

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 VI Institutional and final provisions

Sub-section 1: Institutional provisions

Article 1 Investment Committee

1. The Parties hereby establish an Investment Committee. The Investment Committee shall be co-chaired by the co-chairs of the EU–China High-level Economic and Trade Dialogue (HED) established between the European Commission and the State Council of China at the level of Vice-Premier.
2. Unless otherwise agreed, the Investment Committee shall meet once a year as part of the HED.
3. The meetings of the Investment Committee shall be held on a date and with an agenda agreed in advance between the representatives of the Parties. The Parties shall ensure that the composition of their respective delegations to each meeting is adequate to the matters agreed for discussions.
4. The Investment Committee shall:
 - (i) ensure the proper functioning of this Agreement ;
 - (ii) supervise and facilitate the implementation and application of this Agreement, and further the general objectives thereof;
 - (iii) consider ways to further enhance investment relations between the Parties;
 - (iv) undertake the tasks conferred by this Agreement; and
 - (v) adopt the rules of procedure applicable to the Investment Committee and the Working Groups established in accordance with paragraph 5(vi).
5. The Investment Committee may:
 - (i) make recommendations to the Parties relevant for the implementation and proper functioning of this Agreement;

- (ii) consider amendments to this Agreement or take decisions amending Annexes [XXX] (other than the schedules of commitments)] of this Agreement or other provisions in cases specifically provided for in this Agreement. Such decisions, in accordance with the respective internal legal procedures of the Parties, shall enter into force on the date determined in those decisions;
- (iii) adopt binding interpretations of the provisions of this Agreement;
- (iv) adopt mutually agreed solutions reached in a mediation procedure pursuant to Article X of [SSDS Chapter]; and
- (v) adopt decisions to facilitate the conduct of the proceedings of the panel of experts; and
- (vi) delegate responsibilities to the Working Group on Investment, and establish and delegate responsibilities to other bodies.

6. If a Party considers that there is an urgent and important matter pertaining to the implementation or application of the Agreement, the representative of that Party may request discussion between the co-chairs of the Working Group on Investment, to be held as a matter of urgency and no later than 30 days from the date of the request, with a view to find a mutually agreed solution. If such solution is not found, the Party may request that the matter be discussed between the co-chairs of the Investment Committee. The requested Party shall facilitate the organisation of such discussion as a matter of urgency.

Article 2 **Decision-making**

1. The Investment Committee may, for the purpose of attaining the objectives of this Agreement, take decisions in the cases provided by this Agreement. The Investment Committee may also make appropriate recommendations relevant for the implementation of this Agreement.
2. The decisions and recommendations shall be adopted by consensus between the Parties.
3. The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decision taken.

Article 3 **Working Group on Investment**

1. The Parties hereby establish a Working Group on Investment, which shall be co-chaired by the Director General of the European Commission responsible for trade and investment matters and the designated Vice-Minister of the Ministry of Commerce, or their respective designees.
2. The Working Group on Investment shall meet once every six months, or as agreed by the Parties. The meeting shall alternate between China and the EU, unless otherwise agreed, or shall be held by any other appropriate means of communication.
3. The Working Group on Investment shall prepare the meetings of the Investment Committee and undertake the tasks conferred to it by the Investment Committee. The Working Group on Investment may discuss any matter relevant to the implementation or application of this Agreement.

Article 4

Working Group on Sustainable Development

1. The Parties hereby establish a Working Group on Sustainable Development (SD Working Group). The SD Working Group shall comprise of senior officials, or their delegates, from each Party. It shall meet once a year, unless otherwise agreed by the Parties, and report to the Investment Committee ahead of its meetings held in accordance with [ref to Article 1(2)].
2. The functions of the SD Working Group are to facilitate and monitor the effective implementation of the Sustainable Development Section, and any other matter as the Parties may agree.
3. The SD Working Group shall adopt its rules of procedures at its first meeting no later than within 1 year from the entry into force of the Agreement.

Article 5

Information exchange

1. A Party may request at any meeting, or prior to a meeting, information from the other Party regarding a matter relating to the implementation or application of this Agreement, which the requested Party shall provide within a reasonable period of time. When a Party submits information considered as confidential under its laws and regulations to the Investment Committee or any other bodies, the other Party shall treat that information as confidential.
2. To facilitate the work of the Investment Committee and of the Working Group on Investment each Party shall provide a reasonable opportunity for the other Party to comment on proposed laws and regulations implementing this Agreement or relevant to the implementation or application of this Agreement in a manner consistent with its respective rules and procedures for adopting laws and regulations and consider the concerns raised by the other Party.

Sub-section 2: Final provisions

Article 1

Dialogue

Recognising the importance of transparency, dialogue and openness, and in order to draw on a broad range of perspectives in the implementation of this Agreement, the Parties shall have a regular dialogue with non-state stakeholders in a balanced representation of economic, environmental and social interests.

Article 2

Amendments

1. This Agreement may be amended by agreement, in writing, between the Parties.

2. Such amendments shall enter into force on the thirtieth day, or on such later date as may be agreed by the Parties, following the date on which the Parties notify each other in writing through diplomatic channels of the fulfilment of their internal legal procedures.

Article 3

Negotiations on Investment Protection and Investment Dispute Settlement

The Parties agree to continue, on the basis of the progress already made, their negotiations with a view to negotiate an agreement on investment protection and investment dispute settlement. In such negotiations the Parties shall work towards:

- a) state of the art provisions in the field of investment protection;
- b) state of the art provisions in the field of investment dispute settlement, taking into account progress on structural reform of investment dispute settlement in the context of the United Nations Commission for International Trade Law (UNCITRAL).

The Parties shall endeavour to complete such negotiations within 2 years of the signature of the present agreement.

Article 4

General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalisation, nothing in Section II Sub-section 1 (Liberalisation of investment), Section III (Regulatory Framework), Article [Current Account] and Article [Capital Movements] shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order¹;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
 - (iii) safety.

2. For the purpose of Section II Sub-section 1 (Liberalisation of Investment) and Section III (Regulatory Framework), EU GATT 1994 Article XX is incorporated into and made part of this Agreement, *mutatis mutandis*.

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions of the aforementioned Sections:

¹ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (a) the measures referred to in point (b) of paragraph 1 of this Article and GATT 1994 Article XX (b) include environmental measures, which are necessary to protect human, animal or plant life or health;
- (b) GATT 1994 Article XX (g) applies to measures relating to the conservation of living and non-living exhaustible natural resources; and
- (c) measures taken to implement multilateral environmental agreements can fall under points (a) or (b) of this paragraph.

Article 5 **Current Account**

Each Party shall allow, in a currency, which is freely convertible currency and freely usable currency, and in accordance with the provisions of the Articles of the Agreement of the International Monetary Fund, as applicable, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

Article 6 **Capital Movements**

Each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital² for the purpose of liberalisation of investment as provided for in Section [Investment Liberalisation].

Article 7 **Measures affecting capital movements, payments or transfers**

1. The provisions of Articles X [Capital movements] and X [Current Account] shall not be construed as preventing a Party from applying its laws and regulations relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, or futures, options and other financial instruments;
- (c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offenses, deceptive or fraudulent practices;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
or
- (f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

Article 8

² For greater certainty, such free movement of capital will be allowed in a currency, which is freely convertible currency and freely usable currency, without restriction or delay, and at the prevailing market rate of exchange applicable on the date of transfer to the currency to be transferred.

Temporary safeguard measures with regard to capital movements, payments or transfers

In exceptional circumstances of serious difficulties for the operation of monetary and exchange rate policy, in the case of China, or for the operation of the economic and monetary union, in the case of the European Union, or threat thereof, safeguard measures that are strictly necessary may be taken by the concerned Party with regard to capital movements, payments or transfers for a period not exceeding six months.

Article 9

Restrictions in case of balance of payments and external financial difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers³.

2. The measures referred to in paragraph 1 shall:

- (a) be consistent with the Articles of the Agreement of the IMF, as applicable;
- (b) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (c) be temporary and phased out progressively as the situation specified in paragraph 1 improves;
- (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (e) be non-discriminatory compared to third countries in like situations.

3. In the case of liberalisation of investment, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of the General Agreement on Trade in Services (GATS).

4. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.

5. If restrictions are adopted or maintained under this Article, the Parties shall promptly hold consultations in the Investment Committee unless consultations are held in other fora. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, inter alia, such factors as:

- (a) the nature and extent of the difficulties;
- (b) the external economic and trading environment; and
- (c) alternative corrective measures which may be available.

6. The consultations pursuant to paragraph 5 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

³ For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

Article 10 **Security exceptions**

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests:
 - (i) connected to the production of or traffic in arms, ammunition and implements of war and to such production, traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 11 **Taxation**

1. Nothing in this Agreement shall affect the rights and obligations of either Party, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.

2. Article 5 (Most-favoured nation treatment) shall not apply to any advantage, treatment, preference, or privilege accorded by a Party pursuant to any existing or future tax convention.

3. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure that distinguishes taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

4. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure aimed at preventing the avoidance or evasion of taxes pursuant to its tax laws or tax conventions.

5. Nothing in this Agreement shall apply to existing taxation measures of a Party inconsistent with Article [National Treatment], provided that such measures are consistent with that Party's obligations under GATS, GATT and TRIMs.

For the purpose of this Article:

- (a) "residence" means residence for tax purposes;
- (b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either the Member States, the EU or China are party to.

Article 12

Fulfilment of obligations

Each Party shall take any general or specific measures required to fulfil its obligations under this Agreement, including its observance by central, regional or local governments and authorities, as well as non-governmental bodies in the exercise of governmental powers delegated to them by such governments and authorities. They shall see to it that the objectives set out in this Agreement are attained.

Article 13

Accession of a new Member State to the European Union

1. The Investment Committee shall be informed of any request made by a third State to become a member of the European Union.
2. During the negotiations between the European Union and the applicant State, the European Union shall provide China with any relevant information. The European Union shall notify China of any accession to the European Union.
3. In the framework of the Investment Committee, and sufficiently in advance of the date of accession of a third State to the European Union, the Parties shall examine any effects of such accession on this Agreement. The Investment Committee shall decide on any necessary adjustment or transition measures which shall be approved in accordance with each Party's internal legal procedures.

Article 14

Rights and Obligations under this Agreement

Nothing in this Agreement shall be construed as conferring rights or imposing obligations that may be directly invoked before the Parties' courts or tribunals.

Article 15

Relation with other agreements

1. Previous agreements between the Member States of the European Union and/or the European Community and/or the European Union and China are not superseded or terminated by this Agreement.
2. The present Agreement shall be an integral part of the overall bilateral relations as governed by the Trade and Economic Cooperation Agreement or a future Framework Agreement.
3. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations under the WTO Agreement.

Article 16

Territorial application

This Agreement applies, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties and, on the other hand, with regard to the People's Republic of China, to the entire customs territory of China.

Article 17
Annexes

The Annexes to this Agreement shall form an integral part thereof.

Article 18
Entry into force

1. This Agreement shall be approved by the Parties in accordance with their own procedures.
2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that their respective applicable legal requirements and procedures for entry into force of this Agreement have been completed, or on such other date as the Parties may agree.
3. Notifications shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs of China, or its successor.

Article 19
Duration

This Agreement shall be valid indefinitely.

1. Either Party may notify in writing the other Party of its intention to terminate this Agreement.
2. The termination shall take effect six months after the notification under paragraph 2.

Article 20
Authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Chinese languages, each of these texts being equally authentic. In case of any divergence of interpretation, the text of the language in which this Agreement was negotiated shall prevail.