

In view of the Commission's transparency policy, the Commission is publishing the text of the EU-China Investment Agreement following the agreement in principle announced on 30 December 2020.

The text is published for information purposes only and may undergo further modifications as a result of the process of legal and technical revision, including of the final structure (such as numbering, sequencing, or titles of articles, or any duplication). However, in view of the growing public interest in the negotiations, the text is published at this stage of the negotiations for information purposes. This text is without prejudice to the final outcome of the agreement between the EU and China.

The text will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

SECTION I: OBJECTIVES AND GENERAL DEFINITIONS

Article 1 Objectives

1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate to facilitate and develop trade and investment between the Parties, hereby lay down the necessary arrangements for the liberalisation of investment.
2. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment, including the fight against climate change, public morals, social security or consumer protection, privacy and data protection or the promotion and protection of cultural diversity.

Article 2 Definitions

For the purposes of this Agreement:

'activities performed in the exercise of governmental authority' means activities which are performed neither on a commercial basis nor in competition with one or more economic operators;

'commercial considerations' means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of an enterprise, in the relevant business or industry, that are profit-based, and disciplined by market forces;

'covered enterprise' means an enterprise set up in the territory of a Party through establishment, as defined in this Article, by an investor of the other Party, and which is in existence as of the date of entry into force of this Agreement or made thereafter in accordance with applicable laws;

'economic activities' include activities of an industrial, commercial and professional character and activities of craftsmen, but do not include activities performed in the exercise of governmental authority;

'establishment' means the setting up, including the acquisition¹, of an enterprise in China or in the EU respectively with a view to establishing or maintaining lasting economic links;

'existing' means in effect on the date of entry into force of this Agreement;

"freely convertible currency" means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions;

"freely usable currency" means a currency that is determined as freely usable by the International Monetary Fund under its Articles of Agreement.

'investor of a Party' means a Party, a natural person or an enterprise of a Party, other than a branch or a representative office, that seeks to make, is making, or has made an investment in the territory of the other Party;

Notwithstanding the preceding paragraph, **shipping companies** established outside the EU or China and controlled by nationals of a Member State of the EU or of China, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation, in that Member State or in China and fly the flag of a Member State or of China.

'investor of a non-Party' means, with respect to a Party, an investor that seeks to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party.

'enterprise' means any entity constituted or otherwise organised under the applicable laws, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation and a branch or representative office of an enterprise;

'enterprise of a Party' means:

- (a) an enterprise constituted or otherwise organised under the laws of that Party, and engaged in substantive business operations² in the territory of that Party; or
- (b) an enterprise that is constituted or otherwise organised under the laws of that Party and is directly or indirectly owned or controlled by a natural person of that Party or by an enterprise mentioned under (a);

¹ The term "acquisition" shall be understood as including capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

² In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

'government procurement' means the process by which a procuring entity obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale.

'measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form of a measure by a Party³;

'measures by a Party' or **'treatment by a Party'** means measures or treatment⁴ by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

'natural person' means:

- (i) For the People's Republic of China, a natural person who is a national of the People's Republic of China as defined in the Nationality Law of the People's Republic of China; and
- (ii) In the case of the EU, a natural person having the nationality of one of the Member States of the EU according to their respective legislation⁵;

'operation' of an enterprise includes the conduct, management, maintenance, use, enjoyment, sale or other form of disposal of the enterprise;

'services' include any service in any sector except services supplied in the exercise of governmental authority;

'subsidiary' of an enterprise of a Party means an enterprise, other than a branch or a representative office, which is controlled by another enterprise of that Party.

'TRIPS Agreement' means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement.

'WTO Agreement' means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994.

'aircraft repair and maintenance services' means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

'selling and marketing of air transport services' means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

³ For greater certainty, the Parties state their common understanding that the term "measures" includes failures to act.

⁴ The Parties understand that the term "treatment" includes failures to act.

⁵ The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

‘computer reservation system (CRS) services’ means services provided by computerized systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

‘Ground handling services’ means the supply at an airport, on a fee or contract basis, of the following: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fueling of an aircraft; aircraft servicing and cleaning; line maintenance; surface transport; flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems.