

# Claremont-UC Undergraduate Research Conference on the European Union

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Volume 2021

Article 7

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9-30-2021

## Buying-up Europe No More? How the European Union has Responded to the Challenges of Chinese Foreign Direct Investment

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### Recommended Citation

Kable, Ethan (2021) "Buying-up Europe No More? How the European Union has Responded to the Challenges of Chinese Foreign Direct Investment," *Claremont-UC Undergraduate Research Conference on the European Union*: Vol. 2021, Article 7. DOI: 10.5642/urceu.202101.07  
Available at: <https://scholarship.claremont.edu/urceu/vol2021/iss1/7>

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## Buying-up Europe No More? How the European Union has Responded to the Challenges of Chinese Foreign Direct Investment

### Cover Page Footnote

This paper was adapted from a chapter of my senior thesis, entitled “Buying Influence? An Analysis of the Political and Economic Impacts of Chinese Foreign Direct Investment in the European Union”, and was written in December 2019. While the EU and China’s economic relations have evolved between the time of writing and time of publication, many of the following findings remain important to understanding the current state of play. I would particularly like to thank my thesis supervisor, Professor Appel, as well as the EU Center of California for their help in seeing this project come to fruition.

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# Buying-up Europe No More? How the European Union has Responded to the Challenges of Chinese Foreign Direct Investment

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**ABSTRACT**

This paper looks at how, at an institutional level, the EU's perception of and strategy towards Chinese outward foreign direct investment (OFDI) has evolved over the past decade. I contend that the EU was quite receptive to Chinese OFDI at the beginning of the decade, due to both ideological leanings and the economic context of a post-crisis Europe. I then illustrate how the EU slowly adopted a more guarded and critical approach towards Chinese OFDI. This paper will focus specifically on four key issues surrounding Chinese OFDI policy: national security, technology transfers and IP theft, state support for Chinese firms, and market access, ultimately arguing that bilateral investment treaty (BIT) negotiations and the new EU investment screening mechanism are the main policy levers being used to address these concerns. For the sake of this paper, I will use the OECD's definition of OFDI.

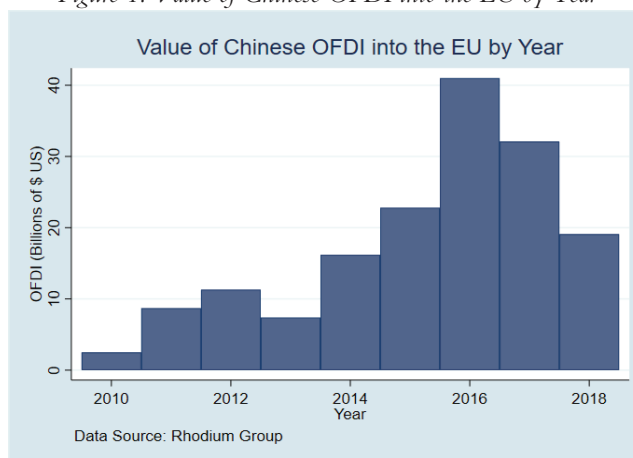
**KEYWORDS**

China, FDI, investment screening, technology transfer

## 1. INTRODUCTION

The rise in Chinese outward foreign direct investment (OFDI) into the EU over the past decade has been truly remarkable. Prior to the global financial crisis (GFC), which mired most of the Eurozone in economic stagnation, China's level of investment in the EU was negligible. In fact, from 2004 to 2008, Chinese OFDI in Europe totaled less than \$1 billion annually. However, in the wake of the crisis, Chinese investment into the EU tripled, as roughly \$3 billion entered the EU from China in both 2009 and 2010 (Meunier, 2014a). This explosion of investment continued into the next decade, with inflows again tripling by 2012 and eventually peaking at \$41 billion in 2016 (Hanemann et al., 2019).

*Figure 1. Value of Chinese OFDI into the EU by Year*



Source: Hanemann et al. (2019)

As Chinese FDI into the EU has skyrocketed, it has been met with increasing skepticism and trepidation. In the immediate aftermath of the GFC, Chinese OFDI was welcomed with open arms across the bloc. This was especially true in the debt-saddled Mediterranean economies which were in desperate need of capital infusion to jumpstart economic recovery. However, at an institutional level, the EU has toughened its stance on foreign investment as it relates to national security, technology transfers, state support, and unreciprocated market access over the past decade. In fact, as a direct reaction to perceived Chinese economic assertiveness across the continent and beliefs in an unequal playing field for EU firms vis-à-vis their Chinese competitors, the EU now is in the process of implementing a foreign investment screening mechanism and a bilateral investment treaty (BIT) with Beijing.

## 2. INITIAL STANCE TOWARDS CHINESE FDI

The EU's openness to Chinese OFDI over the past decade is unsurprising given the bloc's level of openness to investment overall. According to the OECD's FDI Regulatory Restrictiveness Index (FDI RRI), many EU countries ranked amongst the most open in the world in 2010 and continue to be ranked near the top currently (OECD, 2019; Zhang & Van Den Bulcke, 2014). Most EU countries are particularly lenient in regards to pre-estab-

lishment investment conditions, such as screening and ownership policies, and are ranked well above both the US and the OECD average in terms of overall restrictiveness. In fact, as their rankings in the FDI RRI suggest, only a handful of EU countries had any sort of FDI screening mechanism in place prior to 2012 (Meunier, 2014b). The ideological aversion towards investment restrictiveness across the bloc was perhaps best summed up by Karel De Gucht (2012), who as European Commissioner for Trade in 2012 stated that “European security screening of new investments is neither desirable nor feasible.”

Chinese investment in the EU following the GFC did not initially challenge the bloc’s stance towards unfettered openness to FDI. In fact, to the contrary, the euro crisis softened political resistance to Chinese investment. Long-term concerns over the quantity and destination of Chinese OFDI were trumped by short-term economic concerns, such as reeling in unemployment and finding buyers for IMF-mandated privatization plans (Meunier, 2019). Thus, Chinese investment was courted across the EU, with countries such as Hungary going as far as to offer citizenship by investment (De Beule & Van Den Bulck, 2010). Even France, a country which has traditionally been more cautious towards inward foreign investment, was receptive of Dongfeng’s 2014 investment into floundering Peugeot (Meunier, 2019). As a result of EU openness to Chinese investment, Chinese state-owned enterprises (SOEs) and private firms capitalized on the economic opportunities in the EU, snapping up real estate and undervalued European firms alike. Though European leaders understood that Chinese FDI in Europe could present possible long-term concerns, the short-term benefits of Chinese capital for domestic economies took precedence. Once again, Karel De Gucht’s (2012) reminder, “let us be frank: we need the money,” seemed to represent the *zeitgeist* in a still-recovering Europe.

Despite an EU-wide prioritization of economic recovery, of which an infusion of Chinese capital was an important piece, concerns over the size and scope of Chinese OFDI began gaining traction across the bloc. Though there is a dearth of extensive public opinion data regarding European perceptions of China, a poll commissioned by the BBC in 2011 found that negative perceptions of China’s economic practices were on the rise in a number of major EU countries (*Rising Concern about China’s Increasing Power*, 2011). In comparison with a poll from 2005, negative perceptions of China’s economic growth have increased by 22 points in France, 10 points in both Germany and Italy, and 7 points in the UK. While most respondents identified unfair trade practices as their primary gripe with China, think-tankers and EU bureaucrats were becoming increasingly concerned with Chinese investment practices. For example, a European Council on Foreign Relations (ECFR) policy brief entitled “The Scramble for Europe” warned against China’s “exploitive” investment practices in post-crisis Europe and called for a more coordinated approach to managing incoming Chinese FDI (Godement et al., 2011). In a letter written to EU Commission President José Manuel Barroso, Commissioners for Industry and Entrepreneurship, Antonio Tajani, and the Internal Market, Michel Barnier, voiced similar concerns over the explosion of Chinese (as well as Russian) OFDI. In particular, the two Commissioners implored Barroso to consider a supranational body to vet foreign investment into the bloc as a way to protect critical European technology (Meunier, 2017).

Calls for caution towards Chinese investments in the EU became more prevalent as Chinese firms redoubled their investment efforts and a handful of major Chinese investments fell through. As previously noted, prior to the GFC, Chinese investment into the EU was negligible, and from 2010 to 2016 there has been only one year (2013) in which the

quantity of Chinese OFDI into the EU did not increase markedly. The novelty of Chinese investment into the EU as well as the rapidity with which it has grown, is, in itself, a source of anxiety for many Europeans (Meunier, 2019). Numerous authors have drawn the comparison between contemporary European fears of Chinese investment with American fears over the explosion of Japanese OFDI in the US in the 1980s (Meunier, 2019; Milhaupt, 2008; Zakaria, 2019) or even French concerns over the pervasion of American consumerism in the 1990s (Kuisel, 2011).

Yet, critical attitudes towards the influx of Chinese capital were not solely visceral and protectionist reactions to the novelty of Chinese OFDI. A number of high-profile, unsuccessful Chinese investments in the EU put Chinese investment practices under the microscope, calling into question the motivations of Chinese firms and their level of entanglement with the Chinese government. For example, in 2010, Tianjin Xinmao withdrew its bid for Dutch fiber optic cable company, Draka, after receiving significant pushback from Dutch parliamentarians who saw the proposed takeover as an attempt to siphon-off key European technology (Zhang & Van Den Bulcke, 2014). Competition concerns were raised most notably during COVEC's (Chinese Overseas Engineering Company) unfinished highway project in Poland, in which they were able to win the construction contract with a 30-50% lower bid price than competitors, and a 2012 EU investigation into Huawei and ZTE for receiving unacceptable government subsidies (Zhang & Van Den Bulcke, 2014). All of these cases did little to paint Chinese investment in a positive light and pushed the EU to take a more critical stance towards Chinese investment.

### **3. EVOLUTION OF THE EU'S POSITION**

The evolution of the EU's position towards China can be seen most clearly in their official strategy documents regarding China. More specifically, from 2013 to 2019, the EU's rhetoric vis-à-vis China has taken on a tougher and more pragmatic tone. In 2013, the EU and China released the EU-China 2020 Strategic Agenda for Cooperation, a sixteen page, jointly-adopted document which identifies a variety of policy areas for future cooperation, ranging from peace and security to people-to-people exchanges. As would be expected in a jointly-adopted document, the tone is quite amicable. There are a number of specific goals, especially in terms of economic policy, that directly address EU concerns with China, yet they are articulated in a hopeful and non-accusatory way. For example, rather than state that China is using shoddy regulatory standards as a pretense for limiting market access for EU goods, the agenda states that both the EU and China "confirm their commitment towards international standardization and notification of any standards-restricting market access" (European External Action Service, 2013).

Though the EU has reaffirmed its support for the policy agenda laid-out in the EU-China 2020 Strategic Agenda for Cooperation, in 2016, the Commission found it necessary to release a document entitled "Elements for a new EU strategy on China" in 2016. The tone of the strategy document is undoubtedly firmer than the 2013 agenda, with the EU recognizing the importance of putting "its own interests at the forefront in the new relationship" and of the "constructive management of differences" (European Commission, 2016). Moreover, the 2016 strategy document directly calls out many of China's problematic economic practices which were alluded to in the 2013 agenda. In particular, "Elements for a new EU strategy on China" emphasizes China's lack of progress in implementing market-based reforms that open the Chinese economy to foreign firms as well as the lack of "free market principles" that guide Chinese OFDI in the EU (European Commission, 2016).

However, the 2016 strategy document falls short of being completely adversarial. The EU firmly highlights areas of concern with the state of the EU–China economic relationship, without presenting the points of contention as unreconcilable differences.

The EU’s most recent strategy paper regarding China, released in March of 2019, is its most forceful and pragmatic yet. The document, entitled “EU–China—A strategic outlook,” proposes first and foremost a “further EU policy shift towards a more realistic, assertive, and multi-faceted approach” (European Commission, 2019). It is the first policy document that explicitly labels China as an “economic competitor” and a “systemic rival promoting alternative modes of governance,” and instead of simply imploring China to reform its policies, the document considers ways in which the EU can respond to China’s obstinance. For instance, the Commission advocates the adoption of a newly reformed EU public procurement mechanism that “levels the playing field” with China (European Commission, 2019). But most importantly, the Commission’s latest China strategy document is suggestive of a marked change in perception towards China. While the EU continues to harp on many of the same policy concerns that have been voiced for over a decade, it seems to conceptualize its relationship, especially its economic relationship, with China in a more realistic way. The EU recognizes that if China has failed to implement a broad set of market-based reforms, which benefits Chinese domestic industry at the expense of the EU, prospects for future reform are dubious.

This shift in the Commission’s view towards China’s economic policies—from hopeful and patient to more pessimistic and adversarial—has been amplified in the past year. The Federation of German Industries (BDI), in a recent study, contends that “for a long time it looked as if China would move towards the liberal, open-market economies of the West by integrating into the world economy and reshaping its economic system. This theory of convergence is no longer tenable” (Bundesverband der Deutschen, 2019). The BDI’s perspective is shared by European leaders such as French President Emmanuel Macron, German Chancellor Angela Merkel, and Austrian Chancellor Sebastian Kurz, who in 2019 decried the EU’s naivety vis-à-vis China’s economic practices (Blenkinsop & Emmot, 2019). Macron in particular addressed concerns over Chinese OFDI in the EU, labelling China’s rapid acquisition of EU infrastructure as a “strategic error” on the EU’s part (ibid).

#### **4. SPECIFIC CONCERNS WITH CHINESE ECONOMIC POLICY**

While the growing discontent with China’s economic policies, as reflected in the various EU strategy documents and statements by certain European leaders, does not center solely around Chinese investment practices, Chinese OFDI in the EU has brought many of the EU’s concerns to the forefront. At the most basic level, the EU has begun to realize that the usual benefits of foreign investment for the recipient economy may not be materializing. When addressing the issue of Chinese FDI in the EU in 2012, De Gucht (2012) reiterated what was thought to be common knowledge in FDI literature: foreign investment would increase trade and economic activity with the country of origin and the recipient economy would gain technological, organizational, and managerial skills. But as has become increasingly clear, China’s motivation for investing in more advanced economies than its own is to acquire technology and managerial knowhow for its own firms. The “reverse flow” phenomenon is true for high-tech sectors, many of which are included in the Chinese government’s “Made in China 2025” plan, as well as in less geostrategic areas such as soccer (Meunier, 2019). In the past decade, China has made a huge push to develop its domestic soccer league and turn the country, in the words of Xi Jinping, into a “soccer powerhouse”

(as cited in Gibson, 2016) To help achieve this goal, China has attracted high-profile foreign players to its domestic league and acquired a number of major European clubs, such as one of Italy's most historic and successful clubs, Internazionale.

Chinese FDI in the EU has elicited some of the harshest backlash because of the possibilities for technology transfer. The specter of Chinese firms acquiring European technology leaders as a way to upgrade its industrial capabilities at Europe's expense is one of the EU's biggest concerns. The "Made in China 2025" policy has the explicit goal of moving China up the value chain in ten important industry sectors, and acquiring the requisite technology to do so is a key part of the equation. With these motivations in mind, Chinese acquisitions of European tech firms have raised a number of hackles. Predictably, some of the biggest denunciations of Chinese technology transfers have come from Germany, which sees itself as a direct competitor to China in terms of the production and exportation of high-tech goods. For example, Kuka Robotics' takeover by Chinese firm Midea was met with considerable resistance, with many German officials and business leaders seeing it as a hollowing out of Germany's tech industry (Economy, 2018).

The fear of losing a technological edge in part due to forced technology transfers is a fear grounded in reality. A 2019 survey of 585 European businesses from the European Chamber of Commerce found that more than 20% of respondents and 30% of respondents in high-tech sectors "felt compelled to hand over technology to Chinese business partners" (Weinland, 2019). Perhaps of even greater concern is that the percentage of firms who have felt compelled to transfer technology to Chinese partners has doubled from two years ago. In some cases, Chinese firms have even reverted to intellectual property (IP) theft rather than coercion to obtain key technologies. IP theft has been a long-held concern of EU member states, as well as the US. Despite Chinese assurances that they are working to fight against IP theft and the fact that specialized courts meant to handle IP theft cases have existed in China since 2014, EU firms continue to have proprietary secrets stolen (Zakaria, 2019). A recent notable example is the theft of IP from Dutch firm ASML, which makes lithography systems that trace the circuitry of semiconductor chips. Documents from a 2018 court case showed that six ASML employees, all with Chinese names, shared secret software process information with ASML's Chinese competitor, XTAL. Unsurprisingly, XTAL's parent company, Dongfang Jingyuan, has close ties with the Chinese Ministry of Science and Technology (Doffman, 2019).

Even in cases where technology transfers are not a major concern, EU firms feel aggrieved that government support for Chinese firms is partially responsible for takeovers. While the EU has a stringent competition policy that prohibits member states from aiding or subsidizing private firms except for in very specific conditions, Chinese firms, both SOEs and private firms, often receive state support in their business dealings. This "unfair playing field" has been noted by the EU in its strategy documents regarding China, and also once again by the BDI (2019), who assert that foreign takeovers by Chinese firms are aided by "low-cost loans from state-owned banks and direct project-based financing through the state budget and state venture capital" (p. 23). The Chinese government has also helped Chinese firms acquire European firms in more problematic ways, such as the near-takeover of semiconductor company Aixtron by Chinese investment fund Fujian Grand Chip. In 2015, Chinese firm Sanan Optoelectrics, which has connections with both Fujian and the Chinese government, cancelled a large order at the last minute, causing Aixtron's stock to crash and opening the door for Fujian to submit a bid to acquire Aixtron (Meunier, 2019).



The acquisition fell through only after the German government withdrew its approval of the takeover under US pressure.

Another way in which the EU feels that the playing field is unfair for EU firms is in the lack of reciprocal access to Chinese markets. While the EU has given China nearly unrestricted access to one of the world's largest markets, China has been slow to provide similar levels of market access for EU firms in China. Once again, the EU expected that increased levels of Chinese FDI in the EU would open the door for EU firms to invest in China (De Gucht, 2012), but a litany of market-access restrictions are in place for EU firms. Some restrictions are direct, such as simply not allowing foreign firms to penetrate certain sectors, such as fintech. In other cases, market access is restricted in less overt ways, such as by requiring EU firms to launch joint ventures with Chinese counterparts; strict localization requirements, including for data; limiting foreign access to government-funded programs; applying strict and sometimes inconsistent regulatory standards on foreign goods; and a lack of transparency in investment protection (European Commission, 2019). An area in which the imbalance of market access is particularly acute is procurement policy. Chinese firms are able to bid on public projects throughout the EU (and often do so at a lower price than any EU firm can), yet most public projects in China are only open to Chinese firms. In fact, China has not signed onto the WTO's Agreement on Government Procurement (GPA), which would otherwise prevent them from discriminating against foreign bidders. As a result, bidding for all of China's mega-projects is administered by the National Development and Research Committee (NDRC) and awarded exclusively to Chinese firms (Godement et al., 2011).

Finally, Chinese OFDI has presented EU leaders with concerns over national and supranational security. In recent years, the EU has begun to recognize that China has superpower ambitions, and many of those ambitions are antithetical to the EU's interests. The EU and China are by no means enemies, but nor are they security allies. Historically, the US and the EU are unaccustomed to receiving significant amounts of investment from non-security allies; indeed, neither the US nor the EU received any investment, let alone traded with, the Soviet Union during the Cold War (Meunier, 2019). The murky nature of the Chinese government's involvement with Chinese firms only heightens security concerns. It is hard for the EU to gauge whether investments serve purely commercial interests or if there are ulterior motives. As previously discussed, these concerns have been manifested in the cases of sensitive technology, such as semiconductors, or dual-use technologies. For example, Huawei has faced consistent scrutiny from the EU, most recently in a bloc-wide 5G security assessment released in October 2019 (NIS Cooperation Group, 2019). Or, in 2018, the German government blocked two potential Chinese investments on national security grounds. The Yantai Tahai Group was prevented from taking over an advanced manufacturing company, Leifeld Metal Spinning AG, and China's State Grid Corporation was blocked from acquiring a 20% share in 50Hertz, a provider of high-voltage transmission systems (Delfs, 2018).

The security dimension of Chinese investments also encompasses critical infrastructure. Though Chinese investment in European infrastructure, such as the Port of Piraeus or a large portion of Portugal's power grid, was welcomed in the aftermath of the GFC, on an institutional level the EU has grown warier. Notably, former British Prime Minister Theresa May reviewed the proposed takeover of Hinkley Point nuclear power plant in 2016 by a French consortium and the Chinese SOE General Nuclear Power Group (CGN). Though

the deal eventually went through, May was considering the security implications of letting China have control over UK power production (Meunier, 2019). Concerns with Chinese control of critical infrastructure were only heightened with the arrival of China's Belt and Road Initiative (BRI) in the EU. Though the amount of BRI investment in the EU is meager in comparison with the BRI investment in Asia and Africa, it is still viewed by the EU as a security challenge. In 2018, the EU went as far as to release its own strategy document on improving Europe-Asia connectivity as a way to counter China's BRI presence throughout the EU. The document makes no mention of the BRI, and presents itself as a "sustainable, comprehensive, and rules-based" alternative to the Chinese model (European Commission, 2018).

## **5. HOW THE EU IS PUSHING BACK ON BEIJING**

The EU's new Euro-Asia connectivity strategy is just one of the ways in which the EU is trying to substantively push back on Chinese FDI, and it remains to be seen what impact it will have on the level of BRI investment in the EU. The EU has been also responding to its various concerns with Chinese investment in two other major ways: by pursuing a BIT, and by implementing a foreign investment screening mechanism. The competence of foreign investment policy was transferred from the national to the supranational level by the 2009 Lisbon Treaty, and over the past decade the EU has taken more control over the bloc's overall investment policies. Though the specifics of what the term "foreign direct investment" means are not fleshed out in the Lisbon Treaty, the EU has taken the initiative to negotiate a Comprehensive Agreement on Investment (CAI) with China as well as, more recently, to implement a bloc-wide framework for screening foreign investments.

CAI negotiations, which aim to adopt a BIT between the EU and China, have been ongoing since 2013. The CAI was referenced in the EU-China 2020 Strategic Agenda for Cooperation, and has been a key agenda matter at the annual EU-China summits. The overarching goal of the CAI, from an EU perspective, is to level the playing field between EU firms and their Chinese counterparts by bringing Chinese policy closer in line with the tenets of the Western, market-based economic order. The main priorities of the CAI, which have also unsurprisingly been the biggest stumbling blocks in reaching an agreement, are to further open up the Chinese market to European FDI and protect investments in China (Meunier, 2014b). As previously discussed, China employs a variety of levers to limit market access for foreign firms, all of which the EU is keen to address as part of the CAI. EU leaders have voiced their frustration with the slow progress of negotiations, which they hope to conclude by 2020, but see ongoing dialogue with China on economic issues as a way to sustain liberalization pressures.

The even greater of benefit of conducting a single BIT negotiation between the EU and China is that it presents a unified voice to China. Prior to 2013, each EU member state had to negotiate a BIT with China individually, which placed the power squarely in China's hands. China could use its greater economic leverage to force concessions out of EU member states, especially some of the bloc's smaller members. Moreover, the lack of a unified policy vis-à-vis inbound Chinese FDI means that China can play member states off one another, needing investment access to only a single member state to have access to the whole EU market (Meunier, 2014b). But by negotiating as an entire bloc, the EU is able to eliminate some of China's bargaining leverage. This has been an EU focus for a number of years, and was bluntly stated in their 2016 China strategy document:

The EU must project a strong, clear and unified voice in its approach to China.

When Member States conduct their bilateral relations with China... they should cooperate with the Commission, the EEAS and other Member States to help ensure that aspects relevant to the EU are in line with EU law, rules and policies, and that the overall outcome is beneficial for the EU as a whole. (European Commission, 2016)

What makes an EU-led BIT negotiation with China particularly powerful is that internal interests are aligned quite uniformly in regard to OFDI policy – the desire to gain greater market access in China and compete on a more equal playing field with Chinese firms is shared across the bloc.

If CAI negotiations represent an attempt to bolster the EU's OFDI in China, the newly announced investment screening mechanism directly addresses concerns with the nature of inward investment from China. Calls for an EU-wide foreign investment screening mechanism date back to 2011, when Commissioners Tajani and Barnier brought the idea forward in a letter to the Commission President. But it was not until 2017 that the idea of a supranational screening mechanism gained enough political momentum for Commission President Juncker to propose a framework. Juncker's proposal gained institutional consensus quickly, and in April 2019, the Parliament passed the regulation establishing the new FDI screening framework.

While the adoption of the new framework is once again a positive step in presenting a unified EU voice to China, its effectiveness as a tool to protect against Chinese OFDI detrimental to EU interests remains to be seen. Unlike the Committee on Foreign Investment in the United States (CFIUS), which is a committee given the powers to review and potentially block FDI in the US for national security reasons, the EU's FDI screening framework has no enforcement capabilities. Rather, it is a framework for increased cooperation and coordination whereby EU states can share and request information regarding specific foreign investments that potentially impact on their national security and public order (Hanemann et al., 2019). Additionally, the new regulation allows the Commission to voice opinions on foreign investments affecting multiple EU member states or foreign investments that impact the EU as a whole, though these opinions are non-binding for the member state who is the beneficiary of the investment (Regulation 2019/452, 2019). When giving its opinion on the quality of the foreign investment, the Commission is to pay particular attention to deals in sectors such as critical infrastructure, critical technologies and dual-use items, supply of critical inputs, access to sensitive information, and media. Finally, when considering whether or not a deal is "likely to affect security or public order," the Commission will primarily take into account three criteria: whether the foreign investor is directly or indirectly controlled by the government of a third state, whether the foreign investor has previously been involved in activities affecting security or public order, and whether there is a "serious risk" that the foreign investor engages in illegal activity (Regulation 2019/452, 2019).

Though the regulation explicitly states a stance of non-discrimination against the investment's country of origin, it is clear that many of the framework's provisions address the core characteristics of Chinese OFDI in the EU. SOEs still account for a significant share of Chinese OFDI in the EU, and a number of Chinese firms have already faced lawsuits over IP theft and other illicit business activities. In fact, analysis from the Rhodium Group found that if the regulation's review criteria had been applied to China's 2018 OFDI in the EU, approximately 83% of investments could have fallen under EU scrutiny (Hanemann et al., 2019). It is unclear what opinion the Commission would release regarding any specific

investment or if member states would comply with the opinion, but clearly the new framework will place Chinese OFDI more squarely under the microscope.

What is interesting to note in this context is that prior to the new pan-EU investment screening framework, the EU did have the capacity to review foreign investments in specific cases. The European Programme for Critical Infrastructure Protection (EPCIP), which was implemented in 2006, allowed the EU to review foreign investments into critical infrastructure on national security grounds, and the EU Merger Regulation (EUMR), which was reformed in 2004 as part of EU competition law, allows the EU to block anti-competitive M&As (Meunier, 2014b). However, neither the EPCIP nor the EUMR were used often to block any FDI into the EU, let alone Chinese FDI. The EUMR has been called upon to review potential investments quite frequently, but Chinese firms have seldom been ruled against. In fact, in 2011, five deals involving Chinese SOEs looking to acquire major European firms were reviewed under the EUMR framework, and all five rulings went in the favor of the Chinese SOEs (Zhang & Van Den Bulcke, 2014). The EPCIP has seldom been used as a framework for reviewing critical infrastructure investments, in part because the European Court of Justice (ECJ) has tended to rule against claims filed under the EPCIP, interpreting national security narrowly so as to avoid economic protectionism (Zhang & Van Den Bulcke, 2014). The ECJ's stance has been echoed by others, most notably Commissioner De Gucht (2012), who insisted early in the decade that “we cannot accept – in Europe or elsewhere – that national security concerns are used as a false pretense to justify the protection of vested economic interests.”

## 6. CONCLUSION

The new foreign investment screening framework represents a major step forward for the EU with regard to confronting Chinese OFDI, but it does not increase the EU's capacity to block investments at an institutional level. If anything, the new framework is emblematic of the EU's change in perception vis-à-vis Chinese OFDI. The EU began the decade encouraging Chinese OFDI and denouncing any form of economic protectionism, but has recognized the naivety of that position and recently gone as far as to implement a screening mechanism with a broad remit. The screening mechanism, as well as the CAI, are examples of how the increase of Chinese OFDI in the EU have had a centripetal effect (Meunier, 2014b) on the EU: the EU has recognized that Chinese OFDI poses unique challenges that are best confronted at a supranational level. This is not to say, however, that Chinese OFDI has induced only centripetal pressures on the EU. Though it is beyond the scope of this paper, the centrifugal pressures of Chinese OFDI in the EU are acute and have the potential to remain a thorn in the side of EU foreign policy if not adequately addressed. In order to prevent Chinese investment from having a greater divisive effect on the bloc, it is crucial for the EU to build off of the progress of the CAI and the investment screening mechanism, continuing to present a strong and unified voice to Beijing.

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