

# **Business Environment of the European Union**

**2022/2023**

**CCPIT Academy**

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**Research Group of the**  
***Report on the Business Environment of the European Union***  
**2022/2023**

**Research Group**

**Group Leader**

**Zhao Ping** Vice President and Research Fellow, CCPIT Academy

**Deputy Group Leader**

**Zhou Jinzhu** Director, Deputy Research Fellow, International Trade Research Department, CCPIT Academy

**Group Members**

**Li Jiayue** International Trade Research Department, CCPIT Academy

**He Zongwu** International Trade Research Department, CCPIT Academy

**Zhao Lijin** International Trade Research Department, CCPIT Academy

**Zhang Yujing** International Trade Research Department, CCPIT Academy

**Li Jingwei** Associate Professor, Institute of International Economy, University of International Business and Economics



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## Preface

China and the European Union are two major forces in maintaining world peace, two major markets in promoting common development, and two major civilizations in promoting human progress. With global significance and strategic impact, the relations between China and the EU go beyond the bilateral sphere and are all the more relevant under the current circumstances. Since 2022, China-EU relations have remained generally stable, and the two sides have had frequent high-level engagements, kept a sound momentum in economic, trade and investment cooperation, seen positive progress with major cooperation projects, and maintained close communication on international issues, creating a relatively stable environment for cooperation between their businesses and peoples.

In 2022, China and the EU overcame the difficulties of turbulence in the international situation and uncertainty in the global economic recovery, and maintained a sustained growth momentum in their bilateral trade in goods and the trade volume increased steadily. China and the EU were each other's second largest trading partner. Throughout the year, bilateral trade in goods between China and the EU totaled RMB 5,646.798 billion, up 5.6% year-on-year. In 2021, direct investment flows from Chinese enterprises to the EU amounted to USD 7.86 billion, ranking third in China's total outbound direct investment (ODI) flows and first in terms of China's ODI stocks to developed economies. China has always supported the European integration process and the EU's position on strategic autonomy. However, in 2022, the EU saw a rise in protectionism and a negative tendency of decoupling between countries and their respective trading blocs as well as breaking of the supply chain. The business environment continued to get worse, causing unabated negative impact on Chinese enterprises investing and operating in the EU.

In order to fully reflect the voices of Chinese enterprises in Europe and help the EU improve its business environment, the CCPIT Academy has conducted a survey on the business environment of the EU for five consecutive years. The research team has comprehensively reviewed the laws and policies introduced by the EU and its member states, distributed 600 questionnaires through various channels at home and abroad, received 298 completed questionnaires, and surveyed 71 enterprises in Europe through field visits, online and offline seminars, etc. The enterprises generally reported that although the EU business environment is still attractive, there are four major problems that have seriously affected them over the year.

**First, the EU is constantly adding new policy tools and increasing barriers to market access, resulting in huge challenges for businesses, which are neither allowed to enter nor to operate in the EU market.**

In 2022, the EU has basically formed a comprehensive review mechanism covering foreign

investment review, foreign subsidy review, public procurement review, anti-circumvention investigation, cybersecurity review, etc., involving its trade in goods, trade in services, investment, public procurement, cyberspace, and other areas of the market, erecting a three-dimensional protection barrier around the internal market. Furthermore, most of the newly added review tools are proactive and offensive in nature. The governments can launch subsidy reviews, public procurement reviews, anti-circumvention investigations, etc. against third countries and their enterprises to determine whether the economic and trade policies of these countries are up to the EU's own standards, and if not, exclude their enterprises from the EU market accordingly. It would even violate the non-retroactivity principle to use the new law to reverse completed investments or transactions. The survey shows that 45.64% of the respondents believe that the barriers to market access in the EU have been raised.

**Second, the EU has manipulated the “human rights” issue to politicize economic issues, hamstringing the market economy using administrative means, and stigmatize and discriminate against enterprises and products from China’s Xinjiang region.**

Since 2022, the European Parliament has adopted two resolutions on Xinjiang, the “forced labor ban” and *the Directive on Corporate Sustainability Due Diligence (CSDD)*, which disregard the facts, stigmatize the human rights situation in China’s Xinjiang region, and call for an import/export ban on products produced by Chinese-owned enterprises that use “forced labor”. The EU published lists of sanctioned entities, regions, and products, and require enterprises in the EU to disclose information about the subsidiaries, suppliers, sub-suppliers, contractors, and business partners in their supply chains. The exclusion of Xinjiang-related products from the EU market by the EU and some of its member states is a manifestation of political interference with the market economy, to create artificial administrative barriers for the purpose of trade protection, thus discriminating against products and even industrial chains from China’s Xinjiang region, and violating the WTO principle of non-discrimination. According to the survey, 61.4% of the respondents believe that the EU and its member states have a tendency to politicize economic issues, and 34.21% of the surveyed enterprises expect a reduction of supply chain-based cooperation with EU enterprises.

**Third, the EU has continued to step up excessive regulation, and the compliance costs for businesses has risen significantly, which may lead to the decoupling of the EU market and supply chain from the rest of the global market.**

The protectionist policy tools introduced by the EU in various fields have put forward various compliance requirements for foreign enterprises, raising their compliance costs in the whole process and supply chain before, during and after entering the EU market. According to the survey, after the publication of the *CSDD Directive*, 47.14% of the respondents believe that their compliance costs have increased; 59.82% of the respondents believe that the *Regulation Foreign Subsidies Distorting the Internal Market* has increased their compliance costs; 65.22% of the respondents believe that the implementation of the *EU General Data Protection Regulation (GDPR)* has increased the compliance costs for business involving Europe. The EU and its Members States have compelled enterprises to conduct due diligence on human rights and environment in the supply chain, prolonged the investigation time of various reviews, reduced policy transparency, and increased the uncertainty of cooperation between EU and non-EU enterprises, which may lead EU enterprises to abandon their partners in the international market for the sake of reducing compliance risks, and result in a broken supply chain and decoupling between EU enterprises and their foreign counterparts.

#### **Fourth, with a worsening business environment in the EU, foreign enterprises are less than optimistic about their future business environment.**

Since 2022, the EU has developed a protectionist policy toolbox, which makes it more difficult for foreign enterprises to invest, merge and acquire and participate in public procurement in the EU. It has even interfered with enterprises' supply chain cooperation inside and outside the EU, restricting their normal production and operation activities, and resulting in significant worsening of the EU's business environment. According to the survey, 33.04% of the respondents believe that the business environment in the EU has deteriorated, which is 5.86 percentage points higher than last year; 53.91% believe that there is no change; and only 13.04% believe that there is improvement. The survey shows that the top five EU member states with the best business environment are Germany, France, Italy, the Netherlands and Spain, while the five member states with the worst business environment are Lithuania, Latvia, Bulgaria, Estonia and Cyprus. The enterprises are not optimistic about the future business environment of the EU, with 60.87% of the respondents believing that the EU market access environment will further deteriorate.

In view of the main problems with the EU business environment, Chinese enterprises in Europe have put forward ten major recommendations, hoping that the EU and its member states could take their demands seriously.

#### **I. Maintain high-level dialogue with China to address business concerns**

It is recommended that the EU continue to maintain and strengthen high-level dialogue and communication with China, and respond to the concerns of Chinese enterprises through signing memoranda, establishing cooperation committees or technical committees, etc. China and the EU should strengthen in-depth cooperation in such areas as green economy and digital economy, establish bilateral cooperation mechanisms, and ensure the stability of supply chains for key products. China and the EU should strengthen the alignment of their respective strategies, dispel misunderstanding, and promote the sustainable, sound and stable development of China-EU economic and trade relations.

#### **II. Resume the ratification process on the EU side of the China-EU Comprehensive Agreement on Investment (CAI)**

It is recommended that the EU resume the ratification process of the CAI as soon as possible and work toward the early signing of the agreement to provide more open market access, more transparent domestic regulation and higher-level economic and trade rules for two-way investment between China and Europe, and to promote the further deepening of China-EU economic and trade exchanges. The survey shows that if the CAI gets approved and implemented, 40.87% of the surveyed Chinese enterprises will increase their investment in the EU market.

#### **III. Uphold strategic autonomy to form an independent perception of China**

It is recommended that the EU should uphold strategic autonomy and make independent and fair judgment, and engage in bilateral dialogue and consultations with China on foreign investment review, foreign subsidy regulation, the international procurement instrument, human rights and due diligence rules so as to remove interference and work with the Chinese side to promote the long-term, steady development of China-EU relations.

#### **IV. Comply with multilateral trade rules to optimize the EU market access environment**

The EU has been an advocate for and practitioner of multilateralism. However, in recent years the EU has increased the protection of the internal market through foreign investment review, foreign subsidy review and public procurement review, which is contrary to the concept of openness and freedom of trade that it has always championed. It is recommended that the EU implement the WTO's free trade principle under the multilateral framework and create a fair and open market access environment.

#### **V. Eliminate the negative impact of unilateral economic and trade tools**

It is recommended that the EU abandon unilateralism and trade protectionism, uphold liberalism and openness, reduce trade barriers, investment market access barriers and standards barriers, use unilateralist tools prudently, deepen pragmatic cooperation with China, jointly promote progress in high-tech and new energy sectors, and improve the well-being of people in the EU.

#### **VI. Do not create additional temporary barriers for foreign enterprises in the name of national security**

It is recommended that the EU and its Member State governments should avoid frequently updating the scope of “strategic sectors relating to national security” and subjecting foreign enterprises to additional scrutiny; at the same time that they should abide by the legal principle of “non-retroactivity”, and that investment projects prior to the introduction of current legal provisions should not be annulled under such provisions.

#### **VII. Stop the stigmatization of the enterprises and products of China's Xinjiang region**

It is recommended that the EU should respect the facts, stop stigmatizing Xinjiang, refrain from misleading EU enterprises to discriminate against Xinjiang enterprises and products, refrain from protectionism in the name of human rights, and avoid politicizing economic issues.

#### **VIII. Refrain from dividing the market in the name of corporate due diligence**

It is recommended that the EU should put an end to leading, through administrative means, enterprises to decouple their supply chains from China, which could result in market division, and avoid increasing the compliance cost of enterprises by imposing additional supply chain due diligence obligations.

#### **IX. Improve foreign investment review transparency to avoid discriminatory enforcement**

It is recommended that the EU should timely publicize the review timeline and provide clear explanations on the review results in the foreign investment review process, improve the transparency of the foreign investment review process, and treat domestic and foreign enterprises equally. At the same time, it is recommended that the EU and its member states strictly abide by the WTO's national treatment principle, formulate enforcement norms with reasonable rules and clear boundaries, avoid differential treatment of foreign enterprises at the enforcement level, limit enforcement discretion to a reasonable range, and avoid discouraging foreign enterprises from participating in and building the EU market.



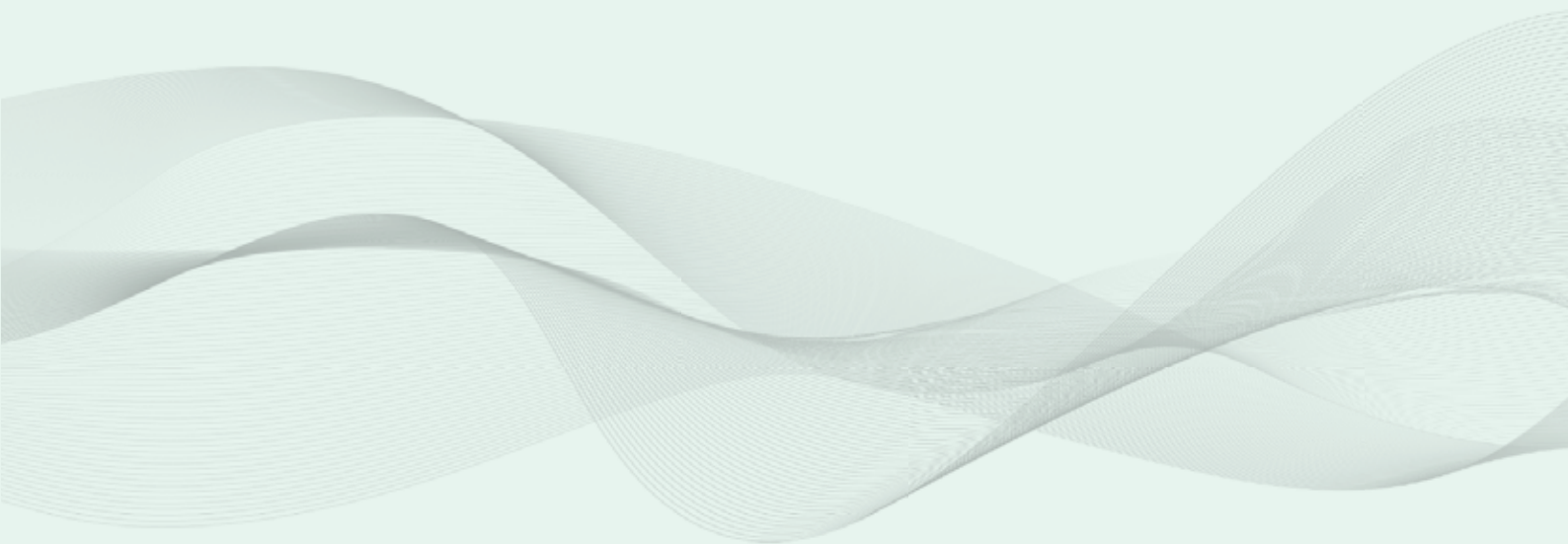
## **X. Conduct foreign subsidy review with caution to reduce compliance costs**

By generalizing the scope of “financial contribution” and “third country”, the foreign subsidy review has significantly increased the risk and compliance cost of foreign enterprises’ investment and M&A activities in the EU market. It is recommended that the EU should limit the definition and scope of “financial contribution” and “third country” within reasonable boundaries, properly distinguish normal market-oriented business operations and use the foreign subsidy review with caution.



## **Chapter 1**

# **Current Status of China-EU Economic and Trade Cooperation**



# I. China and the EU have maintained stability and progress in their economic and trade relations

## 1. China-EU bilateral trade has maintained good momentum.

In 2022, the bilateral trade in goods between China and the EU continued to grow and the trade volume increased steadily. China was the second largest trading partner of the EU, its largest source of import and second largest market for export; the EU was China's second largest trading partner, the second largest export market and the second largest source of import. In 2022, the total bilateral trade in goods between China and EU was valued at RMB5,646.798 billion, up 5.6% year-on-year. In breakdown, China exported RMB3,743.441 billion of goods to the EU, up 11.9% year-on-year; China imported RMB1,903.357 billion of goods from the EU, down 4.9% year-on-year (see Figure 1-1).

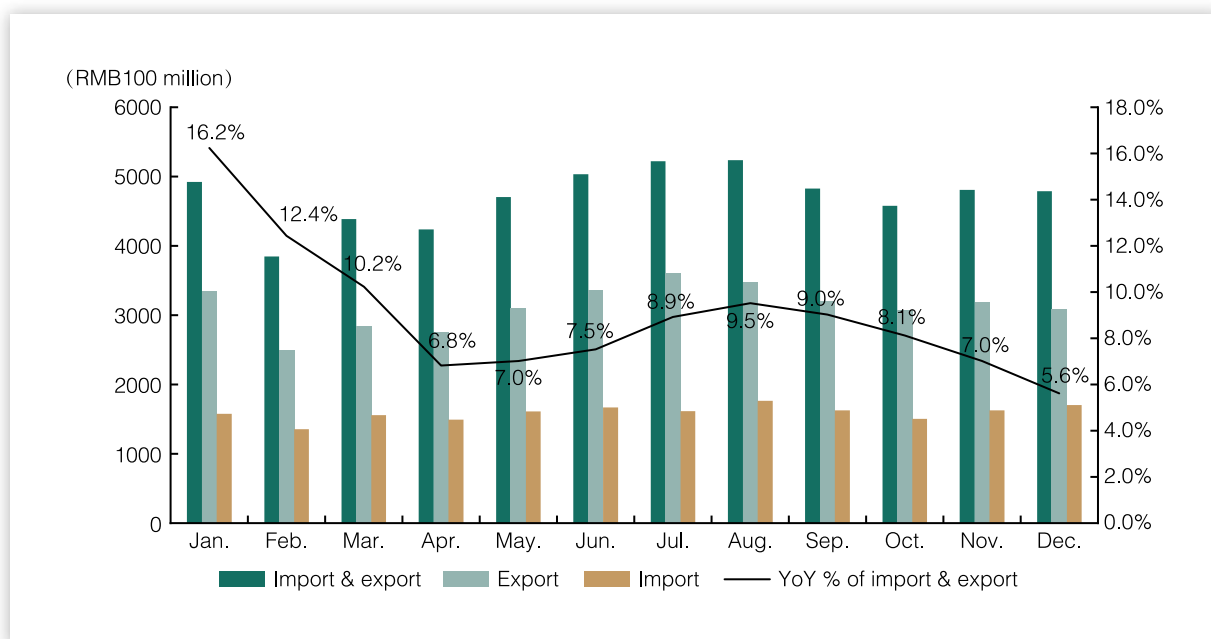


Figure 1-1: Overall China-EU Trade in Goods in 2022

Source: General Administration of Customs of the People's Republic of China, <http://www.customs.gov.cn>.

## 2. Chinese enterprises' direct investment stocks in the EU remained the highest among developed economies.

In 2021, Chinese enterprises' direct investment flowed to the EU amounted to USD7.86 billion, down

22.2% year-on-year, with the EU ranking third in terms of China's ODI flows in 2021. In the same year, the stock of Chinese enterprises' direct investment in the EU was USD95.9 billion, accounting for 33.5% of the stock of Chinese investment in developed economies, making the EU the largest FDI recipient of Chinese investment stock. As of the end of 2021, China had established over 2,700 direct investment enterprises in the EU, covering all 27 EU member states and employing nearly 270,000 foreign workers<sup>1</sup>.

By country, Germany, the Netherlands and Luxembourg stood as top recipients of Chinese direct investment flows. In 2021, Chinese enterprises' direct investment flow to Germany reached USD2.71 billion, up 97.1% from the previous year, accounting for 34.5% of total Chinese investment flows to the EU, mainly in manufacturing, electricity/heat/gas and water production and supply, wholesale and retail, and finance. The Netherlands was next with USD1.7 billion, down 65.5% from the previous year, accounting for 21.7% of the Chinese investment flows to the EU, mainly in information transmission/software and information technology services, mining, wholesale and retail trade, etc.; Luxembourg ranked third with USD1.5 billion direct investment flows from Chinese enterprises, up 113.9% from the previous year, accounting for 19.1%, mainly in residential services/repair and other services, manufacturing, leasing and business services.

By industry, the main target sectors for Chinese direct investment in the EU in 2021 were manufacturing, finance and information transmission/software and IT services, with investment amounts accounting for 47%, 14.3% and 13.7% respectively.

## II. China-EU trade and economic cooperation has enjoyed broad space and many opportunities

### **1. High-level dialogues set the course for China-EU trade and economic cooperation.**

In 2022, China-EU trade and economic cooperation remained resilient and dynamic, and the high-level dialogues set the course for China-EU trade and economic cooperation (see Table 1-1). As China further opens up to the outside world at higher levels and demand picks up driven by sustained economic recovery, China will provide broader development space and greater market opportunities for its global trading partners. As supporters of globalization and the multilateral trading system, China and the EU have broader room for cooperation.

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1 2021 Statistical Bulletin of China's Outward Foreign Direct Investment.

Table 1-1: China-EU High-Level Dialogues in 2022

Date	Form of exchange	Content
January 10, 2022	President Xi Jinping spoke by phone with Maltese President George Vella	President Xi Jinping pointed out that the two sides should deepen pragmatic cooperation, promote the development of the Belt and Road, and expand cooperation in key areas such as trade and investment, health care, clean energy, transport and logistics.
February 6, 2022	President Xi Jinping met with Grand Duke Henri of Luxembourg at the Great Hall of the People	President Xi Jinping welcomed Luxembourg enterprises' effort to match China's new development paradigm and new opening-up initiatives, to deeply explore the potential of cooperation in high-tech and green economy, and to expand and strengthen the China-Luxembourg Silk Road in the Air.
March 8, 2022	Video summit between Chinese, French and German leaders	Xi Jinping pointed out that the three parties should continue to deepen green and digital partnerships and pragmatic cooperation in various fields under the principle of mutual benefit and win for all. Macron and Scholz expressed their willingness to work closely with China and to make joint efforts to solve major global challenges such as climate change and public health.
April 1, 2022	President Xi Jinping met with European Council President Michel and European Commission President von der Leyen	Xi Jinping once again spoke about the three-pronged positioning of China and Europe as the world's "two major forces, two major markets and two major civilizations" and added a new meaning. Xi Jinping stressed that China and the EU should continue to lead global cooperation on climate change and biodiversity. Michel and von der Leyen expressed their willingness to continue to deepen cooperation with China in various fields such as trade, investment, energy, and green development.
May 9, 2022	President Xi Jinping held a video meeting with German Chancellor Olaf Scholz	Xi Jinping stressed the need to tap the potential for mutually beneficial cooperation and actively expand cooperation in new technology fields such as green development, environmental protection, trade in services, artificial intelligence and digitalization. Scholz said the two sides should strengthen cooperation in a wide range of fields such as trade and investment, climate change, combating epidemics, health care, education and culture.
May 10, 2022	President Xi Jinping spoke by phone with French President Emmanuel Macron	Xi Jinping stressed the need to plan the priorities of Sino-French cooperation in the next five years through bilateral dialogue mechanisms, and to promote cooperation in traditional fields such as civil nuclear energy and aerospace, while intensifying cooperation in emerging fields such as artificial intelligence and clean energy. Macron said that in the next five years, France is willing to deepen cooperation with China in the fields of agriculture, aviation, civil nuclear energy and humanities, strengthen cooperation in addressing climate change and biodiversity conservation, and promote more positive results in France-China relations.

Date	Form of exchange	Content
July 29, 2022	President Xi Jinping spoke by phone with Polish President Andrzej Duda	Xi Jinping stressed that the two sides should strengthen policy communication, make use of mechanisms such as the Intergovernmental Cooperation Committee and the Joint Commission on Economy and Trade to enhance strategic alignment, build the Belt and Road with high quality, deepen pragmatic cooperation in economy and trade, connectivity and other fields, and create new growth areas for cooperation in green development and digital economy. Duda said that Poland is willing to work with China to promote bilateral cooperation in economy and trade, logistics, connectivity and other areas for more results.
November 4, 2022	President Xi Jinping met with German Chancellor Olaf Scholz at the Great Hall of the People	Xi Jinping pointed out that the two sides should grow the cooperation potential in traditional areas while activating cooperation in new energy, artificial intelligence, digitalization and so on. Scholz said Germany firmly supports trade liberalization, economic globalization and opposes “decoupling”, and is willing to continue to deepen trade and economic cooperation with China and support mutual investment and cooperation between enterprises of the two countries.
November 15, 2022	President Xi Jinping met with French President Emmanuel Macron in Bali, Indonesia	Xi Jinping stressed that China is willing to work with France to strengthen communication and collaboration in addressing climate change and biodiversity conservation, to jointly safeguard true multilateralism, to address global challenges such as food security and energy security, and to solve the challenges of sustainable development. Macron said France is willing to strengthen multilateral communication and collaboration with China to jointly address global issues such as climate change, food crisis and biodiversity conservation.
	President Xi Jinping meets with Dutch Prime Minister Rutte in Bali	Xi Jinping pointed out that both sides should pursue mutually beneficial cooperation, promote cooperation in agriculture, water resources and energy, and push for greater development of the open and pragmatic partnership for comprehensive cooperation between China and the Netherlands. Rutte said the Dutch side is willing to work with China to expand dialogue and cooperation in the fields of innovation and climate change, with a view to achieving greater success in the next 50 years.
	President Xi Jinping met with Spanish Prime Minister Alexis Sanchez in Bali, Indonesia	Xi Jinping stressed that China is willing to strengthen communication and collaboration with Spain at the G20 and other multilateral platforms to jointly address challenges such as climate change and energy and food security. Sanchez said that Spain is willing to strengthen high-level exchange with China, promote exchanges and cooperation in the fields of trade, investment, humanities and climate change, and further facilitate Chinese business investment and cooperation in Spain.

Date	Form of exchange	Content
November 16, 2022	President Xi Jinping and Grand Duke Henri of Luxembourg exchanged congratulatory messages to celebrate the 50th anniversary of the establishment of diplomatic relations between the two countries	Xi Jinping noted that he would like to take the 50th anniversary of the establishment of diplomatic relations between the two countries as an opportunity to promote the sustainable and healthy development of China-Luxembourg relations for the benefit of the two countries and their peoples. Henri said that Luxembourg is willing to work with China to promote exchanges, strengthen cooperation and jointly maintain world peace and stability.
	President Xi Jinping met with Italian Prime Minister Giorgia Meloni in Bali, Indonesia	Xi Jinping noted that China hopes the two sides would make good use of the Sino-Italian governmental committee and dialogue mechanisms in various fields to explore growth areas for cooperation in high-end manufacturing, clean energy, aerospace and third-party markets. Meloni expressed Italy's willingness to continue to promote exchanges and cooperation between the two countries in trade, culture and other fields.
December 1, 2022	President Xi Jinping held talks with visiting President of the European Council Charles Michel at the Great Hall of the People	Xi Jinping noted that President Michel's visit to China on behalf of all EU member states shortly after the 20th National Congress of the Communist Party of China reflects the EU's good will to develop relations with China. Xi Jinping put forward four points on the development of China-EU relations, including upholding correct understanding, properly managing differences, conducting cooperation at a higher level, and strengthening international coordination and cooperation. Michel said that the current international situation and geopolitics are undergoing profound and complex changes, and the European side is willing to work with China to ensure good organization of the high-level exchanges going forward, reduce misunderstandings and misjudgments by strengthening direct dialogue and cooperation, enhance communication and cooperation, and better address global challenges such as the energy crisis, climate change and public health together. The European side is willing to continue to work with China to move forward the process of EU-China CAI, enhance mutual trust in supply chain stability, and deepen the mutually beneficial cooperation between Europe and China in various fields.

Source: Compiled by the CCPIT Academy.

## **2. Third-party market cooperation has advanced win-win development.**

China and the EU have complementary industrial chains and a good fit between their respective economies. Cooperation in developing third-party markets will help give full play to the comparative advantages of their industries and create more cooperation opportunities for both sides. On February 16, 2022, President Xi Jinping held his eighth call with French President Emmanuel Macron since Covid outbreak, and both sides agreed to accelerate the implementation of a list of the fourth round of demonstration projects for third-party market cooperation. The list contains seven projects in



infrastructure, environmental protection, new energy, etc., with a total amount of more than US\$1.7 billion. These projects involved a number of Chinese and French enterprises and financial institutions, and such regions as Africa, Central and Eastern Europe. The project cooperation forms are flexible and diverse, including joint financing, co-investment, Chinese EPC turnkey + French investment and development, etc. As of September 2022, China has signed third-party market cooperation agreements with France, Italy, the Netherlands, Belgium, Spain, Austria and other EU member states, and has set up such diversified cooperation platforms as working groups, cooperation fora, cooperation funds and steering committees.

### **3. China and the EU have jointly built a green financial cooperation mechanism.**

Both China and the EU are actively committed to forward-looking, practical exploration, which lays a good foundation for deepening cooperation. On June 3, 2022, the International Platform for Sustainable Finance (IPSF) released an updated version of *the Common Ground Taxonomy for Sustainable Finance*<sup>2</sup>, which includes 72 economic activities that have a significant contribution to climate change mitigation (see Table 1-2). The taxonomy was jointly developed by the central bank of China and the relevant departments of the European Commission to improve the global comparability and compatibility of sustainable finance classification standards and definitions of green (sustainable) activities. The main roles of the taxonomy include: for brick-and-mortar businesses to assess the consistency of their business with low-carbon economy objectives; for commercial banks and asset managers to improve the consistency of their own investment activities with low-carbon transition strategies; for developmental financial institutions to assess development and investment projects; for national or regional entities (e.g., governments, regional economic consortia) to refer to when developing their green taxonomies; for international standard-setting bodies to refer to when developing sustainable finance standards; for academic researchers to refer to when conducting data analysis and empirical studies.

**Table 1-2: 72 Economic Activities in the Updated Version of the Common Ground Taxonomy for Sustainable Finance**

Section	Division	Specific Activities
A: Agriculture, forestry and fishing	A1: Forestry and logging	A1.1 Afforestation; A1.2 Rehabilitation and restoration of forests, including reforestation and natural forest regeneration after an extreme event; A1.3 Forest management; A1.4 Conservation forestry.

2 IPSF Common Ground Taxonomy for Sustainable Finance (updated version), [http://www.greenfinance.org.cn/upfile/file/20220605192235\\_360242\\_56062.pdf](http://www.greenfinance.org.cn/upfile/file/20220605192235_360242_56062.pdf).

Section	Division	Specific Activities
C: Manufacturing	C1: Manufacture of low-carbon footprint materials	C1.1 Manufacture of organic basic chemicals; C1.2 Manufacture of iron and steel; C1.3 Manufacture of liquid biofuel for use in transport.
	C2: Manufacture of clean energy technologies	C2.1 Production of smart grid products and equipment (excluding batteries); C2.2 Manufacture of batteries; C2.3 Production of wind generators; C2.4 Production of solar generators; C2.5 Production of biomass energy utilization equipment; C2.6 Production of hydropower generators and pumped-storage equipment; C2.7 Production of fuel cell equipment; C2.8 Production of geothermal energy utilization equipment; C2.9 Production of marine energy utilization equipment; C2.10 Manufacture of hydrogen.
	C3: Manufacture of clean energy vehicles and parts	C3.1 Manufacture of key components of new energy automobiles and its industrialization.
	C4: Manufacture of recycling equipment	C4.1 Manufacture of equipment for the recycling and harmless treatment of food waste; C4.2 Manufacture of facilities for resource recycle and reuse; C4.3 Manufacture of equipment for the recycling and harmless treatment of agricultural and forestry residues.
	C5: Manufacture of energy-saving equipment	C5.1 Manufacture of energy-saving furnace/kiln; C5.2 Manufacture of high-efficient energy-saving household appliances; C5.3 Manufacture of energy-saving pumps and vacuum equipment; C5.4 Manufacture of energy-saving gas compression equipment; C5.5 Manufacture of energy-saving hydraulic and pneumatic pressure equipment; C5.6 Manufacture of energy-saving blowers and fans; C5.7 Manufacture of high-efficient generator and generator sets; C5.8 Manufacture of energy-saving motors; C5.9 Manufacture of energy-saving transformers, rectifiers, inductors and electric welding machines; C5.10 Manufacture of residual heat, pressure and gas utilization facilities; C5.11 Manufacture of energy efficiency equipment for buildings; C5.12 Manufacture of high-efficiency energy-saving heat pumps and cooling/ventilation systems for buildings; C5.13 Manufacture of high-efficiency light-emitting diode (LED) products and systems.

Section	Division	Specific Activities
D: Electricity, gas, steam and air conditioning supply	D1: Electricity, gas, steam and air conditioning supply	D1.1 Electricity generation using solar photovoltaic technology; D1.2 Electricity generation using concentrated solar power (CSP) technology; D1.3 Electricity generation from wind power; D1.4 Electricity generation from ocean energy technologies; D1.5 Electricity generation from hydropower; D1.6 Electricity generation from bio-energy; D1.7 Electricity generation from geothermal energy; D1.8 Storage of electricity.
	D2: Steam and air conditioning supply	D2.1 District heating and cooling; D2.2 Construction, installation and operation of heat pump facilities; D2.3 Production of heat/cool from solar thermal heating; D2.4 Cogeneration of heat/cool and power from solar energy; D2.5 Cogeneration of heat/cool and power from geothermal energy (Production of heat/cool from geothermal energy); D2.6 Cogeneration of heat/cool and power from renewable non-fossil gaseous and liquid fuels (Production of heat/cool from renewable non-fossil gaseous and liquid fuels); D2.7 Cogeneration of heat/cool and power from bioenergy (Production of heat/cool from bioenergy); D2.8 Production of heat/cool using waste heat.
E: Water supply; sewerage, waste management and remediation activities	E1: Sewage sludge treatment	E1.1 Sewage sludge treatment – anaerobic digestion.
	E2: Waste collection, treatment and recycling	E2.1 Collection and transport of non-hazardous waste in source segregated fractions; E2.2 Recycling non-hazardous waste; E2.3 Composting of domestic and agricultural bio-waste; E2.4 Utilization/treatment of domestic waste – anaerobic digestion; E2.5 Recycling of agricultural waste.
F: Construction	F1: Construction and renovation of buildings	F1.1 Construction of new buildings; F1.2 Renovation of existing buildings.
	F2: Construction of transport infrastructure	F2.1 Infrastructure enabling low-carbon road transport; F2.2 Infrastructure enabling low carbon water transport; F2.3 Low carbon airport infrastructure; F2.4 Infrastructure for electric rail transport.
	F3: Electrical, plumbing and other construction installation activities	F3.1 Green lighting upgrades; F3.2 Installation, maintenance and repair of renewable energy technologies in buildings.

Section	Division	Specific Activities
H: Transport and storage	H1: Land transport including railways	H1.1 Construction and operation of public transport system in urban and rural areas; H1.2 Construction and operation of rail freight transport and upgrade of existing railways; H1.3 Construction and operation of facilities for shared transport, including motorbikes, passenger cars and light commercial vehicles; H1.4 Passenger interurban rail transport; H1.5 Construction and operation of personal mobility devices, cycle logistics.
X: Others	X1 Underground permanent geological storage of CO2	
	X2 Hydrogen storage	

Source: IPSF Common Ground Taxonomy for Sustainable Finance (updated version).

#### 4. The quality and efficiency of the China-Europe Railway Express has continued to improve.

With tight capacity in global sea and air freight markets, the advantages of land transport of the China-Europe Railway Express have continued to emerge, as the Express has provided important support for stable supply chains between China and Europe. In 2022, the China-Europe Railway Express freight trains made 16,000 trips, carrying 1,600,000 TEUs of goods, up 10% and 11% year-on-year, respectively (see Figure 1-2).

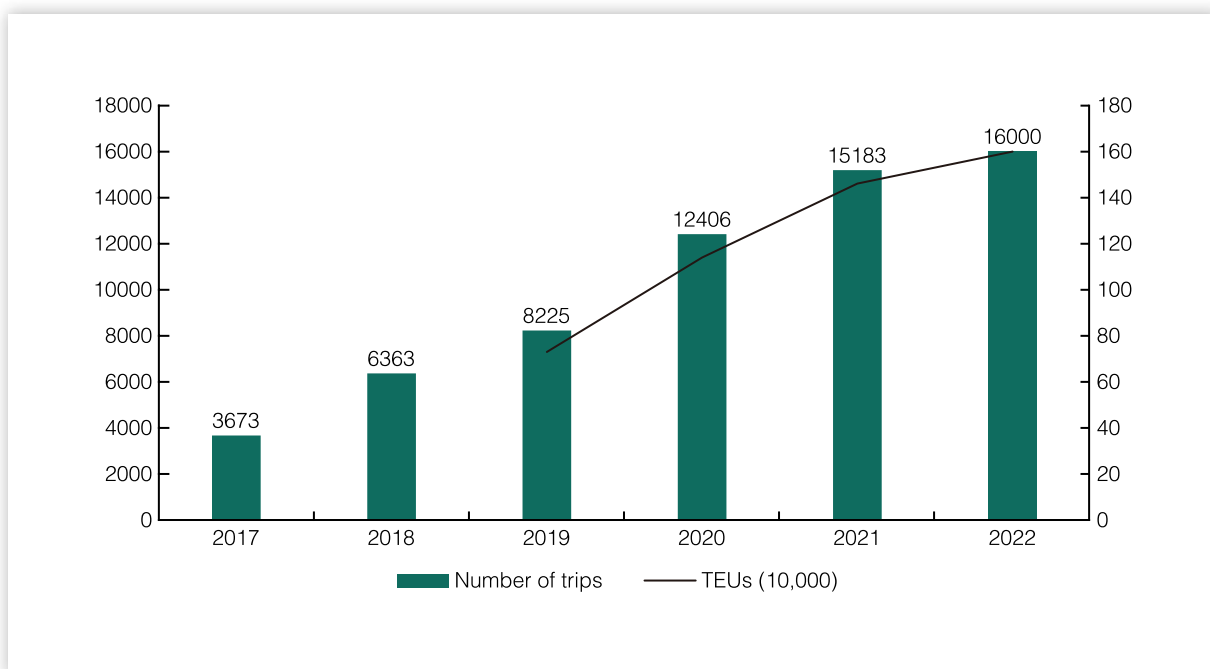


Figure 1-2: Number of Trips of the China-Europe Railway Express Freight Trains and TEUs Transported, November 2017-2022

Source: National Railway Administration, PRC., <http://www.nra.gov.cn/>.

As the mode of transport kept optimizing, the logistics cost of China-Europe Railway Express has been significantly reduced and its efficiency has been rising continuously. Timewise, the China-Europe Railway Express is one-third faster than traditional international intermodal transport, and its cost is only one-fourth of that of air transport, with an overall loaded container ratio of more than 98%<sup>3</sup>. On October 26, 2022, the whole-course schedule of both domestic and overseas services was launched, and under this mode, the schedule of each section of the train service had been connected, and the arrival and departure time of the train had been fixed. This solved the problem of ineffective stays caused by disconnected train schedules of different countries along the route and made the operation time of the China-Europe Railway Express more stable.

### **5. China-Europe cooperation in science, technology, and innovation (STI) has great potential.**

With a good foundation for STI cooperation, China and Europe have both realistic needs for and real benefits to gain from such cooperation. Strengthening cooperation in STI is a key area for current and future trade and economic cooperation between China and Europe. Since the launch of China-EU STI cooperation in 1981, China and Europe have actively engaged in project cooperation in many fields such as energy, biotechnology, agriculture, health medicine, natural resources, environment, etc. and achieved rich results. At the same time, the level of China-EU cooperation in STI has been gradually rising<sup>4</sup> (see Table 1-3). In 2022, China and the EU signed a new round of Sino-European joint research funding agreement<sup>5</sup>, the agreement on the fifth phase of the Sino-European collaborative Dragon Program<sup>6</sup>, and the 100G network cooperation agreement.<sup>7</sup> According to relevant agreements, the two sides will accelerate the implementation of R&D projects, the establishment of cooperation mechanisms and the training of scientific and technological talents in the fields of agriculture, food and biotechnology (FAB) and climate change and biodiversity (CCB).

Table 1-3: China-EU Science, Technology and Innovation Cooperation Mechanisms

Time	Content
April 1981	An energy delegation of the Commission of the European Communities visited China, officially launching Sino-European cooperation and exchanges in science and technology.
1991	The China-EC Working Group on Science and Technology Cooperation was established (renamed as China-EU Science and Technology Cooperation Joint Steering Committee in 1998) to consult regularly on cooperation policies and actions and measures.
December 1998	The two sides signed the <i>China-EU Science and Technology Cooperation Agreement</i> (renewed in 2004).
October 2004	China signed the cooperation agreement with the EU on the Galileo Program, becoming the first non-EU country to participate in the program.

3 Report on the Development of the China-Europe Railway Express, <https://www.ndrc.gov.cn/?code=&state=123>.

4 Ministry of Foreign Affairs of China, [https://www.mfa.gov.cn/web/wjb\\_673085/zzjg\\_673183/xos\\_673625/dqzz\\_673633/oumeng/gx\\_673639/](https://www.mfa.gov.cn/web/wjb_673085/zzjg_673183/xos_673625/dqzz_673633/oumeng/gx_673639/).

5 Ministry of Science and Technology of China, <https://www.most.gov.cn/index.html>.

6 Ministry of Science and Technology of China, <https://www.most.gov.cn/index.html>.

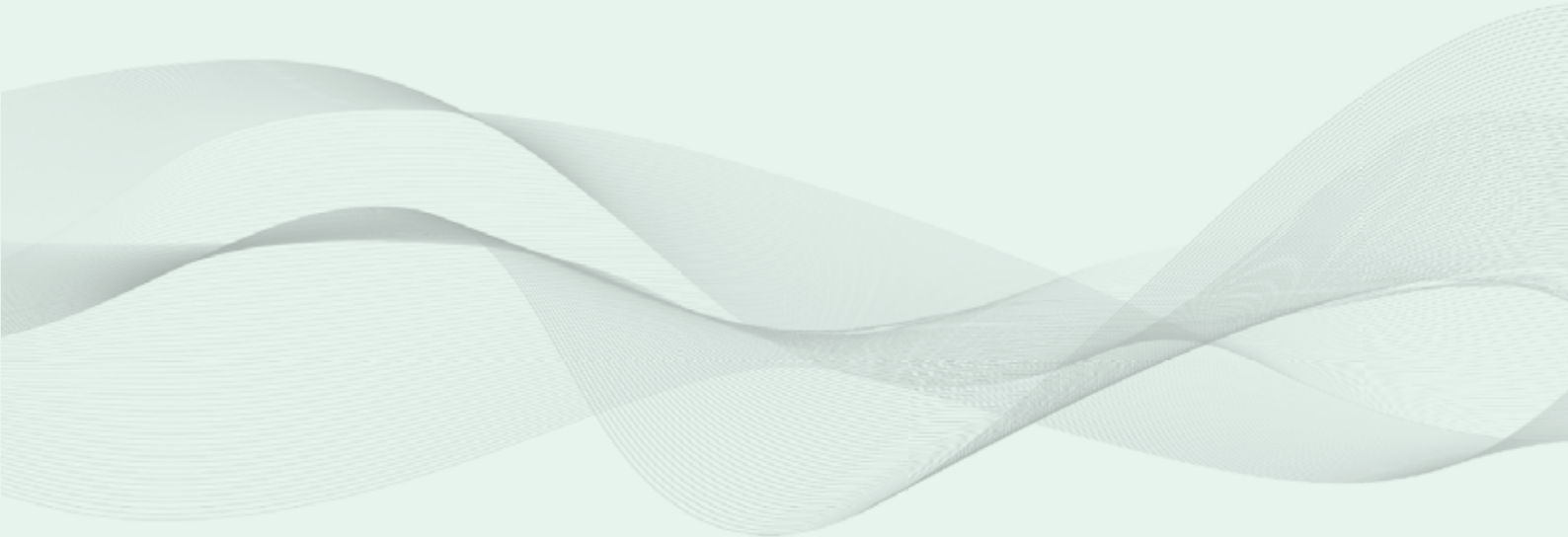
7 National Remote Sensing Center of China, <https://nrsc.most.cn/>.

Time	Content
May 2009	China and the EU signed <i>the China-EU Science and Technology Partnership Scheme</i> .
2010	China and the EU signed a joint statement on the special encouragement of energy research and innovation cooperation between Chinese and European SMEs, for which China set up a three-year (2011-2013), RMB 100 million "China-EU SME Energy Saving and Emission Reduction Special Fund" to support SMEs from both sides to develop scientific and technological cooperation in the fields of new and renewable energy.
September 2012	The 15th China-EU Leaders' Meeting announced the establishment of a comprehensive annual dialogue on innovation cooperation (the first dialogue was held in China in November 2013, the third and fourth dialogues in Brussels in June 2017 and April 2019, respectively).
July 2018	In the <i>Joint Statement of the 20th China-EU Leaders' Meeting</i> , the two sides proposed to jointly implement the 2018-2020 Flagship Initiatives and explore a roadmap for further cooperation in areas such as basic research, frontier science and key societal challenges.
May 2022	China and Europe successfully organized the 15th meeting of the China-EU Steering Committee on Science and Technology Cooperation, which was the first interdepartmental mechanism meeting between the two sides after the China-EU Leaders' Meeting.

Source: Compiled by the CCPIT Academy based on official information.

## **Chapter 2**

# **General Issues of the Business Environment of the EU**



## I. Trade protection and over-intervention have made the EU business environment worse

### **1. More than 30% of the surveyed enterprises believe that the business environment in the EU has deteriorated.**

Since 2022, the EU has developed a protectionist policy toolbox, making it more difficult for foreign enterprises to invest, merge and acquire and participate in public procurement in the EU, and has even interfered with their supply chain cooperation inside and outside the EU, leading to restrictions on their normal production and operation activities and a significant deterioration of the EU's business environment. According to the survey, 33.04% of the respondents believe that the business environment in the EU has deteriorated, which is 5.86 percentage points higher than last year; 53.91% believe that there is no change; and only 13.04% believe that the environment has improved (see Figure 2-1).

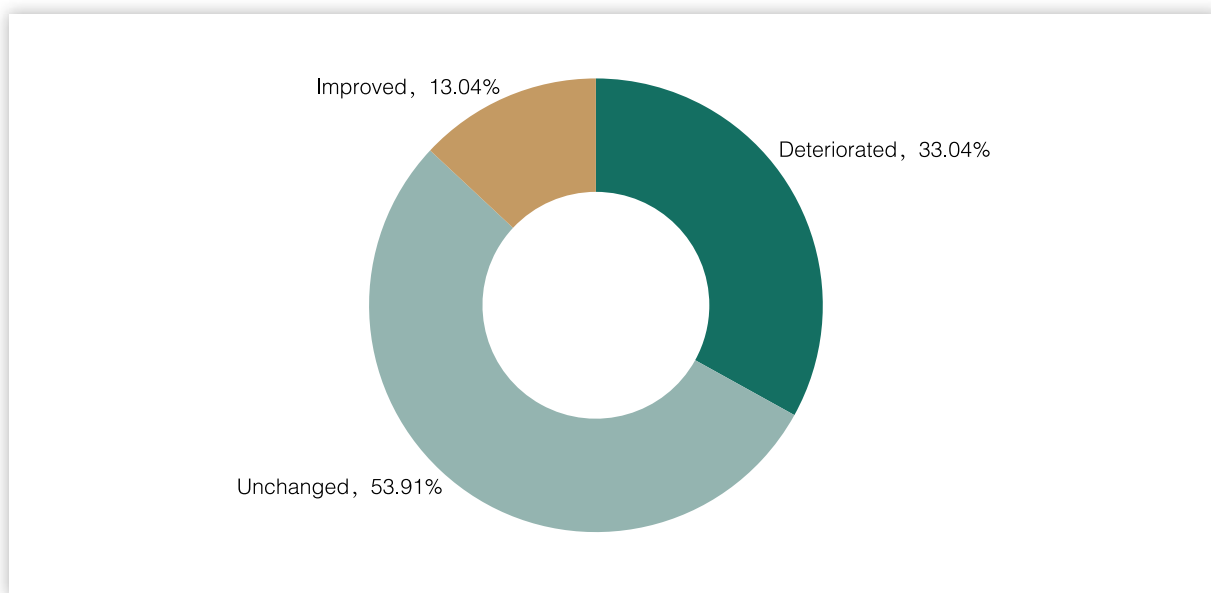


Figure 2-1: Enterprises' Evaluation of Changes in the EU's Business Environment  
Source: CCPIT Academy.



The three most prominent problems with the EU's business environment as perceived by Chinese enterprises in Europe are the rising production costs, the Russia-Ukrainian conflict affecting normal operations, and the continuous increase in market access barriers, accounting for 54.36%, 51.01% and 33.56% respectively (see Figure 2-2).

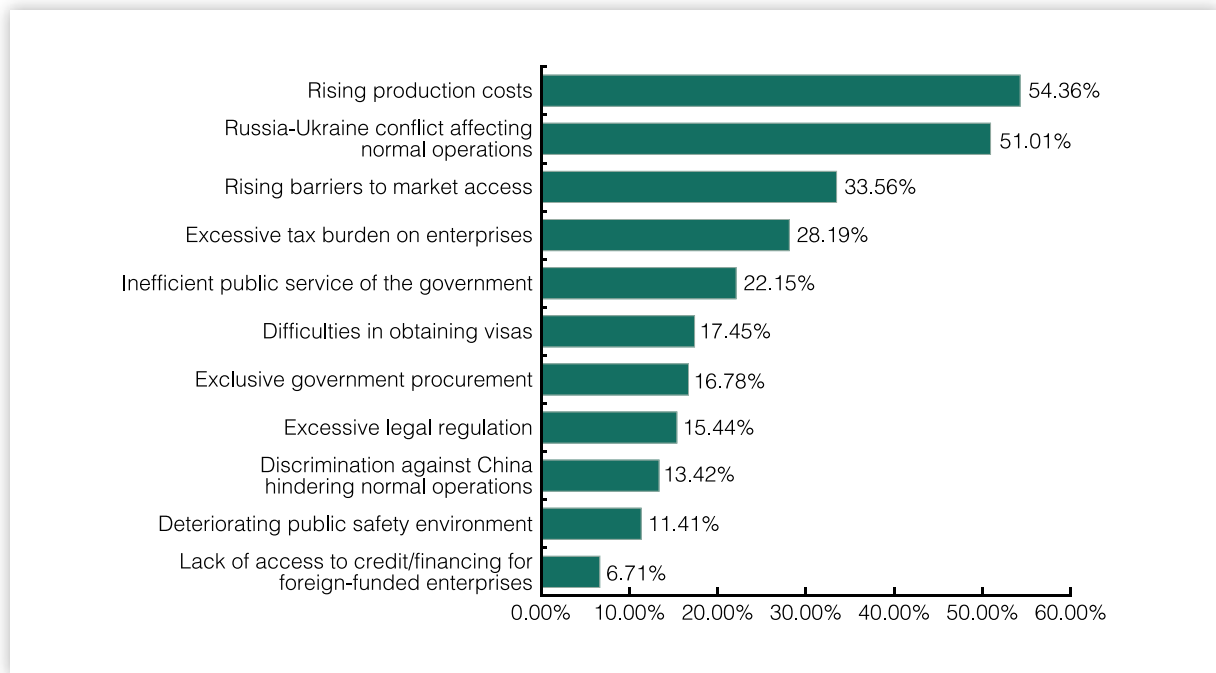


Figure 2-2: Problems with the EU's Business Environment as Perceived by Enterprises

Source: CCPIT Academy.

## **2. How enterprises evaluate the business environment of each EU Member State differs greatly.**

According to the survey, 76.99% of the respondents believe Germany is the EU Member State with the best business environment. France comes next with 58.41%. Italy, the Netherlands and Spain rank third to fifth, accounting for 46.02%, 38.05% and 34.51% respectively (see Figure 2-3).

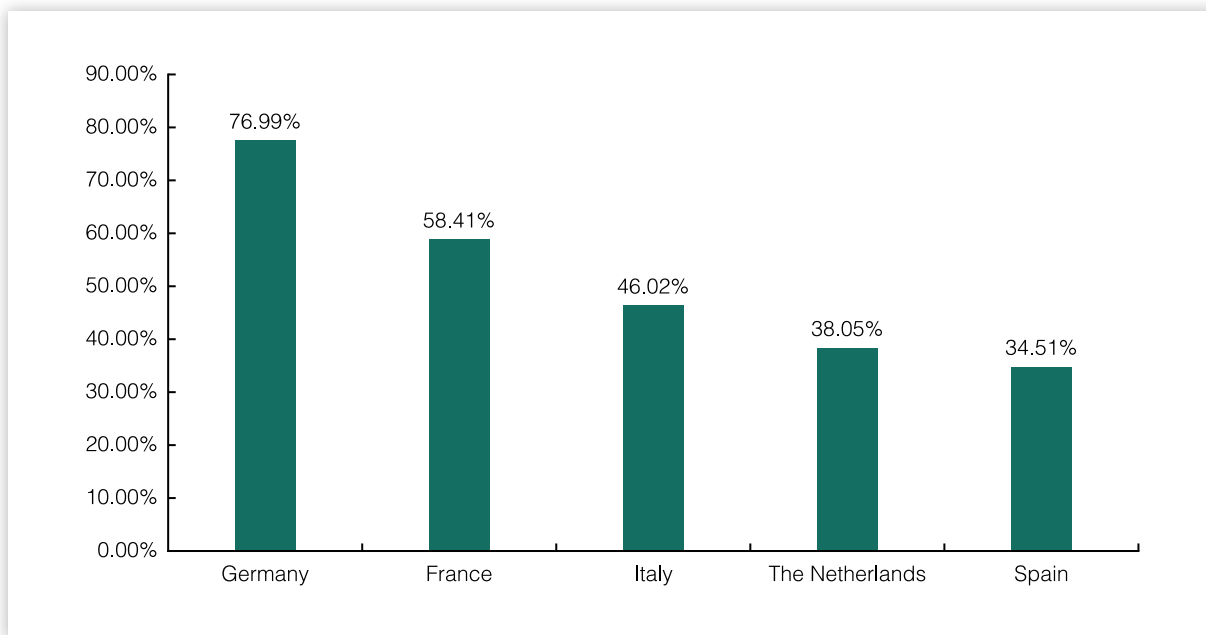


Figure 2-3: The Five EU Member States with the Best Business Environment Evaluation from the Respondents  
 Source: CCPIT Academy.

The survey shows that Lithuania receives the lowest evaluation from the respondents (51.96%) for its business environment, followed by Latvia (33.33%), Bulgaria (23.53%), Estonia (22.55%) and Cyprus (21.57%) respectively (see Figure 2-4).

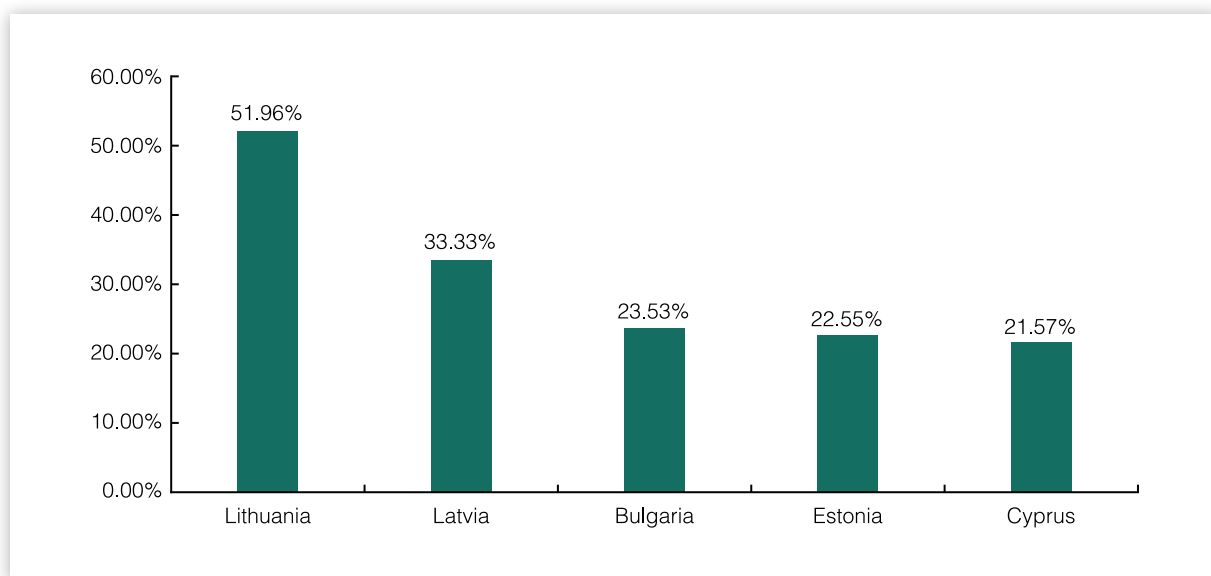


Figure 2-4: The Five EU Member States with the Worst Business Environment Evaluation from the Respondents  
 Source: CCPIT Academy.

## II. The EU's "policy toolbox" has raised market access barriers across the board

### 1. Strengthened foreign investment review has raised market access thresholds.

Since 2022, more and more EU member states have updated or established their own foreign investment review mechanisms in the name of national security, with reference to *the EU Foreign Investment Review Regulation*. As of December 2022, 20 of the 27 EU member states have established foreign investment review mechanisms; five member states, including Sweden, are in the process of establishing such mechanisms; and only two member states, Bulgaria and Cyprus, have not yet publicly announced the establishment of foreign investment review mechanisms<sup>8</sup> (see Table 2-1). Foreign companies investing in the EU market will face more scrutiny from EU member states.

Table 2-1: Establishment of Foreign Investment Review Mechanisms in EU Member States

Establishment of foreign investment review mechanism	Specific Member States
Member states that have established foreign investment review mechanisms (20 in total)	Austria, Finland, Malta, Poland, Portugal, Slovenia, Spain, Czech Republic, Denmark, Slovakia, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Romania, Belgium, Luxembourg
Member states that are preparing to establish a foreign investment review mechanism (5 in total)	Ireland, Croatia, Estonia, Greece, Sweden
Member states that have not publicly announced the establishment of a foreign investment review mechanism (2 in total)	Bulgaria, Cyprus

Source: Compiled based on the European Commission's Foreign Direct Investment Review Report (2021) and related information.

EU member states have been stepping up efforts to intensify foreign investment review. Italy amended its foreign investment review law to expand the scope of review and increase compliance obligations for foreign companies investing in key areas; Poland extended its *Non-EU Foreign Investment Screening Mechanism Legislation*, which originally expired in May 2022, to July 2025 and retained greater discretion for the government; and the Netherlands created a new *Investments, Mergers and Acquisitions Security Screening Act* with a maximum review period of nine months and retroactive to September 2020. Foreign companies have found it more difficult to invest in the EU and its member states.

According to the survey, 45.64% of the respondents believe that the EU has raised its market access barriers, while 34.23% believe that there is no significant change in market access barriers compared with last year (see Figure 2-5).

<sup>8</sup> European Commission, Foreign Direct Investment Reviews 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0433>.

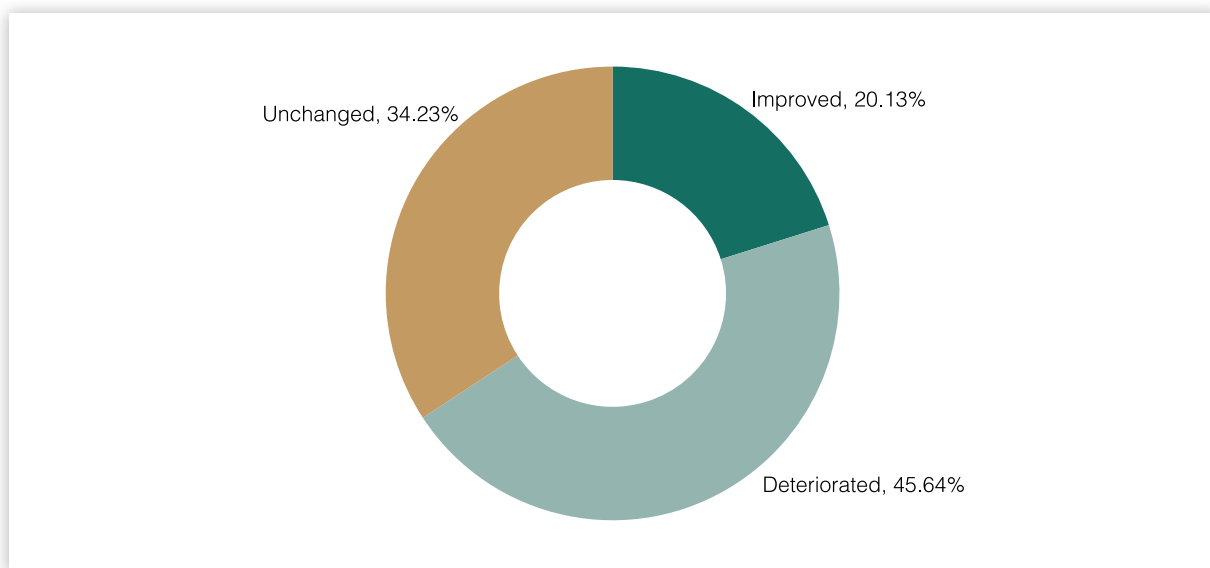


Figure 2-5: EU Market Access Barriers as Evaluated by Chinese Enterprises in Europe in 2022  
Source: CCPIT Academy.

The significant rise in the EU’s market access barriers in 2022 has further lowered foreign companies’ expectations of the EU market access environment. According to the survey, 60.87% of the respondents believe that the EU market access environment will further deteriorate; 35.65% believe that there will be no change in market access environment; and only 3.48% believe that market access environment will improve (see Figure 2-6).

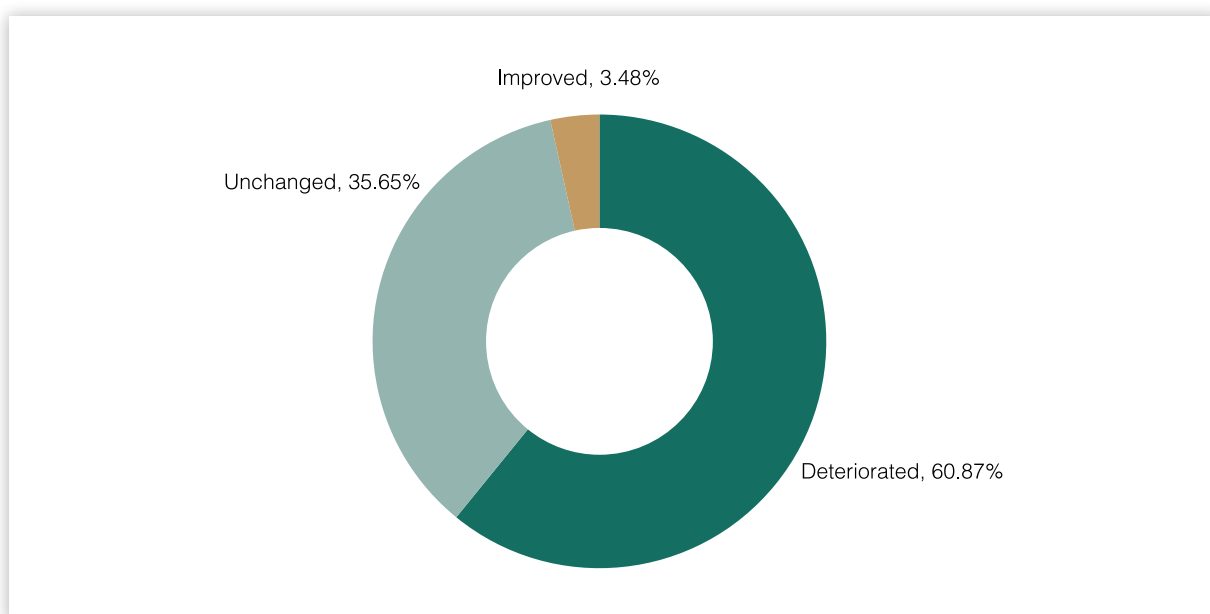


Figure 2-6: Enterprises' Expectations of the Future Market Access Environment in the EU and Host Member States  
Source: CCPIT Academy.

## 2. Chinese enterprises have suffered from unfair treatment in the foreign investment review process.

On September 1, 2022, the European Commission published the *Foreign Direct Investment Review 2021*<sup>9</sup> and a working document<sup>10</sup> (hereinafter referred to as the Report). The Report shows that in 2021, the number of foreign investment projects in the EU exceeded 4,000, an increase of 20.5% year-on-year. Among them, M&A projects increased by 32% and greenfield projects increased by 12% year-on-year<sup>11</sup>. However, the number of M&A and greenfield projects by Chinese enterprises in the EU market have both dropped to the lowest level of the past decade. In breakdown, the number of Chinese-funded M&A projects accounted for only 2.3% of total foreign M&A projects in the EU, down 1.1 percentage points year-on-year; the number of Chinese greenfield projects accounted for 6% of all greenfield projects in the EU, down 1.1 percentage points year-on-year<sup>12</sup>. The countries of origin and their shares of M&A and greenfield projects in the EU in 2021 are shown in Table 2-2.

Table 2-2: Foreign M&A and Greenfield Investments in the EU, 2021

Source of M&A investment	Share of equity acquisition	Source of greenfield investment	Share of greenfield investment
USA	32.3%	USA	39.4%
UK	25.6%	UK	20.9%
Offshore	8.1%	China	6.0%
Switzerland	7.0%	Offshore	6.0%
Canada	5.7%	Switzerland	5.8%
Norway	5.2%	Japan	3.7%
China	2.3%	Russia	2.1%
Japan	2.3%	Norway	1.9%
Singapore	1.9%	Canada	1.8%
Australia	1.5%	Korea	1.6%
Russia	1.3%	Others	10.8%
Others	6.8%		

Source: Compiled based on the European Commission's working papers.

9 The European Commission, Foreign Direct Investment Reviews 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0433>.

10 The European Commission, COMMISSION STAFF WORKING DOCUMENT Screening of FDI into the Union and its Member States Accompanying the document REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Second Annual Report on the screening of foreign direct investments into the Union, [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2022\)433&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2022)433&lang=en).

11 Note: No specific data is provided in the official document. Based on the approximate projection of the proportion of investment projects in each country, the total number of M&A projects in the EU in 2021 is about 2,050; the total number of greenfield investment projects is about 1,960.

12 Note: Ibid. It is estimated that there are about 47 Chinese-funded M&A projects and about 118 Chinese greenfield projects, for a total of 165.

The share of EU investment reviews has increased. Of the 1,563 review requests submitted to the European Commission by the member states, 29% of the projects were reviewed, compared to 20% in 2020.

The failure rate of Chinese investment projects was higher than average. According to the report, a total of 414 projects reviewed in the EU failed and were prohibited from investment, including 29 Chinese projects. The failure rate of Chinese investment projects was about 14.95%<sup>13</sup>, while the average failure rate of foreign investment projects in the EU was about 10.32%, the failure rate of US investment projects was about 10.37%, and the failure rate of British investment projects was about 4.2%. The failure rate of Chinese investment projects was much higher than that of European and other Western countries. The survey shows that 46.15% of the respondents that have undergone EU foreign investment review said they have suffered from discriminatory treatment (see Figure 2-7).

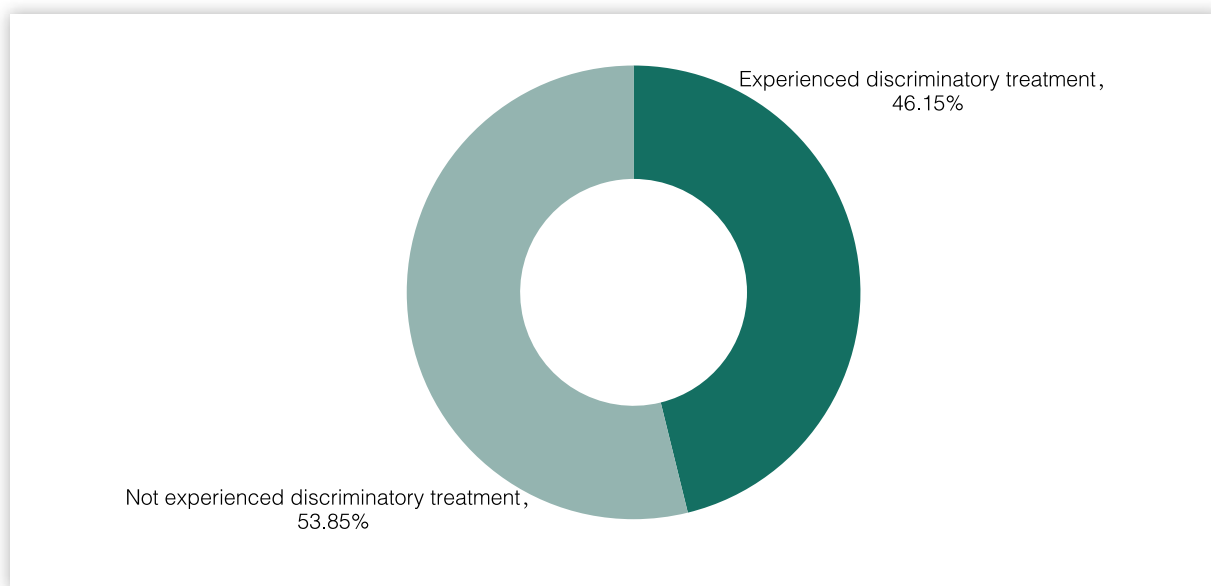


Figure 2-7: Whether Enterprises Experienced Discriminatory Treatment in the EU Foreign Investment Review

Source: CCPIT Academy.

### **3. Foreign subsidy review has made it more difficult for Chinese enterprises to invest in the EU.**

On November 28, 2022, the Council of the EU finally approved the *Regulation on Foreign Subsidies Distorting the Internal Market* (hereinafter referred to as the *Foreign Subsidies Regulation*)<sup>14</sup>, under which the EU created new substantial restrictions on foreign investment access. *The Foreign*

13 Note: Investment project failure rate = prohibited investment projects / (prohibited investment projects + implemented investment projects)

14 The Council of the European Union, <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-approval-to-tackling-distortive-foreign-subsidies-on-the-internal-market/>.

*Subsidies Regulation* requires that companies will have to notify the European Commission for anti-subsidy reviews of mergers and acquisitions of EU companies or tenders in public procurement procedures that benefit from a subsidy granted by a third country and meet the relevant reporting thresholds.

*The Foreign Subsidies Regulation* gives the European Commission two main powers: the power to intervene in M&A transactions involving EU target companies by EU and non-EU acquirers, and the power to intervene in EU public procurement activities by EU and non-EU bidders. The Commission's exercise of these two powers is premised on its belief that "financial contributions" received by an acquirer or bidder (or a member of its group) from a third country constitutes a subsidy with distorting effects.

*The Foreign Subsidies Regulation* broadens the scope of "third countries" and the scope of "financial contributions". *The Foreign Subsidies Regulation* considers any private entity whose actions can be attributed to a third country to be a government, and there is already precedent for the Commission to put Chinese SOEs in the government category. In an *Impact Assessment Report*<sup>15</sup> published by the European Parliament and the Council of the European Union on June 30, 2022, the EC explicitly cited its final determination in the countervailing investigation of Chinese rubber pneumatic tires and found that syndicated loans by state-owned policy banks and state-owned commercial banks were attributable to the State, and that such state-owned enterprises would be identified as "third countries" that provided subsidies. Under this provision, the EU over-interpreted the link between the government and SOEs and regarded the normal market-oriented behavior of SOEs as government subsidies, which constituted substantial discrimination against the enterprises and violated the WTO national treatment principle and the principle of non-discrimination.

*The Foreign Subsidy Regulation* contains provisions tailor-made for SOEs, creating higher barriers for Chinese SOEs to invest in the EU. Compared to the 2021 draft, *the Foreign Subsidy Regulation* provides new rules tailored to SOEs regarding the forms of financial contributions and whether a financial contribution confers benefits. The special or exclusive rights granted to SOEs and the "cross-subsidization" by the enterprises for the rational allocation of market resources based on product attributes are considered as government subsidies. The scope of anti-subsidy review is expanded by lowering the threshold of foreign subsidies that distort the internal market from the previous limit of more than EUR 5 million to more than EUR 4 million. The two revisions have increased intervention of foreign enterprises in the name of competition rules and raised the barriers of protectionism under the pretext of promoting fair competition, which requires foreign enterprises to fulfill additional compliance obligations compared with their EU peers, thus putting them in a competitive disadvantage.

#### **4. New offensive protection tools in the field of public procurement have been added.**

*The International Procurement Instrument*, which came into force on August 29, 2022, becomes another EU protectionist policy tool after the foreign investment review and foreign subsidy review. Under the act, companies from third countries will be excluded from the EU government procurement market if the EU determines that discriminatory policies exist in that country's government

15 The European Commission, Impact Assessment Report, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1690>.

procurement. According to a report published by the European Parliament Research Service (EPRS)<sup>16</sup>, *the International Procurement Instrument*, which allows for the initiation of public procurement market investigations against third countries, is an offensive policy tool to increase the EU's negotiating leverage while promoting the opening of public procurement markets in third countries. However, the EU's exclusion of relevant foreign-funded enterprises from the public procurement market through extraterritorial investigations against third countries is discriminatory against relevant foreign-funded enterprises and deprives them of their right to participate in fair competition.

Some EU member states have also introduced new restrictive policies for public procurement. In January 2022, the Polish Council of Ministers adopted *the State Purchasing Policy 2022-2025*<sup>17</sup>, according to which the Polish government must take into account the use of forced labor by bidding companies when deciding to award public procurement contracts. In April 2022, the Croatian government announced plans to amend its legislation in the area of public procurement<sup>18</sup> to make it "even more expensive for companies to appeal tender decisions", as an appeal of a public procurement process decision for a project worth HRK 100 million or more will have a fee of HRK 500,000.

### III. Generalization of the national security concept has hindered the free flow of production factors

#### 1. The Regulation for Export Controls of Dual-Use Items has increased barriers to technology exchange.

In May 2021, the Council of the European Union adopted *the Regulation setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items* (hereinafter referred to as the "*Dual-Use Items Export Control Regulation*")<sup>19</sup>, which entered into force on September 9, 2021, replacing the previous Regulation (EU) 2009/42<sup>20</sup> governing the export of dual-use items<sup>21</sup>.

*The Dual-Use Items Export Control Regulation* introduces a new concept called "human security" and expands the definition and categories of dual-use items. Items related to dual-use items, such as means of transporting dual-use items, are included in the definition of dual-use items, and a new

16 Report of the European Parliamentary Research Service, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649403/EPRS\\_BRI\(2020\)649403\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649403/EPRS_BRI(2020)649403_EN.pdf).

17 Website of the Government of Poland, <https://www.gov.pl/web/development-technology/new-regulations-coming-into-force-with-the-new-year-2022>.

Embassy of Poland, [https://pl.usembassy.gov/wp-content/uploads/sites/23/tip\\_2022.pdf](https://pl.usembassy.gov/wp-content/uploads/sites/23/tip_2022.pdf).

18 Italian Trade Agency news, <https://www.ice.it/it/news/notizie-dal-mondo/209468>.

19 The European Commission, [https://trade.ec.europa.eu/doclib/docs/2021/december/tradoc\\_159979.pdf](https://trade.ec.europa.eu/doclib/docs/2021/december/tradoc_159979.pdf).

20 Eur-LEX, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF>.

21 Note: Dual-use items refer to products, software and technology that can be used for both civilian and military purposes.



category of dual-use items, “cyber surveillance items”<sup>22</sup>, is added, requiring authorization for export if the exporter knows or has been informed that the exported items will be used or may be used for serious human rights violations.

The Regulation broadens the scope of controls by amending or adding definitions. Any natural person carrying dual-use items out of the country is considered an “exporter”<sup>23</sup>; the transmission of dual-use technology by electronic media or orally by exporters, researchers and natural persons is “deemed export”<sup>24</sup>; natural persons, legal persons or partnerships providing intermediary services from the EU to a third country are required to apply for an export authorization even if the person or enterprise is not resident or established in an EU Member State.

In Sections G and H of the Regulation Annex II, *the “Union General Export Authorizations”*<sup>25</sup>, China is not included in the scope of export destination countries. This means that the export of encryption technology from the EU to China, as well as intra-group export of software and technology from the EU to China, would require a individual export authorization or a global export authorization, which greatly increases the operating costs of Chinese enterprises in Europe.

China is currently the EU’s largest trading partner, and the economic and trade relations between China and the EU are close. Many key sectors in the EU, including energy, aerospace, defense and security, telecommunications, semiconductors and computers, are to varying degrees involved in export controls of dual-use items. The EU has expanded the scope of dual-use items and controlled behaviors on the grounds of “human security”, which has a substantive negative impact on Chinese enterprises conducting trade, investment and R&D cooperation with the EU. Some enterprises in the survey reported that *the Dual-Use Items Export Control Regulation* has increased barriers to technology exchange between China and EU and raised their supply chain costs.

**The EU’s dual-use items export control regime includes:** (1) export control rules to be followed by all members, including a common set of assessment criteria and common types of authorizations; (2) a common “*EU Dual-Use Items List*”, as well as rules for the end use of non-listed items, etc.

**There are four types of export authorizations in the EU:** (1) EU General Export Authorizations (EU GEA), which is an authorization for export from the EU to certain destination countries; (2) National General Export Authorizations (NGA), which is an authorization obtained under the terms of Article 12(6) of Regulation (EU) 2021/821; (3) Global Export Authorizations, which is an authorization granted to one specific exporter in respect of a type or category of dual-use items which may be valid for exports to one or more specified end-users and/or in one or more specified third countries; (4) Individual Export Authorization, which is an authorization granted to one specific exporter for one end-user or consignee in a third country and covering one or more dual-use items.

22 Note: Cyber-surveillance Items, i.e., items used for covert surveillance of natural persons by monitoring, extracting, collecting, and analyzing information and communication system data.

23 Article 2(3) of Regulation (EU) 2021/821.

24 Article 2(2) of Regulation (EU) 2021/821.

25 EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R0821-20220505#B-6>.

The application for an export authorization should be submitted to the competent authority of the EU Member State where the exporter is located, and the information to be submitted includes the parties involved in the transaction, the country of destination, the end-user and end-use, product specifications and product use, quantity, technical information and other information useful for the application for an export authorization.

Typical penalties provided by EU member states for export control violations include: fines; administrative penalties; imprisonment; disqualification of company directors; seizure of goods; suspension or revocation of export authorizations; temporary or permanent prohibition from engaging in relevant economic activities or confiscation of goods and profits derived from illegal transactions; confiscation of assets; and cancellation of legal entities.

## **2. Completed acquisitions by Chinese enterprises have been annulled on national security grounds.**

Since 2022, projects that have been acquired by Chinese companies in accordance with legal procedures and have started normal operations have been annulled by the EU and its Member State governments on the grounds of so-called “national security”, breaking the legal principle of “non-retroactivity”. On April 27, 2022, the German Ministry of Economy annulled a deal completed in 2020 for the acquisition of a German medical device company by a Chinese respiratory maker on the grounds of “preventing increased investment by Chinese companies in key sectors in Germany and safeguarding national security”<sup>26</sup>. The Italian government used its “golden power” twice in 2022, both with China being the target<sup>27</sup>. On March 12, 2022, it annulled the acquisition of an Italian aircraft manufacturer by a Chinese company<sup>28</sup>, and on June 8, 2022, it banned the acquisition of an Italian manufacturer of robotic electronics by a Chinese industrial robotics company. Both acquisitions took place in 2018, and the Chinese companies signed relevant technology license agreements with the acquired parties in accordance with the legal process for acquisitions and paid technical services fees and royalties. Nevertheless, four years later both deals were still annulled by the Italian government on national security grounds.

In addition to the acquisition projects, some engineering contracting projects by Chinese contractors in Europe were also called off. On August 11, 2022, Estonia and Latvia withdrew from the China and Central and Eastern European Countries Cooperation mechanism (currently 14+1). In the survey, a Chinese engineering contractor investing in Latvia reported that, whilst its project-related qualification documents had already been approved, it nonetheless received a notice from the Latvian owner on August 12 that the latter would no longer share project-related information with the Chinese contractor due to national security considerations, which eventually led to the withdrawal of the Chinese contractor from the project.

26 Based on official German press, [https://www.focus.de/finanzen/boerse/schwerwiegende-gefahren-habeck-stoppt-uebernahme-von-deutscher-beatmungs-firma-durch-china\\_id\\_90693248.html](https://www.focus.de/finanzen/boerse/schwerwiegende-gefahren-habeck-stoppt-uebernahme-von-deutscher-beatmungs-firma-durch-china_id_90693248.html).

27 Note: The Golden Power refers to the Italian government’s special powers under the Foreign Investment Review Act to review foreign investment in activities involving the country’s “strategic sectors” and to impose conditions or even outright vetoes on such transactions depending on the outcome of the review.

28 Based on Reuters news, <https://www.reuters.com/world/exclusive-italy-annuls-sale-military-drones-firm-chinese-groups-sources-say-2022-03-10/>.

The above-mentioned projects terminated by the governments of EU member states were annulled by the EU on the so-called “national security” grounds several years after the acquisitions had been completed or the relevant qualifications had been approved. This has not only greatly compromised the impartiality of EU laws, but also increased the uncertainty and risks facing Chinese enterprises investing in the EU, leading to huge losses to the affected. It has turned the capital, equipment and other factors of production previously invested by the enterprises into sunk costs and made it harder for the locals to get employed.

**3. Visa processing in the EU and its member states has become more difficult and less convenient.**

On February 15, 2022, the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted a draft<sup>29</sup> for a “ban on Golden Passports<sup>30</sup>”, which maintains that the “Golden Passports” are contrary to ethics, economics and law, and contain certain security risks. It calls on Bulgaria, Cyprus, Malta and other member states of the EU that offer “Golden Passports” for investment to phase out the “Golden Passports” scheme and switch to the “Residence by Investment” scheme as implemented by 12 other EU member states, represented by Greece.

At present, Chinese enterprises in Europe reported a tightening trend of the EU’s work visa processing, and that compared with the previous experience, it has become now more difficult to process work visas and residence permits. According to the survey, 63.48% of the respondents believe that there is a trend of tightening in the EU’s work visa processing recently (see Figure 2-8); 51.30% of the respondents believe that it is inconvenient to apply for EU work visas (see Figure 2-9); 57.39% of the respondents believe that it is inconvenient to apply for EU residence permits (see Figure 2-10).

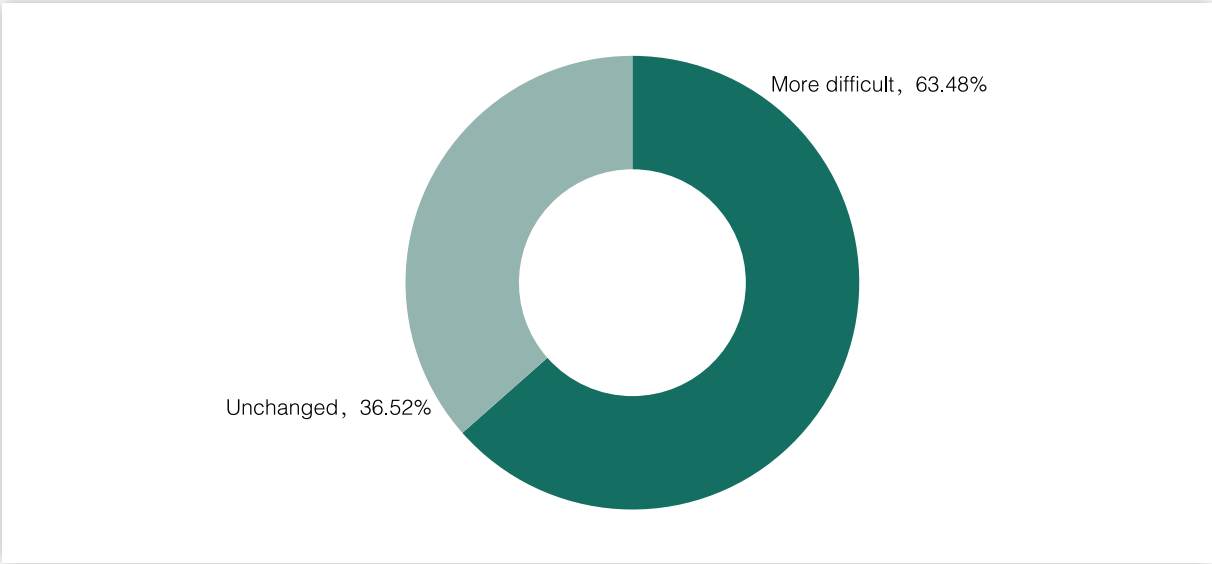


Figure 2-8: Evaluations by Chinese Enterprises in Europe of the Recent EU Work Visa Processing Situation  
Source: CCPIT Academy.

29 The European Parliament, <https://www.europarl.europa.eu/news/en/press-room/20220211IPR23114/meps-call-for-a-ban-on-golden-passports-and-eu-rules-for-golden-visas>.

30 Note: The Golden Passport allows non-EU citizens to obtain citizenship of an EU Member State, provided they invest a certain amount of money in a specific EU Member State.

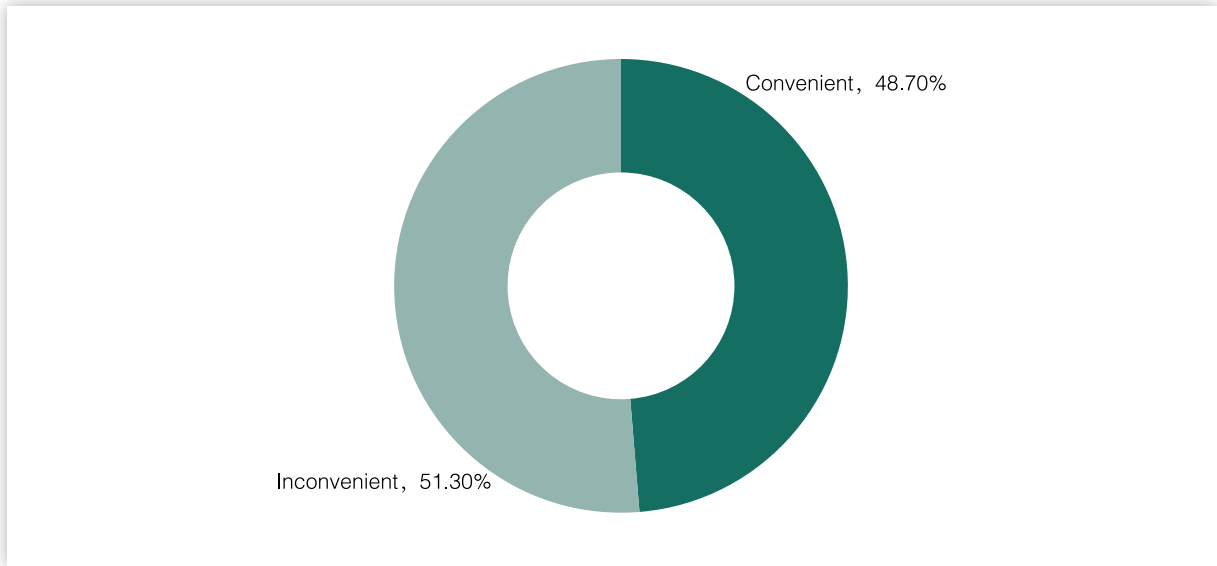


Figure 2-9: Evaluations by Chinese Enterprises in Europe of the Ease of Applying for EU Work Visas

Source: CCPIT Academy.

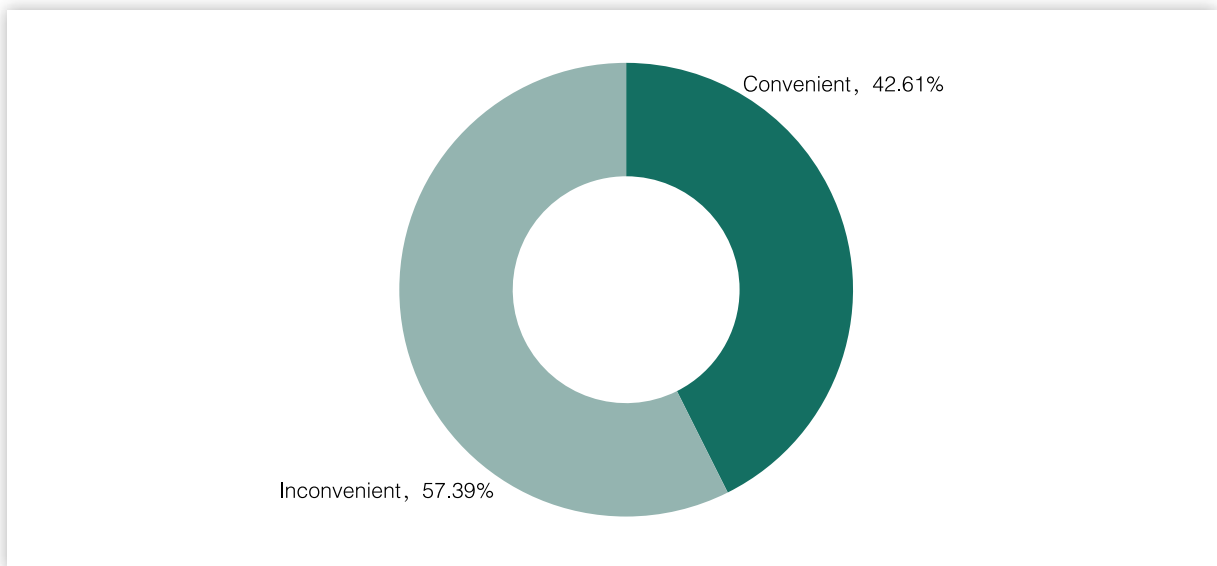


Figure 2-10: Evaluations by Chinese Enterprises in Europe of the Ease of Applying for EU Residence Permits

Source: CCPIT Academy.

## IV. The EU manipulates the human rights issue to politicize economic issues

### 1. The Xinjiang-related resolutions disregard the facts and falsely accuse Xinjiang enterprises of violating human rights.

On June 9, 2022, the European Parliament successively passed the *Resolution on the Human Rights Situation in Xinjiang*, including the Xinjiang Police Files<sup>31</sup> (*the Xinjiang Resolution*) and the *Resolution on a New Trade Instrument to Ban Products Made by Forced Labor*<sup>32</sup> (*the New Trade Instrument Resolution*). Disregarding the facts, the Resolutions falsely claim there is forced labor and abuse of ethnic minorities in Xinjiang, call for an import ban on all products made by Chinese enterprises using forced labor and a public list of sanctioned entities, regions and products, and require European businesses to disclose the information of the subsidiaries, suppliers, sub-suppliers, contractors and business partners in their supply chains (see Table 2-3).

Table 2-3: Main points of the Xinjiang Resolution and the New Trade Instrument Resolution

Resolution	Key points
Xinjiang Resolution	1. Urges the Commission to swiftly adopt additional sanctions targeting individuals and entities who are involved in the systematic human rights violations in the Xinjiang Uighur Autonomous Region;
	2. Calls for the EU and its member states to take all necessary steps, in accordance with the UN <i>Convention on the Prevention and Punishment of the Crime of Genocide</i> , to put an end to these atrocities and ensure responsibility for the crimes committed, including through international accountability mechanisms;
	3. Calls on the Commission to propose an import ban on all products produced by forced labor and on products produced by all Chinese companies listed as exploiting forced labor; reiterates its position in favor of an ambitious <i>Corporate Sustainability Due Diligence Directive</i> ;
	4. Reiterates its call for the EU and the member states to check whether entities operating in the EU internal market are directly or indirectly involved in creating mass surveillance systems in Xinjiang, in running or building detention facilities for minority groups in Xinjiang or in conducting transactions with any person sanctioned for the abuse of Uighurs and other minority groups in Xinjiang; stresses that the determination of these facts should trigger trade-related measures, exclusion from public procurement and sanctions;

31 European Parliament, European Parliament resolution on the human rights situation in Xinjiang, including the Xinjiang police files, [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0237\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0237_EN.pdf).

32 European Parliament, European Parliament resolution of 9 June 2022 on a new trade instrument to ban products made by forced labour, [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0245\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0245_EN.pdf).

Resolution	Key points
Xinjiang Resolution	5. Calls for the EU and the member states to suspend their extradition treaties with China and Hong Kong;
	6. Acknowledges that EU-China relations are increasingly characterized by economic competition and systemic rivalry.
New Trade Instrument Resolution	1. Calls for a new WTO-compatible trade instrument to complement the corporate sustainability due diligence rules <sup>33</sup> , banning the import and export of products made or transported by forced labor and which should be complemented with measures for intra-EU trade; underlines that the new proposal could be based on the best practices of countries with similar legislation in place such as the US and Canada;
	2. Considers that the new instrument should allow for bans on forced labor products from a particular site of production, a particular importer or company, those from a particular region in the case of state-sponsored forced labor and those from a particular transport vessel or fleet;
	3. Considers that public authorities should detain goods at the EU border when they consider that there is sufficient evidence that these goods were made or transported with forced labor; notes that the importer whose goods have been detained should then be given the opportunity to refute this accusation by proving that the goods were not made or transported with forced labor, which may then lead to the release of the goods; underlines that the evidence to prove an absence of forced labor must be based on ILO standards;
	4. Stresses that companies may be requested by public authorities to disclose relevant information concerning subsidiaries, suppliers, sub-suppliers, contractors and business partners in the supply chain, with due regard for commercial confidentiality;
	5. Calls for a public list of sanctioned entities, regions and products to be created and maintained.

Source: Compiled by the CCPIT Academy based on the Xinjiang Resolution and the New Trade Instrument Resolution.

The Resolutions respectively acknowledge that 'EU-China relations are increasingly characterized by economic competition and systemic rivalry' and underline that the new trade instrument 'could be based on the best practices of countries with similar legislation in place such as the US and Canada', fully illustrating the EU's fundamental rationale to introduce the Xinjiang-related resolutions and its tendency to politicize economic issues. The survey suggests that 61.4% of the Chinese companies in Europe see the EU and the member states they operate in as inclined to politicize economic issues (see Figure 2-11).

33 Note: The corporate sustainability due diligence rules require companies to conduct human rights and environmental investigations in supply chains.

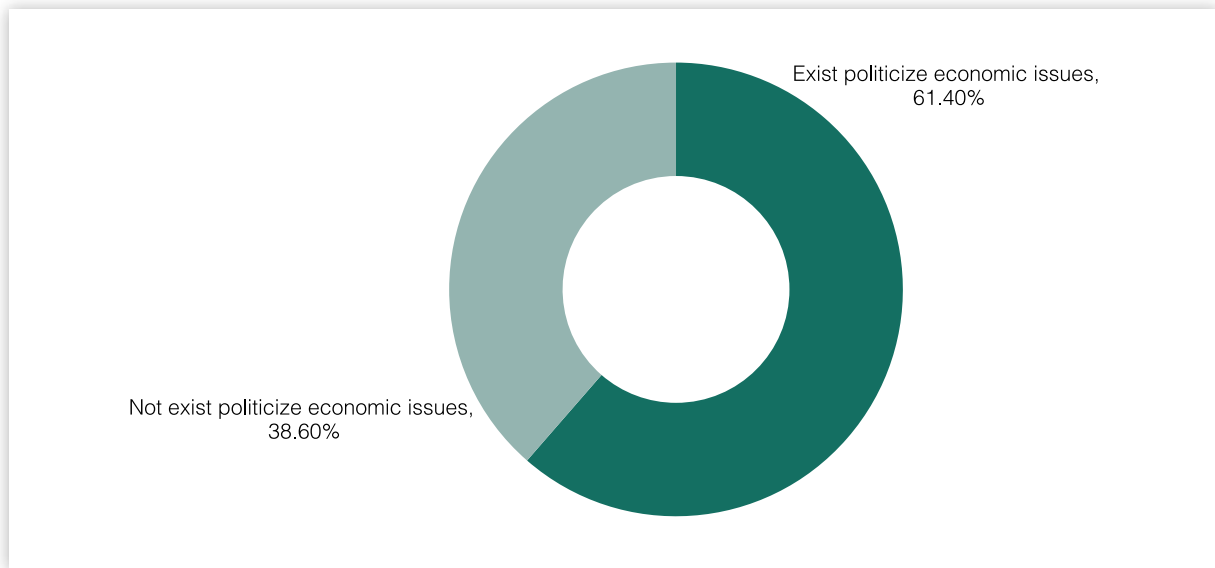


Figure 2-11: Whether Companies think that the EU and the Member States They Operate in Tend to Politicize Economic Issues

Source: CCPIT Academy.

The two EU resolutions falsely accuse Xinjiang enterprises of using forced labor and exclude them from the EU's trade, investment and procurement activities on trumped-up charges, which constitutes gross discrimination against Xinjiang enterprises, breaches the WTO principles of non-discrimination and fair trade, violates the legitimate rights and interests of Xinjiang enterprises and compromises Xinjiang people's right to work and well-being.

## **2. The EU excludes Xinjiang-related enterprises through the 'forced labor'slander.**

On September 14, 2022, the European Commission published the *Proposal for a regulation on prohibiting products made with forced labor on the Union market* (the Proposal), to prevent products made with forced labor from being made available on the EU market or exported from the EU. The regulation is expected to enter into force in 2025. The Proposal provides for prohibitive obligations on both products and economic operators, prohibiting EU economic operators from taking part in business activities involving products made with forced labor and authorizing Member State competent authorities to launch administrative investigations into products with a risk of forced labor and related EU economic operators. Customs authorities are authorized to suspend the release of and even destroy related products according to investigation decisions and conduct uniform enforcement of the prohibition in the EU.

On May 27, 2022, the spokesperson of the Federal Ministry for Economic Affairs and Energy of Germany said that due to concern about so-called forced labor and mass detention, among other human rights issues in Xinjiang, the Ministry had rejected four applications from Volkswagen and decided not to provide guarantee for its investment project in Xinjiang<sup>34</sup>. On January 20, 2022, the French National Assembly also passed a resolution, accusing the Chinese government of committing

<sup>34</sup> summary of Reuters news report, <https://www.reuters.com/business/autos-transportation/germany-denies-vw-china-investment-guarantees-over-human-rights-concerns-spiegel-2022-05-27/>.

crimes against humanity and genocide by using violence against the Uighurs. Mr. Faure, First Secretary of the Socialist Party of France, condemned China as a ruthless machine destroying a people culturally and biologically and criticized Western companies and brands for continuing to use Chinese products made with forced labor in Xinjiang<sup>35</sup>.

The EU's forced labor ban and some member states' practice to exclude Xinjiang related products from the EU market are a case of interfering in the market economy with political means and aim for trade protectionism by artificially erecting administrative barriers, which constitutes discrimination against products and even industrial chains from specific regions and violates the WTO's non-discrimination principle. The EU's move does not only affect economic and trade relations between the EU and specific regions, but also, due to the important status of Xinjiang products in global supply chains, disrupts global industrial chains and works against the historical trend of economic globalization.

In fact, some EU research institutes and companies are against bashing Chinese companies with the human rights issue. Regarding the shutdown of the Volkswagen Urumqi factory due to pressure from German media and politicians citing human rights, Ferdinand Dudenhöffer, Director of the Center Automotive Research, a research institute focused on the auto industry, does not think that it makes sense, as 'no German company should seek to decouple from China'. With China accounting for 40% of Volkswagen's sales volumes, Herbert Diess, the company's CEO, says the future of the company 'will be decided in China'<sup>36</sup>.

### **3. Enterprises' compliance costs in sustainability due diligence increase significantly.**

On February 23, 2022, the European Commission adopted a Proposal for a *Directive on Corporate Sustainability Due Diligence (CSDD) 2019/1937 (Sustainability Due Diligence Directive)*<sup>37</sup>. The Sustainability Due Diligence Directive requires EU and non-EU companies of and above a certain scale to meet due diligence duty to identify and reduce adverse impact on environment and human rights. Apart from the companies, their affiliate entities and entities with direct or indirect business links with them also need to fulfill the sustainability due diligence duty. *The Sustainability Due Diligence Directive* provides no criteria for the so-called adverse human rights impact. Instead, it cites dozens of international conventions on environment and human rights and provides that "a violation of a prohibition or right not specifically listed in that Annex which directly impairs a legal interest protected in those conventions should also form part of the adverse human rights impact covered by this Directive", further enlarging the scope of the so-called adverse human rights impact.

*The Sustainability Due Diligence Directive* directly increases the compliance costs of companies that need to fulfill related obligations. The due diligence on supply chain human rights and environment imposed on businesses by the EU and its member states may lead EU companies to walk away from international business partners to reduce non-compliance risks and thus cause their decoupling from foreign companies. The survey shows that after the directive was introduced, 47.14% of the respondents see their compliance costs rise; 7.14% the respondents report decoupling from EU companies as a result (see Figure 2-12).

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35 summary of French state media report, <https://www.rfi.fr/cn>.

36 summary of news report from guanacha.cn. [https://www.guanacha.cn/internation/2022\\_05\\_28\\_641823.shtml](https://www.guanacha.cn/internation/2022_05_28_641823.shtml).

37 European Commission, [https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en#how-will-the-new-rules-be-enforced](https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en#how-will-the-new-rules-be-enforced).



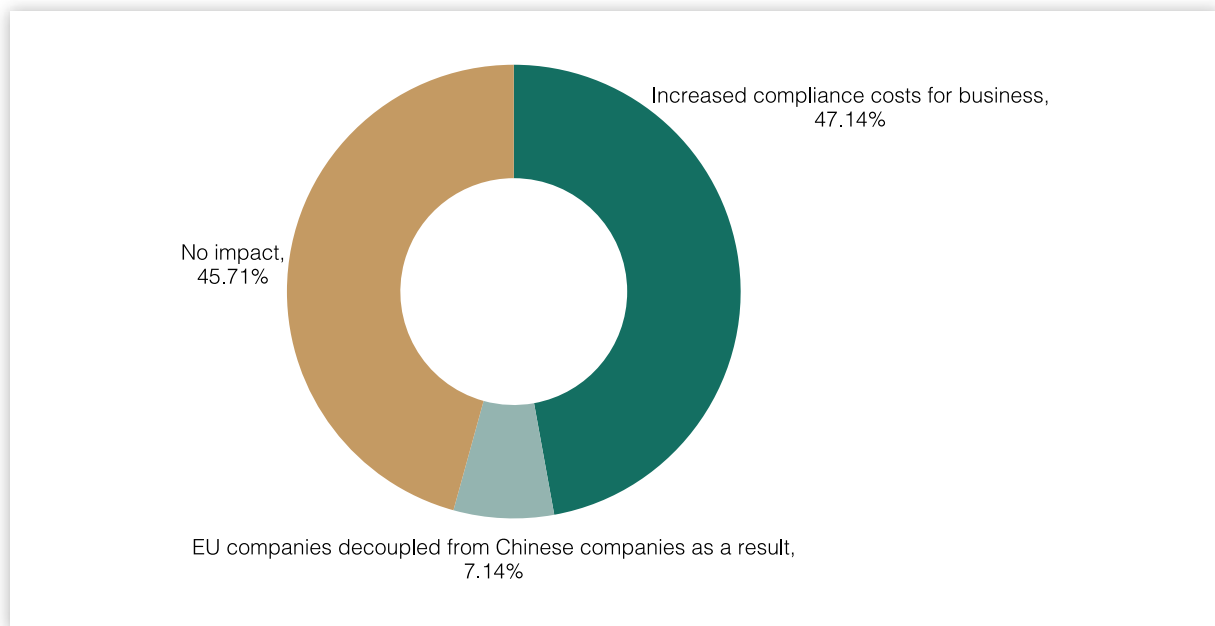


Figure 2-12: Business Comments on the Impact of the Sustainability Due Diligence Directive

Source: CCPIT Academy.

Aside from the *Sustainability Due Diligence Directive*, the European Council adopted the *Corporate Sustainability Reporting Directive* (CSRD) on November 28, 2022, replacing the *Non-Financial Reporting Directive* (NFRD) introduced in October 2014. The CSRD entered into force on December 18, 2022<sup>38</sup>.

The CSRD introduces additional compliance costs for companies. Compared with the NFRD, the CSRD further details environmental, social and governance (ESG) information companies shall disclose and substantially expands the scope of companies that need to make such disclosure. Aside from companies listed in the EU, large companies in the EU shall also fulfill reporting obligations, if they (1) have more than 250 employees, a net turnover of more than EUR40 million, or net assets valuing more than EUR20 million; or (2) are non-EU companies with a net turnover of more than EUR150 million and at least one subsidiary or branch in the EU. According to the European Commission, with the NFRD, about 11,700 large companies shall fulfill the ESG obligations, whereas with the CSRD, the number surges to around 50,000, an increase of 4.27 times.

38 European Council, <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/>.

## V. Intensified trade protectionism accelerates decoupling from China on multiple fronts

### 1. Reshaping technology supply chains speeds up market segregation.

In recent years, the EU and its member states introduced several policies in the technology sector to boost supply chain elasticity and reduce external dependence. The EU toolbox for 5G security of 2020 sets restrictions on so-called high-risk vendors. *The European Chips Act* passed in 2022 invests EUR 43 billion in internal semiconductor research, development and innovation. The EU also subscribes to hi-tech friend-shoring proposed by the US<sup>39</sup>, hoping to reshape supply chains and shake off strategic dependence on China, among others. The drive to reshape supply chains has extended from 5G, rare earth metals, semiconductor to photovoltaics, new energy and other emerging industries. In May, 2022, the EU-US Trade and Technology Council (TTC) was held in Paris, which vows to reduce dependence on China in supply chains for rare earth magnets and solar panels where Chinese companies play a key role<sup>40</sup>.

In 2022, China-EU communications technology cooperation stalled. On January 19, 2022, the European Commission made an affirmative final decision on the countervailing of optical cable products from China, imposing a countervailing duty of 5.1-10.3% on related Chinese products and raising the anti-dumping tariffs on Chinese optical cable products to 14.6-33.7%<sup>41</sup>. In 2022, a court in Sweden rejected Huawei's appeal, ruling that the Swedish government's decision to ban Huawei from the country's 5G mobile network infrastructure does not break the law and that the installed Huawei equipment shall be demolished by January 1, 2025<sup>42</sup>.

The EU's trade protection policies in the technology and new energy sectors dampen the expectations of Chinese companies for cooperation with EU companies. In the survey, a great number of technology companies fear that the EU and US view of China as a common rival will proliferate to more areas. The survey shows that 34.21% of the respondents expect to reduce supply chain-based cooperation with EU companies (see Figure 2-13). Given the profound interdependence and common interests between Chinese and EU industries, technology decoupling from China will exacerbate market segregation and confrontation and hinder the economic recovery and technological advancement of the two sides amid the pandemic.

39 summary of press release by the EU, <https://www.pubaffairsbruxelles.eu/eu-in-the-media/u-s-treasury-secretary-janet-yellen-speaks-at-the-2022-brussels-economic-forum/>

40 US White House, <https://www.whitehouse.gov/wp-content/uploads/2022/05/TTC-US-text-Final-May-14.pdf>.

41 ChinaWTO/MOFCOM, <http://chinawto.mofcom.gov.cn/article/dh/janghua/202201/20220103238755.shtml>.

42 Summary of Pandaily news report, <https://pandaily.com/swedish-court-rejects-huaweis-appeal/#:~:text=Jun%2024%2C%202022%2C%2017%3A25pm%20Pandaily%20Your%20browser%20does,selling%205G%20mobile%20network%20infrastructure%20in%20the%20country.>

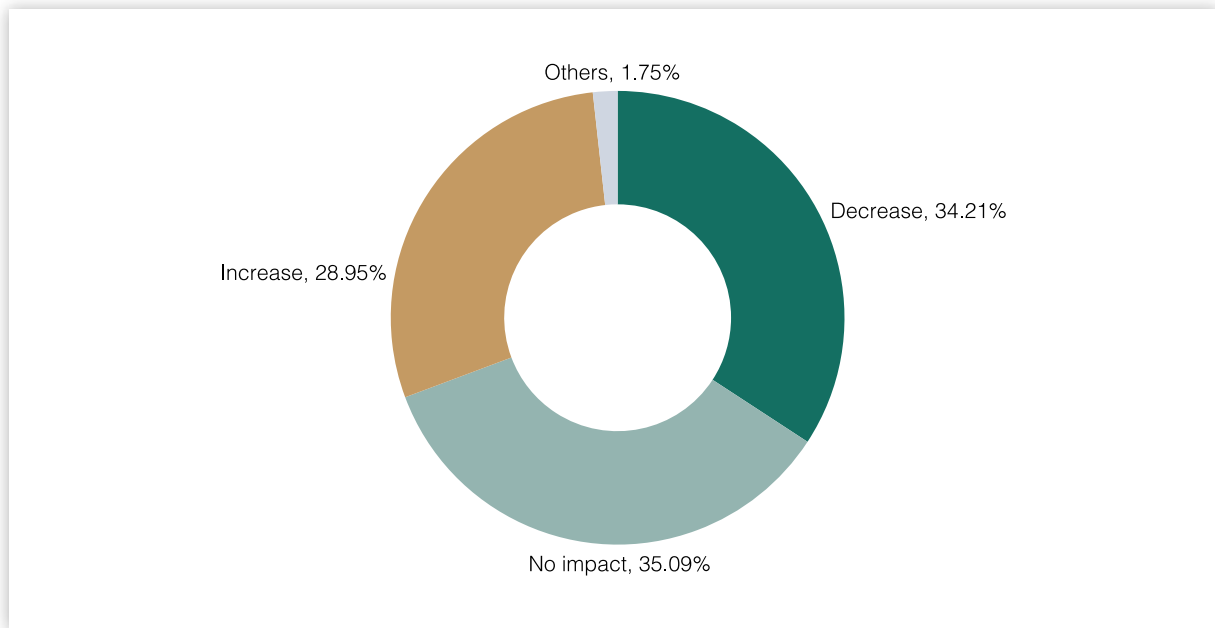


Figure 2-13: Expectations of Chinese Companies in the EU for Supply Chain-Based Cooperation with EU Companies  
Source: CCPIT Academy.

**2. The EU shows a clear tendency to politicize industrial standards.**

In February, 2022, the European Commission issued the new *European Standardization Strategy*<sup>43</sup>. By revising the procedural rules of standardization, the EU aims to strengthen its competitiveness on global technology standards, so as to curtail non-EU companies' legitimate rights and interests in European standardization affairs. The Strategy notes that the geopolitical landscape has significantly shifted in recent years: other actors follow a much more assertive approach to international standardization than the EU and have gained influence in international standardization committees. Geopolitics has become a key factor in the EU's consideration to strengthen its industrial and trade standards, in the course of which the EU is showing a tendency to export its democracy values. European Commission President Von der Leyen points out that the EU must ensure its technological sovereignty and become a global standard-setter.

The Strategy gives CEN, CENELEC and ETSI a central role to play. The three entities are permitted to formulate European standards to support EU legislation. The European Commission is responsible for assessing uniform European standards made to support the EU law and citing them in the *Official Journal of the European Union*. Once a standard is cited in official journals, it is deemed part of the EU law. The European Commission provides financial support for the three European standardization organizations.

The EU's tendency to politicize industrial standards will not only raise the access barriers of the EU market, but also compromise the competitiveness of non-EU companies through non-market factors. Thierry Breton, European Commissioner for the Internal Market, noted that the European Commission

43 CEN, <https://www.cencenelec.eu/news-and-events/news/2022/press-release/cen-and-cenelec-welcome-the-new-european-standardization-strategy/>.

wants to regain control over technology standardization and seeks to reduce the influence of Chinese and US multinationals in EU standardization bodies while promoting European standards globally<sup>44</sup>.

## VI. Deteriorating public service environment increases operational uncertainty for foreign companies

### 1. Discriminatory enforcement weakens foreign companies' competitiveness.

Chinese enterprises in the EU have reported cases of the EU and its member states treating domestic and foreign enterprises differently in law enforcement. The survey suggests that 36.52% of the respondents believe that the EU is unfair towards Chinese companies in law enforcement (see Figure 2-14), which is largely on par with last year's level.

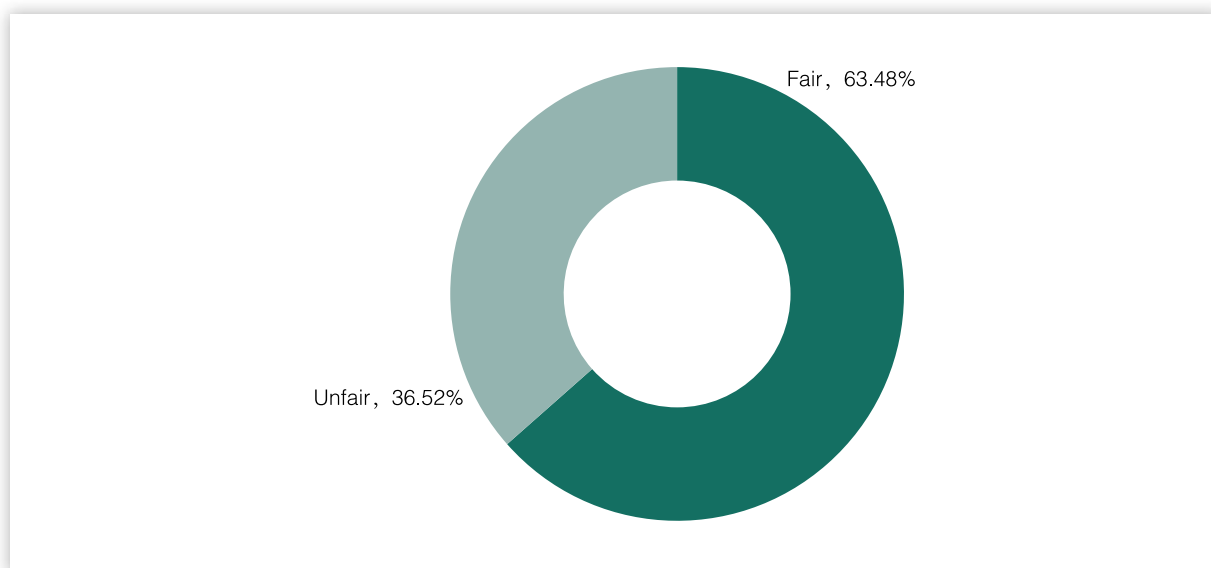


Figure 2-14: EU Member States' Treatment of Chinese Companies in Law Enforcement

Source: CCPIT Academy.

In 2022, as the European Commission's emergency powers increased, its law enforcement process was short on transparency and long on discretion. The proposed *Single Market Emergency Instrument* introduced this year gives the European Commission the power to recommend member states to modify production lines, compel enterprises to provide information and prioritize the assessment of the availability of crisis-related products during times of emergency. *The European Chips Act* requires the European Commission to conduct joint procurement on behalf of member states and state-sponsored OEMs to supply European customers as a priority in times of crisis. Article 35 of the *Regulation on Foreign*

44 Economic and Commercial Office of the Mission of the People's Republic of China to the European Union, <http://eu.mofcom.gov.cn/article/jmxw/202202/20220203278120.shtml>.

*Subsidies Distorting the Internal Market* provides that when reviewing foreign subsidies, the European Commission can interview any consenting natural or legal person.

Chinese companies in Europe feel palpably the unduly large discretion of EU authorities. The survey shows that 33.91% of the respondents believe that the EU and member states have too much discretion in law enforcement, up 0.7 percentage point on last year (see Figure 2-15); 39.13% of the respondents consider the law enforcement process of the EU and member states untransparent (see Figure 2-16), up 6.55 percentage points on last year.

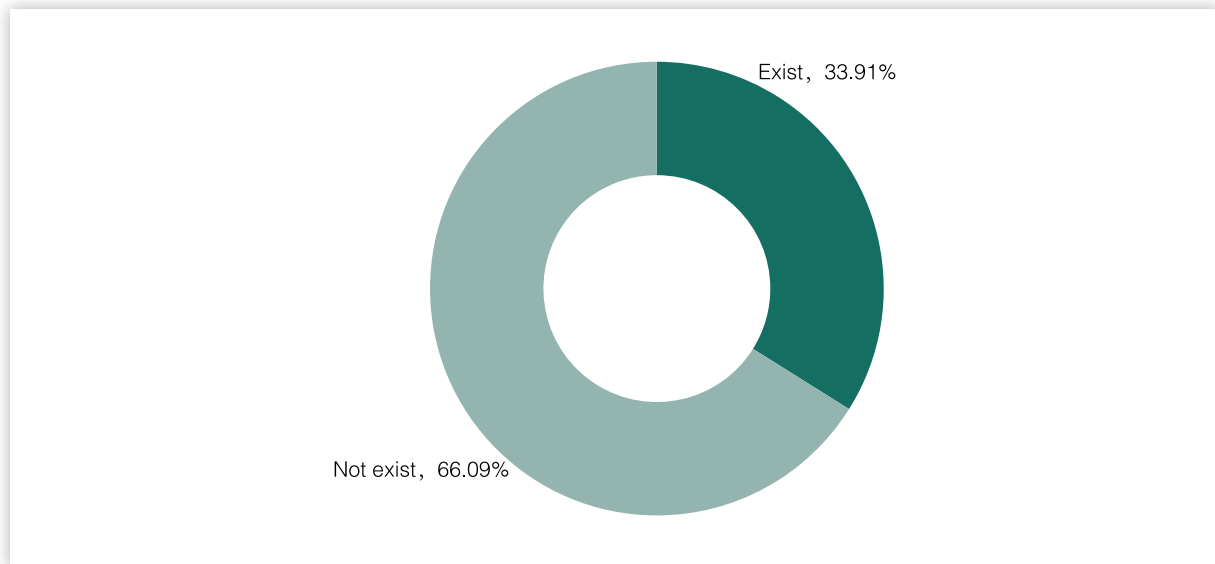


Figure 2-15: Whether the EU and Member States Has Excess Discretion in Law Enforcement  
Source: CCPIT Academy.

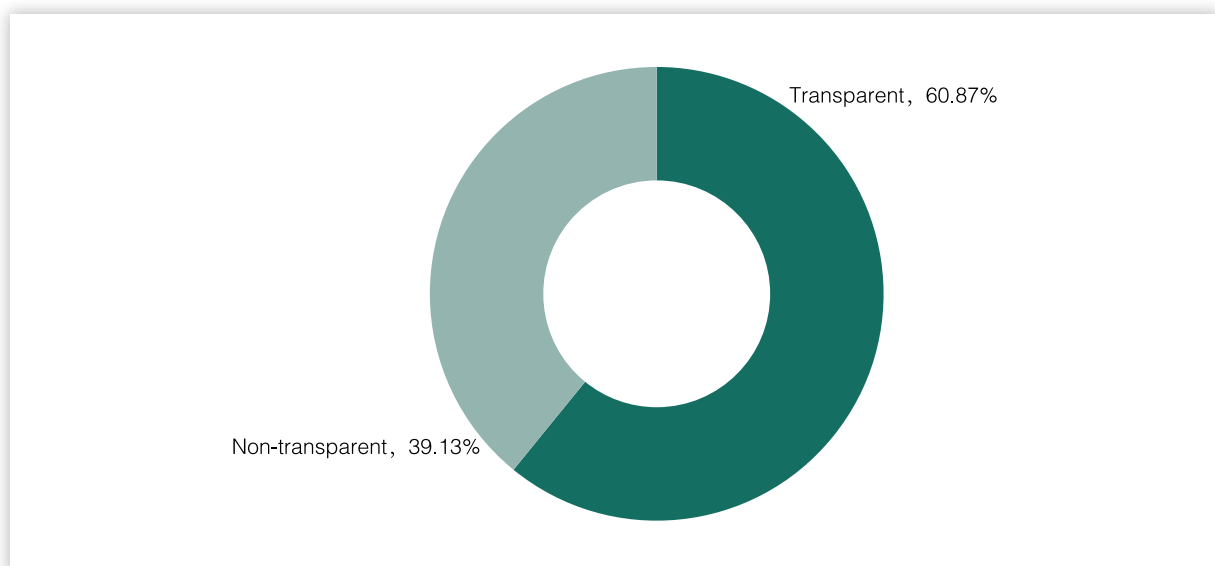


Figure 2-16: Whether EU Enforcement of Laws and Regulations is transparent  
Source: CCPIT Academy.

## 2. Chinese companies are not able to benefit from all the preferential policies.

The EU and its member states do not treat domestic and foreign companies equally when applying preferential policies and treat foreign-invested companies differently. In January 2021, the EU approved a subsidy scheme for the battery industry<sup>45</sup> worth EUR2.9 billion submitted by 12 member states. The scheme intends to include 42 companies in EU and US power battery industrial chains in the subsidy list while excluding Chinese companies that have built or plan to build facilities in the EU. So far, no Chinese companies have benefited from the *European Chips Act* of 2022.

Chinese companies in the EU report widely that the EU does not treat domestic and foreign companies equally when implementing preferential policies. The survey shows that 42.61% of the respondents are not able to benefit from the preferential policies of the EU and member states fairly (see Figure 2-17). In terms of green preferential and subsidy policies, 62.83% of the respondents indicate they are unable to benefit from the policies fairly (see Figure 2-18).

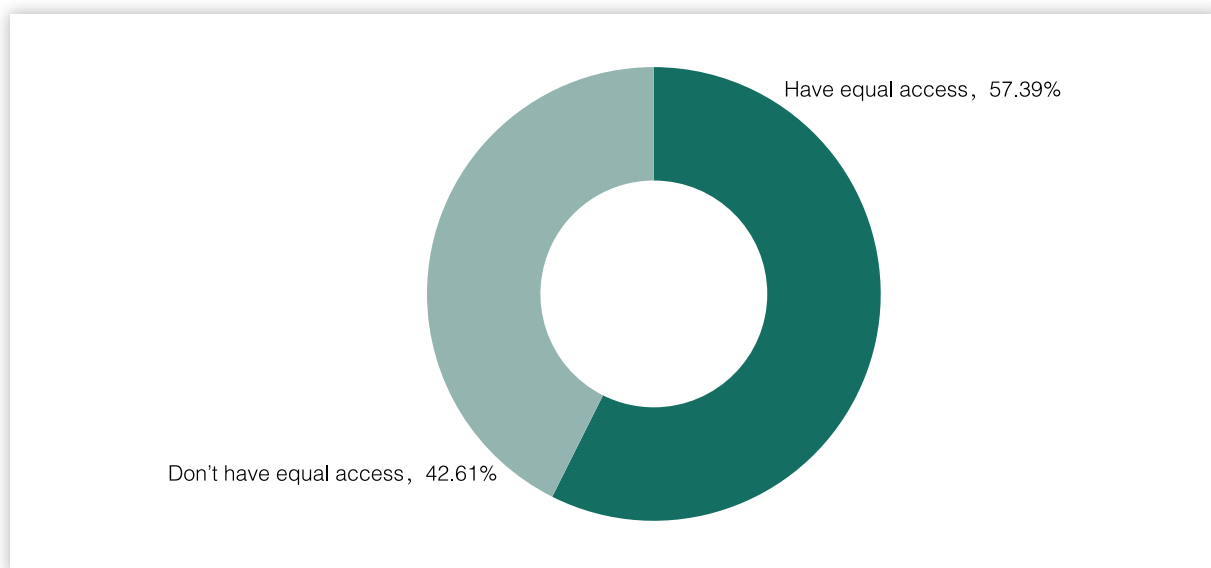


Figure 2-17: Whether Companies Have Equal Access to Preferential Policies of the EU and Member States

Source: CCPIT Academy.

45 European Commission, <https://www.consilium.europa.eu/en/press/press-releases/2021/07/13/council-gives-green-light-to-first-recovery-disbursements/>.

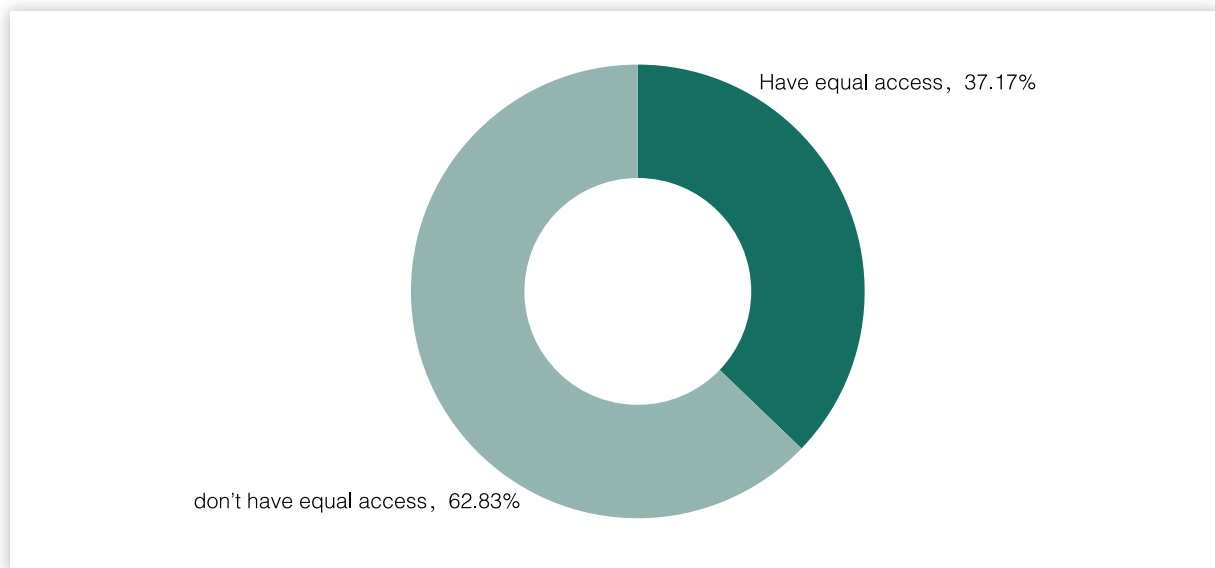


Figure 2-18: Whether Companies Have Equal Access to EU Green Preferential Policies and Subsidies  
Source: CCPIT Academy.

### 3. Worsening public security affects production and operation.

Public security is a basic factor of business environment. Deteriorating public security poses a direct threat to the safety of company employees. Since 2022, due to the Russia-Ukraine conflict, Covid-19, the energy crisis and change of government in some member states, EU public security environment has deteriorated with frequent public protests and demonstrations (see Table 2-4), which has an adverse impact on the operations of foreign companies.

Table 2-4: Protests and demonstrations in the EU since 2022

Time	Place	Event
February 2022	Slovakia	The Slovak government signed a military agreement with the US, which caused major divisions in the Slovak parliament. During the parliamentary debate, thousands of Slovaks protested in front of the parliament building, shouting 'Stop the US military'. The opponents believed that the agreement will compromise Slovak sovereignty and make it possible for the US military to deploy nuclear weapons and maintain a permanent presence in the country.
March 2022	Spain	To protest the inaction of the Spanish government in the face of rising transport costs of small and medium-sized enterprises, Spanish SMEs and individual operators in the transport sector held a massive strike, disrupting the supply chains of multiple products in the country's market.
July 2022	Italy	Campaigners of the Ultima Generazione movement staged a protest next to Sandro Botticelli's Allegory of <i>Spring</i> , attempting to glue their hands to the painting. The movement called itself the Ultima Generazione because the members believe they are the last generation capable of reversing climate change through their actions.

Time	Place	Event
September 2022	Czechia	Tens of thousands of Czechs gathered in Prague, the capital of Czechia, to express their disaffection with the Czech government, NATO and the EU. People protested Prime Minister Petr Fiala's sanctions on Russia, blaming the policy for rising energy prices.
October 2022	Czechia	Tens of thousands took to the streets in Prague, the capital of Czechia, to protest rocketing prices and criticize the government for backing Ukraine's resistance of Russian invasion.
October 2022	France	Several trade unions held a cross-sectoral national strike, covering oil refineries, kindergartens, public transport, energy and nuclear energy. The strike aimed to raise minimum wages and link pay with the inflation index.
November 2022	the Netherlands	Hundreds of protesters broke into the private jet area of the Schiphol Airport of Amsterdam, the Netherlands, blocking the takeoff of flights for hours. The protest was initiated by Greenpeace and Extinction Rebellion, an environmental movement. The protesters called the Schiphol Airport the country's largest CO2 emitter with annual emissions of 12 billion kg.
November 2022	Italy	Tens of thousands took to the streets in Italy to protest. They called for peace in Ukraine and called on the Italian government to stop supplying weapons to Ukraine.

Source: Compiled based on reports by state media of EU member states.

The deteriorating public security environment in the EU since 2022 has impacted the operations of Chinese companies in the EU. The survey finds that 39.13% of the respondents believe that the public security environment in the EU and its member states has had a negative impact on their production and operations (see 2-19).

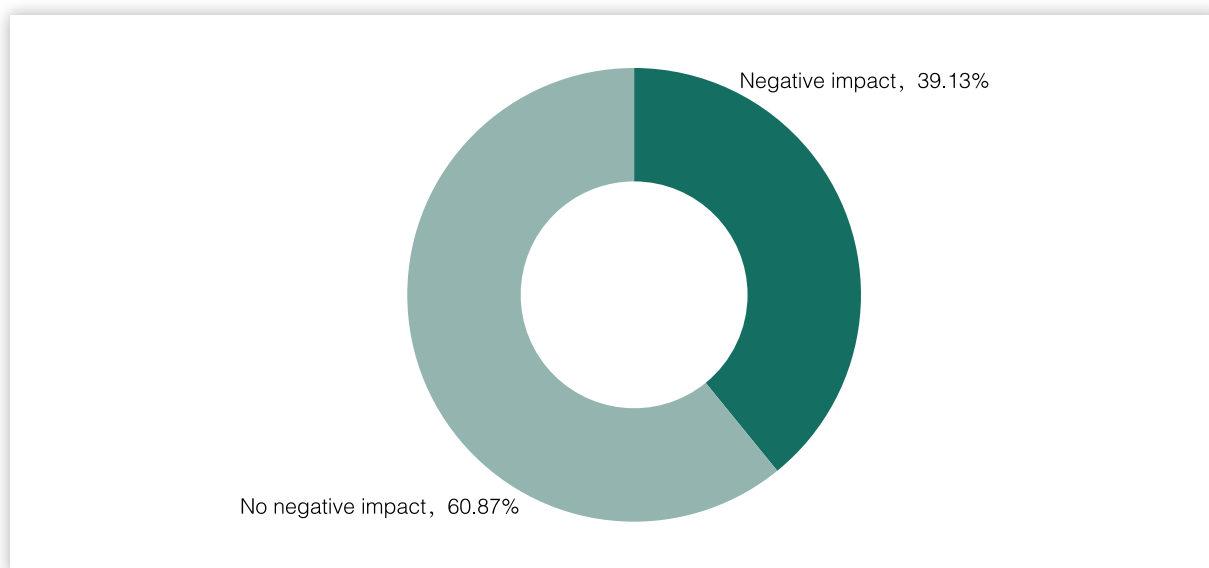


Figure 2-19: Impact of the Public Security Environment in the EU and Member States on the Operations of Chinese Companies

Source: CCPIT Academy.



## VII. Geopolitics and economic downturn cause difficulties for Chinese companies operating in the EU

### 1. High inflation and economic stagflation add to operational risks for Chinese companies in the EU.

The ongoing Russia-Ukraine conflict that broke out in early 2022 has had a profound impact on global economic landscape, causing turmoil in global financial markets, shortages in supply of raw materials, surging energy prices and instability in logistics and transport. As a result, the EU was facing soaring inflation and the risk of economic stagflation. According to the OECD database, in November 2022, the EU's CPI increased by 11.1%<sup>46</sup> (see Figure 2-20), the first decline in 2022; in October 2022, the EU's CPI rose 11.5% year-on-year (see Figure 2-20), the highest in forty years. *The Autumn 2022 Economic Forecast* released by the European Commission on November 11, 2022 suggests that the EU's average annual inflation is expected to hit 9.3% in 2022 and its GDP growth will slow to 0.3%<sup>47</sup> in 2023.

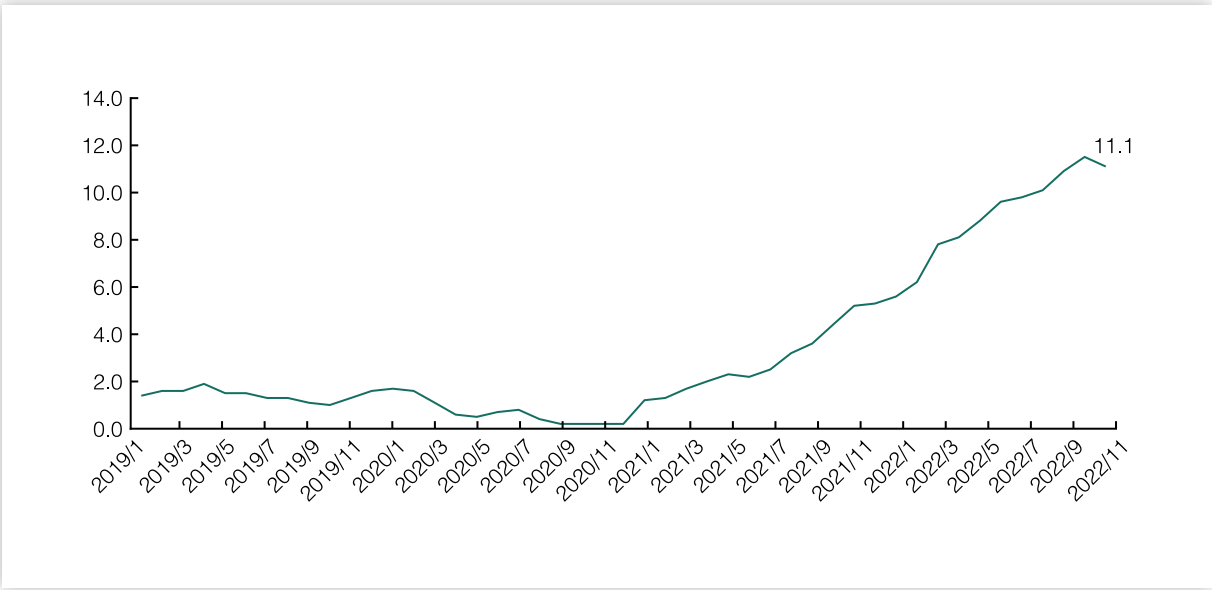


Figure 2-20: Changes of the EU's CPI from January 2019 to November 2022 (%)

Source: OECD database, <https://stats.oecd.org/>.

46 OECD database, [https://stats.oecd.org/Index.aspx?DataSetCode=PRICES\\_CPI#](https://stats.oecd.org/Index.aspx?DataSetCode=PRICES_CPI#).

47 Autumn 2022 Economic Forecast of the European Commission, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6782](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6782).

In response to high inflation, the EU adjusted its monetary policy. The European Central Bank ended negative interest rates and announced its first interest rate hike in eleven years of 50 basis points<sup>48</sup>. As tightening monetary policy amplifies market uncertainties, Chinese companies in the EU were facing financing difficulties, which, compounded by rising operational costs, has affected their business confidence. The survey shows that 53.02% of the respondents report higher costs due to the Russia-Ukraine conflict; 51.68% of them report congestions at ports and clogged logistics by land and sea; 37.58% of the respondents consider inflation severe (see Figure 2-21).

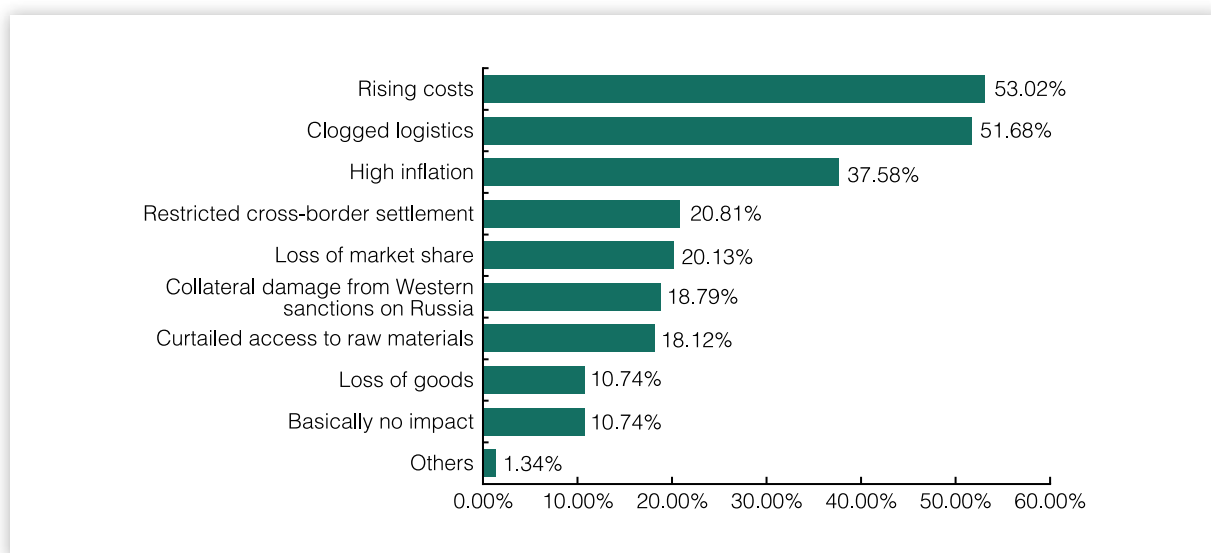


Figure 2-21: Main Impacts of the Russia-Ukraine Conflict as Seen by Chinese Companies  
Source: CCPIT Academy.

## **2. The EU and member states' sanctions on Russia have a collateral impact on Chinese companies.**

The EU and member states' sanctions on Russia have affected Chinese companies in the EU. The survey shows that 56.64% of the respondents report negative impact from EU and member states' sanctions on Russia (see Figure 2-22); 39.29% of the respondents believe that after the outbreak of the conflict, the Members States they operate in are less friendly to Chinese companies (see Figure 2-23).

<sup>48</sup> summary of reuters news report, <https://www.reuters.com/markets/europe/ecb-goes-big-with-50-basis-point-hike-ending-negative-rates-era-2022-07-21/>.

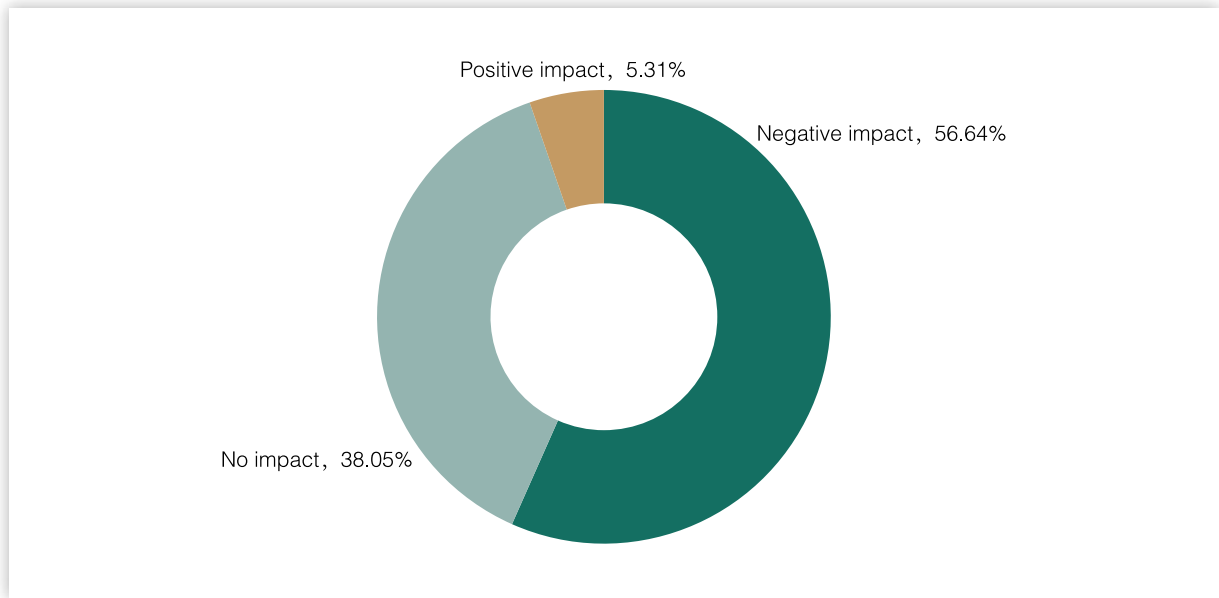


Figure 2-22: Impact on Chinese Companies of the EU and Member States' Sanctions on Russia  
Source: CCPIT Academy.

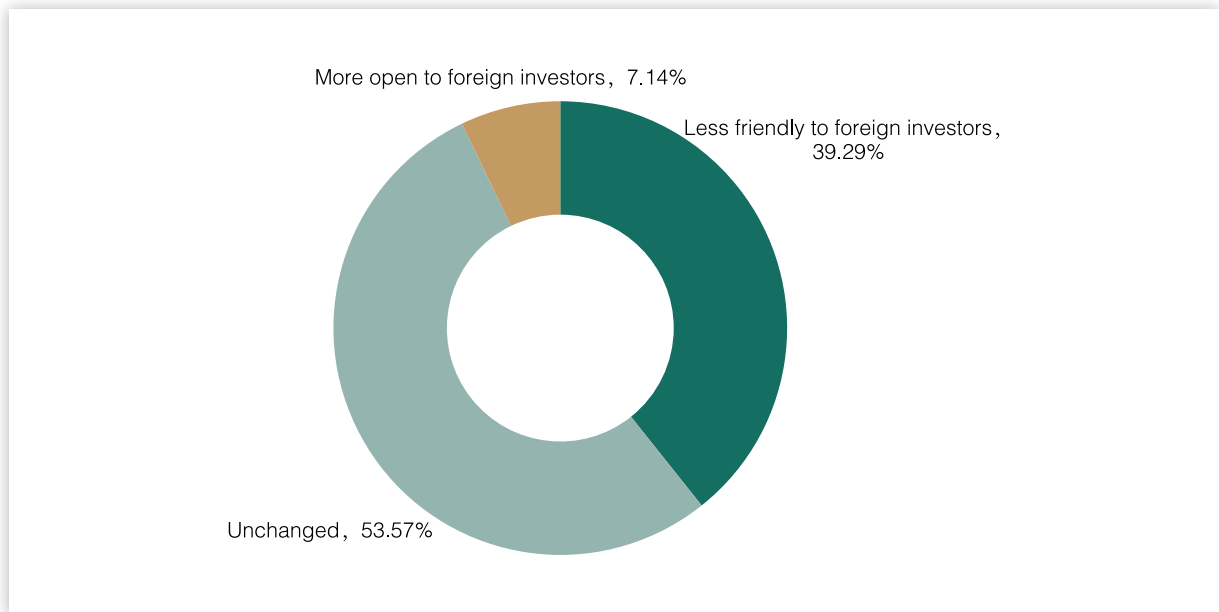


Figure 2-23: Change of Member States' Attitude Towards Foreign Companies after the Russia-Ukraine Conflict as Seen by Companies  
Source: CCPIT Academy.

### 3. Rising energy costs in the EU overburden companies operating in the EU.

Since 2021, frequent extreme climate incidents have limited the supply of clean energy; green economic transition continued to erode bio-fuel inventories; geopolitical conflicts have shifted the patterns of global commodities trade. As commodity prices and energy demand generated by economic recovery keep rising, there was considerable pressure on the energy supply and demand equilibrium.

In November 2022, the EU imported mineral fuels, lubricants and related materials worth EUR66.857 billion, up 1.44 folds year-on-year and accounting for 25.91% of the EU's imported goods over the same period, up 3.95 percentage points year-on-year<sup>49</sup> (see Figure 2-24). In November 2022, the EU's Harmonized Index of Consumer Prices for energy was 165.86, and the level in October 2022 (168.14) was the highest in the past five years (see Figure 2-25).

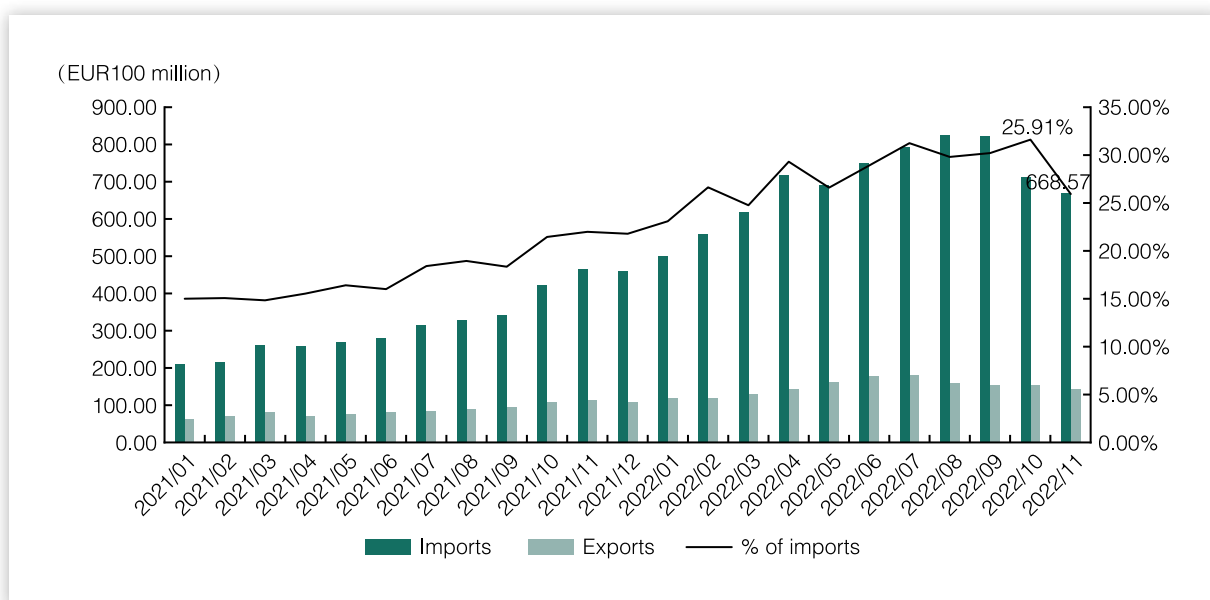


Figure 2-24: EU imports and exports of mineral fuels, lubricants and related materials from January 2021 to November 2022 (EUR100 million)

Source: Eurostat, <https://ec.europa.eu/eurostat/>.

49 Eurostat, <https://ec.europa.eu/eurostat/databrowser/view/teiet140/default/table?lang=en>.

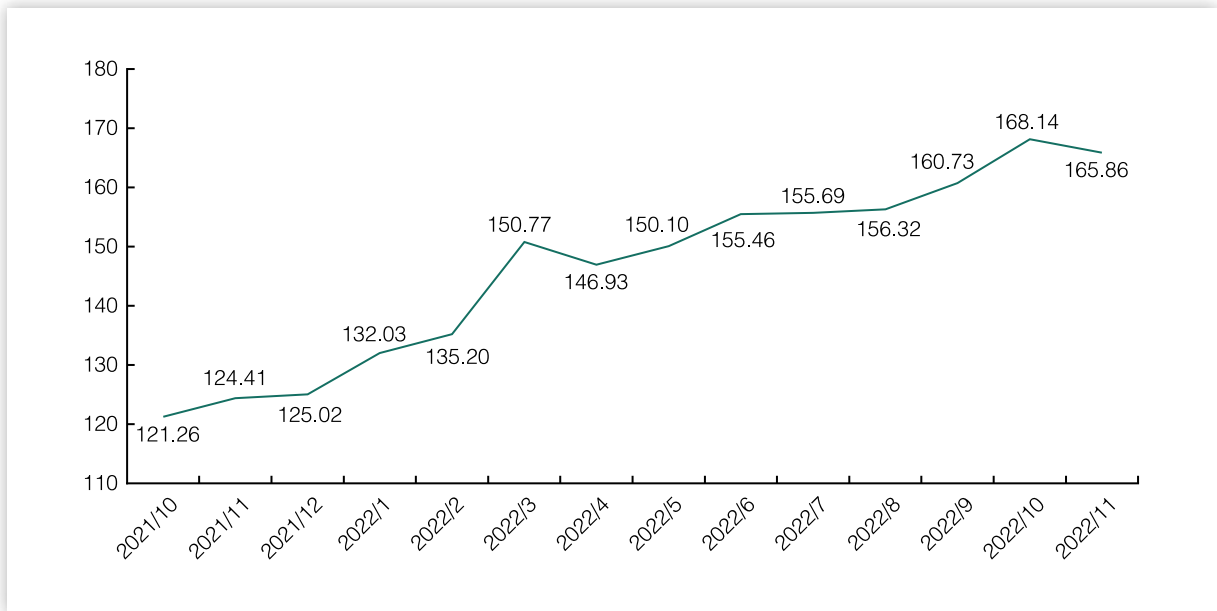


Figure 2-25: EU Harmonized Index of Consumer Prices for energy (HICP - energy) from September 2021 to November 2022

Source: Eurostat, <https://ec.europa.eu/eurostat/>.

The survey indicates that 54.36% of the respondents report continuously rising production costs. Rising costs have become the biggest problem in the EU's business environment as seen by Chinese companies, which are overburdened by exorbitant energy costs.



# **Chapter 3**

## **General Proposals**



## I. Reduce market access barriers in line with trade liberalization principles

### 1. Optimize the EU's market access environment under the multilateral framework.

The EU is a longtime champion and practitioner of multilateralism. However, in recent years, through foreign investment, foreign subsidy and public procurement reviews, the EU has strengthened its protection of the single market, which runs counter to its long established philosophy of open and free trade. It is recommended that the EU enforce the WTO free trade principle under the multilateral framework to create a fair and open market access environment.

### 2. Reduce the EU's market access barriers for foreign companies.

It is recommended that the EU avoid using foreign investment review as a trade protection instrument, formulate a reasonable review list, reduce the review period and curb government discretion in foreign investment review. The survey indicates that if the review is relaxed, 28.7% of the respondents will expand investment in the EU (see Figure3-1).

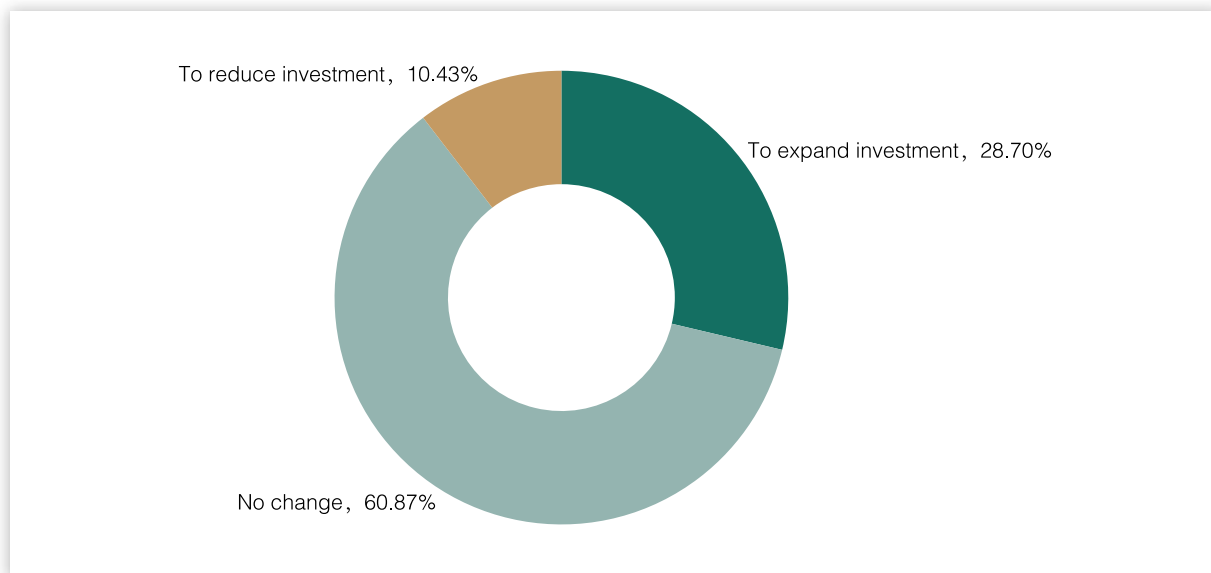


Figure 3-1: Chinese Companies' Investment Plans if Foreign Investment Access Restrictions Are Relaxed

Source: CCPIT Academy.



### **3. Exercise caution in using foreign subsidy review and reduce business compliance costs.**

It is recommended that the EU limit the definitions and scope of 'financial contribution' and 'third country' within a reasonable range to appropriately distinguish businesses' normal market-based operations. At the same time, use foreign subsidy review cautiously to avoid increasing the risk and compliance costs of foreign companies' investment, mergers and acquisitions in the EU market.

### **4. Refrain from turning the *International Procurement Instrument* into a new trade barrier.**

It is recommended that the EU give foreign companies equal access to its public procurement bidding process, avoid making the *International Procurement Instrument* another market access barrier, strengthen bilateral consultations with third countries and exercise caution in launching so-called public procurement market investigations.

### **5. Make sure that the EU's investment and regulation environment is open and transparent.**

It is recommended that the EU treat Chinese companies equally with companies from other countries in foreign investment review and public procurement, offer clear explanations for banning access to related investment or public procurement projects and ensure a level playing field for Chinese companies.

## **II. Clarify the national security concept and avoid over-regulation**

### **1. Identify the applicable scope of export control for dual-use items.**

It is recommended that the EU further identify the scope of dual-use items and behavior subject to control and remove natural persons from the definition of exporters to avoid over-regulating research personnel. Cancel the requirement for an extra single export license or global export license for associated businesses within multinationals to transfer related software and technology from the EU to China.

### **2. Do not erect ad hoc barriers to foreign companies in the name of national security.**

It is recommended that the EU and its member states refrain from frequently updating the scope of sectors of strategic importance to national security, which subjects foreign companies to extra scrutiny. At the same time, abide by the grandfather clause. Investment projects approved before the promulgation of related laws and regulations should not be canceled according to current laws and regulations.

### III. Do not practice trade protectionism in the name of human rights

#### **1. Withdraw slander of the companies and products of Xinjiang, China.**

It is recommended that the EU respect the facts and stop smearing Xinjiang. Do not mislead EU companies to discriminate against Xinjiang companies and products. Do not practice protectionism in the name of human rights. Avoid politicizing economic issues.

#### **2. Do not segregate the market in the name of due diligence.**

It is recommended that the EU refrain from using administrative means to lead companies to decouple from China and thus segregate the market. Avoid increasing business compliance costs by imposing supply chain due diligence obligations.

#### **3. Form independent perceptions regarding the China policy with affirmed strategic autonomy.**

It is suggested that the EU affirm its strategic autonomy and independent and fair judgement and conduct dialogue with China on human rights and due diligence to avoid erecting market barriers on fabricated forced labor charges.

### IV. Treat all foreign companies in the EU fairly and justly

#### **1. Avoid discriminatory law enforcement and ensure national treatment for foreign companies.**

It is recommended that the EU and its member states abide by the WTO's national treatment principle, set reasonable and well-defined law enforcement rules, refrain from treating foreign companies differently in law enforcement, and confine discretion to a reasonable scope to avoid hurting foreign companies' enthusiasm to take part in and build the EU market.

#### **2. Make sure that foreign companies can benefit fairly from preferential policies in the EU market.**

The EU's preferential policies should treat domestic and foreign companies equally, recognize foreign companies' contribution to the EU economy and give foreign companies the right to compete fairly with EU companies.

### **3. Create a stable public security environment to provide assurances for business operations.**

It is recommended that the EU pay high attention to social problems against the background of geopolitics and the pandemic and calm the public in a timely manner to prevent disruptions to normal business operations from protests or demonstrations and create a stable and secure social environment for businesses.

### **4. Improve visa facilitation and approval rate for employees of foreign companies.**

It is recommended that the EU be open-minded, introduce a fast-track policy for business visas and raise the approval rate for foreign business personnel. Avoid obstructing travels of foreign company employees by raising visa threshold repeatedly and causing talent shortages and difficulties in business development for foreign companies.

## **V. Stay open and prevent the further deterioration of business environment**

### **1. Eliminate the negative impact of unilateral economic and trade instruments.**

It is recommended that the EU scrap unilateralism and trade protectionism, adhere to liberalism and openness, reduce trade barriers and investment and market access obstacles, exercise caution in using all kinds of unilateralist tools and deepen practical cooperation with China to jointly promote advances in hi-tech and new energy on both sides and improve people's well-being in the EU.

### **2. Strengthen cooperation and mutual recognition on standardization.**

It is recommended that the EU conduct in-depth exchanges and seek cooperation opportunities with China on key technology research and development and global standardization to jointly push for a global 6G consensus; form a mutual recognition mechanism on cybersecurity; promote common technology-based testing standards; and support Chinese companies in participating in major EU projects and reduce and remove restrictions.

## **VI. Strengthen strategic cooperation to respond to global crises and challenges**

### **1. Strengthen dialogue and cooperation amid the geopolitical crisis.**

In the face of a geopolitical crisis, it is recommended that the EU take the lead in upholding the UN-

centered international system, the international order based on international law and the basic norms of international relations underpinned by the purpose and principles of the UN Charter and oppose making a new cold war. Strengthen dialogue and cooperation with China, widely heed the calls and requests of Chinese companies in the EU, respect companies' commercial choices based on market law and avoid undermining the lawful rights and interests of companies in the EU due to the geopolitical crisis.

### **2. Leverage the strategic leading role of the high-level China-EU dialogue mechanism.**

It is recommended that China and the EU fully tap the role of the high-level dialogue mechanism, keep bilateral exchanges open on economy and trade, green development, digitalization, cybersecurity, science and technology innovation and global governance, increase strategic mutual trust, and strengthen practical cooperation on economy and trade, science and technology, energy, pandemic response and climate change.

### **3. Strengthen communication and coordination on energy security and enhance the level of cooperation.**

It is suggested that the EU act on the principle of mutual benefit and win-win cooperation and strengthen communication and coordination on energy security with China, actively expand China-EU cooperation on energy, enhance the level of technology innovation cooperation, and inject positivity into global energy market stability and green energy development.

## **VII. Optimize the business environment and take part in global competition with an open mind**

### **1. Reopen the EU's ratification process of the China-EU Investment Agreement.**

It is recommended that the EU resume the ratification process of the China-EU Investment Agreement as soon as possible and push for the early signing of the Agreement to provide more liberalized market access, more transparent domestic regulation and higher-standard economic and trade rules for two-way investment and further deepen China-EU economic and trade ties.

The survey shows that if the *China-EU Comprehensive Investment Agreement* is ratified and implemented, 40.87% of the respondents will increase investment in the EU market (see Figure 3-2).

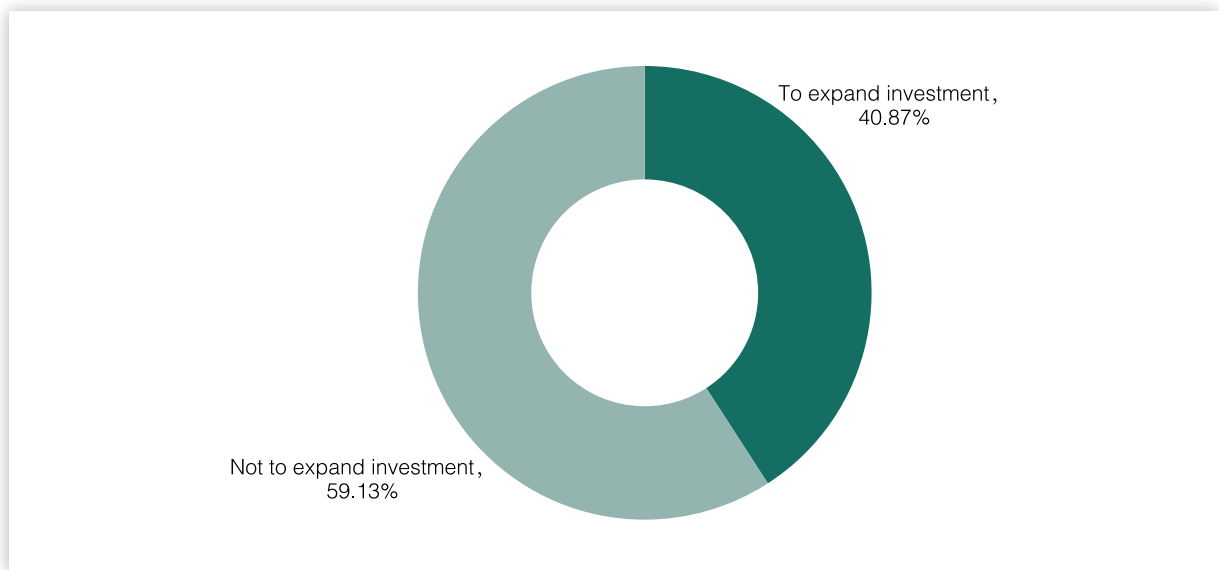


Figure 3-2: Chinese Companies' Investment Plans in the EU if the China-EU Comprehensive Agreement on Investment Is Ratified and Implemented  
Source: CCPIT Academy.

## ***2. Strengthen green economic cooperation and jointly promote the rapid development of the green economy.***

It is recommended that the EU accelerate the connection with China's green and low carbon standards and promote the mutual trust and recognition of the two sides' green projects. On the policy level, it is recommended that the EU strengthen cooperation with China and co-develop energy conservation and emissions reduction standards for data centers, communication infrastructure, transport and construction to jointly promote the green industry.

## ***3. Promote global digital development and advance scientific research.***

With its cybersecurity and data protection regulatory system improving, China has accumulated some experience in on-line contents regulation, cross-border data flow, data protection and personal privacy protection. It is recommended that the EU strengthen exchanges and mutual learning with China on standards for digital governance and jointly push for the regularization and implementation of the China-EU high-level digital dialogue and its supporting mechanisms.

## ***4. Enhance the synergy of the development strategies of China and the EU.***

The EU's NextGenerationEU and China's 14th Five-year Plan share broad convergences. The respondents look to China and the EU to strengthen the synergy of their development strategies and explore potentials for bilateral cooperation.



# **Chapter 4**

## **Market Access**



## I. Latest developments

### **1. Anti-dumping, anti-subsidy and anti-circumvention and safeguard measures sweepingly raise the EU's access threshold for goods.**

Anti-dumping, anti-subsidy and safeguard measures are the EU's major trade remedy measures to block imports from other countries. As an extension of the anti-dumping measures, the anti-circumvention investigation<sup>50</sup> has gradually become the EU's new tool to expand the coverage of trade barriers.

China is the main victim of these trade remedies. On September 20, 2022, the European Commission published the *Annual Report on the EU's Trade Defense Activities of 2021*<sup>51</sup>, which shows that as of the end of 2021, the EU had 163 trade remedy measures under implementation, including 140 anti-dumping measures, 20 anti-subsidy measures and 3 safeguard measures. Of the 140 anti-dumping measures in effect, 96 targeted China, accounting for 68.57%, much higher than the second-ranked Russia (with 10) (see Figure 4-1); Of the 20 anti-subsidy measures, 9 were directed at China, accounting for 45%, higher than the second-ranked India (with 4)<sup>52</sup> (see Figure 4-2). Besides, according to the statistics of *the Commission's Annual Reports on the EU's Trade Defense Activities* over the years, from 2012-2021, the EU launched 41 anti-circumvention investigations, including 35 against China, which made up 85.37% of the total, much higher than the second-ranked Egypt (with 2) (see Figure 4-3).

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50 Note: See the section's box for the definition of the anti-circumvention investigation and the EU's determination of anti-circumventing behavior.

51 European Commission, 40th Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2021, [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:COM\\_2022\\_0470\\_FIN#footnoteref2](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:COM_2022_0470_FIN#footnoteref2).

52 European Commission, [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:SWD\\_2022\\_0294\\_FIN](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:SWD_2022_0294_FIN).



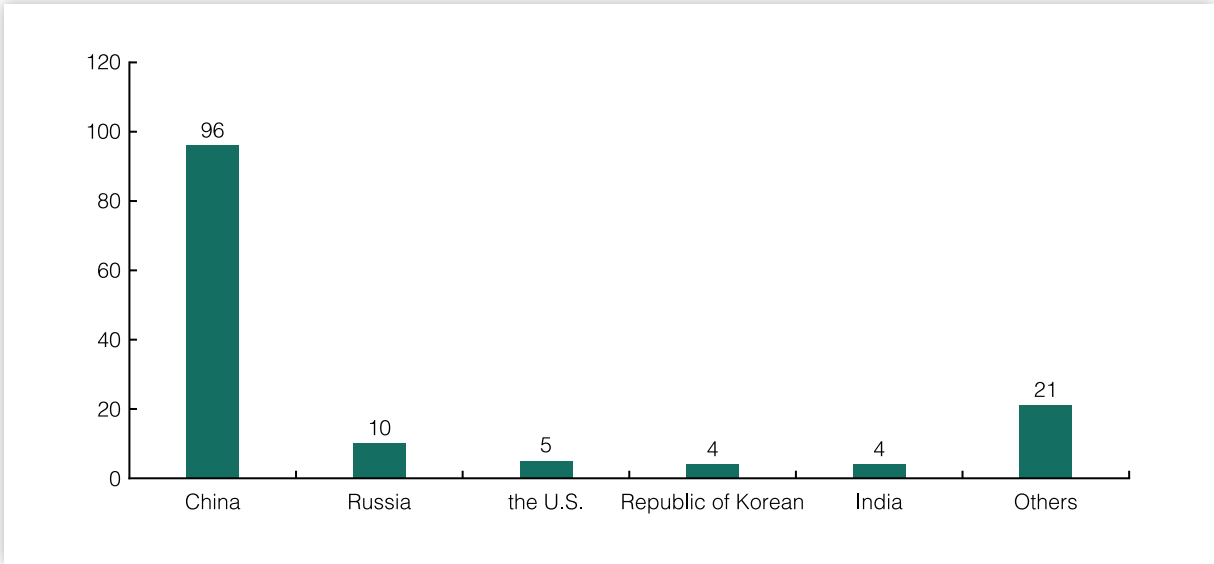


Figure 4-1: EU Anti-Dumping Measures under Implementation, by Country  
 Source: Compiled based on the European Commission’s work report.

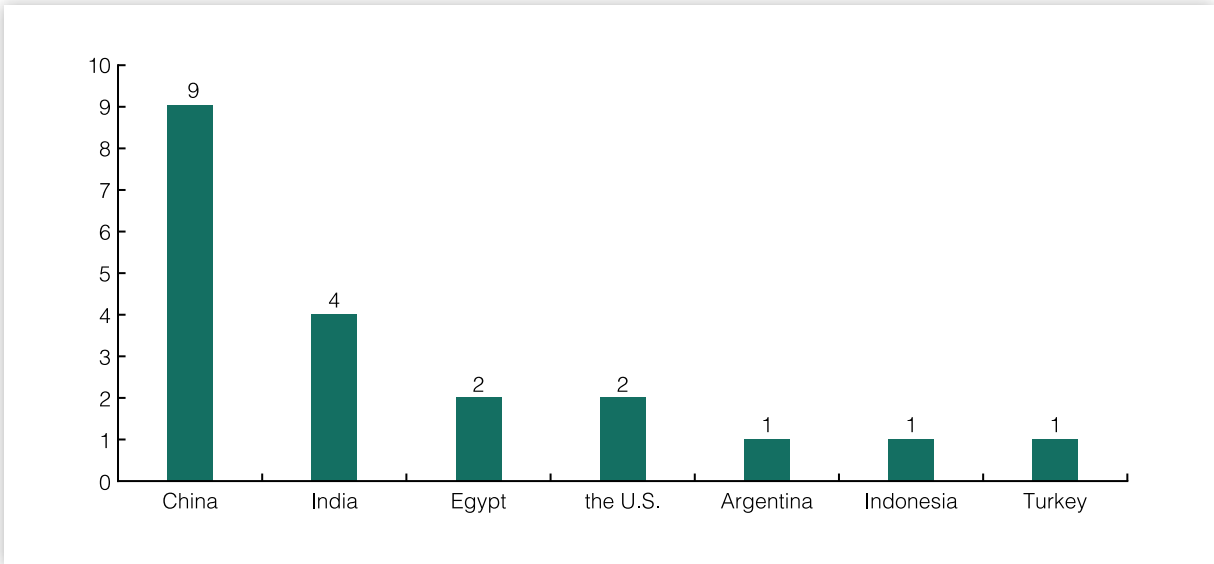


Figure 4-2: EU Countervailing Measures under Implementation, by Country  
 Source: Compiled based on the European Commission’s work report.

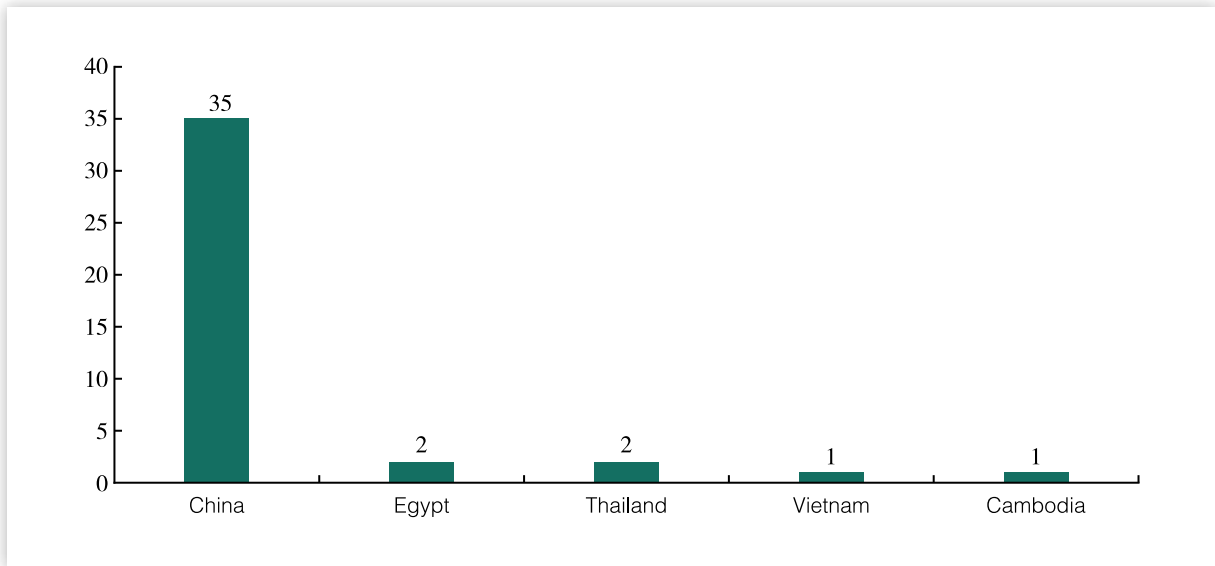


Figure 4-3: Anti-Circumvention Investigations Launched by the EU, 2012-2021, by Country  
 Source: Compiled based on the European Commission's work report.

#### **Definition of the EU's anti-circumvention investigation:**

According to Article 13 Circumvention of the *EU Anti-dumping Regulation 2016/1036*<sup>53</sup>, circumvention is defined as the act on the part of the exporter to reduce or evade the anti-dumping duty or other applicable anti-dumping measures imposed on the exported product through all kinds of means when the exported product is subject to EU anti-dumping measures. Anti-circumvention refers to measures taken by the EU to prevent the foreign exporter from circumventing the anti-dumping duty.

#### **Circumvention practice as determined by the EU:**

Circumvention practice as determined by the EU mainly includes: (1) the modification of the product concerned to change customs codes without altering its essential characteristics; (2) the consignment of the product subject to measures via third countries, including the assembly of parts in a third country; (3) duty rate difference: the exporter or producer exports the product to the EU through a channel with a lower duty rate.

## **2. Italy has expanded the scope and toughened up the process of foreign investment review.**

Italy's foreign investment review is mainly based on the Golden Power Decree introduced in 2012<sup>54</sup>,

53 Eur-lex of the European Commission, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1036&rid=1>.

54 Italy's Golden Power Decree, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2012;21>.

which authorizes the government to review and terminate any foreign investment that may undermine or threaten national strategic interests. On March 22, 2022, the Italian government passed Law Decree No. 21/2022<sup>55</sup> apparently in response to the Ukraine crisis, revising the Golden Power Decree to expand government mandate in exercising the Golden Power and toughen up the review of certain sectors.

### (1) The scope of the Golden Power the government can exercise has been expanded

At the outset, the 'strategic sectors' where the government can exercise the Golden Power only included defense and national security sectors as well as energy, transport and the communications industry. 2019 saw the gradual enlargement of the scope of 'strategic sectors', adding physical or virtual critical infrastructure and technology, agriculture, steel, health, banking and insurance to the list of so-called strategic sectors (see Figure 4-1).

Figure 4-1: Evolution of the review scope of Italy's Golden Power Decree

Time	Scope
2012	Sectors related to defense and national security, energy, transport and the communications industry.
May 2019	Defense and national security, broadband electronic communications based on the 5G technology, energy and transport.
September 2019	Physical or virtual critical infrastructure, including energy, transport, water conservation, health, communications, media, data processing or storage, aviation and aerospace, defense, election or financial infrastructure, sensitive equipment and land and property crucial to the use of such infrastructure; Key technologies, including artificial intelligence, robotics, semiconductor, cybersecurity, aviation and aerospace, defense, energy storage, quantum and nuclear technology, nanotechnology and biotechnology.
April 2020	Investment in energy, transport, water, health, communications, media, processing or filing data, aviation and aerospace infrastructure, defense infrastructure, financial infrastructure and sensitive facilities and land and buildings essential to the use of such infrastructure; Key technologies and dual-use items, including artificial intelligence, robotics, semiconductor, cybersecurity, aviation and aerospace, defense, energy storage, quantum and nuclear technology, nanotechnology and biotechnology; Supply security of critical products, including energy and raw materials and food safety; Capability to access confidential information, including personal data, or the capability to control such data.
June 2020	Additions to that of April 2020: Agricultural food and the steel industry; Health sector, including the production, import, wholesale and distribution of healthcare and surgical medical devices and the production, import, wholesale and distribution of personal protection equipment; Banking and insurance.
March 2022	Additions to that of June 2020: Sectors related to cybersecurity and cloud storage.

Source: Law Decree 21/2022 of Italy.

55 Summary of foreign language materials, <https://www.legance.com/wp-content/uploads/2022/03/Newsletter-Italian-legislation-regarding-foreign-direct-investment-screening-ENG-march-2022-1-1.pdf>.

The decree also expands the scope of defense and security transactions subject to government review. Before that, the government only reviewed foreign direct investment in the defense and security sector. Decree 21/2022 provides that apart from foreign direct investment, any deal that causes ownership changes of Italian companies and the transfer of strategic assets as guarantee are also subject to review.

## **(2) Review requirements for certain sectors have become more strict**

Decree 21/2022 provides that changes in the control of companies in telecommunications, energy, transport, health, agricultural food, and the financial sector (credit and insurance) shall be notified in advance to Presidency of the Council of Ministries<sup>56</sup>. The provision applies to both domestic and foreign-invested companies.

In addition, telecommunications networks, the 5G technology and other services, goods and technologies related to cybersecurity are considered to require a higher level of security by the Italian government. In these areas, apart from prior notification and approval, the acquiring party also needs to provide annual plans to the Italian government, including detailed descriptions of the technology related to the deal and analysis of the predictive and development model of the digital system.

### **Consequences of breaching the Golden Power Decree**

Companies breaching the Golden Power Decree will face severe punishment. According to the regulations, investors that fail to declare specific transactions, acts or decisions or to comply with government decisions made according to the Golden Power Decree will face the following consequences:

1. Such transactions and acts shall be nullified;
2. The violating party will be subject to an administrative fine of up to twice the value of the investment, which in no case shall be less than 1% of the turnover of the enterprise for the previous financial year. For assets involving the 5G technology, the administrative fine can be up to 150% of the transaction value and shall be no less than 25% of the transaction value. If the act constitutes a crime, it is punishable under Italy's criminal law;
3. The government can order the restoration of the original state and require the company involved and the counterparty to bear the relevant costs and other supporting measures.

### **3. The scope of protected entities in Poland's foreign investment review law is very extensive.**

Poland passed the *Non-EU Investment Screening Mechanism Act*<sup>57</sup> on July 24, 2020, with a validity

56 Presidency of the Council of Ministries is called the Prime Minister of Italy in Italian, the top executive of the Republic of Italy and head of the Italian Government that leads the country's administration.

57 Polish government website, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200001086>.

period of two years. In May 2022, the Polish President signed a bill to extend the Act by three years to July 24, 2025<sup>58</sup>.

### **(1) Extensive scope of “protected entities”**

The definition of “protected entities” in the Act is very broad. Non-EU companies’ investment in these sectors needs the approval of the Polish government, which has the authority to make exceptional changes. “Protected entities” include (i) research institutes; (ii) entities with a revenue of over EUR10 million that meet one of the following conditions:

- SOEs that provide public services according to law;
- Enterprises that hold critical infrastructure assets;
- Departments that provide support for critical infrastructure, such as power grids, water supply companies, hospitals, power plants, payment processors, transport companies or food suppliers;
- Entities involved in the following key sectors: energy, oil and natural gas, defense, communications, transport and warehousing, ports, heating, medicine and medical device manufacturing, meat, dairy, grains, vegetable and fruit processing, chemical manufacturing and military technology.

Aside from investment, transactions with the enterprises, industries and sectors listed above that meet the following criteria also need the approval of the Polish government:

- To acquire at least 20% or 40% of the company’s equity, voting rights or other key participation rights;
- To gain key participation rights by acquiring the company’s business or organization;
- To acquire a dominant position in the company that can decide its future business direction.

### **(2) Long review period**

Poland’s *Non-EU Investment Screening Mechanism Act* provides that the review period comprises the preliminary review and the formal review. The preliminary review generally lasts for 30 working days. If the investor fails to provide adequate explanations or supplementary materials regarding issues in the submissions or if the Office of Competition and Consumer Protection decides the investment concerns public security and interests, the investment project will be subject to further review. It is noteworthy that the enterprise has no right to appeal the issued decision of the Office of Competition and Consumer Protection to launch the formal investment review and can only cooperate in the launch of the formal review proceedings.

The formal review period normally lasts for 120 calendar days. The Office of Competition and Consumer Protection will notify the enterprise if it needs supplementary materials from the investor during the formal review and suspend the review until the supplementary materials are provided. If the enterprise fails to provide supplementary materials in time, the case will be rejected.

58 Summary of EU official news report, <https://www.schoenherr.eu/content/new-foreign-investments-screening-rules-in-poland/>.

### (3) Insufficient and unclear grounds for the negative impact decision

If the Office of Competition and Consumer Protection decides there is a potential threat to Poland's public policy, security or health or negative impact on the EU's related projects, it will issue a rejection notice.

When deciding whether there is a potential threat to Poland's public policy, security or health, as the Polish law lacks guiding rules for such determination, the Office of Competition and Consumer Protection enjoys great discretion. In the determination of what EU projects may be negatively impacted by the investment, a clear scope of the projects is also absent.

### 4. The Netherlands' new Investment Screening Bill introduces retroactive reviews over transactions.

On May 17, 2022, the Dutch Senate passed the *Investments, Mergers and Acquisitions Security Screening Bill*<sup>59</sup> (ISB). The ISB applies to both domestic and foreign investment and is expected to enter into force at the end of 2022. It will allow retroactive reviews of transactions from September 8, 2020 onwards, which means some transactions closed before the ISB enters into force are also covered.

#### (1) The review scope is broad and not clearly defined

Subject to the Dutch ISB review are investments, mergers and acquisitions of three categories of operators, namely, vital suppliers, managers of business campuses and sensitive technology companies. The scope of current foreign investment screening is broad with the three categories of operators and involved industries defined vaguely (see Table 4-2). Besides, the Netherlands published the draft orders in council of the ISB on July 19, 2022, adding companies involved in quantum technology, photon technology, semiconductor technology and High Assurance Products to the scope of sensitive technology companies. With the draft orders in council still under consultation, the scope may be further enlarged.

Table 4-2: Definitions of the three categories of operators in the Dutch ISB

Type of operators	Definitions and contents
Vital suppliers	Heating networks, nuclear facilities, air transport, ports, banking services, finance and renewable energy.
Managers of business campuses	Companies that manage strategic hi-tech parks.
Sensitive technology companies	Companies that produce and deal in dual-use goods under Regulation (EU) 2021/821 and military goods as defined by the Dutch law.

Source: Compiled based on the Dutch ISB.

59 National Intelligence and Security Agency of the Netherlands, Investments, Mergers and Acquisitions Security Screening Bill, <https://zoek.officielebekendmakingen.nl/stb-2022-215.pdf>.

## (2) The review threshold is low with a newly added significant influence rule

Under the Dutch ISB, there are two types of situations that will trigger an investment review in the Netherlands. One is when 10% of the voting rights or equity of the three kinds of operators mentioned above or the related Dutch companies are acquired; the other is the significant influence rule, which means that the increase in the shareholding of the three kinds of operators has a significant influence on the companies, with significant impact measured by the final shareholding reaching the 20% and 25% thresholds. The significant influence rule currently applies only to highly sensitive technology companies as defined in the orders in council of the ISB.

## (3) The review period can last for up to 9 months

Activities within the scope of the ISB need to be declared in advance to the Dutch Minister of Economic Affairs and Climate Policy. Upon receipt of the declaration, the Minister is required to decide within eight weeks whether to review and assess the transaction, and if so, to complete the assessment and make a decision within the following eight weeks. If further investigation is required, the above two phases can be extended moderately, but the total period should not exceed six months. In addition, an additional extension of three months may be granted if the activity in question falls within the scope of the review under *the EU FDI Screening Regulation*.

## II. Analysis

### **1. Foreign investment review has become the biggest obstacle for foreign investing in the EU.**

In 2022, Member States including Italy, Poland and the Netherlands revised, extended or established their foreign investment review regimes, expanding the scope of review, lowering the review threshold and extending the review period, which increases the difficulty for foreign investors' M&A and investment in the EU. The survey shows that of the respondents subject to the EU's foreign investment review, 65% report a big negative impact, up 6.03 percentage points from the previous year (see Figure 4-4). The negative impact is mainly manifested in rising investment costs, restricted business scope of foreign companies or even their outright exclusion from the EU market. The survey suggests that 76.92% of the respondents believe that foreign investment review increases the time costs of their investment in the EU; 53.85% report increased financial costs; and 46.15% report restricted business scope (see Figure 4-5).

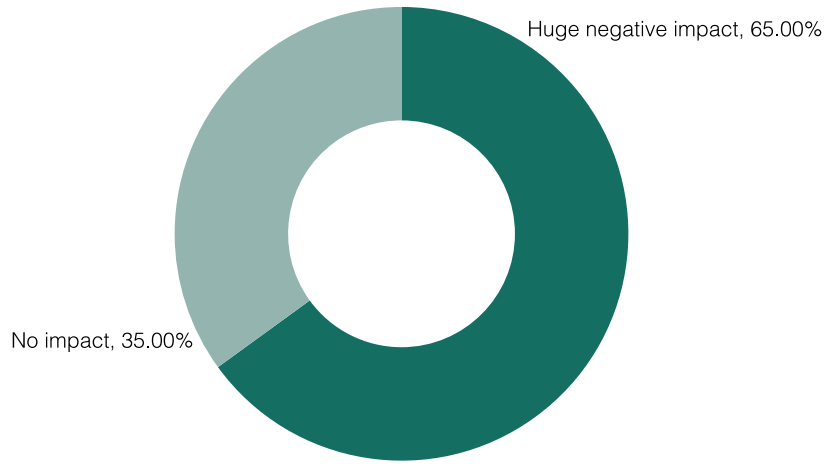


Figure 4-4: Impacts of EU Foreign Investment Review on Businesses  
Source: CCPIT Academy.

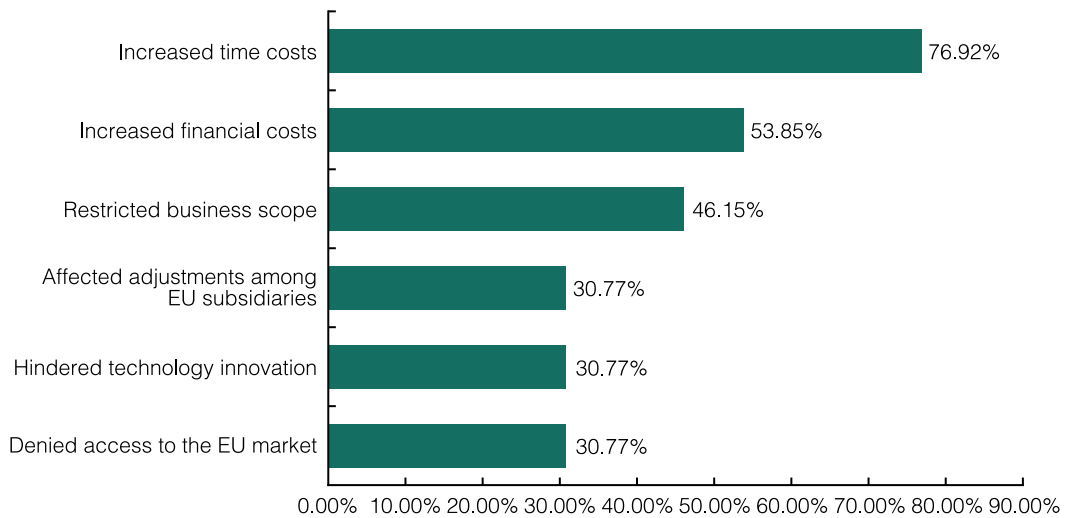


Figure 4-5: Specific impacts of EU foreign investment review on businesses  
Source: CCPIT Academy.



## **2. Lack of transparency and discrimination remain pronounced issues with foreign investment review.**

Lack of transparency and discrimination still exist in the EU's foreign investment review. The survey suggests that 57.14% of the respondents believe that the review process is opaque; and 28.57% of the companies report discriminatory treatment in their review processes (see Figure 4-6).

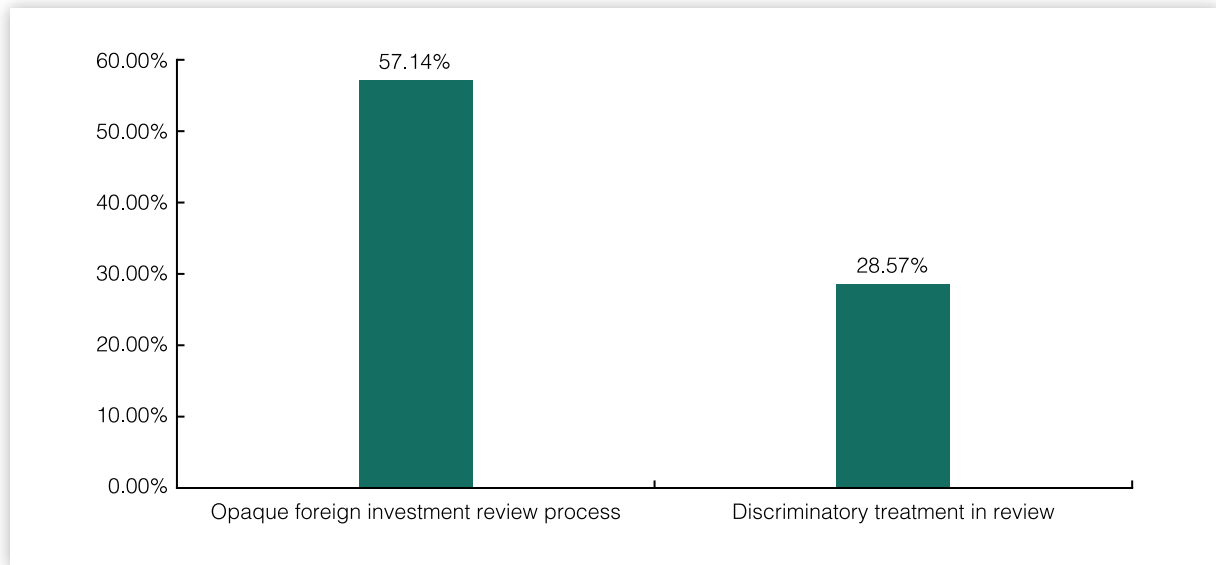


Figure 4-6: Companies' Comments on the Transparency of Foreign Investment Review of the EU and Local Governments

Source: CCPIT Academy.

## **3. Information technology and energy companies have become the focus of foreign investment review.**

Information technology and energy companies suffer a bigger negative impact from EU foreign investment screening. The survey shows that 85.71% of the information transmission, software and IT service companies, 75% of the energy companies and 66.67% of the scientific research and technology service companies report negative impact from the review, much higher than other sectors (see Figure 4-7). These results align with the focus of the reviews of the EU and its member states. In the future, IT and energy companies will find it even harder to invest in the EU.

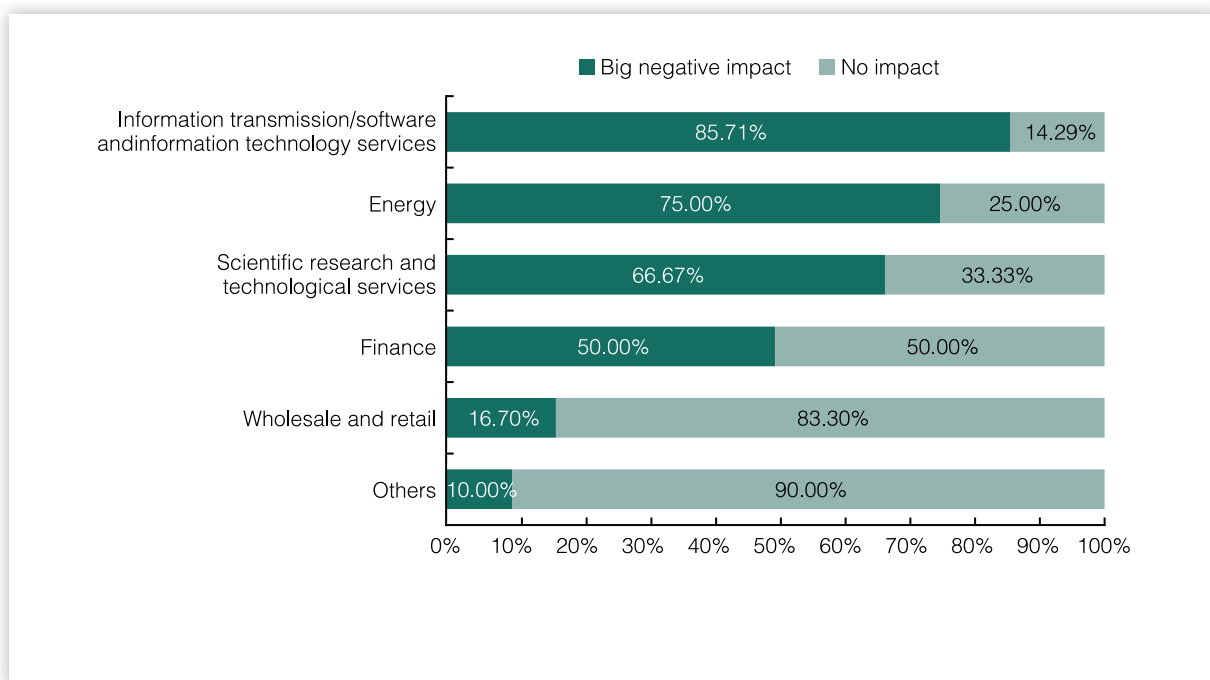


Figure 4-7: Impact of EU Foreign Investment Screening, by Sector

Source: CCPIT Academy.

#### **4. Chinese companies' investment in the EU is facing growing negative impact from the foreign investment review.**

The unfair and opaque foreign investment screening mechanisms of the EU and its member states have prompted some Chinese companies to change investment plans. The survey shows that 40% of the respondents say that they are forced to change investment plans due to the review (see Figure 4-8); of these, 65% of the respondents plan to reduce investment, up 26.54 percentage points from the previous year; 20% of the respondents have not changed the investment plans, but will moved current business to member states with more relaxed review regimes; Besides, 10% of the companies plan to terminate their investment projects in the EU, up 2.31 percentage points from the previous year (see Figure 4-9).

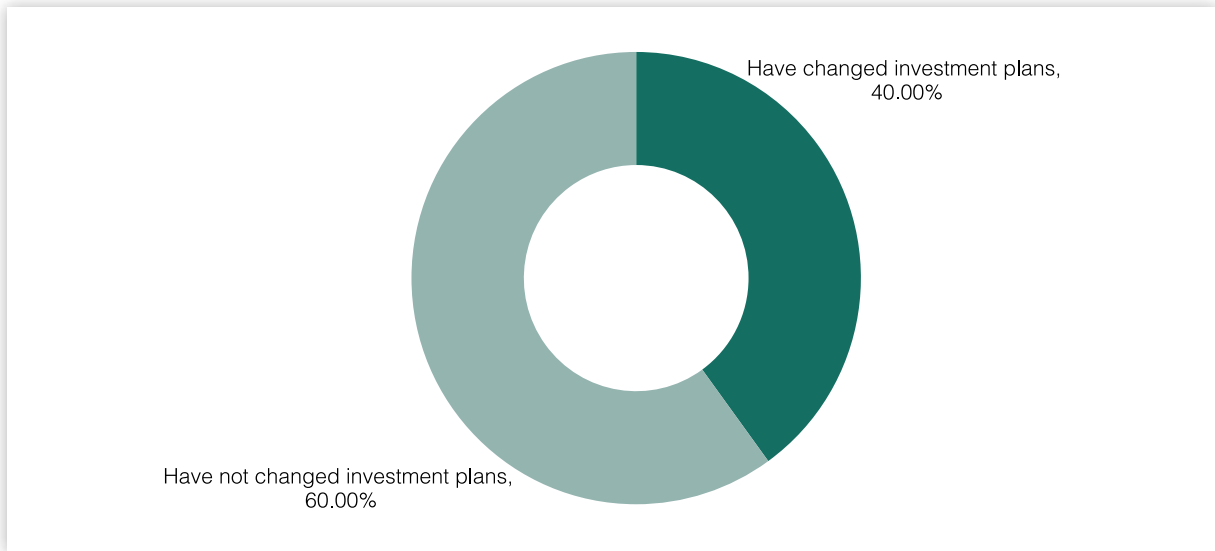


Figure 4-8: Impact of EU Foreign Investment Review on Businesses' Investment Plans

Source: CCPIT Academy.

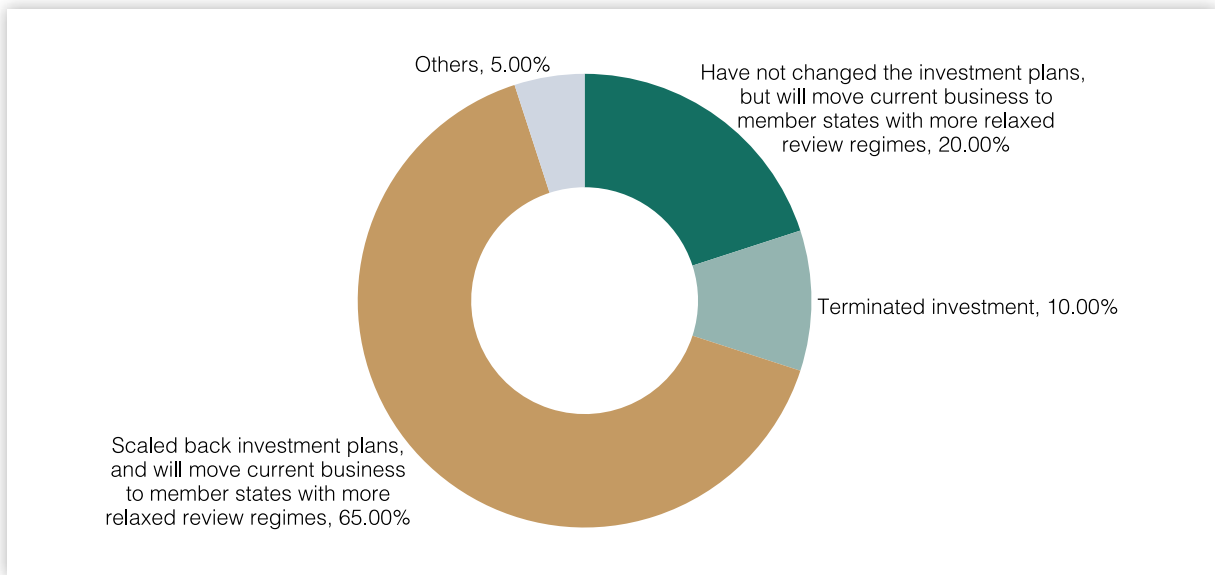


Figure 4-9: Investment Adjustments due to EU Foreign Investment Review

Source: CCPIT Academy.

**5. Anti-circumvention measures hinder the free flow of factors of production.**

The EU interferes in and restricts foreign companies' investment and trade activities with third countries through anti-circumvention measures, not only continuously raising access barriers to the EU market, but also negatively affecting normal trade between third countries and the EU, disrupting

normal investments and operations where companies allocate market resources based on the comparative advantages of the countries' factors of production, and hindering the free flow of factors globally.

#### **6. Retroactive foreign investment review is against legal principles.**

Although the Dutch ISB has not come into force, its retroactive effects allow reviews of transactions from September 8, 2020 onwards and violate the principle of non-retroactivity. Constricting past acts with current regulations severely damages the rights and interests of foreign companies that have invested in the Netherlands by legal means.

#### **7. The Golden Power Decree increases businesses' compliance costs.**

Italy's Golden Power Decree further expands the scope of the government's review mandate with certain sectors placed under greater scrutiny. In addition to prior declaration, detailed annual plans are required, which increases businesses' compliance and governance costs and dampens foreign companies' enthusiasm for investing in Italy.

### III. Our recommendations

#### **1. Remove anti-circumvention investigation from trade remedy measures.**

Currently, the WTO's *Anti-dumping Agreement* includes no official provisions on anti-circumvention. EU anti-circumvention measures pose the risk of labeling companies' normal trade and investment activities as circumventing practice, which is against the WTO's non-discrimination principle and fair trade principle. It is recommended that the EU abolish the anti-circumvention investigation and create a level playing field.

#### **2. Clarify the concept of national security and narrow the scope of foreign investment review.**

It is recommended that the EU refrain from broadening the national security concept, set a reasonable scope for foreign investment screening, and do not change set rules randomly, which causes confusion to Chinese companies in the EU.

#### **3. Raise the transparency of foreign investment screening and eliminate discrimination against foreign investment.**

It is recommended that the EU publish key milestones in the course of screening and offer clear explanations for review results to improve the transparency of the review process and treat domestic and foreign companies equally.

#### **4. Reduce the foreign investment review period and improve the efficiency of government service.**

It is suggested that the EU improve administrative service standards and raise foreign investment review efficiency based on optimized service process to avoid unduly long review period, which causes delays in investment projects and increases operational costs that burden foreign companies.

#### **5. Eliminate retroactive foreign investment review requirements.**

It is recommended that the Dutch government abolish the requirement in the ISB that allows retroactive reviews of transactions from September 8, 2020, onwards and observe the grandfather clause to avoid compromising the lawful rights and interests of foreign companies in the Netherlands.

#### **6. Provide appeal channels for companies subject to foreign investment review.**

In Poland's foreign investment review, if the government decides to launch the formal investment review after the initial review, the company involved has no right to appeal and can but cooperate with the formal review process. This hurts the legitimate rights of foreign companies and jars with an open and transparent foreign investment process. It is suggested that the EU and its member states keep the appeal channel open in the course of review for companies to communicate their feedback and receive timely response.

#### **7. Curb government discretion in foreign investment screening.**

When deciding whether the foreign investment poses a potential threat to Poland, the Polish Office of Competition and Consumer Protection lacks clear legal grounds. It is recommended that the Polish government set up a clear list of factors for consideration and criteria of proof to avoid excessive government discretion.

#### **8. Provide comprehensive investment information and service for Chinese companies in the EU.**

It is suggested that the EU further enhance the service standards for foreign companies in the EU and communicate EU market overview, access for foreign investors, foreign investment screening and other major policies through multiple channels.



# **Chapter 5**

## **Competition Policy**



## I. Latest developments

### **1. The Foreign Subsidies Regulation has become a new tool of unilateralism.**

On November 28, 2022, the European Council gave its final approval to *the Regulation on Foreign Subsidies Distorting the Internal Market* (FSR)<sup>60</sup>. Compared to the European Commission's proposal for a *regulation on foreign subsidies distorting the internal market* (the Proposal), the FSR lowers the threshold for foreign subsidies screening and is more targeted towards state-owned enterprises and even some private companies.

#### **(1) Broad scope of foreign subsidies**

The FSR defines foreign subsidies as a financial contribution made directly or indirectly by a third country that gives the recipient operating in the EU internal market a benefit. The FSR sets out four factors for the determination of foreign subsidies: (i) a third country as provider of the contribution; (ii) financial contribution from a third country; (iii) benefit generated by the financial contribution for the company operating in the EU market; and (iv) benefit exclusive to a specific company or industry de jure or de facto.

The FSR adopts a broadened definition of a 'third country', which includes not only the central government and other authorities of all levels, but also foreign public bodies and any private entity whose behavior is attributable to a third country.

#### **(2) Extensive definition of financial contribution**

The FSR gives an unduly extensive definition of 'financial contribution', including (i) transfer of funds or liabilities (e.g. capital injection, grant, loan); (ii) due income in other forms (such as tax credits); (iii) provision or procurement of goods or services; and (iv) provision of special or exclusive rights without adequate remuneration.

#### **(3) New tailor-made rules for SOEs and related private companies**

In the preamble of the FSR, Paragraph (9) adds that The concept of financial contribution includes granting special or exclusive rights to an undertaking without receiving adequate remuneration in line with normal market conditions; Paragraph (10) adds that a financial contribution is considered to confer a benefit to an undertaking if it could not have been obtained under normal market conditions; Paragraph (11b) points out that a financial contribution that is provided exclusively to the non-economic activities of an undertaking does not constitute a foreign subsidy. However, if a financial

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60 European Council, <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-approval-to-tackling-distortive-foreign-subsidies-on-the-internal-market/>.



contribution for a non-economic activity is used to cross-subsidize<sup>61</sup> the economic activities of the undertaking, it can amount to a foreign subsidy falling under the scope of the regulation.

#### **(4) Expanded scope of foreign subsidies review by the FSR**

The FSR expands the scope of foreign subsidies review and lowers the threshold of review in two aspects. One is to reduce the amount threshold for review from EUR5 million to EUR4 million; the other is to further lower the condition for notifiable concentration. Article 18.3(b) changes “a party to the transaction was granted from foreign countries combined aggregate financial contributions in the three years of more than EUR50 million” to “all undertakings involved in the concentration were granted from third countries combined aggregate financial contributions in the three financial years prior to notification of more than EUR50 million”.

#### **(5) Excessive punishment of the FSR**

The penalty for providing incorrect or misleading information or non-cooperation in investigation is lump-sum fines of up to 1% of the aggregate turnover of the undertaking concerned in the previous financial year. Daily fines: after the penalty decision is made, for each working day before the undertaking concerned provides correct and complete information, daily fines of up to 5% of the average daily aggregate turnover of the undertaking concerned in the previous financial year may be imposed.

Where an undertaking does not comply with a decision with commitments, a decision ordering interim measures or a decision imposing redressive measures, lump-sum fines not exceeding 10 % of the aggregate turnover of the undertaking concerned in the preceding financial year may be imposed. Daily fines: after the penalty decision is made, daily fines not exceeding 5% of the average daily aggregate turnover of the undertaking concerned in the preceding financial year may be imposed for each day of non-compliance.

Where an undertaking fails to notify a transaction prior to its implementation, implements a transaction without authorization, implements a prohibited transaction, or intentionally or negligently fails to notify a foreign subsidy in public procurement process, fines not exceeding 10% of its aggregate turnover in the preceding financial year may be imposed<sup>62</sup>.

## ***2. Single Market Emergency Instrument gives the European Commission the power to intervene in the market.***

On September 19, 2022, the European Commission published a proposal for a *Single Market Emergency Instrument* (the SMEI proposal)<sup>63</sup>, which proposes to authorize the European Commission to intervene in the market in the face of a supply chain crisis to ensure the free flow of essential goods and services at a time of crisis.

61 Cross-subsidy is a pricing strategy. The idea is to sell a product (discounted product) at a discount or even a loss to promote the sale of profitable products.

62 European Commission, Political Agreement on the Regulation on Foreign Subsidies Distorting the Internal Market, Article 15 and Article 32, <https://data.consilium.europa.eu/doc/document/ST-8576-2021-INIT/en/pdf>.

63 European Commission, the single market emergency instrument, SMEI, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5443](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5443).

The SMEI proposal expands the powers of the European Commission. According to different emergency levels of the supply chain, the proposal gives corresponding mandates to the European Commission (see Table 5-1). In particular, under the emergency mode, the Commission can directly intervene in market economic activities, recommend member states to modify production lines and require enterprises to undertake priority rated orders of crisis-relevant products. It can even take emergency response measures under extraordinary circumstances and compel enterprises to provide related information and assess crisis-relevant products on a priority basis.

Table 5-1: Powers Granted to the European Commission by the SMEI Proposal at Different Emergency Levels

Emergency level	Definition of the level	Powers of the European Commission
Contingency planning	Normal times with no emergency having a destructive impact on the Single Market	The European Commission may take multiple measures to improve emergency preparedness, including formulating contingency plans, conducting crisis communication, training and simulation for member states' officials, and establishing an early warning system.
Vigilance mode	Activated in the face of a threat of significant disruption of the supply of goods and services of strategic importance and which has the potential to escalate into a Single Market emergency	The European Commission may monitor the supply chains of goods and services designated as of strategic importance and build strategic reserves in these areas.
Emergency mode	Activated when a crisis severely disrupts the free movement on the Single Market or the functioning of the supply chains in the Single Market	<p>The European Commission may recommend member states to modify production lines to ensure the supply of crisis-relevant products related to the crisis.</p> <p>The Commission may recommend member states to allocate the strategic reserves built in advance in a targeted way.</p> <p>The Commission may also require enterprises to undertake priority rated orders of crisis-relevant products.</p> <p>Under the Emergency mode, the Commission may take emergency response measures to compel enterprises to provide related information and assess crisis-relevant products on a priority basis.</p>

Source: Compiled based on the SMEI proposal.

### 3. The Digital Markets Act aims to regulate large-scale online platform companies.

On July 18, 2022, the European Council gave final approval to the *Digital Markets Act* (DMA)<sup>64</sup>. As a supplement to the competition laws of the EU and member states, the DMA mainly regulates two scenarios. One is acts not covered by current EU competition rules; the other is challenging acts

64 European Commission, [https://competition-policy.ec.europa.eu/sectors/ict/dma\\_en](https://competition-policy.ec.europa.eu/sectors/ict/dma_en).

brought by new digital services that cannot be effectively addressed by current competition rules. The DMA is an extension and reflection of antitrust laws in the digital area and is expected to enter into force in January.

**(1) The DMA regulates online platform companies through the gatekeeper regime**

The gatekeeper refers to the operator of core platform services, which generally controls at least one core platform service, such as search engine, social network services, certain information services, operating system and online intermediary service (see Table 5-2 for definitions). The DMA aims to impose more obligations and bans on the limited number of gatekeepers to regulate competition in the digital area. The current anti-monopoly practice largely targets monopoly and competition-restricting acts. The DMA adopts the gatekeeper regime to cross-cut related markets and aims at the entirety of the digital economy. Identifying regulated subjects by size of business and audience, the DMA marks a key reshaping of the EU anti-monopoly law.

Table 5-2: Determination Conditions and Extrapolation Criteria for DMA Gatekeepers

Determination criteria	Extrapolation criteria
1. Major influence on the domestic market	Having an annual turnover of at least EUR7.5 billion within the European Union (EU) in the past three fiscal years or a market valuation of at least EUR75 billion, and control over one or more core platform services in at least three member states.
2. Providing businesses with key access to end users through core platform services	Having at least 45 million monthly end users and at least 10,000 business users established in the EU on core platforms in the past fiscal year.
3. Holding or expect to hold stable and enduring market position	Meeting the second criterion for the past three fiscal years.

Source: summary of the DMA.

The determination criteria quantify the market influence of online platforms by business size and user scope, among other data, potentially targeting platform operators with or likely to have a major impact on the market and requiring regular reviews of gatekeepers or online platform companies likely to become gatekeepers under a broadened definition of the “gatekeeper”. This dampens the enthusiasm of large platform companies to operate in the EU market.

**(2) The DMA requires the gatekeepers to fulfill three obligations**

In view of fair play, the DMA aims to ensure the equity and openness of digital services by regulating the unfair competition of gatekeepers and requires them to fulfill three obligations.

First, the DMA requires gatekeepers to fulfill the obligation of sharing and sets out a compulsory requirement for advertising data sharing, which enables advertisers and advertisement publishers to access more placement data to analyze the return-on-investment ratio of different platforms and choose the most suitable platform for advertisement cooperation.

Second, the DMA requires online platforms to fulfill the obligation of notification and gives the users more control. When pushing personalized advertisements to users, online platforms are required to

tell the users expressly that the information shown is advertisement, on whose behalf it is published, what parameters are considered for the notification and the reasons for the choice of parameters, and the key criteria for information recommendation. They should also provide users with options to change these major parameters.

Third, the DMA imposes an prohibitive obligation on online platforms based on special protection needs. Online platforms are not allowed to collect the personal data of minors for personalized advertisement recommendation. Nor may they profile users based on sensitive data of special types as defined in the GDPR, such as ethnicity, race, sexuality and sexual orientation.

### **(3) Severe punishment measures raise the non-compliance costs of gatekeepers**

Large online platforms designated as gatekeepers must comply with the rules of the DMA within six months. In case of violation, fines up to 10% of the global aggregate turnover may be imposed. For re-offenders, fines up to 20% of the global aggregate turnover may be imposed. If a gatekeeper systemically violates the DMA, i.e. breaks the rules at least three times in eight years, the European Commission may conduct market investigations and take remedy measures when necessary.

### **4. The Digital Services Act regulates online service providers with too broad a range.**

On July 5, 2022, the European Parliament passed the *Digital Services Act* (DSA)<sup>65</sup>, which complements the EU's current digital regulations. By prescribing detailed compliance obligations for online platforms providing digital services in the EU, the DSA sets up a robust transparency requirement and accountability mechanism to create a more equitable and open European digital market. The act is expected to enter into force around January 2024.

The DSA applies to intermediary services transmitting or storing third-party contents, including providing network infrastructure services (such as network access providers and domain name registrars), cloud service and network custody service, and online platforms (such as social networks, content-sharing platforms, app stores and online travel agencies). According to the nature, scale and influence of different online services, the DSA sets out obligations of varying degrees for different kinds of intermediary services to make sure their services are not abused by illegal activities and their business is conducted responsibly. To be specific, due diligence applies to custody services, especially sub online platforms of custody services. Some substantial obligations only apply to large online platforms with major social and economic impact (with at least 45 million users in the EU, or 10% of the EU population). Small platforms are exempt from most of the obligations.

The DSA applies to the EU single market, including online intermediary agencies established outside the EU that provide services in the EU. This means that even intermediary agencies established outside the EU single market need to appoint a legal representative to perform related obligations as long as they provide services to recipients in or with business domicile in the EU. This provision expands the scope of online platforms subject to the DSA to the whole world. Any online platform that provides services in the EU may be subject to risk reviews by the EU and member states' authorities. If these entities are not founded in the EU, they must designate a legal representative to fulfill related obligations.

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65 European Commission, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4313](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4313).

## II. Analysis

### **1. The Foreign Subsidies Regulation is allegedly against WTO rules.**

Although the scope of application of the WTO's subsidy discipline is relatively limited and only regulates trade in goods, the EU *Foreign Subsidies Regulation's* remedy measures targeting foreign subsidies are against Article 32.1 of *the Agreement on Subsidies and Countervailing Measures*<sup>66</sup>. Subsidies on goods (countervailing measures) are subject to the *Agreement on Subsidies and Countervailing Measures* and *the General Agreement on Tariffs and Trade 1994* (GATT 1994), while no subsidy discipline exists for services and investment. Article 32.1 of the SCM Agreement provides that no specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994. The Appellate Body holds that the purpose of Article 32.1 of the SCM Agreement is to confine the unilateral countervailing measures available to the Members to the scope defined by GATT 1994 and the SCM Agreement. Since neither GATT 1994 nor the SCM Agreement authorizes the EU to take actions against foreign subsidies, the commitments and remedies provided by the FSR are not only allegedly against Article 32.1 of the SCM Agreement, but will also tip the balance reached by WTO Members on goods subsidies when drafting the SCM Agreement.

The EU's FSR is allegedly against the market access obligations under the WTO's *General Agreement on Trade in Services* (GATS). GATS applies to the Members' measures affecting trade in services. Although GATS does not have a subsidy discipline directly constraining subsidies in trade in services, the Members' subsidies and actions against subsidies still need to observe GATS obligations. EU FSR provides that if the European Commission finds there are foreign subsidies distorting the internal market, it may require related companies intending to set up joint ventures to give undertakings or impose corrections on related companies, such as production reduction and asset split. In addition, the Commission also has the power to ban joint ventures. These provisions constrain to varying degrees the capability of foreign service providers to serve the EU's internal market.

### **2. The extensive scope of foreign subsidies hinders the normal market activities of foreign companies.**

The European Commission extends the scope of foreign government subsidies to foreign public bodies and any private entity whose actions are attributable to third countries without providing clear rules to make a distinction between market action and action related to fiscal funding of SOEs and private entities and even labels market-based transactions of foreign state-owned banks as foreign subsidies, significantly broadening the scope of foreign subsidies and disrupting enterprises' investment and operations. The survey shows that 82.3% of the respondents believe the definition of government subsidies in the FSR is too extensive and hinders the normal market behavior of enterprises (see Figure 5-1).

66 Hu Jianguo, Chen Yujin, EU's FSR Proposal and its WTO Compatibility Analysis, *European Studies*, Issue No.5, 2021.

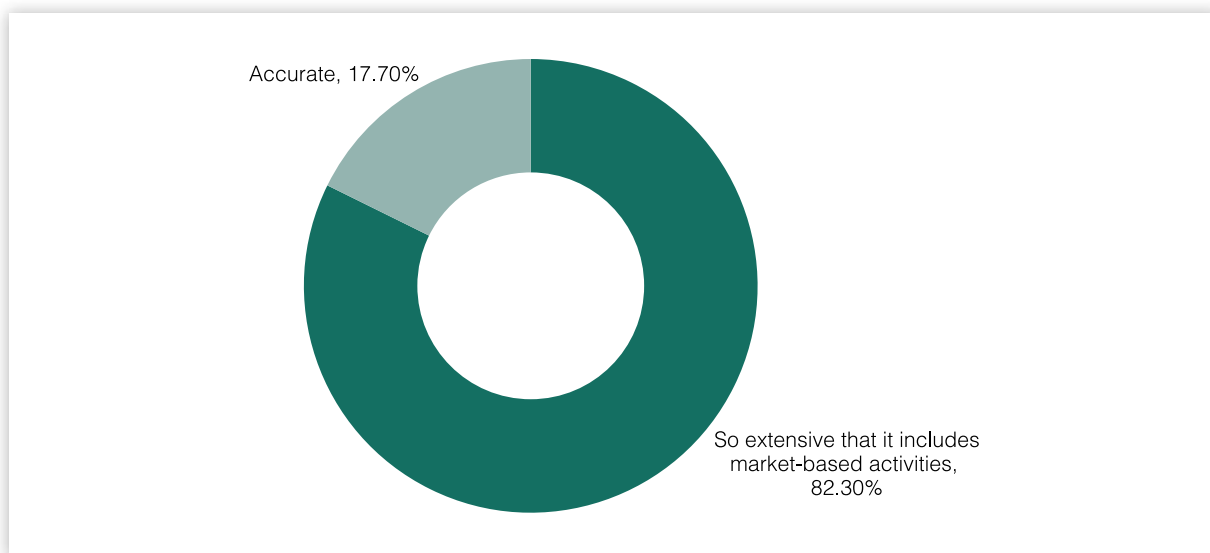


Figure 5-1: Companies' Perceptions of the Definition of "Foreign Subsidies"

Source: CCPIT Academy.

### 3. The Foreign Subsidies Regulation hampers foreign companies' fair competition in the EU.

The EU's FSR further reduces the threshold for triggering foreign subsidies review and tailor-makes more rigorous rules for SOEs and associated companies, raising business compliance costs and hindering Chinese companies' participation in investment, M&A and public procurement in the EU market on a level playing field. The survey shows that 32.79% of the companies believe the FSR has had a big negative impact on their investment and operations in the EU (see Figure 5-2).

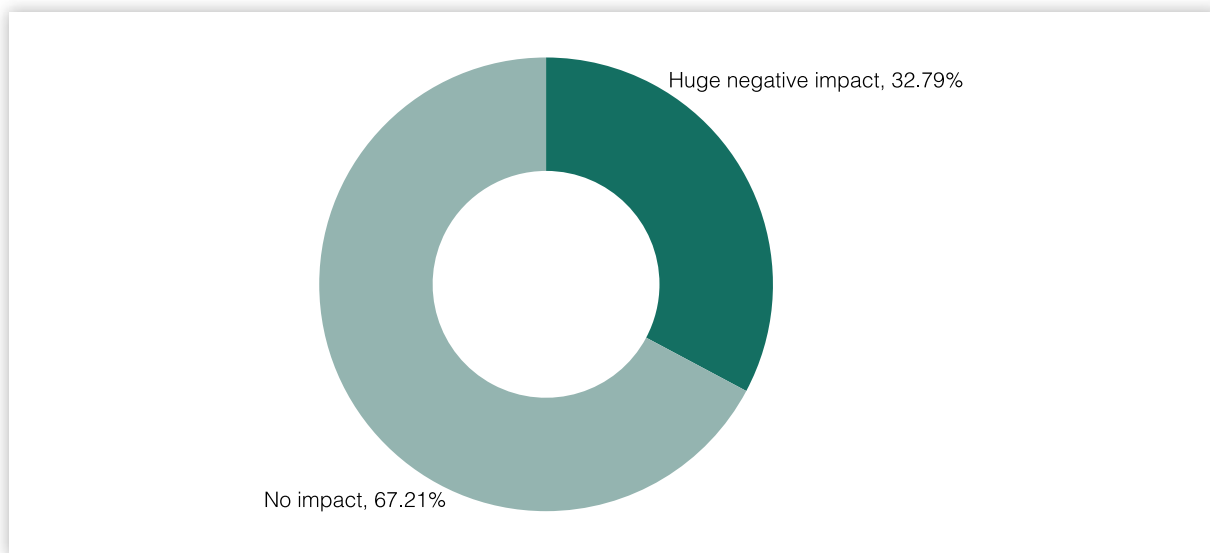


Figure 5-2: Impacts of the EU's FSR on Companies

Source: CCPIT Academy.

The respondents report that the impact of the FSR is mainly reflected in increased compliance requirements, business costs raised by long review period, and a tilted playing field in competition with EU companies. Companies reporting the three views respectively account for 59.82%, 38.39% and 33.04% of the total (see Figure 5-3).

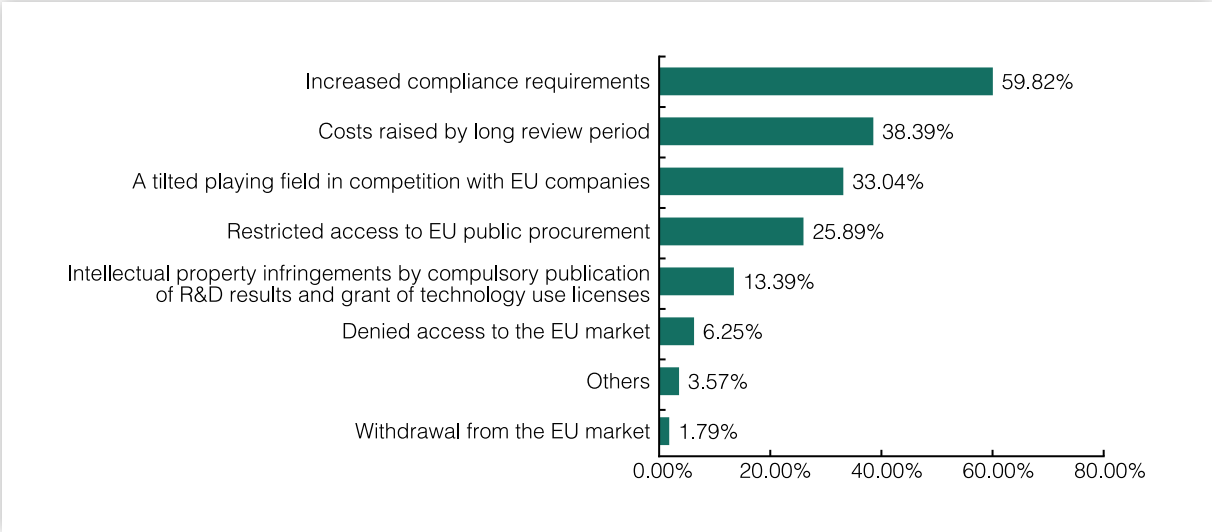


Figure 5-3: Specific Impacts of the EU's FSR on Companies  
Source: CCPIT Academy.

**4. Expanded emergency powers of the European Commission interfere in market actions.**

The EU's *Single Market Emergency Instrument* proposal gives the European Commission emergency powers to directly intervene in market economic activities and compel companies to provide related information in an emergency. This is an act of the Commission to intervene in the market economy through political means. The interference of business production and operations with administrative means is against the WTO principle of liberalization.

**5. Competition regulations in the digital sector dampen the investment enthusiasm of foreign companies.**

Based on the principle of what is banned offline shall also be banned online, the EU's *Digital Services Act* empowers regulators, regulates digital service providers and brings digital services a major step forward towards more transparency and equity. That said, it requires online intermediary agencies incorporated outside the Single Market that provide services to recipients in or with business domicile in the EU to appoint a legal representative to fulfill related obligations. This overly sweeping provision may dampen the enthusiasm of companies outside the EU to invest in the EU to the detriment of the innovation of the digital economy in the EU market.

## III. Our recommendations

### **1. Delineate the scope of providers of foreign subsidies.**

It is recommended that the EU limit the providers of foreign subsidies to a reasonable scope and remove private entities from the government category to avoid labeling normal commercial actions of private companies' government subsidies, further clarify the scope definition, fully refer to the state aid system of member states and exempt businesses shouldering special social responsibilities to underline the non-discrimination principle the EU always upholds.

### **2. Clarify the criteria for “attributable to third countries”.**

It is recommended that the EU clarify the criteria for 'attributable to third countries' as quickly as possible and make a clear distinction between market actions of foreign public bodies and fiscal subsidizing on the basis of whether foreign public bodies or companies have or exercise powers granted by the government.

### **3. Set a reasonable review threshold for government subsidies.**

It is recommended that the EU fully consider the different features of various sectors and moderately relax the conditions of government subsidies review for asset-heavy industries. It is advisable to take into account close vertical coordination within certain industries and not to add together the government subsidies of all parties to M&A deals.

### **4. Reduce government discretion in the review as much as possible.**

It is suggested that EU legislators establish a clear list of factors for consideration and the rules of evidence when assessing EU interests in the course of foreign subsidies review to minimize the discretion of the authorities.

### **5. Abolish the ten-year retroactive period for foreign subsidies review.**

It is suggested that the EU abolish the ten-year retroactive period for foreign subsidies review, remove the condition of 'obtaining foreign subsidies for the past three years' and observe the grandfather clause.

### **6. Eliminate the wrong practice of forcing companies to publish R&D results.**

The remedy of forcing companies to publish R&D results is in essence a threat of technology transfer, which grossly infringes on companies' trade secrets and intellectual property rights and bespeaks



unilateralism. It is recommended that the EU remove the remedy of forcing companies to publish R&D results from foreign subsidies review.

### **7. Fully ensure the subject's right and opportunity of defense.**

It is recommended that the EU establish a mechanism of due process for foreign subsidies review to fully ensure the right and opportunity of defense of the investigated party. Process-wise, there should be a hearing mechanism and statutory review deadlines. The review authorities' rules of evidence and factors of consideration should be made public to give the industry adequate legal certainty and minimize the extra transaction costs caused by administrative review.

### **8. Regulate emergency powers to avoid over-intervention in the market.**

It is suggested that the emergency powers of the European Commission and member states' authorities should be regulated to avoid interfering in the internal management and normal market actions of enterprises and abusing administrative powers to constrain competition.

### **9. Clarify and explain the vague concepts in the Digital Services Act.**

It is recommended that the EU further clarify the "illegal content online" mentioned in the DSA to enhance the transparency and operability of the act and avoid excessive government discretion and discriminatory enforcement.

### **10. Ensure a fair and open market and avoid discriminatory actions.**

The competition policy instruments of the EU authorities should keep the market open, ensure legal certainty and equity for foreign-invested companies and avoid new distortions caused by constraining the competitiveness of foreign-invested companies.



# **Chapter 6**

## **Public Procurement**



## I. Latest developments

### 1. The International Procurement Instrument raises market access barriers for public procurement.

On August 29, 2022, the EU's *International Procurement Instrument* (IPI)<sup>67</sup> entered into force for all EU member states. According to the IPI, the EU may launch investigations into the public procurement market of a third country<sup>68</sup> on its own initiative or at the request of an interested party to consider whether there are discriminatory public procurement policies in the third country in question against EU businesses. If the investigation finds that discriminatory policies exist, and the third country fails to abolish or amend these policies within a specified timeframe, EU authorities may restrict or exclude companies from the third country from participating in public procurement projects in the EU. The IPI Regulation spells out the scope of investigations, investigation and consultation procedures, IPI measures, obligations upon the successful tenderer, scope of application, exceptions, and exemption.

Table 6-1: Highlights of the IPI

Key points	Details
Scope of investigation	<ul style="list-style-type: none"> <li>•“Third-country measure or practice”, i.e., any legislative, regulatory or administrative measure adopted the government or public procurement entities in a third country.</li> </ul>
Investigation and consultation procedures	<ul style="list-style-type: none"> <li>•The European Commission may initiate an investigation on its own initiative or upon a substantiated complaint of an interested party. The European Commission shall invite the third country concerned to enter into bilateral consultations. The investigation and consultation shall be concluded within nine months; in special cases, this period may be extended by five months.</li> </ul>
IPI measures	<ul style="list-style-type: none"> <li>•The IPI measure shall only apply to public procurement procedures with an estimated value above a threshold. That estimated value should be equal to or above EUR15 million net of VAT for works and concessions, and equal to or above EUR5 million net of VAT for goods and services;</li> <li>•The IPI measures are taken by contracting authorities or entities. Two types of measures are available: imposing a maximum of negative 50% score adjustment on tenders submitted by economic operators originating in the third country; or excluding tenders submitted by economic operators originating in that third country;</li> <li>•An IPI measure shall expire five years from its entry into force, and may be extended for another five years.</li> </ul>

67 European Parliament. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649403/EPRS\\_BRI\(2020\)649403\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649403/EPRS_BRI(2020)649403_EN.pdf).

68 A third country refers to a country that is not a party to the WTO Agreement on Government Procurement (GPA) and has not entered into an agreement on government procurement with the EU.

Key points	Details
Obligations upon the successful tenderer	<ul style="list-style-type: none"> <li>•The successful tenderer shall not subcontract more than 50 % of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure;</li> <li>•For contracts whose subject matter covers the supply of goods, the successful tenderer shall ensure that goods or services originating in the third country which is subject to an IPI measure represent no more than 50 % of the total value of the contract, irrespective of whether such goods or services are supplied or provided directly by the successful tenderer or by a subcontractor;</li> <li>•The successful tenderer shall provide to the contracting authority or entity upon their request adequate evidence corresponding to the above points, at the latest upon completion of the execution of the contract;</li> <li>•The successful tenderer shall be fined between 10 % and 30 % of the total value of the contract in the event of non-observance of the above obligations.</li> </ul>
Scope of application, exceptions and exemption	<ul style="list-style-type: none"> <li>•Countries that are parties to the WTO Agreement on Government Procurement (GPA) or have concluded a bilateral agreement with the EU that includes provisions on public procurement shall be exempted;</li> <li>•Least-developing countries are exempted;</li> <li>•IPI measures may not be implemented if only tenders from a third country subject to an IPI measure meet the tender requirements, or if the exemption is justified by overriding reasons of public interest.</li> </ul>
Special provisions	<ul style="list-style-type: none"> <li>•When the tenderer is a group, and the participation of entities from a third country subject to an IPI measure is less than 15%, the IPI measure shall not apply, unless when the non-third-country entities are held or substantially controlled by entities from the third country.</li> </ul>

Source: CCPIT Academy based on the IPI Regulation.

## **2. The Foreign Subsidies Regulation strengthens declaration obligations of public procurement.**

On November 28, 2022, the European Council gave the final approval to *the Regulation on Distortive Foreign Subsidies* (“*Foreign Subsidies Regulation*”)<sup>69</sup>. The Regulation sets up a foreign subsidies review for public procurement, stipulating that a tenderer shall provide to the contracting authority or entity information of foreign financial contributions it was granted in the three years prior to the notification, when the estimated value of the public procurement is equal to or greater than EUR250 million, or when the tenderer (including its subsidiary companies, holding companies, and main subcontractors and suppliers) was granted aggregate financial contributions equal to or greater than EUR4 million in the three years prior to the notification. Otherwise, the tenderer shall not be awarded the contracts. The contracting authority or entity shall transfer the notification or declaration from the tendering entity to the European Commission without delay. The European Commission shall carry out a preliminary review in no later than 20 working days and close the in-depth review in no later than 110 working days after it has received the complete notification, and the tenderer concerned shall not

69 European Council. <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-approval-to-tackling-distortive-foreign-subsidies-on-the-internal-market/>.

be awarded the contract before the review is closed. This Regulation greatly increases the time cost for foreign enterprises to participate in EU public procurement, restricts to some extent their right to fair competition, and puts EU enterprises in a de-facto better position by setting up barriers to public procurement access for foreign enterprises.

### **3. “Forced labor” product bans limit normal participation of Chinese businesses.**

On June 9, 2022, the European Parliament adopted the *Resolution on the Human Rights Situation in Xinjiang*, including the *Xinjiang Police Files*<sup>70</sup>, and the *Resolution on a New trade Instrument to Ban Products Made by Forced Labor*<sup>71</sup>, two bans on products related to “forced labor”, calling for banning products made by so-called “forced labor” from entering the EU market, including public procurement. Although the two resolutions are not legally binding, and has not led to direct legal consequences, they reflect the EU’s position on the Xinjiang question and possible follow-up measures, and have even resulted in discriminatory administrative actions against Chinese businesses.

## II. Analysis

### **1. Thirty-five percent of the surveyed companies report a worsening EU public procurement market.**

With the IPI and the *Foreign Subsidies Regulation*, the EU raises barriers to its public procurement market and introduces discriminatory policies targeting products from certain regions, diminishing the fairness, openness and transparency of the market. According to our survey, 35.71% of the respondents say that the environment of the EU’s public procurement has worsened (see Figure 6-1).

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70 European Parliament, European Parliament resolution on the human rights situation in Xinjiang, including the Xinjiang police files. [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0237\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0237_EN.html).

71 European Parliament, European Parliament resolution on a new trade instrument to ban products made by forced labour. [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0245\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0245_EN.html).

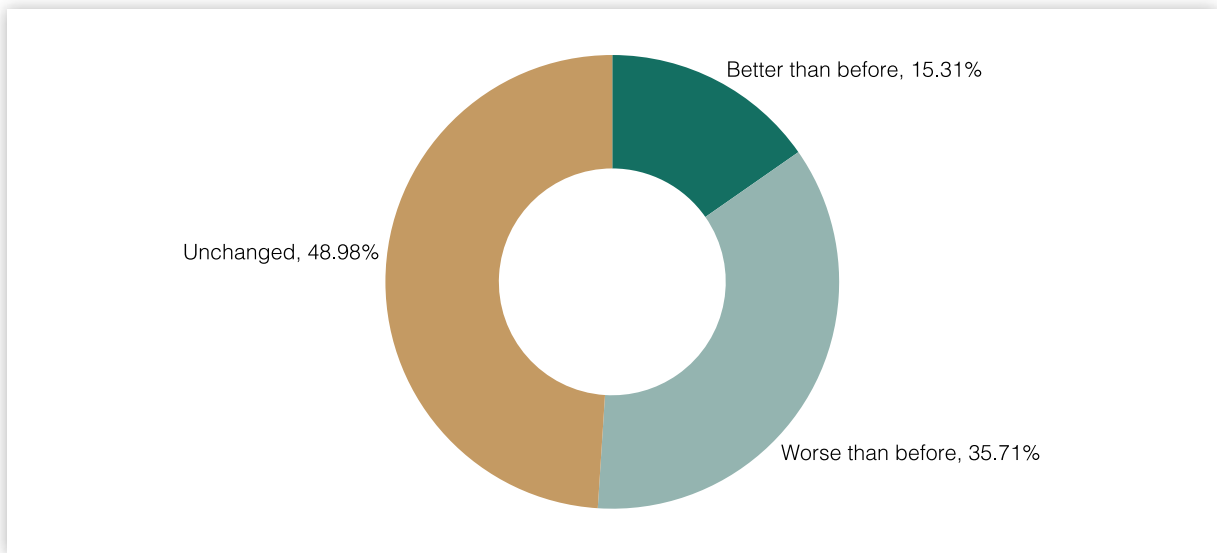


Figure 6-1: Comments of Chinese Businesses in the EU on the Public Procurement Environment of the EU and its Member States

Source: CCPIT Academy.

**2. The IPI becomes the EU’s new protectionist instrument.**

The IPI is a an obviously aggressive protectionist tool built by the EU for itself. Under the pretext of fending EU businesses off unfair treatment, it erects new barriers to EU public procurement, blocking the participation of non-EU companies while posing hidden danger to an efficient and sound market. According to our survey, 40.62% of the respondents say that the IPI has created obstacles for companies to participate in EU public procurement (see Figure 6-2).

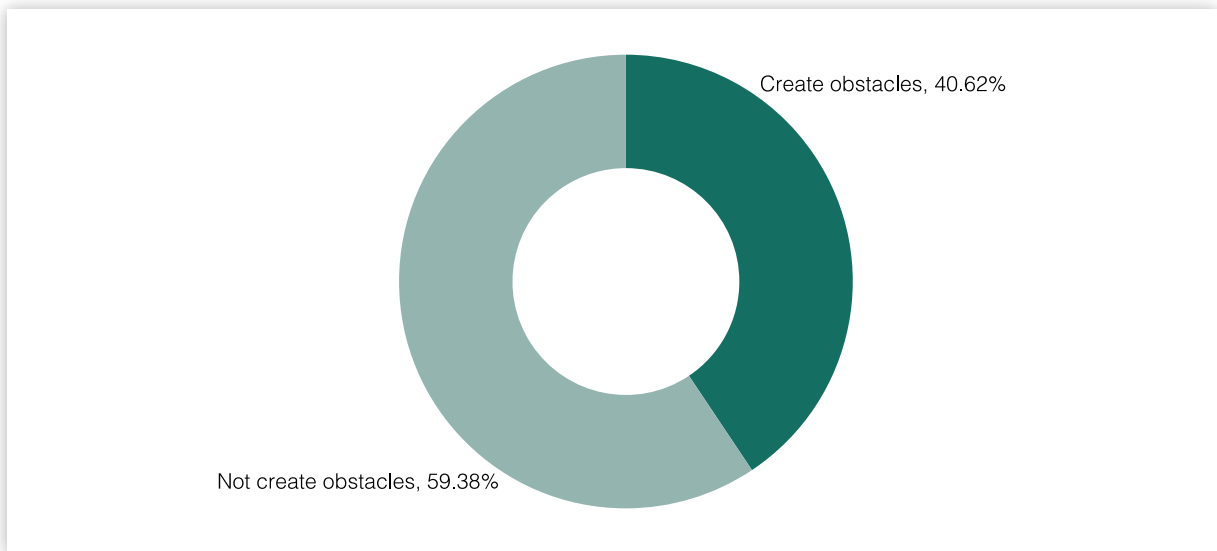


Figure 6-2: Chinese Businesses’ Attitudes Towards Whether EU IPI Creates Obstacles to Market Access

Source: CCPIT Academy.

### 3. Public procurement documents contain many vague provisions and invisible barriers.

It is a general belief among companies that lack of transparency in the disclosure of public procurement information by the EU and its member states has costed foreign businesses their opportunities to participate, and that vague provisions in EU public procurement documents constitute barriers against non-EU companies. According to our survey, 44.53% of the respondent believe that EU and local public procurement legislation and bid documents contain vague provisions (see Figure 6-3), and 42.97% of the respondents say that EU public procurement procedures are not transparent (see Figure 6-4).

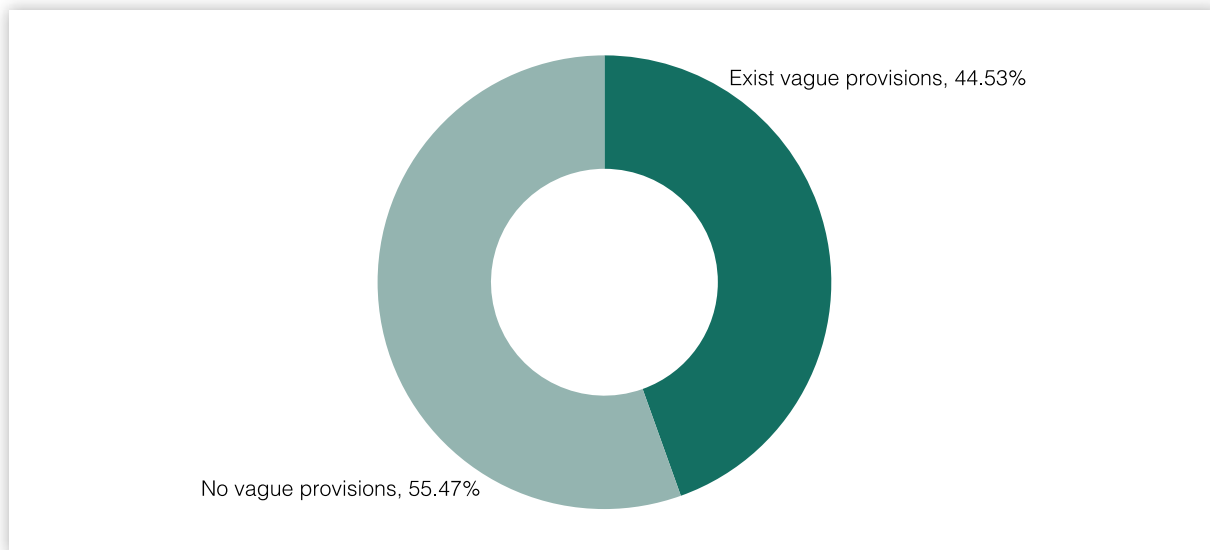


Figure 6-3: Chinese Businesses' Attitudes Towards Whether EU Public Procurement Exist Vague Provisions  
Source: CCPIT Academy.

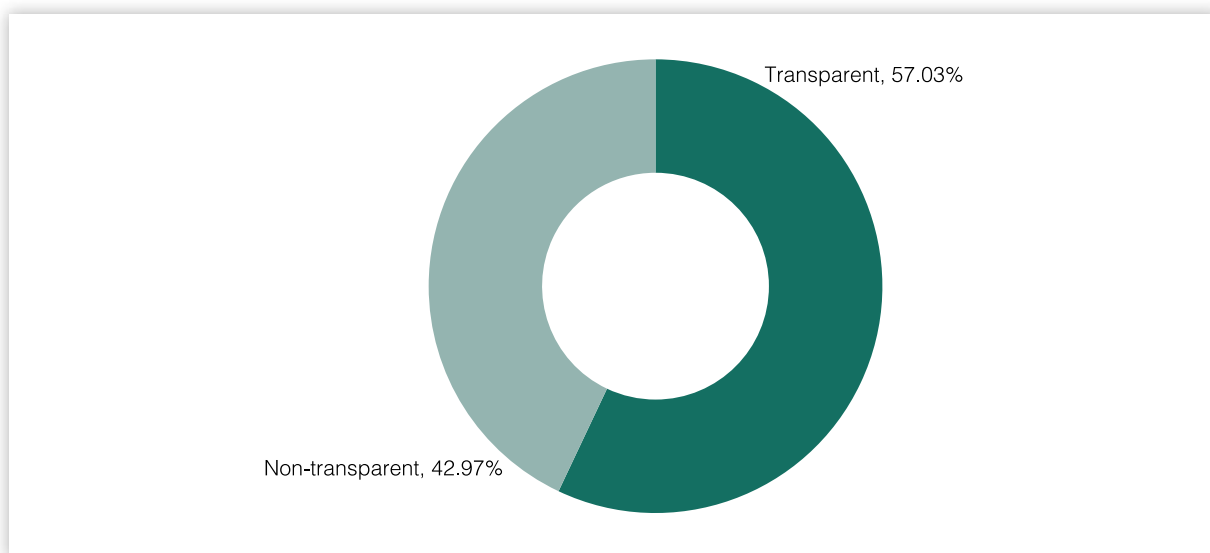


Figure 6-4: Transparency in EU Enforcement of Laws and Regulations  
Source: CCPIT Academy.



#### 4. Chinese companies face de-facto discrimination in public procurement.

When participating in public procurement projects of certain EU member states, Chinese companies face additional discriminatory treatment. According to our survey, 46.88% of the respondents that have participated in EU public procurement report exclusion of Chinese businesses in procurement projects at the EU or local level by discriminatory criteria (see Figure 6-5). Some EU member states have even blocked Chinese companies' participation in fair competition on the grounds of "national security". After Estonia and Latvia exited the China-central and eastern European countries (CEEC) cooperation mechanism, one company said that it received a notice from the Latvian proprietor (of a railway project) that it would stop sharing project-related documents to its Chinese partner out of national security concerns. This caused great difficulties for the Chinese company to move forward with the project, and eventually led to its withdrawal from the project.

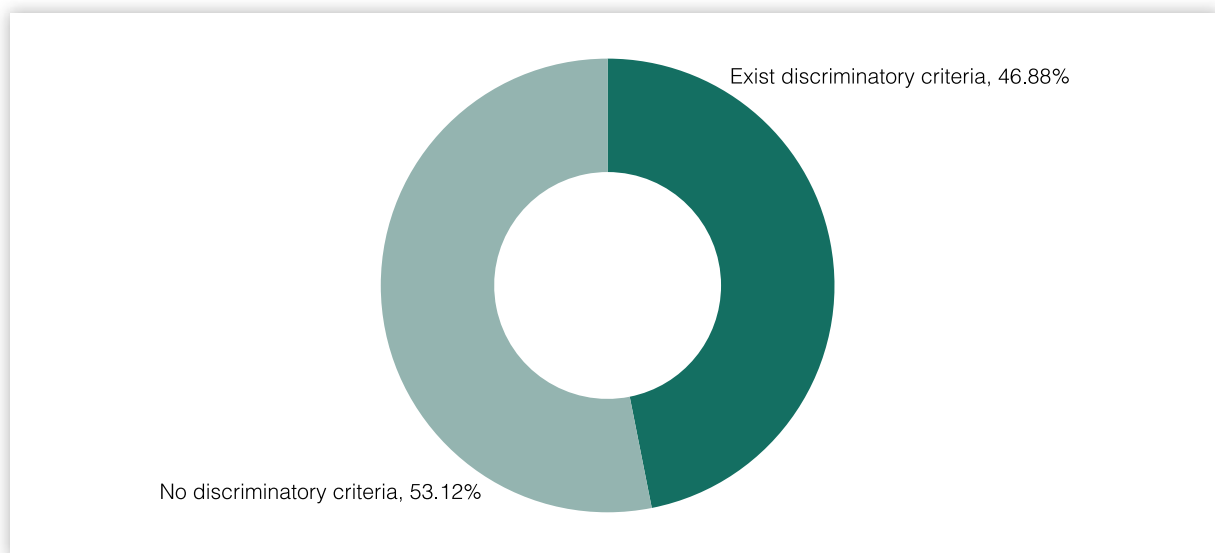


Figure 6-5: Businesses' Attitudes Towards Whether the EU Side Establishes Discriminatory Criteria in Public Procurement

Source: CCPIT Academy.

### III. Our recommendations

#### 1. Avoid creating new protectionist instruments in public procurement.

It is recommended that the EU and its member states uphold the principle of fair and open market, avoid introducing new protectionist tools in public procurement, and maintain the openness, fairness and transparency of the EU public procurement market.

#### 2. Reduce intervention of administrative agencies in the public procurement market.

It is recommended that the EU respect the workings of the public procurement market, reduce restrictions and exclusions against non-EU companies by administrative agencies, and refrain from

administrative investigations that undermine the competitiveness of non-EU companies and products on the public procurement market.

### ***3. Treat all foreign-funded enterprises fairly in public procurement.***

It is recommended that the EU and its member states comply with the WTO's non-discrimination principle, refrain from setting discriminatory standards at the institutional and implementation levels, guarantee the rights of non-EU enterprises to participate in EU public procurement projects equally, and equal access of products from all regions to the EU public procurement market.

### ***4. Standardize the public procurement process to reduce invisible barriers.***

It is recommended that the EU and its member states formulate strict guidelines on public procurement processes and eliminate discriminatory and manipulative behaviors such as tailor-making bidding standards for specific enterprises or setting excessive conditions beyond reasonable public procurement needs, to make public procurement processes more standardized and reduce hidden barriers.

### ***5. Continue to support China's early accession to the GPA.***

China's accession to the GPA is beneficial to all countries and will provide a broad market for all parties. It is recommended that relevant parties within the EU continue to support China's accession to the GPA and make joint efforts to open up and improve the government procurement market. It is also recommended that EU member states advance bilateral public procurement cooperation with China and accelerate negotiation and conclusion of bilateral public procurement agreements.

## **Chapter 7**

### **Finance**



## I. Latest developments

### **1. Financial businesses face rigorous sustainability reporting requirements.**

On April 6, 2022, the European Commission adopted a Delegated Regulation on *Sustainability-related Disclosures in the Financial Services Sector* (“Delegated Regulation”)<sup>72</sup>, which is expected to enter into force from January 1, 2023. The Delegated Regulation is to be used by financial market participants when disclosing sustainability-related information under the *Sustainable Finance Disclosures Regulation* (SFDR).

According to the SFDR and the *Delegated Regulation*, financial entities shall disclose how they integrate sustainability risks into their decision-making and consultation processes, and shall provide information of sustainability transparency of their financial products. A sustainability risk means an environmental, social or governance (ESG) risk that could cause a negative material impact on the value of the investment.

The SFDR defines financial entities as financial market participants and financial advisers. The scope of financial products covers portfolio management and investment advice, insurance-based investment products, pension products, alternative investment funds<sup>73</sup>, and products falling under the undertaking for collective investment in transferrable securities (UCITS). Information that needs to be disclosed includes integration of sustainability risks in the investment decision-making process, impacts of sustainability risks on investors’ returns, and principal adverse impacts of investment decisions and advice on sustainability factors. Forms of disclosure include pre-contractual disclosure, disclosure in periodic reports, and website disclosure.

The SFDR covers a wide range of market participants and products, and may thus lead to difficulties in large-scale implementation due to less-than-professional disclosure. The SFDR requires companies to collect data pertaining to the principal adverse impacts on sustainability, which is demanding for the many small and medium businesses. The lack of comparable, publicly available and reliable data under the SFDR poses a great challenge for asset managers as they transition towards sustainable investment.

### **2. The EU steps up supervision over third-country bank branches.**

On October 27, 2021, the European Commission published its proposal submitted to the European Parliament and European Council amending the Capital Requirements Directive (CRD 6) and other

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72 European Commission, Regulation on sustainability-related disclosure in the financial services sector. [https://finance.ec.europa.eu/sustainable-finance/disclosures/sustainability-related-disclosure-financial-services-sector\\_en](https://finance.ec.europa.eu/sustainable-finance/disclosures/sustainability-related-disclosure-financial-services-sector_en).

73 An alternative investment fund refers to funds invested in categories other than publicly trading equity assets, fixed-income assets and monetary assets, which includes real estate, shops, mining, energy, securitized assets, hedge funds, commodities, private equity, infrastructure, gold, and art.

directives (“proposed amendment”)<sup>74</sup>, with the aim of increasing the resilience of the European banking sector and financial stability. The draft amendment went through four internal discussions at the European Council in 2022. Main elements of the proposed amendment include implementation of Basel III reforms such as the output floor, increase of the banking sector’s resilience to ESG risks, and more stringent regulation for third-country branches within the EU. The element of third-country branch supervision would be exceptionally negative for some non-EU bank groups and their branches within the EU in two aspects.

The first is supervision that treats branches as subsidiaries. Once a non-EU bank branch is supervised as a subsidiary, it will lose access to the capital of its head office, and its capital adequacy requirements, facility amount to an individual client, and intrabank fund redeployment will be seriously restricted. The second is the establishment of intermediate parent undertakings (IPU). Requiring the establishment of an IPU within the EU jurisdiction for two or more banking institutions that belong to one third-country group will significantly limit the credit capacity of small and medium banks.

## II. Analysis

### **1. New sustainability regulations increases costs of companies.**

The SFDR, the *Delegated Regulation* and other new ESG rules create new opportunities for green cooperation between Chinese and European businesses. However, businesses face huge compliance pressure, as most of the complicated content of disclosure is not financial or market information, but indicators that are hard to quantify, such as greenhouse gas emissions and human rights impacts.

Companies reported that the SFDR and other new ESG rules of the EU mainly have three impacts. First, they i add to the compliance cost for companies “going global” with higher-standard and more mandatory ESG disclosure requirements. Aside from companies operating in the EU, other EU-related non-EU financial entities also fall within the scope of regulation. Investors are also required to disclose investment activities outside of the EU. Second, they lead to higher financing cost in the EU for companies of certain sectors. EU financial institutions will more rigorous when handling credit application in certain projects, particularly in main areas of Chinese investment in the EU, such as electricity and infrastructure. Third, they lead to companies’ cost for social responsibilities. Chinese suppliers in a third country will be required to carry out more ESG obligations, undertake extra social expenditure, and readjust their governance structures to keep and provide high-quality, complete, and authentic information and data.

### **2. Supervision over third-country branches hinders normal business activities.**

In recent years, the EU has updated its CRD many times, and its member states have been moving

<sup>74</sup> EUR-LEX, the proposed amendment to Directive 2013/36/EU. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0663>.

fast with relevant measures. Supervisory measures over third-country branches have greater adverse impacts on Chinese-invested bank groups and their branches within the EU. As of October 31, 2022, third-country branches (TCBs) established in the EU originated from 23 third countries, the most numerous being from China (18), UK (15), Iran (10), USA (9) and Lebanon (9)<sup>75</sup>.

Companies reported that in some member states such as Germany, Chinese bank branches were already supervised as subsidiaries, which seriously undermines their ability to expand their business and provide financial support for brick-and-mortar businesses. They also mentioned in their responses that given that Chinese branches mainly engage in wholesale businesses for Chinese companies in the EU, and that the size of their retail business is very limited, their large exposure limits will be restricted if they are supervised alongside with IPUs. The branches will have to renegotiate credit terms with their clients, negatively affecting their clients and reputation and hampering their ability to lend to new clients.

### III. Our recommendations

#### **1. Avoid generalizing the sustainability financial disclosure rules.**

It is recommended that the EU and its member states, when carrying out the SFDR, uphold the principle of prudence and necessity, limit disclosure to a reasonable scope, and avoid generalized interpretation that leads to artificially increased compliance cost of non-EU financial entities.

#### **2. Calibrate and design financial supervisory rules in a prudent manner.**

It is recommended that the European Commission carefully calibrate and consider TCB provisions in CRD 6 so that the compliance cost of financial companies does not exceed the benefits of supervision, and prevent limits to TCBs' support for the EU economy to avoid fewer financing channels for European businesses and reduced financial market liquidity.

#### **3. Treat non-EU financial businesses equally and fairly.**

It is recommended that the EU and its member states treat EU and non-EU banks as equals and adopt unified supervisory standards that exclude additional disclosure requirements and more frequent regulatory actions for non-EU banks.

#### **4. Address issues related to financial markets through cooperation mechanisms or bilateral consultation.**

It is recommended that the EU and its member states resolve issues of reasonable supervision on the financial market through existing regulatory frameworks or bilateral consultations, such as the China-

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75 European Commission, EBA Report on Third Country Branches. <https://www.eba.europa.eu/eba-publishes-list-third-country-groups-and-third-country-branches-credit-institutions-operating>.

EU Macroeconomic Policy Dialogue and the China-EU Economic and Financial Dialogue, to avoid excess regulation over the financial markets of the EU and its member states.

**5. Promote two-way opening up of and supervisory cooperation in the financial sector.**

It is recommended that the EU and its member states uphold financial market openness, raise the ratio caps for Chinese and European investment in the financial sector, and encourage offshore-market financial products, to diversify financial channels for both sides, and advance connectivity of Chinese and EU financial markets, especially the bond market.





# **Chapter 8**

## **Digital Economy**



## I. Latest developments

### 1. The European Chips Act aims at increasing EU competitiveness.

On February 8, 2022, the European Commission released the *Regulation of the European Parliament and of the Council Establishing a Framework of Measures for Strengthening Europe's Semiconductor System* ("European Chips Act")<sup>76</sup>.

The *European Chips Act* aims to establish a clearly defined organizational framework, a response mechanism and a budgetary catalogue, enlarge the resilience of the EU's semiconductor ecosystem, increase its global market share, facilitate early adoption of new chips by EU industry and increase its competitiveness. The targets are to increase its world production share today to 20% by 2030, ensure supply of semiconductor chips for the EU, reduce external dependencies, guard against crises, and elevate the EU's influence in the global semiconductor supply chain and value chain.

Focusing on enhancing core competences such as research and technology, innovation in design, manufacturing and packaging, talent training, and supply chain security, the European Chips Act puts in place three pillars. **The first pillar is technological capacity building.** The European Chips Act establishes a European Chips Infrastructure Consortium (ECIC) run by both the public and private sectors to support large-scale technological capacity building through investment into innovative infrastructures set up in the EU to enable the development of cutting-edge and next-generation semiconductor technologies that will reinforce the EU's advanced design, systems integration, and chips production capabilities. **The second pillar is security of production and supply.** The European Chips Act supports the establishment of Integrated Production Facilities (IPFs) and Open EU Foundries (OEFs) for cutting-edge semiconductor design and manufacturing in member states, and requires that IPFs and OEFs shall invest in the design or manufacture of next-generation chips and shall be monitored by the European Commission. **The third pillar is a coordination mechanism for semiconductor crisis response.** The European Chips Act strengthens cooperation between the European Commission and member states to monitor, forecast and assess EU-wide and global semiconductor supply, demand, shortages and crises, such as abnormal price fluctuation, the effect of accidents, attacks, natural disasters or other serious events, the effect of trade policies, tariffs, export restrictions, trade barriers and other trade related measures, and the effect of business closures or acquisitions<sup>77</sup>.

The European Chips Act includes five operational objectives to enhance EU capacity for semiconductor design, ensure supply chain security and resilience, promote application of semiconductor technologies, and narrow the technological gap among member states (see Table 8-1).

76 European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. A Chips Act for Europe. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_729](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_729).

77 Compiled by the CCPIT Academy based on the European Chips Act.

Table 8-1: Five Operational Objectives of the European Chips Act

Objective	Content
1. Building up an innovative virtual platform available across the EU	Connecting the communities of design houses, IP and tool suppliers, with research and technology organizations to provide virtual prototype solutions based on co-development of technology by: integrating existing and new design facilities with extended libraries and Electronic Design Automation (EDA) tools; upgrading the design capacity with ongoing innovative developments, such as processor architectures based on the open-source Reduced Instruction Set Computer Architecture (RISC-V); and enlarging the semiconductor ecosystem by integrating the vertical market sectors, contributing to the green, digital and innovation agendas of the EU.
2. Developing new PPP-based advanced pilot production lines	Providing infrastructure needed for next-generation chip manufacturing for the EU semiconductor industry, including nodes below two nanometers, Fully Depleted Silicon on Insulator (FD-SOI) at 10 nanometers and below, and 3D heterogeneous systems integration and advanced packaging; Supporting experimentation, test, and validation of new design concepts integrating key functionalities, such as novel materials and architectures for power electronics fostering sustainable energy and electro mobility, lower energy consumption, security, higher levels of computing performance or integrating breakthrough technologies such as neuromorphic and embedded artificial intelligence (AI) chips, integrated photonics, graphene and other new material-based technologies.
3. Increasing investment in alternative technologies	Investing in the development of neuromorphic computing and quantum components; Developing quantum chip design libraries, production lines and test and experimentation facilities.
4. Promoting use of technologies with competence centers in member states	Requiring that access to the publicly funded competence centers should be open to a wide range of users and must be granted on a transparent and non-discriminatory basis and on market terms, while SMEs can benefit from preferential terms; Using the network of competence centers to address the skills shortage by attracting and mobilizing new talent and training qualified workers.
5. Setting up a special fund facilitating EU semiconductor investment	Using debt financing and equity to improve the leverage effect and achieve a higher multiplier effect in terms of attracting private-sector financing for semiconductor manufacturing and chip design, support companies facing difficulties, including startups, small and medium-sized enterprises (SMEs) and other companies in the semiconductor supply chain, and support dynamic and resilient development of the semiconductor ecosystem.

Source: Compiled by the CCPIT Academy based on the European Chips Act.

## 2. Entry into force of the Digital Markets Act limits “gatekeepers”.

On November 1, 2022, *the Digital Markets Act (DMA)*<sup>78</sup> entered into force. Aiming at regulating the digital market and limit excess monopoly and acts of unfair competition of digital giants, the

78 European Commission, Digital Markets Act (DMA). [https://competition-policy.ec.europa.eu/sectors/ict/dma\\_en](https://competition-policy.ec.europa.eu/sectors/ict/dma_en).

DMA adopts an innovative approach combining ex ante regulation and case-by-case enforcement and establishes a set of mandatory rules targeting Internet giants designated as “gatekeepers”. Gatekeepers shall refrain from abusing dominant positions to oppress or acquire competitors, implementing forced advertising or installing software without the user’s consent, or using sourced user data for other purposes.

A gatekeeper normally controls a core platform service (search engines, social networking services, messaging services, operating systems, online intermediation services, etc.) and serves as an important gateway for business users to reach end users. With a sustained and enormous user base, gatekeepers take up or are expected to take up lasting dominant positions, and thus in effect become rules-makers.

The DMA applies to companies providing core platform services to EU business users or end users with a market capitalization of at least EUR75 billion or an annual turnover of EUR7.5 billion, which include Alphabet, Amazon, Apple, Meta and Microsoft.

After the DMA comes into force, companies reaching quantitative thresholds shall notify the European Commission and wait for the latter to decide on the designation within 45 working days. According to the DMA, quantitative thresholds include financial performance and number of active users. A company meeting the thresholds shall be presumed by the European Commission as qualified for a gatekeeper. The quantitative thresholds and presumable qualitative criteria are explained in Table 5-2, Chapter 5. If a company does not satisfy the requirements for a gatekeeper, the European Commission may conduct market investigations to assess the company concerned and decide on the designation on the basis of qualitative evaluation.

To ensure the effectiveness of the DMA, gatekeepers found non-compliant with the DMA may face severe punishment. The DMA clearly sets out deterrence or sanctioning measures of varying severity, including heavy penalties, rapid notification, structural remedies and even ban from the EU market. For instance, the European Commission may impose a fine of no more than 10% of a gatekeeper’s total annual turnover and a periodic fine of no more than 5% of its average daily turnover. When a gatekeeper systemically violates the DMA, the European Commission is entitled to take extra remedial measures, such as requiring the divestiture of a business or part of it (including departments, assets, intellectual properties and brands) (see table 8-2).

Table 8-2: Five Operational Objectives of the European Chips Act

Aspects of compliance		Details
Fair transaction	Data use restrictions	<p>A gatekeeper shall refrain from using any data not publicly available generated or provided by its core platform services in competition with business users.</p> <p>A gatekeeper shall refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services.</p> <p>A gatekeeper shall refrain from processing personal data of end users generated by the use of third party services on the ground of providing online advertising services which use its core platform services.</p>

Aspects of compliance		Details
	Transaction restrictions	<p>A gatekeeper shall allow business users to promote offers to end users acquired via the core platform service without using the core platform services of the gate keeper.</p> <p>A gatekeeper shall allow business users to offer the same products or services to end users through other channels at conditions different from those offered by the gatekeeper.</p> <p>A gatekeeper shall refrain from forcing users to use the authentication, web browser, payment or other services offered by the gatekeeper.</p>
	Interoperability	<p>A gatekeeper shall allow the installation and effective use of third party software applications or software application stores using, or interoperating with, operating systems of that gatekeeper.</p>
Consumer rights	Consumer choice	<p>A gatekeeper shall allow end users to un-install any pre-installed software applications on its operating system, except for software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third-parties.</p> <p>A gatekeeper shall allow end users to alter the default settings of its operating system, virtual assistant and Web browser.</p>
	Data portability	<p>At the request of an end user or third parties authorized by an end user, a gatekeeper shall provide data provided for or generated through the use of the core platform services free of charge, and shall provide tools free of charge to facilitate effective data portability.</p>
	Fair transaction	<p>A gatekeeper shall refrain from treating more favorably in ranking services and products offered by the gatekeeper itself, and shall apply fair and non-discriminatory conditions to such ranking.</p> <p>A gatekeeper shall provide to any third party providers of online search engines, upon their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymization for the query, click and view data that constitutes personal data.</p>
Data sharing	Platform data	<p>A gatekeeper shall allow business users to obtain data generated by their activity on its core platform services. Should such data contain personal data, the gatekeeper shall share them with business users only with the consent of the end users.</p>
	Advertising data	<p>A gatekeeper shall provide advertisers and publishers to which it supplies advertising services, upon their request, with information concerning the price paid by the advertiser and publisher, the amount or remuneration paid to the publisher, and the criteria for calculating the price and remuneration, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper, on a daily basis.</p> <p>A gatekeeper shall provide ad publishers or their authorized third parties, upon the request of the publishers and free of charge, with information concerning verification of the publisher's ad inventory, including the remuneration paid to and the price paid by the publisher, the price paid by the advertiser, and the criteria for calculating the price and remuneration.</p>

Aspects of compliance		Details
Data sharing	Advertising data	A gatekeeper shall provide advertisers and publishers, upon the request of them or their authorized third parties and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for verification of the ad inventory, to allow advertisers and publishers to evaluate the performance of the core platform services with their own measuring tools.

Source: Compiled by the CCPIT Academy based on the DMA.

In the long term, the DMA may be helpful in establishing and improving market order for digital services, urging large platforms to reduce reliance on conventional behaviors of unfair competition, and encouraging gatekeepers to engage in innovative activities and provide better services, which contribute to sound development of the digital markets.

### **3. Legislation of the Digital Services Act moves forward with enhanced digital governance.**

On October 4, 2022, the European Council adopted the *Digital Services Act* (DSA) which aims at strengthening digital governance and fostering a safe online environment. As a regulation targeting providers of intermediary services, the DSA creates new standards of accountability targeting illegal content of online platforms and other content the regulators deem harmful, puts forward regulations concerning online information, digital ads and software application ecosystems, and introduces increases obligations of social media, online marketplaces, very large online platforms (VLOPs) and very large online search engines (VLOSEs) for content control and information transparency, which will significantly change the operational models of digital service providers.

The DSA optimizes mechanisms for removal of illegal online contents and protection of fundamental rights of consumers online, and builds up a horizontal framework of supervision, accountability and transparency for online platforms, particularly large online platforms. The DSA includes five sections and incorporate seven aspects, namely: (1) measures to counter illegal online products, services or contents; (2) new traceability rules for traders on online marketplaces to identify sellers of illegal products and better protect consumers; (3) protection of fundamental rights of consumers, such as allowing users to question platforms' decisions on content review; (4) transparency requirements for online platforms, including algorithm transparency of the recommender systems and targeted ads; (5) stipulations concerning risk management obligations of VLOPs, including independent audit of their risk management measures, enhanced supervision to prevent abuse of the systems for illegal content and disinformation campaigns (manipulation in elections, criminal activities and incitement to terrorism, fake news, etc.); (6) access for researchers to crucial data of VLOPs to understand how online risks evolve; and (7) a supervisory framework to address the complexities of the digital space, with the help of the newly established European Board for Digital Services, which enables a major role of EU member states, and allows the European Commission to step up enforcement and supervision over VLOPs.

By focusing on regulating Internet giants, the DSA opens new space for market-based competition and activates the competitiveness and creativity of the whole EU market, while exempting SMEs

from certain obligations in light of the pressure they face to ensure compliance. The compliance obligations of different types of businesses are explained in Tables 8-3, 8-4 and 8-5.

**Table 8-3: Compliance Obligations of Providers (Companies) of Digital Intermediary Services**

Type	Key points	Details
"Mere conduit"	Transmission only	The provider only provides transmission conduits, and does not initiate the transmission, select the receiver of the transmission, and does not select or modify the information contained in the transmission.
"Caching"	Caching only	The provider only provides temporary storage services, does not modify the information, and complies with conditions on access to the information and with rules regarding widely recognized and used by the industry.
	Expeditious actions	The provider acts expeditiously upon obtaining actual knowledge that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a judicial or an administrative authority has ordered such removal or disablement.
"Hosting"	Expeditious removal	Even without prior actual knowledge of illegal activity or illegal content, the provider shall, upon obtaining such knowledge, expeditiously remove or disable access to the illegal content.
	Notice and action	Providers of hosting services shall establish an easily accessible notice and action mechanism for illegal content. The provider shall send a confirmation of receipt of the notice and process the notice in a timely manner.
	Statement of reasons	Providers of hosting services shall provide a statement of reasons at the latest from the date of the imposition of restrictions including removal of and disabling access to content, limitation to monetary payment, suspension or termination of the provision of the service, and suspension or termination of the recipient of the service's account.
"Mere conduit", "caching" and "hosting"	Points of contact	Providers of intermediary services shall designate a single point of contact and make public necessary information to enable communication with authorities and users.
	Legal representatives	Providers of intermediary services which do not have an establishment in the EU but offer services in the EU shall designate, in writing, a legal or natural person to act as their legal representative in one of the member states where the provider offers its services. Providers of intermediary services shall ensure that the name, postal address, email address and telephone number of their legal representative, and make this information publicly available.

Type	Key points	Details
"Mere conduit", "caching" and "hosting"	Terms and conditions	<p>Providers of intermediary services shall provide the content of their terms and conditions in in clear, plain, intelligible, user-friendly and unambiguous language in an easily accessible format.</p> <p>Where an intermediary service is primarily directed at minors, the provider of that intermediary service shall explain the conditions in a way that minors can understand.</p> <p>Providers of VLOPs and VLOSEs shall provide recipients of services with an easily accessible summary of the terms and conditions, including the available remedies and redress mechanisms, in clear and unambiguous language.</p>
	Transparency reporting of content management	<p>Providers of intermediary services shall make publicly available clear, easily comprehensible reports at least once a year on the transparency of content moderation, including the number of orders received from member states' authorities, information about the content moderation, automated tools used for content moderation, and the number of complaints received.</p> <p>SMEs are exempted from these reports.</p>

Source: Compiled by the CCPIT Academy based on the DSA.

Table 8-4: Compliance Obligations of Non-SME Online Platforms

	Key points	Details
Illegal content moderation	Complaint handling	<p>Providers of online platforms shall provide an easily accessible complaint-handling system for illegal content, and shall inform complainants that the final decisions are taken under the supervision of staff, and not solely on the basis of automated means.</p> <p>Complainants shall not abuse their rights. Providers of online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the processing of notices and complaints submitted by complainants that frequently submit notices or complaints that are manifestly unfounded.</p>
	Flaggers	<p>Trusted flaggers are a new category of entities introduced in the DSA. Online platforms shall take the necessary technical and organizational measures to ensure that notices submitted by trusted flaggers, acting within their designated area of expertise, are given priority and are processed and decided upon without undue delay.</p>



Key points		Details
Enhanced transparency	Reporting	In addition to the information referred to in transparency reporting of content management, the reports shall also include the number of disputes submitted to the out-of-court dispute settlement bodies, the outcomes of the dispute settlement, and the median time needed for completing the dispute settlement procedures, as well as how the provider of the online platform has implemented the decisions of the body.
	Advertising	Providers of online platforms that present advertisements on their online interfaces shall ensure that the recipients of the service are able to identify the advertisements, that is: the information is an advertisement, indicated through prominent markings or in other ways; the natural or legal person on whose behalf the advertisement is presented; and the main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, about how to change those parameters. Providers of online platforms shall not present advertisements to recipients of the service based on profiling using special categories of sensitive data referred to in the GDPR, such as race.
	Recommender systems	Providers of online platforms that use recommender systems shall set out in their terms and conditions, in plain and intelligible language, the main parameters used in their recommender systems, and shall at least include the criteria which are most significant in determining the information suggested to the recipient of the service and the reasons for the relative importance of those parameters. Providers of online platforms shall give users an option to select and modify the main parameters. Where several options are available for recommender systems that determine the relative order of information presented to recipients of the service, providers of online platforms shall also make available a functionality that allows the recipient of the service to select and to modify at any time their preferred option via prioritized options.
Interface design	Providers of online platforms shall not design, organize or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts the ability of the recipients of their service to make informed decisions. The European Commission will focus on the following areas and introduce separate regulations: (1)giving more prominence to certain choices when asking the recipient of the service for a decision; (2)repeatedly requesting user consent; and (3)making the procedure for terminating a service more difficult than subscribing to it.	
Protection of minors		Providers of online platform shall not collect personal data of minors to present targeted advertisements.

Key points		Details
Online transaction management	Traders on the platform	Providers of online platforms shall ensure traceability of traders concluding distant contracts, by requiring traders to provide the following information and assessing whether the information is reliable and complete, prior to allowing traders to use their services: (1)the name, address, telephone number and email address of the trader; (2)the identification document of the trader; (3)the payment account details of the trader; (4)the trade register or similar public register in which the trader is registered and its registration number; (5)a self-certification by the trader committing to only offer products or services that comply with the applicable rules of EU law.
	Protection of user rights	Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that its online interface contains the following information: (1)necessary information of the products or services; (2)any sign identifying the trader; and where applicable, the information concerning the labelling and marking in compliance with rules of applicable EU law on product safety and product compliance; (3)Where the provider of the online platform becomes aware that an illegal product or service has been offered by a trader to consumers, that provider shall inform users of the information concerning the identity of the trader and any relevant means of redress.

Source: Compiled by the CCPIT Academy based on the DSA.

Table 8-5: Compliance Obligations of VLOPs

Key points	Details
Risk assessment	Providers of VLOPs shall carry out risk assessments at least once every year. When conducting risk assessments, providers of VLOPs shall take into account the design of their recommender systems and any other relevant algorithmic system, their content moderation systems, the applicable terms and conditions and their enforcement, systems for selecting and presenting advertisements, and data-related practices of the provider. Providers of VLOPs shall preserve the supporting documents of the risk assessments for at least three years.
Independent audit	Providers of VLOPs shall be subject to independent audits at least once a year. Providers of VLOPs shall take due account of the operational recommendations in the audit reports, and shall within one month from receiving those recommendations, adopt an audit implementation report setting out those measures. Where they do not implement the operational recommendations, they shall justify in the audit implementation report the reasons for not doing so.
Recommender systems	Providers of VLOPs that use recommender systems shall provide at least one option for each of their recommender systems which is not based on profiling.

Key points	Details
Advertising transparency	Providers of VLOPs shall present on their online interfaces a publicly available advertisement repository, and shall ensure that the repository does not contain any personal data of the recipients. The repository shall include the content of the advertisement, the natural or legal person on whose behalf the advertisement is presented, the natural or legal person who paid for the advertisement, the period during which the advertisement was presented, the main parameters used for presenting the advertisement to particular groups, and the total number of recipients of the service reached.
Data access	Providers of VLOPs shall provide the authorities with access to data necessary to monitor and assess compliance with the DSA. After being assessed by the authorities, researchers meeting certain condition may also request for data access for research activities, and shall make their research results publicly available free of charge within a reasonable period after the completion of the research.
Compliance function	Providers of VLOPs shall establish a compliance function, which is independent from their operational functions, and shall ensure that the head of the compliance function is an independent senior manager.
Reporting	Providers of VLOPs shall publish a report every six months that include transparency reporting elements as well as the human resources dedicated to content moderation, the training given to such staff, and the indicators of accuracy of automated content moderation and related information. Providers of VLOPs shall, at least three months after receiving each audit report, submit to the Digital Services Coordinator of the authorities a report setting out the results of the risk assessment, the specific mitigation measures put in place, the audit report, the audit implementation report, and where applicable, information related to the risk assessments and mitigation measures.

Source: Compiled by the CCPIT Academy based on the DSA.

#### 4. The European Commission published a proposal for a Data Act.

On February 23, 2022, the European Commission published a proposal for a *Data Act*, a new set of rules for the use of and access to data generated by EU economic authorities. *The Data Act* aims at ensuring fairness of the digital environment, stimulate competition on the digital marketplace, create opportunities for data-driven innovation, and give every equal access to data. The European Commission said that both individuals and businesses may access data generated through devices and use them for aftermarket services and value-added services such as maintenance before a problem occurs, and combine data to develop new digital services<sup>79</sup>.

The proposal for the Data Act includes: (1) measures to allow users of connected devices to gain access to data generated by them, which is often exclusively harvested by manufacturers; and to share such data with third parties to provide aftermarket or other possible innovative services, which in turn incentivizes manufacturers to continue investing in high-quality data generation; (2) measures to rebalance negotiation power for SMEs by preventing abuse of contractual imbalances in data

<sup>79</sup> European Commission, Data Act – Questions and Answers. [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_22\\_1114](https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_1114).

sharing contracts (the European Commission will develop model contractual terms for data-sharing contracts); (3) means for public sector bodies to access and use data held by the private sector that is necessary for exceptional circumstances, particularly in case of a public emergency, such as floods and wildfires, or to implement a legal mandate if data are not otherwise available; and (4) new rules allowing customers to effectively switch between different cloud data-processing services providers and putting in place safeguards against unlawful data transfer.

## **5. The EU and the U.S. agreed in principle on a new Trans-Atlantic Data Privacy Framework.**

After implementing the *General Data Protection Regulation* (GDPR) for more than four years, the EU has maintained comprehensive security review on cross-border data transfer, and has reinforced regulation of data security and transmission. The regulations, conditions and situations of EU-related data transfer witnessed changes in 2022 that reflected checks and balances with the U.S.

On March 25, 2022, the European and the U.S. released a joint statement on *Trans-Atlantic Data Privacy Framework* and announced that they have agreed in principle on a new Trans-Atlantic Data Privacy Framework<sup>80</sup>. *The Trans-Atlantic Data Privacy Framework* requires the U.S. to undertake reforms ensuring that its surveillance activities in the pursuit of national security objectives will ensure the privacy of EU personal data, and to create a new mechanism for EU individuals to seek redress. For example, EU individual entities may use an alternative dispute settlement mechanism or arbitration to protect their lawful rights. For EU individuals, the deal includes high-standard commitments regarding the protection of personal data. For companies in the EU and the U.S., the deal will enable the continued flow of data that underpins more than \$1 trillion in cross-border commerce every year<sup>81</sup>.

## II. Analysis

### **1. Comments are mixed on changes to the EU's digital economic environment.**

Chinese businesses in the EU have varied views about changes to the EU's digital economic environment. According to our survey, 32.17% of the respondents thought that the environment has become better, 30.43% replied that it has become worse, and 37.39% said that it has remain unchanged (see Figure 8-1).

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80 White House. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-trans-atlantic-data-privacy-framework/>.

81 White House. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-trans-atlantic-data-privacy-framework/>.

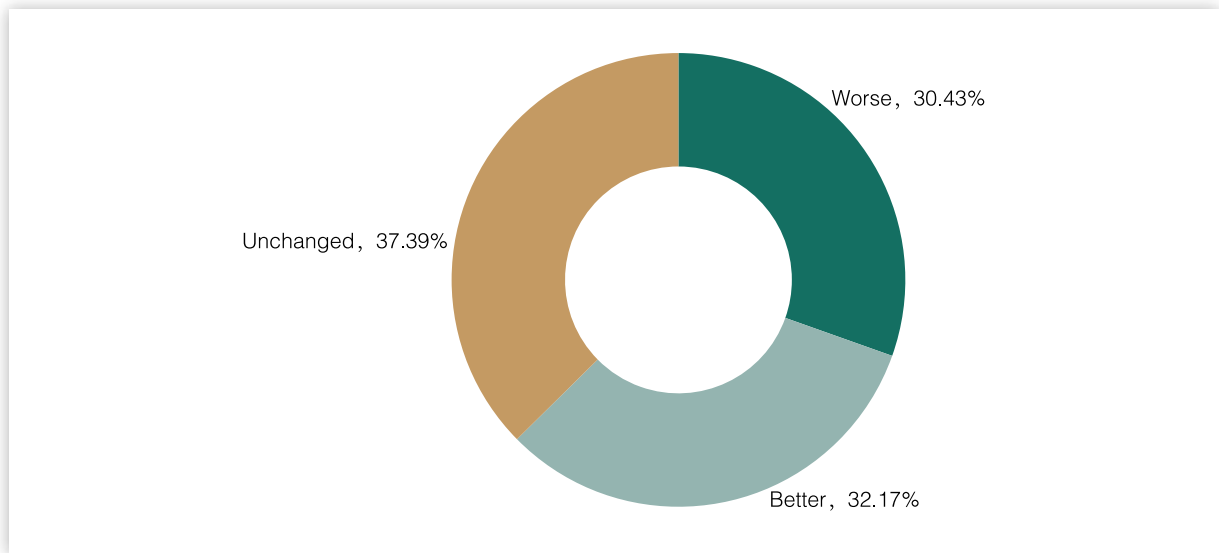


Figure 8-1: Companies' Perception of the EU's Digital Economic Environment

Source: CCPIT Academy.

## 2. The EU's internet security review has obvious discrimination against Chinese companies.

It is a common perception among the survey businesses that EU cybersecurity review entail prejudice against Chinese companies. According to our survey, 59.13% of respondents think that the EU's 5G cybersecurity investigations are discriminatory against foreign suppliers (see Figure 8-2). By type of ownership, SOEs have been the top victims of discrimination; 71.43% of them believe that discrimination persists in the EU's 5G cybersecurity review (see Figure 8-3).

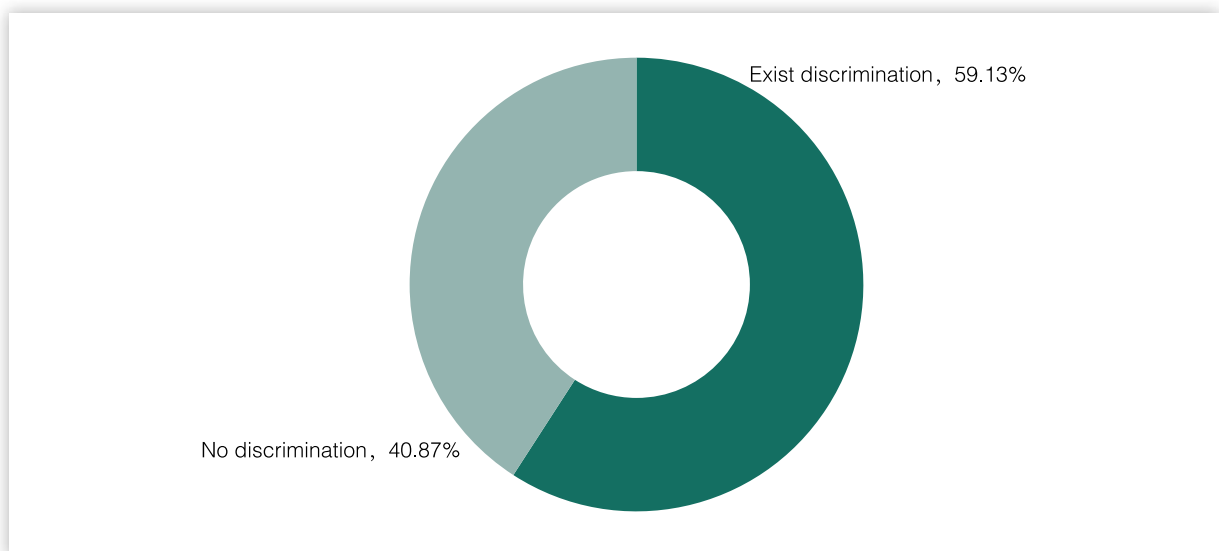


Figure 8-2: Discrimination Against Chinese Suppliers by the EU's 5G Cybersecurity Review

Source: CCPIT Academy.

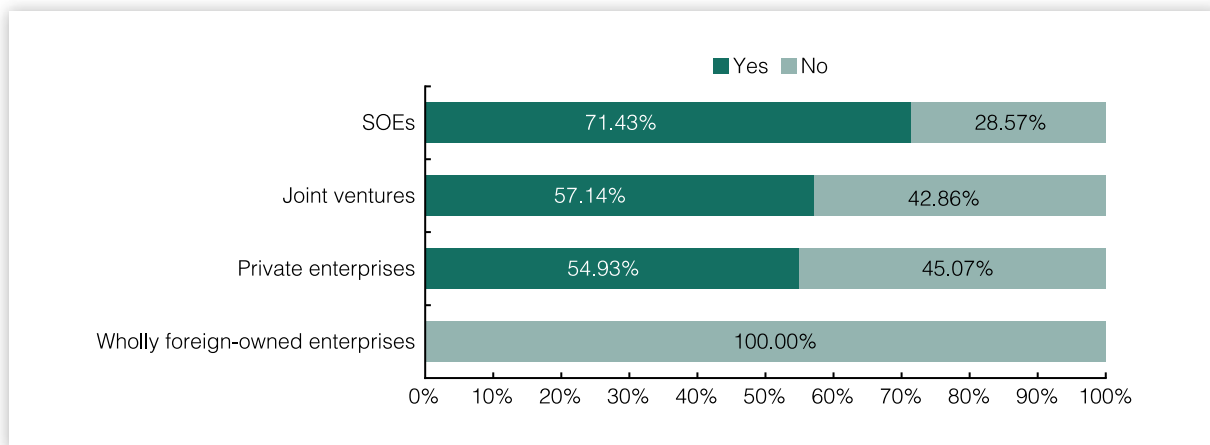


Figure 8-3: Discrimination Against Chinese Suppliers by the EU's 5G Cybersecurity Review, by Type of Ownership  
Source: CCPIT Academy.

In all sectors except agriculture, forestry, animal husbandry and fisheries, half or more than half of the companies say they feel that Chinese companies are discriminated against in EU 5G cybersecurity review. On the top of the list is information transfer/software and IT services (69.23%), followed by scientific research and technical services, finance, and electricity, heat, gas and water supply (66.67%). The wholesale and retail sector comes in the third place (65.00%) (see Figure 8-4).

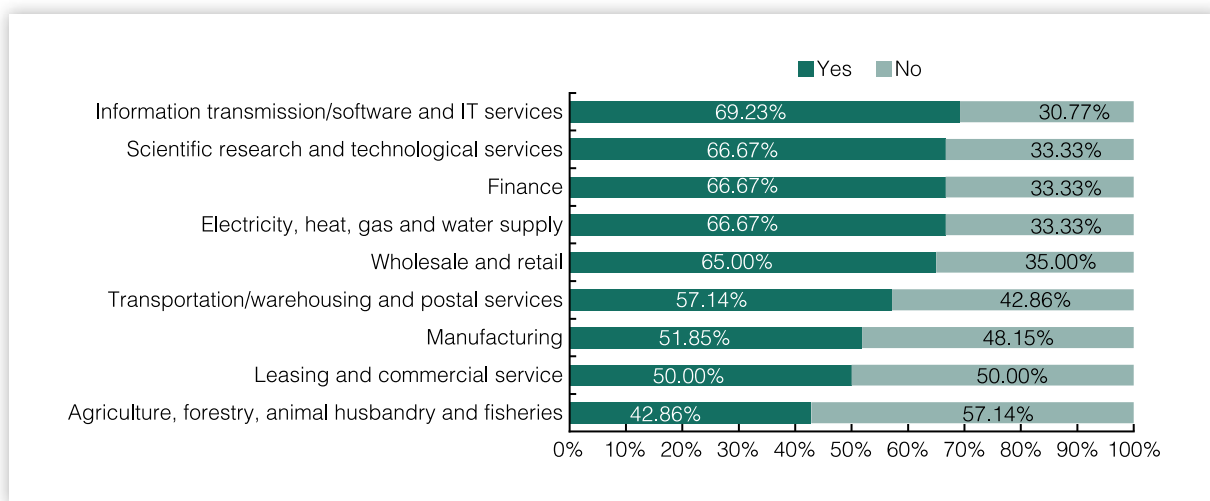


Figure 8-4: Discrimination Against Chinese Suppliers by the EU's 5G Cybersecurity Review, by Sector  
Source: CCPIT Academy.

### 3. Companies are adversely impacted by EU digital levies.

**Digital levies.** Digital levies of some EU member states such as Italy and Spain have a negative impact on certain sectors. Our survey shows that 61.54% of the companies in the information transfer/software and IT services sector say that their business is strongly affected by digital taxes, concurred by half of the companies in leasing and commercial services and in wholesale and retail (see Figure 8-5).

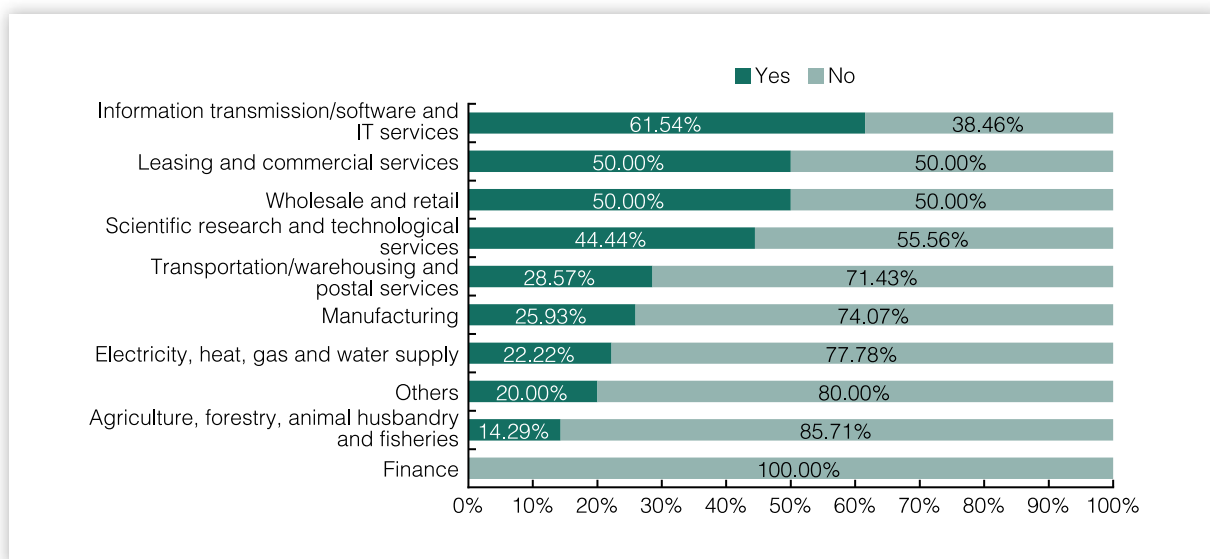


Figure 8-5: Impacts of Some EU member states' Digital Taxes, by Sector  
 Source: CCPIT Academy.

**Value-added tax (VAT).** In more than one year's time since the implementation of the non-EU cross-border e-commerce companies have been negatively impacted. As the VAT exemption goods imported into the EU valued at less than 22 euros by non-EU companies is lifted, and as e-commerce companies are required to present final prices that include taxes, Chinese cross-border e-commerce businesses have been directly faced with shrinking operational profits and rising costs.

According to our survey, 57.00% of respondents say that the e-commerce VAT reform impacts their business (see Figure 8-6). Most of the companies believe that the reform leads to higher tax burden (44.79%) and more complex procedures (39.58%). A few companies (15.63%) say it is easier to register for and declare VAT thanks to the reform (see Figure 8-7).

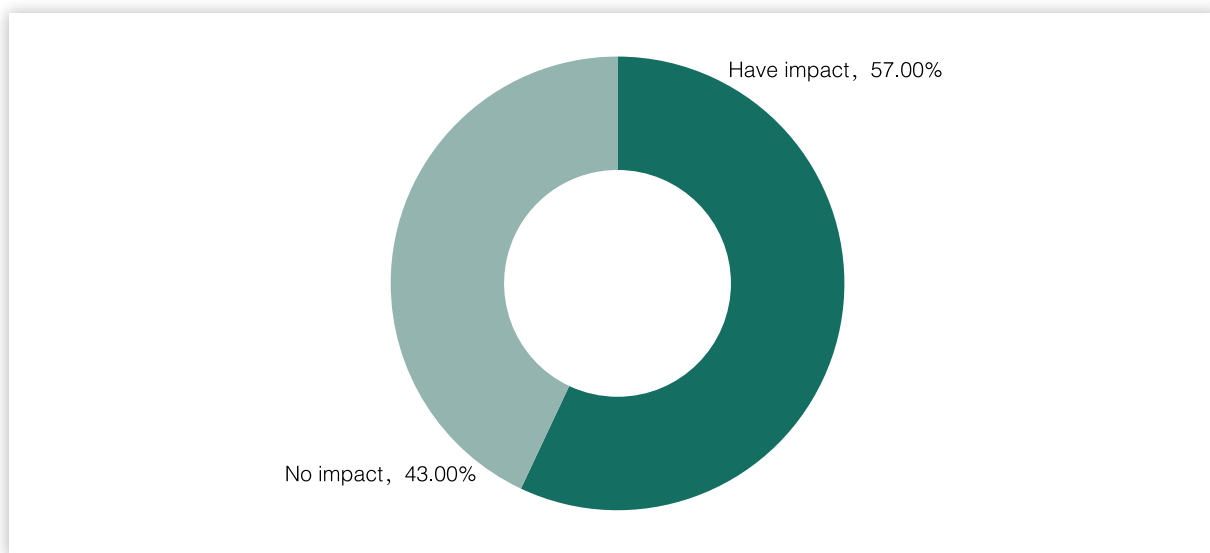


Figure 8-6: Whether Chinese Companies Are Impacted by the EU's E-Commerce VAT Reform

Source: CCPIT Academy.

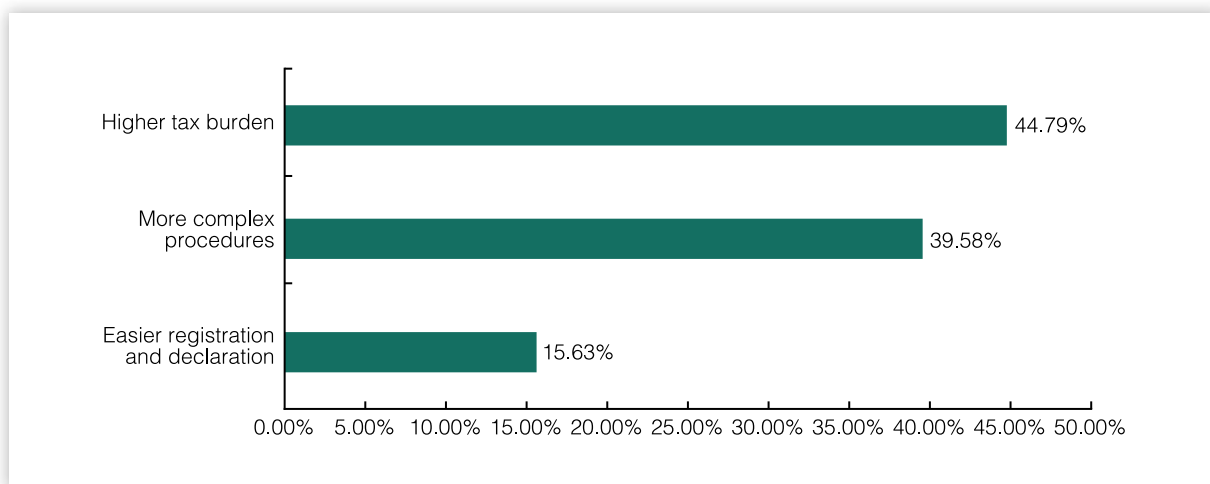


Figure 8-7: Specific Impacts on Chinese Companies by the EU's E-Commerce VAT Reform

Source: CCPIT Academy.

By sector, more than half of the respondents in leasing and commercial services (75.00%) and transportation/warehousing and postal services (57.14%) say that they face higher debt burdens (see Figure 8-8).



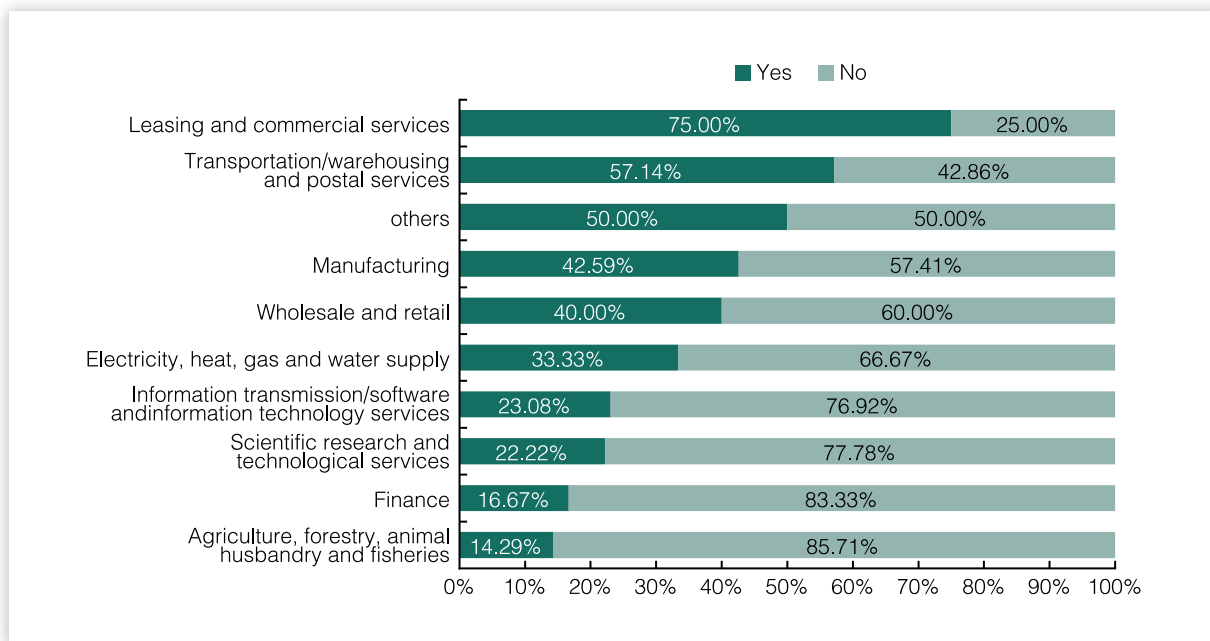


Figure 8-8: Whether Companies Feel Higher Debt Burden  
 Source: CCPIT Academy.

**4. The GDPR increases Chinese companies' compliance costs.**

According to our survey, 65.22% of the companies say that their compliance costs for EU-related business are higher due to the GDPR (see Figure 8-9). Most sectors believe that the GDPR has increased their compliance costs, led by transportation/warehousing and postal services (85.71%), wholesale and retail (85.00%) and finance (83.33%) (see Figure 8-10).

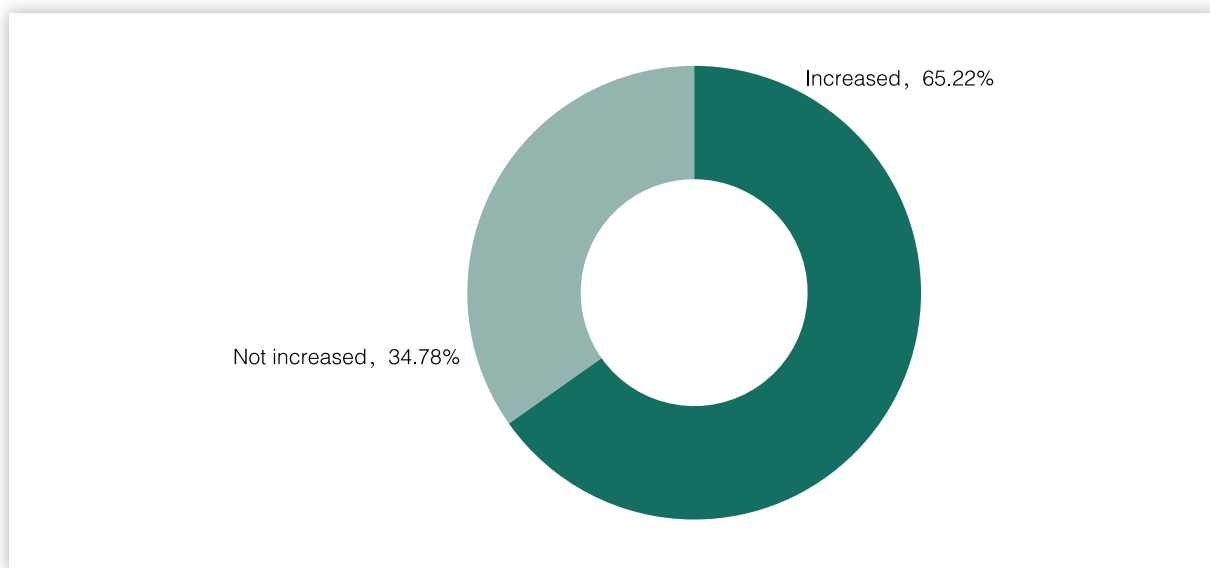


Figure 8-9: Whether the GDPR has Increased Compliance Costs for non-EU Companies  
 Source: CCPIT Academy.

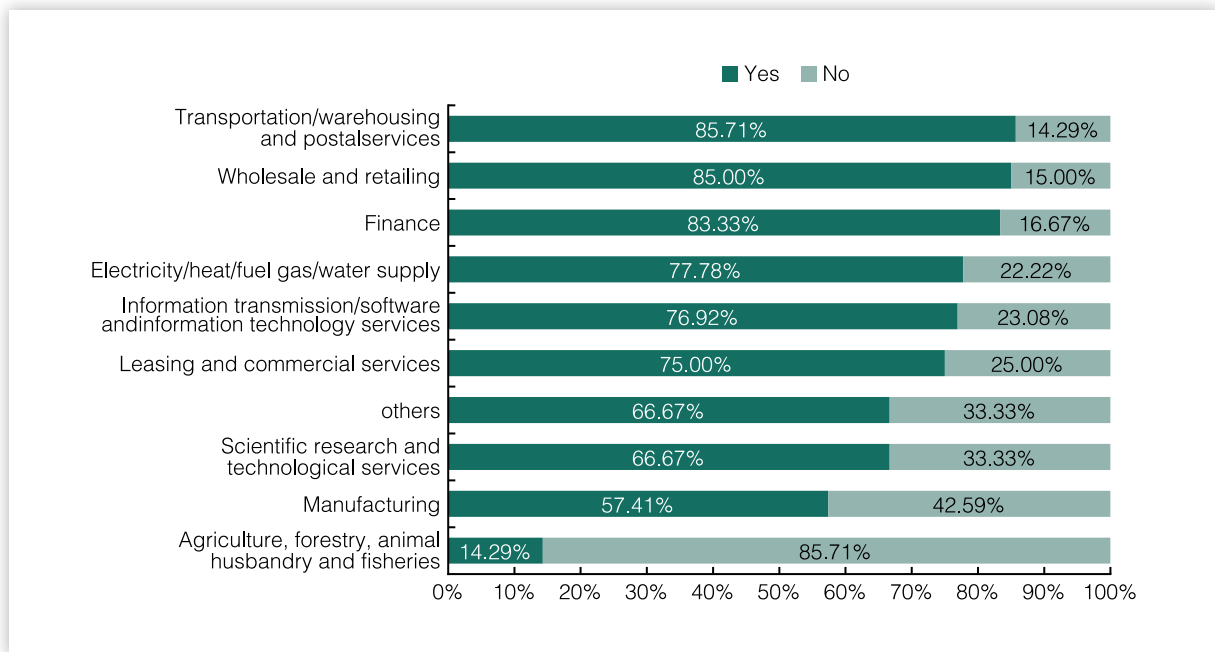


Figure 8-10: Whether the GDPR Increases Compliance Costs for non-EU Companies, by Sector  
Source: CCPIT Academy.

### 5. The GDPR affects companies' business operations.

The GDPR has seriously hindered operations of transportation/warehousing and postal services (71.43%) and information transmission/software and information technology services (69.23%) (see Figure 8-11).

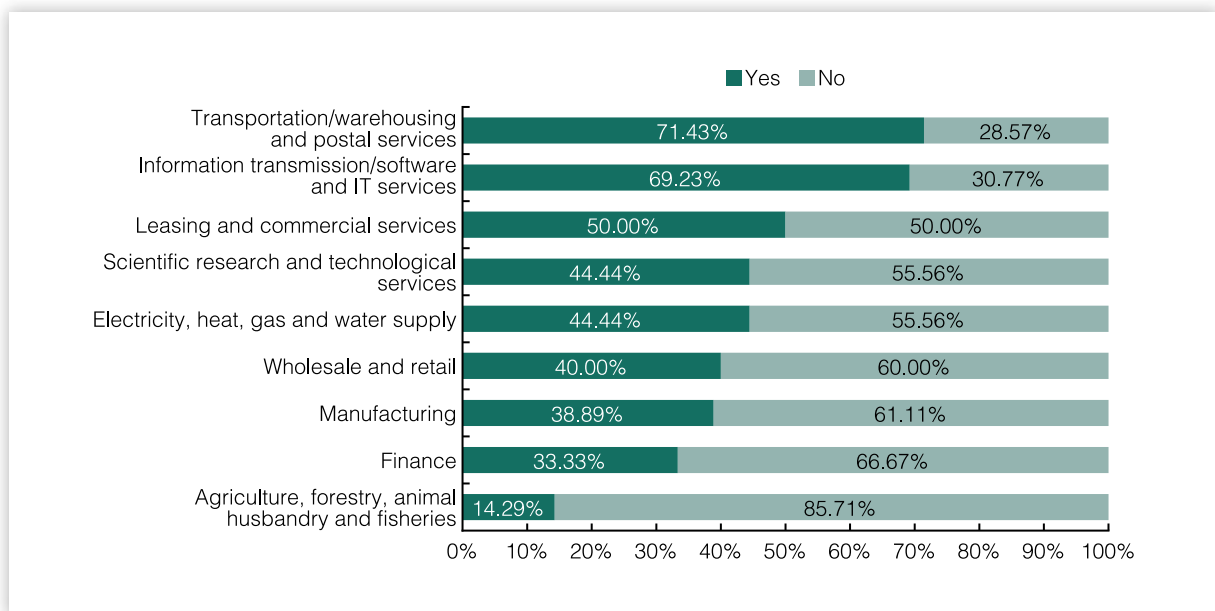


Figure 8-11: Whether the GDPR Negatively Impacts Business Operations of Companies, by Sector  
Source: CCPIT Academy.

## III. Our recommendations

### **1. Respect the sound distribution of labor in the global chip industry.**

The chipmaking industry relies so heavily on intensive investment, a high level of expertise and interconnectivity that country or company can be completely self-sufficient. It is recommended that the EU engage in chipmaking cooperation with China with an open and cooperative attitude, and respect the sound distribution of labor in the global chip industry.

### **2. Value Chinese companies as enablers in the digital ecosystem.**

It is recommended that the EU focus on addressing issues of the GDPR such as overgeneralization of definitions, vague regulation scenarios, and ambiguous boundaries between responsibilities, to maintain reasonable competition on the EU digital market, and work from the perspective of a digital ecosystem to optimize and readjust its digital regulatory system, particularly highlighting the enabling role of Chinese digital businesses.

### **3. Make sure that cybersecurity reviews are equitable, fair and transparent.**

It is recommended that the EU and its member states stop discriminating against Chinese 5G companies in its cybersecurity review and refrain from limiting access of Chinese companies to the EU market. Some of the EU's 27 member states, including Romania, Belgium and Sweden, have adopted exclusion targeting Chinese business 5G networking, incurring tremendous sales losses and causing great uncertainties.

### **4. Step up coordination of global cybersecurity governance.**

It is recommended that the EU foster a more open and secure digital ecosystem by upholding multilateral and multiparty participation, paying attention to the needs of non-EU businesses, listening to the opinions and concerns of companies, and enhancing policy coordination regarding global cybersecurity governance, to build a cyberspace that of all, by all, and connecting everyone.

### **5. Provide services supporting e-commerce VAT collection.**

It is recommended that the EU leverage electronic and information reforms to promote smart services and data sharing, so that non-EU cross-border e-commerce businesses can make effective use of collection rules to reduce their operational burdens when paying VAT and have greater confidence in the EU e-commerce market.

## ***6. Advance regular China-EU High-Level Digital Dialogue and its supporting mechanisms.***

It is recommended that the EU work with China to strengthen exchanges, cooperation and mutual learning on standards, hold regular sessions of the China-EU High-Level Digital Dialogue and its supporting mechanisms, and ensure their implementation, and increase dialogue and cooperation on online content moderation of large companies, cross-border data flow, data protection and protection of personal privacy.

# **Chapter 9**

## **Green Economy**



## I. Latest developments

### **1. The Sustainability Due Diligence Directive raises threshold of environmental compliance.**

Since 2017, some EU member states have adopted legislation concerning supply chains that requires their businesses to conduct sustainability due diligence probes into their suppliers, extending EU environmental compliance obligations to businesses of other countries via supply chains.

On February 23, 2022, the European Commission published a proposal for the *Directive on Corporate Sustainability Due Diligence* and amending Directive (EU) 2019/1937 (“Sustainability Due Diligence Directive”), expanding sustainability due diligence obligations to all member states. The Sustainability Due Diligence Directive is expected to be adopted in 2023 and enter into force in 2025.

**Scope of companies and sectors.** The obligations of sustainability due diligence investigation of the Sustainability Due Diligence Directive apply to certain companies within and outside of the EU. Specifically, they fulfill one of the following conditions:

(1) the company has more than 500 employees on average and has a net worldwide turnover of more than EUR150 million in the last financial year for which annual financial statements have been prepared;

(2) the company has 250 to 500 employees on average and has a net worldwide turnover of EUR40 million to EUR150 million in the last financial year, provided that at least 50% of this net turnover was generated in one or more of the sectors in a given list;

(3) the company is formed in accordance with the legislation of a third country and generated a net turnover of more than EUR150 million in the EU in the financial year preceding the last financial year;

(4) the company is formed in accordance with the legislation of a third country and generated a net turnover of more than EUR40 million but not more than EUR150 million in the EU in the financial year preceding the last financial year, provided that at least 50% of its net worldwide turnover was generated in one or more of the sectors in a given list.

Sectors in the list include:

(1) the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear;

(2) agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages;

(3)the extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

**Table 9-1: Companies that Shall Fulfill Sustainability Due Diligence Obligations in Accordance with the Sustainability Due Diligence Directive**

Type	Employees	Annual net turnover	Other conditions
EU	Over 500	Over EUR150 million worldwide	N/A
	250-500	EUR40-150 million worldwide	Of the turnover, at least 50% comes from the list of designated sectors (textiles, leather, agriculture, forestry, fisheries, manufacture of food products, extraction of mineral resources, etc.)
Non-EU	N/A	Over EUR150 million in the EU	N/A
		EUR40-150 million in the EU	Of the turnover, at least 50% comes from the list of designated sectors (textiles, leather, agriculture, forestry, fisheries, manufacture of food products, extraction of mineral resources, etc.)

Source: Compiled by the CCPIT Academy based on the Sustainability Due Diligence Directive.

**Scope of investigation.** *The Sustainability Due Diligence Directive* stipulates that companies should take appropriate steps to set up and carry out due diligence measures, with respect to their own operations, their subsidiaries, as well as their established business relationships. They shall fulfill due diligence obligations regarding potential or actual adverse human rights and environmental impacts connected with their whole value chains.

“Value chains” means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company.

“Business relationships” means a relationship with a contractor, subcontractor or any other legal entities.

“Established business relationships” means business relationships, whether direct or indirect, which are, or which are expected to be lasting, in view of their intensity or duration and which do not represent a negligible or merely ancillary part of the value chain.

**Specific regulations.** The Sustainability Due Diligence Directive does not establish specific environmental due diligence standards, but quotes specific matters, indicators, standards and steps

of implementation from dozens of international environmental conventions, including the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants and the Montreal Protocol on Substances that Deplete the Ozone Layer.

*The Sustainability Due Diligence Directive* requires companies to set up systems with specific measures, including (1) formulating and updating annually due diligence policies; (2) assessing actual or potential adverse environmental impacts; (3) ensuring the ability to identify, prevent and mitigate adverse environmental impacts; (4) establishing environmental complaint procedures; (5) monitoring and evaluating effectiveness of due diligence policies and measures; and (6) making due diligence implementation publicly available.

*The Sustainability Due Diligence Directive* also puts forward stricter demands for supplier management and contracts. Companies shall seek contractual assurances from their business partners that they will ensure compliance with the companies' sustainability code of conduct. The contracts shall be accompanied by terms to verify compliance, such as third-party verification. If the actual or potential adverse impacts cannot be mitigated or prevented, companies shall be required to refrain from entering into new or extending existing relations, and may temporarily suspend or terminate business relationships.

What's more, *the Sustainability Due Diligence Directive* also provides that entities that fail to fulfill relevant obligations shall be subject to not only civil, but also administrative, liabilities.

## **2. The CBAM expands scope of carbon border levies.**

On June 22, 2022, the European Parliament adopted texts, during the first reading, of the Carbon Border Adjustment Mechanism, or CBAM ("amendments to the proposal")<sup>82</sup>, which represents formal amendments to the European Commission's proposal for the CBAM in 2021 ("proposal"). On December 13, 2022, the European Parliament and the European Council reached a provisional agreement on the CBAM. On December 18, 2022, the European Parliament and the European Council had another negotiation to reach an agreement ("the agreement") on reforms to the EU's Emissions Trading System (ETS), which finalizes the pending elements of the provisional agreement and adjusts the time frame, marking the official entry into force of the CBAM<sup>83</sup>.

Compared to the proposal, the agreement establishes more rigorous decarbonization policies<sup>84</sup>.

(1) Expanded scope of implementation. Beyond the proposal's scope of iron and steel, cement, fertilizers, aluminum and electricity generation, the agreement adds hydrogen and downstream products of the above sectors to the list. By 2034, the CBAM will be expanded to cover all sectors under the ETS;

(2) More stringent rules for fines. For the failure to surrender CBAM certificates, the proposal sets

82 EUR-LEX. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=EP%3AP9\\_TA%282022%290248&qid=1664930233406](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=EP%3AP9_TA%282022%290248&qid=1664930233406).

83 European Council, <https://www.consilium.europa.eu/en/press/press-releases/2022/12/18/fit-for-55-council-and-parliament-reach-provisional-deal-on-eu-emissions-trading-system-and-the-social-climate-fund/>.

84 The text of the agreement on December 18 has not yet been published, but a news item was released, explaining the scope of sectors and the transitional period. Hence, items (1) and (5) reflects the latest changes in the agreement, and items (2) (3) and (4) are compiled based on the proposal dated June 22..



a EUR100 fine per ton of carbon dioxide emission, whereas the amendments to the proposal raise the amount to three times the average price of CBAM certificates in the previous year, which, given the current closing price of EUR80-90 per ton of carbon dioxide emission allowance at the common auction platform of the EU ETS, will significantly increase the amount of penalty;

(3) New enforcement authority. The amendments to the proposal establishes a unified CBAM authority at the EU level to receive CBAM declarations, CBAM certificates, carbon prices that have been paid, and other information;

(4) Phasing-out of free allowances obtained by EU industries. Free allowances will be maintained at 100% during the transitional period, be reduced starting from 2027, and be completely phased out in 2032;

(5) Adjustment to transitional period. According to the agreement on December 18, 2022, the CBAM is expected to enter into force on October 1, 2023, and a transitional period will commence and end on December 31, 2025. During the transitional period, declarants do not need to pay for allowances, but still need to fulfill their declaration obligations. The CBAM will become operational in 2026 and enter into full implementation by 2034, upon which importers need to pay for CBAM allowances based on the emissions of the products.

### **3. The EU ETS reform covers maritime transport.**

On June 22, 2022, the European Parliament adopted a draft revising the EU ETS, calling for bigger ambition for decarbonization<sup>85</sup>. The draft stipulates:

(1) a new emissions trading system (ETS II) for commercial buildings and road transport from 2024;

(2) increased 2030 greenhouse gas reduction target from 61% to 63%;

(3) inclusion of maritime transport in the ETS as of January 1, 2024, without a transitional period;

(4) expanded scope of applicable vessels. Emissions requirements apply to ships of 5,000 gross tonnage and above by the end of 2026, and also apply to ships of 400 gross tonnage and above from January 1, 2027;

(5) additional types of emissions, aside from carbon dioxide, methane and nitrous oxides. No later than December 31, 2024, the European Commission shall assess the impact on the global climate of greenhouse gas emissions and of particles with a global warming potential from ships arriving at, within or departing from ports of member states, and provide legislative proposals to address the question;

(6) increased coverage of routes. The ETS will cover only 50% of emissions from extra-EU routes until the end of 2026. From 2027, emissions from all intra- and extra-EU trips should be covered 100%;

(7) Amendment to the Regulation on the Monitoring, Reporting and Verification of Greenhouse Gas Emissions from Maritime Transport ("MRV Regulation"), to cover carbon dioxide, methane and nitrous oxide emissions.

<sup>85</sup> European Parliament. <https://www.europarl.europa.eu/news/en/press-room/20220603IPR32158/fit-for-55-in-2030-parliament-wants-a-more-ambitious-emissions-trading-system>.

## II. Analysis

### 1. The environmental issues becomes the EU's new tool to curb non-EU businesses.

Sustainability due diligence may become the EU's new barrier to block non-EU companies. *The Sustainability Due Diligence Directive* not only includes EU and non-EU businesses above a designated scale, but also incorporates other entities on their value chains. This means that most companies doing business with the EU shall fulfill the obligations of *the Sustainability Due Diligence Directive*, which goes far beyond companies' reach and capacity. To avert risks, companies may have to choose only supply chain partners within the EU.

Sustainability due diligence also increases compliance costs of non-EU companies. *The Sustainability Due Diligence Directive* highlights the initiative of companies, requiring them to establish systems able to identify, prevent and mitigate environmental hazards, and to ensure implementation through third-party audit and public reporting, which all rely on heavy input in human resources, logistics and time.

### 2. The CBAM may lead to new instances of unfair trade.

Under the CBAM, the EU will officially start imposing carbon border taxes on businesses in the nine sectors with high risks of carbon leakage from 2027, while phasing out EU producers' ETS free allowances until 2032. This means that in the five years between 2027 and 2032, importers will have to pay for CBAM certificates and carbon tariffs based on the emissions of the products, while EU industries may still get free allowances, leading to new instances of unfair competition in related sectors. According to our survey, 63.70% of the respondents believe that the CBAM leads to higher trade barriers (see Figure 9-1).

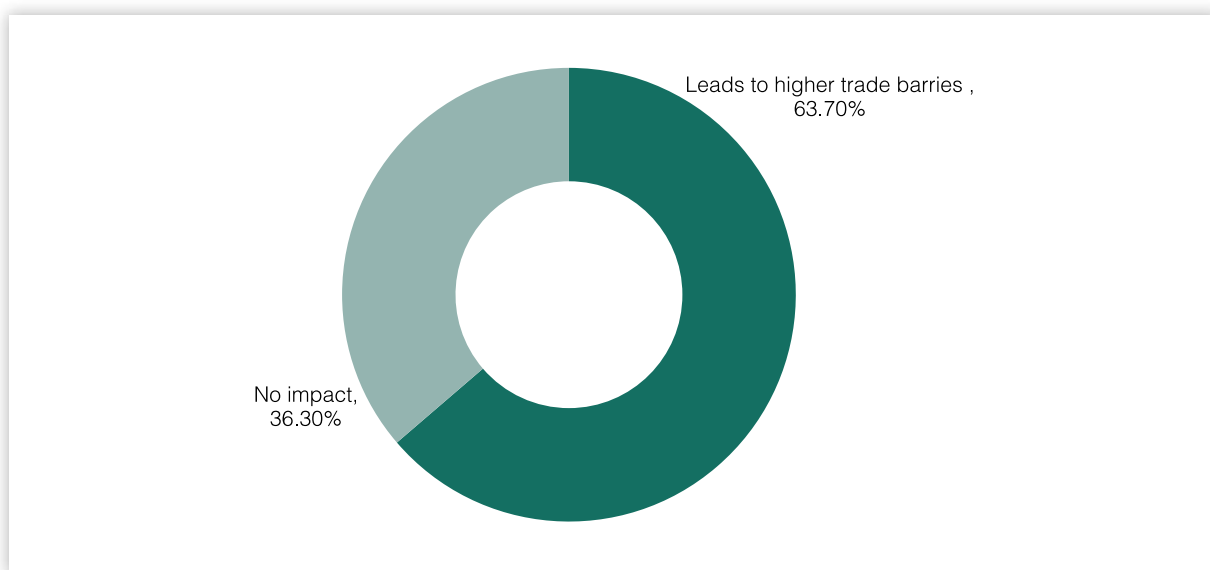


Figure 9-1: Whether the CBAM Leads to Higher Trade Barriers

Source: CCPIT Academy.

### 3. Chinese companies are excluded from the Green Deal projects.

According to the survey, 61.06% of the Chinese companies say they are unable to equally participate in projects under the European Green Deal(see Figure 9-2); 62.83% say they cannot equally enjoy EU green preferential policies and subsidies (see Figure 9-3); 74.11% say they are unable to equally apply for the EU's concessional loans supporting businesses' transition towards carbon neutrality (see Figure 9-4).

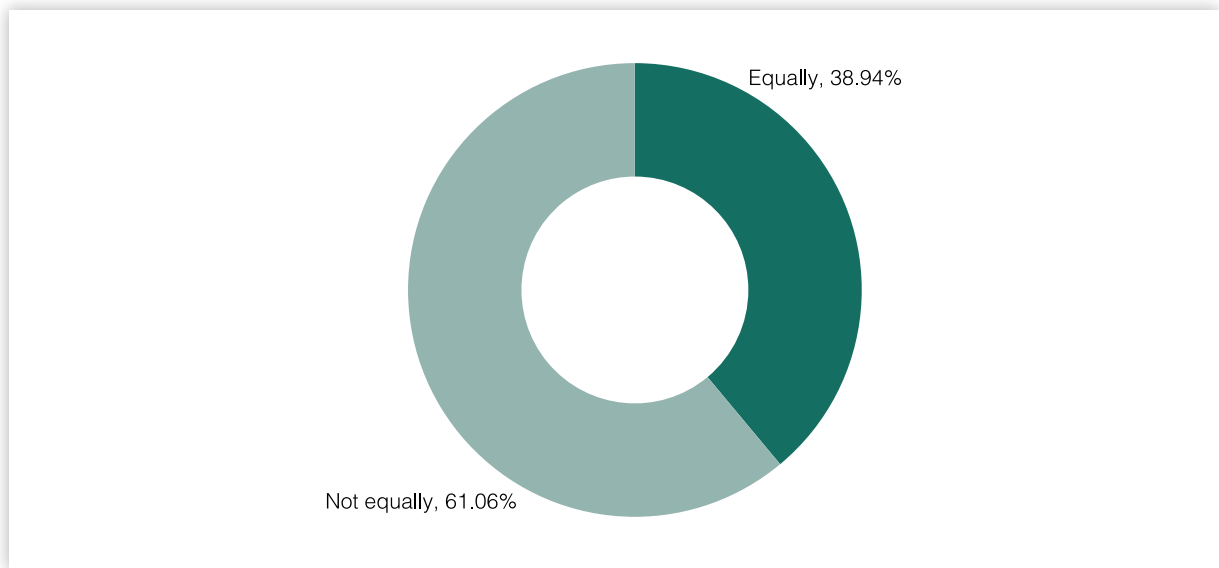


Figure 9-2: Whether Companies Can Participate in the Green Deal Projects Equally

Source: CCPIT Academy.

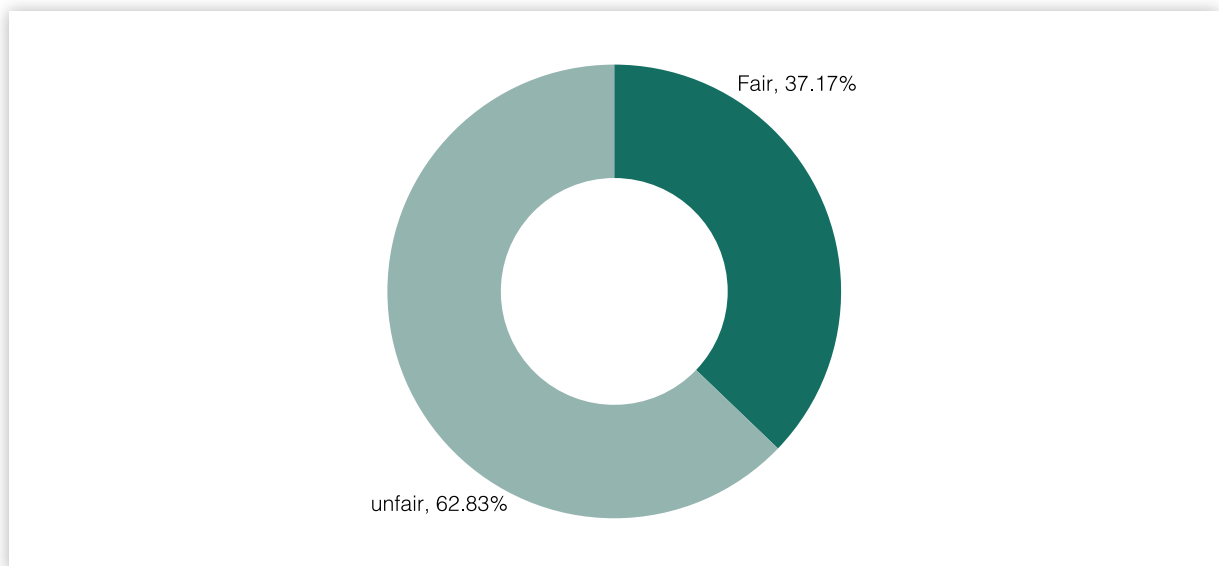


Figure 9-3: Whether Companies Can Enjoy Green Preferential Policies and Subsidies Fairly

Source: CCPIT Academy.

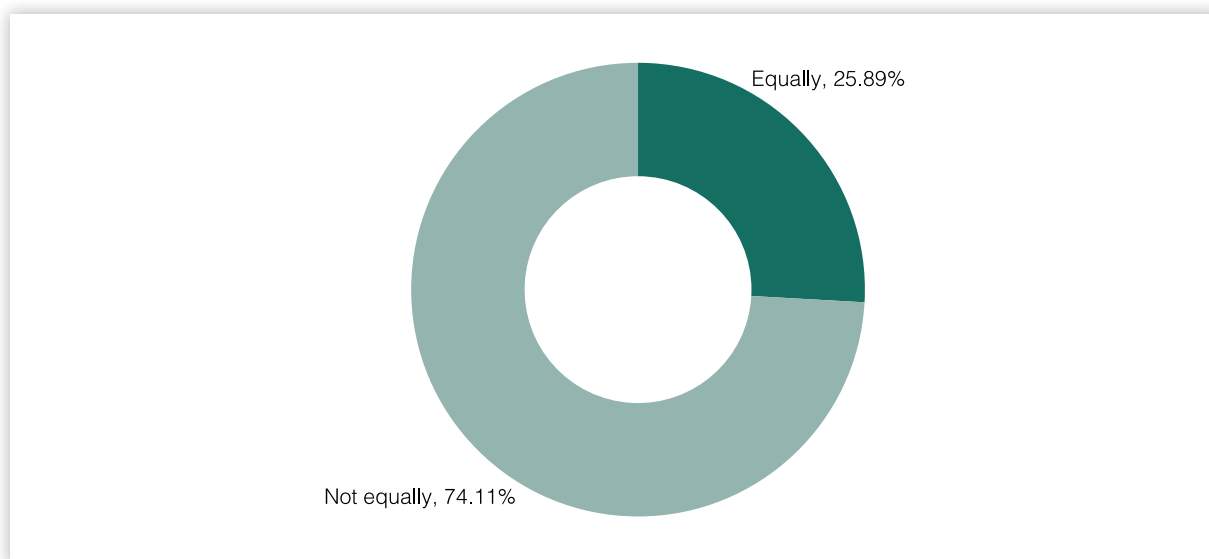


Figure 9-4: Whether Companies can Equally Apply for Concessional Loans Supporting Businesses' Transition Towards Carbon Neutrality

Source: CCPIT Academy.

### III. Our recommendations

#### **1. Narrow down due diligence obligations for lower compliance costs of businesses.**

It is recommended that the EU narrow down the scope of application of due diligence obligations as requirements for the whole of the value chains exceed the capacity of companies, and reduce unreasonable regulations on and demands for indirect suppliers. At the same time, the EU should streamline companies' due diligence procedures to lower their costs.

#### **2. Strictly limit scope expansion of the CBAM.**

It is recommended that the EU stop expanding the list of sectors falling under the CBAM, create a stable and predictable policy environment, and seriously assess impact and consequences that expanded scope may have on the sectors, to avoid disruption in the sectors or even the global value chain at large.

#### **3. Cancel free emission allowances to eliminate unfair competition.**

It is recommended that the EU cancel free emission allowances when importers need to pay for them based on the emissions embedded in the products, to ensure that importers from non-EU producers can compete with producers in the EU on a level playing field.

#### **4. Ensure market-based operation in decarbonization of maritime transport.**

It is recommended that the EU ensure market-based operation in decarbonization of the maritime transport sector, encourage ship operators, charterers and owners to negotiate among themselves agreements to split the cost, and avoid forced shifting of costs upon the operators.

#### **5. Facilitate mutual recognition of rules for carbon footprint certification.**

It is recommended that China and the EU expedite mutual recognition of rules for certification of producers' carbon footprints and determination of exporters' carbon content.

#### **6. Carry out green preferential policies in a fair and equitable manner.**

It is recommended that the EU treat all types of companies on the EU market as equals when implementing preferential policies targeting key sectors of the green economy, and establish fair, equitable, open and transparent mechanisms to grant such concessions.

#### **7. Introduce policies underpinning prosperity of the EU's green economy.**

It is recommended that the EU increase support for electric bus and truck pilot projects and the new energy sector; lower tariffs for power batteries upon entry into EU jurisdictions and reduce the wait for customs clearance and inspection of producer materials; accelerate the development of charging infrastructure and provide policy incentives; and establish more transparent conditions and procedures for applicants for new energy passenger vehicle incentives to make the market more transparent and conducive to fair competition.

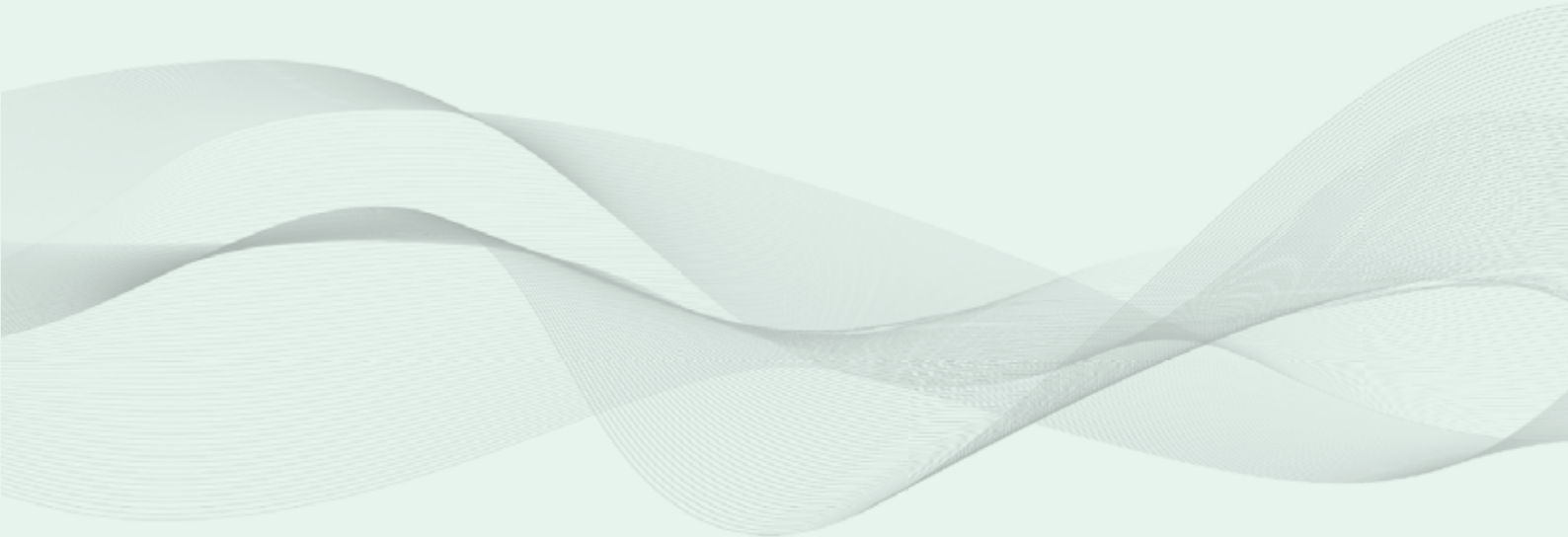
#### **8. Step up China-EU cooperation on the green economy.**

It is recommended that China and EU continue to strengthen cooperation and coordination in the carbon trading system, exchange views and share experience regarding carbon pricing, and develop their respective carbon trading systems. At the same time, they may deepen cooperation on the green economy by hosting related summits and platforms.



**Annex I**

**Overview of the Business Environment in  
Germany**



## I. China-Germany trade and economic relations

### 1. Bilateral trade in goods grew steadily.

As important trading partners to each other, China and Germany share close trade and economic connections featuring steady bilateral trade cooperation in recent years. For six years in a row, China has been Germany's largest trading partner, second largest source of import and second largest export market<sup>86</sup>. Germany is China's largest trading partner in the EU<sup>87</sup>.

In 2022, China-Germany trade in goods registered USD227.626 billion, down 3.1% year-on-year. China's goods export to Germany increased by 1% to USD116.227 billion (see Figure A1-1) and goods import from Germany declined by 7.1% to USD111.399 billion<sup>88</sup>. China imported more goods from Germany than any other country, and main imports included electric machinery and equipment, and mechanical apparatus, while main exports from China to Germany were machinery and electronics, and textiles and raw materials<sup>89</sup>.

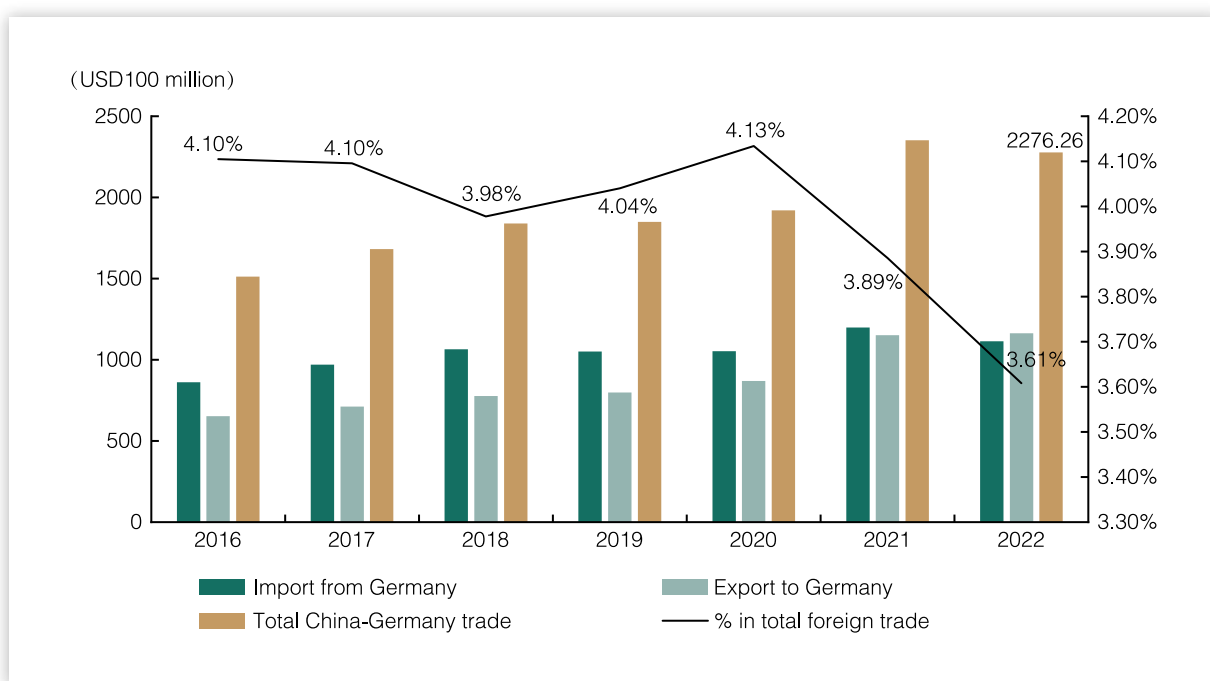


Figure A1-1: China-Germany Trade in Goods, 2016- 2022

Source: General Administration of Customs of China.

86 Statistisches Bundesamt. <https://www.destatis.de/EN/Themes/Economy/Foreign-Trade>.

87 General Administration of Customs of China. <http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302275/index.html>.

88 General Administration of Customs of China. <http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302275/4668440/index.html>.

89 Statistisches Bundesamt. <https://www-genesis.destatis.de/genesis/online?operation=previous&levelindex=2&step=0&titel=Statistics+%28tables%29&levelid=1668857727609&levelid=1668856489435#abreadcrumb>.



## 2. Two-way investment surged in 2022.

From January to October 2022, foreign direct investment (FDI) from Germany surged by 95.8% year-on-year<sup>90</sup>. In 2021, paid-in FDI from Germany increased by 24% to USD1.680 billion, accounting for 0.97% of the total paid-in FDI in China (see Figure A1-2).

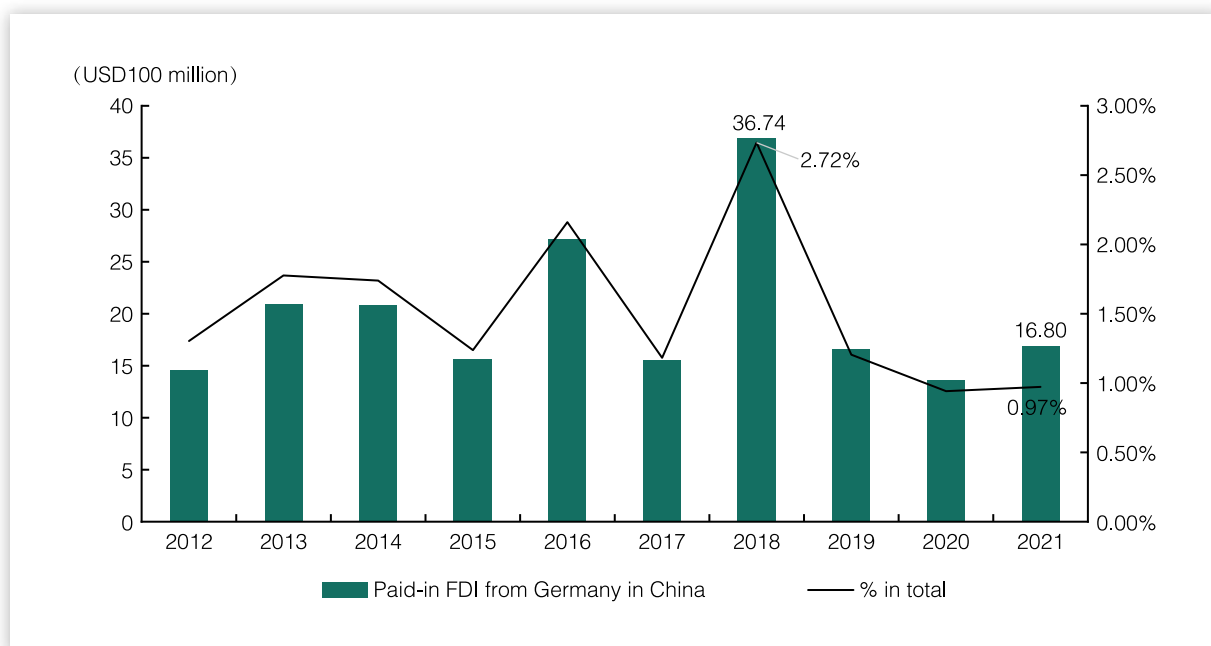


Figure A1-2: Paid-in FDI from Germany in China, 2012-2021

Source: Ministry of Commerce.

In 2021, the flow of Chinese direct investment in Germany grew significantly by 97.1% to USD2.711 billion (see Figure A1-3)<sup>91</sup>. The investment was mainly channeled to manufacturing, electricity, heat, gas and water supply, wholesale and retail, and finance.

90 Ministry of Commerce. <http://www.mofcom.gov.cn/article/xwfb/xwsjzr/202211/20221103368399.shtml>.

91 Ministry of Commerce, 2021 Statistical Bulletin of China's Outward FDI. <http://images.mofcom.gov.cn/fec/202211/20221118091910924.pdf>.

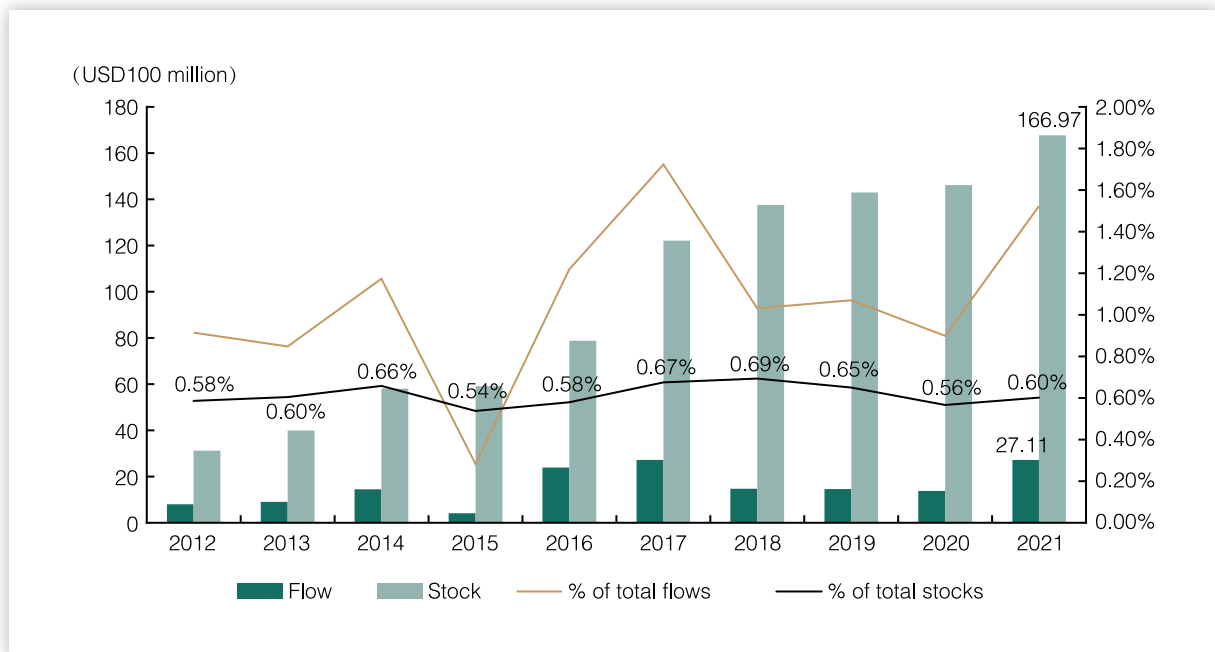


Figure A1-3: China's Direct Investment in Germany, 2012-2021  
Source: 2021 Statistical Bulletin of China's Outward FDI.

### 3. The scale of engineering contracting declined.

In 2020, the value of newly signed engineering contracts by Chinese companies in Germany dropped by 15.7% to USD523 million, making up 3% of the total value of China's new engineering contracts in Europe (see Figure A1-4). Performed contracts valued USD504 million, accounting for 0.32% of China's total performed contracts and 3.6% of China's total engineering contracts in Europe. In 2020, 38 Chinese workers were dispatched to Germany and 86 Chinese workers were in Germany at the end of the year under engineering contracts; a total of 1,585 Chinese workers were dispatched to Germany and 3,212 Chinese workers were in Germany at the end of the year under international labor cooperation arrangements.

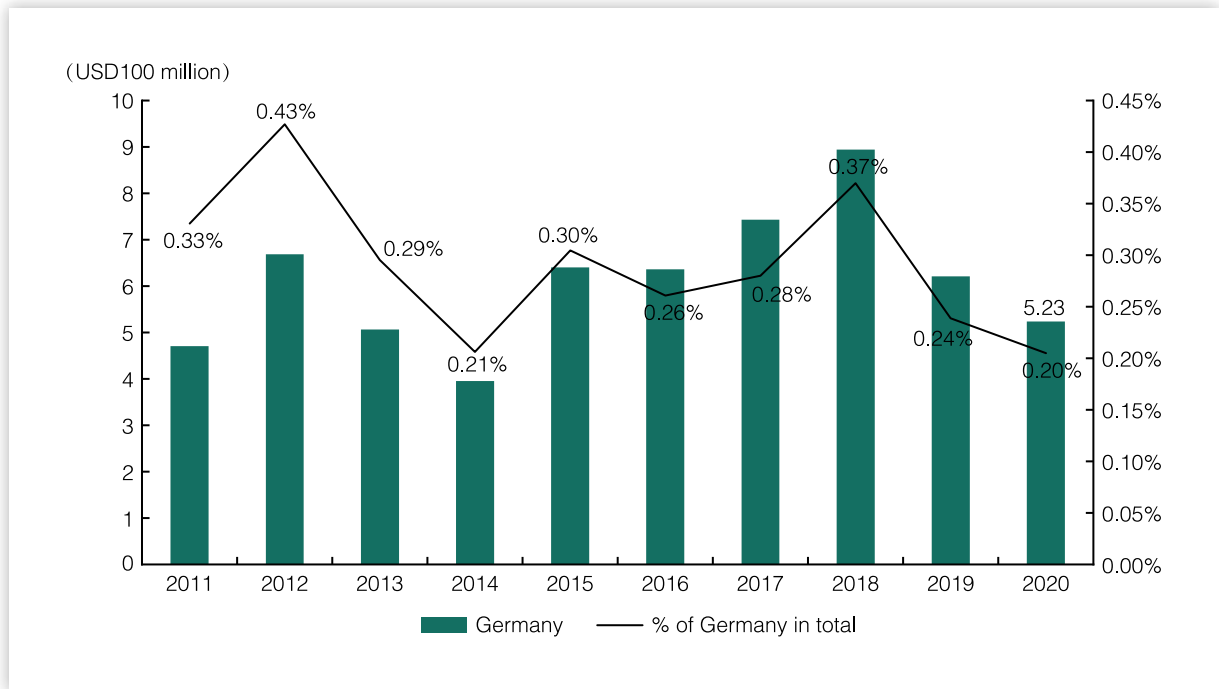


Figure A1-4: Value of China's New Engineering Contracts in Germany, 2012-2021  
 Source: 2021 Statistical Bulletin of China's Outward FDI.

## II. Main problems

### 1. Politicizing trade and economic topics has become a strong tendency.

According to our survey, 63% of the respondents think that the German government has a strong tendency to politicize economic matters (see Figure A1-5).

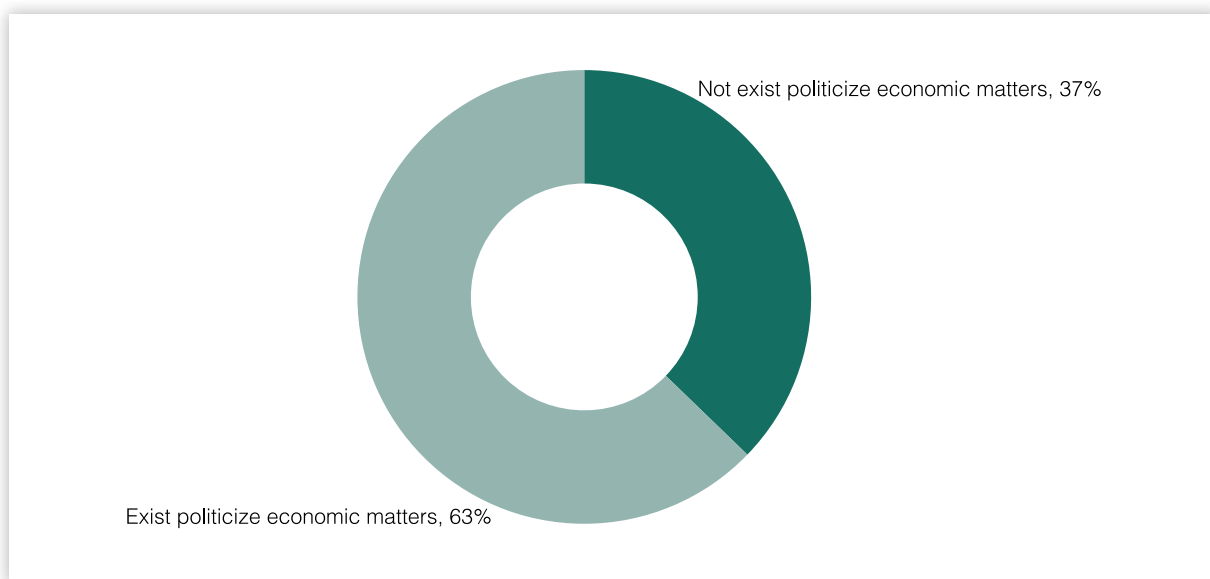


Figure A1-5: Whether Companies Think Germany Politicizes Economic Matters

Source: CCPIT Academy.

## 2. Companies voice serious concerns about rising production costs in Germany.

Chinese businesses in Germany consider rising production costs to be the biggest challenge. According to our survey, 53% of the respondents say that production costs keep rising, 45% say that the Russia-Ukraine conflict has disrupted their normal operations, 35% say that barriers to market access in Germany becomes higher, and 27% report heavy tax burden (see Figure A1-6).

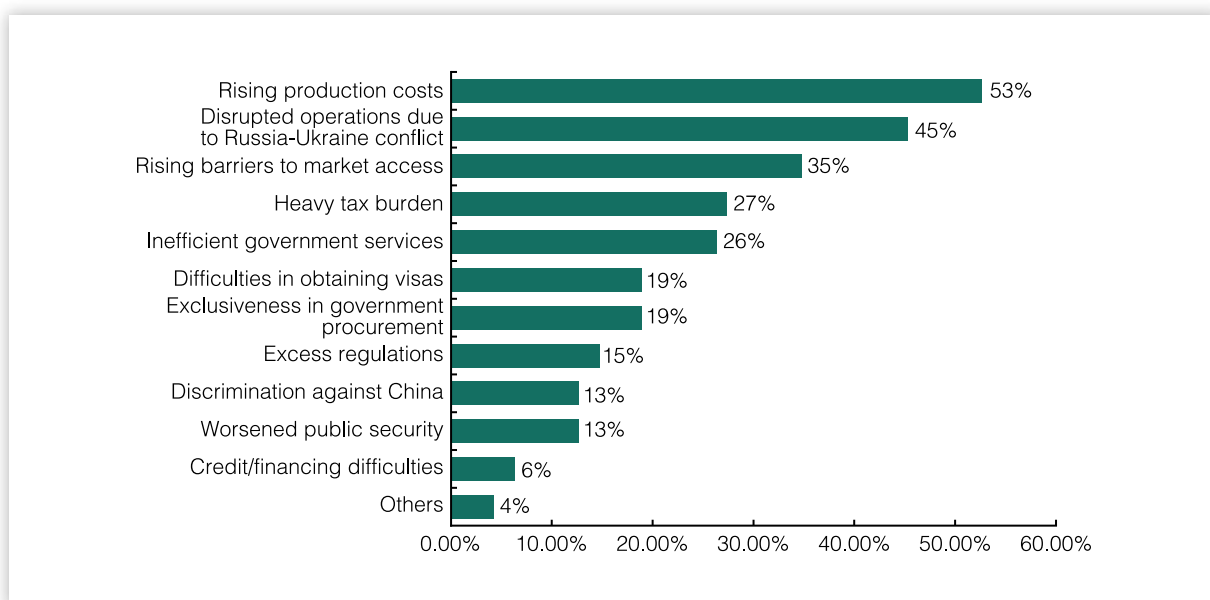


Figure A1-6: Problems with the Business Environment in Germany, Reported by Companies

Source: CCPIT Academy.

### 3. The Russia-Ukraine conflict negatively impacts companies.

The business environment in Germany has declined after the Russia-Ukraine conflict started. According to our survey, 39% of the respondents say that Germany has become unfriendly to foreign investors after the conflict (see Figure A1-7); 54% of the companies say that they are negatively impacted by Germany's sanctions against Russia (see Figure A1-8).

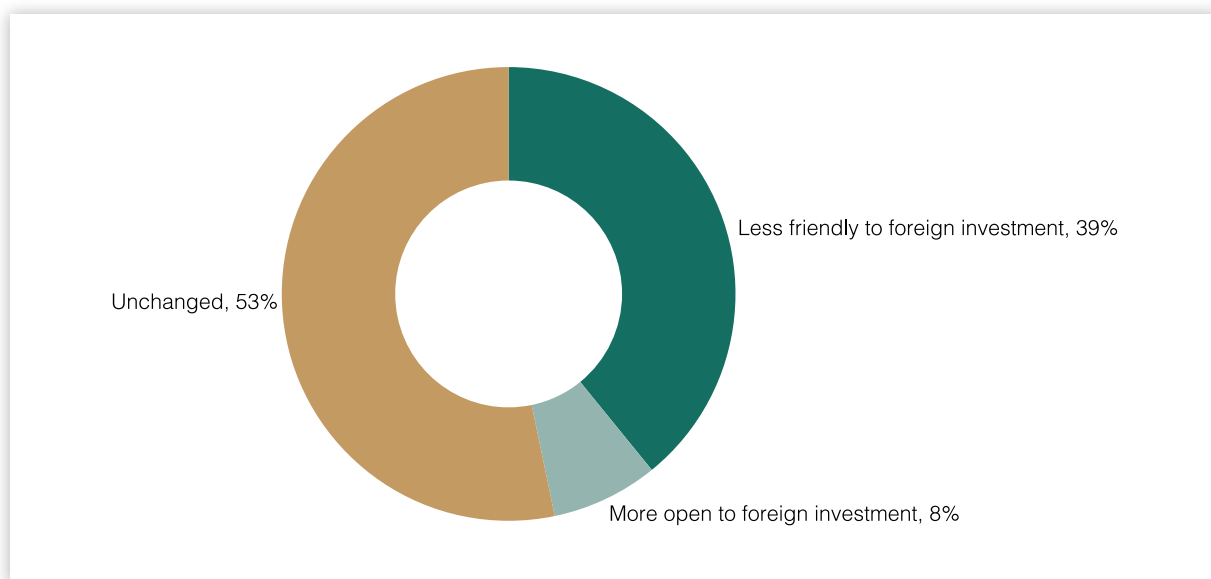


Figure A1-7: Changes in Germany's Attitude Towards Foreign Investors, Reported by Chinese Companies  
Source: CCPIT Academy.

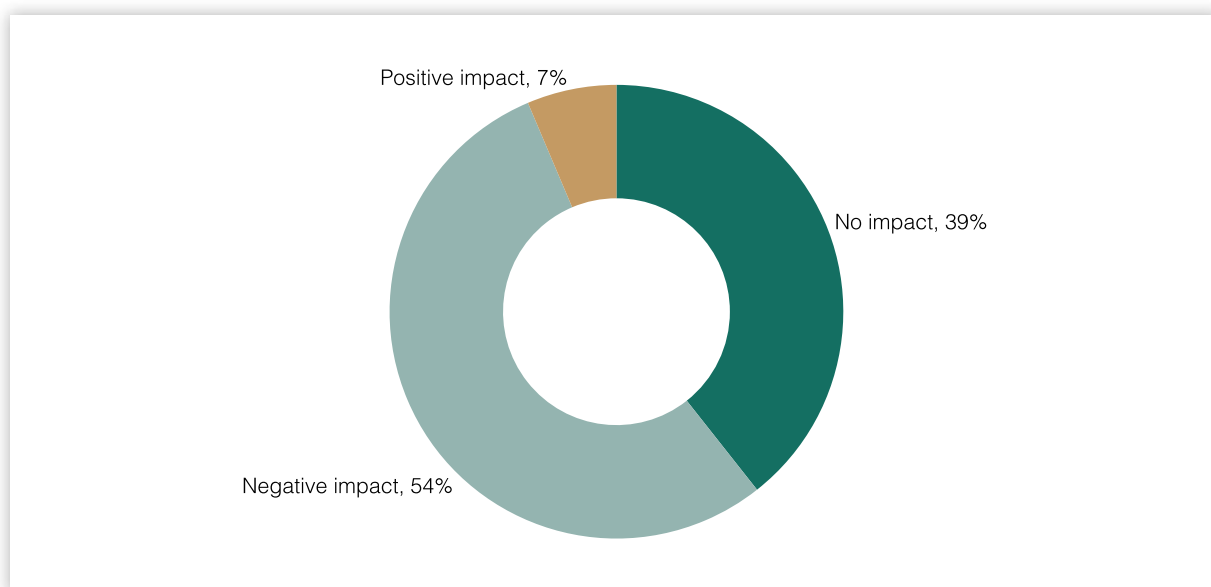
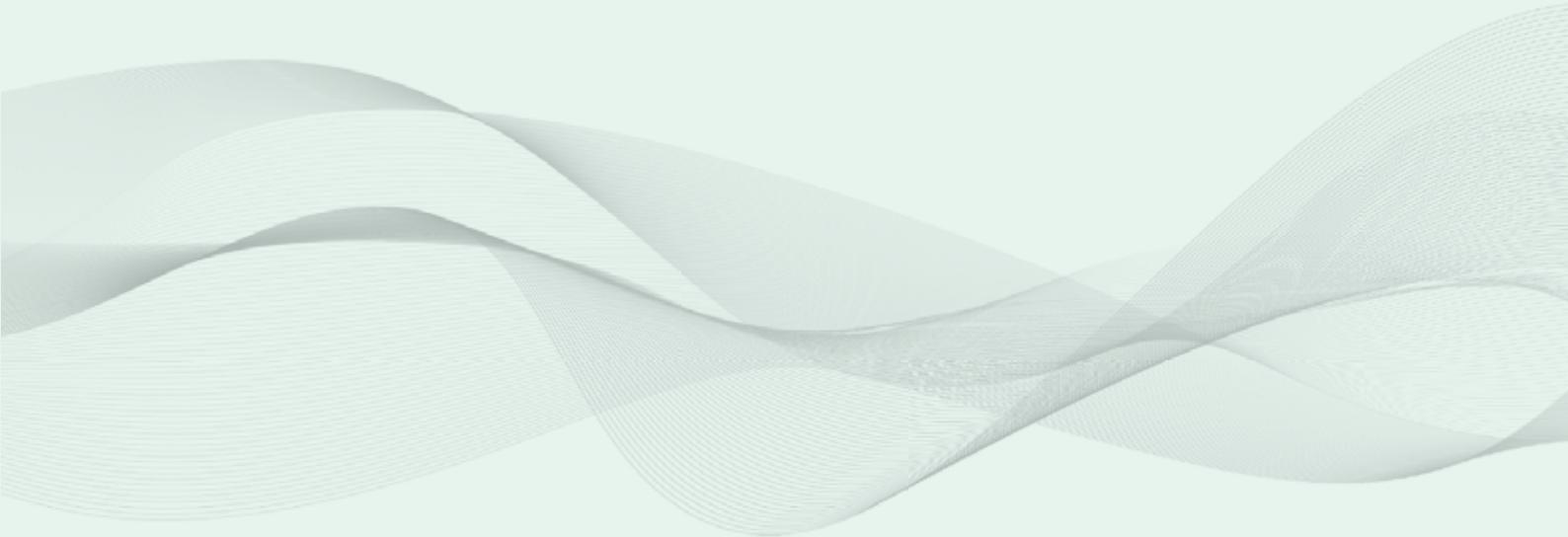


Figure A1-8: How EU Sanctions Against Russia Affect Companies  
Source: CCPIT Academy.



**Annex II**  
**Overview of the Business Environment in  
Germany**



## I. China-France trade and economic relations

### 1. Trade in goods grew rapidly.

China and France share close trade and economic ties. Bilateral trade in goods has grown rapidly in recent years. China is France's sixth largest trading partner globally and the largest trading partner in Asia<sup>92</sup>. France is China's third largest trading partner in the EU<sup>93</sup>.

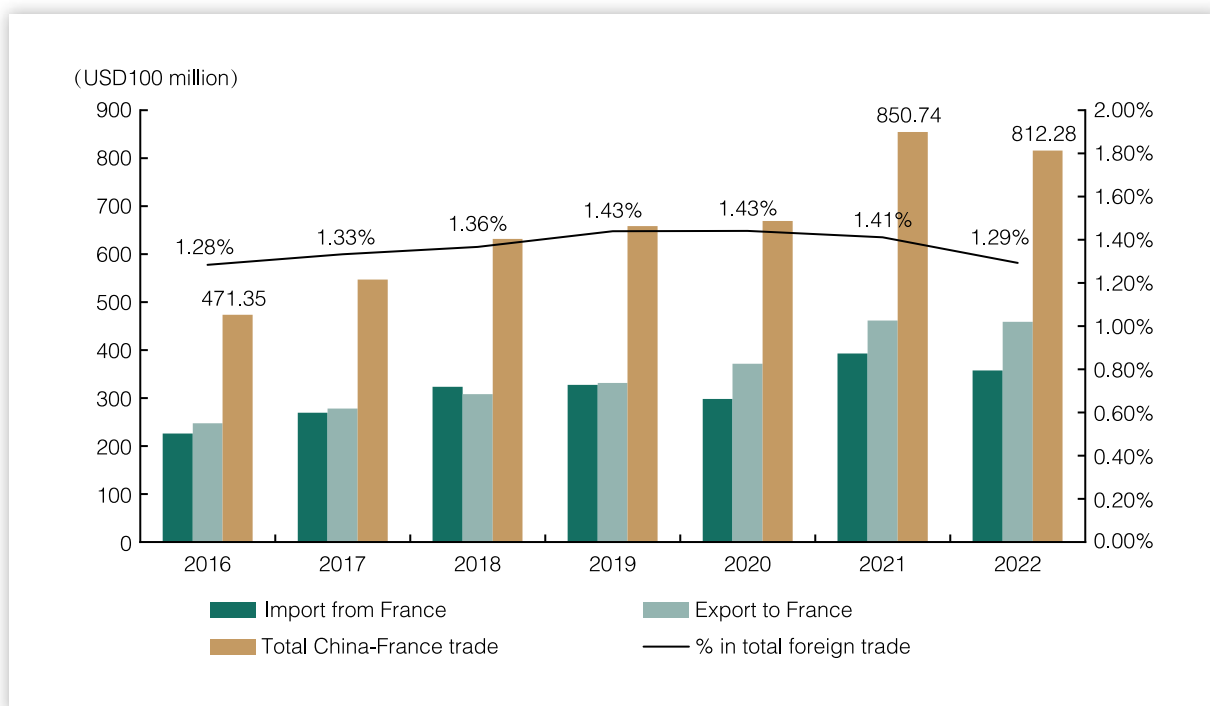


Figure A2-1: China-France Trade in Goods, 2016- 2022

Source: General Administration of Customs of China.

From January to November 2022, China-France trade in goods registered USD81.228 billion, down 4.4% year-on-year. China's goods export to France decreased by 0.5% to USD45.663 billion and

92 Eurostat. <https://ec.europa.eu/eurostat/web/international-trade-in-goods/visualisations>.

93 General Administration of Customs of China. <http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302277/302276/4127605/index.html>.



goods import from France declined by 9% to USD35.565 billion<sup>94</sup> (see Figure A2-1). Main exports from China to France include electric machinery equipment, audiovisual devices and compartments<sup>95</sup>, while main import from France to China were chemicals and related industrial goods<sup>96</sup>.

**2. Bilateral investment volume remained modest.**

In 2021, paid-in FDI from France increased by 38.5% to USD710 million, accounting for 0.41% of the total paid-in FDI in China (see Figure A2-2).

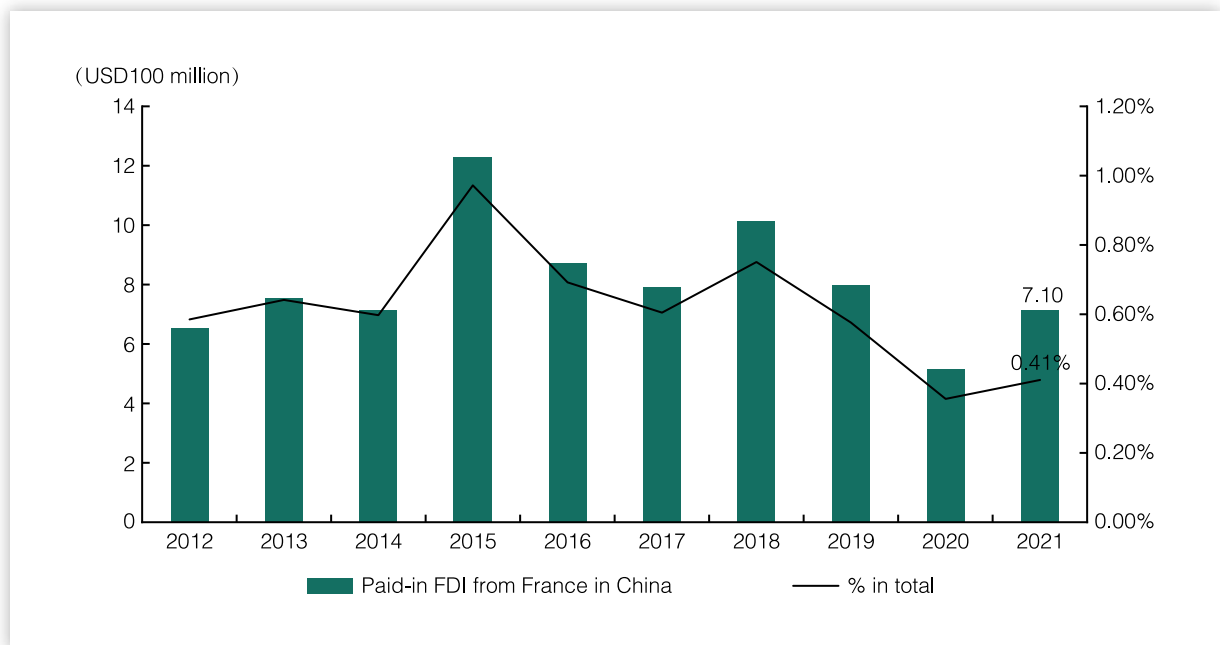


Figure A2-2: Paid-in FDI from France in China, 2012-2021  
 Source: Ministry of Commerce of China.

Chinese direct investment in France remained modest. In 2021, Chinese direct investment flow to France decreased sharply to USD125 million (see Figure A2-3).

94 General Administration of Customs of China. <http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302275/4668440/index.html>.  
 95 General Administration of Customs of China. <http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302277/302276/4687321/index.html>.  
 96 General Administration of Customs of China. <http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302277/302276/4687385/index.html>.

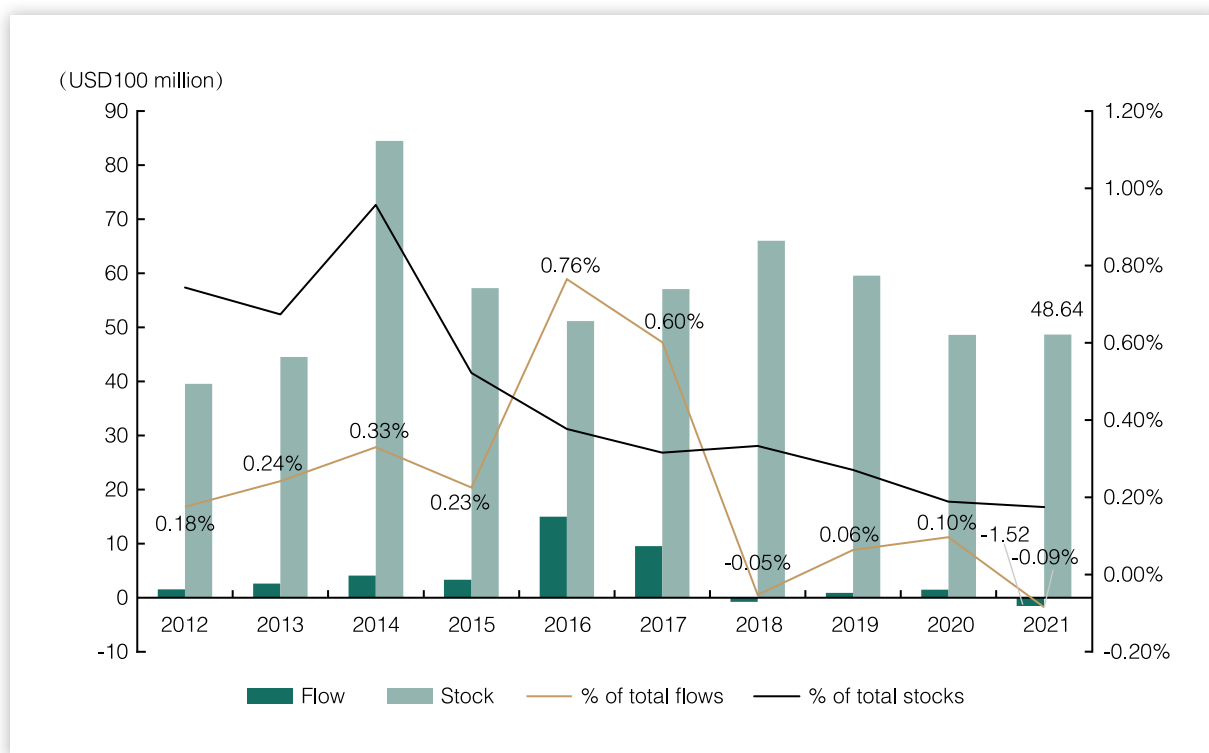


Figure A2-3: China's Direct Investment in France, 2012-2021

Source: 2021 Statistical Bulletin of China's Outward FDI.

### 3. The scale of engineering contracting declined.

In 2020, the value of newly signed engineering contracts by Chinese companies in France dropped by 10.7% to USD1.458 billion, making up 0.57% of China's total new engineering contracts and 6.98% of China's new engineering contracts in Europe (see Figure A2-4). Performed contracts valued USD1.472 billion, accounting for 0.94% of China's total performed contracts and 10.75% of China's total engineering contracts in Europe. In 2020, 93 Chinese workers were dispatched to France and 157 Chinese workers were in France at the end of the year under engineering contracts; a total of 207 Chinese workers were dispatched to France and 190 Chinese workers were in France at the end of the year under international labor cooperation arrangements<sup>97</sup>.

<sup>97</sup> National Bureau of Statistics. <https://data.stats.gov.cn/easyquery.htm?cn=C01>.

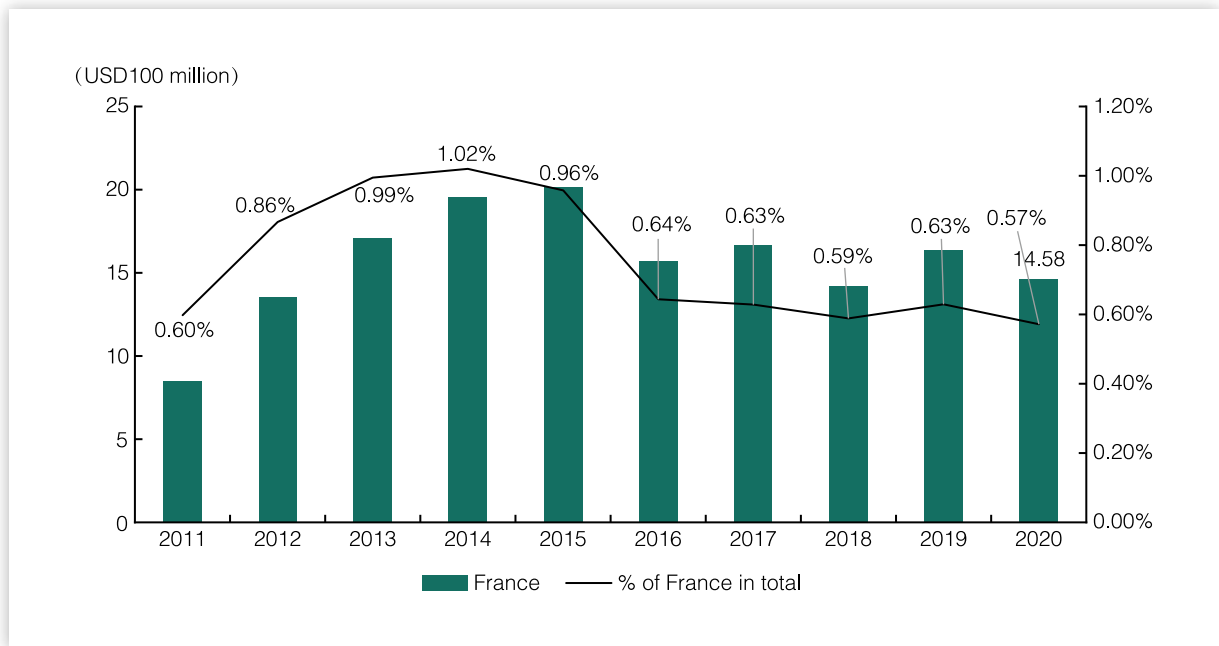


Figure A2-4: Value of China's New Engineering Contracts in France,2012-2020  
 Source: 2021 Statistical Bulletin of China's Outward FDI.

## II. Main problems

### 1. Barriers to market access continue rising.

The Sustainable Due Diligence Directive and proposal for a foreign subsidies regulation published by the EU step up review of foreign investment, which has already affected Chinese businesses in France. According to our survey, 45% of the recipients say that the business environment in France has worsened (see Figure A2-5).

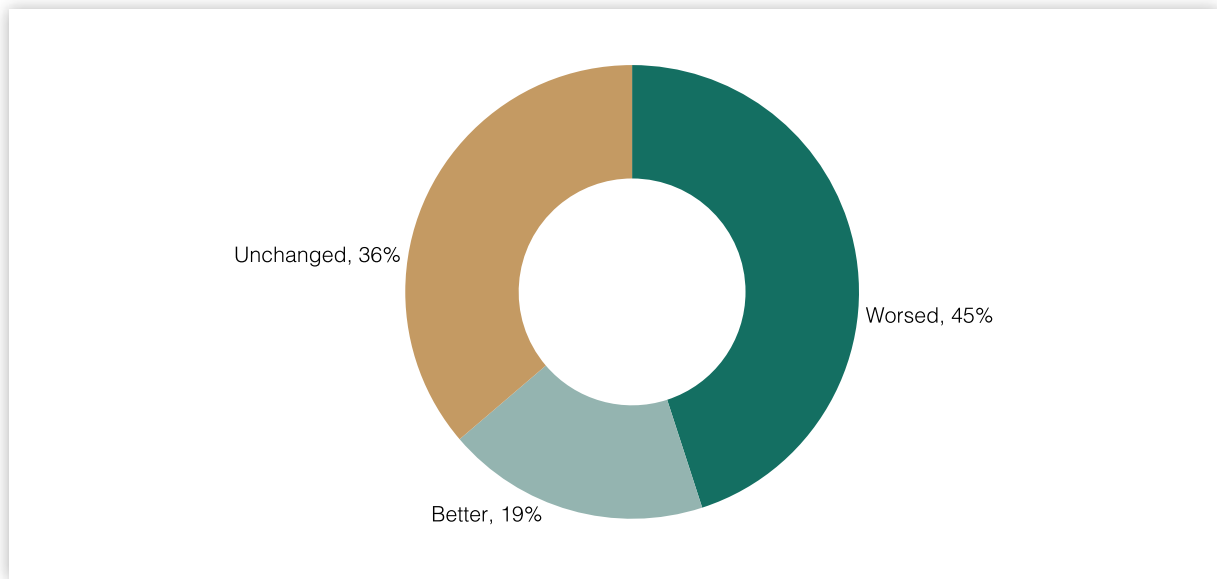


Figure A2-5: Changes to EU Market Access, Reported by Companies Investing in France  
Source: CCPIT Academy.

**2. The government has excess discretion and legislation is not transparent enough.**

Chinese companies in France report that the French government has excess discretion in foreign investment enforcement, and that French laws and regulations need to be more transparent. According to the survey, 36% of the Chinese companies find that local governments are not transparent enough in enforcement (see Figure A2-6), 37% think that the French government has excess discretion (see Figure A2-7), and 36% believe that French laws and regulations are not transparent enough (see Figure A2-8).

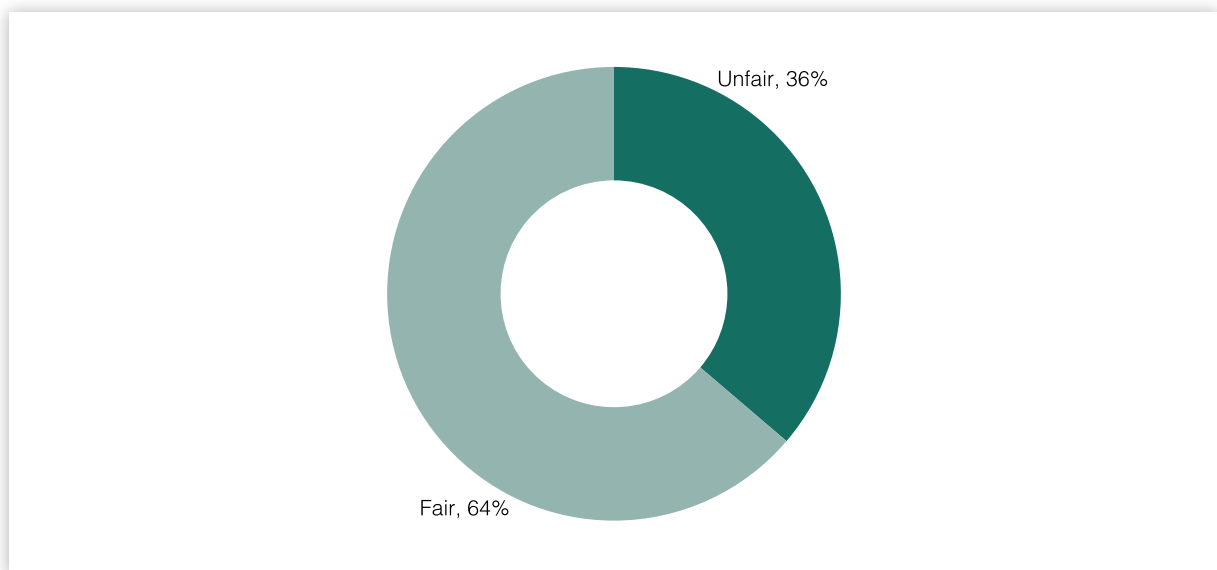


Figure A2-6: Whether Companies Are Treated Fairly in Foreign Investment Enforcement  
Source: CCPIT Academy.

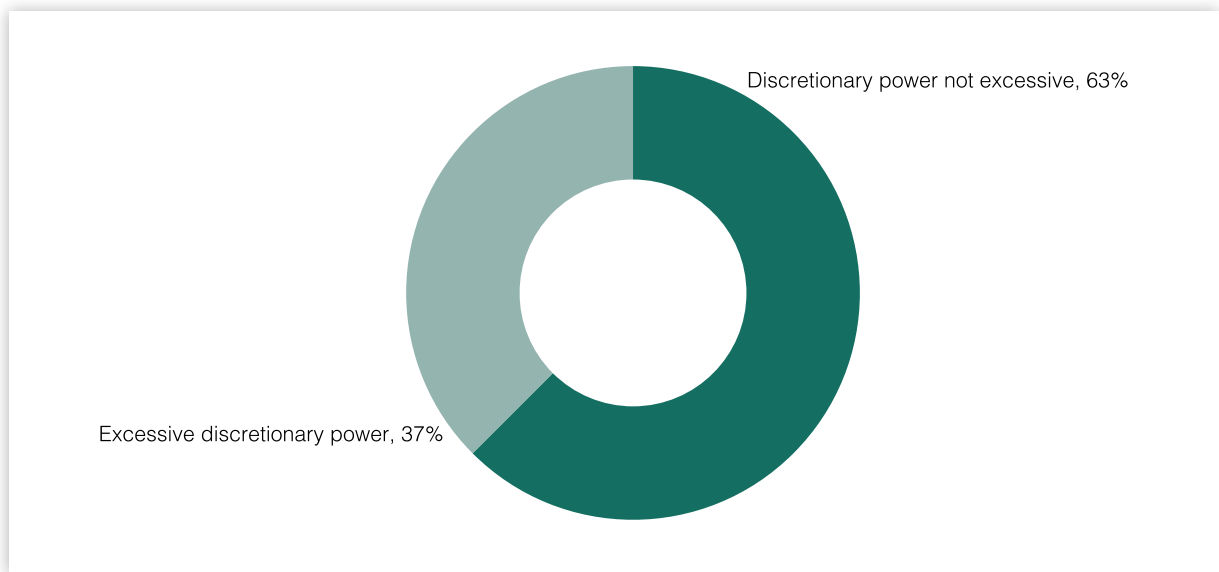


Figure A2-7: Whether the French Government Has Excess Discretion  
 Source: CCPIT Academy.

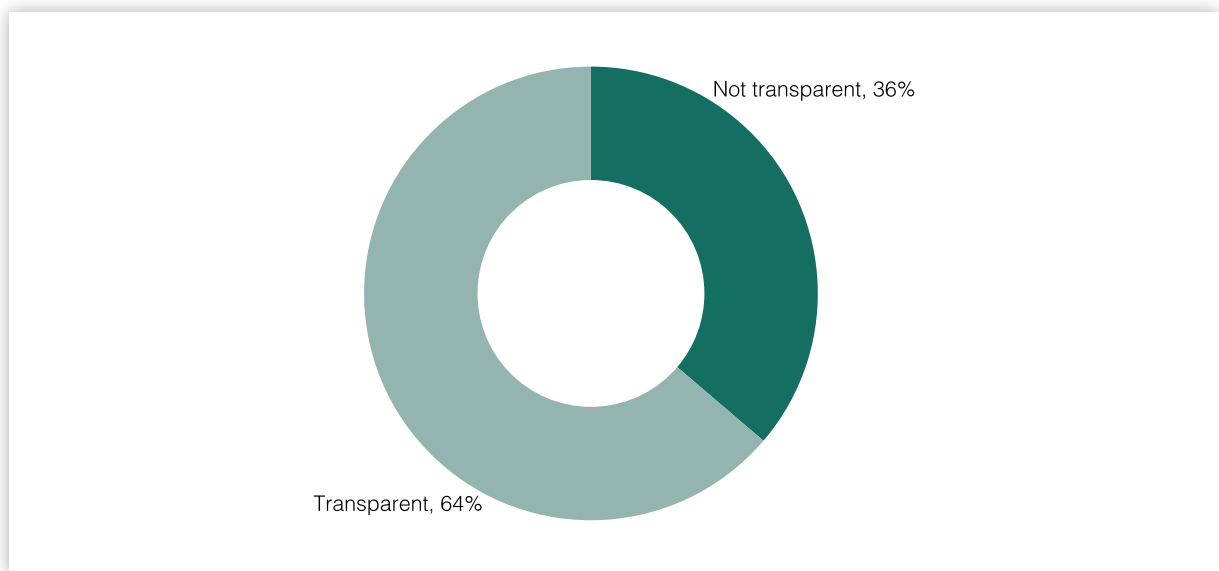


Figure A2-8: Whether French Laws and Regulations Are Transparent  
 Source: CCPIT Academy.

**3. Nearly 40% of the companies don't have equal access to concessions.**

The French government has introduced a set of preferential policies for companies, in a bid to stimulate economic recovery. However, Chinese companies in France report that these policies do not treat foreign companies as equals. The survey shows that 39% of the Chinese companies say they do not have equal access to these concessions (see Figure A2-9).

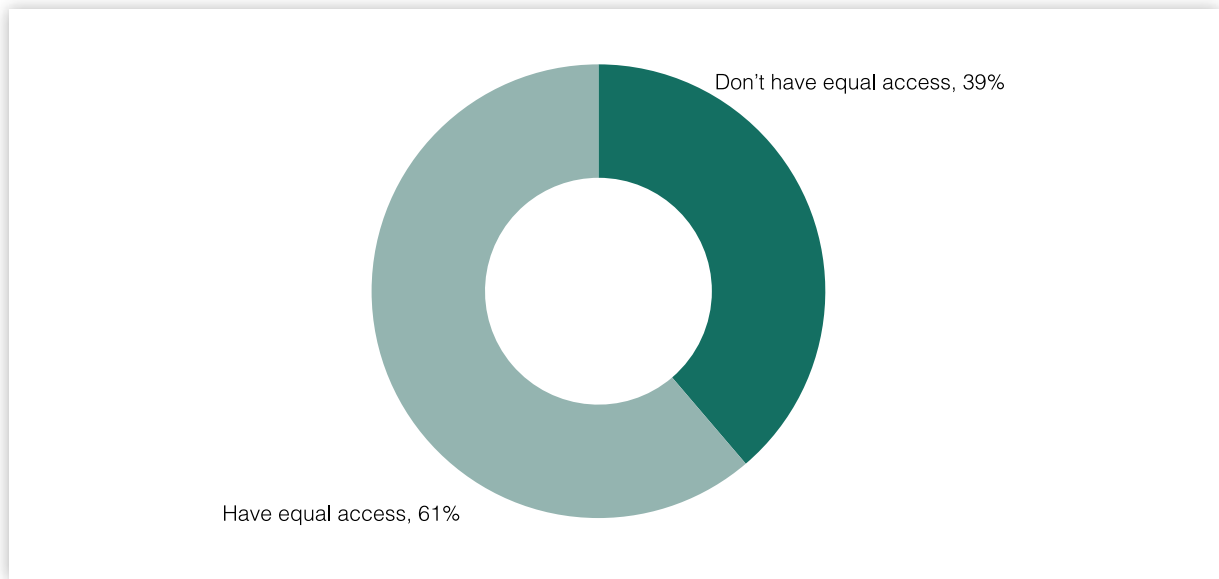


Figure A2-9: Whether Companies Investing in France Have Equal Access to Concessions  
Source: CCPIT Academy.

**Annex III**  
**Overview of the Research Process**



## I. Research methodology

The CCPIT Academy launched research for the *Report on the Business Environment of the European Union 2022/2023* in 2022. In order to fully understand and reflect the demands of Chinese enterprises in the EU, the research team adopted various methods including surveys, interviews and policy analysis.

### **1. Survey.**

A total of 600 questionnaires were distributed and 298 valid questionnaires were returned, all of which were completed by senior managers directly involved in the specific operations of their enterprises in the EU. Questions cover company information, state of operation, and evaluation of the business environment, market access, competition policies, public service, cross-border movement of people, public procurement, the green economy and the digital economy. During the survey, the research team independently prepared the questionnaire and sorted and analyzed the feedback collected.

### **2. Interviews with companies.**

The team conducted research at 71 companies operating in the EU through field visits and online and on-site seminars. The interviewees were all senior managers responsible for their companies' EU business. In order to gain an accurate picture of the companies' state of operation in the EU from different perspectives, the research team also visited law firms, accounting firms, consulting firms and other third-party intermediary service providers.

### **3. Policy analysis.**

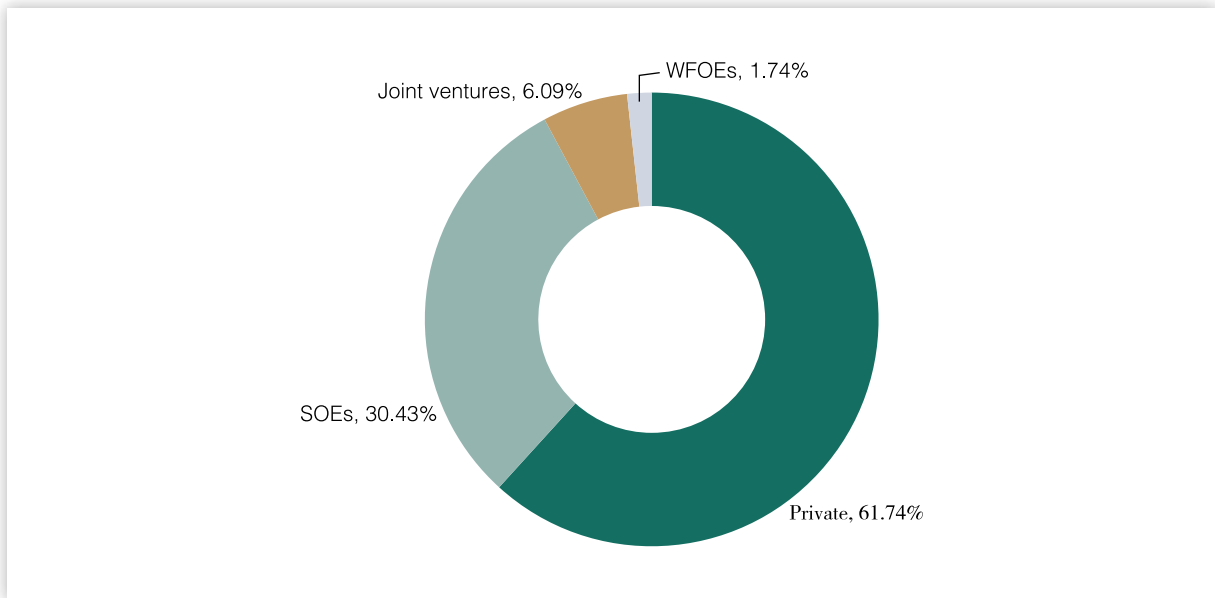
The research team comprehensively and systematically collated and analyzed the legislation of the EU pertaining to the business environment in 2022 in the areas of trade remedy, foreign investment review, competition policies, public procurement, financial policies, the digital economy, and the green economy, providing an in-depth analysis from an institutional perspective of the recent developments of the EU business environment.

## II. Characteristics of respondents to the questionnaire

### **1. Distribution by ownership.**

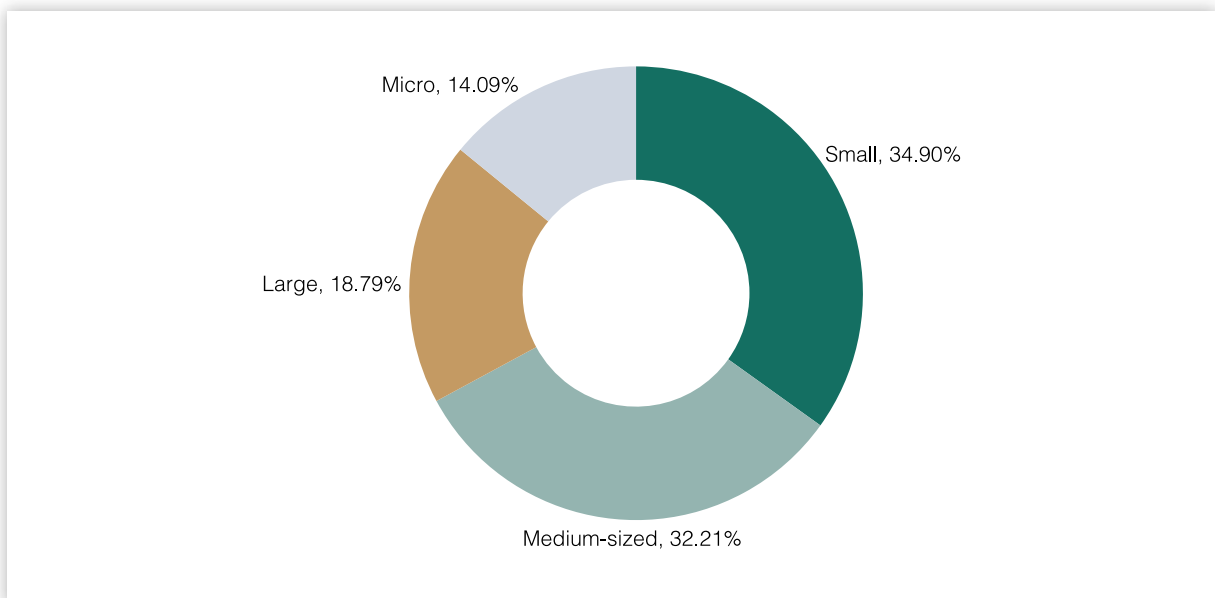
In terms of the nature of the enterprises surveyed, there were 184 private enterprises (61.74%), 91 SOEs (30.43%), 18 joint ventures (6.09%), and 5 wholly foreign owned enterprises (WFOEs) (1.74%).





## 2. Distribution by size.

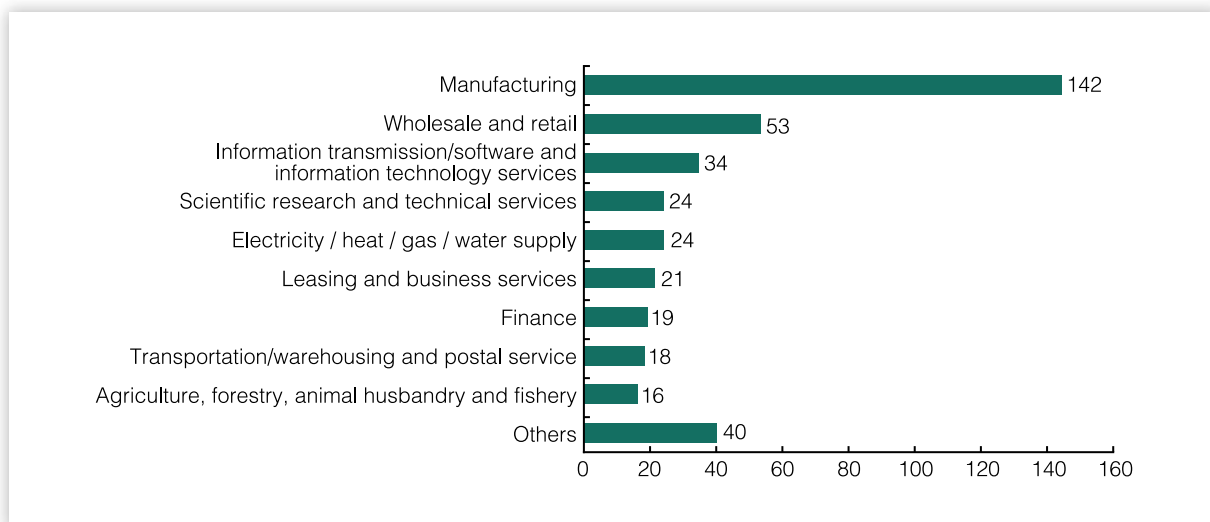
In terms of the size of the enterprises surveyed, the majority was small enterprises (104, 34.90%), followed by medium-sized enterprises (96, 32.21%), large enterprises (56, 18.79%), and micro enterprises (42, 14.09%).



## 3. Distribution by sector.

In terms of the sectors the respondents do business in within the EU, the largest proportion of them

engage in manufacturing (142), while wholesale and retail business (53), information transmission/software and information technology services (33), scientific research and technological services (24), electricity, heat, gas and water supply (24), and leasing and business services (23) ranked second to fifth.



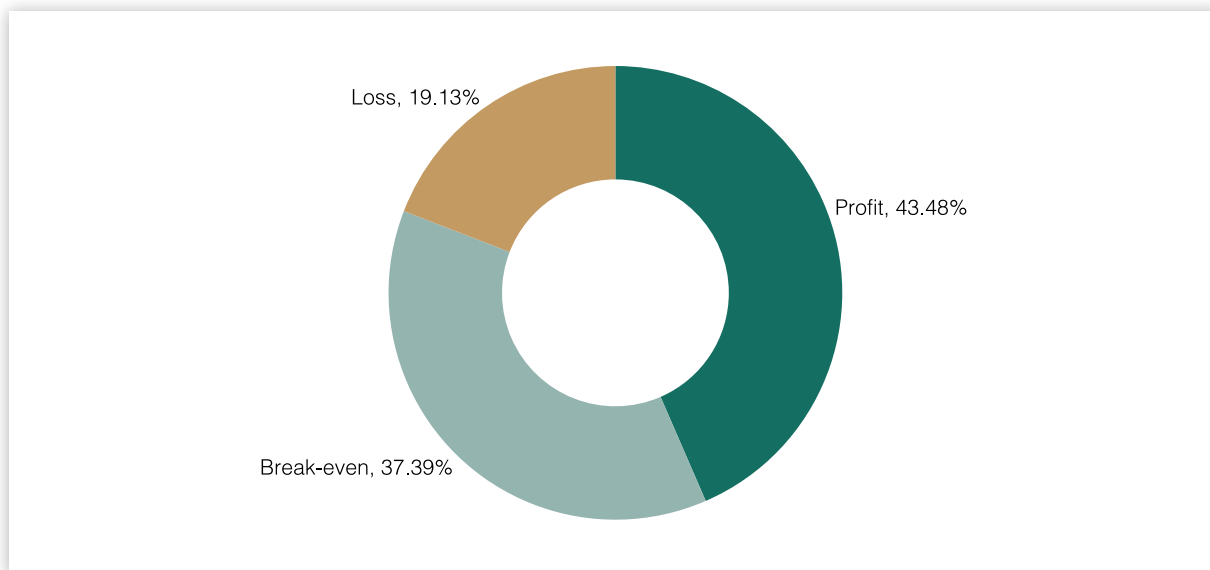
## **Annex IV**

# **Business Performance of Chinese Companies in the EU in 2022**



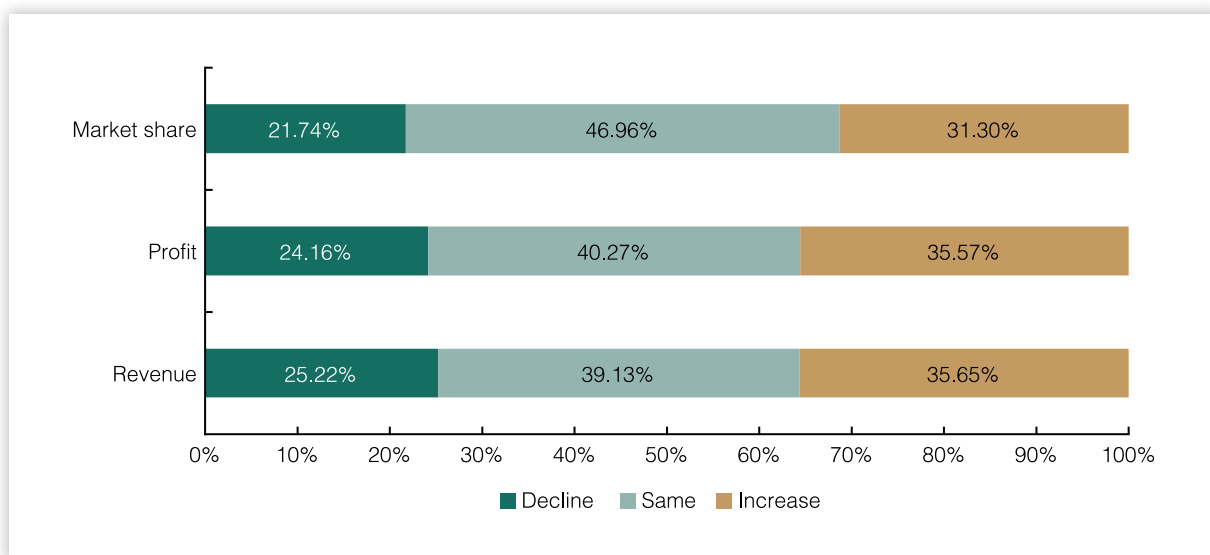
### 1. Decrease in the proportion of Chinese companies making profits in the EU.

According to the survey, the proportion of enterprises expecting to operate at a loss in the EU in 2022 was 19.13%, 0.67 percentage points higher than that in 2021; the proportion of enterprises expecting to make a profit was 43.48%, 3.16 percentage points lower than that in 2021.



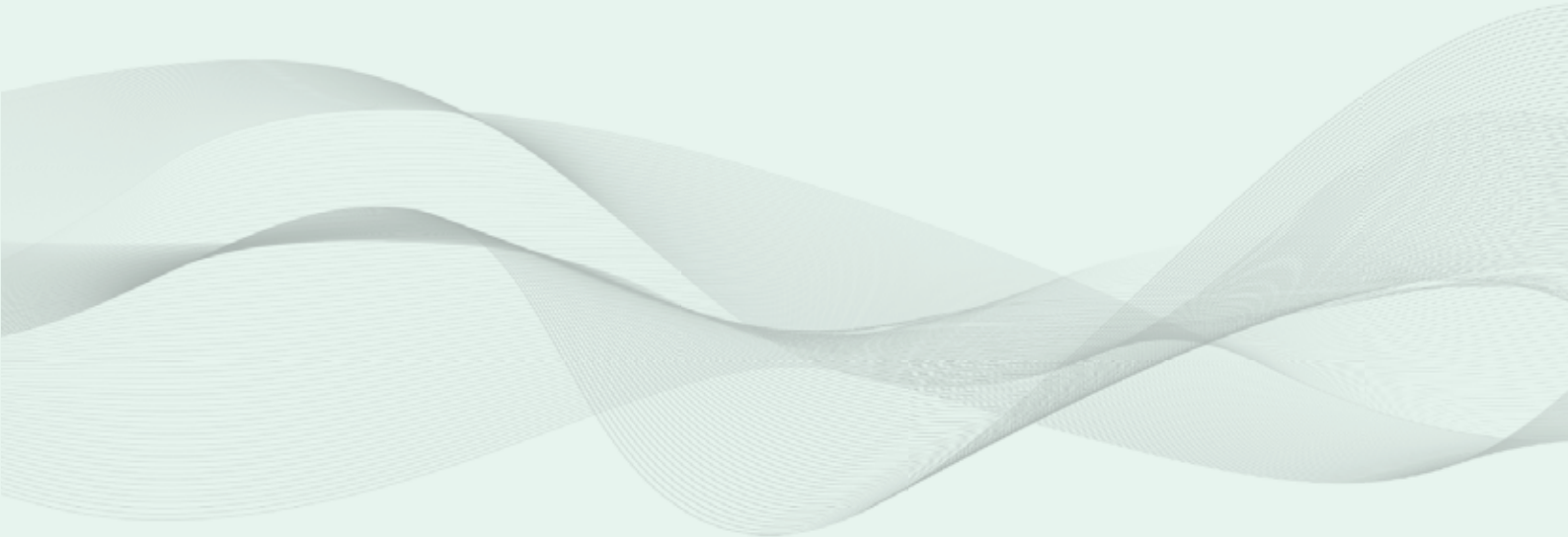
### 2. One quarter of enterprises expect a decline in revenue and profit.

The survey shows that the business situation in the EU worsened in 2022 compared to 2021, with 35.65%, 35.57% and 31.30% of the companies indicating an increase in revenue, in profit and in market share, respectively, a decrease of 2.94, 0.67 and 2.93 percentage points compared to 2021.



## **Annex V**

# **Introduction to the CCPIT Academy**



The Academy of the China Council for the Promotion of International Trade (CCPIT Academy) is a research institute directly affiliated to the CCPIT.

The CCPIT Academy is committed to building a trade and economic think tank with a strong academic foundation which serves government authorities and represents the businesses. Focusing on national economic development and external affairs, the CCPIT Academy initiates research projects in international trade, cross-border investment, world economic situations, domestic and international markets, e-commerce, business law and other areas, undertakes research commissions from international organizations, government departments at all levels, trade promotion agencies and businesses, and provide consulting service for policymaking, subnational planning, industry development and business operations.

The CCPIT Academy has a host of renowned Chinese experts in domestic and international trade, as well as a high-level research team on international trade, outbound investment, e-commerce and market circulation.

**Website:** [www.ccpit-academy.org](http://www.ccpit-academy.org)

**Address:** Room A716, Wantong New World Plaza, No.2 Fuchengmenwai Street, Xicheng District, Beijing 200037, China

**Tel:** +86 010-68015121