

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

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

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

## **SECTION II: LIBERALISATION OF INVESTMENT**

### **Article 1 Scope of Application**

1. This Section applies to measures or treatment adopted or maintained by a Party affecting the establishment of an enterprise or the operation of a covered enterprise by an investor of the other Party in its territory. For the purpose of Article 3 [Performance Requirements], it applies with respect to the establishment and operation of all enterprises in the territory of the Party which adopts or maintains the measure or treatment.
2. This Section does not apply to:
  - (a) audio-visual services;
  - (b) air transport services and auxiliary air services other than:
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services;
    - (iii) computer reservation systems (CRS) services;
    - (iv) ground handling services;
  - (c) activities supplied in the exercise of governmental authority.
3. This [Section] does not apply to any measure of a Party with respect to government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale.
4. Articles [National Treatment], [Most-Favored-Nation Treatment] and [Senior Management, Boards of Directors and Entry of Personnel] do not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees, and insurance.

### **Article 2 Market Access**

1. In sectors or subsectors where market access commitments are undertaken and subject to the terms, limitations and conditions specified in [Annex], neither Party shall adopt or maintain with regard to market access through constitution, acquisition<sup>1</sup> or maintenance of an enterprise by an investor of a Party, either on the basis of its entire territory or on the basis of a regional subdivision measures that:
  - (a) impose limitations on:
    - (i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;
    - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
    - (iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>2</sup>
    - (iv) the total number of natural persons that may be employed in a particular sector or subsector, or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.
  - (b) restrict or require a specific type of legal entity or joint venture through which an enterprise may carry out an economic activity.

### **Article 3** **Performance Requirements**

1. Neither Party may, in connection with the establishment or the operation of all enterprises in its territory, impose or enforce any requirement or enforce any commitment or undertaking:<sup>3</sup>
  - (a) to export a given level or percentage of goods or services;
  - (b) to achieve a given level or percentage of domestic content of goods or services;
  - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory<sup>4</sup>;

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<sup>6</sup> For the purposes of this Article, the term acquisition shall be understood as including capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

<sup>2</sup> Subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural product.

<sup>3</sup> For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for the purposes of paragraph 1.

- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;
  - (e) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
  - (f) to transfer<sup>9bis</sup> technology, a production process, or other proprietary knowledge to a natural person or an enterprise in its territory;
  - (g) to supply exclusively from the territory of the Party a good produced or a service provided by the enterprise to a specific regional or the world market;
  - (h) to locate the headquarters of that investor for a specific region or the world market in its territory;
  - (i) to achieve a given percentage or value of research and development in its territory; or
  - (j) to use or favour technology that is owned by or licensed to a natural person or an enterprise of the Party.
2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of all enterprises in its territory, on compliance with any requirement:
- (a) to achieve a given level or percentage of domestic content of goods or services;
  - (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from natural persons or enterprises in its territory;
  - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise; or
  - (d) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
  - (e) to use or favour technology that is owned by or licensed to a natural person or an enterprise of the Party; or
  - (f) to transfer<sup>9bis</sup> technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory.

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<sup>4</sup> This sub-paragraph does not in itself impose obligations for either Party to allow the cross-border supply of services.

<sup>9bis</sup> For greater certainty, “to transfer” includes to license or to otherwise make available.

3. Neither Party shall directly or indirectly require, force, pressure or otherwise interfere with the transfer or licensing of technology between natural persons and enterprises of a Party and those of the other Party. Such transfer or licencing of technology shall be based on market terms that are voluntary and reflect mutual agreement.

4. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

5. Subparagraphs 1(f), 2(f) and 3 do not apply when:

(i) the requirement is imposed or enforced, or the commitment or undertaking is enforced by a court or administrative tribunal, or by a competition authority pursuant to the Parties' competition laws to prevent or remedy a restriction or a distortion of competition; or

(ii) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.

6. Subparagraphs 1(a), (b) and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programs.

7. Subparagraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. This Article is without prejudice to the obligations of a Party under the WTO Agreement.

### **Article 3bis Covered Entities**

**1. Covered entity** means, at all levels of government, the following entities<sup>[5]</sup>:

- (a) Enterprise in which a Party directly or indirectly,
  - i owns more than 50 per cent of the share capital;
  - ii controls, through ownership interests the exercise of more than 50 per cent of the voting rights;
  - iii holds the power to appoint a majority of members of the board of directors or any other equivalent management body; or
  - iv holds the power to control the decisions of the enterprise through any other ownership interest, including minority ownership;

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<sup>5</sup> For greater certainty, the listing of such covered entity is for the purpose of defining the scope of application of this sub-section and does not presume its existence in either Party.

- (b) Enterprise in which a Party has the power to legally direct the actions or otherwise exercise an equivalent level of control in accordance with its laws and regulations;
- (c) Any entity, public or private, including where relevant any subsidiary thereof, or a consortium, which in a relevant market in the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;
- (d) Two or a small number of enterprises, public or private, including where relevant any subsidiary thereof, designated by a Party, formally or in effect, as the only suppliers or purchasers of a particular good or service in a relevant market in the territory of that Party<sup>6</sup>.

## 2. Scope

- (a) Nothing in this Article shall be construed to prevent a Party from establishing or maintaining the covered entities.
- (b) This Article does not apply to situations where the covered entities act as procuring entities of goods or services purchased for governmental purposes<sup>7</sup> and not with a view to commercial resale, or use in the supply of a good or service for commercial sale or resale.
- (c) This Article does not apply to the activities in sectors or subsectors reserved pursuant to the non-conforming measures maintained by China as set out in Entries 1.21 to 1.26 of China's schedule in Annex I.
- (d) Paragraph 3 (Non-discriminatory Treatment and Commercial Considerations) and Paragraph 4 (Transparency) shall not apply with respect to a covered entity if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of such covered entity was less than 200 million Special Drawing Rights.
- (e) For greater certainty, this Article does not apply to the activities conducted in the exercise of governmental authority, including those for national defence or public security, pursuant to Article 1(2) (c) of this Sub-Section.
- (f) For greater certainty, the Parties acknowledge that this Article does not apply to non-commercial activities conducted by covered entities to support the development of poverty areas or to deal with natural disasters.

## 3. Non-discriminatory Treatment and Commercial Considerations

- (a) Each Party shall ensure that its covered entities when engaging in commercial activities<sup>8</sup>:

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<sup>6</sup> For greater certainty, point (d) does not include enterprises to which a Party has granted an authorisation according to objective, transparent and impartial criteria.

<sup>7</sup> For greater certainty, purchases of the covered entities shall not be presumed to be for governmental purposes merely on the ground that the covered entity has carried them out according to the domestic procurement or bidding laws, or that the domestic laws qualify those purchases as such.

<sup>8</sup> For great certainty, it is understood that this does not apply to situations of trade in goods and to supply of services other than through establishment of an enterprise and operation of a covered investment.

- (i) act in accordance with commercial considerations in their purchases or sales of goods or services in the territory of the Party, except to fulfil any terms of their public service mandate that are not inconsistent with subparagraph (a) ii and iii;
  - (ii) in their purchases of goods or services, accord to goods or services supplied by investors of the other Party and the covered enterprises treatment no less favourable than they accord to like goods or like services supplied by investors and enterprises of the Party; and
  - (iii) in their sales of goods or services, accord to investors of the other Party and to the covered enterprises treatment no less favourable than they accord, in like situations, to investors and enterprises of the Party.
- (b) Subparagraph (a) does not preclude a covered entity from:
- (i) purchasing or selling goods or services on different terms or conditions, including those relating to price; or
  - (ii) refusing to purchase or sell goods or services, provided that such different terms or conditions or refusal is undertaken in accordance with commercial considerations.
- (c) Subparagraph (a) does not apply to the extent that a covered entity of a Party makes purchases or sales of goods or services pursuant to a non-conforming measure that the Party adopts or maintains in accordance with Article X (Non-Conforming Measures), as set out in its Schedules to Annex II (reservations taken against a National Treatment or Most-Favoured Nation treatment obligation).

#### **4. Transparency**

- (a) A Party which has reason to believe that its interests under this Article are being adversely affected by the commercial activities of a covered entity of the other Party, may request in written form that Party to supply information about the operations of such entity related to the carrying out of the provisions of this Article. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include an explanation of how the activities of such enterprise have or could have adversely affected the interests under this Article. Such information includes the following:
- i. the percentage of shares and the percentage of voting rights that the Party and/or a covered entity of the Party cumulatively own or hold in the enterprise, as well as the ownership and the voting structure of that enterprise;
  - ii. a description of any special shares or special voting or other rights that a Party and/or a covered entity holds, where such rights differ from the rights attached to the general common shares of the enterprise;
  - iii. the organisational structure of the enterprise, the composition of its board of directors or of any other equivalent management body exercising control in such enterprise, and cross-holdings and other legal arrangements with

covered entities where relevant for the assessment of the compliance with the provisions of this Article;

- iv. annual revenue or total assets, or both;
- v. any exemptions, immunities and equivalent measures applicable to the enterprise under the requested Party's laws and regulations;
- vi. a description of which competent authority is responsible for exercising the government's ownership functions with respect to the enterprise and which government department is responsible to regulate its activities at issue; if applicable, a description of the reporting requirements imposed by those departments/competent authority and of the manner in which the latter may be involved in the appointment, dismissal and remuneration of executives and members of its board of directors or any other equivalent management body of the enterprise.

(b) Each Party shall endeavor to ensure that its covered entities respect international good practices of corporate governance and transparency.

### **Article 3ter**

#### **Impartiality, Non-discrimination and Independence of Regulatory Authority**

1. Each Party shall ensure that any regulatory body<sup>9</sup> or any other body exercising a regulatory function that the Party establishes or maintains acts impartially in like circumstances with respect to all enterprises that it regulates, including the covered entities.
2. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner<sup>10</sup>, including on the covered entities.
3. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains is legally separate from and not accountable to any of the enterprises regulated by that body.<sup>11</sup>

### **Article 4**

#### **National Treatment**

1. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than the treatment it accords, in like situations<sup>12</sup>, to its own investors and to their enterprises, with respect to establishment and operation in its territory.

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<sup>9</sup> Both sides confirm the intention to cover regulators for air transport services.

<sup>10</sup> "Non-discriminatory treatment" means the better of National Treatment and Most Favored Nation Treatment.

<sup>11</sup> This paragraph shall not apply in sectors or subsectors in which foreign investment is prohibited according to the non-conforming measures as set out in Entry 9 (paragraph 1), 21, 22, 23, 24, 25 and 26 of China's schedule in Annex I.

<sup>12</sup> For greater certainty, whether the treatment is accorded in 'like situations' requires a case-by-case, fact-based analysis.

2. For greater certainty, paragraphs 1 shall not be construed as preventing a Party from prescribing ordinary formalities, such as a requirement to provide authenticated documents or official translations, or information requirements for statistical purposes, in connection with the covered enterprise, provided that those requirements do not constitute a means to circumvent that Party's obligations pursuant to this Article.

#### **Article 5** **Most favoured nation treatment**

1. Each Party shall accord to investors of the other Party and to covered enterprises, treatment no less favourable than the treatment it accords, in like situations, to investors and their enterprises of any non-Party with respect to establishment and operation in its territory.
2. Substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute treatment under this Article.
3. For greater certainty, the treatment referred to in paragraph 1 does not include investor-to-state and other dispute settlement procedures provided for in other international agreements.

#### **Article 6** **Senior Management and Boards of Directors**

Neither Party may require that an enterprise of that Party that is a covered enterprise appoint to senior management or the board of directors positions natural persons of any particular nationality.

#### **Article 6bis** **Entry and temporary stay of natural persons for business purposes**

1. This Article applies to measures of the Parties concerning the entry and temporary stay in their territories of business visitors for establishment purposes and intra-corporate-transferees in accordance with paragraph 4.
2. This Article shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a



manner as to nullify or impair the benefits<sup>13</sup> accruing to any Party under the terms of a specific commitment in this Article and its Annexes.

4. For the purpose of this Article:

- a) ‘Business visitors for establishment purposes’ mean natural persons working in a senior position who are responsible for setting up an enterprise. They do not offer or provide services or engage in any other economic activity than required for establishment purposes. They do not receive remuneration from a source located within the host Party.
- b) ‘Intra-corporate transferees’ mean natural persons who have been employed by a juridical person, or its branch or have been partners in it for at least one year and who are temporarily transferred to an enterprise that may be a subsidiary, branch or head company of the juridical person in the territory of the other Party<sup>14</sup>. The natural person concerned must belong to one of the following categories:

**Managers:** Persons working in a senior position within a juridical person, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least: directing the enterprise or a department or subdivision thereof; and supervising and controlling the work of other supervisory, professional or managerial employees; and having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions.

**Specialists:** Persons working within a juridical person who possess specialised knowledge essential to the enterprise’s production, research equipment, techniques, processes, procedures or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

5. The permissible length of stay shall be for a period of up to ninety days in any twelve month period for business visitors for establishment purposes, and up to three years for managers and specialists.
6. Subject to the relevant reservations specified in, for the EU Annex IV [reservations for business visitors for establishment purposes and intra-corporate transferees], and for China Schedule on Business Visitors for Establishment Purposes and Intra-Corporate Transferees:

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<sup>13</sup> The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

<sup>14</sup> For greater certainty, managers and specialists may be required to demonstrate they possess the professional qualifications and experience needed in the enterprise to which they are transferred.

- a) A Party shall allow the entry and temporary stay of intra-corporate transferees and business visitors for establishment purposes.
  - b) A Party shall not maintain or adopt, either on the basis of a territorial subdivision or on the basis of its entire territory, limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes or that an investor may employ as intra-corporate transferees in a specific sector in the form of numerical quotas or economic needs tests either on the basis of a territorial subdivision or on the basis of its entire territory.
  - c) Each Party shall accord to Intra-corporate Transferees and Business Visitors for Establishment Purposes of the other Party national treatment with regard to their temporary stay in its Territory. For the purpose of this article, national treatment provided in Article 17 of GATS shall apply, *mutatis mutandis*.<sup>15</sup>
7. For greater certainty, temporary entry granted in accordance with this Article [Entry and temporary stay of natural persons for business purposes] does not replace the qualification requirements needed to carry out a profession or activity according to the applicable laws and regulations in force in the territory of the granting Party, provided such requirements are not inconsistent with its obligations under this Agreement.
8. To the extent that the relevant measure affects the temporary stay of natural persons for business purposes, paragraph 6 does not apply to:
- a) any existing non-conforming measure of a Party at the level of:
    - a. for the European Union:
      - i. the European Union, if the measure is consistent with a reservation listed in Annex I;
      - ii. the central government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I;
      - iii. a regional government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I; or
      - iv. a local government, other than that referred to in subparagraph (c), if the measure is consistent with a reservation listed in Annex I;

and

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<sup>15</sup> For greater certainty, the Parties agree that this commitment applies to all sectors of economic activity covered by the scope of the liberalisation commitments of the Agreement.

- b. for China:
  - i. the central government, if the measure is consistent with a reservation listed in Annex I;
  - ii. a provincial government, if the measure is consistent with a reservation listed in Annex I; or
  - iii. a local government, if the measure is consistent with a reservation listed in Annex I;
- b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
- c) a modification of any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that it does not decrease the conformity of the measure with paragraph 6, as it existed immediately before the modification; or
- d) any measure of a Party consistent with a reservation specified in Annex II.

#### **Article 6ter Transparency**

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party, referred to in paragraph 1 of Article [6 bis].
2. The information referred to in paragraph 1 shall, to the extent possible, include inter alia the following information relevant to the entry and temporary stay of natural persons:
  - (a) entry conditions;
  - (b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions;
  - (c) indicative processing time;
  - (d) applicable fees;
  - (e) appeal procedures; and
  - (f) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

#### **Article 7 Non-Conforming Measures and Exceptions**

1. Article 3 (Performance Requirements), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Senior Management and Boards of Directors) do not apply to:
  - (i) for the European Union:

- a. the European Union, if the measure is consistent with a reservation listed in Annex I;
  - b. the central government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I;
  - c. a regional government of a Member State of the European Union, if the measure is consistent with a reservation listed in Annex I; or
  - d. a local government, other than that referred to in subparagraph (c), if the measure is consistent with a reservation listed in Annex I;
- and
- (ii) for China:
- a. the central government, if the measure is consistent with a reservation listed in Annex I;
  - b. a provincial government, if the measure is consistent with a reservation listed in Annex I; or
  - c. a local government, if the measure is consistent with a reservation listed in Annex I;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 3 (Performance Requirements), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Senior Management and Boards of Directors).
2. Article 3 (Performance Requirements), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in Annex II.
  3. A Party shall not adopt a measure after the date of entry into force of this Agreement and covered by its Schedule to Annex II that requires an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an enterprise existing at the time the measure becomes effective.
  4. Articles 3 [National Treatment] and 4 [Most-Favoured-Nation Treatment] do not apply to any measure that constitutes an exception to, or a derogation from, Articles 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of that Agreement.