

EU-CHINA, TOWARDS A CHINESE WIN

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INTRODUCTION

FRANÇOIS GODEMENT

One would never guess it from the storms that have brewed publicly in Europe about China - the slide in public opinion mood about China in most (but not all) EU countries; the controversies surrounding the "wolf warrior diplomacy" adopted by several Chinese ambassadors (and renamed "Kung Fu Panda" by China's envoy to Rome); the popular, if not completely accurate, perception that China is responsible for the Covid-19 epidemic; the mixed results of Beijing's "mask diplomacy"; the increasing media criticism over Xinjiang, Hong Kong and the renewed interest for Taiwan in several EU Member States, and in the Commission.

But the perception of EU-China relations remains largely positive among Chinese foreign policy elites, for good and (from our perspective) less good reasons.

China Trends is meant to understand and communicate how the other side thinks because ignoring the ideas and feelings of other parties can lead to policy mistakes. In the case of China, this is of course easier to ascertain for official, second track expert and analyst views than for public opinion as a whole. It is what the three articles collected in this issue do, and some of the results are indeed surprising. EU-China relations remain on track because both sides share "pragmatism" and support for multilateralism, while China supports European integration. **In what could be a very controversial policy for Beijing, a young expert sees the EU's coming investment screening regulation as a clarification and homogenization of what was a juxtaposition of national systems, or simply absent.** Others just warn Chinese investors not to tread on risky grounds - such as high tech or areas that affect national security and to focus on the scope that remains for welcoming Chinese FDI in Europe. On the 17 + 1 (formerly 16 + 1 before the addition of Greece) format for summits and other meetings with China, some of the views found by our guest author, Justyna Szczudlik, seem to focus on successes with the 5 non-EU participants (which indeed have been courted more successfully by Chinese lending), and they dismiss an overall €45 billion trade surplus with Central and Eastern Europe.

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Some clouds in the relationship are acknowledged - Europe's increased "assertiveness" which would be the cause of its March 2019 depiction of China as a "systemic rival"; China should work more with third parties (and especially Germany) in CEE countries to lessen reluctance from the EU; the investment screening process is unclear and creates new uncertainties and compliance costs. **Interestingly, the three themes - criticism of "assertiveness", need to work with third parties, and request for clarity of rules and a negative list - are an exact mirror image of what is constantly requested from China by Europe!** Strictly no value issues appear in our selected sources - whether it be human rights, divergences over international law (for example over the South China Sea), or the competition between democratic and socialist governance models captured by the notion of "systemic rivals", which is also present in many Chinese policy documents.

Do Chinese experts on the EU see only what they want to see? There may be another underlying explanation for some of this optimism. For another opinion that recurs is one of European weakness. CEE countries are classified as developing or emerging economies. Trends that are critical of China are ascribed to US pressure, particularly successful in Poland. Binding EU decisions on investment would require a treaty change. This is an honest Chinese analyst's mistake since the Lisbon Treaty gave the EU exclusive competence on investment: but it is true that member states are far from politically accepting this. **Ironically, China trusts the rule of law in the EU to limit some of the more negative policies towards market play:** the European Court of Justice can prevent the EU or member states basing decisions on an abusive view of public order and security (and indeed, we know there have been hints of Chinese companies going to the ECJ on this basis). EU's toughened stand on investment is akin to protectionism, and crucially, Europe's value chains are now less efficient than Asia's. CICIR's well-known European expert expresses it most crudely: Europe is "powerless in spite of its intentions". It will have no other choice but to move to flexible integration - in other words, to a two-tier or three-tier Europe? - and to be "pragmatic" (read, accommodating) to its outside partners and therefore to China.

Our selection does not cover some of the central and sometimes burning issues of this year: decisions on 5G, controversies over human rights that grow larger every year, the growing perception that supply chains must be made more secure, the lack of discernible progress on a new investment agreement or on climate change mitigation, the new Hong Kong crisis which is bound to have consequences for European presence as well. **But on 17 + 1, investment screening and the overall relationship, it shows a Chinese expert trend that is trying to put a brave face on a deteriorated environment for the relationship.** That this makes them overlook some issues, or that they have to rely on an assessment of European weakness, may lead to Chinese policy mistakes. But it is still better than some of the other manifestations of China's new push abroad, from cyberwar to threats and fake news condoned by resident diplomats.

ABOUT

China Trends seeks understanding of China from Chinese language sources. In an era where the international news cycle is often about China, having a reality check on Chinese expressions often provides for more in-depth analysis of the logic at work in policies, and needed information about policy debates where they exist. China Trends is a quarterly publication by Institut Montaigne's Asia program, with each issue focusing on a single theme.



EU-CHINA: A FAIRLY SMOOTH ROAD AHEAD

“For the advancement of human progress, China and the EU must remain each other’s comprehensive strategic partners and not become systemic rivals. **Our interaction should be a positive cycle that enables our mutual success, not a knock-out match which results in only one winner**”, said Wang Yi, China’s foreign minister during a press conference on May 24, 2020.¹ The call for a positive relationship is not new, as it was also emphasized by Wang Yi back in December 2019, after a meeting with Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy.² As 2020 marks 45 years of diplomatic ties between China and Europe, and the first year of a new team at the European Union, it is seen as an important year for the relationship. The press release published by EEAS on the meeting also emphasized the importance of 2020 as a “milestone in relations between China and the European Union”. But the mention of advancement of friendship and cooperation was followed by “subjects on which we do not always agree”,³ giving a less positive view of the status of cooperation.

According to a Blue Book annual report published by the Chinese Academy of Social Sciences in December 2019, EU-China relations show a steady trend of improvement (稳中向好).

Three major summits were on the 2020 agenda: the China-Central and Eastern European Countries Summit, the 22nd EU-China Summit, and a special Leipzig EU-China Summit. However, due to the COVID-19 outbreak, the EU and China had to reshape this agenda. Facing a critical test, where are EU-China relations heading?

Steady improvement with some unavoidable conflicts

The Chinese perceptions of EU-China relations can be divided into two periods: pre- and post- COVID-19 crisis. The positive outlook presented by Wang Yi in the end of 2019 is based on an analysis of the relations at the time: the 21st EU-China Summit led to a joint statement; the 16+1 mechanism was enlarged to include Greece; the EU and China signed two aviation agreements and the geographical indications agreement. **According to a Blue Book annual report published by the Chinese Academy of Social Sciences in December 2019, EU-China relations show a steady trend of improvement (稳中向好).**⁴ It emphasizes that EU-China cooperation has a solid foundation, and their cooperation mechanisms are becoming increasingly mature. In addition, it describes China’s EU policy as highly consistent, contributing to the stability of EU-China relations. Geng Shuang, Spokesperson for the Foreign ministry, outlines three key constant points (三个“始终如一”): China’s attitude towards EU and its support of European integration; its determination to promote EU-China pragmatic cooperation; and its commitment to defend multilateralism along with the EU.⁵



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1. “State Councilor and Foreign Minister Wang Yi Meets the Press”, Ministry of Foreign Affairs of the People’s Republic of China, 24 May 2020, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1782262.shtml

2. “Wang Yi: The China-EU relations are standing at a new historical starting point (王毅：中欧关系已站在新的历史起点上)”, Xinhua, 16 December 2019, http://www.xinhuanet.com/world/2019-12/16/c_1125349884.htm

3. “China: press statement following the bilateral meeting between HR / VP Josep Borrell and Minister of Foreign Affairs of China Wang Yi”, EEAS, 16 December 2019, https://eeas.europa.eu/delegations/china/72150/node/72150_sq

4. “China-Europe relations are generally stable and improving, and we are building a community of shared destiny (中欧关系总体稳中向好 共同构建人类命运共同体)”, Xinhua, 19 December 2019, http://www.xinhuanet.com/world/2019-12/19/c_1210402089.htm

5. “Foreign Ministry talks about Wang Yi’s trip to Europe: Communicating the Three ‘Consistencies’ of China-EU Relations (外交部谈王毅欧洲之行：传递发展中欧关系的三个‘始终如一’)”, The Paper, 18 December 2019, https://www.thepaper.cn/newsDetail_forward_5272690

However, other developments in the relationship are also acknowledged by Chinese experts. For instance, the EU's Strategic Communication on China issued in March 2019 raised alarm bells in Beijing. The document explained that the balance of challenges and opportunities had shifted, describing China as both a cooperation partner, an economic competitor, and a systemic rival. Wang Yiming, Researcher at Renmin University, attributes the change to two factors.⁶ **He argues that traditionally, globalization works well because there was a stable US-Europe-China triangle, with all the three major forces fulfilling their respective roles: the United States as the innovator, Europe as the regulator, and China as the executor.** However, current conflicts between the US and China are transforming the triangle, pressuring the EU to adjust its perception of China. This is an unwelcome change for China: Wang Yiming associates it with a European push for a more assertive Europe. Moreover, he suggests that the process of European integration is slowing down while that of Asian integration is accelerating. This has also directly impacted the level of integration of their respective value chain, widening the gap between them, putting the EU at a disadvantage and leading to increasing EU complaints against China.

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These conflicts and frictions are normal, given the historical and development level differences, explains Zhang Ming, Ambassador of China to the EU. He adds that the upcoming high-level summits would provide more incentives for cooperation and draw a blueprint for the next five years.⁷ Yang Fengmin, Director of the European Institute at East China University of Science and Technology, writes that **since the EU has no intention to become a global hegemon and has to deal with its internal problems, there are no serious political obstacles between EU and China.**⁸

Overall, most Chinese comments put a positive spin on the EU-China relationship. They should continue to defend together multilateralism, free trade and cooperation on environmental issues.

Enforcing the friendship during and after the pandemic

The COVID-19 pandemic has put on hold this initial agenda. The EU-China Summit and the 17+1 Summit have been postponed, while the special EU-China "Leaders Meeting" faces doubts about its necessity and usefulness. As Chinese policymakers and experts often attach symbolic meaning to official dialogues and exchanges, the postponement and possibility of cancellation could prove harmful to the EU-China relations. This could explain the constant emphasis on communication and on medical supply deliveries between China and the EU Member States. **"A true friend is known in the day of adversity (患难见真情)",⁹ and therefore the delivery of medical supplies from China to the rest of the world is supposed to enforce the friendship of China with the respective country or area.** Public health, previously a less discussed topic, has thus been included as an area of cooperation between China and the EU. However, actual cooperation seems to have remained on the level of phone call exchanges between leaders and delivery of medical supplies. The "Health Silk Road" is seen more as a way to revive the existing Belt and Road Initiative instead of a form of cooperation. The Chinese effort, often referred to as "mask diplomacy", has received mixed responses in Europe, with some European leaders praising China's support and others questioning the quality of the supplies as well as the political intention behind it.

6. "Wang Yimei: Opportunities and Challenges for China-EU Relations in 2020 (王义桅：2020中欧关系的机遇与挑战)", Huanqiu, 04 December 2019, <https://opinion.huanqiu.com/article/9CaKrnKo8uu>

7. "Interview of Ambassador Zhang Ming, Head of Mission to the European Union, by China Youth Daily on China-EU relations (驻欧盟使团团长张明大使就中欧关系接受《中国青年报》专访)", Mission of the People's Republic of China to the European Union, 06 January 2020, <http://www.chinamission.be/chn/stwx/t1731626.htm>

8. "Scholars Roundtable - Where is the EU heading? Which way is the Sino-European relationship heading? (学者圆桌 | 欧盟向何处去? 未来的中欧关系怎么走?)", Shanghai Observer, 07 November 2019, <https://www.shobserver.com/news/detail?id=187077>

9. Shen Xiaquan, "Eliminating disruptions, China-EU ties move forward in common fight against epidemic (排除干扰，中欧关系在共同抗疫中前行)", Fisnet.com, 06 May 2020, <http://comment.cfnisnet.com/2020/0506/1319407.html>

In a much more realist direction, Feng Zhongping, Vice President of the China Institutes of Contemporary International Relations (CICIR) explains that the crisis has made the European Union realize how powerless it is internationally in spite of its intentions (有心无力).¹⁰ He expects that as a result,

The EU will be forced to adapt “flexible integration (灵活的一体化)” and be more realistic and pragmatic with its internal and external policies.

“flexible integration (灵活的一体化)” and be more realistic and pragmatic with its internal and external policies. The crisis has also highlighted the dependency issue of medical supplies on China, leading to a wider discussion on overall supply

dependency. In other words, the COVID-19 crisis is both an opportunity and a challenge to EU-China relations. According to this assessment, having a more pragmatic EU also means having a more China friendly EU, due to the reliance on the economic benefits China could bring. But the increasing debate about the dependency issue is a negative variable in the bilateral relations.

In May 2020, the Chinese Academy of Social Sciences published a report on international trends.¹¹ It argues that against the backdrop of the epidemic affecting international relations, it is in the interest of both sides to maintain a good and stable Sino-European relations. The interest of China and the EU are now interconnected, and the two rise and fall together (一荣俱荣 一损俱损). It means that China does not want a U-turn or even a setback in the Sino-European relations. Cui Hongjian, Director of European Studies at the China Institute of International Studies (CIIS), also predicts that the European Union will be “looking East (向东看)” after the pandemic and aim to strengthen EU-China cooperation.¹² But it means that China could also be facing a more demanding and politically tougher EU, which aims to redefine its relationship with China. The US factor will continue to influence the EU-China relationship, but **Cui Hongjian believes in increased EU assertiveness of its strategic autonomy post-COVID, attempting to find its place in the competition between China and the United States instead of picking a side.**

Moving towards economic recovery

Most of the Chinese analyses about the future of EU-China relations concentrate on their economic component. This is because the outbreak has had a severe impact on the global economy and caused an economic slowdown. For instance, lockdowns and confinements aiming to contain the spread of virus have caused stagnation of manufacturing and transport sectors. Economic losses are visible. Huang Ping, Executive President of the Chinese Institute of Hong Kong at CASS, argues that as the crisis has accelerated the decline of the European economy. European countries have to remain rational and pragmatic when dealing with China, and cooperation is Europe’s best option.¹³ China and Europe should further explore ways and means towards working together in a competitive environment. However, in an earlier publication, he mentioned his concern over the EU demand for a reciprocal relationship, doubting the possibility of such a relationship given the difference in development level between the two sides.¹⁴ **Both Cui Hongjian and Huang Ping think that EU-China relations are facing a crucial test (大考). They both point to increasing interdependence and cooperation between China and the EU accompanied by the inevitability of conflicts and competition.**

Some Chinese experts go further, arguing that China is indispensable for the EU’s economic recovery, making it impossible for the EU to shift away from China. Zhang Jian, Director of the Institute of European Studies of CICIR, believes that China and Europe could only overcome their economic difficulties

10. Feng Zhongping, “Europe’s Strategic Dilemma and China-Europe Relations under the COVID-19 Outbreak (新冠疫情下的欧洲战略困境与中欧关系)”, Fisnet.com, 08 May 2020, <http://comment.cfisnet.com/2020/0508/1319441.html>

11. “CASS report predicts eight global trends for 2020, the COVID-19 crisis is the biggest uncertainty (科院报告预测2020年全球形势八大趋势 新冠疫情成最大不确定因素)”, China Council for the Promotion of International Trade, 13 May 2020, http://www.ccpit.org/Contents/Channel_4114/2020/0513/1260327/content_1260327.htm

12. “Under the epidemic, China and Europe need to strengthen rational and pragmatic cooperation (疫情之下 中欧更需加强理性务实合作)”, China Minutes, 15 May 2020, <http://www.oushinet.com/wap/china/chinanews/20200515/350153.html>

13. *Ibid.*

14. Huang Ping, “An uncertain Europe? Certain China-EU relations? 不确定的欧洲？确定的中欧关系？”, Aisixiang, 03 September 2019, <http://www.aisixiang.com/data/118022-2.html>

through cooperation, and such cooperation would be a win-win model for the rest of the world to follow.¹⁵ Zhou Hong, Director General of the Academic Division of International Studies at the Chinese Academy of Social Sciences, points out that **while there is political demand and public opinion support in Europe for the relocalization of production lines to the Eurozone, large-scale industrial restructuring is time-consuming and uneconomical.**¹⁶ Given the current context, state intervention in industrial restructuring for the sake of "security" might be possible. But **the market will prevail at a later stage because the Chinese market holds an irresistible attraction for European companies.** Tang Zheng, Vice President of the China - Europe Association for Technical and Economic Cooperation, suggests that China could increase trade with Europe to facilitate the economic and industrial recovery of European countries.¹⁷ For example, China could promote greater trade cooperation with the European auto industry, which has suffered heavy losses in the pandemic.

To conclude, despite several changes in the EU-China relations caused by internal and external factors in the past year, Chinese experts continue to argue that there are many points of agreement between EU and China. This includes support of globalization, multilateralism, and environmental protection. Economic cooperation again has the upper hand. It was always significant for EU-China relations in the past, and it has now become indispensable due to the need for an economic recovery after the pandemic. There also seems to be a consensus among all Chinese experts mentioned in this paper on the presence of an element of competition in EU-China relations. **However, competition and cooperation can co-exist, and in the case of EU-China relations, many experts suggest that cooperation would have a heavier weight than competition.** In short, competition between EU and China will continue to exist as it is inevitable, but the two will also continue to cooperate as it is necessary.

While there is political demand and public opinion support in Europe for the relocalization of production lines to the Eurozone, large-scale industrial restructuring is time-consuming and uneconomical.

15. Zhang Jian, "Unprecedented urgency of Sino-European cooperation (中欧合作的紧迫性前所未有)", China Daily, 12 May 2020, <https://cn.chinadaily.com.cn/a/202005/12/WS5eba60efa310eec9c72b865d.html>

16. Zhou Hong, "Europe and EU-China relations in the context of the epidemic (疫情下的欧洲与中欧关系)", Aisixiang, 21 April 2020, <http://www.aisixiang.com/data/120968.html>

17. "Experts: the epidemic does not change the resilience of China-EU economic and trade relations (专家：疫情不改中欧经贸关系韧性)", China News, 11 April 2020, <http://www.chinanews.com/cj/2020/04-11/9153819.shtml>

LIVING WITH THE EU'S INVESTMENT SCREENING

The EU formally adopted an investment screening regulation in March 2019.¹⁸ The regulation creates an information-sharing mechanism for the Commission and Member States on incoming foreign investment in Europe that is scheduled to be operational in October 2020.¹⁹ Even though the European instrument is not yet fully operational, screening is already part of a changed operating environment for Chinese firms seeking acquisitions in Europe. How does this affect their business activities? And does the changing regulatory environment have an impact on the politics of EU-China relations?

The politics of FDI screening in Europe

Leng Shuai, a Ph.D. Candidate at Xi'an Jiaotong University, starts his analysis with a lucid assessment of Chinese investment in Europe: there is "a variety of recipient countries and sectors, cases of success and failure".²⁰ Recent MERICS/Rhodium research shows Chinese FDI transactions in Europe in 2019 at EUR 12 billion, a decrease of 33% from 2018 level, and on a continuous downward trend since the 2016 peak at EUR 37,3 billion.²¹ After this cautionary take

that a one-size-fits-all analysis does not capture the diversity of Chinese investment in the EU, Leng Shuai contradicts the view, held by some other Chinese analysts, that European FDI screening is simply a protectionist response against incoming foreign investment from China, and about creating

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"barriers" (壁垒). This is the case for example of Ye Bin, Director of the EU Law research office at the European Department of the China Academy of Social Sciences (CASS). He sees FDI screening as "selective trade protectionism" (有选择性的贸易保护主义) and as an approach which is incompatible with the principle of free movement of capital, enshrined in European treaties.²²

To Leng Shuai, **FDI screening is first and foremost about intra-European harmonization of foreign investment policies, creating transparency, with the ultimate aim of protecting European security interests.** As such, the FDI screening regulation will effectively prevent Member States from adopting excessively protectionist legislation that could reverse globalization.

In other words, Leng Shuai sees the EU system generating convergence on a middle-of-the-road approach and thus implicitly as a positive development. China established its own security screening system for foreign investment as early as 2011. Indeed, the construction of an EU-wide system bridges a gap. It creates intra-European unity where there were (although not in all cases) national systems, complicating the conclusion of bilateral investment negotiations. Of course, this is not going to be an absolute convergence, and **once the EU system is operational, foreign companies will face "sandwich-style security screening" (三明治式安全审查) at both the EU and the national levels.** Here, the political macro-perspective of the state as a negotiator and the business micro-perspective of the company have a different focus.



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18. European Commission, "EU foreign investment screening regulation enters into force", press release, 10 April 2019. https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2088.

19. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, Official Journal of the European Union. <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

20. Leng Shuai, "An appraisal of the EU Framework for screening foreign investment and countermeasures (欧盟外资监管和安全审查立法的评估与应对)", 现代法学, Modern Law Science, Vol. 41, no. 6, November 2019, pp. 194-209.

21. Agatha Kratz, Mikko Huotari, Thilo Hanemann, Rebecca Arcetasi, "Chinese FDI in Europe: 2019 update", 8 April 2020, <https://www.merics.org/en/papers-on-china/chinese-fdi-in-europe-2019>

22. Ye Bin, 《欧盟外资安全审查条例》与资本自由流动原则的不兼容性, (Incompatibility of the EU Regulation on Screening Foreign Direct Investment with the Principle of Free Movement of Capital), European Studies - 欧洲研究, Chinese Journal of European Studies, 2019, No. 5. <http://kns.cnki.net/kcms/detail/Detail.aspx?dbname=CJFDTEMP&filename=OZZZ201905004&v=>

Leng Shuai provides a clear analysis of the division of roles between the Commission and Member States. In the end, only Member States have the power to block transactions or impose remedies and penalties. The Commission plays a key role in promoting convergence and best practices, and supports the crucial construction of a communication mechanism. It remains an unchanged fact that the Commission does not have executive power over Member States. What is the perimeter of the Commission's power? Article 8.2 of the regulation states that "the Member State where the foreign direct investment is planned or has been completed shall take utmost account of the Commission's opinion and provide an explanation to the Commission if its opinion is not followed". In other words, according to Leng Shuai, **the whole EU FDI screening game is ultimately all about "political pressure" against specific transactions.** Ye Bin's analysis goes in the same direction: he argues that for the Commission

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to seize the power to block transactions or impose remedies and penalties, there would be a need to amend EU Treaties – a misinterpretation given that articles 206 and 207 of the Lisbon Treaty give the Commission exclusive competence over foreign direct investment, even

though the modalities of securitizing FDI are not addressed in the Treaty. The reality of politics between the Commission and Member States prevails, and Leng Shuai anticipates that the Commission will simply seek to increase its influence on the basis of the regulation.

A deteriorating European environment for investment?

The issue of foreign acquisition of strategic assets now receives particular political attention as a result of the upcoming severe economic recession in Europe due to the COVID-19 crisis. In March, the EU Commission issued a communication providing guidance to Member States.²³ The guidance stresses the importance of conducting investment screening, stating the "increased potential risk to strategic industries, in particular but by no means limited to health care".

The financial daily *Diyi Caijing* provides a timely analysis of investment screening in Europe in the context of the COVID-19 crisis, and of Commission's guidelines to Member States to protect their strategic assets from foreign acquisition²⁴. The expansion of regulations in Europe has proceeded through the widening of their scope and/or the lowering of the threshold to trigger a screening process. **Analysts interviewed by the financial daily point to the decreased valuations of European company stocks, which create opportunities for acquisitions. This is an area for which FDI screening does not apply, but clearly one for which increased vigilance has been advised by Brussels.**

Overall, the tightening of the European regulatory environment is logically perceived as increasingly constraining for China's business activities. This is made clear in the 2019 and 2020 reports of the China Council for the Promotion of International Trade, a publication titled "Report on the Investment Environment in the European Union" (欧盟投资环境报告).²⁵ The 2019 report starts with a positive assessment of the EU-China investment relationship, before noting a few problems arising from the perspective of Chinese interests in relation to the investment screening system. The criticism points to a lack of predictability in the investment screening process, given that there are no EU standards to determine whether a transaction affects security and public order. This raises the "costs of corporate compliance" (增加了企业合规成本). The survey shows widespread concern. **85.34% of the companies surveyed are concerned that**

23. European Commission, Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation)

24. "Is the strengthening of the EU's investment screening a temporary response to COVID or a structural change? (欧盟外资审查趋严，是疫情期间临时“防抄底”还是常态化?)", *Diyi Caijing*, 2 May 2020, <https://m.yicai.com/news/100616208.html>

25. China Council for the Promotion of International Trade, "Report on the investment climate in the EU (欧盟投资环境报告)", 25 April 2019. http://www.ccpit.org/Contents/Channel_3434/2019/0425/1157693/content_1157693.htm

the European screening will lead to unfair treatment (不公平对待) of Chinese investors. The 2020 report reiterates the issue of corporate compliance and focuses on the looming problem of “excessive regulations” as a constraint to Chinese business operations in Europe.

The report recommends moving away from an extensive but unclear approach of security and to adopt instead a “clear and exhaustive review list” (明确而穷尽的审查清单) that would create more predictability. It also recommends, to improve transparency, the creation of convenient communication channels for foreign investors so that they can get a precise understanding of the relevant national policies below the EU level.

In this context, **the Chinese analysts also address the scope that remains for future mergers and acquisitions (M&A) deals.** Meng Ji’an, a partner of Hawking Luwei International Law Firm, advises Chinese investors to avoid sensitive areas and to focus their European investment on sectors such as retail and fashion. Legal compliance is important, and it is worth considering starting with small companies and start-up firms. Xu Liang, another partner with the same law firm, advises companies to look at Central and Eastern Europe as a good entry point, given that FDI is a less sensitive issue there than in Western Europe.

Further to this approach of focusing on the opportunities that remain for Chinese business expansion in Europe, Leng Shuai argues that **“as long as the M&A transaction falls within the scope of legality, its final cost and whether it will be completed or not is not going to be the main concern of the government”.** Leng Shuai lists the sectors covered in the EU regulation, which invites the Commission and Member States to evaluate the effect of a particular transaction on critical infrastructure, critical technologies and dual-use items (“including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies”), the supply of critical inputs with an impact on energy and food security, access to sensitive information including personal data, but also the impact of the freedom and pluralism of the media.

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This points to the fact that there is some room for optimism for Chinese investors. As Xu Liang argues in another media interview, the recent German approval for the acquisition of Vossloh Locomotives by CRRC Zhuzhou Locomotive at the end of April, is important symbolically and politically.²⁶ Some commentators expected the transaction to be blocked by the regulatory authorities. **According to Xu Liang, communication is important to build up cases, and “strict supervision does not mean that Chinese investors have no chance” (监管严格并不意味着中国投资者没有机会了).**

²⁶. “The value of companies diminishes with COVID, do Chinese companies have opportunities for M&A abroad? (疫情下企业估值降低，中国企业海外并购“抄底”机会来了?)”, Guoji Jinrongbao, 13 May 2020. <https://finance.sina.com.cn/wm/2020-05-13/doc-iirczymk1468368.shtml>

Looking ahead: legal options and the EU-China bilateral investment agreement

Leng Shuai explains that in certain cases, the European Court of Justice (ECJ) could intervene in support of the free movement of capital, as defined in the founding Treaty on the Functioning of the European Union. The Treaty also

There is a legal avenue to challenge the executive decisions of Member States with regards to a particular transaction taken under the EU investment screening regulation.

defined the scope of measures that Member States can adopt for the sake of national security. The jurisprudence of the ECJ is a good reminder that national security measures are legal but that in some cases Member States have failed to fulfil their obligations under the Treaty. Ye Bin also sees a legal balance between national security screening and the defense of free capital movement

by the ECJ. In other words, **from Leng Shuai's perspective, there is a legal avenue to challenge the executive decisions of Member States with regards to a particular transaction taken under the EU investment screening regulation.**

In general, Leng Shuai argues that the EU investment screening regulation is an "important topic" (重要议题) for the ongoing negotiation of the EU-China Bilateral Investment Agreement (BIA). His general view is that the regulation endows the EU with "proactive negotiating power" (谈判的主动权). However, this is not about European leverage, and this is definitely not a bargaining chip. Leng Shuai argues, correctly, that the FDI screening regulation should be seen in China as both a "precondition and a basis" (基础和前提) for the ongoing negotiation.



“17+1”: OVERRIDING THE COMPLAINTS

Blurred Definitions and Membership Criteria

There is a large grey area between the 17+1 format (China-Central and Eastern Europe, CEE)²⁷ defined *stricto sensu* and how it corresponds to the Belt and Road Initiative (BRI). **Chinese analysts mostly depict the China-CEE cooperation format through the prism of, or references to, the BRI.** It appears that the BRI should be considered as the umbrella over the 17+1. 17+1 now serves as part of the Silk Road initiative, despite the fact that it was created more than a year before the BRI. Yet according to Zang Shumei, Research Fellow at East China Normal University, 17+1 is a specific and more targeted platform than the BRI.²⁸ A similar argument is made by Ji Wengang,²⁹ Director of the Center for Poland Research at Xi'an International Studies University and Cheng Jianbing,³⁰ Professor at Zhejiang Financial College. They both posit that China-CEE format is within the BRI remit but more specific.

There is also a problem with the definition (or perception) of CEE countries. Among those seventeen states, twelve are EU member states, while five are outside the European Union. Xi Jinping's 2015 speech referred to 16+1 as a “new platform of South-South cooperation characteristics within the North-South cooperation”, suggesting that **China perceives CEE as a group of developing countries, differentiated from Western developed countries.** For Ji Wengang, CEE seems to be even more limited, as he gives examples of Chinese investments only in the Western Balkans, without any mention of CEE EU member states. On the other hand, Liu Zuokui, Director of the Central and Eastern European Studies Department at the Chinese

Chinese analysts mostly depict the China-CEE cooperation format through the prism of, or references to, the BRI.

Academy of Social Sciences (CASS)³¹ suggests that the CEE region should be depicted as being a region comprising both developed and emerging market countries (中东欧国家这种介于发达国家和新兴市场国家之间的区域).

Furthermore, the criteria of the membership in the format are blurred as well. The best example is the first enlargement case with Greece in April 2019 and its narrative. Since the very beginning, China has been arguing that the socialist past was a key criterion for the selection of the sixteen members. However, after Greece's accession, the situation has changed. Liu argues that Greece has various identities (多样的身份). The country could be perceived as a Balkan, Mediterranean, Eastern or Southern European state... This means that **China – as Liu points out – no longer wants to create a “club of former socialist states” (“前社会主义国家俱乐部”)**. Instead, it wants to open the format to any country interested to join (任何有兴趣的国家 [...] 都可以加入). But he omits one important fact: **the decision does not lie in Chinese hands.** According to the Sofia Guidelines (2018), any changes in the format should be based on prior consultation and consensus by all participants. This clause was added to the Guidelines on the CEE's request, after China's one-sided attempts in 2018 to invite Germany and other EU countries to the format or at least to its high-level summits. Meanwhile, the Dubrovnik Guidelines (2019) indicate that



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27. The format (16+1) was established in 2012. Till 2019 it included China and 16 European states. Since 2019, after Greece accession, the name has been changed into 17+1. It consists of China and the following seventeen European states: Albania, Bosnia & Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Greece, Hungary, Macedonia, Montenegro, Latvia, Lithuania, Poland, Romania, Serbia, Slovakia and Slovenia.

28. Zang Shumei, “China-Central and Eastern Europe Regional Cooperation under ‘the Belt and Road Initiative’ – Analyses of Multilevel Cooperation Mechanisms (‘一带一路’背景下中国与中东欧地方合作一种多层次合作机制探析)”, *Social Sciences* 社会科学, No.1, 2020.

29. Ji Wengang, “17+1 Cooperation: a Full Demonstration of Pragmatism (17+1 合作: 充分彰显务实性)”, *China Social Science Network* 中国社会科学网, 4 September 2019.

30. Cheng Jianbing, “Promotion of China-Central and Eastern Europe Cooperation to a New Level based on Development of High Quality Trade (以贸易高质量发展助推中国—中东欧合作迈上新台阶)”, *China Business Herald* 中国经贸导刊, Mid-February 2020

31. Liu Zuokui, “Greece energizes ‘China-Central and Eastern European Countries Cooperation’ (希腊赋能‘中国—中东欧国家合作’)”, *China Social Science Network* 中国社会科学网, 5 September 2019; Liu Zuokui, “China-Central and Eastern Europe Cooperation’ under the Great Change [of Global Order] 大变局下的‘中国-中东欧国家合作’”, [China] *International Studies* 国际问题研究, no. 2, 2020.

participants would be working on enlargement procedures, which means that of accepting new members might be worked out soon. So far there are no any enlargement procedures. Greece became a member due to a consensus based on consents presented by all participants in the form of diplomatic notes.

"17+1" Successes

Despite a lack of coherent definition and strict membership criteria, Chinese experts see 17+1 as a successful cooperation format. Ji Wengang even claims that 17+1 has already enhanced its global influence (17+1 合作的全球影响力进一步提升). As Liu Zuokui emphasizes, the **first** enlargement (首次扩员) of the 16+1 to include Greece has empowered and enriched the format, changed the cooperation pattern, and "expanded the pie of cooperation" (做大了合作蛋糕). **Greece has also made the format more visible internationally, more open and more attractive (吸引力大增)**. Greece, an ancient civilization and maritime power located at the start of the ancient Silk Road, also gives a new impetus for BRI.

Other examples include economic dimensions such as the rise of China-CEE trade and Chinese investments in Central Europe. Liu and Cheng rightfully

admit that it is China's exports that are increasing more. In 2019, the trade surplus for China was over 45 billion USD. **On investment, Chinese analysts almost only give examples of projects in non-EU CEE states such as Serbia, Montenegro or Bosnia and Herzegovina. This provides indirect proof that there is scarce Chinese investment in CEE EU member states.** It is worth mentioning that CEE EU member states are generally praised

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for high-level economic development since their accession to the EU. Cheng Jianbing³² from the Zhejiang University underscores that Europeanization (欧洲化) has led to a better trade structure, higher quality standards and norms (标准较高). As a result, European integration made CEE countries attractive partners for China.

32. Cheng Jianbing, "Promotion of China-Central and Eastern Europe Cooperation to a New Level based on Development of High Quality Trade (以贸易高质量发展助推中国—中东欧合作迈上新台阶)", China Business Herald 中国经贸导刊, Mid-February 2020

The third success story is a social dimension, about people-to-people contacts. Despite the fact that existing meeting and exchange formats (various sectoral platforms, centers and associations) do not present any tangible results, the analysts assert that those mechanisms under the 17+1 umbrella are good channels for establishing contacts. These contacts are not only with high-level officials but also with ordinary people. **Liu even argues that the relations between China and CEE should be government-led, but socially-oriented (including business) (政府引导，社会(含企业)为主)**. People-to-people exchange is being seen as the integral part (有机组成部分) or one of the pillars (支柱之一) of the 17+1. China seems to appreciate its own agenda-setting power and sees this social dimension as a crucial factor to create an atmosphere of bonhomie.

...but also Problems

Chinese experts also acknowledge problems, and even failures, which either stem from Chinese shortcomings, including the so-called inherent problems (自身存在的问题) in China-CEE cooperation, or from external factors.

The Chinese-led problems mainly include a lack of experience in dealing with CEE, and little knowledge about those countries' needs, regulations, specificities and characteristics. Wang Yichen,³³ Associate Researcher at the Economic Forecasting Department of China's National Information Center,

33. Wang Yichen, "Analyses of EU's Attitude towards China-Central and Eastern Europe Cooperation and Chinese Response (欧盟对中国-中东欧合作的态度、原因分析及我国的应对措施)", Development Research 发展研究, No. 7, 2018

highlights the need to match Chinese investment offers with the demand of the respective country and in line with the EU regulations. Liu claims that the inexperience of Chinese financial institutions may eventually create a debt trap (债务陷阱). Liu Zuokui and Zang Shumei highlight the management problems (管理和引导也日益复杂化) with sectoral mechanisms or platforms (covering culture, tourism, investment, agriculture, etc.) under 17+1 (专业性协调机制或平台), and add that the non-homogeneous nature of the region (中东欧是非同质区域) presents a challenge to the Chinese activities.

China-Europe cargo trains (中欧班列) have recorded losses in operation (亏本经营) due to one-way transportation (单向运输) and the scramble for subsidies by Chinese local governments (地方政府争相补贴). There is a problem with logistics cooperation due to undeveloped infrastructure in CEE, and differences in size between Chinese and CEE companies (企业规模不对等). The Chinese economic model is based on big state-owned enterprises (SOEs), while in CEE the core of the model is small and medium companies (SMEs).

Liu points out inherent problems in China-CEE cooperation: the CEE trade deficit which is very harmful especially for Poland and the Czech Republic –

both countries are very critical of China due to this problem; difficulties in expanding exports of agriculture products to China because of brands not being recognizable (知名度不高) and small quantities of products (量产不够); politics in the CEE, with change of governments after elections resulting eventually in

The Chinese-led problems mainly include a lack of experience in dealing with CEE, and little knowledge about those countries' needs, regulations, specificities and characteristics.

changes of the country's approach towards China and its ongoing and planned projects; differences in values and ideologies (意识形态和价值观方面存在差异) between China and CEE.

The external problems are connected mainly with geopolitical risks (地缘政治风险). This rather vague issue raised by Liu and Wang, as well as by Long Jing, Deputy Director of the Center for European Studies of Shanghai Institutes for International Studies (SIIS),³⁴ is linked to the current US pressure on other countries, including CEE, to limit ties with China. Liu argues that **US-China tensions might have a negative impact on CEE countries' attitudes towards China, as this region pays close attention to the US.** Moreover, the EU's recently sharpened China policy (e.g. the March 2019 "EU-China: A Strategic Outlook" document) has an impact on CEE as well.

34. Long Jing, "Recent Developments in Poland's Special Economic Zones and Prospects for Chinese Investment in Poland (波兰特别经济区的最新发展及中国对波投资的展望)", Eurasian Economy 欧亚经济, No. 5 2019.

For example, Long Jing argues that economic issues in Poland are politicized. **Poland, as a close US ally, uses security excuses to suppress Chinese companies.** The country has one of the most important military NATO bases in CEE, led by the United States. These non-economic factors cast a shadow on the activities of Chinese companies in Poland, and could even lead to the interruption or termination of investment cooperation, which will bring huge economic losses to China. She predicts that in the context of rising US-China competition, and the strengthening of US and EU influence on CEE, Chinese companies must remain cautious and vigilant to avoid highly sensitive and high-risk investment, prevent and mitigate the adverse effects of changes in the political environment in Poland.

Why is the EU Critical about "17+1"?

Chinese experts also try to outline the motivations behind the EU's harsh criticism of 17+1. They are aware that this formula is seen by the EU institutions (mainly the European Commission) and member states (mostly developed ones such as EU's dual core 欧盟“双核心” Germany and France) as a Chinese

instrument to undermine or even split the EU (分裂欧盟). **It should be noted that they mostly refer to the criticism coming from the Western countries, not 17+1 members.** But recently CEE is becoming more cautious about China and 17+1 as such (examples are Poland, Czech Republic, Baltic states). Only Long Jing, to some extent, refers to Poland's doubts about the PRC, but not due to the 17+1 as such. The concerns are about Chinese investments and the PRC's general policy.

But why is the EU critical about 17+1? According to Zang Shumei, EU is afraid of PRC's increasing control over the major infrastructure in Europe through Chinese investment (逐步控制欧洲的主要基础设施). What is more, as Wang Yichen underscores, **the EU is concerned about its diminishing influence in CEE because of Chinese investment, which is based on different rules from the EU.** EU is also convinced that China is using its own investment to exert political pressure (政治压力) on CEE to interfere into the EU's internal affairs, which may undermine the EU's political unity (影响了欧盟的政治统一). A Chinese expert also argues that some internal EU problems (like Brexit) make the Union vulnerable to China, and that the EU uses criticism of the CEE-China cooperation as a bargaining chip, for example, to pressure the PRC to open the Chinese market. Apart from the EU and its institutions, Wang refers to concerns presented by some Western (or developed) member states such as Germany. The development of the port of Hamburg has been impacted (我国的投资影响了汉堡港的发展) by the well-functioning port of Piraeus controlled by a Chinese company in Greece. Transport of goods from China to Piraeus is 9 days quicker than to Hamburg. Moreover, CEE used to be an area of German influence, and the Chinese presence undermines the German impact on the region.

The EU is concerned about its diminishing influence in CEE because of Chinese investment, which is based on different rules from the EU.

What China Needs to Do?

Experts are trying to provide Chinese decision makers with recommendations. Those arguments are not innovative and might be divided into two groups. The first one is merely rhetorical. As Wang suggests, China should confirm that it supports European integration and has no intention to split and weaken the EU. Cooperation with the CEE countries is an important part of EU-China relations. **When it comes to the trade deficit, Liu argues that China should highlight that it is a structural problem which the PRC government has only little impact on.** The deficit is not harmful for CEE, and the emphasis should be put not only on trade in goods but also in services.

The second group of arguments embraces slightly more specific recommendations. Liu argues that the 17+1 format should be better positioned (明晰的定位) and play a stabilization role for EU-China ties. To do so, there is a need to focus on specialized areas (专业性领域) such as the financial sector, cooperation with third parties (第三方) such as Germany, France, Italy and Turkey; to strengthen cooperation between SMEs from the both sides. **Liu also highlights the need to create favorable views on China within CEE public opinion, and better management of the various platforms and mechanisms under 17+1.** Cooperation between China and Germany in terms of investment in CEE is also encouraged, so that Chinese companies may learn from German enterprises which are more experienced in investing in Central Europe.

NOTES

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