

欧盟中国商会《周·知》

WEEKLY UPDATES

Which areas have "landed" in final stage of negotiations on China-EU investment agreement?

Editor's note: In 2020, the China-EU investment agreement has been at the heart of the bilateral agenda. During the year, the China-EU negotiating teams have significantly sped up the negotiations and this week, as the talks entered the most critical phase of the annual sprint, the top level of China-EU mediation has been stepped up in a bid to clinch an agreement as soon as possible. Thanks for reading and have a great holiday!

Following the entry into force of the Lisbon Treaty in December 2009, foreign direct investment (FDI) was formally included in the EU common trade policy and became the exclusive competence of the EU in the field of external negotiations. If signed, the EU-China investment agreement will be the first investment agreement reached by the EU on behalf of member states since 2009.

The seven-year-long negotiations are largely behind closed doors. An analysis of the public information on the 12th to 34th rounds of negotiations published by the European Commission's Directorate-General for Trade gives a general idea of the direction and content of the negotiations.

According to the EC's announcement and a recent interview with EU Ambassador to China Nicolas Chapuis, the China-EU investment agreement covers important areas such as "ensuring a level playing field", "investment liberalization", and "sustainable development".

Earlier, the head of the Chinese mission to the EU, Ambassador Zhang Ming, and Chapuis both confirmed to the media that China and the EU had ironed out disagreements on items under "a level playing field".

"A level playing field" is a core phrase frequently mentioned by Brussels in recent years when it tries to rebalance trade and economic ties with foreign countries. The increase in investment from emerging economies and foreign-owned companies in the EU in recent years has somehow caused concern in the bloc, with some Europeans fretting about foreign state-owned companies "seizing" strategic assets from the EU.

The EC last year published a report titled 'Foreign direct investment report: continuous rise of foreign ownership



The China Chamber of Commerce to the EU (CCCEU) is a platform between China and the EU and it serves the best interests of Chinese enterprises investing in the EU. Established in August 2018, the CCCEU speaks on behalf of its 62 members and represents about one thousand Chinese enterprises.

Office 503 A, Rond-Point Schuman 6, 1040 Brussels, Belgium | info@ccceu.eu | en.ccceu.eu

of European companies in key sectors', which noted that between 2007 and 2017, nearly 400 EU companies were acquired by foreign state-owned companies. Of these, nearly a third came from EFTA countries (Norway and Switzerland), followed by Russia (93 acquisitions), the Gulf Cooperation countries (United Arab Emirates, Qatar, Kuwait, Bahrain, Saudi Arabia and Oman) (80 acquisitions), and China (including Hong Kong), which started later, but also had 60 acquisitions, mostly within the last four years.

The new generation of free trade agreements promoted by Europe and the US in recent years all include provisions for state-owned enterprises. For example, the EU-Vietnam FTA has rules on the commercial operations of SOEs and the transparency of subsidies. Sure, the rules on SOEs in the China-EU investment agreement are understandable to be different from the EU-Vietnam FTA. What is all but certain is that there are no major differences between China and the EU on the issues of "a level playing field" in relation to SOEs, competition, transparency of subsidies, addressing forced technology transfer and so forth.

The high level of the China-EU investment deal is largely reflected on items under the "investment liberalisation". Traditional investment agreements, such as the BITs signed between China and EU member states in earlier years, were mainly concerned with investment protection. In contrast, the China-EU investment agreement incorporates investment liberalisation objectives, introduces market access provisions and uses the 'negative list' model often used in US BITs to list sectors where foreign investment is prohibited.

In the announcement of the results of the 12th to 34th rounds of negotiations, the EC did not disclose much about specific provisions under market access, but mentioned "financial service", "national treatment", as well as the ICT/telecoms, health and transport sectors.

Under this topic, the European side is also focusing on another core element - the dispute settlement mechanism. There are currently 3,000 bilateral investment treaties worldwide, of which more than 1,400 are concluded by EU member states, the vast majority of which include dispute settlement mechanisms for investors. EU investors are the most frequent users of these mechanisms globally.

The EU has been concerned about investor-state dispute settlement mechanisms and has been pushing for their reform in recent years. In 2015, the EC even proposed to replace the existing ISDS initiative with an Investment Court System (ICSID).

In the BITs signed by China, the only ones that explicitly state that the contracting parties agree to submit disputes to international arbitration are the Netherlands (2001), the Belgium-Luxembourg Economic Union (2005), Mexico (2008) and Switzerland (2009). Information indicates that investor-state/state-state and the Investment Court System were discussed during negotiations on China-EU investment agreement. It will be interesting to see how China and the EU eventually coordinate their positions on this issue.

Sustainable development is a new topic in the talks, which includes provisions on the environment, climate change, corporate social responsibility and labour rights. According to public information and media reports, this is a difficult part of the "last mile" of the negotiations. The two sides have agreed on the environment and climate change, but the sticking point may be about labour rights.

According to the International Labour Organisation, which China is a founding member, China has ratified 26 international conventions, including four core conventions, two governance conventions and 20 technical conventions. The ILO said it and China have a long-standing cooperation relationship, which has been further strengthened in recent years through South-South and Triangular Cooperation (SSTC) and China's financial support to ILO development cooperation projects.

On 24 December, a spokesperson for the Chinese Ministry of Commerce said that the China-EU investment agreement aims to provide more opportunities and good institutional safeguards for bilateral investments. The conclusion of the agreement requires joint efforts from both sides and a mutually supportive approach. China is committed to promoting a high level of opening up to the outside world and will, on the premise of safeguarding its own security and development interests, conduct external negotiations at its own pace and strive to reach a comprehensive, balanced and high-level investment agreement with the European side.

The China-EU investment agreement is in both interest. According to [the 2019 Annual Statistical Bulletin on China's Outward Foreign Direct Investment](#) jointly released by the Chinese Ministry of Commerce and other authorities, China's stock of direct investment in the EU stood at US\$93.912 billion at the end of 2019, accounting for 4.3 percent of China's stock of outward direct investment. Meanwhile, Eurostat data showed that by the end of 2018, the stock of direct investment absorbed by China (including Hong Kong) in the EU was EUR 256 billion, while the stock of direct investment from China (including Hong Kong) to the EU was EUR 202 billion. Compared to the huge economic volume and trade exchanges between the two sides, there is much room and potential for China-EU investment.

On 23 December, [Premier Li Keqiang had telephone conversations with Spain's Prime Minister Pedro Sanchez and the Netherlands' Prime Minister Mark Rutte](#), with the China-EU investment agreement among their discussion. On 21 December, [Chinese State Councilor and Foreign Minister Wang Yi also signalled his expectation of an early conclusion of the negotiations during a group meeting with the ambassadors of 27 EU member states in Beijing.](#)

The Chinese and European communities are looking forward to a comprehensive, balanced, and high-level investment agreement as soon as possible, which will provide a more stable and open legal and business environment for enterprises from both sides to invest.

《周·知》 | 中欧投资协定谈判只剩最后一公里，哪些领域已“着陆”？

编前语：2020 年，加快推进并争取完成中欧投资协定谈判是双边经贸关系最核心议程。年内，中欧谈判明显加快节奏，本周进入年度冲刺最紧要关头，中欧高层也加紧斡旋，力争尽快达成协议。中欧投资协定谈判不仅包括传统投资保护内容，还涉及市场准入、可持续发展等新议题，谈判复杂程度高。本周《周·知》梳理中欧谈判团队公开资料，厘清谈判关键和重点。感谢阅读，订阅双语版请致信 info@cceu.eu。祝您节日愉快！周末愉快！

欧洲一体化进程中，中欧投资协定具有标杆意义。

2009 年 12 月《里斯本条约》生效后，外国直接投资(FDI)正式纳入欧盟共同贸易政策范畴，在对外谈判领域成为欧盟专属权限。欧盟和加拿大、新加坡和越南等近年达成的自贸协定中设有投资保护内容；欧盟和日本达成自贸协议，投资保护协议谈判被单独拿出，如今陷入停滞。如果中欧投资协定签署，将是欧盟对外达成的首部单独投资协议。

经历 7 年之久的谈判基本处闭门状态。目前公开可搜寻到资料包括欧委会贸易总司发布的第 12 轮至第 34 轮谈判公告，可据此大致了解谈判方向和内容、共识和分歧。

结合欧委会公告和欧盟驻华大使郁白近期采访，中欧投资协定主要覆盖确保公平竞争 (ensuring a level playing field)、投资自由化 (investment liberalisation) 和可持续发展 (sustainable development)等重要领域。

此前，中国驻欧盟使团团长张明大使和郁白均向媒体确认，中欧在“公平竞争”项下议题已达成一致。“公平竞争” (a level playing field) 是近年欧盟在对外经贸关系发展频繁提及的核心词汇。近年新兴经济体对欧投资增加，欧盟外国有企业对欧投资增多，使欧洲有所担忧，部分欧洲人士则鼓噪外国国有企业在“攫取”欧盟战略资产。

欧委会去年发布关于外商持有欧洲关键产业公司情况加剧的报告

(Foreign direct investment report: continuous rise of foreign ownership of European companies in key sectors) 指出，从 2007 年至 2017 年，以国家为最终所有者公司收购近 400 家欧盟企业。其中，来自欧洲自由贸易区国家（挪威和瑞士）的近三分之一，其次是俄罗斯（93 项收购），海湾合作国家（阿拉伯联合酋长国、卡塔尔、科威特、巴林、沙特阿拉伯和阿曼）（80 项收购），中国（包括香港）起步较晚，但也有 60 项收购，而且多在近四年内发生。

近年欧美推动的新一代自由贸易协定均纳入国有企业条款。如欧盟-越南自贸协议对国有企业（SOEs）商业经营和补贴透明度等设置较严格规则，其第 11 章强调，双方国有企业参与商业活动时应像私营企业一样遵循公平竞争原则；此外，还有对国内补贴透明度和磋商程序规定等规定。

当然，由于缔约国不同及谈判实力差异，中欧投资协定中关于国有企业规则方面内容和欧越自贸协定内容应有所不同。目前或可肯定的是，双方在公平竞争议题下关于国有企业、竞争、补贴透明度、应对强制技术转让和商业经营等方面内容已无太大分歧。

中欧投资协定高水平很大程度体现在第二大部分“投资自由化”议题上。传统投资协议，如中国和欧盟成员国早些年签订的双边投资协定，主要涉及投资保护。中欧投资协定则加入投资自由化目标，引入市场准入条款，并采用美国双边投资协定经常使用的“负面清单”模式，列举出禁止外资进入的行业。

在第 12 轮至第 34 轮谈判结果公告中，欧委会没有过多披露市场准入下具体条款内容和进展，但多次提到金融服务（financial service）条款、国民待遇(national treatment)、也提到过电信、健康和交通领域等。据欧委会 2018 年发布中欧投资协定可持续性影响评估报告，欧盟主要关注中国运输设备、采矿和能源开采、化工、食品和饮料制造、金融和保险、通信和电子设备等六大方面。欧盟希望在这些领域有更好市场准入，显著改善欧盟投资者进入中国市场机会，尤其是消除数量限制、股权上限或合资企业要求等。

在该议题下，欧方着墨较多的还有另一核心内容——争端解决机制。目前全球有 3000 项双边投资条约，其中 1400 多项由欧盟成员国缔结，绝大多数包括针对投资者的争端解决机制。欧盟投资者是全球范围内最常使用这些机制的群体。

欧盟对投资者-国家争端解决机制一直极为关注，近年推动争端解决机制改革。2015 年，欧委会甚至提出，以投资法院体系(Investment Court System)取代现有投资争端解决机制倡议。有研究指出，在中国签订的双边投资协定中，明确声明缔约各方同意将争端提交国际仲裁的仅

限于荷兰（2001 年）、比利时-卢森堡经济联盟（2005 年）、墨西哥（2008 年）、瑞士（2009 年）。欧委会公告显示，中欧投资协定谈判中讨论了投资者-国家/国家-国家以及投资法院系统（Investment Court System）。中欧最终如何协调在该问题上立场值得关注。

可持续发展是中欧投资协定新议题，包括环境、气候变化，企业社会责任和劳工权益等条款。综合公开资料和媒体报道看，该部分是谈判“最后一公里”的难点。双方在环境和气候变化等问题取得一致，谈判焦点或集中在劳工权益。

据国际劳工组织官网发布的消息，中国是国际劳工组织创始成员国。中国已批准 26 个国际公约，包括 4 个核心公约，2 个治理公约以及 20 个技术公约。国际劳工组织和中国之间建立长久合作关系，近年，合作关系通过南南和三方合作（简称 SSTC）以及中国对国际劳工组织发展合作项目资金支持而进一步加强。

12 月 24 日，商务部新闻发言人就中欧投资协定谈判有关情况应询答记者问时表示，中欧投资协定旨在为双边投资提供更多的机会和良好的制度保障。协定的达成需双方共同努力、相向而行。中方致力于推进高水平对外开放，将在维护好自身安全发展利益的前提下，按照自身节奏，开展对外谈判，努力与欧方达成一项全面、平衡、高水平的投资协定。

2020 年是特殊的一年，也是中欧建交 45 周年、双边关系不平凡的一年。2019 年，中欧双边贸易总额为 7051 亿美元，目前每日双边贸易额即等于建交时一年贸易额。今年前 10 个月，中国在欧盟对外贸易史上首次取代美国，成欧盟第一大贸易伙伴。

在投资方面，据商务部等部门联合发布的《2019 年度中国对外直接投资统计公报》，2019 年末，中国对欧盟直接投资存量为 939.12 亿美元，占中国对外直接投资存量 4.3%。欧盟统计局数据显示，至 2018 年底，中国(包括香港)吸收欧盟直接投资存量为 2560 亿欧元，中国(包括香港)对欧盟直接投资存量则为 2020 亿欧元。

相比双方庞大经济总量和贸易往来，中欧投资大有空间和潜力。中欧各界期待双方尽快达成全面、平衡和高水平的投资协定，为双方企业投资提供更稳定和开放的法律环境和营商环境。

当然，任何事关核心利益的双边和多边谈判过程都“好事多磨”，谈判“最后一公里”阶段高层斡旋更显必要。24 日，李克强总理分别与西班牙首相桑切斯和荷兰首相吕特通电话，据报道，中欧投资协定是议题之一。桑切斯表示，西班牙支持早日达成欧中投资协定；吕特表示荷

兰期待欧中投资协定尽早达成，促进欧中关系更好发展。21 日，**国务委员兼外长王毅**在北京集体会见**欧盟及 27 个成员国驻华使节**时也发出期待尽早完成谈判的信号。