands of the businesses very seriously, eliminate unreasonable market access thresholds, avoid overregulation that curbs market economic development, stop all forms of discriminatory behaviours, strengthen government public service systems, continue to improve the business environment, and shore up the confidence of the businesses in investing and doing business in the Union.

Chapter One

Annual Review of EU Reforms

In recent years, the European Union has taken multiple measures to promote integration as well as trade and investment liberalisation. While some results have been achieved, the progress of reform and integration remains slow and the economy is still lacklustre. Measures such as the strengthening of foreign investment screening and 5G security review have reflected that the European Union is going backwards on the path towards trade and investment liberalisation.

I. Limited effect of the multiple stimulus measures in lifting the economy

In June 2010, the European Union officially adopted the blueprint for its development in the next decade, i.e., the *Europe 2020: A strategy for smart, sustainable, inclusive growth*, which identifies the three strategic priorities of smart, sustainable, and inclusive growth. Guided by this strategy, the European Union subsequently published such initiatives as the Investment Plan for Europe, the InvestEU program and the Connecting Europe Facility to stimulate economic development.

1. The Investment Plan for Europe supports small and medium-sized companies

As of October 2019, the Investment Plan for Europe had boosted EU GDP growth by 0.9 percent and added 1.1 million jobs. In terms of investment, the Investment Plan for Europe created an additional investment of EUR439.4 billion within the Union, while investment was restored to pre-crisis level and kept rising steadily. In terms of assisting small and medium-sized companies, more than one million start-ups and small businesses received financing through the Investment Plan for Europe. In terms of promoting people's livelihood, through the Investment Plan for Europe a total of 531,000 homes were built or renovated, 28.3 million smart electric meters were installed, 33.3 million EU residents gained access to better sewage treatment, and 10.4 million households used renewable energy¹.

The EU forecasts that by 2022 the Investment Plan for Europe will have boosted the EU GDP by 1.8 percent and added 1.7 million jobs.

¹ https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/investment-plan-results_en

In November 2014, European Commission President Jean-Claude Juncker proposed the Investment Plan for Europe to promote growth, employment and investment, and established the European Fund for Strategic Investment (EFSI), which mainly helps to finance reform and expansion projects in infrastructure such as energy pipelines and networks, transport, and broadband, and in such sectors as education, research and innovation. In September 2016, the European Commission upgraded the strategic investment goals, and launched the EFSI 2.0, extending the plan to 2020, and raising the investment target to EUR500 billion, with a greater focus on financing small projects.

2. The InvestEU program promotes financial access

In April 2019, the European Parliament officially approved the InvestEU program to boost the economy for 2021-2027. This initiative consists of three projects: the InvestEU Fund, the InvestEU Advisory Hub and the InvestEU Portal, bringing together, under one roof, the European Fund for Strategic Investments and 13 EU financial instruments currently available². Triggering at least EUR650 billion in additional investment, the program aims to give an additional boost to investment, innovation and job creation in Europe³.

The InvestEU program supports four main policy areas: **sustainable infrastructure**, including sustainable energy, digital connectivity, transport, circular economy, environmental infrastructure and more; **research, innovation and digitisation**, including taking research results to the market, digitisation of industry, artificial intelligence and more; **small businesses**, facilitating access to finance for small and medium-sized companies and small startup companies; and **social investment and skills**, including science, education, social innovation, healthcare, integration of migrants and refugees, and more.

² Including the CEF debt instrument, the CEF equity instrument, loan guarantee facility under COSME, Equity facility for Growth under COSME, Innovfin Equity, the Innovfin SME Guarantee, Innovfin Loan Service for R&I Facility, the Private Financing for Energy Efficiency instrument, the Natural Capital Financing Facility, the EsSI capacity building investments, the EsSI Microfinance and Social Enterprise Guarantees, the Student Loan Guarantee Facility, and the Cultural and Creative Sectors Guarantee Facility.

³ https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/whats-next-investeu-programme-2021-2027_en

3. The Connecting Europe Facility supports infrastructure

In March 2019, the Council and the European Parliament reached agreement on the Connecting Europe Facility (hereinafter referred to as the CEF) proposal, as part of the next long-term EU budget 2021-2027, making clear that the project will continue to be implemented after 2020, and it is planned to expand the fund's size in 2021-2027 to EUR42.3 billion, of which EUR30.6 billion will be used for European transport infrastructure networks, EUR8.7 billion for energy investments, and EUR3 billion for digital investment. **In the transport sector**, the CEF will give priority to cross-border projects with EU added value in the trans-European transport networks; **in the telecommunications sector**, the scope of funding will be expanded to support the Union's digital single market and projects to enhance the level of EU connectivity, giving priority to projects providing digital services to residents; **in the energy sector**, the European Union will continue to promote European energy market integration, improve cross-border and cross-sectoral energy network connectivity, support low-carbon development, ensure energy supply security, and provide funding support for cross-border renewable energy projects⁴.

The CEF is a key funding instrument to promote investment, jobs and competitiveness through providing funding support for key infrastructure projects in the transport, digital and energy sectors at European level. The CEF has been implemented since January 2014 and its first phase will end in 2020, with a planned budget of EUR30.4 billion. The CEF also emphasises synergy between the transport, digital and energy sectors to increase the effectiveness of EU actions and optimise implementation costs.

4. The EU economy is still mired in low growth

Although the stimulus measures instituted by the EU have invigorated the economy and investment to a certain extent, the economic development of the Union is still in the doldrums. Since the fourth quarter of 2017, the quarterly growth rate of the EU GDP has continued the downward trend (as shown in Figure 1). On 7 November 2019, the European Commission released its economic forecast, in which it lowered the growth forecast for the Eurozone in 2020 from 1.4 percent to 1.2 percent.

⁴ <https://ec.europa.eu/inea/en/connecting-europe-facility>

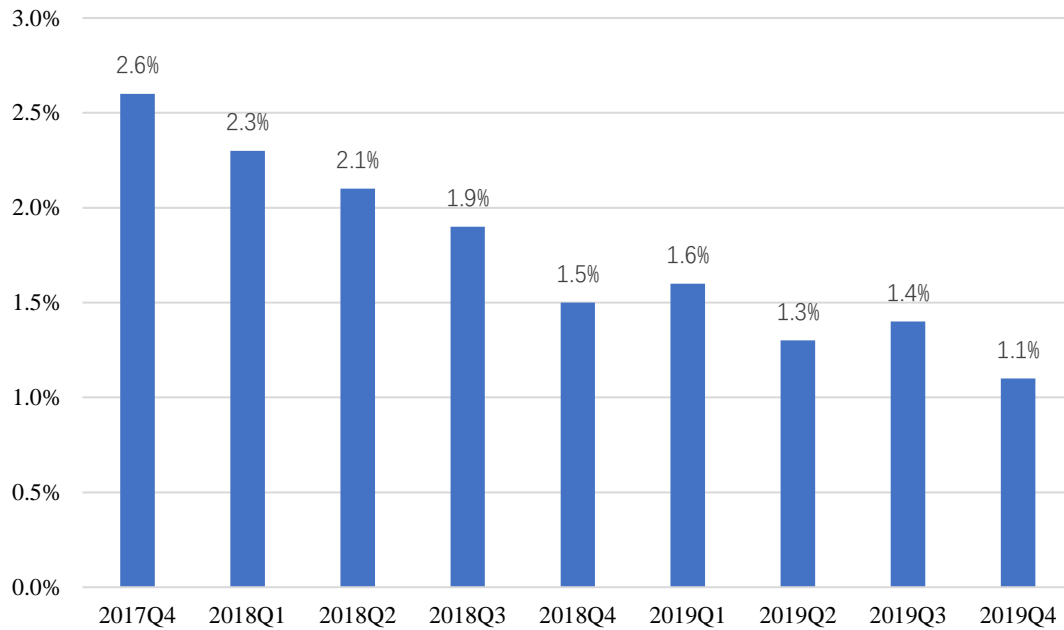


Figure 1 Quarterly GDP growth rates of the European Union

Source: Eurostat.

II. Slow progress in developing the Single Market of the Union

1. Digital Single Market Strategy makes progress

Since the implementation of the Digital Single Market Strategy, the European Union has put forward 30 legislative proposals with regard to the “digital single market”, of which 28 have been adopted by the European Parliament and the Council. Revolving around the six key areas of “digital culture”, “digital future”, “digital life”, “digital trust”, “digital shopping” and “digital connection”, progress has been made in developing the European Digital Single Market (see Table 1) .

On 6 May 2015, the European Commission formally announced the “Digital Single Market” strategy, identifying the three pillars of building the digital single market: providing better digital products and services for individuals and businesses; creating a favourable network environment for the prosperous development of the digital network and services; maximising the growth potential of the digital economy.

Table 1 Progress in developing the EU Digital Single Market

Area	Major Progress
Digital Culture	<p>Protection of EU cultural diversity;</p> <p>Since 1 April 2018, cross-regional portability of digital content and services within the European Union;</p> <p>Development of digitised cultural archives.</p>
Digital Future	<p>Formulation of a plan to build a top-ranked supercomputer by 2023;</p> <p>Drafting of the AI ethics guidelines;</p> <p>Establishment of the European Blockchain Partnership to ensure collaboration across Member States;</p> <p>Establishment of the Pan-European network of Digital Innovation Hubs.</p>
Digital Life	<p>Digitisation and facilitation of public services among EU governments;</p> <p>Secure electronic interactions between businesses, citizens and public authorities in EU countries;</p> <p>Sharing of health information by citizens of EU Member States and promotion of the use of digital technologies in the health sector;</p> <p>Introduction of a skills agenda to bridge the digital skills deficit;</p> <p>Plans to build 5G cross-border corridors.</p>
Digital Trust	<p>Protection of personal data;</p> <p>Protection of minors;</p> <p>Cooperation on protecting cybersecurity.</p>
Digital Shopping	<p>Cross-regional delivery of online shopping services in the European Union since December 2018.</p>
Digital Connectivity	<p>Guarantee of a good internet connection in EU countries;</p> <p>Launch of the Wifi4EU initiative.</p>

Source: <https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market>

2. Slow progress in implementing the capital markets union action plan⁵

As of 2018, risks facing the European Union's banking sector were under effective control, and the percentage of defaulted loans was significantly reduced. From 2015 to 2018, some key cornerstones building the capital markets union were laid. However, there is still need for further efforts to ensure financial stability and integration. Ten of the 13 proposals on the capital markets union have not yet been agreed upon (see Table 2). In addition, the three proposals on sustainable financial classification, disclosure and low-carbon standards are yet to be resolved⁶.

Table 2 Status of legislative proposals on capital markets union

Adopted legislative proposals	Unadopted legislative proposals
<p>Proposal to review the Prospectus Directive</p> <p>Proposal for Regulations on the European Venture Capital Funds and European Social Entrepreneurship Fund</p> <p>Proposal for an EU framework for simple, transparent and standardised (STS) securitisation</p>	<p>Proposal to the amendments to the functioning of European Securities and Markets Authority (ESMA) and other ESAs to promote the effectiveness of consistent supervision across the EU and beyond;</p> <p>Proposal to improve the proportionality of prudential rules for investment firms;</p> <p>Proposal on a pan-European personal pension product;</p> <p>Proposal to develop a secondary market for non-performing loans (NPLs);</p> <p>Proposal for an EU framework on covered bonds;</p> <p>Proposal on specifying the conflict-of-laws rules for third party effects of transactions in securities and claims;</p> <p>Proposal to ensure the European Systemic Risk Board (ESRB) has the capacity to monitor potential risks to financial stability arising from market-based finance;</p> <p>Proposal for pan-European venture capital fund-of-funds and multi-country funds;</p> <p>Proposal on the central counter-party mechanism;</p> <p>Proposal for the Common Consolidated Corporate Tax Base.</p>

Source: https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en

⁵ https://ec.europa.eu/info/publications/action-plan-building-capital-markets-union_en

⁶ http://europa.eu/rapid/press-release_IP-18-6548_en.htm

In September 2015, the European Commission published the “Action Plan on Capital Markets Union” to strengthen financial support for enterprises, facilitate corporate financing, promote infrastructure investment, facilitate individual and institutional investment, and support economic development through banking business and facilitate cross-border investment, with the following main objectives:

- Reducing barriers to cross-border investment by establishing a single capital market;
- Lowering financing threshold, expanding project funding sources and reducing financing costs;
- Enhancing the role of the capital market in economic development and job creation;
- Improving financing facilities for small and medium-sized companies;
- Enhancing the European Union’s attractiveness to foreign direct investment.

III. The European Union’s backsliding on trade and investment liberalisation

1. Tightening foreign security review policies

On 14 February and 5 March 2019, the European Parliament and the Council of the European Union respectively adopted the new framework to screen foreign direct investments coming into the European Union, and on that basis formally promulgated the Regulation establishing a framework for screening foreign direct investment in the European Union (hereinafter referred to as the Regulation), which will fully apply 18 months after its entry into force in April 2019. The Regulation is the first foreign investment screening legislation at EU level. Although the final approval power in foreign investment screening still rests in the hands of the Member States, the Regulation provides the principles and directions for the Member States in foreign direct investment screening legislation and practice, and establishes an information sharing mechanism among the Member States, which in effect strengthen the screening of foreign direct investment.

After the Regulation establishing a framework for screening foreign direct investment in the European Union came into effect, France and Italy have amended their domestic laws according to the requirements of the Regulation. In May 2019, France published the draft Action Plan for Business Growth and Transformation (PACTE), which strengthens the executive power of the French Ministry of Economy and Finance and provides that the Ministry may, without the sending of a formal notice, directly veto an investment in emergencies relating to public order, public security and national defence. On 11 July 2019, the Italian government promulgated the Law Decree No. 64/2019 (DL64/2019), supplementing the Golden Power Law to strengthen the government's power to review foreign investment in such "strategic industries" as defence, national security, telecommunications, energy and transport, and to list a company's "control by the government" as a factor that affects "national security" or "public order".

In 2017, the governments of Germany, France, and Italy submitted a letter to the European Commission accusing that some countries are putting up barriers to EU investment, whereas investment from these countries are having unimpeded access to the European Union. They proposed the establishment of foreign investment screening mechanism at EU level. The Commission adopted a proposal for a regulation establishing a framework for screening foreign direct investment in the European Union in September 2017, recommending the establishment of a security screening system for foreign acquisition and investment at EU level, focusing on examining foreign investment in key infrastructure, key technologies, key inputs, and sensitive information, and on reviewing whether foreign investors are directly or indirectly controlled by a third country government.

2. Market distortions run counter to World Trade Organisation rules

The European Union amended its trade remedy rules, and published in June 2018 Regulation No 2018/825, whereby it introduced the concept

of “distortions on raw materials”⁷, and on that basis partly abandoned the lesser duty rule. According to the pre-amendment rules, the European Union would compare the calculated damage margin with the dumping margin and determine the final duty level based on the lesser margin (i.e. the lesser duty rule). However, the new rules stipulate that in the presence of distortions on raw materials, the Commission may determine that the lesser duty is not sufficient to fully compensate for the damage, which in effect increases the penalties of the trade remedy measures.

The concept of the “significant distortions” of the market does not exist in the WTO rules. The new EU anti-dumping methodology lacks legal basis under WTO rules. Using the European Union’s unilaterally-developed standards to determine whether other countries have “significant distortions” of the market will weaken the authority of the WTO anti-dumping regime.

On 19 December 2017, the European Union published the Regulation adopted by the European Parliament and the Council amending the original antidumping regulation of the European Union (REGULATION (EU) 2017/2321), in which a “significant distortions” calculation methodology was added. The European Commission regards the existence of market distortions as the prerequisite for the adoption the costs and prices of the exporting country as the basis for comparison in anti-dumping investigations, and uses the influence of government policies, and the independence of state-owned enterprises and financial institutions as indicators to measure market distortions.

⁷ Distortions on raw materials consist of the following measures: dual pricing schemes, export taxes, export surtax, export quota, export prohibition, fiscal tax on exports, licensing requirements, minimum export price, value added tax (VAT) refund reduction or withdrawal, restriction on customs clearance point for exporters, qualified exporters list, domestic market obligation, captive mining if the price of a raw material is significantly lower as compared to prices in the representative international markets.

Chapter Two

General Issues with the Business Environment

In recent years, the European Union’s stand on trade and investment liberalisation has been wavering. It has regarded China as a “systemic” rival, continuously tightened foreign direct investment screening, and modified trade remedy methodologies. Overregulation in the digital single market and in the Union’s integration reforms has increased costs and burdens for companies. In general, the uncertainty of the European Union’s policy formulation and implementation has increased, leading to the worsening of the business environment and declines in business confidence in investing in the Europe.

I. The overall business environment of the European Union is less than optimistic

The *Doing Business 2020* released by the World Bank shows that the global ranking of China’s business environment rose by another 15 places to 31 in the world in 2019, following a 32-places jump in 2018. For two consecutive years, China has been one of the top ten economies with the biggest improvement in global doing business rankings. France, the Netherlands, Belgium, Italy, Luxembourg and other major EU Member States, as developed countries, are lagging behind some developing countries.

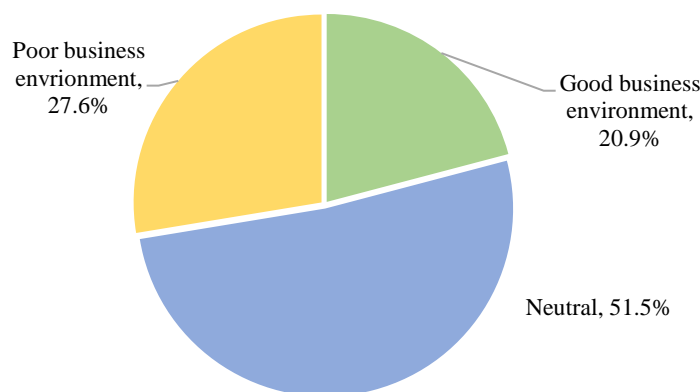


Figure 2 Assessments of the European Union’s Business Environment

Source: CCPIT Academy.

1. Companies reckon that the EU business environment has declined

The European Union’s overregulation and unclear policy environment in foreign direct investment screening, data protection,

finance and other fields has directly led to a decline in the business environment and a more difficult life for foreign companies operating and investing in the Union. Our survey shows that the percentage of companies that reported negatively about the European Union’s business environment reached 27.6 percent, which is higher than the percentage of companies that reported positively (as shown in Figure 2).

2. Major Member States have poor business environment rankings

The *Doing Business 2020* shows that most of the EU Member States are ranked below 30. Especially on the indicator of starting a business, the EU Member States performed poorly, and Member States like Germany and Poland even ranked below 100 (see Table 3). The business environment rankings of 17 Member States have declined compared to the previous reporting period, and Poland, the Netherlands, Italy, Greece, and Luxembourg have all fallen by more than 5 places.

Table 3 Rankings of EU Member States by business environment and ease of starting a business

Member States	Business environment rankings (2018)	Business environment (2019)	Change in rankings	Starting a business index rankings (2019)
Denmark	3	4	Down	45
Sweden	12	10	Up	39
Lithuania	14	11	Up	34
Estonia	16	18	Down	14
Latvia	19	19	No	26
Finland	17	20	Down	31
Germany	24	22	Up	125
Ireland	23	24	Down	23
Austria	26	27	Down	127
Spain	30	30	No	97
France	32	32	No	37
Slovenia	40	37	Up	41

Table 3 Rankings of EU Member States by business environment and ease of starting a business

Member States	Business environment rankings (2018)	Business environment (2019)	Change in rankings	Starting a business index rankings (2019)
Portugal	34	39	Down	63
Poland	33	40	Down	128
Czech	35	41	Down	134
Netherlands	36	42	Down	24
Slovakia	42	45	Down	118
Belgium	45	46	Down	48
Croatia	58	51	Up	114
Hungary	53	52	Up	87
Cyprus	57	54	Up	50
Romania	52	55	Down	91
Italy	51	58	Down	98
Bulgaria	59	61	Down	113
Luxemburg	66	72	Down	76
Greece	72	79	Down	11
Malta	84	88	Down	86

Source: *Doing Business 2019* and *Doing Business 2020*, World Bank.

II. Rising market access thresholds in the European Union

Market access refers to the degree to which a country allows foreign goods, services, and capital to participate in the domestic market. Raising the market entry threshold for foreign capital violates the non-discriminatory principle, makes it more difficult for foreign-invested companies to enter the market, and even blocks them from the market, and increasing the cost of entry of foreign products into the market when it comes to trade.

1. Barriers to foreign investment access impede foreign investment growth

Measures of the European Union and some Member States to strengthen foreign investment screening have raised the threshold for foreign companies to enter the European Union, increased investment costs, and dampened foreign investor confidence in investing in the European Union. The survey shows that among the surveyed companies that have been subject to EU foreign direct investment screening, 48.8 percent of them reported discriminatory treatment, and 78.8 percent believed that foreign direct investment screening had caused damages to the company (as shown in Figure 3).

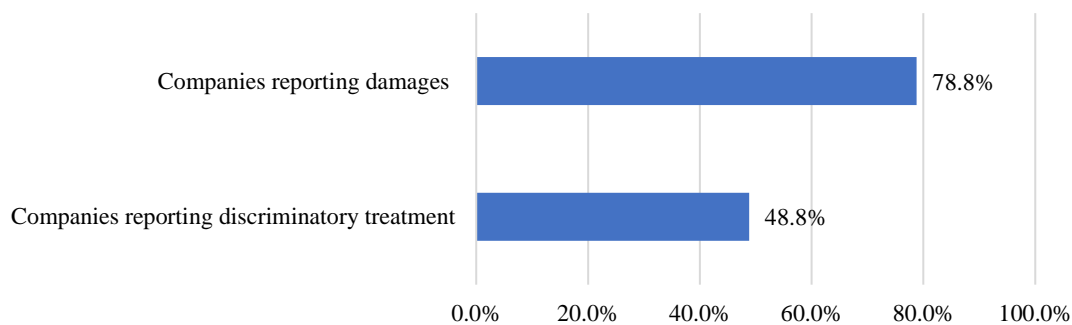


Figure 3 Views of companies with FDI screening experience on FDI screening

Source: CCPIT Academy.

2. Abuse of trade remedy measures increases business costs

China is the European Union's second largest trading partner, and the European Union is China's largest trading partner and largest source of imports. In 2019, China's trade with the European Union was valued at 4.86 trillion RMB, an increase of 8 percent year-on-year, accounting for 15.4 percent of China's total foreign trade value during the same period. However, China is the largest target country for the European Union as far as the Union's trade remedy measures are concerned. The frequent adoption of trade remedy measures has gravely harmed Chinese firms exporting to the European Union. According to WTO statistics, from 2001 to 2018, the European Union initiated 99 anti-dumping investigations and 12 countervailing investigations against China. It is the third largest economy in terms of the number of anti-dumping and anti-subsidy investigations it had initiated against China, next only to the United States and India. As of the end of 2018, among the economies against which the European Union imposed trade remedies, China accounted for the highest proportion of anti-dumping, safeguard measures and special safeguard measures, far higher than other economies (see Table 4).

The abuse of punitive trade remedy measures has increased the costs for products to enter the EU market and put companies at a disadvantage in competition. On 3 May 2019, the European Commission issued an announcement about the final determination of the sunset review of the anti-dumping and countervailing investigations on organic coated steel products originating in China, and decided to extend the antidumping and countervailing measures for the products involved. The measures targeting organic coated steel products originating in China were first implemented in 2013, and have now been extended for another five years. With antidumping duties ranging from 0 to 26.1 percent and countervailing duties from 13.7 percent to 44.7 percent, Chinese organic coated steel makers involved will face very high cost burdens in the European Union.

Table 4 Statistics of countries subject to EU trade remedies (as of the end of 2018)

	Antidumping		Anti-subsidy		Safeguards		Special Safeguard	
	Number of cases	Percent (%)	Number of cases	Percent (%)	Number of cases	Percent (%)	Number of cases	Percent (%)
China	133	27	12	15	5	71	10	100
India	38	8	22	28	0	0	0	0
Korea	28	6	7	9	0	0	0	0
Russia	27	5	0	0	0	0	0	0
Thailand	21	4	0	0	0	0	0	0
US	18	4	4	5	0	0	0	0
Others	236	46	35	43	2	29	0	0
Total	501	100	80	100	7	100	10	100

Source: China Trade Remedies Information website.

3. Frequent changes in standards prevent market entry

The European Union's product standards are updated too frequently, resulting in the disruption of the pace of research and development, production, and operations on the part of the companies. The surveyed companies reported that before they completed product testing and updating in accordance with existing standards, the European Union introduced new standards, which greatly increased the production costs of the companies, reduced the efficiency of which products are marketed, and constituted *de facto* barriers to entry.

Chinese enterprises find it difficult to participate in the development of EU standards. The survey shows that Chinese enterprises are enthusiastic about participating in the development of EU standards, which reflects the Chinese companies' proactive attitude towards participating in EU economic development and fulfilling their social responsibilities. However, Chinese enterprises reported a lack of a clear and unimpeded path towards participating in EU standard development, which has hindered their integration into the EU economy.

III. Overregulation increases business risks

In recent years, the European Union has promulgated many laws and regulations to regulate business operations in multiple respects. These laws and regulations cover data protection, the digital economy, standard development, foreign investment access, competition and other fields. Many regulations have exceeded the reasonable boundaries for government intervention in the market, thus disrupting the normal operation of the market, weakening the autonomy of business operations, and greatly increasing the cost of compliance.

1. Excessive regulatory intervention disrupts daily operations

The European Union's excessive intervention in markets and business operations has run counter to the principle of liberalisation. The overly complex legal provisions and excessively stringent regulatory requirements have made companies feel perplexed.

For example, in terms of data protection, overregulation of the General Data Protection Regulation (GDPR) has prevented companies from operating properly. Companies reported that they could not even contact Chinese-funded enterprises through communication apps, or transmit resumes via email during recruitment, and their normal operations were therefore impeded. In the financial sector, the surveyed companies reported that the European Union's excessive regulation in finance has led to an infinite increase in the cost of compliance, making it more difficult for companies to operate.

2. Excessive government power increases rent-seeking opportunities

Overregulation facilitates government intervention in market mechanisms. It means that the government has more jurisdiction and dominance, and as a result the space for private interest groups to protect their own interests through rent-seeking has expanded. In foreign direct

investment screening, the government can block a normal investment behaviour of the enterprise on the grounds of the vague concept of “national security”; in trade remedy investigations, the government has adopted the “market distortion” methodology in calculating the punitive duties for goods and services exported to the European Union, while the European Commission, as the trade remedy investigating agency of the European Union, formulates and issues the so-called “Market Distortion Report” and makes investigation determinations based on the report produced by itself, thus increasing the space for government rent-seeking.

3. Visa restrictions impairs reasonable personnel mobility

The visa issue remains one of the important challenges facing companies investing and operating in Europe. The strict control of work visas by EU Member States hinders the effective movement of human resources. The companies surveyed generally reported that strict and cumbersome visa application procedures have increased the financial and time costs of the companies, the European Union’s requirements for employee visas were becoming stricter, and the probability of refusal has increased. For example, in Belgium, the work visa is valid for one year, and it usually takes companies eight months to apply for one. As a result, the moment this year’s visa application is granted, it is time to start preparing for next year’s visa renewal. In 2019, it became more difficult for foreign-invested companies to apply for work visas for their employees in the European Union. The process became more cumbersome, and the rate of visa denials with no reasons provided has increased. For example, Chinese-funded enterprises in Poland reported that they had never been denied visas in the past, and yet visa denials started to occur in 2019.

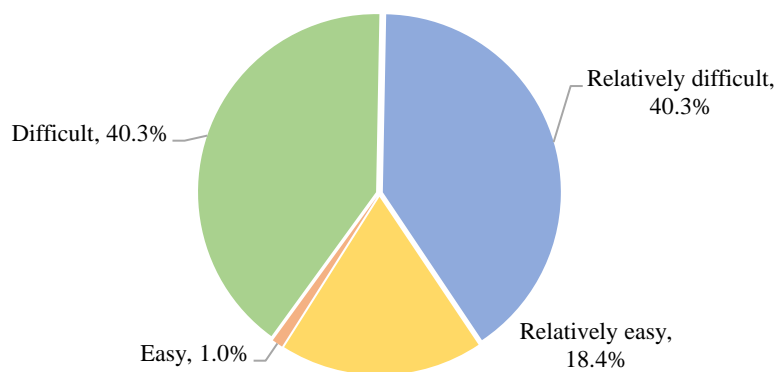


Figure 4 Level of difficulty for obtaining work visas and residence permits in the EU
Source: CCPIT Academy.

According to the survey, 80.6 percent of the companies surveyed found it difficult to obtain work visas and residence permits in the European Union. Only 19.4 percent of the companies surveyed found it easy or relatively easy (as shown in Figure 4).

4. Complex regulations increase compliance costs

The laws of the European Union and its Member States are very complex. As a consequence, companies had to invest huge time and capital costs in order to meet compliance requirements. The surveyed companies reported that no matter it is greenfield investment or mergers and acquisitions they are engaged in within the European Union, they all need services provided by professionals (including finance, taxation, law, etc.). However, some laws and regulations are so complicated that even internationally renowned third-party professional service agencies may not be able to handle them properly, and that sometimes governments, business associations and service agencies may even give completely different interpretations, which not only makes enterprises confused, but also increases the company's risks of "non-compliance".

Government officials are also unable to accurately handle some of the issues that are in their areas of competence. The survey shows that 56.1 percent of the companies surveyed reported that they had encountered problems with different interpretations of the same laws and regulations by different government agencies in the European Union. On the one hand, this is due to the lack of professional capabilities on the part the government officials; on the other hand it shows that the laws and regulations of the European Union are too complex that even the employees of the competent authorities fail to understand them accurately.

5. Long-arm jurisdiction undermines the sovereignty of other nations

Long-arm jurisdiction derives from the legal terminology used by the legal profession in the United States. It refers to the ability to exercise jurisdiction in a place outside the jurisdiction of the local court. The European Union's GDPR provides that GDPR applies to the processing of personal data of data subjects in the European Union, even if the controller and processor are not established in the EU. That is, regardless of whether the company is in the EU, it is subject to the GDPR stipulations as long as it has processed the personal data of EU residents, and the EU has the right

to impose penalties should it violate the relevant provisions of the GDPR. The use of long-arm jurisdiction means the expansion of “extraterritorial jurisdiction”, which would easily lead to the groundless expansion of the use of that jurisdiction, and undermine the protection of the legitimate rights and interests of enterprises.

IV. Implicit discrimination runs counter to the principle of justice and fairness

The European Union has always adhered to the concept of liberalisation and built an open market environment based on the multilateral trading system and a sound legal system. However, “implicit discrimination” exists in daily practice, and it is wrong. “Implicit discrimination” creates a “glass door” that is difficult for foreign-funded enterprises to pass through. For example, although state-owned enterprises can invest in the European Union together with other foreign-invested enterprises, they face stricter oversight during the review process, which put them at a disadvantage in competition. In the process of law enforcement, the regulatory agencies carry out selective law enforcement and put forward additional regulatory requirements with regard to some foreign-invested enterprises, thus increasing their operating costs.

1. The European Union fails to adhere to the principle of competitive neutrality for state-owned enterprises

The European Union has adopted a discriminatory method of “calculation of aggregated turnover” in anti-monopoly reviews of Chinese state-owned enterprises, in which case the so-called “government factors” are taken into consideration in the security review. The European Union is also planning to adopt legislation to deal with the so-called “distortion effect” in the internal market of the European Union by Chinese state-owned enterprises and government funds. The European Union’s discriminatory treatment of state-owned enterprises will greatly discourage them from investing in Europe, making it difficult for them to promote European economic development through investment.

The survey shows that 42.7 percent of the surveyed state-owned enterprises have been subjected to stricter reviews due to their status as state-owned enterprises, and 69.7 percent of the surveyed state-owned enterprises have faced stricter supervision in their daily operations due to their status(as shown in Figure 5).

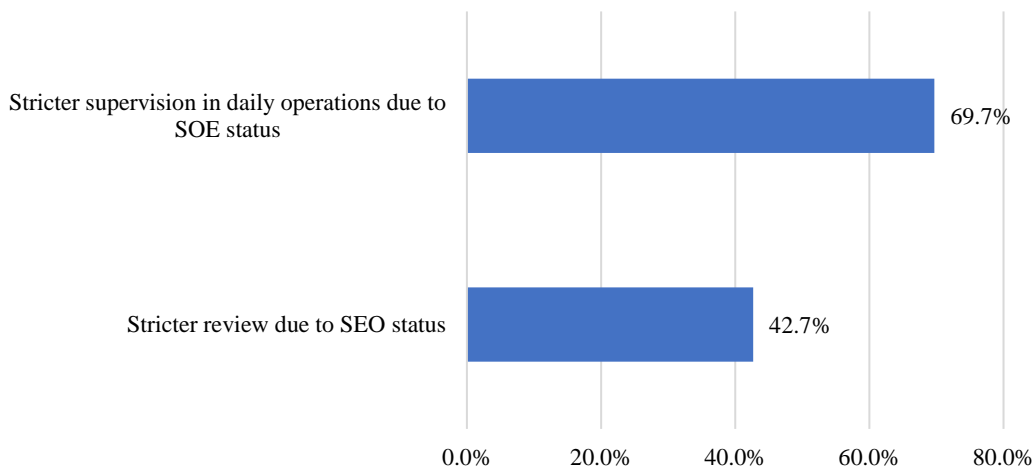


Figure 5 Stricter reviews and supervision due to SOE status

Source: CCPIT Academy.

China adheres to the principle of competitive neutrality when it comes to treatment for state-owned enterprises, and provides equal treatment to domestic and foreign investors. According to the OECD, the principle of competitive neutrality means that the same rules are applied to public and private enterprises within the regulatory framework, and the relationship with the government does not give any participant in the market a competitive advantage. On 26 March 2019, the executive meeting of the State Council of China announced that China will expedite the cleanup and modification of a series of policies and measures that restrict the development of private enterprises and violate the principle of equal treatment of domestic and foreign investment in accordance with the principle of competitive neutrality⁸. Meanwhile, China has continued to reform state-owned enterprises to further clarify their independent legal person status and status as a market player. On 28 April 2019, the State Council of China issued the *Reform of the Authorised Operation System for State-owned Capital*⁹, stating clearly that: the separation of the government and business and the separation of the government and capital should be adhered to; the separation of the government's public management functions and state-owned capital investor functions should be adhered to so as to sort out according to law the investment relationship between the government and state-owned enterprises, establish according to law the status of state-owned enterprises as market players and minimize

⁸http://www.gov.cn/premier/2019-03/26/content_5376991.htm

⁹http://www.gov.cn/zhengce/content/2019-04/28/content_5387112.htm

direct government intervention in market activities; with clearly defined representative agency of the government-authorized investor performs the role of the investor in the state-owned enterprises according to the proportion of the investment, thus scientifically defining the boundaries of power and responsibility of the agency representative of the investor; the state-owned enterprise is entitled to complete corporate property rights and full autonomy in business operation.

The *Business Confidence Survey 2019*¹⁰ published by the European Union Chamber of Commerce in China also points out that in the past 24 months, a quarter of European companies have participated in the mixed ownership reform of Chinese state-owned enterprises. EU companies have become beneficiaries of China's implementation of the "competitive neutrality" principle.

2. Discriminatory law enforcement weakens foreign companies' competitiveness

The Report on the Investment Environment of the European Union 2018/2019 of the CCPIT Academy points out that due to the misperception of Chinese companies, some Member State governments had discriminatory and selective law enforcement vis-a-vis Chinese companies, creating obstacles for Chinese companies operating in Europe. This problem still exists today. Some Member State governments inspected Chinese companies significantly more frequently than they did with other companies, and after the inspection, they would raise more stringent requirements for the Chinese companies, resulting in disruptions to their normal operations and increase in their operating costs.

The survey shows that discriminatory law enforcement is an important issue facing Chinese-funded enterprises. 32.1 percent of the companies surveyed have encountered discriminatory law enforcement in the European Union, and 30.1 percent of the companies believe that the EU governments' enforcement is relatively unfair when it comes to foreign investors (as shown in Figure 6).

Chinese companies in Poland reported that the Polish government has a discriminatory attitude towards Chinese design agencies, and has repeatedly reviewed design plans produced by Chinese design agencies,

¹⁰<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>

resulting in the project being unable to proceed smoothly. As a result, Chinese companies were forced to hire local Polish design agencies. Because the design plans were produced by these Polish design agencies, Chinese companies were unable to use Chinese raw materials in the project and could only purchase local Polish raw materials. During project acceptance, the acceptance of the work of the Polish building contractor was fast and the process simple, while the acceptance of the work of the Chinese building contractor was cumbersome and came along with various unreasonable requirements, which was discrimination against Chinese companies.

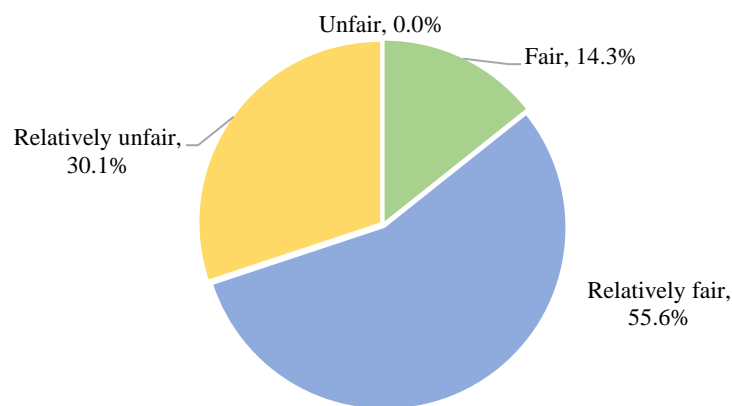


Figure 6 Fairness of EU governments' foreign investment law enforcement

Source: CCPIT Academy.

V. The political and social environment adds to foreign investor concerns

1. Low government efficiency adds to business costs

Efficiency in government services and government work is the administrative guarantee for foreign companies to invest and operate in the European Union. However, surveyed companies generally reported that the work efficiency of some EU Member State governments is low, which has caused obstacles to the normal operation of Chinese companies in Europe. The survey shows that 73.4 percent of the companies surveyed maintained that the work efficiency of government employees in the European Union is low or relatively low; 43.4 percent of the companies believed that the European Union has procedural delays in the process of administrative approval and supervision (as shown in Figures 7 and 8).

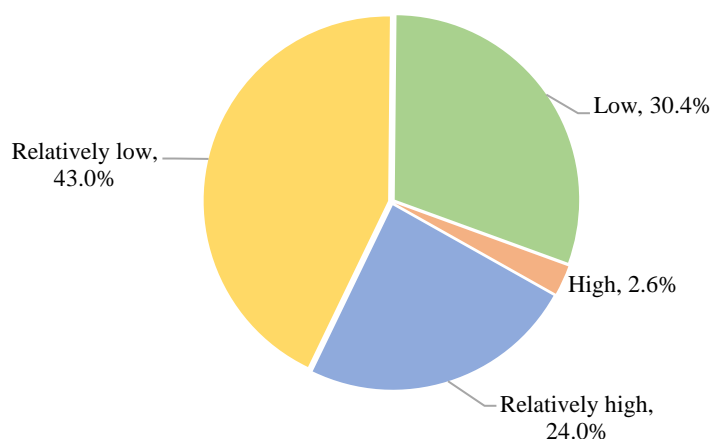


Figure 7 Work efficiency of government employees in the European Union

Source: CCPIT Academy.

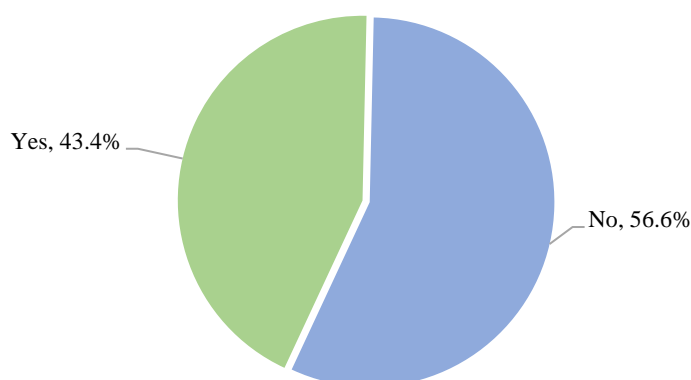


Figure 8 Whether the European Union has procedural delays in the process of administrative approval and supervision

Source: CCPIT Academy.

2. Deterioration of public security affects everyday life

The public security environment is the basic element of the business environment. Only if the personal safety of the employees is effectively guaranteed can foreign-invested enterprises conduct normal investment and operations. In recent years, however, the European Union’s public security environment has been not so good, and the frequent terrorist attacks have affected the investment confidence of foreign-invested enterprises.

The *2018 Global Law and Order Report*, published by Gallup, a US consultancy, ranks the security environment around the world based on feedback from residents in 142 countries and regions. China is ranked 10th, while EU Member States such as Belgium, Croatia, Poland, Italy and Hungary are ranked below 40th. Poor security environment means the

safety of the employees of foreign-invested companies cannot be effectively guaranteed. Chinese-funded enterprises reported that public security in Brussels has not improved significantly over the past years, theft cases occur from time to time, and the police work remains inefficient.

Frequent strikes in the EU have led to the deterioration of public security environment. On 3 September 2019, France's public transport system went on strike, involving 90 percent of all the metro workers in Paris. On 5 December 2019, a massive strike broke out in France, with more than 200 demonstrations staged across the country. Almost all traffic was disrupted, with 90 percent of the country's high-speed trains suspended and 11 of the 16 metro lines in Paris shut down. There were even people vandalising cars and shops, and posing threat to the lives of residents. Prior to the strike, the Chinese Embassy in France had issued a message asking Chinese citizens to raise personal security awareness.

Table 5 Major terrorist incidents in the EU since 2016

Time	Location	Terrorist incidents
22 March 2016	Belgium	At least 30 people were killed and 300 injured in a series of explosions at Zaventem airport on the outskirts of Brussels and at a metro station near the EU headquarters in the city
14 July 2016	France	At least 84 people were killed and 202 injured when a truck ploughed into a crowd watching a fireworks display in the southern French tourist city of Nice
24 July 2016	Germany	An explosion in the Bavarian city of Ansbach killed the bomber and injured 12 others, three of which were critically wounded
19 December 2016	Germany	Twelve people were killed and 49 injured when a van ploughed into the sidewalk of a Christmas market in the busy area of Berlin's city west
7 April 2017	Sweden	At least 4 people were killed and 15 injured in a terrorist attack in central Stockholm when a van rammed into a crowd
23 March 2018	France	Three people were killed and 16 injured in a terrorist attack by an armed terrorist in the towns of Carcassonne and Trèbes in the southern French province of Ode
29 November 2019	UK	A man armed with a knife attacked passers-by on London Bridge, killing three people, including the killer, and injuring three others, police said

Source: Summarised according to public information.

The frequent occurrence of terrorist incidents is also an important factor giving rise to the deterioration of the security environment. In recent

years, frequent terrorist attacks took place in several EU Member States (see Table 5). According to the *EU Terrorism Situation and Trend Report 2019* published by Europol¹¹, the total number of terrorist attacks in EU Member States in 2018 was 129, posing a threat to the personal and property safety of the employees of foreign-invested enterprises.

VI. Over-protection adding to business operating cost

Stringent laws and discriminatory regulation lead to the over-protection of the domestic market. In the field of human resources, the rigid labour system curbs the flexibility of enterprises to operate, significantly increases costs and hinders day-to-day operations. In the financial sector, discriminatory practices against foreign-invested enterprises increase the cost and difficulty of financing.

1. Labour system rigidity boosts labour costs

Excessive labour regulations and too much union power not only increase business cost, but also create interference with normal business activities. According to the survey, 46.4 percent of the companies had been subjected to local hiring requirements, 49 percent believed that trade union activities affected their normal business activities (see Figure 9) and 66.9 percent believed that trade unions and the labour system significantly increased their cost (see Figure 10). The companies surveyed generally reported an increase in human resource costs, with 76 percent of them having an increase in human resource costs in 2018.

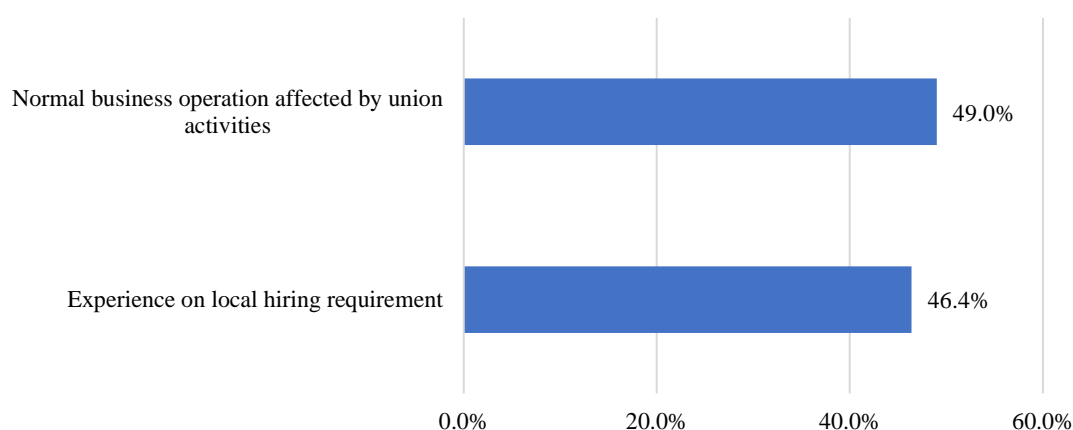


Figure 9 Normal business operation affected by union activities and experience of local hiring requirement

Source: CCPIT Academy.

¹¹ <https://www.europol.europa.eu/activities-services/main-reports/terrorism-situation-and-trend-report-2019-te-sat>

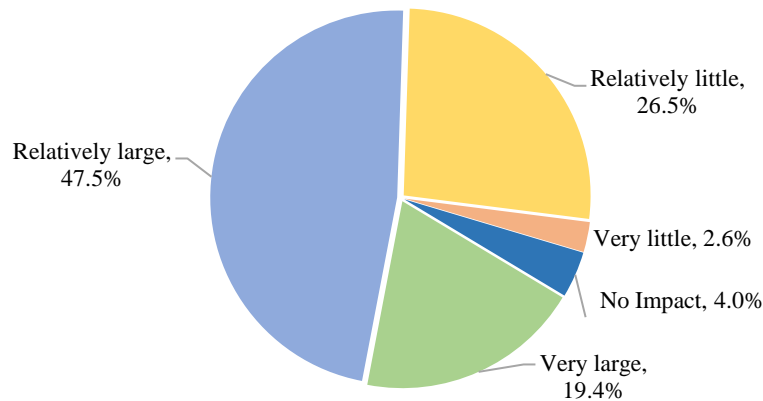


Figure 10 Impact of unions and the labour system on business cost

Source: CCPIT Academy.

2. Cognitive bias increases financing difficulties for foreign enterprises

Facilitation of financing is an important basis for foreign-invested enterprises to invest in the European Union. Nevertheless, foreign-invested enterprises are still facing obstacles in financing in the Union. The companies surveyed reported that some EU Member States did not understand the business model of Chinese enterprises, and implemented discriminatory screening procedures and additional documentation requirements for Chinese enterprises in loan approval, hence increasing the financing difficulty for the latter. According to the survey, 46.4 percent of the companies said their financing costs in the European Union were higher than in the previous year. Increased financing difficulties and rising costs have prevented enterprises from operating normally in the Union under existing investment plans, and their development has been held back by the lack of funds.

VII. Foreign investor confidence in the European Union declines

Uncertainties in business environment directly lead to a decline in investor confidence. According to the survey, the confidence of Chinese companies investing and operating in Europe has fallen sharply in 2019. A survey by Ernst & Young also shows that the satisfaction of multinationals with the investment climate in Germany was declining, and that out of the more than 700 multinational executives surveyed, the proportion of those who rated Germany negatively rose from 22 percent in 2017 to 37 percent in 2018; while the proportion of those who rated positively was only 11 percent, down by 14 percentage points from a year earlier.

1. Significant reduction in the number of enterprises choosing the European Union as their top investment destination

According to the survey, only 24 percent of companies chose the European Union as their top investment destination (see Figure 11), while in the previous year, 78.63 percent of the companies chose the EU as their top investment destination, a significant drop in the proportion of companies ranking the European Union as their top investment destination.

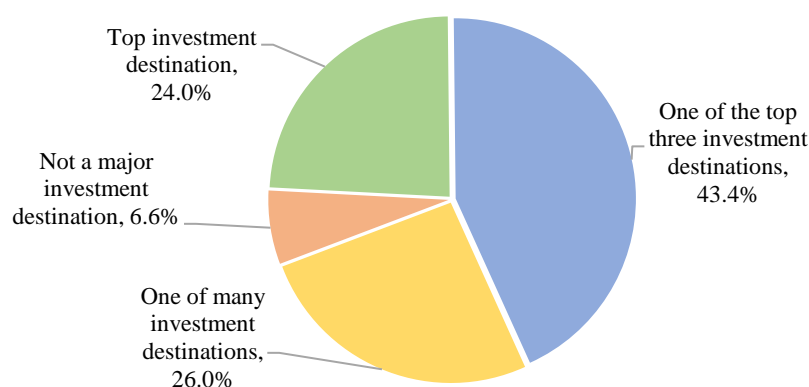


Figure 11 The European Union's importance in companies' global investment plans
Source: CCPIT Academy.

2. M&A by Chinese enterprises may suffer the largest decline

China's investment in the European Union slowed down in 2018, with investment flows at USD8.866 billion, down 13.6 percent from a year earlier, according to the Ministry of Commerce of China¹². In breakdown, China's investment flows to Germany amounted to USD1.468 billion, down 45.9 percent YoY, accounting for 16.6 percent of the investment flows to the European Union (26.5 percent in 2017). According to the OECD, the European Union as a whole saw a decline in foreign direct investment by as much as 62 percent in the first half of 2019 as compared with the previous half year, while 19 Member States saw a decline in inward foreign direct investment¹³. The value of China's acquisitions in the European Union has also fallen sharply, with Ernst & Young data showing that the value of acquisitions by Chinese companies in Europe fell by 57.1 percent to just USD20.53 billion in 2019¹⁴. In 2019, the European Union accounted for just one of the China's top 10 target countries for overseas mergers and acquisitions by value, with UK ranking the second, whereas in 2018 six EU Member States made it to the top 10 target economies of China's overseas mergers and acquisitions.

¹² Ministry of Commerce: 2018 Statistical Bulletin of China's Outward Foreign Direct Investment.

¹³ <http://www.oecd.org/investment/FDI-in-Figures-October-2019.pdf>

¹⁴ Ernst & Young: 2019 China's Outward Foreign Direct Investment Overview.

Chapter Three

General Recommendations

I. Eliminate unreasonable market protection measures

1. Formulate fair and reasonable rules for foreign direct investment screening

Foreign investment screening should be based on a fair and reasonable footing. The EU, regardless of the reality that China has different national conditions, emphasises the so-called “reciprocal openness” and abuses the concepts of “national security” and of the so-called “government control”, and violates the non-discrimination principle.

We recommend that the European Union should establish fair, reasonable, transparent and predictable rules for foreign direct investment screening; streamline the review catalogue and increase the transparency of the screening process so as to increase investor confidence in the European Union.

2. Strictly regulate the use of trade remedy measures

The EU uses the existence of so-called market distortions as a precondition for determining whether the cost and price of the investigated country should be used as the basis for comparison in anti-dumping investigations, and views government policy influence and financial institution independence as factors to measure market distortion. These new practices have no basis in WTO rules, and would easily become a tool for trade protection. As one of the world’s largest economies and a major WTO member, the EU should take the lead in strictly observing the rules of the WTO and should adopt trade remedy measures according to the rules so as not to send the wrong signal of trade protectionism to the world.

3. Ensure that standard certification is fair and predictable

Standard certification is an important threshold for foreign companies and products entering the EU market. Discriminatory treatment may directly lead to the failure of access to the EU market. Unstable and opaque standard development and revision processes would hinder the normal product marketing of foreign-invested enterprises and constitute unfair barriers to entry. In terms of standard development, foreign-invested enterprises have strong enthusiasm for participating in developing EU standards, and their participation can further improve the openness and transparency of the Union’s standard development work and expand the influence of EU standards.

In terms of choosing standard certification agencies, we recommend that the European Union should stick to the non-discrimination principle,

and ensure fairness and transparency in choosing certification agencies and developing certification standards; we recommend that the European Union should formulate clear processes and roadmaps for standard update in order to give companies stable expectations. We recommend that the European Union should provide reasonable and smooth channels for foreign-invested enterprises to participate in standard development, and should take into full consideration the reasonable suggestions of foreign-invested enterprises with regard to EU standards.

II. Mitigate the impact of overregulation on the economy

1. Avoid excessive government intervention in the market

Excessive regulation is a departure from the original intention of correcting the externality of the market. Rather, it serves the other intentions of the government, enhances the government's power, increases the space for government rent-seeking, and further increases the difficulty of business operation.

We recommend that the European Union should avoid over-regulating the businesses in such aspects as legislation and administrative enforcement, and give them reasonable space for development; reduce excessive government intervention in microeconomic behaviours, and strengthen its functions as a service supplier for the business; improve the supervision and checks mechanism of government power and reduce the occurrence of rent-seeking.

2. Regulate emerging business in an inclusive and prudent manner

In the Internet age, the development of new business types has challenged the traditional model of government control. Because the traditional regulatory model is no longer suited to the development of the new business type, and the regulatory authorities also lack a comprehensive and accurate understanding of it, the original regulatory system can easily lead to the overregulation of the new business type, thus hindering the innovation and development of the latter.

We recommend that the EU should adopt an inclusive regulatory attitude and approach to scientific and technological innovation, especially with regard to the new business types, provide a policy environment for business development with a balance between regulation and inclusive innovation, strengthen service and guidance for the emerging business types, and build a standardised and efficient risk control system to promote the development of emerging business types on the basis of risk control.

3. Promote free movement of the human resources of foreign-invested enterprises

Foreign-invested enterprises investing in the European Union not only provide funding and technology, but also bring in professionals in various fields. However, EU restrictions on the work visas and residence permits of the employees of foreign-invested enterprises have prevented these enterprises from dispatching business and technical personnel to the European Union based on their business needs and in a timely manner, thus affecting their operation in Europe.

We recommend that the European Union should relax the control over work visas and residence permits and make sure that foreign-invested enterprises with stable investment and long-term business projects receive a reasonable number of visas, in order to ensure the normal operation of foreign-invested enterprises in the European Union.

4. Fully solicit the opinions and suggestions of foreign-invested enterprises

Foreign-invested enterprises are an important part of the EU economy. In formulating laws and regulation relating to foreign direct investment, the European Union should listen to the opinions and suggestions of the foreign-invested enterprises, which can not only help improve the quality of legislation and enable the law to lead and guide foreign investment, but also further boost the enthusiasm of foreign-invested enterprises to participate in the Union's legal and economic development.

We recommend that the European Union should solicit on a larger scale the opinions of foreign-invested enterprises on legislation and to seriously consider their reasonable suggestions. After the introduction of laws and regulations, we recommend that the European Union should introduce detailed rules and provide targeted training for enterprises, and promptly clean up invalid and outdated laws and regulations.

5. Promote the European Union's labour reform

The European Union's rigid labour system restricts the normal development of enterprises, and also to a certain extent hinders foreign direct investment in the Union, thus weakening the its international competitiveness. We recommend that the EU should step up efforts to promote labour reform and stimulate the vitality of the labour market.

6. Exercise long-arm jurisdiction reasonably

All legal systems are to safeguard the social order of the country and

protect the interests of her nationals. Various economic and trade conflicts and frictions are inevitable, and extraterritorial jurisdiction has become a constant concern of various countries. However, extraterritorial jurisdiction must be maintained within a reasonable scope, and it must not be used as an excuse to arbitrarily interfere in the economic governance and business operation of other countries.

We recommend that the EU should comply with the provisions in international laws and make reasonable use of the “long-arm jurisdiction” clause in order to prevent the unreasonable expansion of jurisdiction.

III. Stop all types of discriminatory behaviours

1. Treat foreign-invested enterprises of all ownerships equally

A level playing field is a basic element of a sound business environment. Foreign-invested enterprises of all ownerships all contribute to the economic development of the European Union. Taking a differentiated approach to enterprises of different ownerships and subjecting them to discriminatory treatment will dampen the confidence and enthusiasm of foreign-invested companies in investing in Europe.

We recommend that the European Union should follow strictly the principle of competitive neutrality, treat enterprises of all ownerships equally, protect their rights and interests equally, and provide equal treatment to enterprises of all ownerships with regard to market access, licensing and certification, government procurement, project application, and standard development.

2. Enforce laws in strict accordance with standard operation procedures

In the process of law enforcement, subjecting some foreign-invested enterprises to discriminatory and selective enforcement not only harms the interests of enterprises, but also undermines the European Union’s environment for the rule of law and reduces the attractiveness of the EU business environment.

We recommend that the European Union and its Member States should develop sound law enforcement standards and procedures and keep foreign-invested enterprises informed of them, so as to improve law enforcement transparency and give enterprises stable law enforcement expectations; treat various market players equally in the course of law enforcement, and avoid discriminatory and selective enforcement; establish and perfect the supervision mechanism for law enforcement,

take seriously the suggestions and inquiries of the business, and severely punish violations in law enforcement.

IV. Strengthen the government public service system

1. Improve the capacity of government workers to provide public services

The survey shows that the lack of capacity and the low efficiency of government workers in some Member Countries have already affected the normal operation and investment confidence of foreign enterprises.

We recommend that Member State governments should step up training for government workers on administrative and operational capabilities, take the needs of enterprises as the guide, and formulate strict and reasonable administrative work guidelines and norms.

2. Increase investment in public security management

A good public security environment is the most basic thing that foreign-invested enterprises investing and operating in the EU ask for. It is an important factor affecting a foreign investor's decision-making. Investor confidence will not increase unless there is stable public security.

We recommend that the Member States should increase their investment in public security management, improve the public security environment, and ensure the effective protection of the personal safety of local residents and the employees of foreign-invested enterprises.

3. Effectively meet the reasonable demands of foreign-invested enterprises

Foreign-invested enterprises are faced with all sorts of problems when investing and operating in the European Union. Governments of the Member States are required to pay attention to these problems and provide targeted solutions. This is not only a basic thing that foreign-invested enterprises ask for, but also a measure that the European Union must take to shore up investor confidence and improve the business environment.

We recommend that the European Union should attach great importance to the decline in confidence in the European Union and the downbeat expectations of the EU business environment, strengthen communication and exchanges with foreign-invested companies, heed their demand for an improved business climate, and make every effort to improve the business environment.

Chapter Four

The Market Access

Section

I. Recent developments

1. The first EU regulation on foreign direct investment screening came into force

The Regulation establishing a framework for the screening of foreign direct investments into the Union¹⁵ came into force in April 2019 and will fully apply in October 2020, making it the first foreign direct investment screening tool based on security and public order at EU level. Its formal entry into force indicates that the European Union has begun to tighten foreign investment review. The Regulation establishes a list of “non-exhaustive” screening items relating to “security and public order of the European Union”, and a system of law enforcement cooperation and information exchange between Member States and the European Commission, whereby the Commission may issue non-binding opinions to the Member States that the investment involves.

Key areas for screening under the Regulation

- Critical infrastructure, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.
- Critical technologies and dual use items, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies.
- Supply of critical inputs, including energy or raw materials, as well as food security.
- Access to sensitive information, including personal data, or the ability to control such information.
- The freedom and pluralism of the media.
- Whether the foreign investor is directly or indirectly controlled by the government of a third country, including through ownership structure or significant funding.
- Whether the foreign investor has already been involved in activities affecting security or public order in a Member State.
- Whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

¹⁵<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0452&from=EN>

2. The European Union's strategic document on China targets Chinese-funded enterprises

On March 12, 2019, the European Commission released its strategic document on China, *EU-China – A Strategic Outlook*¹⁶, which positions China as a systemic rival and an economic competitor. The European Union believes that the existing policy does not fully appreciate the impact of government subsidies in foreign direct investment, and makes it clear that it will step up supervision of Chinese investment in the European Union, and strengthen through legislation intervention with regard to Chinese investments.

Part of the European Union's strategic document on China

- Step up supervision on investment in 5G. The document points out that foreign investment in strategic sectors such as critical assets, technologies and infrastructure in the European Union can pose risks to the European Union's security. This is particularly relevant for critical infrastructure, such as 5G networks, that closely involves sensitive information and supply of critical equipment of the European Union. The European Commission will propose to the European Council for the adoption of policies to guarantee the security of 5G networks.
- Step up implementation of the Regulation. Member States should ensure the expeditious, complete and effective implementation of the laws on foreign investment screening, make adjustment to their domestic systems according to the Regulation, and strengthen coordination among the Member States.

3. Germany expanded the scope and raised the standard for reviews

On 19 December 2018, the German cabinet discussed and adopted a draft amendment to the *Foreign Trade and Payments Act* (hereinafter referred to as the *Foreign Trade Act*).

First, the threshold for screening was lowered. When companies involved in German defence and critical infrastructure are acquired by non-EU capital, for example, a foreign investor directly acquiring more than 10 percent of the voting rights of the target company, the federal government can step in to review the acquisition. Previously, the German government would only initiate the review mechanism if more than 25 percent of the voting rights of the company are acquired.

¹⁶<https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>

Second, the period for the exercise of the right of review was extended. Under the original system, the German Federal Ministry for Economic Affairs and Energy exercising the right of investigation would notify the direct acquirer of the transaction and the domestic company affected by the transaction the opening of the investigation procedure within one month of acquiring knowledge of the relevant acquisition and the conclusion of the contract. Paragraph 3 of Section 55 of the *Foreign Trade Act* extends the that period to three months. At the same time, the *Foreign Trade Act* extends the period of the “main investigation procedure” from the original two months to four months.

Third, the company’s obligation is increased as they are asked to report. Paragraph 4 of Section 55 of the *Foreign Trade Act* introduces for the first time the “obligation for the acquirer to report”, i.e., if a non-EU entity acquires a domestic company in Germany of the six types mentioned above, or directly or indirectly acquires 10 percent or more of the voting rights in the above-mentioned company as set forth by the Act, such information should be provided to the Federal Ministry of Economic Affairs and Energy in writing after the conclusion of the contract.

4. Italy extended the screening scope to cover 5G

In March 2019, Italy’s *Golden Power Law* was supplemented with additional provisions, stipulating that when a company signs purchase contracts or agreements for goods or services related with the design, construction, maintenance and management of 5G networks, or acquires the high-tech components that are functional to the network itself, the government will carry out a review if the company is cooperating with a non-EU company and may compromise the integrity and security of the network.

On 11 July 2019, the Italian government promulgated the Law Decree No. 64/2019, further supplementing the *Golden Power Law* to strengthen the government’s power to review foreign investment in such “strategic industries” as defence, national security, telecommunications, energy and transport.

First, the review period is extended. The original law provided that the government should make a decision on whether to approve the investment within 15 days of receiving the material submitted by the investor or target company, and the new law extends the 15-day review

period to 45 days; the original law provided that, during the review process, the government could extend the review period by an additional 10 days by requesting additional materials from the parties to the transaction, and the new law extends the additional time limit to 30 days.

Second, whether a company is “controlled by the government” is listed as a factor that affects “national security” or “public order”. When a non-EU company acquires Italy’s strategic assets in the areas of communications, energy and transport, the acquisition will be examined for harm to Italy’s “national security” or “public order” if the company is directly or indirectly controlled by a non-EU government in the form of ownership or financial subsidies.

5. France tightened control of foreign investment in strategic areas

In May 2019, France published the *Action Plan for Business Growth and Transformation* (PACTE)¹⁷, which strengthens the executive power of the Ministry of Economy and Finance and reinforces the protection of and support for strategic industries. The reform measures mainly involve the company law, the labour law, as well as legal provisions relating to areas such as taxation, investment, import and export, and intellectual property. The “Protecting Strategic Companies” section provides for the strengthened screening of foreign investment in the strategic sectors.

First, the executive power of the Ministry of Economy and Finance as the competent authority has been strengthened. The Ministry of Economy and Finance can handle investment behaviours that are unauthorised or inconsistent with the conditions attached to the approval, and may, in cases of emergencies relating to public order, public security and national defence, make decisions directly without sending a formal notice.

Second, the scope of administrative penalties has been expanded. PACTE steps up the penalties for such behaviours as the “passing pre-screening through fraud” and the “failure to perform, as required, in part or in full, the administrative decisions for correction”.

Third, the power of the Ministry of Economy and Finance to obtain company information has been expanded. Investors or relevant target companies shall, in accordance with the requirements of the competent departments, provide the Ministry of Economy and Finance

¹⁷ <https://www.gouvernement.fr/en/pacte-the-action-plan-for-business-growth-and-transformation>

with all the documents and information necessary for the examination and approval procedures. The company may not refuse to provide such documents to the Ministry of Economy and Finance on the ground that they contain trade secrets protected by law.

Fourth, the government’s obligation to disclose relevant information has been established. The government shall publish statistics on foreign investment control measures on a regular basis each year and submit a work report to the Special Parliamentary Committee on the protection of the country’s economic, industrial and scientific interests, as well as specific statistics (quantity, penalties, etc.) relating to the pre-screening of foreign direct investment.

6. The Netherlands took a more critical attitude towards China

On 15 May 2019, the Dutch government released its policy paper on China, *“The Netherlands & China: a new balance”*¹⁸, stating that although China is an important partner, the Netherlands should treat China with a more critical attitude.

The document points out that on the trade front, China is not a market economy and the Netherlands wants China to change the so-called unfair trade practices, and that Sino-Dutch trade relations must be more “balanced and reciprocal”; on the investment front, the Dutch government will pay more attention to the protection of intellectual property, avoid forced technology transfer, and effectively control investment risks coming from China.

7. Hungary published a security review list

On 1 January 2019, the *Law on the Control of the Foreign Investments Offending the National Security of Hungary* (hereinafter referred to as the *Foreign Investments Control Law*)¹⁹, entered into force, establishing a mechanism for conducting national security reviews in specific areas and a clear list of national security review industries. When foreign investors invest in the industries on the list, regulatory authorities can initiate national security reviews.

¹⁸ <https://www.government.nl/documents/policy-notes/2019/05/15/china-strategy-the-netherlands--china-a-new-balance>

¹⁹ https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157938.pdf

List and requirements of Hungary for national security review

List of activities applicable for review:

- weapon and ammunition production, production of military technology, equipment subject to authorisation;
- dual-use product production;
- production of intelligence tools;
- provision of financial services and functioning of payment systems;
- services falling within the scope of the Law on electricity, the Law on supply of natural gas, the Law on water utility services and the Law on electronic communications;
- special activities foreseen by the Government Decree related to the electronic information systems falling within the scope of the Law on electronic information security of state bodies and municipalities.

Review period:

The regulator's national security review period for foreign direct investment is 60 days, with a maximum extension of 60 days.

Thresholds triggering reviews:

- in case of these rights are higher than 25 per cent;
- exceeding the 10 per cent in the case of a public limited liability company;
- in case of acquiring dominant influence according to the Hungarian Civil Code.

II. Analysis of problems

1. The foreign direct investment screening list of the European Union continues to grow

The Report of the Investment Environment of the European Union 2018/2019 produced by the CCPIT Academy points out that the project list as required in the Regulation is “non-exhaustive”, and that the increasing industrial restrictions will lead to greater uncertainty for enterprises investing in the European Union and greater risks of investment for companies. The Confederation of German Industries (BDI) commented that the list was too broad.

In 2019, the European Union and Member States such as Italy have begun to expand their lists of projects subject to screening. With the continuous development and growing influence of the 5G technology, and the rising attention of the European Union and its Member States to 5G, 5G has become a key area subject to investment screening by the European Union and its Member States. In its strategy document on China, the European Union made clear that 5G is a critical infrastructure and that its protection should be enhanced to prevent foreign direct investment in 5G from posing risks to EU security. Italy has also added 5G to its list of sectors for foreign investment screening.

The vague definition of “critical infrastructure” in the Regulation also leaves room for the expansion of the “non-exhaustive” list. 1(a) of Chapter 4 of the Regulation lists critical infrastructure such as energy and transport and provides that “land and property critical to the use of such infrastructure” also fall within the scope of critical infrastructure, and that enterprises’ investment on assets such as real estate and land may also be placed under screening. This significantly extends the scope of critical infrastructure beyond what is a reasonable definition of concept, and leads to blurred boundaries for the screening.

2. Time costs and uncertainty increased

At EU level, according to the procedures for the cooperative mechanism under the Regulation, regardless of whether or not a Member State in which the investment is located has a foreign investment screening mechanism, other Member States and the European Commission may request information on relevant investments from this Member State and make comments and opinions on the investment. This inevitably leads to the prolonging of the original review period of that Member State. Furthermore, foreign direct investments will be subject to interference as a result of the opinions from other EU Member States, thus substantially increasing investment uncertainty.

At Member State level, Germany and Italy have extended the review period, while the *Law on the Control of the Foreign Investments Offending the National Security of Hungary* provides for a maximum period of 120 days for national security review in Hungary. The companies surveyed reported that the *Law on the Control of the Foreign Investments Offending the National Security of Hungary* has begun to affect investment projects

of Chinese enterprises, and that the regulatory authorities have added items intended for approval during the review process, leading to a three-months delay of the investment process. Furthermore, the respondents reported that the Hungarian authorities' review rules and standards were not clear.

On the one hand, the increase in approval time and uncertainty increases the capital cost of enterprises, and on the other hand, puts foreign-invested enterprises at a disadvantage in competition with EU enterprises. Only by paying a higher amount can foreign-invested enterprises be competitive in bidding. This further increases the investment cost for foreign enterprises in the European Union.

3. The concept of national security was abused in the review

The concept of “national security” is vaguely defined. The Regulation does not explain the concept of “public order”, leaving a great deal of leeway for Member States in the practical operation of foreign direct investment screening. In its opinion on the Regulation²⁰, the BDI points out a precise definition of what is to be understood by national order and security could improve the legal certainty for investors and prevent new forms of hidden protectionism. At Member State level, the French PACTE strengthens the government's power in the “national security” review of foreign direct investments and allows the government to make direct decisions in emergency situations concerning public order, public security and national defence without sending a formal notice. Under this provision, the government can veto any investment it opposes on the ground of “national security”, in which case “national security” can easily be used as a tool of protectionism.

The so-called “government control” is deemed as an important consideration for national security review. The Regulation provides that, in determining whether a foreign direct investment affects security or public order, special consideration should be given to “whether a foreign investor is controlled directly or indirectly, for example through an ownership structure or significant funding, by the government of a third country, including a state body”. Italy, in updating the *Golden Power Law*, makes full reference to the “government control” provisions of the Regulation; the European Union's strategy paper on China²¹ also states that China's

²⁰ https://ec.europa.eu/info/law/better-regulation/feedback/8162/attachment/090166e5b71ed952_en

²¹ <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>

state-owned enterprises and government funding support have caused damage of the EU market. Such is the European Union's subjective speculation and has no factual basis²². The European Union over-interprets the relationship between enterprises and the government, and wrongly defines the government's reasonable and legitimate support for enterprises as the so-called "government control", constituting discrimination against the normal investment behaviour of enterprises.

III. Our recommendations

1. Develop a stable and exhaustive review list

We recommend that the European Union and the Member State governments should change the way in which the scope of the review is determined by the "non-exhaustive" list, and establish a clear review list to give investors a stable expectation; regularly evaluate the rationality of the project review list, timely remove those unreasonable items on the list and continuously shorten the list.

2. Clarify review authority and improve efficiency

In foreign direct investment screening, we recommend that the European Union and its Member State governments shorten the statutory time limit for the review as much as possible, improve the efficiency of the review, disclose the progress of the review to enterprises in a timely manner during the review process, give foreign enterprises a clear expectation of the review time, and reduce the investment cost of the enterprises. They should define the scope and boundaries of the expression of views by other Member States in the foreign investment screening process of the host country, and formulate a list of the circumstances under which Member States express their views so as to prevent the increase in the financial and time costs of the enterprises due to excessive interference by other Member States in the foreign investment review of the host country.

²² The Commission Staff Working Document "Foreign Direct Investment in the EU" released in March 2019 even suggested that all mergers and acquisitions from China can be considered government-backed, partly because companies need approval and authorisation from the Chinese government for outward investment, and partly because investors often use loans from Chinese banks, most of which are directly controlled by the Chinese government. The government will direct enterprises to carry out acquisitions in the EU for so-called "strategic purposes", rather than for commercial purposes. As a result of this, these investments with government background and support will offer a higher bidding price than others, thus gaining an additional competitive advantage due to government support. If the EU holds such a view in foreign direct investment screening, not only state-owned enterprises investing in the EU will face discriminatory treatment, non-state-owned enterprises in the EU may also be discriminated against on the grounds of receiving government support.
http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157724.pdf

3. Define the specific scope of national security review

We recommend that the European Union should determine the target and scope of foreign direct investment screening in accordance with clear and specific rules, stop the arbitrary expansion of the scope of application of national security and prevent national security review from becoming a tool for protectionism. It is recommended that other EU Member States should develop a clearly defined list of national security reviews and should not carry out national security reviews with regard to foreign direct investments unspecified on the list.

4. Treat enterprises of all ownerships equally

We recommend that the European Union should strictly protect the rights and interests of enterprises on an equal footing according to law, uphold the basic values of contract and fair competition, and ensure that enterprises of different ownership systems enjoy equal treatment in market access. The European Union should recognise the status of Chinese enterprises as independent legal persons and market players, and treat all Chinese enterprises equally on the principles of “competitive neutrality” and “ownership neutrality”.

Chapter Five

The Administrative Enforcement Section

I. Recent developments

1. The eGovernment Action Plan has made progress

On 18 October 2019, the European Union published the eGovernment benchmark report 2019, entitled “Empowering Europeans through trusted digital public services” (hereinafter referred to as the eGovernment report²³). The eGovernment report measures the development of eGovernment in the European Union by four indicators: user-centricity, referring to the degree of development of online services, such as network availability, usability and mobility; transparency, including the transparency of government authorities’ operations, service delivery procedures, etc.; cross-border mobility, referring to the extent to which public services are available to European citizens across national borders; key enablers, referring to the availability of the four key technologies of eID, eDocuments and Authentic Sources, and Digital Post.

The eGovernment report notes that Malta, Estonia and Austria are European front-runners in eGovernment, with Latvia, Lithuania and Finland following closely behind. Of the four dimensions of eGovernment, the European Union has fared least well on cross-border mobility, indicating that EU citizens are not yet able to make full use of eGovernment services in other Member States; Europe is most advanced in terms of user-centricity, although there is most room for improvement for mobile friendliness; in terms of key enablers, eID and Authentic Sources need to be further developed and applied; in terms of transparency, further efforts are needed to uplift the transparency of government services.

In 2016, the European Union launched the eGovernment Action Plan (2016-2020), under which it was committed to the principle of digitalisation and the “Once-Only-Principle”, to improving the openness, transparency, interoperability and security of eGovernment, and to building a faster, more facilitated, user-centric digital public service system.

²³ <https://ec.europa.eu/digital-single-market/en/news/commissions-report-egovernment-shows-narrower-gap-between-leading-and-lower-performing-european>

2.The eIDAS Regulation²⁴ entered into force

From 29 September 2018 onwards, the European Union’s Electronic Identification and Trust Services Regulation (eIDAS) will apply directly in its entirety in the European Union. The services include eID, eSignature, eSeal, eTimestamp, Qualified Web Authentication Certificate, and Electronic Registered Delivery Service. After the eIDAS came into force, EU citizens, businesses and public organisations can conduct cross-border online activities within the Union, including cross-border enrolments, online completion of tax returns, signing electronic contracts for online transactions, online bankcard opening, online procurement and bidding. For business, eIDAS can improve the security of cross-border transactions, reduce the administrative burden of electronic transactions, improve operational efficiency, and reduce operating costs.

II. Analysis of problems

1. The implementation of the Once-Only-Principle has been less than effective

Although the European Union vigorously promotes the implementation of the “Once-Only-Principle”, the survey found that the principle has not been effectively implemented, and the actual result of the implementation less than satisfactory. Belgium, for example, has introduced the facilitated initiative to put work and residence permits in one. This initiative in theory could save the processing time for the applicant. However, in actual fact, the time of application has not been reduced.

The problem of administrative inefficiency also defeats the original purpose of the “Once-Only-Principle”, which is to reduce the burden and improve the efficiency of the business. Companies operating in the Netherlands reported that it took a month to receive replies from government staff to their mail. Chinese companies in Poland reported that the environmental impact assessment process for setting up a workshop in Poland lasted up to a year, greatly increasing the investment cost of the company; in contrast, the same process took only 3 to 6 months in China. Some Belgian government agencies have only two full work days a week, and are extremely inefficient.

²⁴ <https://ec.europa.eu/digital-single-market/en/news/eidas-made-easy-quickstart-guide-and-checklist-your-business>

2. Transparency in public service delivery needs to be enhanced

The eGovernment report notes that the transparency of services delivery by the governments in EU Member States needs to be improved. The survey found that the low transparency of government services has prevented enterprises from obtaining relevant information in a timely and accurate manner. Companies operating in Italy reported that in terms of government procedures, and bank, tax and accounting issues, the government has not released sound information channels, making it difficult for companies to know the provisions of local laws and regulations, and affecting their work efficiency. Because there is no clear and specific channel of information, companies have to delegate legal and financial affairs to local third-party intermediaries, leading to increased business cost.

3. Credibility of some Member State governments needs to be improved

Government credibility is the guarantee for foreign investor confidence. The theme of the eGovernment report is “Empowering Europeans through trusted digital public services”, which shows how much the European Union values the credibility of the government. However, in practice the European Union’s commitment to government credibility has not been fully and effectively honoured. Chinese companies investing in Poland reported that the local government promised to give foreign companies a subsidy of 24,000 zlotys (about EUR5,600) for each local job created. Yet after the company completed local recruitment (hiring about 90 local employees), the government publicly broke its promise and paid only EUR200,000 in a one-off employment subsidy, less than the initial commitment of about EUR500,000. The Polish government also re-examined tender documents and project contracts in the energy sector in order to find loopholes, and use the loopholes as a reason to demand the revision of the terms of the contract or the dissolution of the contract for the purposes of cancelling the original preferential policies or subsidies. The dishonest practices of some Member State governments have not only disrupted the original investment plans of the companies, but also dampened the confidence of the companies to invest in Europe.

4. Service capacity of Member State governments needs to be improved

Although the European Union is improving administrative efficiency through digitisation, especially through the rapid adoption of such new technologies as eIDs and eDocuments, the government's capacity to provide service for e-commerce and other new technologies and new business types has not improved simultaneously. Lack of familiarity and knowledge about the new business types on the part of government agencies of the European Union has led to overregulation or even misregulation, and undermined business efficiency. Cross-border e-commerce is a relatively new business type. European government agencies are lagging behind in understanding this new type of business, and cannot keep pace with the rapid development of cross-border e-commerce as far as government services and regulation are concerned. For example, the companies surveyed reported that German customs authority is not familiar with cross-border e-commerce and unwilling to take the initiative to know more about this new business, resulting in low supervision efficiency and prolonged customs clearance.

III. Our recommendations

1. Modernise government service capacity

In promoting the digitisation of public services, the European Union should not neglect the modernisation of government public service capabilities. We recommend that Member States should focus on improving the administrative and operational capacity of government staff, and strengthen professional skills training to better serve the business; increase investment in public service capacity building, introduce at government level regulatory and service measures for emerging business types such as cross-border e-commerce, and organise training for government staff and front-line law enforcement personnel so as to better equip them with the knowledge of emerging business types; optimise all the approval processes involved in business operation, reduce the time and expenses required by related links, improve efficiency and speed up the actual implementation of the "Once-Only-Principle".

2.Speed up the integration of public services in the European Union

We recommend that the European Union should take the opportunity of building the digital single market to strengthen the development of an integrated public service system, make full use of electronic and digital means to break down the barriers of public services among Member States; strengthen unified public information delivery capacity at EU level, and solve the problems of information asymmetry and of the lack of transparency faced by enterprises when investing in the Union.

3.Vigorously raise the government's credibility

Government credibility is an assurance for businesses investing in the European Union. For the governments of the European Union and its Member States, they must vigorously raise government credibility in order to attract foreign direct investment. Information asymmetry between the government and the business is an important reason for the loss of government credibility. We recommend that the European Union should take the opportunity of the eGovernment development to step up the government information disclosure effort, and ensure the integrity, timeliness and accuracy of the information disclosed to keep enterprises well-informed of government policies; establish an electronic platform for communication between the government and the business, and build a sound communication relationship between the government and the business, so that the government can win the trust of enterprises; improve the supervision and accountability system of government administrative behaviour, ensure that government behaviour is under effective scrutiny, and ensure that enterprises can be effectively and reasonably compensated in the event of a breach of contract on the part of the government.

Chapter Six

The General Data Protection Regulation Section

On 25 May 2018, the European Union put into effect the GDPR²⁵, with a view to coordinating the data privacy laws of Europe and protecting the data privacy of EU citizens.

I. Recent developments

1. The six principles for personal data processing

To effectively protect personal data, the GDPR provides six principles for personal data processing: **lawfulness, fairness and transparency** — Processing must be lawful, fair, and transparent to the data subject; **purpose limitation** — One must collect and process data for the legitimate purposes on the principle of specificity, clarity and legitimacy; **data minimisation** — One should process only as much data as absolutely necessary for the specified business, and shall not collect any non-necessary personal data; **accuracy** — One must keep personal data accurate and up to date and take all reasonable measures to promptly remove or correct inaccurate personal data; **storage limitation** — One may only store the data for as long as necessary for the specified purpose while circumstances under which extensions are allowed are also identified, such as processing for the purposes of public interests, scientific or historical research, and statistics. That said, the data controller must take reasonable technological and organisational measures to ensure data security; **integrity and confidentiality** — Processing must be done in such a way as to ensure appropriate security. In course of such processing, strict authorisation is imperative for data acquisition to avoid unlawful disposal or inappropriate leakage.

2. Data subjects' eight rights

It's a basic right of the natural person to enjoy protection in the course of personal data processing. GDPR has established a clear system of the rights of data subjects. The rights of the data subject to personal data include, among others: **the right to be informed**, the data subject has the right to require the controller to provide related information in an easily accessible and intelligible form; **the right of access**, the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and related information; **the**

²⁵ <https://gdpr-info.eu/>

right to rectification, the data subject shall have the right to obtain the rectification of inaccurate and incomplete personal data concerning him or her; **the right to erasure/be forgotten**, where the data subject requests for erasure or the controller loses the legal grounds for retaining the data, the personal data shall be erased without undue delay; **the right to restrict processing**, the data subject shall have the right to obtain from the controller restriction of the processing of the personal data concerning him or her; **the right to data portability**, the data subject, under particular circumstances, shall have the right to receive the personal data concerning him or her in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller; **the right to object**, the data subject shall have the right to object to processing of personal data concerning him or her. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests and rights of the data subject; **rights in relation to automated decision making**, the data subject shall have the right not to be subject to a decision based solely on automated processing, which produces legal effects concerning him or her or similarly significantly affects him or her.

GDPR's definitions of key terms

- **'Personal data'** means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- **'Processing'** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means.

- **'Controller'** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

- **'Processor'** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

3. Potential jurisdiction over companies across the world

The GDPR has extensive territorial scope. Companies whether or not established in the EU may come under its jurisdiction. Specifically, its regulatory scope includes: the processing of personal data in the context of the activities of an establishment of a controller or a processor in the EU, regardless of whether the processing takes place in the EU or not; the processing of personal data of data subjects who are in the European Union by a controller or processor not established in the Union, where the processing activities are related to the offering of goods or services to such data subjects in the Union, or the monitoring of their behaviour as far as their behaviour takes place within the EU; and the processing of personal data by a controller not established in the EU, but in a place where Member State law applies by virtue of public international law.

4. Significantly increased requirements for corporate data compliance

The GDPR provides that data controllers shall take appropriate technological and organisational measures to ensure and prove that their data processing is GDPR-compliant. Companies are important data controllers. Data compliance requirements for companies mainly include the following three aspects.

Recording data processing activities. Each controller and the controller's representative shall maintain a record of processing activities under its responsibility in writing, including in electronic form. But this obligation shall not apply to an enterprise or an organisation employing fewer than 250 persons unless the processing it carries out is likely to result in a risk to the rights of data subjects.

Data protection impact assessment. Where a type of processing in particular using new technologies is likely to result in a high risk to the rights of natural persons, the data controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

Designation of the data protection officer. The controller and the processor shall designate a data protection officer in any case where the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope or their purposes, require regular and systematic monitoring of data subjects on a large scale.

A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.

5. Maximum fines based on total worldwide turnover

The GDPR imposes hefty punishment of up to EUR20 million or 4 percent of the total worldwide annual turnover of the preceding financial year, whichever is higher, on infringements. But since the GDPR became effective, with the exception of the huge fine of EUR50 million on Google, the fines of other cases are relatively small (see Table 6).

Table 6 Fine levies since GDPR became effective

Country	Date	CASE	Fine
Germany	December 2018	Knuddels.de, a messaging network, failed to encrypt user passwords.	EUR20,000
France	January 2019	Google's lack of transparency when processing user data; inconvenience for user to access data; and absence of effective principle of voluntariness in personalized advertising	EUR50 million
Denmark	May 2019	"Taxa 4 X 35", a car rental company breached the principle of minimum data	DKK 1.2 million (approximately EUR160,000)
Lithuania	May 2019	MisterTango, a fintech company, inappropriately processed data, leaked personal information and failed to report the leakage to the regulator	EUR61,500
Poland	September 2019	Morele.net, a retail website failed to take reasonable measures to protect data security, which resulted in the leakage of the data of 2.2 million customers	PLN 2.80 million (approximately EUR650,000)

Source: Summary of public information.

II. Analysis of problems

1. Extensive regulation markedly drives up compliance costs

With 99 articles in 11 chapters, the GDPR features numerous clauses and complex rules, considerably increasing the subjects' control over data while laying out the requirements for controllers. For instance, data controllers shall process the subjects' personal data in a lawful, fair and transparent manner; keep a record of data processing activities and take appropriate measures to provide related processing information to data subjects; and ensure the subjects' right to access, rectify, delete, restrict the disposal of, reject and make self-determined decisions regarding personal data. Complicated and stringent rules will inevitably raise the compliance costs of companies.

Hefty compliance costs. To fully comply with the GDPR, companies have to commit enormous energy and funds, including substantial upfront costs and compliance costs throughout the operation. A survey by Price Waterhouse Coopers Consulting finds that 77 percent of the responding companies will each spend over USD1 million in response to the GDPR²⁶.

Huge time costs. Most of the respondents note that it will take them more than 10 years to fully meet GDPR requirements. Surveyed Belgian companies indicate that by hiring professionals and engaging consultancies, they can only meet 50 percent of the requirements in two years with many gaps to fill and have already spent EUR1 million.

The survey points out that with 96.1 percent of the companies reporting higher costs due to the GDPR. An overwhelming majority of 90.3 percent attribute the increase to management costs, followed by labour costs (70.3 percent) and customer service costs (63.9 percent). Only 3.9 percent of the respondents report no impact from the regulation (see Figure 12).

2. Ambiguities make compliance much more difficult

The great number of ambiguities and complex technicalities in the GDPR make it difficult for businesses to understand and follow. The survey data show that among the GDPR-literate respondents, 65.2 percent find its provisions lack clarity and are difficult to put into practice. Deloitte's

²⁶ <https://4f0imd322ifhg1y4zfwk3wr7-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/pwc-gdpr-series-pulse-survey-1.pdf>

research suggests that 54 percent of the 1000 polled small- and medium-sized companies find GDPR rules extremely confusing. For instance, the GDPR requires companies to provide a reasonable level of protection for personal data without defining the specific criteria for ‘reasonable’.

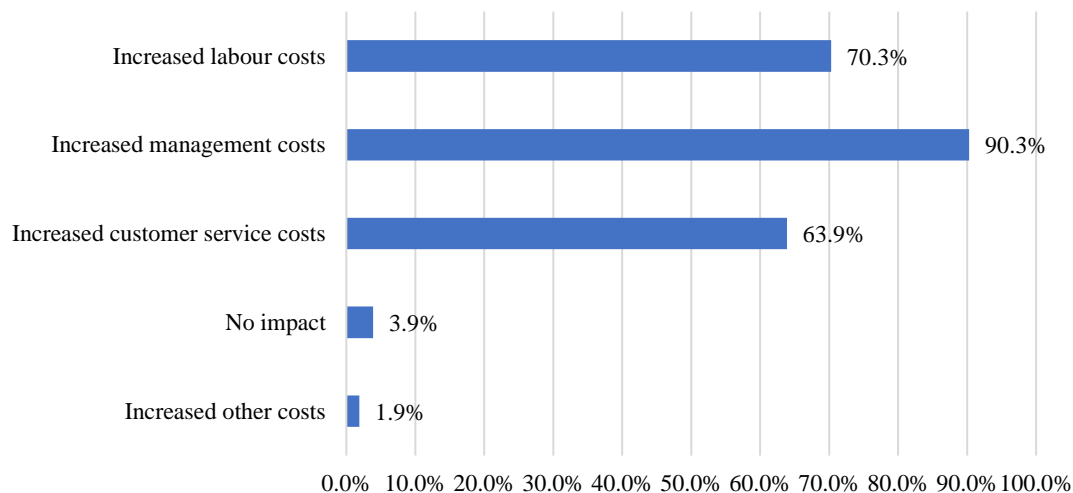


Figure 12 GDPR impact on business costs

Source: CCPIT Academy.

In order to balance the rights and obligations of data owners and data users, the GDPR has done much balancing and compromising, including on the rights of data subjects, where the regulation sets quite a few exceptions or restrictions for the right of access and the right to be forgotten, among others. There is even a special chapter titled ‘Provisions relating to specific processing situations’, granting mandate to member states to enact related rules in accordance with the GDPR to address specific situations. These balancing mechanisms introduced to make the articles more scientific and reasonable, also complicate the rules and defy business efforts to identify legal boundaries.

BITKOM of Germany conducted a survey of 500 companies in September, which points to legal uncertainty as the biggest challenge facing companies enforcing the GDPR (see Figure 13).

Ambiguous provisions create difficulty in the mastery of compliance requirements by businesses implementing the GDPR and thus the correct conduct of compliance work in accordance with the regulation. As businesses are at a loss to identify the boundaries of compliance, their infringement risks in data protection mount as a result of poor understanding of the rules.

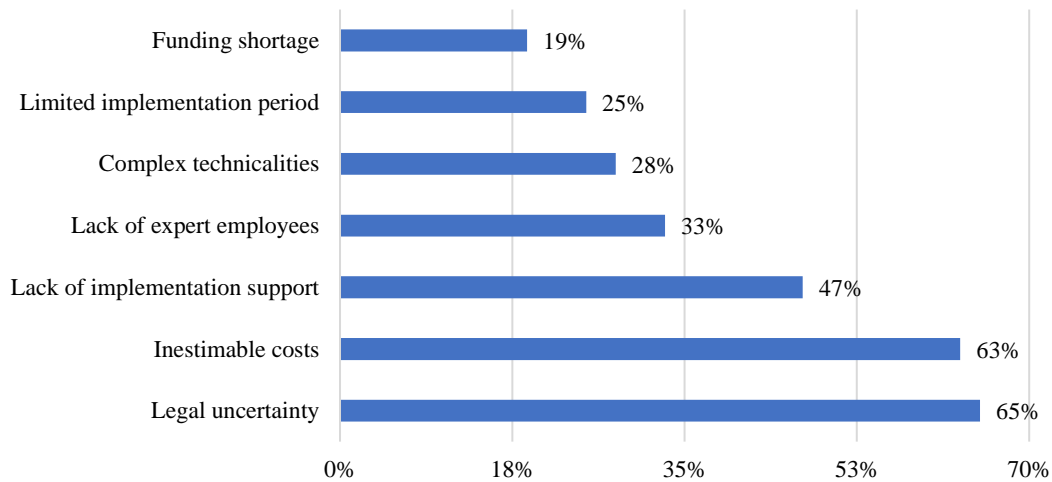


Figure 13 Key challenges facing companies' implementation of the GDPR

Source: Bitkom.

3. Stringent regulation disrupts normal business operations

The GDPR assigns many rights to data subjects, directly interfering in business' process of data processing and disrupting normal business operation. For example, personal users may cite GDPR requirements repeatedly and even unreasonably demand that companies delete or rectify personal data information, among others, upsetting normal business order.

The GDPR's exacting compliance requirements for businesses disrupt their operations related to data collection, processing and transmission. Research shows that curtailed ties between EU businesses and their parent companies, undermined data sharing and joint R&D businesses among global companies, and restricted industry scope of businesses investing in the European Union are among the Top 3 impacts of GDPR on business operations (see Figure 14).

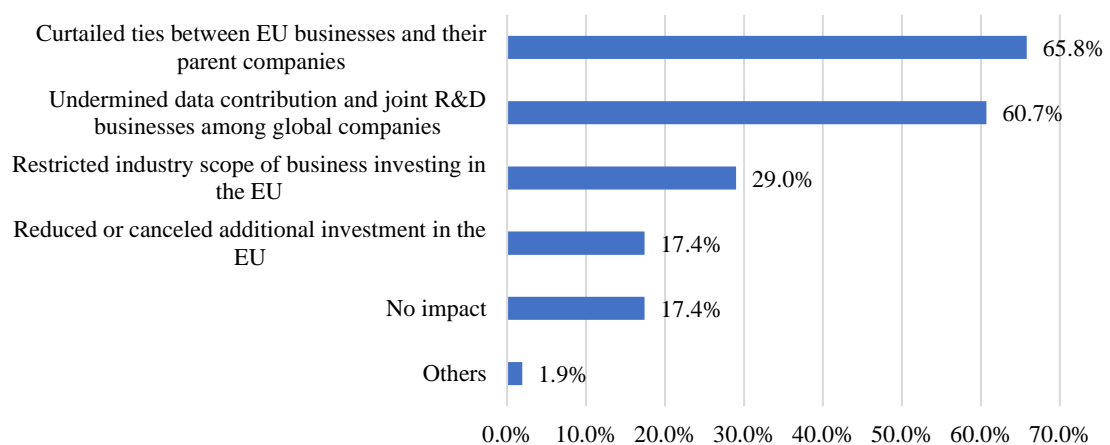


Figure 14 GDPR's impacts on business operations

Source: CCPIT Academy.

4. The efforts of financial institutions to develop the credit system suffer a setback

The credit blacklist approach can help financial institutions effectively mitigate operational risks and avoid defaults. Following the promulgation of the GDPR, credit defaulters demand that financial institutions remove their names from the blacklists on the grounds of personal data privacy, while the institutions may have to face GDPR penalties for protecting the integrity and efficacy of their credit system. In this case, the over-regulation of the GDPR hinders the development of the social credit system, increasing the risks of distressed debts and even financial frauds for businesses due to inadequate credit system.

5. Brakes on technological advances hinder business innovation

The right to deny internet companies user information provided by the GDPR will make it difficult for internet companies to collect user data. The lack of or incomplete user data will definitely affect the results of big data and artificial intelligence analytics. This is the most vivid illustration of the GDPR's outright restriction of technological innovation in big data, IoT, cloud computing, blockchain and AI, etc.

III. Our recommendations

1. Formulate operable supporting implementing rules

We recommend that the European Union introduce judicial interpretations and implementing rules for GDPR provisions that are as detailed as possible and highly operable to provide clear enforcement criteria and straightforward guide for business execution and avoid needless infringements due to poor understanding of the regulation.

2. Conduct business training based on judicial interpretations

To help businesses meet GDPR requirements effectively and better understand the regulation, we recommend that the European Union should create targeted guide manuals and papers for GDPR enforcement and application based on judicial interpretations, and allocate funds for business training to conduct training sessions irregularly as a public service.

3. Balance data protection against credit system development

We recommend that the European Union set more clarified and reasonable criteria for business responsibilities and avoid the obstruction

of reasonable and legal operations by over-protection of personal privacy. The development of the credit system is a key foundation for economic development. As data is an essential part of corporate credit system, it is advisable that the European Union should prevent over-protection from hindering the credit system while protecting personal data and balancing data protection against credit system development by providing data norms in credit system development.

Chapter Seven

The Digital Economy

Section

I. Recent developments

1. Release of the Commission Recommendation on Cybersecurity of 5G Networks

In March 2019, the European Commission issued its recommendations on cybersecurity of 5G networks²⁷ to strengthen cybersecurity legislation and introduce a host of policy instruments, conduct a comprehensive assessment of potential threats in 5G networks and step up cybersecurity precautions. The Commission recognises that any vulnerabilities concerning 5G networks in one Member State would bring security threat to the Union as a whole, so cooperation across the Union should be enhanced in cybersecurity.

At Member State level, by 30 June 2019, Member States should carry out a risk assessment of the 5G network infrastructure and update accordingly the security requirements for network suppliers. In particular where 5G is concerned, obligations on suppliers and carriers should be further clarified to ensure the security of 5G networks. Risk assessment should look at technical factors and the conduct of suppliers and carriers. Member States have the right to ban suppliers or carriers that fail to meet their national risk assessment standards from their markets on the grounds of national security.

At EU level, Member States should exchange information and by 1 October 2019, complete a joint review of Union-wide exposure to cybersecurity risks and form a whole set of risk management measures, including certification, security tests, and risk mitigating measures.

2. Issuance of the cybersecurity risk assessment report

In accordance with the Commission's Recommendation, the European Union published the report on risk assessment on cybersecurity in 5G networks on 9 October 2019, which appraises Union-wide cybersecurity risks and underlines that a) the trust in third-country suppliers and their role in 5G supply chains should be reviewed. In particular, as non-EU suppliers or those receiving support from third-country governments increase the vulnerability of 5G networks to attacks, all suppliers should go through effective security assessment; and b) dependence on a single supplier raises 5G risks.

²⁷ <https://ec.europa.eu/digital-single-market/en/news/cybersecurity-5g-networks>

3. Entry into force of the EU Cybersecurity Act

On 27 June 2019, the EU Cybersecurity Act²⁸ officially became effective, laying down specific measures for technological means, supporting facilities, security education and Member States' cooperation related to cybersecurity assurance, and include the following five aspects.

Establishing the agency for cybersecurity. The European Union Agency for Cybersecurity (ENISA) is designated the permanent agency for cybersecurity, whose key responsibilities include developing the EU cybersecurity certification framework and ensuring that EU ICT products, services and processes meet an adequate level of cybersecurity standards while preventing disagreements over cybersecurity certification within the EU.

Strengthening cross-border cooperation. Measures will be introduced to enhance EU cybersecurity cross-border cooperation, including summarising and analysing Member State cybersecurity reports, ensuring the effective flow of cybersecurity information, and providing public communications support.

Raising the security standards of cyber infrastructure. ENISA is to develop and maintain the European Cybersecurity Competence Centre and enhance the security standards of cyber infrastructure.

Improving cybersecurity communication and training. Efforts will be made to raise the cybersecurity awareness of EU citizens, including communicating the cybersecurity strategy, conducting cybersecurity training, and providing cybersecurity guidance.

Formalising cybersecurity certification. A unified cybersecurity certification system will be established to avoid discrepancies resulting from varying certification standards.

4. Digital taxes introduced in France, Austria and Spain

Compared to traditional businesses, the effective tax rates on EU digital economy are unduly low. The average tax rate of 9.5 percent on the digital economy is less than half of the 23.2 percent facing traditional companies, which is a gross breach of the principle of tax neutrality²⁹.

To address the taxation of digital economy, in March 2018, the

²⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0881&from=EN>

²⁹ https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf

European Commission proposed new rules for digital tax featuring higher levies on companies operating digital business in the EU. However, due to opposition from Ireland, Sweden and Denmark, the Commission was forced to put the scheme on hold and announced in March 2019 a suspension in Union-wide roll-out of the tax. Supportive Member States will advance the digital taxation respectively, with national plans developed by France, Spain and Austria.

France introduced its own digital tax in March 2019. Companies reporting global annual revenues of over EUR750 million with France accounting for more than EUR25 million will pay 3 percent in tax for ‘digital transactions’ (in the main digital advertising and cross-border data flow) while online direct sale, payment platform and internet financial services are exempt.

In 2020, Austria will start to impose a 5 percent digital tax on companies with global annual revenues of over EUR750 million as compared to the current 0.8 percent corporate income tax paid by internet companies.

The cabinet meeting of the Spanish government passed the digital service tax plan in January 2019 to place a levy of 3 percent on companies reporting global annual revenues of over EUR750 million with Spain contributing more than EUR3 million.

5. The European Parliament’s adoption of the China tech threat resolution

In March 2019, the European Parliament passed the resolution on security threats connected with the rising Chinese technological presence in the European Union and possible action on the EU level to reduce them³⁰ (the resolution on reducing China tech threats), calling upon the European Commission to develop a strategy for strengthened cooperation among Member States, reduced dependence on foreign technologies in cybersecurity and enhanced EU cybersecurity standards, while establishing a cooperation mechanism between the Union and Member States to raise the capability for foreign investment review and avoid cybersecurity risks generated by foreign direct investment.

The resolution notes the EU’s deep concern about Chinese-

³⁰ http://www.europarl.europa.eu/doceo/document/TA-8-2019-0156_EN.html?redirect

manufactured 5G equipment. The European Union believes that the obligation prescribed by Chinese State Security Laws of Chinese citizens and companies to cooperate in government activities as required by national security may be extended beyond the Chinese territory, so Chinese network equipment manufacturers may work with the Chinese government and obtain the private data from EU without authorisation, thus posing security threats to the EU. The resolution also mentions the Czech national authority for cybersecurity's warning against security threats posed by Huawei and ZTE, and Czech tax authorities excluded Huawei from a tender to build a tax portal.

6. Poland-US joint declaration on 5G

In September 2019, US and Poland signed Poland-US Joint Declaration on 5G in Warsaw³¹, endorsing the Prague Proposals³² and vowing to strengthen cooperation on 5G network security and ensure that all suppliers in their networks are 'trusted and reliable'. The declaration also lists the elements to be considered when evaluating 5G network suppliers, such as whether the supplier is subject to control by a foreign government, whether the supplier has a transparent ownership structure, and whether the supplier has a record of ethical corporate behaviour and enforces transparent corporate practices.

7. Resolution passed on mitigating 5G-related risks

On 3 December 2019, the Council of the EU adopted the Council Conclusions on the significance of 5G to the European Economy and the need to mitigate security risks linked to 5G³³, underlining that a) in addition to the technical risks related to cybersecurity of 5G networks, also non-technical factors such as the legal and policy framework to which suppliers may be subject to in third countries, should be considered; b) Member States should consider the need to diversify suppliers in order to avoid or limit the creation of a major dependency on a single supplier; and c) trust in 5G technologies must be firmly grounded in the core values of the European Union such as human rights and fundamental freedoms, rule of law, protection of privacy, personal data and intellectual property.

³¹ https://www.premier.gov.pl/files/files/deklaracja_en-1.pdf

³² From 2-3 May 2019, the Prague 5G Security Conference was held in the Czech capital. Chinese companies were not invited. The meeting issued the non-binding Prague Proposals, emphasising the need to take into account the general risk of third-country governments' influence on suppliers. https://www.vlada.cz/assets/media-centrum/aktualne/PRG_proposals_SP_1.pdf

³³ <https://www.consilium.europa.eu/media/41595/st14517-en19.pdf>

II. Analysis of problems

1. Concocting and magnifying the China tech threat

The Council Conclusions seriously misrepresents and exaggerates the China tech threat. No country or organisation can by far provide solid evidence to prove that Chinese equipment and technology pose cybersecurity threats to other countries. In the absence of factual basis, the hype of national cybersecurity and China tech threat and discrimination against Chinese companies not only violate the market principle of fairness, but will also damage the EU's digital economy. The truth is the Chinese government takes the protection of data privacy very seriously and has never engaged in any way or supported any individual or company in the infringement of cyber privacy. China's Cybersecurity Law is aimed at protecting its own national security, rather than hurting others' interests. At the same time, Chinese companies faithfully abide by related EU laws and regulations and actively cooperate with the cybersecurity authorities of Member States in their reviews, which have found no security threat from Chinese companies to EU cybersecurity.

2. Exclusion of Chinese companies by the Poland-US declaration

By signing the joint declaration, Poland and the US mean to protect 5G network security and strengthen cooperation for this purpose. The declaration includes no reference of communications companies of a third country, but in effect constitutes discrimination against Chinese companies.

The declaration endorses the Prague Proposals. But as key participants in global 5G network development, China and its 5G equipment manufacturers were not invited to the Prague 5G Security Conference. Nor did China take part in the consultations of the Proposals, which one-sidedly emphasise the general risk of third-country government's influence on suppliers and oversteps 5G's technological bounds.

The review standards for equipment suppliers provided by the declaration are very ambiguous and linked to their ownership structure and corporate governance model, which facilitates the governments' discriminatory measures against foreign companies.

III. Our recommendations

1. Stop the discrimination against Chinese companies in 5G

Cybersecurity is essentially a technological issue that requires a technological solution. It is not justified to set up unnecessary barriers to normal business operations on the grounds of unproven cybersecurity threats. To discriminate against businesses in 5G goes against the principle of fair play and the common interests of the international community. We recommend that the European Union should provide a fair and just environment for 5G cooperation of companies from across the world.

2. Refrain from over-intervention in 5G

The choice and use of 5G network equipment and suppliers are market behaviour that should be based on objective decisions by companies in view of their countries' actual needs and the technological specifications of related equipment. 5G is the bellwether of technological progress. Man-made market access barriers will only obstruct technological advances and sap the endogenous vitality of the world economy. The government should not meddle with and restrict normal business operations at every turn in the name of national security. It is suggested that the European Union take an accommodating approach to developing the 5G industry so as to promote technological and industrial progress.

Chapter Eight

The Intellectual Property Section

I. Recent developments

1. Cooperation on unitary patent protection lacks progress

Austria, France, Sweden, Belgium, Denmark, Malta, Luxembourg, Bulgaria, the Netherlands, Portugal, Finland, Italy, Estonia, Lithuania, and Latvia, had ratified the Agreement on a Unified Patent Court (UPC Agreement)³⁴. According to the rule, the Agreement will only enter into force after being ratified by at least all 13 Member States including the France and Germany. By far, the ratification process in Germany has been suspended due to challenge from the Federal Constitutional Court.

On 17 December 2012, the European Parliament and the European Commission passed the Regulation (EU) No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with the decision to develop the Unitary Patent and Unitary Patent Court. On 19 February 2013, 25 EU member states signed the Agreement on a Unified Patent Court in Brussels, Belgium, deciding to set up European Union's unified patent court.

2. The Directive on Copyright in the Digital Single Market has been implemented

On 13 February 2019, the European Commission, the Council of Ministers and the European Parliament officially agreed on the Directive on Copyright in the Digital Single Market³⁵ (the Copyright Directive) aimed at addressing the legal uncertainties facing right holders and users when using copyrighted works in the digital environment and providing rules to facilitate cross-border access of cable TV and broadcast contents within the Union.

The Copyright Directive carried the Council of the European Union on 15 April 2019 with 19 Member States voting in favour, six against and three abstentions before officially coming out on 17 May 2019. Member States are obligated to transpose the Directive through domestic legislation in two years.

³⁴ In the order of ratification by Member States, <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2013001>

³⁵ <https://ec.europa.eu/digital-single-market/en/copyright>

The European Union published the Digital Single Market Strategy in May 2015 and accordingly drew up the draft Directive on Copyright in the Digital Single Market in September 2016.

3. The EU Geographic Indication Register has been launched

In 2013, Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs, which is the European Union's new GI protection law, entered into force, after a third revision of the EU's GI protection system. As compared with the original regulation, the new system includes additions such as the purpose of GI protection, protection during the transition period, local farming and direct sale reporting while specifying and improving the provisions on GI requirements, dispute settlement and protection measures.

On 1 April 2019, the European Commission launched a brand-new public data base named eAmbrosia—EU geographical indications register that provides access to all EU GI information, including status (applied, published or registered), information of protected products, and a link to legal basis for GI protection.

II. Analysis of problems

1. Discrimination against foreign investors acquiring intellectual property

To acquire intellectual property in the course of investing is a normal activity between businesses. However, foreign-invested companies often face discrimination from government and business when acquiring EU intellectual property, which has become an impediment to business investing in the EU.

A survey shows that among respondent businesses that have purchased IP, 62 percent have suffered discrimination or opposition; with the congress of some EU Member States creating barriers for foreign investors' normal purchases citing key technology and IP protection, 19 percent of the companies met with intervention from the European Union or Member States; and 71.4 percent of the companies were required to provide related information in the review process (see Figure 15).

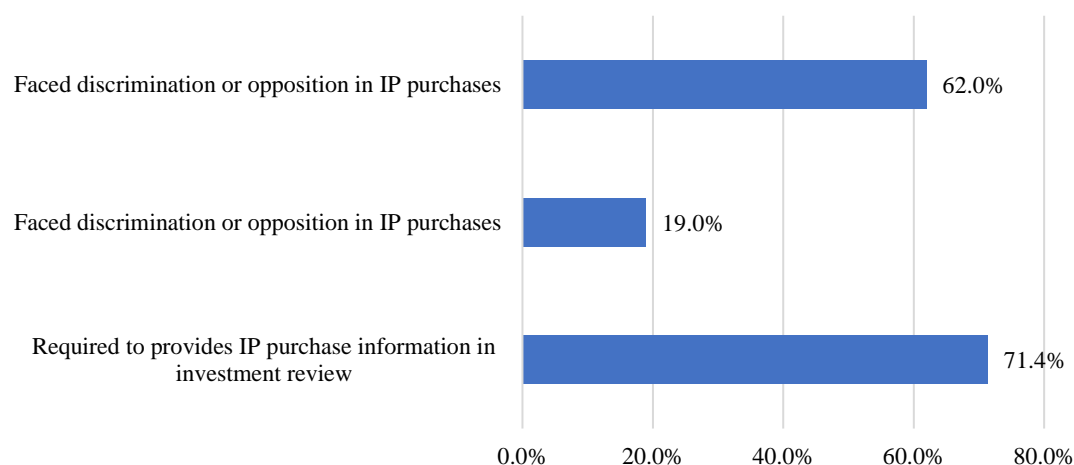


Figure 15 Issues facing businesses acquiring IP in the EU

Source: CCPIT Academy.

2. Events like Brexit increase business costs

It remains unclear whether the UK will be subject to the EU's unitary patent system post-Brexit. Though the UK has ratified the UPC Agreement and indicated its wish to stay in the unitary patent system after Brexit, given that the legal basis for the UPC is EU law, Brexit will increase the uncertainty facing the EU's unitary patent system.

Germany's ratification of the UPC Agreement has stalled. Despite the early clearance at both chambers of the Bundestag, in June 2017, the Federal Constitutional Court of Germany started to hear the case contesting the constitutionality of the UPC Agreement, bringing the ratification process to a halt. So far no verdict has been issued regarding the constitutionality of the UPC Agreement³⁶.

The repeated delays of the entry into force of the Agreement hold up the patent costs of investors. Due to disunity in the judicial systems of Member States, companies have to pay separate patent fees in each country. When the patent becomes effective in Member States, the applicant is granted rights separately protected by the law of Member States. In case of patent infringement litigation, the right holder has to sue separately and face high costs to protect their rights.

3. Disclosure rules can easily lead to trade secret leakage

Regulation No 1151/2012 provides for the submission of a product

³⁶ Alan Johnson, Will 2019 be the year of the UPC?, <https://www.bristowsupc.com/commentary/will-2019-be-the-year-of-the-upc/>

specification in order to register GI with the European Union and lays down disclosure requirements in Article 7 and Article 19: the specification shall include a description of the product, including the raw materials, as well as the principal physical, chemical, microbiological or organoleptic characteristics of the product; a description of the production method that the producers must follow, including, the nature and characteristics of the raw materials or ingredients used, and the method by which the product is prepared. These disclosure requirements can very likely cause the leakage of trade secrets.

4. The cancellation process is susceptible to abuse

Article 54 of Regulation No 1151/2012 provides that the Commission may, on its own initiative or at the request of any natural or legal person having a legitimate interest, adopt implementing acts to cancel the registration of a protected geographical indication where compliance with the conditions of the specification is not ensured; or where no product is placed on the market under the protected geographical indication for at least seven years. As a result, even a company successfully registers a GI with the EU, it is vulnerable to bad faith litigation and might be stripped of the registration if no product is placed on the market under the protected geographical indication for at least seven years.

III. Our recommendations

1. Give equal treatment to IP acquired by foreign investors

Foreign investors' procurement of IP is a self-determined and market-oriented activity aimed at strengthening innovation and promoting joint R&D so as to drive EU employment and economic growth. We recommend that the European Union should stop discrimination against foreign-invested companies in IP trading and treat them in a market-oriented way to promote the EU's technological exchange with the rest of the world.

2. Accelerate legislation for unitary patent

To effectively reduce patent costs such as translation fees, licensing fees and litigation fees, encourage science and technology innovation and improve IP protection, we recommend that the European Union should speed up the unitary patent process. Especially Germany should expedite the domestic ratification of the UPC Agreement.

3. Protect trade secrets in GI registration

We recommend that the EU's disclosure requirements for GI registration give full consideration to the protection of business privacy and trade secrets and set reasonable bounds for disclosure.

4. Fairly enforce GI cancellation

The exercise of power needs legal definition and restriction. It is suggested that the conditions whereby the European Commission has the right to cancel the GI registration be further clarified to avoid excess discretion, spell out the cancellation process, and improve the scrutiny of power.

Chapter Nine

The Public Procurement Section

I. Recent developments

1. Strategic priorities of EU public procurement were unveiled

In October 2017, the European Commission published *Making Public Procurement Work in and for Europe*³⁷, underlining the need for the EU to pay more attention to public procurement and ensure that public procurement funds meet efficient, sustainable and strategic purposes. The European Union set six strategic priorities to promote public procurement modernisation: ensuring broader adoption of innovative, green and social procurement; making procurers more professional; increasing the chances for companies to access the EU's procurement market and for EU companies to access non-EU market through trade agreements; raising transparency, integrity and data reliability; facilitating public procurement digitisation; and promoting cooperation on joint procurement.

2. International procurement mechanism is actively promoted³⁸

In 2012, the European Commission proposed the establishment of an international procurement mechanism. Products from trading partners without a reciprocal public procurement policy will face restricted access to EU public procurement market. Furthermore, the European Union can investigate and retaliate against non-reciprocal procurement conduct of other countries. In 2016, the European Commission tabled the amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement; In March 2019, the European Commission urged the Parliament and the Council to pass the international procurement mechanism in accordance with the amended proposal by the end of 2019.

3. Guidance for third-country bidders was issued

On 24 July 2019, the European Commission published the Guidance on the participation of third-country bidders and goods in the EU procurement market³⁹, setting forth to ensure a level-playing field in cooperation with China and aiming to create more balanced and mutually beneficial international economic relations through the Guidance underlining strict labour, social and environmental access standards.

³⁷ <https://ec.europa.eu/docsroom/documents/25612>

³⁸ http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154187.pdf

³⁹ <https://ec.europa.eu/docsroom/documents/36601>

II. Analysis of problems

1. Public procurement bids discriminate against foreign-invested companies

The discriminatory rules in the EU public procurement access criteria keep foreign-invested businesses out of its public procurement market. The EU's public procurement documents stated clearly that the procurement scope is the EU and North America, excluding other countries and economies. The documents of some Member State governments define the tender process too narrowly, favouring domestic businesses and technically excluding foreign-invested companies. In Poland's public procurement, companies complain that though the bidding process is nominally open to foreign-invested companies, public bids often name target companies (by and large EU companies) and in effect discriminate against foreign investors. Poland revised the bidding criteria in 2015 and 2016 to require EU construction experiences of bidders and Polish qualifications of builders, in effect excluding many non-EU companies.

The survey shows that 66.7 percent of the respondents having participated in EU public procurement report unfair treatment (as shown in Figure 16).

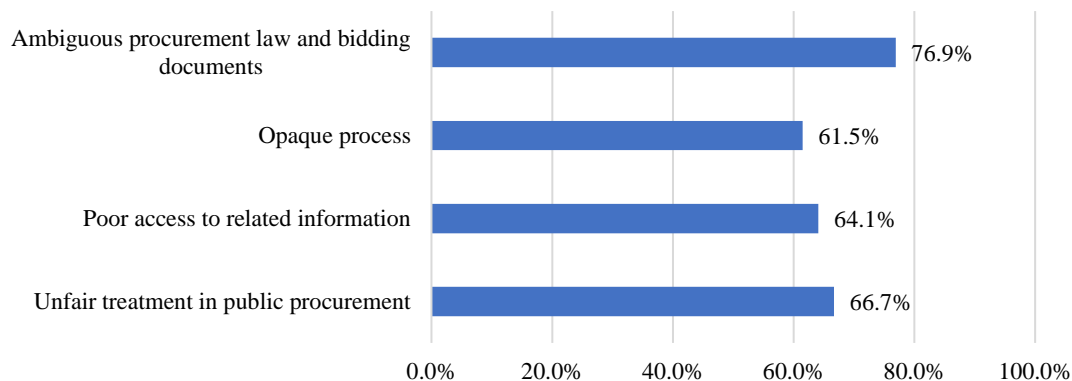


Figure 16 Issues facing businesses participating in EU public procurement

Source: CCPIT Academy.

2. Public procurement procedures are opaque and unfair

In public bidding projects, ambiguities in bidding documents often make them difficult to understand and thus create barriers for foreign investors while giving local players advantages. As regards products standards and testing, foreign investors face opaque or discriminatory product certification procedures whereas local companies can benefit from better

access to information and avoid such issues, which causes de facto discrimination against foreign-invested companies. Among the respondents having participated in the process, 64.1 percent are unable to access related information effectively; 61.5 percent believe that EU public procurement procedures are not transparent enough; and 76.9 percent report ambiguities in EU regulations and bidding documents (as shown in Figure 16).

Corruption also affects the fairness of public procurement. The 2014 Report from the Commission to the Council and the European Parliament on EU Anti-Corruption⁴⁰ names public procurement of Member State as one of the most corruption-prone areas. Over 50 percent of the respondent companies see corruption in public procurement as common. Of these 56 percent find corruption common in central government procurement as compared to 60 percent that hold the same opinion of local government procurement. 32 percent of the companies having participated in public procurement bidding attribute failure to corruption. The Report also lists the main forms of corruption in public procurement, namely, tailor-made bidding conditions for pre-designated companies; conflict of interests between projects and procurement officials; random disqualification of bidders; wanton application of special bidding procedures; collusion among bidders; unfair selection and assessment; and taking kickbacks.

3. Foreign-invested companies face differential treatment in practice

After the public procurement process, bid winners are often subject to differential and discriminatory treatment from competent authorities. One respondent reported that after they won contracts in Poland, the government imposed unreasonable verification requirements on equipment import, project planning, and plant acceptance inspection with cumbersome approval procedures and protracted processes. Having to comply with higher requirements than their EU peers, Chinese businesses are in effect discriminated against in the country.

III. Our recommendations

1. Raise the transparency of public procurement procedures

⁴⁰ Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, February 3, 2014.

The European Union should avoid random procurement and backroom dealings and combat illegal and corrupt acts in public procurement and integrate the processes in accordance with law. In particular, formalised information sharing and disclosure systems should be established and access to information regulated by procurement departments to ensure timely issuance and accurate and clear access to and understanding of information by all participants and eliminate information asymmetry. Public procurement rules and bidding documents should be free from discriminatory elements to treat all companies equally and remove unreasonable access conditions. In post-bidding implementation, foreign-invested companies should be treated fairly and subject to no discriminatory review and management requirements.

2. Accelerate public procurement digitisation

We recommend the European Union should apply digital technology to apply IT-enabled management to the procurement process, so as to reduce artificial interference and mitigate corruption risks for open, transparent and informatised procurement. The integration of public procurement should be promoted for Union-wide information sharing. Unitary and shared EU-level information networks of supplier and products should be piloted to maximise the utility of manpower and funds, raise procurement efficiency and incentivise business participation in public procurement.

3. Establish a monitor and management system for public procurement

To ensure a fair and just procurement process and minimise artificial interference, we recommend that the EU set up a multi-layered public procurement monitor system with checks and balances to regulate the responsibilities, rights and obligations of procurers, agencies, suppliers and administrators. Systems are also needed for post-procurement inspection, tracking and accountability.

4. Back China's accession to the Government Procurement Agreement

The Government Procurement Agreement is a WTO deal specially aimed at liberalising the government procurement market. China's accession would significantly improve international trade and create a

broader market for other parties. Since the inception of its accession negotiations, China has actively engaged with the parties and continuously improved offers and expanded scope of commitment, highlighting its resolve to expand open-up and the goodwill to safeguard the multilateral trading system. China's accession would produce mutual benefits and win-win outcomes for all parties. It is hoped that the European Union will further its active support for China's accession efforts for an early conclusion of the talks.

Chapter Ten

The Anti-trust Section

I. Recent developments

1. Germany and Austria announced the value threshold for transaction notification

On 18 August 2018, Germany and Austria released the final version of the *Joint Guidance on the New Transaction Value Threshold* (hereinafter referred to as the “Guidance”). Prior to the Guidance, a transaction only had to be notified if the turnover achieved by the companies concerned reached certain minimum turnover thresholds⁴¹. The Guidance now establishes value thresholds (EUR400 million in Germany and EUR200 million in Austria), requiring transactions below the turnover thresholds and above the value thresholds to be notified. As a result, mergers where companies or assets which (as yet) generate little or no turnover but are purchased at a high price can now be examined by the regulators under competition law.

2. A Joint Statement to promote industrial development in the European Union was released

On 18 December 2018, a Joint Statement⁴² by France, Austria, Croatia, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Romania, Slovakia, and Spain was released to promote industrial development of the European Union. The Joint Statement noted that antitrust rules must better take into account international markets and competition, so that EU industrial giants can withstand the “fierce competition” from China and the US and the competitiveness of European industry can be maintained.

3. France and Germany released the Manifesto for a European Industrial Policy

On 19 February 2019, Federal Ministry for Economic Affairs and Energy of Germany and the Ministry for the Economy and Finance of France jointly released *A Franco-German Manifesto for a European Industrial Policy Fit for the 21st Century*⁴³, proposing three pillars for European industrial strategy: massive investment in innovation, adaptation

⁴¹A concentration has to be declared in the EU if the parties’ combined worldwide turnover exceeds 5 billion euros and the EU-wide turnover of at least two parties exceeds 250 million euros.

⁴² https://www.gouvernement.fr/sites/default/files/locale/piece-jointe/2018/12/929_-_declaration_finale_-_geme_reunion_des_amis_de_lindustrie-en.pdf

⁴³ https://www.bmwi.de/Redaktion/DE/Downloads/F/franco-german-manifesto-for-a-european-industrial-policy.pdf?__blob=publicationFile&v=2

to regulatory framework, effective measures for self-protection. In terms of regulatory adjustment, French and Germany proposed to: change existing European competition rules to take into greater consideration the impact of state-control and subsidies in antitrust review; update current merger guidelines to take greater account of competition at the global level and potential future competition, so that the European Commission has flexibility when assessing relevant markets.

4. France, Germany and Poland call for reform of anti-trust law

In July 2019, France, Germany and Poland submitted to the European Commission the proposal titled *Modernizing EU Competition Policy*⁴⁴. The proposal emphasized that current EU merger control does not sufficiently take into account the impact of third countries' state control and subsidies for undertakings, and stated that the European Commission should "introduce more flexibility" and "better take into account competition at global level", and that Council of the European Union should play its role in the consolidation of European champion enterprises.

II. Analysis of problems

1. Foreign enterprises are more likely to be subject to review

With value thresholds as one of the triggers for merger review under the Guidance, the scope of transaction notification is greatly expanded, which means the scope of merger review is enlarged by the double thresholds of turnover and value. In particular, governments trying to impede the acquisition of emerging SMEs by foreign companies can use the Guidance as a protectionist tool to carry out merger review.

2. Antitrust reviews do not fit the realities of Chinese SOEs

In merger review, the European Commission simply adds up the turnovers or market share of the company filing the notification and companies specially related to it (such as parent company and subsidiaries). However, the European Union failed to uphold the non-discrimination principle set forth by the *Merger Regulation* when it comes to mergers between Chinese SOEs and European companies. In 2016, in the review of the joint investment by China General Nuclear Power Corporation (CGN) and Electricite De France (EDF) in the Hinkley Point C project, the European Commission claimed that CGN did not enjoy independent power

⁴⁴ https://www.bmwi.de/Redaktion/DE/Downloads/M-O/modernising-eu-competition-policy.pdf?__blob=publicationFile&v=4

of decision, and as such its turnover should also cover that of other SOEs in the energy sector under the State-owned Assets Supervision and Administration Commission of the State Council. That is to say, the European Commission regards all the Chinese SOEs in the same sector as the “same economic unit”, as opposed to the normal practice of aggregating the turnover or market share of “related businesses” only. Such wrongful approach to calculation has led to results that are much higher than the actual turnover of Chinese companies in merger reviews.

3. Double-standards are applied on Chinese SOEs

State-owned enterprise, as a form of business organization and operation, is broadly present in numerous economies around the world. According to the *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*⁴⁵ published by OECD, SOEs in the 31 countries involved are all subject to the administration of the state or government to a certain degree. But Chinese SOEs are treated differently than those from other countries in the EU merger review. In 2009, when EDF sought exclusive control of Segebel, a Belgium company, the Belgian government believed that the French government having stakes in EDF and GDF Suez may create a synergy effect of the two. But the European Commission concluded in the review that EDF and GDF Suez enjoyed independent power of decision from each other. The double standards applied on China by the European Commission in considering “government impact on businesses” constitute discrimination against Chinese SOEs.

4. Anti-trust reviews are prone to infringe on trade secrets

Mandated by Article 20 of EU Regulation 1/2003, the European Commission is empowered to: enter any business premises without advance notice; to examine and copy the books and other records related to the business; to seal any business premises and books and records; to ask any representative or member of staff for explanations on facts or documents and to record the answers. If a reasonable suspicion exists that books or other records related to the business are being kept in any other premises, the Commission is also empowered, subject to the authorization

⁴⁵ <http://www.oecd.org/corporate/ca/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices.pdf>

of the judicial authority of Member States, to enter the premises, including private homes. Such power may infringe upon trade secrets and personal privacy.

III. Our recommendations

1. End discrimination against Chinese SOEs

The Chinese SOEs invest in the EU independently and based on market terms. We recommend that the European Union acknowledge the independence of Chinese SOEs with investment in the European Union, refrain from the unfair practice of aggregating all the turnovers of SOEs in the same sector in anti-trust review, and treat all foreign SOEs equally.

2. Reduce business disruption caused by anti-trust inspections

We recommend that the European Commission and the competition authorities of Member States minimize the frequency of anti-trust inspections and refrain from entering private homes as much as possible to reduce the disruption to businesses and their management. They should pay full respect to the right of businesses in trade secret protection, clarify the procedures and scope of inspection before entering business premises, and must not infringe on trade secrets under the pretext of enforcement to ensure fair competition.

3. Further clarify review thresholds and rules

We recommend that Germany and Austria introduce further rules to clarify the value thresholds, draft reasonable and clear pre-review conditions, and clarify the review criteria, so that review rules are not abused as protectionist tools.

Chapter Eleven

The Standard

Certification Section

I. Recent Developments

1. RoHS restrictive catalog was further extended

In June 2015, the European Union published directive (EU) 2015/863 to revise Annex II of RoHS 2.0 (2011/65/EU), formally including four types of phthalate (DEHP, BBP, DBP, DIBP) into the Annex and bringing the restricted substances to ten (see Table 7).

Table 7 Changes to the EU RoHS control catalog

Originally controlled substances	Newly-added controlled substances
Lead(Pb)and its compounds	DEHP
Mercury(Hg)and its compounds	BBP
Cadmium(Cd)and its compounds	DBP
Hexavalent chromium(CrVL)compounds	DIBP
PBBs	
PBDEs	

Considering the time needed to satisfy the new requirement on hazardous substances, (EU) 2015/863 allows a transition period: starting from 22 July 2019, all the electrical and electronic equipment to the European Union (except medical and monitoring equipment) must meet the requirements; starting from 22 July 2021, medical equipment (including non-invasive medical equipment) and monitoring equipment (including industrial monitoring equipment) must be put under control.

RoHS, short for the *Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment*, is a mandatory standard introduced by EU legislation. The RoHS standard, effective on 1 July 2006, serves to set the requirements on materials and techniques for electrical and electronic products to protect human health and environment.

2. WEEE may be applicable to all products

WEEE directive is implemented in two phases, the first from 13 August 2012 to 14 August 2018, covering 10 categories of products; starting from 15 August 2018, the applicable scope was revised and enlarged into six categories, covering almost all electrical and electronic equipment. Plus, the list is open-ended, which means unlisted products can also be subject to the scope of control (see Table 8).

Table 8 Change of scope of WEEE

13 August 2012 to 14 August 2018	After 15 August 2018
Large household appliances	Temperature exchange equipment
Small household appliances	Lamps
IT and telecommunications equipment	Large equipment (any external dimension more than 50 cm)
Consumer equipment and photo voltaic panels	Small equipment (no external dimension more than 50 cm)
Lighting equipment	Small IT and telecommunication equipmen (no external dimension more than 50 cm)
Electrical and electronic tools (with the exception of large-scale stationary industrial tools)	Screens, monitors, and equipment containing screens having a surface greater than 100 m ²
Toys, leisure and sports equipment	
Medical devices (with the exception of all implanted and infected products)	
Monitoring and control instruments	

The EU Directive on Waste Electrical and Electronic Equipment was officially introduced in 2003, with the objective to reduce the generation of WEEE, promote re-use, recycling and other forms of recovery, reduce the quantity of such waste to be disposed, and improve the environmental performance of WEEE from production to disposal.

3. REACH has frequently updated the notification list

Under REACH, substances of very high concern (SVHC) are defined as substances that are carcinogenic, mutagenic, toxic to reproduction, persistent, bioaccumulative and toxic, or very persistent and very bioaccumulative, or substances that cause irreparable damage to environment and human health such as endocrine disrupting. Producers and importers of articles must notify European Chemicals Agency (ECHA) if any SVHC included in the Candidate List is present in their articles above the threshold of 0.1 percent weight by weight and if the quantity of such substance in those articles is over 1 tonne per producer/importer per year. The SVHC list was first published on 28 October 2008 and contained 15 items; four updated lists were released in 2010 and the items increased to 46; starting from 2011, it has been updated every half a year. On 16 July 2019, ECHA released the 21st version of SVHC list which added four items, bringing the total items to 201.

REACH stands for registration, evaluation, authorization, and restriction of chemicals and entered into force on 1 June 2007. It requires companies to prove that daily goods do not contain chemical substances posing risks to human health. All the daily goods manufactured in or imported into the European Union must be registered, tested, and approved for hazardous chemical substance. Once the substances are above the designated level, they may not be marketed in the European Union.

II. Analysis of problems

1. The designation of third-party certification organizations is not transparent

In the standard certification process, laboratories or certification organizations are designated by the European Union, while eligible organizations with EU recognition are so few that the process may be manipulated and reduced to a protectionist tool that excludes some foreign companies and products from the EU market.

2. The standard certification process is lengthy and costly

The standard certification process in the European Union incurs high financial and time cost. The companies surveyed reported that it takes

about RMB10,000 to certify the energy efficiency of all models of a compressor in the EU, compared with the much lower RMB3,000 in China; Certification by VdS, a Germany organization for the certification of firefighting equipment, security equipment and systems, can be quite expensive, according to our respondents. It costs around RMB250,000 to certify one product before it even enters the EU market or receives any order, pushing up the early input of businesses attempting to enter the EU market.

As regards the time period, it takes as long as five to six months or even a year to get energy efficiency certification in the European Union, compared with three or four months in China; it takes about half a year to apply for TÜV, a German safety logo for components and parts, compared with only half a month in Switzerland. The lengthy process will reduce the efficiency for foreign companies and products to enter the EU market.

3. Frequent change of standards hampers product marketing

The EU certification standards are updated so frequently that it raises the cost for businesses. ECHA updates its REACH catalogue every six months by adding substances or hazardous attributes of a certain substance. For example, in January 2018, ECHA added seven new SVHCs and updated for the third time standards for BPA, pushing up the certification cost for businesses. The surveyed international trading companies complained that as they represented numerous types of products, the frequent change of standards would burden them with higher cost.

The frequent update of standards also reduces the efficiency of product marketing. In the lighting area, respondents said that the approaches to testing changed and the ERP life-cycle test would take as long as 6,000 hours, delaying the marketing of their products. Sometimes, new standards are introduced before companies have yet completed certification by the old standards, leading to substantial waste of the operational cost and hampering the successful marketing of their products in the European Union.

4. Poor standard enforcement undermines fair competition

Fair and effective law enforcement is an important measure to improve business environment and protect the legitimate rights and interests of businesses, while poor standard enforcement would harm

business interests. According to the surveyed Chinese companies, in the 2017 energy efficiency examination by a Member State, a European refrigerator brand was graded level A, only found to be level B according to testing by Chinese companies, calling into question the accuracy of the energy efficiency test by the European Union; Chinese companies found that the products of some small importers were allowed into the EU market even when they failed to meet the safety standards. Some products are sold on the market even when they do not satisfy the safety requirements. This is unfair for those who comply with EU regulations and standards and other foreign-invested enterprises that have invested heavily in certification.

5. Chinese companies are not engaged in standard-setting

Chinese companies have a strong desire to engage in the EU standard-setting process, but are allowed few such opportunities. According to our survey, Chinese companies are very enthusiastic about engaging in EU standard-setting, with 89.7 percent companies responding affirmatively (as shown in Figure 17), while 88.3 percent companies said they do not have the opportunities to get involved. In the drafting of ERP rules by Lighting Europe, Philips, OSRAM, and other large European enterprises had greater voice while Chinese companies were excluded and lacked effective channels to make comments.

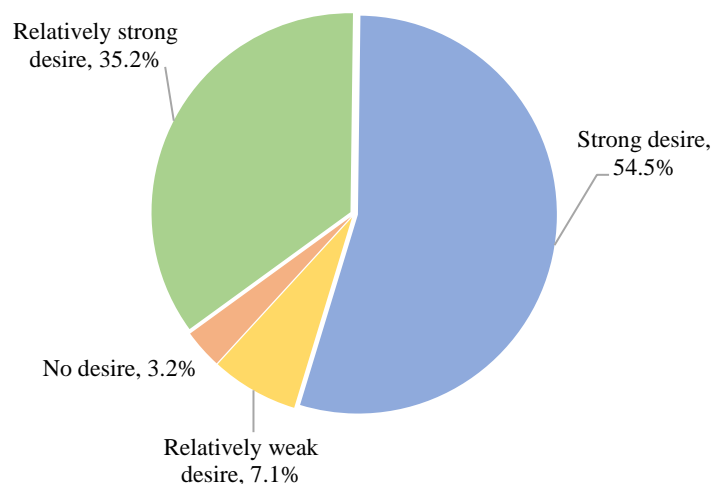


Figure 17 Desire of Chinese companies to engage in EU standard-setting

Source: CCPIT Academy.

III. Our recommendations

1. Certification organizations should be diversified and certification process should be transparent

To prevent costly and lengthy certification from obstructing access to the EU market, we recommend that the European Union diversify and expand the scope of selection of certification organizations, and ensure the certification process is objective, fair and transparent; we recommend the European Union to make the certification process more simplified, efficient, and less costly, and provide well-developed public services for businesses seeking certification.

2. Keep the standards relatively stable and predictable

Stable and predictable updates of standards are conducive to informed planning of production and R&D. We recommend that the European Union refrain from frequent updates and upgrade of standards, and make clear plans or rules for standards update that are suitable to the products.

3. Treat all enterprises equally in enforcement inspection

We recommend that the European Union treat products from all companies and countries equally in standard certification, adopt unified certification procedures, and step up enforcement inspection to prevent substandard products from entering the EU market and damaging the level playing field.

4. Engage foreign-invested enterprises in standard-setting on an equal footing

We recommend that the European Union listen to and adopt reasonable inputs from all businesses in standard-setting, establish long-term communication platforms and contact mechanisms between the governments, certification agencies, and businesses to timely receive responses from the businesses. In standard-setting, the European Union should take into full consideration the situation of enterprises from developing countries and provide them with a level playing field.

Chapter Twelve

The Taxation Section

I. Recent developments

1. VAT reform has simplified the collection and administrative process

In October 2017, the European Commission launched reform to the VAT rules⁴⁶, clarifying the rules for cross-border VAT collection and simplifying the process for levy and regulation.

Levy VAT on cross-border trade between businesses. The VAT is paid to the Member State of the final consumer and at the rate of that Member State. VAT will be declared and paid by the seller of goods within the European Union.

Simplify VAT declaration and payment procedures. The use of “one-stop shop” was expanded for cross-border service suppliers to declare and pay VAT in the country of registration; invoicing requirements were simplified.

Introduce the notion of “certified taxable person”. “Certified taxable person” refers to trusted EU companies. Companies, big or small, can be considered reliable taxpayers once certain criteria are fulfilled and would benefit from faster and easier taxpaying. The status of “certified taxable person” is mutually recognized among Member States.

2. Minimum VAT among Member States have been unified

Members of the European Community reached agreement in 1992 that the standard tax rate should be no more than 25 percent and no less than 15 percent with the exception of special industries. In June 2018, Council of the European Union adopted the directive to set the minimum VAT rate at 15 percent permanently. Application of the minimum standard tax rate can effectively avoid sharp discrepancies of VAT among Member States and reduce the risks of unfair competition arising from extremely low VAT.

3. France and Belgium have implemented large-scale tax cut

In September 2019, France announced tax reduction measures totalling EUR6 billion and planned to cut the first band of personal income tax by three percentage points to 11 percent. Tax d’habitation will be reduced step by step, granting a 30 percent tax reduction by 2018 for 80

⁴⁶ https://ec.europa.eu/taxation_customs/business/vat/action-plan-vat/single-vat-area_en

percent principal residence, and a reduction of 65 percent by 2019, leading finally to complete exemption for all principal home owners in 2020.

The tax reform bill was adopted by the Belgian Federal Parliament on 22 December 2017 and was officially issued on the 29th after signed by the King. The agenda of the tax reform mainly involves adjustment of corporate income tax rates, minimum tax bases, and dividend exemption. Corporate income tax will be gradually reduced from 33 percent to 25 percent from 2018 to 2020 (see Table 9).

Table 9 Corporate income tax reduction for different types of businesses in Belgium

	Non-SMEs	SMEs (annual revenue below EUR100,000)	SMEs (annual revenue above EUR100,000)
2018-2019	29.58%	20.4%	29.58%
Post 2020	25%	20%	25%

4. Poland has implemented the VAT split-payment mechanism

The bill to introduce the VAT split-payment mechanism was effective on 1 July 2018. The bill introduced an alternative for buyers to decide whether it will pay using the split-payment mechanism, so the net amount would be transferred to the regular bank account, whereas the VAT amount would be transferred to the special "VAT account", which can only be used to pay tax or pay tax for sub-suppliers.

II. Analysis of problems

1. Overall tax burden in major Member States is too heavy

The *Report on Taxation Trends in the European Union*⁴⁷ shows that European businesses and individuals are burdened with heavy tax. In 2017, tax revenue in the 28 Member States accounted for 39 percent of GDP, 0.3 percentage points higher than 2016. Tax level in the European Union is 11.9 percentage points (pp) above the level in the United States and almost 8.5 pp above that recorded by Japan, 7 pp higher than New Zealand, 12.1 pp higher than South Korea. Within the European Union, the most heavily taxed Member States are France (46.5%), Denmark (45.7%), Belgium (44.9%), Sweden (44.4%), and Finland (43.3%). According to *Doing Business 2020* report by the World Bank, leading EU economies are large tax contributors, with Germany ranking 46th, France, 61st, Belgium, 63rd,

⁴⁷ https://ec.europa.eu/taxation_customs/business/economic-analysis-taxation/taxation-trends-eu-union_en

Greece, 72nd, Poland, 77th, Italy, 128th. Heavy tax has raised the operational cost and directly led to the degradation of business environment in the European Union.

2. Tax system divergence in the EU raises business cost

Businesses operating in the European Union have to deal with the tax systems and complicated collection and administrative schemes of multiple Member States, which differ greatly in accounting practices, determination of taxable income, and tax collection and administration. Businesses have to follow different rules and navigate red tapes, which greatly raises financial cost and reduces operational efficiency.

The tax differences among Member States have also led to unfair tax burdens in reality. Large companies, with stronger capacity in cross-border resource allocation, may establish subsidiaries in the region with lower tax rate; while SMEs operating in different Member States have to struggle with the high cost of complicated tax systems, and therefore face difficulties in expanding globally.

3. Split-payment strains the funding flow of foreign-invested enterprises

The VAT split-payment mechanism in Poland is not mandatory, but in implementation Polish companies would often force Chinese companies to choose split-payment, straining corporate liquidity, raising financial cost and undercutting their competitiveness in the European Union.

III. Our recommendations

1. Ease the overall tax burden for foreign-invested enterprises

Amid the declining trend of overall corporate tax around the world, corporate tax burden in the European Union remain high, leaving room for further tax cut. We recommend that the Member States continue to ease business burdens through tax reduction and improve the business environment.

2. Push reforms to unify tax systems across Member States

Tax system convergence helps to uphold tax neutrality and enables more efficient cross-border flow of production factors among Member States. We recommend that the European Union move forward tax system reforms to narrow the gaps and gradually achieve tax convergence.

3. Standardize tax collection and administration among Member States

We recommend that the Member States promote tax compliance, expand the use of digital services, adopt electronic declaration, and simplify tax procedures and cut red tapes for all taxpayers (especially SMEs). They are expected to keep tax policies consistent, and reach out to businesses before adjusting tax policies to help them adapt and adjust, and release information through various channels in a timely manner.

4. Step up tax cooperation among Member States

We recommend the Member States strengthen cross-border tax cooperation, such as through automatic information sharing and inter-state data analysis sharing, and provide foreign-invested enterprises with readily-available taxation information of Member States to facilitate their investment and operation in the European Union.

Chapter Thirteen

The Finance Section

I. Recent developments

1. The new MiFID has been implemented

The second edition of the Markets in Financial Instruments Directive (MiFID II)⁴⁸ has been applicable across the European Union since 3 January 2018. Building on MiFID, MiFID II has made significant adjustments to emphasize improvement of the financial market function and structure, stronger investor protection, and greater regulator authority.

Greater power to regulators. For example, when certain products or transactions are found likely to threaten investor protection, financial stability and market function, the regulators may, after full communication and coordination, prohibit product launch or limit positions; Member States shall require a regulated market to be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction.

Full coverage of products and trading venues. MiFID II covers almost all financial products other than foreign exchange spot.

Greater pre-and post-trading data transparency. MiFID II has intensified market data transparency, requiring all the investment firms, regulated markets, multilateral trading facilities, and organized trading facilities to regularly disclose trading data of all the spot and derivatives except foreign exchange spot in accordance with the information disclosure rules. The disclosure should include but not limited to price, speed, venue and likelihood of execution and settlement. Data reporting must be as timely as possible.

New market access mechanism for third-country companies. Companies from third countries seeking to provide investment services in Europe need only to open branches if the service is provided to retail client; need to register at the European Securities and Markets Authority if the client is eligible counterparty.

⁴⁸ <https://www.esma.europa.eu/policy-rules/mifid-ii-and-mifir>

Limits on commodities speculation. MiFID II requires market operators to measure their business activities against the market scale of commodities derivatives. Market operators above a certain market share must apply for authorization from regulators as investment firms and be subject to regulation, so that positions are not too concentrated to pose systemic risks.

2. Non-EU financial institutions are required to set up IPU

In May 2018, the proposal by the EU Commission that requires eligible non-EU financial institutions to set up Intermediate Parent Undertakings (IPU) was approved by Council of the European Union, requiring banks with asset of EUR30 billion or above to set up IPU.

3. The 5th EU anti-money laundering directive was issued

The Commission issued on 9 July 2018 the 5th EU anti-money laundering directive, making important changes to the fulfilment of obligations, customer due diligence, and Financial Intelligence Units (FIUs). Member States are supposed to bring national anti-money laundering systems in line with the latest directive by January 2020.

Extend the scope of obligations to include providers engaged in exchange services between virtual currencies and fiat currencies as well as custodian wallet providers.

Enhance due diligence of business and transactions involving high-risk countries, including by obtaining information on the customer and actual beneficiaries, the intended nature of the business relationship, the source of funds and wealth of the customer and of the beneficial owners, the reasons for the intended or performed transactions, obtaining the approval of senior management for establishing or continuing the business relationship, conducting enhanced monitoring of the business relationship.

Strengthen cooperation among FIUs. Member States should ensure that FIUs have access to information on their own volition or through application about cases involving money laundering or terrorist financing. The information should flow directly and quickly without undue delays especially when cases are related to terrorism.

II. Analysis of problems

1. Compliance cost for financial institutions is raised significantly

MiFID II, covering broad scope and consisting of over 1.4 million paragraphs of rules, would for one thing significantly raise the operational and compliance cost for financial institutions, and for another hamper the pace of innovation because of its strict restrictions.

2. The plannings of foreign financial institutions are disrupted by IPU

To keep in line with the EU IPU threshold of EUR30 billion (lower than the EUR50 billion threshold in the US), numerous foreign financial institutions will have to establish IPU or even change the equity architecture, management structure, people and capital distribution of their branches in the European Union. Immense cost will be incurred. If the European Union requires them to include branches into IPU, these financial institutions may have to meet demanding requirements on capital and liquidity. Non-EU financial institutions will have to review their business strategy in the European Union and be tempted to keep business scale below the IPU threshold or concentrate business in certain Member States, which would widen the regional gaps of the European financial industry.

3. Regulating branches as subsidiaries leads to unfair competition

Regulatory rules for independent legal entities (subsidiaries) within the European Union tend to be convergent, while that for non-independent legal entities (branches) outside the European Union are quite divergent in different Member States. For example, Germany has strict regulation over branches outside the European Union. According to Article 53 of the Federal Banking Act, branches of banks headquartered outside the European Union should be regulated as their subsidiaries and be held up to the same requirements as subsidiaries, and cannot the capital of their parent banks despite the fact that they are not independent legal persons. In practice, these provisions are highly unfair in two ways.

First, the exemption from being regulated as subsidiaries is only applicable in a few advanced economies. Since Chinese banks are regulated as equals to subsidiaries, the capital of their parent banks are not

recognized by the regulators. By contrast, branches of banks from the US, Japan and Australia in Germany can all share the capital of their parent banks.

Second, banking branches are treated as subsidiaries only in some Member States, a departure from the trends of convergence in the EU regulation system. In countries like Luxembourg, branches of foreign banks are treated as branches in regulation; in recent years, France is getting loose on the regulation of branches as subsidiaries. On 21 September 2016, the branch of Bank of China in Paris received the official notice of French Prudential Supervision and Resolution Authority (ACPR) to exempt it from requirements on liquidity coverage ratio, net steady finance ratio, leverage ratio, large exposure, information disclosure, and capital adequacy ratio for non-euros.

4. Money laundering tracing treats foreign capital more strictly

According to Chinese banks in the European Union, stern anti-money laundering rules and over-regulation in some Member States have affected their normal business and pushed up the compliance cost significantly. In addition, the European Union traces funding sources beyond reasonable scope and time frame.

III. Our Recommendations

1. Financial reform should account for business affordability

MiFID II reform should be implemented step by step, not in haste. The reform should help lower cost and ease burden for financial institutions, rather than undermining their innovation capability. In the fight against money laundering, regulators should not disrupt the normal operation of financial institutions beyond the reasonable degree, otherwise they will become burdens on them and their clients.

2. Raise the IPU threshold for foreign banks

In January 2018, PBoC and CBRC sent the *Joint Comment Letter on the Intermediate Parent Undertakings Proposal*⁴⁹ to European Parliament, Council and Commission, expressing hopes that the Commission considers

⁴⁹ <http://www.cbrc.gov.cn/chinese/home/docView/BC32C359A3A14F0BBF556508ADB5615E.html>

raising threshold for foreign financial institutions to set up IPU. They also asked for the reconsideration on the appropriateness of calculating total assets including those of branches and incorporating existing branches into the new IPU.

3. Press ahead with the China-German exemption agreement

We recommend that Germany sign related agreement with China as soon as possible to free Chinese banks in Germany from restrictions on equity capital. This will beef up their capacity to provide services and lend robust support to trade between China and Germany.

Chapter Fourteen

The Logistics Section

I. Recent developments

1. The European Union has officially implemented the Port Service Regulation

On 15 February 2017, the European Parliament adopted the Port Service Regulation (PSR) and required Member States to begin its implementation from 24 March 2019. PSR provides a basic framework for port service, financial transparency, and charging rules for Member States, covering refilling, discharge, mooring, and tug boat, but not passenger services, tallying, and piloting. PSR sets forth the minimum standards for port operation and emphasizes the professional standards on personnel, security and environment protection, but does not contain clear provisions on port management. After it is implemented by Member States, port services will largely be subject to the new provision on financial transparency.

2. Germany issued funding policies for combined transport

The combined transport subsidy policy of Germany was deliberated and adopted by the 18th Federal Parliament-Government Joint Agreement. The *Guidelines on Funding for Combined Transport Terminals Operated by Private Undertakings* published by Federal Ministry of Transport and Digital Infrastructure (BMVI) would go into effect between 4 January 2017 and 31 December 2021. The guidance explains the recipients of subsidies, terms for infrastructure subsidies and application process. Applications from only private firms will be accepted and combined transport in only recognized forms can be funded.

Funding for forwarding station. The BMVI combined transport funding policy provides that the interchanges applying for subsidies must ensure over 10 or 20 years of operation, be closely connected to public transport network, and must communicate with the fund issuers from the stage of planning and provide data at the operation stage. The subsidies provided by German government to forwarding station will be as high as 80 percent, and will be applied and granted by third-party professional agencies and used for the sole purpose of interchange infrastructure building. The Guidelines requires forward station receiving subsidies to process freight at a cost of no more than EUR33 per unit on average, or EUR15 per unit if they are located near sea ports.

Funding for special railway lines in logistics parks. Eligible special railway lines will receive up to 50 percent of subsidies from German government, issued by DEUTSCHE BAHN. The applicant must provide proof of extra demand in railway freight, and the special railway line must be connected to the public railway network. Freight volume, freight turnover or number of carriage must be submitted for application. In addition, investment enterprises must collect annual statistics on freight volume and freight turnover of subsidized railway lines for up to 10 years.

3. Packaging Act in Germany imposes distribution ban

The new Packaging Act of Germany(VerpackG) took effect on 1 January 2019, replacing the Packaging Ordinance(VerpackV). The Packaging Act applies to all actors who put packaged products (including padding material) into circulation and which end up as waste with the consumers. Companies failing to comply with the new Packaging Act will be fined up to EUR200,000 and be subject to a sales ban. A new federal authority, Central Agency Packaging Register(ZSVR) has been established to oversee package recycling and reuse and oversee business compliance.

Main provisions of the new Packaging Act

- The Act involves manufacturers, distributors, importers and shippers. Manufacturers refer to the first entity who bring packaged products into market circulation, including external package, final retail package, disposable containers in service packaging, and shipment packaging;
- To ensure market access, all companies with sales in Germany, including cross-border e-commerce firms and online retailers, are obliged to register and receive licensing before bringing packaged products onto the market;
- Registration should be completed at the Central Agency Packaging Register on the LUCID website. Failure to file declarations on time will be fined tens of thousands of euros based on the weight of products or even be banned from sales;
- All participants must declare the packaging materials, types and weight annually. If the packaging exceeds the following thresholds: 80,000 kg of glass, 50,000 kg of paper and cardboard, 30,000 kg other composites, a Declaration of Completeness has to be submitted.

Table 10 Businesses that need to register under VerpackG

Who needs to register	Explanation
Manufacturers	Manufacturers are often first suppliers and therefore are obliged to register.
Retailers	Retailers, including e-commerce sellers, are obliged to register
Importers	If the headquarters of a manufacturer are abroad, then the domestic importer may be deemed the first distributor in Germany and hence considered to be the manufacturer. In principle, people with legal responsibilities for imported products are obliged to engage in the system. If they do not fulfil the obligations, the final distributors will be subject to a distribution ban.
Shipment companies	Shipment companies are considered manufacturers by VerpackG, for they are the first to fill containers with freight. The entire packaging material is marketed as part of the shipping to the end consumer and accumulates there for disposal. Therefore the system participation and registration obligation should fall on the part of the shipment companies.

The principle of extended product responsibility applies. Every market entity that brings packaged products (including padding material) onto the German market will be responsible for recycling and reuse by paying the waste disposal companies for the disposal of packages like yellow bags, paper, paper board, card board, and glass.

II. Analysis of problems

1. PSR may aggravate bureaucracy and monopoly

PSR fails to accord greater economic autonomy to ports that would enable port managers to set facility tolls based on their business strategies and investment. Nor does it allow users and shareholders to engage in major infrastructure planning, construction, and pricing. Though it grants extra economic bargaining power to ports, it also leaves space for government departments to interfere with the port autonomy under the pretext of national policy. Considering the possibility of ineffective intervention, PSR may cause unnecessary bureaucracy that is detrimental

to port interests. PSR also solidifies the existing double charging standard, whereby some ports may set prices independently while others do not have such power, thus artificially creating unfair competition.

It is likely that PSR will cause material damage to the interests of port users. European Community Shipowners' Association claims that since PSR does not cover tallying, piloting, passenger services, dredging, etc., it may aggravate the monopoly of ports. This means that port users will become more passive, and PSR may fail to achieve its intended effect. Instead, it will push up tallying and passenger service cost and cause customer dissatisfaction.

2. Funding policy may undermine fair competition

Unfair competition in the European Union was triggered by the high proportion of combined transport subsidies to private firms by the *Guidelines on Funding for Combined Transport Terminals Operated by Private Undertakings* in Germany. According to BMVI, German government grants as high as EUR93 million of subsidies to combined transport annually, which underpins transshipment capacity of 8.4 million loading units, taking up 67.2 percent of the total combined transport capacity. Infrastructure receiving government subsidies undertake transshipment of 5.5 million loading units, or 64 percent of the aggregate. Subsidies have greatly beefed up the competitiveness of Germany in combined transport. But such competitiveness comes from lower operational cost covered by the subsidies, putting foreign-invested enterprises in the European Union at a severe disadvantage.

3. The new Packaging Act increases difficulties for import

The VerpackG mainly aims to enhance materials recycle rate. It is predicted that the package recycle rate will jump from 36 percent to 63 percent by 2022. Despite the good intention, the Act is not popularized or promoted well. The fact that an Act that affects tens of thousands of importers and cross-border retailers around the world does not have an English version prevents companies from registering and declaring on time and in accordance with regulations, which directly leads to sales losses.

Overly strict registration and declaration requirement have raised business operational cost and disrupted the market. The new Packaging Act involves all the manufacturers, distributors, importers and shippers on the

German market, requesting them to fulfill the registration and declaration obligations even if only one product is sold on the German market. VerpackG mandates retailers to register online at the beginning of every year by listing all brand names that may enter the German market that year and declaring the packaging materials, type and weight, and to pay the licensing fee. Failure to register in LUCID on time or erroneous declaration data would result in a fine of up to EUR200,000 or even sales ban. This is undoubtedly a huge amount of work and creates huge unpredictability for cross-border retailers whose sales are characterized by small consignment and numerous categories. As a result, business scale of importers and cross-border retailers will be restricted artificially and normal market order will be disrupted.

Excessive power is given to government authorities when they are responsible for controlling the entire system. The demanding requirement of the new Packaging Act makes it basically impossible for some enterprises to fulfill the registration and declaration obligations. The government can therefore artificially intervene in the market access threshold, giving ZSVR excessive power that would increase room for rent-seeking.

III. Our recommendations

1. Delegate more autonomy to ports

Port ownership in different countries may vary, spanning state, mixed, private ownership and foreign limited operation and user right. We recommend that the PSR grant greater autonomy to port operators and shareholders that suits their respective situations, and allow them to make plans and set prices independently according to their own development.

2. PSR should ensure full competition among ports

PSR should ensure full competition among ports, not aggravate monopoly. We recommend that PSR cover as many services as possible in its service content and standard-setting, so as to provide the utmost convenience to port users with better services and greater efficiency.

Chapter Fifteen

The E-commerce

Section

I. Recent Developments

1. The Implementing Regulation on E-commerce VAT Reform was introduced

The European Union released the E-commerce VAT Regulation in December 2017 and the Implementing Regulation on E-commerce VAT Reform in February 2019. The reform agenda mainly includes: extension of the scope of One Stop Shop to intra-EU distance sales of goods and distance sales of goods imported from third countries; the online trading platforms are responsible for the declaration and VAT payment for goods sold by non-EU retailers on its platform; abolition of the current VAT exemption for goods imported from third countries in small consignment of a value of up to EUR22.

2. PSD2 has been implemented

On 13 January 2018, the new Payment Services Directive (PSD2) became effective in the European Union. PSD2 has three key points: encourage the use of third-party payment products to manage personal or corporate finances; prohibit sellers from transferring payment cost to consumers; intensify protection of the interests of online consumers.

By 14 March 2019, banks and other conventional financial institutions need to create and open testing environment for third-parties that include APIs to reduce the dependency of sellers on special bank payment services. By 14 September 2019, all EU businesses have to use multiple customer authentication in online shopping.

3. New anti-geoblocking regulation was launched

On 4 December 2018, the EU anti-geoblocking regulation entered into force to address the unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market, applicable to goods and service providers to EU customers. The regulation affects not only the internal market, but companies from other countries or regions that provide service to EU customers, as it prohibits traders from treating customers differently in the following aspects: access to online interfaces, access to goods and services, conditions for payment transactions.

4. Information collection on cross-border parcel delivery has been strengthened

The new EU regulation on cross-border parcel delivery went into force in May 2018. The regulation requires operators in parcel delivery business to send to the authorities of host countries information about business registration and scope and terms of service, with a view to contributing to market transparency and improved regulation.⁵⁰

II. Analysis of problems

1. Jurisdictions over cross-border trading remain ambiguous

For all the EU laws and regulations that aim to establish a single digital market, numerous barriers exist when it comes to conducting cross-border e-commerce in the EU, especially when border issues are involved. Ambiguous jurisdiction rules among Member States remain an acute problem. For example, when an e-commerce firm in one Member State sells products in another, it is unclear as to which Member State's laws and regulations should apply as regards consumer rights, licensing requirements, product labeling, among others. Online-shoppers also face difficulties defending their rights to get product maintenance, return and refund.

2. Intra-EU cross-border payment faces obstacles

EU e-commerce firms usually offer their clients several payment methods, such as debit card, credit card or installment. However, different legislation in Member States makes it hard for online sellers to offer the same payment choices across the European Union. *European E-commerce Report 2019*⁵¹ shows that in almost all EU countries, payment inconveniences or concerns over payment security are primary barriers to online shopping for EU citizens, and such problems are most acute in Portugal, Hungary and Greece.

Another problem is complex and fragmented tax regimes governing cross-border trading among Member States. Despite the EU VAT framework, VAT rates vary among countries, which means online transaction rates can be different in different Member States.

3. Cross-border logistics system-building lags behind

Cross-border logistics system is a critical underpinning to e-commerce, while backward logistics can be an impediment to the rapid

⁵⁰ https://ec.europa.eu/growth/sectors/postal-services/parcel-delivery_en

⁵¹ <https://www.ecommercewiki.org/reports/792/european-ecommerce-report-2019-free>

development of e-commerce. According to *European E-commerce Report 2019*, slow logistics or inconvenient delivery are important factors affecting online shopping, second only to online payment. In addition, the logistics system development is patchy in EU Member States, with some countries constrained by backward logistics infrastructure that hamper cross-border trading. Such problems are most acute in countries like Latvia, Malta, and Romania.

4. Administration among Member States are discrepant

For all the efforts to promote European integration, institutional differences between Member States still exist. Lack of legal coordination and overlapping regulation among governments are main problems for e-commerce business start-up, market regulation, and tax collection. E-commerce operators have to overcome institutional, cultural, delivery and logistics barriers when they try to start a business in different countries.

III. Our recommendations

1. Remove the barriers to cross-border payment in the European Union

The existing laws and regulations on cross-border payment are far from meeting the development needs of businesses. We recommend that the European Union resolve the numerous obstacles to cross-border payment expeditiously, including by removing cross-border payment barriers, increasing cross-border payment security, and reducing cross-border payment cost.

2. Enhance cross-border logistics within the European Union

We recommend that the European Union take further steps to tackle the institutional obstacles to cross-border logistics, ensure the reliability of cross-border transportation of goods, launch logistics tracking systems and standards, establish unified logistics operation standards, and enhance logistics system-building within the European Union.

3. Promote EU-level e-commerce legislation

We recommend that the European Union enact e-commerce legislation at the Union level to bridge the gaps in e-commerce legislation and enforcement among Member States, reduce the institutional barriers for businesses to carry out e-commerce business across Member States, and cut business costs.



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