欧盟营商环境报告 2019/2020

Business Environment of the European Union 2019/2020



中国贸促会研究院
ACADEMY OF CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE

欧盟营商环境报告

2019/2020

本报告所含信息仅供参考，任何内容均不作为商业或法律建议，中国贸促会研究院对本报告所含信息的准确性与完整性不承担任何法律责任。

中国贸促会研究院版权所有，未经中国贸促会研究院的书面许可，任何个人或单位不可复制印刷本报告的部分或全部内容。

中国贸促会研究院

课题编写组：

组　长：赵　萍　中国贸促会研究院国际贸易研究部主任、研究员

成　员：周晋竹　中国贸促会研究院国际贸易研究部副主任

赵丽艳　中国贸促会发展研究部经济研究处处长

杨　挺　中国贸促会发展研究部投资研究处处长

张继行　中国贸促会研究院国际贸易研究部博士

张玉静　中国贸促会研究院国际贸易研究部博士

张庆波　中国贸促会研究院国际贸易研究部博士

周　磊　中国贸促会发展研究部经济研究处

李荣祥　中国贸促会发展研究部经济研究处

宫毓雯　安徽财经大学国际经济贸易学院副教授

李敬伟　对外经贸大学国际经济研究院副教授

参与校对：王晨、王慧铭、王鹏飞、刘彧瑾

目 录

前言 **2**

第一章 欧盟改革年度盘点 **3**

一、多重刺激提振经济效应有限 **4**
（一）欧洲投资计划扶持中小企业 4
（二）投资欧盟计划增进融资便利 5
（三）连接欧洲基金支持基础设施 5
（四）欧盟经济仍在低增长中徘徊 6
二、欧盟市场一体化推动速度慢 **7**
（一）数字单一市场战略取得进展 7
（二）资本市场联盟计划进程迟缓 9
三、欧盟贸易与投资自由化退坡 **10**
（一）外资安全审查政策持续收紧 10
（二）市场扭曲违背世贸组织规则 11

第二章 营商环境总体问题 **13**

一、欧盟整体营商环境不容乐观 **14**
（一）企业认为欧盟营商环境退步 14
（二）主要成员国营商环境排名差 15
二、欧盟市场准入门槛持续提高 **16**
（一）外资准入壁垒抑制外资增长 16
（二）滥用救济措施增加企业成本 17
（三）标准频繁变动阻碍市场进入 18
三、过度规制增加企业经营风险 **18**
（一）制度过度干预扰乱日常经营 19
（二）政府权力过大增加寻租机会 19
（三）签证限制阻碍人员合理流动 19
（四）法规繁复增加企业合规成本 20
（五）长臂管辖损害其他国家主权 21
四、隐性歧视违反公平公正原则 **21**
（一）对国企未坚持竞争中立原则 22
（二）歧视性执法削弱外企竞争力 23
五、政治社会环境增加外资忧虑 **24**
（一）政府效率低下增加企业成本 24
（二）治安环境恶化影响日常生活 25
六、过度保护增加企业运营成本 **27**
（一）劳工制度僵化拉升人力成本 27
（二）认知偏差增加外企融资困难 28

七、外资企业对欧投资信心下滑 29
（一）投资首选欧盟企业大幅减少 29
（二）中资企业并购或现最大降幅 30
第三章 总体建议书 31
一、取消不合理的市场保护措施 32
（一）制定公平合理外资审查规则 32
（二）严格规范使用贸易救济措施 32
（三）确保标准认证公平与可预期 32
二、减少过度规制对经济的影响 33
（一）避免政府对市场的过度干预 33
（二）包容审慎对待新兴业态监管 33
（三）促进外企人力资源自由流动 34
（四）充分征求外资企业意见建议 34
（五）推动欧盟的劳动力制度改革 34
（六）合理使用长臂管辖相关条款 34
三、坚决杜绝各种隐性歧视行为 35
（一）公平对待各所有制外资企业 35
（二）严格按照标准流程进行执法 35
四、加强政府公共服务体系建设 36
（一）提高政府人员公共服务能力 36
（二）加大公共治安管理投入力度 36
（三）切实满足外资企业合理诉求 36
第四章 市场准入专题 37
一、近期发展 38
（一）首部欧盟外资审查条例生效 38
（二）欧盟对华战略文件针对中资 39
（三）德国审查扩围并且提高标准 39
（四）意大利审查范围扩展到 5G 40
（五）法国收紧战略领域外商投资 41
（六）荷兰更加强调对华批判态度 42
（七）匈牙利已出台安全审查清单 42
二、问题分析 43
（一）欧盟外资审查清单不断扩大 43
（二）增加了时间成本与不确定性 44
（三）在审查中滥用国家安全概念 45
三、我们建议 46
（一）制定稳定和穷尽的审查清单 46
（二）明确审查权限且要提高效率 46
（三）给出国家安全审查具体范围 46
（四）给各种所有制企业公平待遇 47
第五章 行政执法专题 48

一、近期发展 **49**
（一）电子政务行动计划取得进展 49
（二）电子身份识别认证法律生效 50
二、问题分析 **50**
（一）只跑一次原则落实效果欠佳 50
（二）公共服务提供透明度待提升 51
（三）部分成员国政府信用待改善 51
（四）成员国政府服务能力待提高 51
三、我们建议 **52**
（一）提高政府服务能力现代化水平 52
（二）加快欧盟公共服务一体化建设 52
（三）大力加强政府的信用体系建设 52

第六章 通用数据保护条例专题 **54**

一、近期发展 **55**
（一）个人数据处理遵循六大原则 55
（二）个人数据主体拥有八大权限 56
（三）适用范围可能涵盖各国企业 57
（四）企业数据合规要求大量增加 57
（五）以全球营业额计算处罚上限 59
二、问题分析 **59**
（一）宽泛规制明显提升合规成本 59
（二）模糊条文大大增加合规难度 60
（三）严苛监管扰乱企业日常经营 61
（四）困扰金融机构信用体系建设 62
（五）背离科技进步抑制企业创新 62
三、我们建议 **63**
（一）配套制定可操作的执行条例 63
（二）基于司法解释开展企业培训 63
（三）数据保护与信用体系要兼顾 63

第七章 数字经济专题 **64**

一、近期发展 **65**
（一）发布 5G 网络安全审查建议 65
（二）发布网络安全风险评估报告 65
（三）欧盟网络安全法案正式施行 66
（四）法奥西三国开始实施数字税 66
（五）议会通过中国技术威胁决议 67
（六）波兰美国通过 5G 联合声明 68
（七）通过缓解 5G 相关风险决议 68
二、问题分析 **69**
（一）臆想并渲染中国技术威胁论 69
（二）波美联合声明排斥中资企业 69
三、我们建议 **70**

（一）停止 5G 领域对中资的歧视 70
（二）减少对 5G 领域的过度干预 70

第八章 知识产权专题 71

一、近期发展 72
（一）统一专利合作迟迟无法推进 72
（二）实施数字单一市场版权指令 72
（三）已启动欧盟地理标志注册簿 73
二、问题分析 73
（一）外资购买知识产权遭受歧视 73
（二）脱欧等新变局增加企业成本 74
（三）披露规则易致商业秘密泄露 75
（四）地理标志取消权力易遭滥用 75
三、我们建议 75
（一）平等对待外资购买知识产权 75
（二）加快推进统一专利立法进程 76
（三）地理标志注册保护商业秘密 76
（四）公正执行地理标志取消制度 76

第九章 公共采购专题 77

一、近期发展 78
（一）提出欧盟公共采购战略重点 78
（二）积极推动建立国际采购机制 78
（三）发布第三国投标者采购指引 78
二、问题分析 79
（一）公共采购标书歧视外资企业 79
（二）公共采购程序不透明不公正 79
（三）实际操作流程差别对待外企 80
三、我们建议 81
（一）提高公共采购程序的透明度 81
（二）加快公共采购的数字化进程 81
（三）建立公共采购监督管理体系 81
（四）支持中国加入政府采购协定 82

第十章 反垄断专题 83

一、近期发展 84
（一）德奥公布申报交易金额门槛 84
（二）发布促进欧盟产业发展声明 84
（三）法德发布欧洲工业政策宣言 84
（四）法德波呼吁反垄断法的改革 85
二、问题分析 85
（一）外资企业被审查可能性提高 85
（二）反垄断审查不符合国企实际 85
（三）对于国有企业实行双重标准 86

（四）反垄断审查易侵犯商业秘密 86
三、我们建议 87
（一）停止对中资国企的歧视行为 87
（二）反垄断检查减少对企业干扰 87
（三）进一步明确审查门槛等规则 87

第十一章 标准认证专题 88

一、近期发展 89
（一）RoHS 限制目录进一步扩大 89
（二）WEEE 可能适用所有产品 90
（三）REACH 频繁更新通报清单 91
二、问题分析 91
（一）指定第三方认证机构不透明 91
（二）标准认证时间过长成本过高 92
（三）标准频繁变化影响产品上市 92
（四）标准执法不力影响公平竞争 93
（五）标准制定没有中国企业参与 93
三、我们建议 94
（一）认证机构多元化过程透明化 94
（二）保持标准相对稳定与可预期 94
（三）执法检查公平对待所有企业 94
（四）允许外企平等参与标准制定 94

第十二章 税收专题 95

一、近期发展 96
（一）增值税改革简化了征管流程 96
（二）统一成员国增值税最低税率 96
（三）法国比利时实施大规模减税 96
（四）波兰实施增值税拆分支付法 97
二、问题分析 97
（一）主要成员国税负总水平过高 97
（二）欧盟税制差异推升企业成本 98
（三）拆分支付挤占外资企业资金 98
三、我们建议 99
（一）降低外资企业整体税务负担 99
（二）推进成员国税制一体化改革 99
（三）成员国进一步规范税收征管 99
（四）加强成员国之间的税收合作 99

第十三章 金融专题 100

一、近期发展 101
（一）实施新版金融工具市场指令 101
（二）要求非欧盟金融机构设 IPU 102
（三）颁布欧盟反洗钱第五次指令 102

二、问题分析 **103**
（一）大幅提升金融机构合规成本 103
（二）IPU 干扰外资金融机构布局 103
（三）子行化监管导致不公平竞争 103
（四）反洗钱过度溯源对外资更严 104
三、我们建议 **104**
（一）金融改革兼顾企业承受能力 104
（二）提升外资银行 IPU 设立门槛 105
（三）积极推动签订德中豁免协议 105

第十四章 物流专题 **106**

一、近期发展 **107**
（一）欧盟正式实施港口服务条例 107
（二）德国发布多式联运补贴政策 107
（三）德国新包装法设置销售禁令 108
二、问题分析 **109**
（一）PSR 或加剧官僚主义和垄断 109
（二）补贴政策可能损害公平竞争 110
（三）新包装法大大增加进口难度 110
三、我们建议 **111**
（一）更大程度向港口下放自主权 111
（二）PSR 应保障港口的充分竞争 111

第十五章 电子商务专题 **112**

一、近期发展 **113**
（一）新颁布电商增值税实施条例 113
（二）实施新版支付服务修订法案 113
（三）推出反地域封锁的电商新规 113
（四）加强跨境包裹递送信息采集 114
二、问题分析 **114**
（一）跨境交易管辖权归属不明确 114
（二）欧盟内部跨境支付存在障碍 114
（三）跨境物流体系建设水平落后 115
（四）成员国间管理制度差异较大 115
三、我们建议 **115**
（一）消除欧盟内部跨境支付障碍 115
（二）完善欧盟内部跨境物流体系 115
（三）推进欧盟层面电子商务立法 115

前言

中国和欧盟都是世界多极化、经济全球化进程的重要参与者和塑造者，中欧关系是全球最重要的双边关系之一，中国将欧洲视为重要合作伙伴和外交优先方向之一。虽然近年欧盟发展受到英国脱欧等事件影响，但没有改变一体化方向，继续致力于推进改革、应对挑战，中方一贯支持欧洲一体化进程。

2019年中欧关系继续走稳走实，中欧按期完成地理标志协定谈判，签署两份航空合作协定，“一带一路”与欧亚互联互通对接也在顺利推进；经贸合作成果丰硕，2019年中国与欧盟贸易额为4.86万亿元人民币，同比增长8%；截至2018年底，中国共在欧盟设立直接投资企业超过3200家，覆盖欧盟全部成员国，雇佣外方员工近26万人，中国企业正在通过各种形式为欧盟经济发展做出贡献。

欧盟和中国在《第二十一次中国——欧盟领导人会晤联合声明》中承诺，在双边贸易和投资中确保平等、互利合作，双方重申愿加强双边经济合作、贸易及投资，愿相互给予更加广泛、更为便利、非歧视的市场准入。但是欧盟及部分成员国继续加强外资审查、滥用贸易救济措施、在5G等领域歧视外资、过度规制干扰企业经营。2019年2月12日，欧委会发布《欧中战略前景》文件，将中国视为“经济竞争对手”及“制度性竞争对手”，并提出10项对华措施以寻求对华关系“再平衡”。欧盟的各项举措直接导致了欧盟营商环境的退步，调查显示，2019年受访中国企业中选择欧盟为首要投资目的地的比例仅为24%，远低于2018年的78.63%。

为帮助欧盟改善营商环境，促进中欧经贸合作进一步深化，中国贸促会研究院开展了《欧盟营商环境报告2019/2020》课题研究。课题组在国内和欧盟通过实地走访和座谈等形式调研在欧经营企业163家，全面、准确掌握企业诉求；通过各种渠道发放问卷500份，回收有效问卷268份。调查表明，欧盟市场准入门槛持续提高，过度规制增加企业经营风险，隐性歧视违反公平公正原则，政治社会环境增加企业忧虑，过度保护增加企业运营成本，外资企业对欧投资信心下降。

2020年是中国欧盟建交45周年，也是欧盟新一届领导履新元年，中欧在应对气候变化、扩大贸易投资等方面具有广阔的合作空间。希望欧盟高度重视企业诉求，取消不合理的市场准入门槛，避免过度规制限制市场经济发展，坚决杜绝各种歧视行为，加强政府公共服务体系建设，持续完善营商环境，增强企业在欧投资和经营信心。

第一章

欧盟改革年度盘点

近年来，欧盟在推动一体化发展和贸易投资自由化方面采取多项举措，虽然取得一定成效，但是一体化改革进展仍显缓慢，经济依然低迷，加强外资审查和 5G 安全审查等举措体现欧盟在贸易投资自由化道路上的退步。

一、多重刺激提振经济效应有限

2010 年 6 月，欧盟正式通过未来十年发展蓝图，即“欧洲 2020：智慧型、可持续与包容性的增长战略”（简称“欧洲 2020 战略”），确定了智慧型增长、可持续增长和包容性增长三个优先发展战略重点。在这一战略指导下，欧盟相继推出欧洲投资计划、投资欧盟计划、连接欧洲资金等项目刺激经济发展。

（一）欧洲投资计划扶持中小企业

截至 2019 年 10 月，欧洲投资计划促进欧盟 GDP 增长 0.9%，增加 110 万个就业岗位。**在投资领域**，欧洲投资计划在欧盟范围内额外创造 4394 亿欧元投资，投资恢复到危机前水平并且保持稳定增长；**在扶持中小企业方面**，超过 100 万初创企业和小企业通过欧洲投资计划获取融资；**在促进民生方面**，通过欧洲投资计划共修建或翻新 53.1 万套房屋，安装 2830 万个智能电表，3330 万欧盟居民享受更好的污水处理，1040 万家庭应用可再生能源[1]。

欧盟预计，到 2022 年，欧洲投资计划将总计促进欧盟 GDP 增长 1.8%，增加 170 万个就业岗位。

[1] https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/investment-plan-results_en

2014 年 11 月，欧委会主席容克提出促进增长、就业和投资的欧洲投资计划，并设立欧洲战略投资基金（EFSI），资金主要投向能源管网与能效、交通、宽带等基础设施领域改革扩建工程，以及教育、科研和创新等部门。2016 年 9 月，欧委会对战略投资目标进行升级，推出 EFSI 2.0 计划，将计划时间延长至 2020 年，并将投资目标提升至 5000 亿欧元，且将加强对小型项目投资力度。

（二）投资欧盟计划增进融资便利

2019 年 4 月，欧洲议会正式通过在 2021-2027 年欧盟长期预算期实施的刺激计划——投资欧盟，该计划由投资欧盟基金、投资欧盟咨询中心和投资欧盟门户网站三个项目组成，汇集“欧洲战略投资基金（EFSI）”和其他 13 项金融工具[2]，致力于推动就业、投资和创新，投资总目标为 6500 亿欧元[3]。

投资欧盟计划重点支持四大领域：**可持续基础设施**，包括可持续能源、数字联通、运输、循环经济、环境基础设施等项目；**研发、创新和数字化**，包括研发成果市场化、产业数字化、人工智能等项目；**中小企业**，重点支持中小企业和初创小企业；**社会投资与技术**，包括科教文卫、社会创新、医疗保健、移民和难民收容等项目。

（三）连接欧洲基金支持基础设施

[2] 包括 CEF 债务工具、CEF 投资工具、贷款担保便利、股权投资便利、Innovfin 股权、Innovfin 中小企业担保、增进研发便利的 Innovfin 贷款服务、提升能源效率的私募融资工具、自然资本融资便利、EsSI 能力建设投资、EsSI 小微金融和社会企业担保、学生贷款担保便利、文化和创意性产业担保便利。

[3] https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/whats-next-investeu-programme-2021-2027_en

2019 年 3 月，欧盟成员国常驻代表委员会与欧洲议会就启动 2021-2027 年连接欧洲基金计划达成共识，明确在 2020 年后继续实施该项目，并拟将 2021-2027 年基金规模扩大至 423 亿欧元，其中用于欧洲运输基础设施网络 306 亿欧元，用于能源投资 87 亿欧元，用于数字领域投资 30 亿欧元。**在交通领域**，该基金将优先考虑泛欧交通网络中有欧盟附加值的跨境项目；**在数字领域**，将扩大资助范围，支持欧盟数字单一市场建设和提升欧盟互联互通水平的项目，优先考虑为居民提供数字服务的项目；**在能源领域**，将继续促进欧洲能源市场整合，改善跨境和跨部门能源网络的连通性，支持低碳化发展，确保能源供应安全，并为跨境可再生能源项目提供资金支持[4]。

连接欧洲基金是通过为交通、数字和能源领域基础设施重点项目提供资金支持，促进欧盟投资、就业和整体竞争力提升的欧盟重点基金工具。该基金自 2014 年 1 月起实施，第一期至 2020 年结束，计划预算为 304 亿欧元。该基金同时强调运输、数字和能源部门之间的协同作用，以提高欧盟行动的有效性、优化实施成本。

（四）欧盟经济仍在低增长中徘徊

虽然欧盟一系列刺激举措在一定程度上带动了经济和投资，但是欧盟经济发展仍然处于低迷状态。自 2017 年第四季度开始，欧盟 GDP 季度增速呈下降趋势（如图 1 所示）。2019 年 11 月 7 日，欧委会发布经济预测报告，将 2020 年欧元区经济增长预期由 1.4%下调至 1.2%。

[4] https://ec.europa.eu/inea/en/connecting-europe-facility

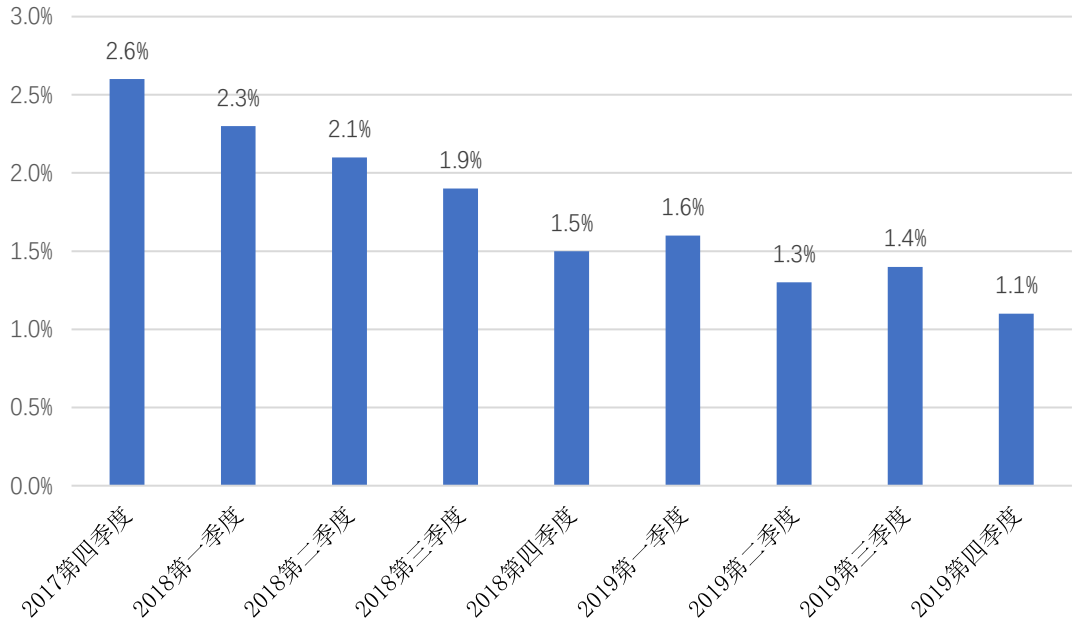


图 1 欧盟季度 GDP 同比增长率

数据来源：欧盟统计局。

二、欧盟市场一体化推动速度慢

（一）数字单一市场战略取得进展

数字单一市场战略实施以来，欧盟已围绕“数字单一市场”提出 30 项立法提案，其中 28 项已经在欧盟议会及欧盟理事会通过。围绕“数字文化”“数字未来”“数字生活”“数字信任”“数字购物”及“数字连接”六大领域，欧洲数字单一市场建设已取得诸多进展（见表 1）。

2015 年 5 月 6 日，欧委会正式公布“数字单一市场”战略，该战略明确了建设数字单一市场三大支柱：为个人和企业提供更好的数字产品和服务；创造有利于数字网络和服务繁荣发展的网络环境；最大化实现数字经济增长潜力。

表 1 欧盟数字单一市场建设进展

领域	主要建设进展
数字文化	保护欧盟文化多样性; 自 2018 年 4 月 1 日起，在欧盟内部实现线上内容及服务的跨地区提供; 构建数字文化档案。
数字未来	制定“超级电脑”建设计划,计划于 2023 年之前建成世界领先的超级电脑; 起草人工智能道德规范指南; 形成“欧盟区块链合作关系”，确保成员国间紧密合作; 建立数字创新中心泛欧网络。
数字生活	推动欧盟各国间政府公共服务数字化、便捷化; 保障欧盟各国中小企业、公民和政府机构间电子信息的安全传输; 加强欧盟各国公民健康信息共享，推动数字技术在健康领域的使用; 推出“欧洲技术议程”，减少各国数字技术水平差异; 5G 走廊建设计划。
数字信任	个人数据隐私保护; 儿童上网安全保护; 欧盟各国就维护网络安全展开合作。
数字购物	自 2018 年 12 月起，在欧盟内实现跨地区网络购物服务提供。
数字连接	保证欧盟各国的网络连接速度; 发起“Wifi4EU"倡议。

数据来源: https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market

（二）资本市场联盟[5]计划进程迟缓

截至 2018 年，欧盟银行部门风险得到有效控制，违约贷款比重大幅降低。2015-2018 年，资本市场联盟建设的一些关键基石已经打好，但金融稳定和一体化建设工作仍需继续推进，13 个关于资本市场联盟的提案中仍有 10 项尚未达成一致（见表 2）。此外，关于可持续金融分类、披露和低碳标准的 3 项提案也仍未得到解决[6]。

表 2 资本市场联盟立法提案通过情况

通过的立法提案	未通过的立法提案
关于招股说明书法案的立法提案； 关于欧洲风险资本和社会创业基金法案的立法提案； 关于简单、透明和标准化的证券化法案立法提案。	增加欧洲证券和市场管理局（ESMA）一致性监督有效性的立法提案； 增强投资公司审慎规则相称性的立法提案； 泛欧个人养老金产品立法提案； 开发不良贷款二级市场的立法提案； 建立欧盟资产担保债券框架的立法提案； 明确证券和债券交易第三方影响法律规则冲突的立法提案； 确保欧洲系统风险委员会（ESRB）能够有效监控潜在的金融稳定性风险的立法提案； 关于泛欧基金的风险投资基金和多国基金的立法提案； 关于中央对手方机制的立法提案； 关于共同合并公司税基的立法提案。

数据来源：https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en

[5] https://ec.europa.eu/info/publications/action-plan-building-capital-markets-union_en

[6] http://europa.eu/rapid/press-release_IP-18-6548_en.htm

2015 年 9 月，欧委会发布《建立资本市场联盟行动计划》，从加强对企业的金融支持、提高企业融资便利性、促进基础设施投资、促进个体和机构投资、利用银行业务支持经济发展、提高跨境投资便利性等 6 个方面发力，主要目标包括：

- 通过建立单一资本市场减少跨境投资障碍；
- 降低融资门槛、扩展项目资金来源并减少融资成本；
- 增强资本市场对经济发展和就业带动作用；
- 增强中小企业融资便利性；
- 增强欧盟对于外资吸引力。

三、欧盟贸易与投资自由化退坡

（一）外资安全审查政策持续收紧

2019 年 2 月 14 日和 3 月 5 日，欧洲议会和欧盟理事会分别通过《欧盟外资审查法律框架草案》，并在此基础上正式颁布《欧盟外资审查条例》，2019 年 4 月正式生效，生效 18 个月之后开始实施。该法案是欧盟层面第一部外资审查立法，虽然外资审查最终审批权仍然掌握在各成员国手中，但该法案为各成员国外资审查立法和实践提供原则和方向，建立成员国间信息共享机制，事实上加强了对于外资审查的力度。

在《欧盟外资审查条例》生效后，法国和意大利根据该条例修改本国法律。2019 年 5 月，法国颁布《推动企业经济增长与转型法》（PACTE）草案，加强经济财政部权力，规定在事关公共秩序、公共安全和国防安全的紧急情况下，经济财政部可以不履行催告程序，直接

做出否决。2019 年 7 月 11 日，意大利政府出台 DL64/2019 法案，对《黄金权力法案》进行增补，增强政府在国防、国家安全、电信、能源和交通等“战略性产业”外商投资领域审查权限，并将企业是否“被政府控制”纳入影响“国家安全”或“公共秩序”因素。

2017 年，德国、法国和意大利曾致信欧委会，指责部分国家对欧盟投资设置障碍，而这些国家对欧投资却畅行无阻，建议建立欧盟层面外资审查机制。欧委会于 2017 年 9 月发布《欧盟外资审查法律框架草案》，建议设立欧盟层面外国投资安全审查制度，重点审查关键基础设施、关键技术、关键投入品、敏感信息等领域外国投资，并重点考虑外国投资者是否由第三国政府直接或间接控制。

（二）市场扭曲违背世贸组织规则

2018年6月，欧盟修订贸易救济规则，发布2018/825号条例，引入“原材料扭曲”[7]概念，并在此基础上部分弃用低税规则。根据修订前规则，欧盟要将计算出的损害幅度与倾销幅度进行比较，按照较低幅度确定最终征税水平（即低税规则）。但新规则规定，在存在原材料扭曲的情形下，欧委会可以判定低税不足以充分弥补损害，实际上增加了贸易救济措施的处罚力度。

世界贸易组织规则不存在市场“严重扭曲”概念，欧盟反倾销调查新方法缺乏世贸组织规则依据，用欧盟单方制定标准衡量其他国家是否存在市场“严重扭曲”，将削弱世贸组织反倾销法律体系权威性。

[7] 价格双轨制、出口税、出口附加税、出口配额、出口禁令、出口财政费用、许可证、出口最低限价、减少或撤回出口退税、出口商清关限制、出口商资质清单、国内市场义务、原材料价格显著低于国际市场价格时的限制开采等行为，均可作为认定原材料扭曲的依据。

2017 年 12 月 19 日，欧盟公布欧洲议会和欧盟理事会通过欧盟反倾销修正条例（REGULATION（EU）2017/2321），增加市场“严重扭曲”计算方法，欧委会把是否存在市场严重扭曲作为是否采用被调查国成本和价格作为反倾销比较基础的前提，把政府政策影响力、国有企业以及金融机构的独立性等因素作为衡量市场扭曲的指标。

第二章

营商环境总体问题

欧盟近年来贸易和投资自由化立场动摇，将中国视为“制度性”竞争对手，不断收紧外资安全审查，修改贸易救济方法；在数字单一市场等欧盟一体化改革中过度规制，增加企业成本和负担。总体上，欧盟政策制定和执行不确定性增加，导致营商环境退步和中国企业对欧盟投资信心下降。

一、欧盟整体营商环境不容乐观

世界银行发布的《2020年营商环境报告》显示，中国营商环境全球排名在2018年大幅提升32位的基础上，2019年再次提升15位至全球第31位，连续两年成为全球营商环境改善幅度最大的10个经济体之一。法国、荷兰、比利时、意大利、卢森堡等欧盟主要成员国作为发达国家，排名却落后于发展中国家。

（一）企业认为欧盟营商环境退步

欧盟在外资审查、数据保护、金融等领域的过度规制和不清晰不明确的政策环境直接导致营商环境退步，加大外资企业在欧盟经营和投资难度。调查显示，受访企业中对欧盟营商环境持负面评价的比例达到27.6%，高于持正面评价的企业比例（如图2所示）。

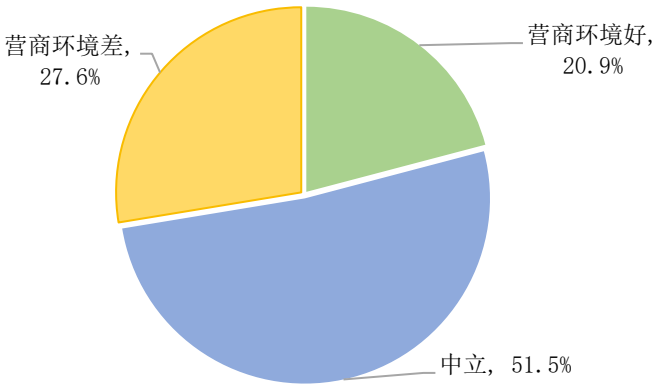


图2 对欧盟营商环境评价

数据来源：中国贸促会研究院。

（二）主要成员国营商环境排名差

《2020年营商环境报告》显示，大部分欧盟成员国营商环境排名位于30名之后，特别是在开办企业这一指标上，欧盟各成员国表现不理想，德国、波兰等成员国甚至排名在100位之后（见表3）。17个成员国的营商环境排名相对于上一报告期出现下降，波兰、荷兰、意大利、希腊、卢森堡均下降超过5个位次。

表3 欧盟各成员国营商环境和开办企业指标排名

成员国	营商环境排名（2018）	营商环境排名（2019）	排名变化	开办企业指标排名（2019）
丹麦	3	4	下降	45
瑞典	12	10	上升	39
立陶宛	14	11	上升	34
爱沙尼亚	16	18	下降	14
拉脱维亚	19	19	不变	26
芬兰	17	20	下降	31
德国	24	22	上升	125
爱尔兰	23	24	下降	23
奥地利	26	27	下降	127
西班牙	30	30	不变	97
法国	32	32	不变	37
斯洛文尼亚	40	37	上升	41
葡萄牙	34	39	下降	63
波兰	33	40	下降	128
捷克	35	41	下降	134
荷兰	36	42	下降	24

续表 3 欧盟各成员国营商环境和开办企业指标排名

成员国	营商环境排名（2018）	营商环境排名（2019）	排名变化	开办企业指标排名（2019）
斯洛伐克	42	45	下降	118
比利时	45	46	下降	48
克罗地亚	58	51	上升	114
匈牙利	53	52	上升	87
塞浦路斯	57	54	上升	50
罗马尼亚	52	55	下降	91
意大利	51	58	下降	98
保加利亚	59	61	下降	113
卢森堡	66	72	下降	76
希腊	72	79	下降	11
马耳他	84	88	下降	86

数据来源：世界银行《2019 年营商环境报告》《2020 年营商环境报告》。

二、欧盟市场准入门槛持续提高

市场准入是指一国允许外国货物、劳务与资本参与国内市场的程度。对外资提高市场准入门槛违反非歧视性原则，增加外资企业进入市场难度，甚至将外资企业挡在市场大门之外，在贸易领域会提高外国产品进入市场的成本。

（一）外资准入壁垒抑制外资增长

欧盟和部分成员国加强外资审查的举措提高外资企业进入欧盟门槛，增加投资成本，打击外资企业对欧盟投资信心。调查显示，在经历过欧盟外资审查的受访企业当中，48.8%遭受过歧视性待遇，78.8%认为外资审查给企业带来损害（如图 3 所示）。

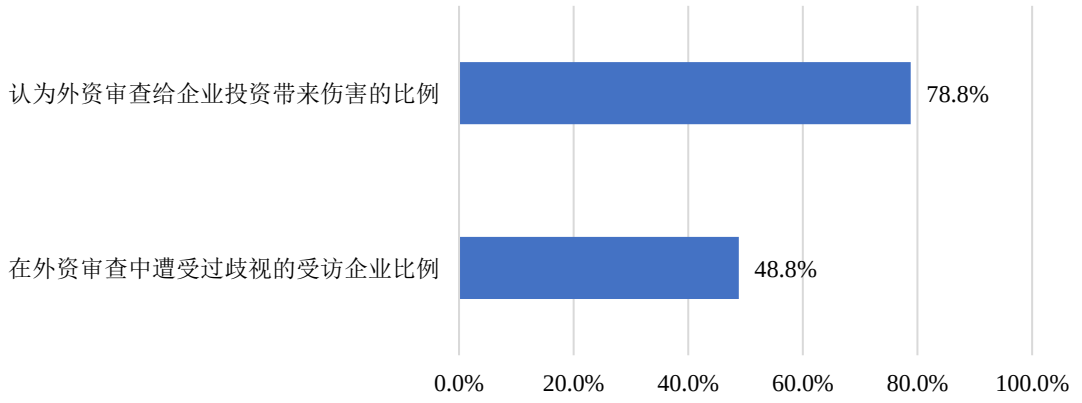


图 3 经历过外资审查企业对外资审查看法

数据来源：中国贸促会研究院。

（二）滥用救济措施增加企业成本

中国是欧盟第二大贸易伙伴,欧盟是中国最大的贸易伙伴和最大进口来源地。2019年中国对欧盟贸易额为4.86万亿元人民币，同比增长8%，占同期中国外贸总值15.4%。然而中国却是欧盟发起贸易救济措施的最大对象国，频繁的贸易救济措施极大地伤害中国对欧盟出口企业。WTO统计数据显示，2001-2018年，欧盟累计向中国发起99起反倾销调查和12起反补贴调查，是对华发起反倾销和反补贴调查数量第三多的经济体，仅次于美国和印度。截至2018年底，在欧盟发起贸易救济的申诉对象中，中国在反倾销、保障措施和特别保障措施三项措施中均占比最高，远高于其他经济体（见表4）。

滥用贸易救济惩罚措施增加产品进入欧盟市场成本，使企业在竞争中处于劣势。2019年5月3日，欧委会发布公告，对原产于中国的有机涂层钢产品做出反倾销和反补贴日落复审终裁，决定延长对涉案产品的双反措施。针对中国有机涂层板的双反措施最初于2013年实施，将延长五年，中国涉案企业反倾销税率为0-26.1%、反补贴税率为13.7%-44.7%，中国有机涂层钢板企业在欧盟将面临高昂的成本压力。

表4 欧盟作为贸易救济申诉国涉案国别统计（截至2018年底）

	反倾销		反补贴		保障措施		特别保障措施	
	案件数	占比（%）	案件数	占比（%）	案件数	占比（%）	案件数	占比（%）
中国	133	27	12	15	5	71	10	100
印度	38	8	22	28	0	0	0	0
韩国	28	6	7	9	0	0	0	0
俄罗斯	27	5	0	0	0	0	0	0
泰国	21	4	0	0	0	0	0	0
美国	18	4	4	5	0	0	0	0
其他	236	46	35	43	2	29	0	0
总计	501	100	80	100	7	100	10	100

数据来源：中国贸易救济信息网。

（三）标准频繁变动阻碍市场进入

欧盟产品标准频繁更新打乱企业研发、生产、经营节奏。受访企业反映，在还未根据既有标准完成产品测试与更新的情况下，欧盟又推出新标准，极大提高企业生产成本，降低产品上市效率，构成事实上进入壁垒。

中国企业参与欧盟标准制定困难。调查显示，中国企业对参与欧盟标准制定的积极性较高，愿意参与欧盟经济建设、履行社会责任。但缺乏明确、畅通的参与标准制定的路径阻碍了企业融入欧盟经济。

三、过度规制增加企业经营风险

欧盟近年来出台多项法律法规，涉及数据保护、数字经济、标准制定、外资准入、竞争等多个领域，对企业经营行为进行多方面规制。诸多规定超过政府对于市场干预的合理界限，破坏市场正常运行秩序，削弱企业经营自主性，极大增加企业合规成本。

（一）制度过度干预扰乱日常经营

欧盟对于市场和企业经营过度干预违反自由化原则，过于复杂的法律条款和过度严苛的监管要求使企业不知所措。

例如，在数据保护方面，GDPR 的过度规制导致企业无法正常开展工作，企业反映甚至无法正常通过社交软件联系中资企业，在招聘时不能够通过邮箱传递简历等，阻碍工作的正常开展。在金融领域，受访企业反映欧盟对于金融的过度监管导致合规成本无限放大，增加了企业经营难度。

（二）政府权力过大增加寻租机会

过度规制为政府干预市场机制提供便利，过度规制意味着政府拥有更多管辖权限和主导权，私人利益集团通过寻租来保证自身利益的空间随之扩大。在外资审查中，政府可依据模糊的“国家安全”的概念将企业正常的投资行为拒之门外；在贸易救济调查中，政府根据市场“严重扭曲”计算方法对输欧货物和服务采取惩罚性贸易保护主义措施，而欧委会作为欧盟贸易救济调查机关，自行制定并发布所谓的《市场扭曲报告》，并以其自身出具的报告为依据进行贸易救济调查裁决，增加政府的寻租空间。

（三）签证限制阻碍人员合理流动

签证问题仍然是在欧投资和经营企业面临的重要挑战之一，欧盟各成员国对工作签证的严格管制阻碍人力资源的有效流动。受访企业普遍反映，严格、繁琐的签证申办手续增加企业的资金和时间成本，而且对员工签证要求正在变得更严格，拒签几率增加。例如在比利时，

工作签证有效期为一年，而企业申请工作签证时间普遍在八个月左右，导致签证申请成功后便需立即着手准备下一年度的签证更新。2019 年外资企业在欧盟为员工申请工作签证更加困难，流程更加繁琐，无理由拒签率提升，例如波兰中资企业表示以往从未出现过被拒签现象，而 2019 年开始被拒签情形陆续出现。

调查显示，有 80.6%受访企业认为在欧盟获取工作签证和居留许可难度较大，仅有 19.4%的受访企业选择容易和较容易（如图 4 所示）。

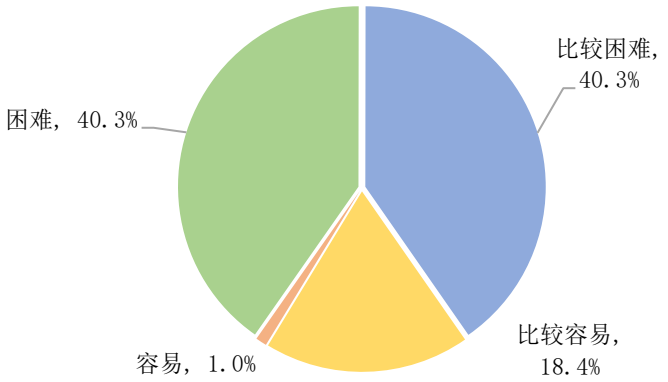


图 4 在欧盟获取工作签证和居留许可难度

数据来源：中国贸促会研究院。

（四）法规繁复增加企业合规成本

欧盟及其成员国法律非常复杂，导致企业需要付出巨大的时间和资金成本来达到合规要求。受访企业反映，在欧盟不管是开展绿地投资还是并购，都需要专业人士（包括金融、税务、法律等方面）提供的服务。但有些法律法规之复杂，即使是国际知名的第三方专业服务机构也未必能够妥善处理，有时政府、商协会与服务机构甚至可能给出完全不同的解释，不但使企业无所适从，更增加企业“不合规”的风险。

政府工作人员对主管领域的部分问题也不能准确处理。调查显示，56.1%的受访企业反映曾经遭遇过欧盟不同政府部门对同一法律法规给出不同解释的问题，这一方面是由于政府工作人员专业程度有待提升，另一方面也体现欧盟法律法规过于复杂，导致主管的政府工作人员也无法准确理解。

（五）长臂管辖损害其他国家主权

长臂管辖源自于美国国内法律界术语，即越过法院所在地而在域外执行法律管辖权。欧盟在《欧盟通用数据保护条例》（GDPR）规定："本法适用于对欧盟内数据主体的个人数据处理，即使控制者和处理者没有设立在欧盟内。"即不论企业是否在欧盟境内，只要处理了欧盟居民的个人数据，即受 GDPR 规制，一旦违反 GDPR 相关规定，欧盟有权进行处罚。长臂管辖权的运用意味着"域外管辖权"的扩张，易导致该管辖权的无端扩大使用，不利于保护企业的合法权益。

四、隐性歧视违反公平公正原则

欧盟一直坚持自由化发展理念，以多边贸易体制和完善的法律体系为基础构建开放的市场环境，但是在日常实践中却存在"隐性歧视"的错误做法。"隐性歧视"形成外资企业难以逾越的"玻璃门"。中国国有企业虽然可以同其他外企一同投资欧盟，但是在审查过程中遭遇更加严格的监管，使国有企业在竞争中处于劣势；在执法过程中，监管机构对部分外资企业开展选择性执法和提出额外的监管要求，增加企业经营成本。

（一）对国企未坚持竞争中立原则

欧盟在反垄断审查中对中国国有企业采取“合并计算营业额”的歧视性计算方法，在安全审查中考虑所谓的“政府因素”，并计划通过立法应对中国国有企业和政府资金对欧盟内部市场所谓的“扭曲效应”。欧盟歧视性地对待国有企业，将极大打击国有企业对欧投资热情，无法发挥国有企业投资对欧盟经济发展的促进作用。

调查显示，42.7%的受访国有企业曾因国有企业身份遭受更加严格的审查，69.7%的受访国有企业曾因国有企业身份在日常经营中面临更加严格的监管（如图 5 所示）。

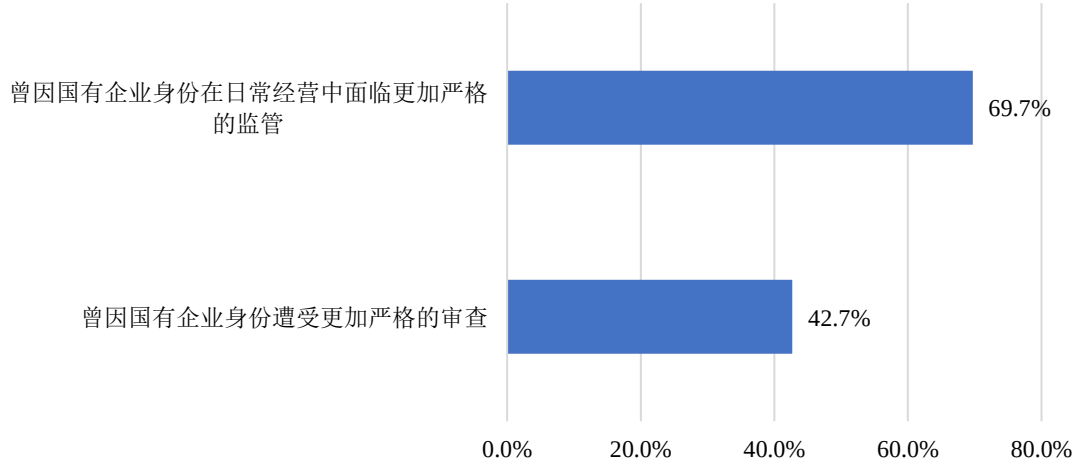


图 5 因国有企业身份遭受更加严格审查和监管

数据来源：中国贸促会研究院。

中国坚持按照竞争中性原则对待国有企业，对外商投资者一视同仁。按照经合组织的定义，竞争中性原则是指公有企业与私有企业在监管框架内适用相同的规则，与政府的关系不为市场中的任何参与者带来竞争优势。2019 年 3 月 26 日，中国国务院常务会议宣布，中国

将按照竞争中性原则，加快清理修改一系列束缚民营企业发展、有违内外资一视同仁的政策措施[8]。同时，中国不断对国有企业进行改革，进一步明确国有企业独立的法人身份和市场竞争主体的地位。2019 年 4 月 28 日，中国国务院印发《改革国有资本授权经营体制方案》[9]，明确提出：坚持政企分开政资分开；坚持政府公共管理职能与国有资本出资人职能分开，依法理顺政府与国有企业的出资关系，依法确立国有企业的市场主体地位，最大限度减少政府对市场活动的直接干预；坚持权责明晰分类授权，政府授权出资人代表机构按照出资比例对国家出资企业履行出资人职责，科学界定出资人代表机构权责边界；国有企业享有完整的法人财产权和充分的经营自主权。

中国欧盟商会公布的《商业信心调查 2019》[10]也指出，在过去的 24 个月中，四分之一的欧洲企业参与了中国国有企业的混合所有制改革。欧盟企业已成为中国落实“竞争中立”原则的受益者。

（二）歧视性执法削弱外企竞争力

中国贸促会研究院《欧盟投资环境报告 2018/2019》曾指出，由于对中国企业的错误认知，部分成员国政府存在对中国企业歧视性和选择性执法的问题，给中国企业在欧经营带来障碍。该问题目前仍然存在，部分成员国政府对中国企业的检查频率明显高于其他企业，在检查后会对中国企业提出更加苛刻的要求，影响企业正常经营，导致经营成本上升。

[8]http://www.gov.cn/premier/2019-03/26/content_5376991.htm
[9]http://www.gov.cn/zhengce/content/2019-04/28/content_5387112.htm
[10]https://www.europeanchamber.com.cn/en/publications-business-confidence-survey

调查显示，歧视性执法是中资企业面临的重要问题，32.1%的受访企业在欧盟遭遇过歧视性执法，30.1%的受访企业认为欧盟政府对外资的执法较不公平（如图 6 所示）。

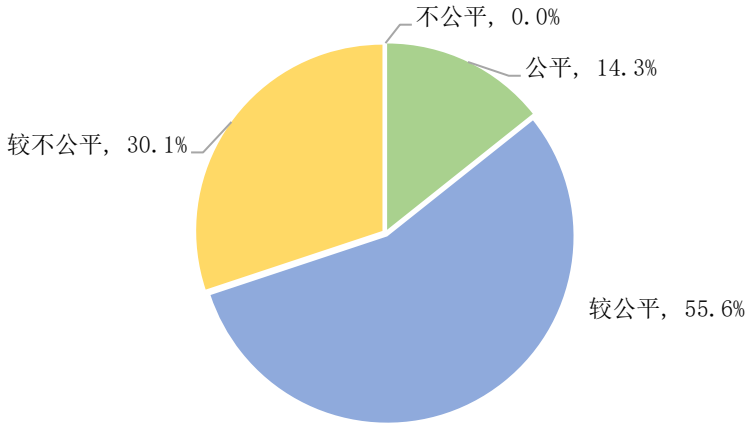


图 6 欧盟政府外资执法公平性

数据来源：中国贸促会研究院。

波兰中资企业反映，波兰政府对中国设计机构持有歧视性态度，反复审查中国设计机构出具的设计方案，导致工程无法顺利推进。中国企业被迫雇佣波兰当地设计机构，波兰设计机构的方案直接导致工程无法使用中国原材料，只能采购波兰当地原材料。在工程验收时，对波兰施工机构的工作内容验收速度快且流程简单，而对中国施工机构的工作内容则验收流程繁琐且提出各种不合理要求，是对中方企业歧视。

五、政治社会环境增加外资忧虑

（一）政府效率低下增加企业成本

高效的政府服务是外资企业在欧盟开展投资、经营的行政保障，

但是受访企业普遍反映部分欧盟成员国政府工作效率低下，对中国企业在欧正常经营造成障碍。调查显示，73.4%的受访企业认为欧盟政府工作人员的工作效率低或较低；43.4%的受访企业认为欧盟在行政审批、监管等过程中存在程序上的拖延（如图 7 和图 8 所示）。

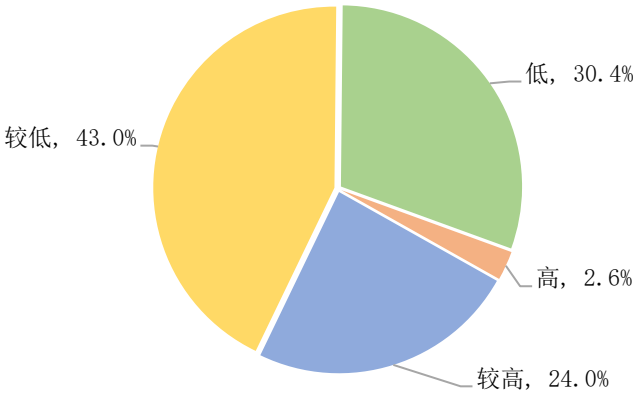


图 7 欧盟政府工作人员工作效率

数据来源：中国贸促会研究院。

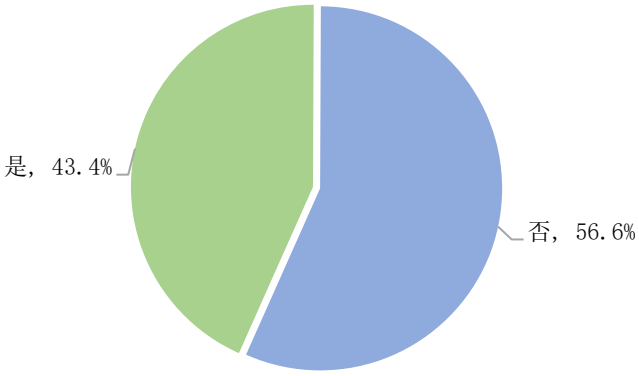


图 8 欧盟在行政审批、监管等过程中是否有程序上的拖延

数据来源：中国贸促会研究院。

（二）治安环境恶化影响日常生活

治安环境是营商环境的基本要素，只有企业员工的人身安全得到有效保障，外资企业才能正常开展投资和经营。而近年来欧盟治安环境不容乐观，恐袭事件频发影响外资企业的投资信心。

表 5 2016 年以来在欧盟发生的主要恐袭事件

时间	地点	恐袭事件
2016 年 3 月 22 日	比利时	布鲁塞尔市郊的扎芬特姆机场和市内欧盟总部附近地铁站接连发生爆炸袭击，造成至少 30 人死亡、300 人受伤
2016 年 7 月 14 日	法国	一辆卡车冲入法国南部旅游城市尼斯观赏烟花表演的人群中，造成至少 84 人死亡、202 人受伤
2016 年 7 月 24 日	德国	巴伐利亚州安斯巴赫市发生一起爆炸事件，造成爆炸制造者本人死亡，另有 12 人受伤，其中 3 人伤势严重
2016 年 12 月 19 日	德国	一辆货车冲进柏林西部城区繁华地带一个圣诞市场的人行道，造成 12 人死亡、49 人受伤
2017 年 4 月 7 日	瑞典	斯德哥尔市中心发生货车撞向人群的恐怖袭击，造成至少 4 人死亡，15 人受伤
2018 年 3 月 23 日	法国	一名持有武器的恐怖分子在法国南部奥德省的卡尔卡松市和特雷布镇制造恐怖袭击，导致 3 人丧生，16 人受伤
2019 年 11 月 29 日	英国	一名男子持刀在伦敦桥袭击路人，警方表示，事件造成包括凶手在内的 3 人死亡，另有 3 人受伤

数据来源：根据公开资料整理。

美国咨询公司盖洛普发布的 2018 年《全球法律与秩序》根据全球 142 个国家和地区居民反馈，基于居民自身安全感，对全球各地的治安环境进行排名。中国排名第 10，而比利时、克罗地亚、波兰、意大利、匈牙利等欧盟成员国位于 40 名之后。治安环境不良导致外资

企业员工的人身安全得不到有效保障。中资企业反映，比利时布鲁塞尔治安近几年没有明显改善，盗抢案件时有发生，警察工作效率低下。

欧盟频繁的罢工事件导致治安环境恶化。2019 年 9 月 3 日，法国爆发公共交通系统的罢工，巴黎地铁员工罢工率高达 90%。2019 年 12 月 5 日，法国爆发大规模的罢工事件，全国有超过 200 场示威，交通几乎全面瘫痪，全国 90%的高铁停驶，巴黎 16 条地铁线路中的 11 条关闭，甚至出现针对汽车、商店等设施的破坏行为，对居民生命安全构成威胁。在此次罢工前，中国驻法国大使馆曾发布消息，提醒在法中国公民提高安全防范意识。

恐怖袭击事件频发也是导致治安环境恶化的重要因素。近年来，欧盟多个成员国的恐袭事件频发（见表 5）。欧盟刑警组织发布的《欧盟恐怖主义形势与趋势报告 2019》[11]显示，2018 年欧盟成员国各类恐怖袭击总数 129 起，对外资企业员工的人身与财产安全造成威胁。

六、过度保护增加企业运营成本

严苛的法律规制和歧视性监管形成对本国市场的过度保护，在人力资源领域，僵化的劳工制度制约企业经营灵活度并大幅拉升成本，阻碍日常经营；在金融领域，对外资企业的歧视性做法增加企业的融资成本和难度。

（一）劳工制度僵化拉升人力成本

过度的劳工法律规制和过大的工会权力既增加企业成本，也干扰企业正常经营活动。调查显示，46.4%的受访企业遭遇过本地用工比例要求，49%认为工会活动影响企业正常经营活动（如图 9 所示）；

[11] https://www.europol.europa.eu/activities-services/main-reports/terrorism-situation-and-trend-report-2019-te-sat

66.9%认为工会和劳工制度极大提升企业成本（如图 10 所示）。受访企业普遍反映人力资源成本增加，76%的受访企业人力资源成本在 2018 年出现增长。

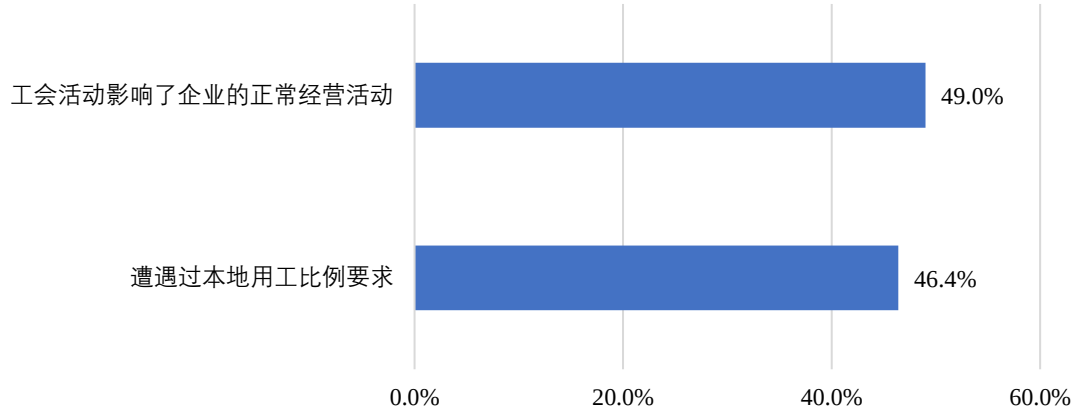


图 9 工会活动影响企业正常经营和遭遇本地用工比例要求

数据来源：中国贸促会研究院。

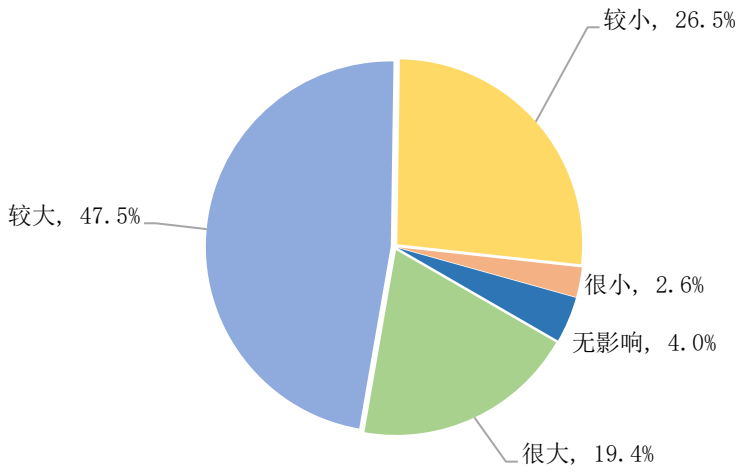


图 10 工会和劳工制度对企业成本提升的影响

数据来源：中国贸促会研究院。

（二）认知偏差增加外企融资困难

便利化的融资是外资企业在欧盟开展投资的重要基础，但是外资企业在欧盟开展融资仍面临阻碍。受访企业反映，部分欧盟成员国对中国企业经营模式不够了解，在贷款审批方面对中资企业实行歧视

性审查程序和额外文件要求，增加中资企业融资难度。调查显示，46.4%的受访企业表示在欧盟的融资成本比上一年度增加。融资难度增加和成本上升导致企业无法根据既有投资计划在欧盟开展正常经营，企业发展受到资金不足的困扰。

七、外资企业对欧投资信心下滑

不确定的营商环境直接导致企业投资信心下滑。调查显示，2019年在欧投资和经营中资企业对欧盟营商环境的信心出现大幅下降。安永调查数据也显示，跨国企业对德国投资环境的满意度在下降，受访的700多名跨国企业管理人员对德国的负面评价比例由2017年的22%上升到2018年的37%；正面评价仅占11%，同比降低14个百分点。

（一）投资首选欧盟企业大幅减少

调查显示，选择欧盟为首要投资目的地的受访企业比例仅为24%（如图11所示），而在上一年度，选择欧盟为首要投资目的地的受访企业比例高达78.63%，投资首选欧盟的企业比例出现大幅下降。

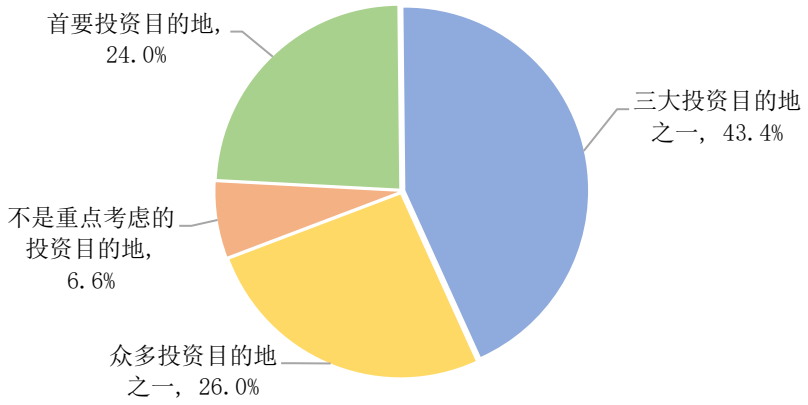


图11 欧盟在企业全球投资计划中的重要性

数据来源：中国贸促会研究院。

（二）中资企业并购或现最大降幅

中国商务部数据[12]显示，2018年中国对欧盟的投资放缓，投资流量为88.66亿美元，同比下降13.6%。其中，中国对德国投资流量为14.68亿美元，同比下降45.9%，占对欧盟投资流量的16.6%（2017年度占比为26.5%）。根据OECD统计，2019年上半年，欧盟整体吸引外资环比下降高达62%，19个成员国吸引外资出现下降[13]。中国对欧盟的并购金额也在大幅下滑，安永数据[14]显示，2019年，中企在欧洲并购金额仅为205.3亿美元，同比大幅下降57.1%；2019年中国海外并购十大目标国家（按并购金额）中，仅有英国一个欧盟成员国，而2018年度中国企业海外并购前十大经济体中欧盟国家则占据六席。

[12] 商务部：《2018 年度中国对外直接投资统计公报》。

[13] http://www.oecd.org/investment/FDI-in-Figures-October-2019.pdf

[14] 安永：《2019 年全年中国海外投资概览》。

第三章

总体建议书

一、取消不合理的市场保护措施

（一）制定公平合理外资审查规则

外资审查应当建立在公平、合理的基础上，欧盟枉顾与中国国情差异的现实状况而片面强调所谓“对等开放”，滥用“国家安全”和所谓“政府控制”概念，违反非歧视原则。

建议欧盟制定公平、合理、透明、可预期的外资审查规则；缩减审查目录并提高审查程序的透明性，增强投资者在欧盟投资的信心。

（二）严格规范使用贸易救济措施

欧盟将所谓市场扭曲作为是否采用被调查国成本和价格作为反倾销比较基础的前提，把政府政策影响力、金融机构独立性等因素作为衡量市场扭曲的要素，这些新做法在世贸组织规则中没有依据，容易成为贸易保护的工具。

欧盟作为世界上最大的经济体之一和 WTO 重要成员，建议欧盟带头严格遵守世贸规则，规范使用贸易救济措施，避免向外界发出贸易保护主义的错误信号。

（三）确保标准认证公平与可预期

标准认证是外资企业和产品进入欧盟市场的重要门槛，歧视性待遇有可能直接导致企业进入欧盟市场失败，不稳定、不透明的标准制定与修订流程会阻碍外资企业产品的正常上市，均构成不公平的进入壁垒。在标准制定方面，外资企业对于参与欧盟标准制定具有较强的积极性，外资企业参与欧盟标准工作，能够进一步提高欧盟标准工作的公开性和透明度，扩大欧盟标准影响力。

在标准认证机构选择方面，建议欧盟坚持非歧视原则，确保认证机构选择、认证标准制定等公平、透明；建议欧盟制定明确的标准更新流程与路线图，给予企业稳定预期；建议欧盟为外资企业参与标准制定提供合理、通畅的渠道，充分考虑外资企业对欧盟标准合理建议。

二、减少过度规制对经济的影响

（一）避免政府对市场的过度干预

市场经济发展的原则是减少政府对市场过度干预，增强市场微观主体活力。过度规制偏离了纠正市场外部性的初衷而服务于政府其他意志，增强政府权力，增大政府寻租空间，进一步增加企业经营难度。

建议欧盟避免在法律法规、行政执法等方面对于企业的过度规制，给予企业合理的发展空间；减少政府对于微观经济行为的过度干预，加强对企业的服务职能；完善政府权力监督和制约机制，减少寻租行为发生。

（二）包容审慎对待新兴业态监管

在互联网时代，新兴业态的发展为传统政府管制模式提出挑战，“创新”与“监管”之间的两难选择是政府亟待解决的问题。由于传统监管模式不能适应新兴业态的发展，监管部门对新兴业态也缺乏全面、准确认识，易导致新兴业态受到原有监管体制的过度规制，阻碍新兴业态创新发展。

建议欧盟对科技创新特别是新兴业态采取包容性的监管态度和方式，为企业发展提供监管和包容创新并重的政策环境，加强对新兴业态服务指导；同时要构建规范高效的风险管控体系，在控制风险的基础上促进新兴业态发展。

（三）促进外企人力资源自由流动

外资企业对欧盟投资不仅提供资金和技术，也带来各领域专业人才。然而欧盟对于外资企业员工工作签证和居留许可的限制导致外资企业无法根据经营需要及时向欧盟派遣经营和技术人才，影响外资企业在欧经营。

建议欧盟放松对工作签证和居留许可的管制，确保具有稳定投资和长期经营项目的外资企业获得合理的签证数量，保证外资企业在欧盟的正常运营。

（四）充分征求外资企业意见建议

外资企业是欧盟经济的重要组成部分，在制定与外商投资有关法律规章时听取外资企业意见和建议，不但能够提高立法质量，发挥法律对外资引领和保障作用，也能进一步提升外资企业参与欧盟法制和经济建设的积极性。

建议欧盟在更大范围内征求外资企业对于立法的意见，认真考虑合理化建议；在法律法规颁布以后，出台详尽的解释条例，并对企业开展针对性培训；及时清理无效、过时的法律法规条文。

（五）推动欧盟的劳动力制度改革

欧盟僵化的劳工制度限制企业的正常发展，也在一定程度上阻碍外资在欧盟投资，削弱了欧盟国际竞争力。建议欧盟加大力度推动劳动力制度改革，激发劳动力市场活力。

（六）合理使用长臂管辖相关条款

任何法律制度都是为更好地维护本国社会秩序、保护本国国民利

益。随着国际间经贸往来日益频繁，各种经济贸易冲突与摩擦在所难免，域外管辖也成为各国法律不断关注的问题，但域外管辖必须维持在合理范畴内，不得以此为借口随意干预他国经济治理、企业经营。

建议欧盟在制定法律法规时应遵守国际法的规定，合理使用“长臂管辖”条款，防止管辖权无端扩大。

三、坚决杜绝各种隐性歧视行为

（一）公平对待各所有制外资企业

公平的竞争环境是良好营商环境的基本要义，各所有制外资企业均为欧盟经济发展做出自身贡献，对不同所有制企业采取差别性、歧视性待遇会打击外资企业对欧投资信心与热情。

建议欧盟严格按照竞争中性原则，对各类所有制企业一视同仁，公平保护企业的各项权利，保障不同所有制企业在市场准入、资质许可、政府采购、项目申请、标准制定等方面享受同等待遇。

（二）严格按照标准流程进行执法

在执法过程中对部分外资企业进行歧视性、选择性执法不但会损害企业利益，还会破坏欧盟法治环境，降低欧盟营商环境的吸引力。

建议欧盟及成员国政府制定完善的执法标准与流程，并对外资企业予以公示，提高执法透明度，给予企业稳定执法预期；在执法过程中公平对待各类市场主体，避免选择性执法和歧视性执法；建立健全执法制约和监督机制，认真对待企业建议和质询，对于违规执法行为严格依法惩处。

四、加强政府公共服务体系建设

（一）提高政府人员公共服务能力

政府工作人员业务素质高低决定公共服务能力和水平，也代表了欧盟成员国政府的形象。调查显示，部分成员国政府工作人员能力不足、效率过低等问题已经影响外资企业正常经营和投资信心。

建议欧盟各成员国政府加强对政府工作人员的行政和业务能力培训，以企业需求为导向，制定严格、合理的行政工作指南和规范。

（二）加大公共治安管理投入力度

良好治安环境是外资企业在欧盟投资和经营的最基本诉求，影响外资决策的一个重要因素，稳定的社会治安才能增强投资者的信心。

建议欧盟各成员国加大治安管理相关投入，大力改善治安环境，使本国居民和外资企业员工人身安全得到有效保障。

（三）切实满足外资企业合理诉求

外资企业在欧盟开展投资与经营会面临多方面问题，需要各成员国政府予以重视并针对性地解决，这是外资企业的基本诉求，也是欧盟提升投资者信心、完善营商环境的必然举措。

建议欧盟高度重视外资企业对欧盟信心的下降和对欧盟营商环境的悲观预期，加强与外资企业沟通和交流，掌握外资企业对改善营商环境的诉求，全力改善营商环境。

第四章

市场准入专题

一、近期发展

（一）首部欧盟外资审查条例生效

《欧盟外资审查条例》[15]（以下简称《条例》）于 2019 年 4 月正式生效，将于 2020 年 10 月正式实施，是欧盟层面首个基于安全和公共秩序的外商直接投资审查工具，其正式生效表明欧盟开始收紧外资审查。《条例》制定涉及“欧盟安全和公共秩序”的“非穷尽”审查项目清单，确立了成员国和欧委会之间的执法合作和信息交换制度，欧委会可向投资涉及的成员国出具无约束力的意见。

《条例》规定的重点审查领域

●关键基础设施，包括能源、运输、水资源、卫生、通信、媒体、数据处理或存储、航空航天、国防、选举或金融基础设施和敏感设施，以及对使用这种基础设施至关重要的土地和房地产；

●关键技术和双重用途技术（军民两用），包括人工智能、机器人、半导体、网络安全、航空航天、国防、能源储存、量子和核技术以及纳米技术和生物技术；

●关键投入品，包括能源或原材料以及粮食的供应安全；

●访问敏感信息，包括个人数据或控制此类信息的能力；

●媒体自由和多元化；

●外国投资者是否由第三国政府直接或间接控制，包括通过所有权结构或显著的资本投入进行控制；

●外国投资者是否参与影响成员国安全或公共秩序的活动；

●外国投资者是否存在从事非法或犯罪活动的严重风险。

[15] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0452&from=EN

（二）欧盟对华战略文件针对中资

2019 年 3 月 12 日，欧委会公布对华战略文件——《欧中战略前景》[16]，该文件将中国定位为制度性对手和经济上的竞争者。欧盟认为，现有政策未充分考虑外国投资中政府补贴的影响，明确表示要加强对中国在欧盟投资的监管力度，将通过立法加大对中国投资的干预力度。

欧盟对华战略文件部分内容

●**加强对 5G 领域投资的监管力度。**文件指出，在关键资产、技术和基础设施等战略性领域外国投资会导致欧盟的安全风险，特别是 5G 等关键基础设施同欧盟的敏感信息、关键设备供应等联系紧密，更应加强保护。欧委会将向欧盟理事会提议出台政策保障 5G 网络的安全。

●**加大《条例》落实力度。**各成员国应当保证外资审查法案的快速、完整和有效实施，根据《条例》对本国的审查制度做出相应调整，并加强各成员国之间的协作。

（三）德国审查扩围并且提高标准

2018 年 12 月 19 日，德国内阁讨论并通过《对外贸易与支付条例》（以下简称《外贸条例》）修改草案。

第一，降低审查触发门槛。当涉及德国国防以及关键基础设施领域的企业在被非欧盟资本收购时，如外国投资者直接收购目标企业的决策投票权超过 10%，联邦政府就能介入进行审核。此前，只有在这些企业被收购股比超过 25%时，德国政府才会启动审核机制。

16 https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf

第二，延长行使审查权的期限。原有审查制度规定德国联邦经济事务与能源部在获悉相关并购、合同签署后的一个月内，将启动并购审查程序的决定通知直接交易的购买方以及交易所涉及的德国国内企业，即可行使审查权，《外贸条例》第 55 条第 3 款将该期限扩展到 3 个月；“主审查程序”的期限由原来的 2 个月延长到 4 个月。

第三，增加企业主动申报的义务。《外贸条例》第 55 条第 4 款首次引入“主动申报义务”，即非欧盟主体若并购前述六种类型德国企业，或者直接或间接地对上述企业进行参股达到或者超过该条例设定的 10%的表决权比例，应当在交易相关债权合同缔结后向德国联邦经济事务与能源部进行书面申报。

（四）意大利审查范围扩展到 5G

2019 年 3 月，意大利《黄金权力法案》新增补充条款，当企业签署有关 5G 网络的设计、建设、维护和管理相关的商品或服务购买合同或协议，或对网络本身具有功能的高科技组件的收购时，若与欧盟以外的企业合作，并可能危及网络完整性和安全性，政府将进行审查。

2019 年 7 月 11 日，意大利政府出台 DL64/2019 法案，继续对《黄金权力法案》进行增补，增强政府在涉及国防、国家安全、电信、能源和交通等“战略性产业”外商投资领域的审查权限。

第一，延长审查时间。原法案规定，在收到投资者或目标公司上报的材料后，政府应在 15 天内做出是否批准该项投资的决定，新法案将 15 天的审查时间延长到 45 天；原法案规定，在审查过程中，政府可以通过要求交易各方提供补充材料，并据此将审查时限额外延长 10 天，新法案将额外延长时限增加为 30 天。

第二，将企业是否“被政府控制”纳入影响“国家安全”或“公共秩序”的因素。当非欧盟企业收购意大利在通信、能源和交通领域的战略性资产时，如果该企业以所有制形式或者资金补贴的形式被非欧盟政府直接或间接控制，该项收购将被审查是否会损害意大利“国家安全”或“公共秩序”。

（五）法国收紧战略领域外商投资

2019 年 5 月，法国颁布《推动企业经济增长与转型法》[17]，加强经济财政部的行政权力，强化对战略行业的保护和支持。改革措施主要涉及公司法、劳动法，以及税收、投资、进出口、知识产权等领域的法律规定。其中“保护战略领域企业”部分加强了对外资进入战略领域的审查力度。

第一，加强经济财政部作为主管部门的行政权力。经济财政部可对未经审批、未按照附条件批准中所附条件进行投资的行为进行处理，并可在事关公共秩序、公共安全和国防安全的紧急情况下不履行催告程序，直接做出决定。

第二，扩大行政处罚范围。增加对“通过欺诈手段取得前置审批”“未按要求部分或全部履行责令改正行政决定”等行为处罚。

第三，扩大经济财政部获取企业信息的权力。投资者或相关目标企业应当按照主管部门要求，向经济财政部提供一切审批手续所必需的文件和信息。企业不得以商业秘密受到法律保护为由，拒绝向经济财政部提供相关文件。

[17] https://www.gouvernement.fr/en/pacte-the-action-plan-for-business-growth-and-transformation

第四，规定政府对相关信息的公开义务。政府应当每年定期公布对外资管制措施的统计数据，并就国家经济、产业和科研利益的保护等相关内容以及有关外商投资前置审查的具体统计数据（数量、处罚情况等）向议会特别委员会提交工作报告。

（六）荷兰更加强调对华批判态度

2019 年 5 月 15 日，荷兰政府发表关于中国的政策文件——《荷兰和中国：新的平衡》[18]，称尽管中国是重要伙伴，但荷兰应该以更加批判性态度对待中国。

该文件指出，在贸易方面，中国并不是一个市场经济国家，希望中国改变所谓不公平的贸易行为，中荷贸易关系必须更加“平衡和对等”；在投资方面，荷兰政府将更加注重保护知识产权，避免强制技术转移并有效控制来自中国的投资风险。

（七）匈牙利已出台安全审查清单

2019 年 1 月 1 日，匈牙利《基于保护国家安全的外国投资控制法》（以下简称《外资控制法》）[19]正式生效，该法建立在特定领域进行国家安全审查的机制，并制定明确的国家安全审查行业清单，当外国投资者投资该清单内行业时，监管部门可以启动国家安全审查。

18 https://www.government.nl/documents/policy-notes/2019/05/15/china-strategy-the-netherlands--china-a-new-balance

19 https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157938.pdf

匈牙利国家安全审查清单及要求

审查行业清单：

●武器和军火生产，军事技术和设备；

●军民两用商品生产；

●智能工具生产；

●金融服务和支付系统供给；

●《电力法》《天然气供应法》《水务服务法》《电子通信法》所涵盖的服务；

●涉及国家和市政机构电子信息安全的电子信息系统。

审查期限：

监管部门对于外国投资者的国家安全审查期限为 60 日，审查期限最多可延长 60 日。

触发审查的股比门槛：

●外国投资者对企业直接或间接持有股份超过 25%；

●对公开有限公司直接或间接持有股份超过 10%；

●对公司收购的股份达到可以主导该公司决议的份额。

二、问题分析

（一）欧盟外资审查清单不断扩大

中国贸促会研究院《欧盟投资环境报告 2018/2019》指出，《条例》要求重点审查项目清单是“非穷尽”的，不断增加的产业限制会导致企业在欧盟投资面临更大的不确定性，企业投资风险加大。德国工业联合会（BDI）指出，该清单过于宽泛。

2019 年，欧盟和意大利等成员国已开始扩大审查项目清单。随着 5G 技术的不断发展及影响扩大，欧盟及其成员国对 5G 的重视程度不断提高，5G 领域投资已成为欧盟及其成员国的重点审查领域。欧盟在其对华战略文件中明确表示，5G 属于关键基础设施，应当加大保护力度，避免外资对 5G 领域的投资给欧盟安全造成风险。意大利也将 5G 增补进其外资审查行业清单。

《条例》对“关键基础设施”的模糊规定也为“非穷尽”清单的扩展提供空间，《条例》第 4 章 1（a）条列举能源、交通等关键基础设施，并规定“对于使用这类基础设施至关重要的土地和不动产”也属于关键基础设施的范畴，企业对于房地产、土地等资产的投资也可能被划入审查范围，该项规定大大扩展关键基础设施的范畴，已经超出合理的概念界定范畴，导致审查的边界不清。

（二）增加了时间成本与不确定性

在欧盟层面，根据《条例》规定的合作机制运作流程，无论投资所在国是否设有安全审查机制，其他成员国和欧委会均可要求该国提供投资相关信息，并发表评论和意见，这不仅不可避免地导致成员国原有的审查时间延长，而且外商投资将会受到来自其他欧盟成员国意见的干扰，大大增加投资的不确定性。

在成员国层面，德国、意大利分别延长审查期限；匈牙利《外资控制法》规定，国家安全审查期限最长可到 120 天。受访企业反映，匈牙利《外资控制法》已经开始影响中资企业投资项目，监管当局在审查中增加意向审批环节，导致投资进程推迟三个月，且受访企业表示匈牙利当局的审查规则和标准并不清晰。

审批时间和不确定性的增加，一方面加大企业资金占用成本，另一方面导致企业在同欧盟企业竞争时处于劣势，只有支付更高的资金才能在投标中具有竞争力，进一步增加企业在欧盟投资的成本。

（三）在审查中滥用国家安全概念

“国家安全”概念模糊不清。《条例》对于“公共秩序”概念没有做出解释，给成员国在外资审查的实际操作留下极大的弹性空间。德国工业联合会在对《条例》的意见[20]中指出，对于“公共秩序和安全”制定明确的概念能够提高《条例》的法律确定性并且避免新型的隐性保护主义出现。在成员国层面，法国《推动企业经济增长与转型法》强化政府在外资“国家安全”审查中的权力，政府在事关公共秩序、公共安全和国防安全的紧急情况下可以不履行催告程序，直接做出决定。根据此规定，政府可以“国家安全”的名义否决任何政府反对的投资，“国家安全”易沦为保护主义的工具而被滥用。

所谓“政府控制”被作为国家安全审查的重要考虑因素[21]。《条例》规定，在确定一项外国投资有无可能影响安全或公共秩序时，要特别考虑“外国投资者是否通过所有权结构或重大资助，直接或间接受到包括国家机构在内的第三国政府控制”，意大利在增补《黄金权力法案》时完全参考《条例》关于“政府控制”的相关规定；欧盟对

20 https://ec.europa.eu/info/law/better-regulation/feedback/8162/attachment/090166e5b71ed952_en

21 欧委会 2019 年 3 月份发布的《欧盟的外商投资》工作报告（Foreign Investment in the EU）甚至表示所有来自中国的并购交易均可被认为有政府背景，一方面是由于企业对外投资需要中国政府审批和授权，另一方面是由于投资通常使用来自中国银行的贷款（这些银行大多受到中国政府的直接控制）。政府会引导企业在欧盟开展所谓“战略性”的收购，而非基于商业目的，这就导致这些有政府背景和支持的投资会比其他企业出价更高，从而由于政府支持而获得额外的竞争优势。如欧盟在外资审查中持有这种观点，未来不仅国有企业在欧盟投资会受到欧盟的歧视性对待，非国有企业对欧盟投资也有可能以接受政府支持的理由被歧视。http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157724.pdf

华战略文件[22]也明确表示中国国有企业和政府资金支持对欧盟市场造成了破坏，这是欧盟方面主观臆测，毫无事实根据。欧盟过度解读企业与政府关系，将政府通过合理合法方式对企业的支持错误地定位为所谓“政府控制”，构成对企业正常投资行为的歧视。

三、我们建议

（一）制定稳定和穷尽的审查清单

建议欧盟和成员国政府改变以“非穷尽”项目清单来确定审查范围的方式，制定明确的审查清单，给予投资者稳定的审查预期；定期评价审查项目清单的合理性，及时去除不合理的审查项目，不断缩减审查项目清单。

（二）明确审查权限且要提高效率

在外资审查中，建议欧盟及其成员国政府尽可能地缩短审查法定时限，提高审查效率，在审查过程中及时向企业披露审查进展，给予外资企业明确的审查时间预期，降低企业投资成本；应当明确东道国外资审查过程中其他成员国发表意见的范围与边界，制定成员国发表意见的情形清单，避免因其他成员国过度干预东道国外资审查而导致企业资金和时间成本增加。

（三）给出国家安全审查具体范围

建议欧盟依照清晰、明确的规则确定外资审查对象和审查范围，杜绝随意扩大国家安全适用范围，避免外资国家安全审查沦为保护主

[22] https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf

义的工具。建议欧盟其他成员国制定明确国家安全审查清单，不得对清单以外的外国投资开展国家安全审查。

（四）给各种所有制企业公平待遇

建议欧盟严格依法平等地保护企业的各项权利，坚持维护契约、公平竞争等基本导向，保障不同所有制企业在市场准入方面享受同等待遇。承认中国企业的独立法人和市场主体地位，以“竞争中性”和“所有制中立”原则平等对待中国所有企业。

第五章

行政执法专题

一、近期发展

（一）电子政务行动计划取得进展

2019 年 10 月 18 日，欧盟发布题为《电子政务：重要性日益提升的政府公信力》的 2019 年度电子政务基准报告（以下简称《电子政务报告》）[23]。《电子政务报告》通过以下四个指标来度量欧盟电子政务发展状况：以用户为中心，包括在线服务的发展程度，如网络可得性、可用性和可移动性等指标；透明度，包括政府运行、服务提供流程的透明度等；跨境流动，指公共服务在各成员国之间的互通程度；关键推动力，包括电子身份证、电子文件、数据二次利用可信来源技术、电子信箱等四项重要技术的发展程度。

《电子政务报告》指出，马耳他、爱沙尼亚、奥地利是欧盟电子政务发展最好的三个国家，而拉脱维亚、立陶宛和芬兰发展紧随其后。在四项指标中，欧盟在跨境流动方面表现最差，表明欧盟成员国居民还不能在其他成员国充分利用电子政务服务；用户为中心是欧盟表现最为优秀的指标，但是在其中的可移动性指标方面仍有较大进步空间；在关键推动力指标方面，电子身份证和数据二次利用可信来源技术两项技术有待进一步发展和应用；在透明度方面，政府提供服务的透明度仍有待提高。

2016 年欧盟推出《欧盟电子政务行动计划（2016-2020）》，坚持数字化、“只跑一次”原则，提高电子政务的开放性、透明性、互通性和安全性，提供更加快速、便捷、以用户为中心的数字公共服务体系。

23 https://ec.europa.eu/digital-single-market/en/news/commissions-report-egovernment-shows-narrower-gap-between-leading-and-lower-performing-european

（二）电子身份识别认证法律[24]生效

2018 年 9 月 29 日，《欧盟电子身份识别和认证服务》（eIDAS）正式生效，服务内容包括电子身份证、电子签名、电子签章、电子时间标记、合格的网络认证、电子登记传输服务等。eIDAS 生效后，欧盟居民、企业和公共组织可在欧盟内部进行跨国界的在线活动，具体包括跨国教育入学注册、在线完成纳税申报、在线交易签署电子合同、在线银行开卡借贷、在线进行采购和招投标等。eIDAS 可以提高企业开展跨境交易的安全性，降低电子交易的行政负担，提高经营效率，减少经营成本。

二、问题分析

（一）只跑一次原则落实效果欠佳

虽然欧盟大力推动“只跑一次”原则的落实，但是调研发现，该原则并未得到有效的落实，实际实施效果不尽如人意。例如比利时推出工作和居留许可二证合一的便利措施，在理论上能够节省办理者时间，但是实际上申领时间并没有得到进一步缩减。

行政效率低下的问题也不符合“只跑一次”原则减轻企业负担、提高企业效率的初衷。在荷兰经营的受访企业反映，曾历时一个月才收到政府工作人员对于邮件的回复；波兰中资企业反映，在波兰设立厂房车间的环评流程持续长达一年，极大增加企业投资的成本，而同类流程在中国仅需 3-6 个月；比利时部分政府机构每周只有两天是全天工作，且效率极低。

[24] https://ec.europa.eu/digital-single-market/en/news/eidas-made-easy-quickstart-guide-and-checklist-your-business

（二）公共服务提供透明度待提升

《电子政务报告》指出，欧盟各成员国政府提供服务的透明度有待提升。调查发现，政府提供服务的透明度偏低导致企业无法及时、准确地获取相关信息。在意大利经营的受访企业反映，在政府程序、银行税务会计等问题方面，政府未公布完善的信息获取渠道，企业无法确切了解到当地法律法规的规定，影响办事效率。由于没有清晰明确的了解渠道，企业不得不将法律、财务等全权委托给当地第三方中介机构，增加企业成本。

（三）部分成员国政府信用待改善

良好的政府信用是外资企业投资的信心保障，《电子政务报告》的主题为“重要性日益提升的政府公信力”，该主题体现了欧盟对于政府公信力的重视程度，但是在实践中欧盟关于政府公信力的承诺并未得到全面、有效落实。在波兰投资的中资企业反映，当地政府曾承诺，外资企业每创造一个当地就业给予 2.4 万兹罗提（约合 5600 欧元）的补贴，但是在企业完成当地招工后（雇佣当地员工约 90 人），政府公开毁诺，只一次性拨付 20 万欧元的用工补贴，低于最初承诺的约 50 万欧元。波兰政府还曾在能源领域重新审议投标文件、项目合同来寻找漏洞，并以此为理由要求修改合同条款或者解约，以达到取消原有优惠政策或补贴的目的。部分成员国政府不诚信的做法不但打乱了企业原有投资计划，更打击了企业在欧投资的信心。

（四）成员国政府服务能力待提高

欧盟虽然通过数字化建设来提高行政效率，特别是电子身份证、

电子文件等新技术应用速度不断加快，但是政府对于电子商务等新技术、新业态的服务能力却未同步提高。欧盟政府机构对新业务模式不熟悉、不了解，导致过度监管甚至错误监管，影响了企业的经营效率。跨境电商是新兴的商业模式，欧洲政府机构对该新业态新模式的理解滞后，在政府服务和监管等方面跟不上跨境电商的快速发展。例如，受访企业反映，德国海关对跨境电商业务不熟，也不会主动去了解新业务，导致监管效率低下，影响了企业通关时效。

三、我们建议

（一）提高政府服务能力现代化水平

欧盟在推动公共服务数字化的同时不应忽略政府公共服务能力现代化的提升。建议成员国着重提高政府工作人员的行政和业务素质，提升服务企业专业技能水平；加大公共服务能力提升方面的投入，在政府层面出台针对跨境电商等新兴业态的监管和服务办法，组织对政府工作人员和一线执法人员的培训，增强工作人员对新兴业务模式的学习和理解；优化企业经营所涉及的各项审批等流程，减少相关环节所花费的时间和所需的相关费用，提高办事效率，加快“只跑一次”原则的真正落实。

（二）加快欧盟公共服务一体化建设

建议欧盟依托数字单一市场建设契机，加强一体化公共服务体系建设，充分利用电子化、数字化手段破除成员国之间的公共服务壁垒；增强欧盟层面统一的公共信息提供能力，解决企业在欧盟投资所面临的信息不对称和不透明问题。

（三）大力加强政府的信用体系建设

政府公信力是企业在欧盟投资“定心丸”，大力加强政府信用建设是欧盟各成员国政府吸引外资的必然举措。政府与企业之间信息不对称是政府公信力流失的重要原因，建议欧盟借“电子政务”的建设契机，加强政府信息的公开力度，保证信息公开的全面性、及时性和准确性，让企业对政府政策了如指掌；建设政府和企业沟通的电子化平台，建立政府与企业之间良好沟通关系，使政府赢得企业的信任；完善对政府行政行为的监督和追责制度，确保政府行为处在有效的监督之下，并保证在政府违约时企业能够得到有效、合理的赔偿。

第六章

通用数据保护条例专题

2018 年 5 月 25 日，欧盟正式实施《欧盟通用数据保护条例》(GDPR)[25]，旨在协调整个欧洲的数据隐私法律，保护欧盟公民的数据隐私。

一、近期发展

（一）个人数据处理遵循六大原则

为达到对个人数据的有效保护，GDPR 规定个人数据处理应遵循六大原则。

合法性、公平性和透明性原则：个人数据应以合法、公平和透明的方式被处理。

目的限制原则：在收集和后续处理个人数据过程中必须满足正当目的要求，坚持特定、明确和合法原则。

数据最小化原则：对个人数据的处理应以满足该业务需要的最小需求为限，不得收集任何非必须的个人数据。

准确性原则：确保数据准确性并且在必要时保持更新，必须采取一切合理措施及时删除或纠正不准确的个人数据。

存储限额原则：数据存储时间不得长于应用于数据处理的必要时间，同时明确可以超期储存的个人数据情形，包括为实现公共利益、进行科学或者历史研究、进行统计而开展的数据处理活动，但数据控制者必须采取合理的技术与组织措施来保障数据安全。

完整性和保密性原则：个人数据应以安全的方式被处理，在个人数据处理过程中，获取该数据者必须经过严格授权，避免数据被非法处理或者不当泄露。

[25] https://gdpr-info.eu/

GDPR 对关键概念的定义

●**“个人数据”**是指已识别到的或者可被识别的自然人（“数据主体”）的所有信息，可被识别的自然人是指其能够被直接或间接通过识别要素得以识别的自然人，尤其是通过姓名、身份证号码、定位依据、在线身份等识别数据，或者通过该自然人的物理、生理、遗传、心理、经济、文化或社会身份的一项或多项要素予以识别。

●**“处理”**是指对个人数据或个人数据集合的任何单一或一系列的自动化、非自动化操作。

●**“控制者”**是指能单独或共同决定个人数据处理目的和方式的自然人、法人、公共机构、行政机关或其他实体。其中个人数据处理的目的和方式，以及控制者或者控制者资格的具体标准由欧盟或其成员国的法律予以规定。

●**“处理者”**指为控制者处理个人数据的自然人、法人、公共机构、行政机关或其他实体。

（二）个人数据主体拥有八大权限

自然人在其个人数据处理过程中获得保护是其拥有的基本权利，GDPR 明确而系统地建立数据主体对于个人数据的权利体系。数据主体拥有的对个人数据的权利主要包括：**知情权**，数据主体有权要求数据控制者以易获取、可理解的形式提供相关信息；**访问权**，数据主体有权从控制者处确认与其相关的个人数据是否正在被处理，并有权要求访问与其相关的个人数据并获知有关信息；**更正权**，数据主体有权请求更正错误的、不完整的个人数据；**删除权/被遗忘权**，数据主体提出删除个人数据请求或数据控制者丧失留存数据的合法理由时，个人数据即应被删除；**限制处理权**，数据主体有权限制数据控制人处理

其个人数据的活动；**移植权**，在特定情况下，数据主体有权要求控制方以结构化的、通用的和可以机读的方式提供其个人数据，并可以将其个人数据发送给其他数据控制者；**拒绝权**，数据主体有权拒绝其个人数据的处理，数据控制者或数据处理者应停止处理个人数据，除非能够提出令人信服的正当理由以证明数据处理优先于数据主体的利益和权利；**不受自动化处理约束的权利**，若某个单独基于自动化处理做出的决定将对数据主体产生法律影响或者类似重大影响，则数据主体有权不受该决定的限制。

（三）适用范围可能涵盖各国企业

GDPR 拓展监管的地域范围，不论企业是否在欧盟设立，都可能受到 GDPR 的管辖。GDPR 监管范围具体包括：适用于在欧盟内部设立的数据控制者或数据处理者对个人数据的处理，无论其处理行为是否发生在欧盟境内。对于设立在欧盟境外的控制者和处理者对欧盟境内数据主体的个人数据进行处理，如果涉及向欧盟内的数据主体提供商品、服务或对数据主体发生在欧盟境内的行为进行监控，则适用 GDPR。设立在欧盟境外的控制者，如果其设立地依据国际公法而要适用欧盟成员国法律的，其对个人数据的处理适用 GDPR。

（四）企业数据合规要求大量增加

GDPR 规定，数据控制者应当采取适当技术和组织措施确保并且能够证明数据处理符合 GDPR 规定。企业是重要的数据控制者，针对企业的数据合规要求主要包括以下三个方面。

记录数据处理活动的要求。数据控制者及控制者代表应当留存进行数据处理活动的记录，该记录应当为书面形式（包括电子形式），但是该记录义务不适用于雇佣人数少于 250 人的企业或组织，除非其处理活动可能对数据主体的权利造成风险。

评估数据保护影响的要求。在进行数据处理，特别是应用新技术进行处理时，考虑到可能对自然人的权利产生较高风险，数据控制者应当在进行数据处理前对拟进行的数据处理操作进行影响评估。

任命数据保护专员的要求。当数据控制者或处理者的核心活动是数据处理操作时，由于处理操作的性质、范围或目的要求对数据主体进行定期和系统的大规模监控时，数据控制者和处理者应任命一名数据保护专员。企业仅可指定一名数据保护专员，并保证该企业的每一个营业机构均可便捷地与其联络。

表 6 GDPR 生效以来处罚案例

国家	时间	案件	处罚
德国	2018.12	聊天社交平台 Knuddels.de 未对用户的密码采取加密措施	罚款 2 万欧元
法国	2019.1	谷歌在处理个人用户数据时存在缺乏透明度、用户获知信息不便、广告订制缺乏有效的自愿原则等问题	罚款 5000 万欧元
丹麦	2019.5	租车公司“Taxa 4 X 35”没有遵守数据最小化原则	罚款 120 万克朗（约 16 万欧元）
立陶宛	2019.5	金融科技公司 MisterTango 不恰当地处理数据、泄露个人信息以及未向监管机构报告数据泄露事件	罚款 6.15 万欧元
波兰	2019.9	零售网站 Morele.net 未采取合理措施保障数据安全，导致大约 220 万客户的数据泄露	罚款 280 万波兰兹罗提币（约 65 万欧元）

数据来源：根据公开资料整理。

（五）以全球营业额计算处罚上限

GDPR 对违规行为惩罚力度大，违规企业最高可能受到 2000 万欧元或上一财务年度全球营业额 4%的罚款，以较高者为准。但自 GDPR 生效以来，除法国对谷歌处以 5000 万欧元的巨额罚款外，其余处罚案例的罚款金额均较小（见表 6）。

二、问题分析

（一）宽泛规制明显提升合规成本

GDPR 共有 11 章 99 条，条款众多，规则复杂，大幅扩大了数据主体对数据的控制权，同时也明确了数据控制者需要遵守的要求，如数据控制者应当以合法、公平和透明的方式处理数据主体的个人数据，留存数据处理活动的记录，并采取适当措施向数据主体提供与数据处理相关信息，保证数据主体对于个人数据的访问权、纠正权、删除权、限制处理权、拒绝权和自主决定权等。复杂、严格的规定必然带来企业合规成本增加。

合规成本高昂。对企业来说，要完全满足 GDPR 要求，需付出高昂的前置成本，并且在运营过程中仍然需要持续支付高额的合规成本。普华永道的一项调查显示，77%的受访企业表示将在应对 GDPR 方面花费超过 100 万美元[26]。

时间成本巨大。大部分受访企业表示，要完全达到 GDPR 的要求，需要耗费 10 年以上的时间。在比利时经营的受访企业表示，通过聘请专业员工、顾问公司等形式，花费超过两年时间才达到 50%的要求，离完美要求还有差距，总共花费成本已超过 100 万欧元。

[26] https://4f0imd322ifhg1y4zfwk3wr7-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/pwc-gdpr-series-pulse-survey-1.pdf

调查显示，有 96.1%认为 GDPR 增加了企业的成本，其中选择增加管理成本的受访企业最多，达到 90.3%，其次是人工成本（70.3%）和客户服务成本（63.9%），仅有 3.9%的受访企业认为 GDPR 对于企业成本无影响（如图 12 所示）。

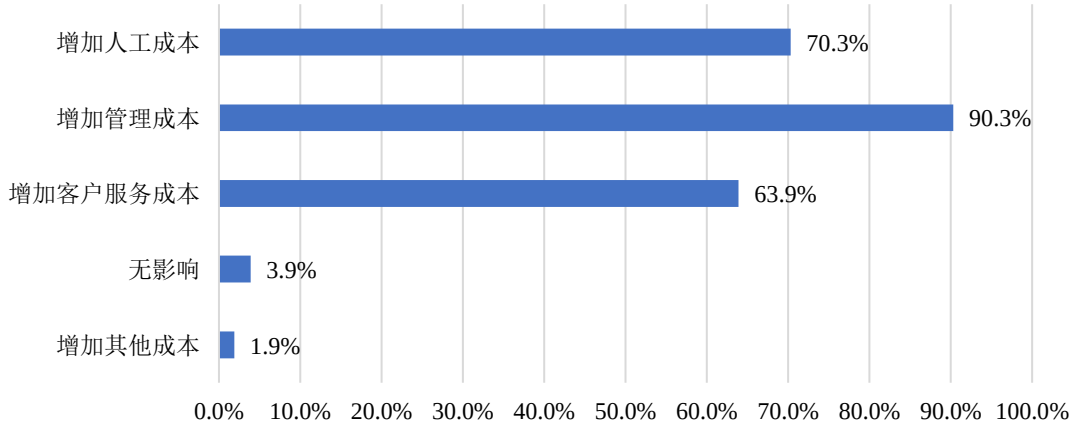


图 12 GDPR 对企业成本影响

数据来源：中国贸促会研究院。

（二）模糊条文大大增加合规难度

GDPR 存在大量模糊条文，技术条款复杂，企业理解执行难度大。调查数据显示，在了解 GDPR 的受访企业中，有 65.2%认为 GDPR 的规定不清晰，难以操作。德勤调查报告显示，在 1000 个受访的中小企业中，54%对于 GDPR 规则极度困惑，例如 GDPR 要求公司必须为个人数据提供“合理”的保护等级，但是却并未明确界定“合理”的标准。GDPR 为了平衡数据所有者及数据使用者的权利与义务，进行了许多平衡折中，如对数据主体权利的平衡折中，GDPR 对数据访问权、被遗忘权等均设定了诸多的例外情形或限定条件；专门设立了“关于特定处理情形的规定”一章，授权成员国根据 GDPR 制定相应的规章来处理特殊情形。GDPR 试图通过这些平衡机制使条款更加科学合理，但引入诸多平衡机制导致条文更为复杂，相关企业难以明确法律界限。

德国信息技术和通信新媒体协会于 2018 年 9 月对 500 家企业进行了调查，调查结果显示，法律不确定性是企业在实施 GDPR 过程中面临的最大挑战（如图 13 所示）。

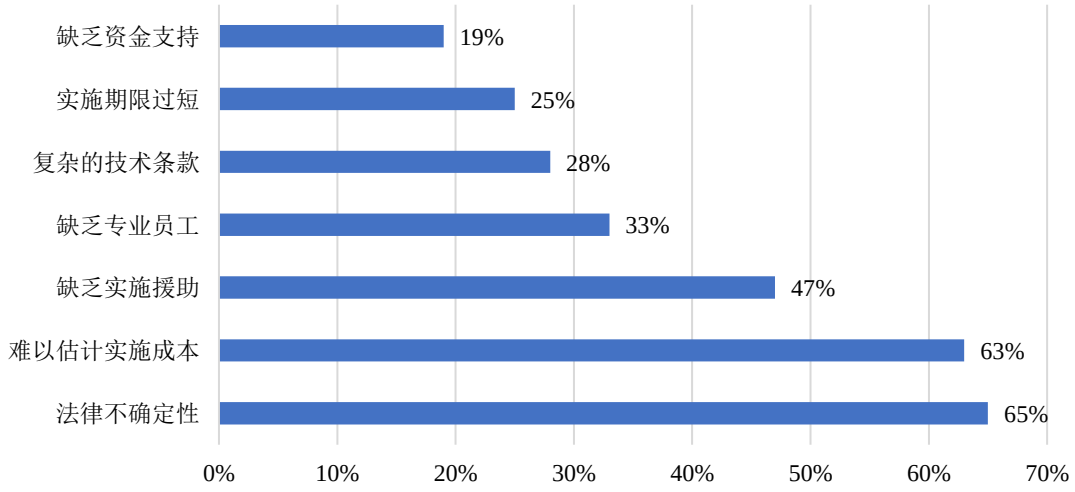


图 13 企业在执行 GDPR 过程中面临的主要挑战

数据来源：德国信息技术和通信新媒体协会（Bitkom）。

模糊条文令企业在执行 GDPR 要求时难以准确理解合规要求，进而无法根据规定正确地开展合规工作；而且由于企业无法明确合规界限，导致企业在数据保护中因理解不到位而出现违规行为的风险增加。

（三）严苛监管扰乱企业日常经营

GDPR 赋予了数据主体大量的权利，可以直接干预企业数据处理过程，对企业日常经营构成干扰。例如，个人用户可基于 GDPR 的要求，频繁甚至以不合理的方式要求企业采取删除、更正个人数据信息等措施，对企业正常的经营秩序造成了困扰。

GDPR 对企业提出了近乎苛刻合规要求，干扰企业涉及数据收集、处理、传输的相关经营活动。调查显示，限制欧盟公司同母公司之间联系、损害全球公司间数据共享和共同研发等业务及限制企业在欧盟

投资行业范围是对企业经营最为明显的三个影响（如图 14 所示）。

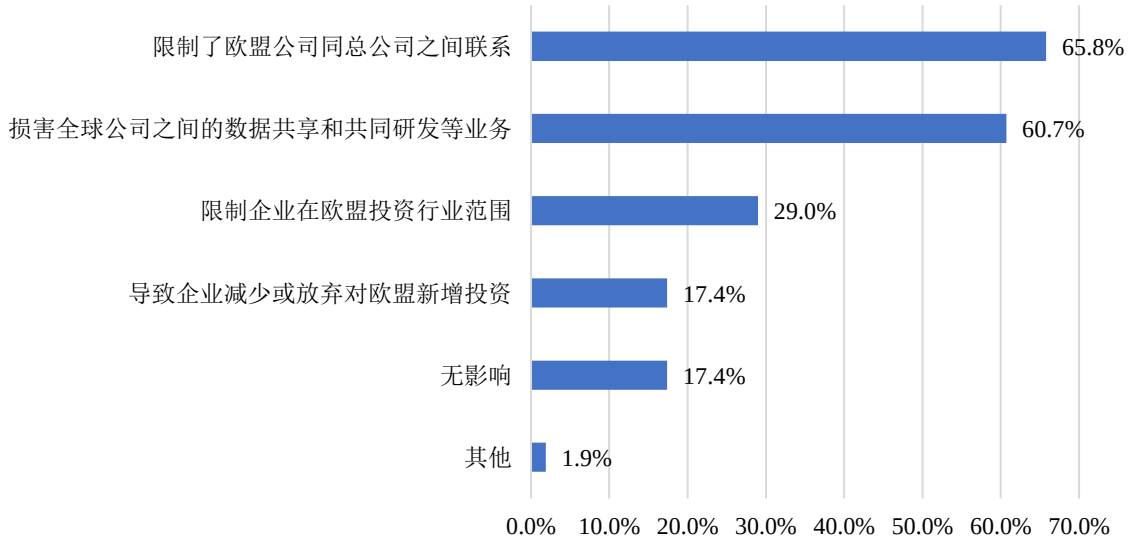


图 14 GDPR 对企业经营的影响

数据来源：中国贸促会研究院。

（四）困扰金融机构信用体系建设

对于金融机构而言，在经营过程中通过设立“信用黑名单”的方式可以有效规避经营风险，防止信用违约。而 GDPR 颁布后信用违约者可以保护个人数据隐私为由要求金融机构将其从信用黑名单中删除，金融机构为保证其信用体系完整有效，不得不面临可能被 GDPR 处罚的风险。此时 GDPR 的过度规制阻碍了社会信用体系的建设，增加了企业因信用体系不完善而带来坏账甚至金融诈骗的风险。

（五）背离科技进步抑制企业创新

GDPR 规定用户有权拒绝互联网公司收集用户信息的请求，意味着互联网公司将难以收集用户信息。缺乏用户数据信息或者收集的用户信息不全面势必影响到大数据、人工智能的分析结果，这是 GDPR 直接限制大数据、物联网、云计算、区块链、人工智能等科技创新最直观的结果。

三、我们建议

（一）配套制定可操作的执行条例

建议欧盟针对 GDPR 的各项规定出台尽可能详尽的、可操作性强的司法解释与执行条例，使企业有更为明确的执行指南，避免因对条款理解不到位而出现违规行为。

（二）基于司法解释开展企业培训

为帮助企业满足 GDPR 各项要求，建议欧盟在出台司法解释的基础上，针对 GDPR 执行和应用制定针对性的指导手册和文件，帮助企业更好地理解 GDPR；设立针对企业 GDPR 合规的培训资金，以公共服务的形式不定期开展企业培训。

（三）数据保护与信用体系要兼顾

建议欧盟针对数据保护设置更加明确、合理的企业责任标准，防止过度保护个人隐私而阻碍企业的合理、合法经营；信用体系建设是经济发展的重要基础，而数据是企业信用体系建设的重要组成部分，建议欧盟在保护个人数据的同时避免过度保护对信用体系建设构成阻碍，通过制定信用体系建设中的数据规范来平衡数据保护与信用体系建设的关系。

第七章

数字经济专题

一、近期发展

（一）发布 5G 网络安全审查建议

2019 年 3 月，欧委会发布关于对 5G 网络进行安全审查的建议[27]，包括加强网络安全立法及推出一系列政策工具，全面评估 5G 网络可能存在的安全威胁并加强网络安全预防措施。欧委会认为，欧盟任何一个成员国如果存在 5G 网络安全漏洞，都可能给整个欧盟带来安全威胁，欧盟应在网络安全领域进一步加强合作。

在成员国层面，各成员国在 2019 年 6 月底前完成本国网络基础设施的风险评估，并在此基础上更新对本国网络供应商的安全要求。尤其是在 5G 领域，应进一步明确供应商和运营商的相关义务，确保 5G 网络安全。风险评估的具体内容包括技术风险评估和供应商或运营商行为风险评估。如果供应商或运营商不符合成员国风险评估标准，成员国有权出于国家安全考虑禁止其进入本国市场。

在欧盟层面，各成员国应相互交换信息，欧盟于 2019 年 10 月 1 日前完成欧盟整体网络安全风险评估，并在评估基础上形成一整套网络安全管理措施，包括资质认证、安全测试、风险控制措施等。

（二）发布网络安全风险评估报告

根据欧委会对 5G 进行安全审查的建议要求，欧盟于 2019 年 10 月 9 日发布了网络风险安全评估报告。该报告对欧盟整体网络安全风险进行了评估，并着重强调：第一，应当审查对第三国供应商的信任程度以及其在 5G 供应链中的作用。特别是，由于来自非欧盟国家供

[27] https://ec.europa.eu/digital-single-market/en/news/cybersecurity-5g-networks

应商或者得到第三国政府支持的供应商增加了 5G 网络受攻击的风险，因此所有供应商都应经过有效的安全性评估；第二，对于单一供应商的依赖会增加 5G 风险。

（三）欧盟网络安全法案正式施行

2019 年 6 月 27 日，欧盟《网络安全法案》[28]正式施行。《网络安全法案》对网络安全防护相关的技术手段、配套设施、安全教育以及成员国合作等方面制定了具体措施，主要包括以下五个方面。

设立网络安全职能机构，指定欧盟网络和信息安全署（ENISA）为永久性的网络安全职能机构，ENISA 的主要职责是建立系统的欧盟网络安全认证框架，确保欧盟信息通信产品、服务和流程达到足够的网络安全水平，同时避免欧盟内部在网络安全认证方面产生分歧。

加强跨境合作，出台措施加强欧盟网络安全跨境合作，包括汇总及分析成员国网络安全报告、确保网络安全信息的有效流动及提供公共通讯支持等。

提升网络基础设施安全水平，由 ENISA 开发和维护欧盟信息中心，提升网络基础设施安全水平。

加强网络安全宣传与培训，增强欧盟公民网络安全意识，具体措施包括宣传网络安全战略、开展网络安全培训、提供网络安全指导等。

规范安全认证，建立统一的网络安全认证制度，避免由于成员国认证标准不同导致认证结果产生差别。

（四）法奥西三国开始实施数字税

[28] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0881&from=EN

欧盟数字经济企业缴纳的有效税率相比传统业务过低，传统企业平均税率为 23.2%，数字经济企业平均税率仅为 9.5%，数字经济企业税率不足传统企业的一半，严重违反了税收中性原则[29]。

为解决向数字经济企业征税的问题，2018 年 3 月，欧委会发布数字税提案，主要内容是提高在欧盟开展数字经济业务企业的税率。但是由于爱尔兰、瑞典、丹麦反对提案内容，2019 年 3 月欧委会宣布暂时不在全欧盟范围内推行数字税计划，数字税计划被迫搁浅。其他支持数字税的成员国将各自在国内推进数字税征收，目前法国、西班牙和奥地利已经制定了本国的数字税征收方案。

法国自 2019 年 3 月正式独立开征数字税，对全球年收入超过 7.5 亿欧元且来源于法国境内收入超过 2500 万欧元的企业征收 3%的数字交易税（主要针对数字广告及跨境数据流动），对网上直销、支付平台以及网上金融服务予以税收豁免。

奥地利从 2020 起对全球年销售额超过 7.5 亿欧元的互联网企业征收 5%的数字税，目前互联网公司仅缴纳 0.8%的公司所得税。

西班牙政府内阁会议于 2019 年 1 月通过数字服务税计划，对全球年收入超过 7.5 亿欧元且在西班牙境内收入超过 300 万欧元的公司征收 3%的数字服务税。

（五）议会通过中国技术威胁决议

2019 年 3 月，欧洲议会通过题为《中国在欧盟的技术发展所导致的安全威胁及欧盟可能采取的应对行动》的决议[30]（以下简称《关于应对中国技术安全威胁的决议》），呼吁欧委会制定战略，加强欧盟

[29] https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf
[30] http://www.europarl.europa.eu/doceo/document/TA-8-2019-0156_EN.html?redirect

成员国之间合作，减少欧盟在网络安全领域对外国技术的依赖，提高欧盟网络安全标准，同时建立欧盟和成员国之间的合作机制，提升对外商直接投资的审查能力，避免外商直接投资带来网络安全风险。

该决议指出，欧盟对中国制造的 5G 设备深感忧虑。欧盟认为，中国政府新颁布的《国家安全法》规定，出于国家安全需要，所有中国公民和企业都有义务配合政府活动，这种义务有可能被延伸到中国领土之外，中国网络设备制造商可能与中国政府进行合作，未经授权获取欧盟隐私数据，给欧盟带来安全威胁。决议还提到，捷克国家网络安全部门警告中国华为和中兴公司提供的方案具有安全威胁，并将华为排除在捷克税务机关门户网站的招标范围之外。

（六）波兰美国通过 5G 联合声明

2019 年 9 月，波兰总理马特乌什·莫拉维茨基和美国副总统彭斯在华沙签署 5G 联合声明[31]，声明表示两国赞同布拉格提案[32]内容，加强 5G 网络安全建设合作，确保所有参与 5G 网络建设的供应商是“可靠且值得信赖的”。两国联合声明还明确对 5G 网络供应商进行评估时需要考虑的因素，包括供应商是否受外国政府控制，是否拥有透明的所有权结构，是否有确保企业透明运行的制度以及是否有良好的信用记录。

（七）通过缓解 5G 相关风险决议

2019 年 12 月 3 日，欧盟理事会通过题为《5G 对欧洲经济重要性

31 https://www.premier.gov.pl/files/files/deklaracja_en-1.pdf

32 2019 年 5 月 2 日-3 日，布拉格 5G 安全大会在捷克首都召开，会议并未邀请中国企业参加，会议发布了一份非约束性协议“布拉格提案”，强调应考虑第三国政府对供应商影响的总体风险。https://www.vlada.cz/assets/media-centrum/aktualne/PRG_proposals_SP_1.pdf

及缓解 5G 相关风险必要性》[33]的决议，该决议着重指出：第一，除 5G 网络面临的技术性风险外，需格外注意非技术性风险，如第三国供应商带来的法律和政策风险；第二，各成员国需要推动 5G 供应商的多元化，以避免或降低对于单一供应商的依赖；第三，对 5G 技术的信任必须要建立在人权、基本自由、法治、隐私、个人信息、知识产权保护等欧盟核心价值观之上。

二、问题分析

（一）臆想并渲染中国技术威胁论

《关于应对中国技术安全威胁的决议》严重歪曲及渲染中国的技术威胁。目前，没有任何国家、任何机构能够提供确凿证据证明中国设备及中国技术对他国构成网络安全威胁。在缺乏事实依据的情况下，炒作“国家网络安全”概念，渲染“中国技术威胁论”，对中国企业采取歧视性措施，不仅违背市场公平原则，也给欧盟自身数字经济发展带来损害。事实上，中国政府始终重视保护数据隐私，中国政府从未以任何形式参与或支持任何个人和企业开展侵犯网络隐私的行为。中国颁布《国家安全法》的目的是为了维护自身国家安全，而不是为了侵害他国利益。同时，中国企业始终严格遵守欧盟相关法律法规，积极配合欧盟各国网络安全机构的审查，未有审查结果显示中国企业对欧盟网络安全构成威胁。

（二）波美联合声明排斥中资企业

波兰和美国签署联合声明的目的是保护 5G 通讯网络安全，并为此加强合作。两国联合声明虽然没有单独提到任何第三国的通讯企业，

33 https://www.consilium.europa.eu/media/41595/st14517-en19.pdf

但客观上造成对中国企业的歧视。

联合声明表示赞同布拉格提案内容，但作为全球 5G 网络建设的重要参与者，中国及中国相关 5G 设备制造商未被邀请参加布拉格 5G 安全大会，中国也未参与该提案内容的磋商；布拉格提案片面强调第三国政府对供应商影响的总体风险，脱离 5G 的技术范畴。

联合声明对设备供应商审查标准过于模糊，且与企业所有制结构和公司治理模式相关联，为政府对他国企业采取歧视性措施提供便利。

三、我们建议

（一）停止 5G 领域对中资的歧视

网络安全本质上是技术问题，技术问题应该通过技术手段解决，不应基于未被证实的网络安全威胁给企业的正常运营设置不必要的障碍。在 5G 领域对企业采取歧视性做法有悖公平竞争的原则，不符合国际社会共同利益，建议欧盟为各国企业在欧盟开展 5G 合作提供公平、公正的环境。

（二）减少对 5G 领域的过度干预

5G 网络设备和供应商的选择和使用是市场行为，应该由各国企业根据本国的实际需求和相关设备技术指标，做出客观的选择。5G 是技术进步的典型代表，人为设置市场准入障碍会阻碍科技进步，拖累世界经济增长的内生动力。政府不应动辄以国家安全为由干预和限制 5G 相关企业的正常经营活动。建议欧盟以包容的态度对待 5G 产业发展，鼓励更多企业参与到欧盟 5G 建设中来，推动技术和产业的进步。

第八章

知识产权专题

一、近期发展

（一）统一专利合作迟迟无法推进

目前，共有奥地利、法国、瑞典、比利时、丹麦、马耳他、卢森堡、保加利亚、荷兰、葡萄牙、芬兰、意大利、爱沙尼亚、立陶宛、拉脱维亚等成员国批准《统一专利法院协定》[34]。但是按照规定，《统一专利法院协定》必须至少由包括法国、德国在内的 13 个成员国全部批准后才能生效，其中任一成员国未批准则不能生效。目前，德国审批进程受到联邦宪法法院的挑战，已经暂停批准。

2012 年 12 月 17 日，欧洲议会和欧委会通过《关于在建立统一专利合作方面实施强化合作的第 1257/2012 号条例》，决定建立欧洲统一专利和欧盟统一专利法院。2013 年 2 月 19 日，欧盟 25 个成员国在布鲁塞尔签订《统一专利法院协定》，决定设立欧盟统一专利法院。

（二）实施数字单一市场版权指令

2019 年 2 月 13 日，欧委会、欧盟部长理事会与欧洲议会就《数字单一市场版权指令》[35]（以下简称《版权指令》）达成正式协议。《版权指令》的目标是解决权利持有人和用户在数字环境下使用受版权保护作品时的法律不确定性，制定规则以便于在欧盟境内跨境访问在线电视和广播内容。

2019 年 4 月 15 日，《版权指令》以 19 个成员国支持、6 个成员国反对、3 个成员国弃权在欧盟理事会获得通过。《版权指令》于 2019

[34] 按成员国批准时间先后排序，https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2013001

[35] https://ec.europa.eu/digital-single-market/en/copyright

年 5 月 17 日正式发布，成员国有义务在两年内将《版权指令》内容通过国内立法进行转化。

欧盟于 2015 年 5 月发布《数字单一市场战略计划书》，并根据该战略计划书的规划在 2016 年 9 月制定《数字单一市场版权指令》草案。

（三）已启动欧盟地理标志注册簿

2013 年起，欧盟新版地理标志保护法规——《关于农产品和食品的质量规划条例》（“1151/2012 号条例”）生效并实施，这是欧盟第三次修改地理标志保护制度。与原条例相比，新制度增加了地理标志保护的目的、过渡期保护以及本地耕作与直销报告等内容，并对原条例中关于地理标志的要求、争议处理以及保护措施等内容进行细化和完善。

2019 年 4 月 1 日，欧委会启动名为“eAmbrosia－欧盟地理标志注册簿”的全新公共数据库，便于人们获取所有欧盟地理标志的信息，包括地理标志的状态（例如已申请、已公布或已注册状态）、地理标志产品的说明以及地理标志正式获得保护的法律依据链接。

二、问题分析

（一）外资购买知识产权遭受歧视

在投资过程中购买知识产权是企业间正常商业行为，但是外资企业在购买欧盟知识产权的过程中会遭受来自政府、企业等的歧视，对企业在欧盟投资构成障碍。

调查显示，在购买过知识产权的受访企业中，62%曾遭遇过歧视或者反对；部分欧盟成员国会以所谓保护关键技术和知识产权为由对外资企业的正常收购行为设置障碍，19%的企业曾遭遇过欧盟或者成员国干预；71.4%的企业在审查中被要求提供相关信息（如图 15 所示）。

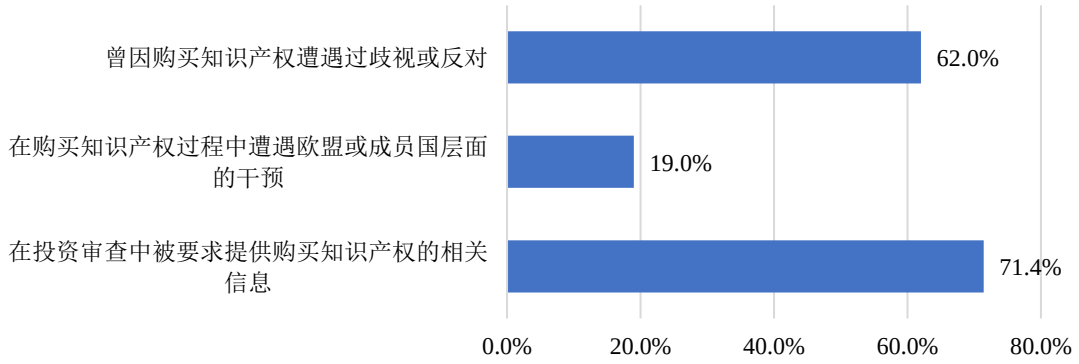


图 15 企业在欧盟购买知识产权时面临的问题

数据来源：中国贸促会研究院。

（二）脱欧等新变局增加企业成本

英国脱欧后是否仍适用欧盟统一专利体系仍不明确，尽管英国已批准《统一专利法院协定》，并表态希望在脱欧后仍留在统一专利体系，但由于设立统一专利法院的法律依据属于欧盟法范畴，英国“脱欧”将增加欧盟专利一体化的不确定性。

德国国内关于专利一体化协定的审批处于停滞状态。尽管德国两院已通过《统一专利法院协定》，但在 2017 年 6 月，德国联邦宪法法院开始受理关于《统一专利法院协定》是否违宪的诉讼，使得其国内审批程序陷入停滞，至于《统一专利法院协定》是否违背德国联邦宪法，尚未做出裁决[36]。

[36] Alan Johnson，Will 2019 be the year of the UPC?，https://www.bristowsupc.com/commentary/will-2019-be-the-year-of-the-upc/

《统一专利法院协定》生效日期不断拖后导致投资企业专利成本居高不下。由于各国司法制度不统一，企业不得不在各成员国分别支付专利费用。在专利进入各成员国生效以后，申请人实际上获得的是不同成员国法律保护的专利权，当出现专利侵权诉讼时，需要在各国分别起诉，增加了申请人的维权成本。

（三）披露规则易致商业秘密泄露

“1151/2012 号条例”规定，在欧盟注册地理标志必须提供产品说明书，并且在第 7 条产品说明书以及第 19 条产品规格中又明确提出披露要求：产品说明书必须包括产品原料情况，产品主要物理、化学、微生物特征或感官特征等；提供生产者所遵循的生产方法，包括所使用原材料的成份性质和特征，以及产品配制的方法。该披露要求很有可能引发企业商业秘密外泄。

（四）地理标志取消权力易遭滥用

“1151/2012 号条例”第 54 条规定：只要受保护地理标志产品产品规格所列条件得不到保证，或者受保护地理标志产品投放欧盟市场不足 7 年，欧委会有权自主或者在具有合法利益的法人、自然人要求下，取消受保护地理标志产品在欧盟的注册登记。该制度使得企业即便在欧盟成功注册为地理标志产品，亦有可能遭遇恶意诉讼，并因“投放欧盟市场不足 7 年”，被欧盟取消地理标志产品资格。

三、我们建议

（一）平等对待外资购买知识产权

外资在欧盟市场购买知识产权是自主的市场行为，目的是加强创新，促进共同研发，进而带动欧盟市场的就业，推动欧盟经济发展。建议欧盟摒弃在知识产权交易过程中对外资企业的歧视，以市场化的方式对待外资企业，促进欧盟与全球各国的技术交流。

（二）加快推进统一专利立法进程

为有效降低翻译费用、获得专利授权费用、诉讼费用等相关专利成本，鼓励科技创新，更好地保护知识产权，建议欧盟加快推进专利一体化进程。特别是德国应加快《统一专利法院协议》国内审批程序的推进速度。

（三）地理标志注册保护商业秘密

建议欧盟注册地理标志的披露要求应充分考虑保护企业的隐私和商业秘密，合理设置披露内容的边界。

（四）公正执行地理标志取消制度

权力使用应受到法律明确的界定与限制，建议进一步明确欧委会有权取消地理标志产品资格的条件，避免欧委会拥有过大的自由裁量权，并且制定明确的取消流程，完善权力监督机制。

第九章

公共采购专题

一、近期发展

（一）提出欧盟公共采购战略重点

2017 年 10 月，欧委会发布《让公共采购为欧洲服务》[37]的报告，指出欧盟应提高对于公共采购重视程度，确保用于公共采购的资金达到高效、可持续和战略性目的。欧盟确定六项公共采购战略重点来推动公共采购现代化建设：确保更广泛地采用创新、绿色和社会采购；提高买家公共采购专业化水平；增加企业进入欧盟采购市场机会，并通过贸易协定增加欧盟企业进入非欧盟市场机会；提高透明度、完整性和数据可靠性；促进公共采购数字化转型；推进合作共同采购。

（二）积极推动建立国际采购机制[38]

2012 年，欧委会提议建立国际采购机制，如果贸易对象国缺少互惠的公共采购政策，欧盟将限制该国产品进入欧盟公共采购市场，且欧委会可针对他国不互惠的政府采购行为进行调查及报复。2016 年，欧委会提出修订提案，即《欧洲议会与理事会关于第三国进入欧盟内部公共采购市场的法案》；2019 年 3 月，欧委会呼吁理事会和议会根据修订后的提案，在 2019 年底之前通过该国际采购机制。

（三）发布第三国投标者采购指引

2019 年 7 月 24 日，欧委会发布《第三国投标人和货物参与欧盟采购市场的指引》[39]，明确指出要确保在和中国合作中获得公平竞争环境，意图通过该指引获得更加平衡和互惠的国际经济关系，并强调招标方应当设定严格的劳工、社会和环境准入标准。

---

37 https://ec.europa.eu/docsroom/documents/25612

38 http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154187.pdf

39 https://ec.europa.eu/docsroom/documents/36601

二、问题分析

（一）公共采购标书歧视外资企业

欧盟在公共采购准入标准方面设置歧视性规定将外资企业挡在欧盟公共采购市场之外。欧盟在公共采购文件中曾明确标注产品采购范围为欧盟和北美等地区，将其他国家和经济体排除在外。部分成员国政府招标文件还会对投标进行过于狭窄定义，目的是针对特定的本国企业，技术性地将外资企业排除在外。在波兰公共采购中，企业反映招投标程序名义上对外资企业开放，但是公开标书会标明若干目标企业（基本都是欧盟企业），造成对外资企业事实上歧视。波兰在 2015 年和 2016 年两次修改招标标准，增加企业在欧盟施工经验要求，并要求施工人员具备波兰资质，事实上将众多非欧盟企业排除在外。

调查显示，在参与过欧盟公共采购的受访企业中，66.7%认为没有得到公平对待（如图 16 所示）。

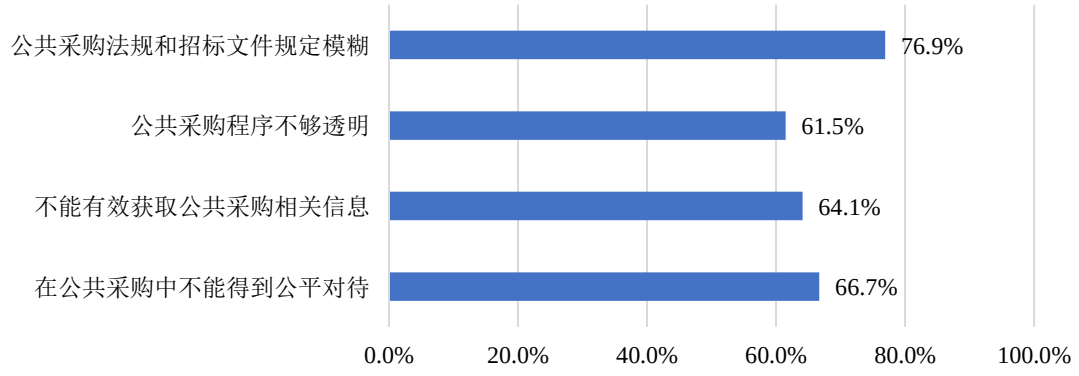


图 16 企业参加欧盟公共采购遇到的问题

数据来源：中国贸促会研究院。

（二）公共采购程序不透明不公正

在公共招标项目中，招标文件存在模糊规定问题，导致招标文件

难以理解，形成对于外资企业的文件障碍，而当地企业可以凭借本土特点获取竞争优势。在公共采购所涉及的产品标准、检测方面，外资企业会面临不透明或者歧视性的产品评定程序，而当地企业则凭借相对完善的信息渠道规避此类问题，导致外资面临事实上歧视。在参与过公共采购的受访企业中，有 64.1%不能有效获取相关信息，61.5%认为欧盟公共采购程序不够透明，76.9%认为欧盟公共采购法规和招标文件存在模糊规定（如图 16 所示）。

腐败问题也会影响公共采购的公平性。欧委会《欧盟反腐败报告 2014》[40]称，成员国公共采购是最易受腐败影响的领域之一，50%以上的受访公司认为公共采购领域的腐败是普遍现象，其中 56%认为中央政府的公共采购腐败是普遍现象，60%认为地方政府的公共采购腐败是普遍现象；参与公共采购招投标的受访公司中 32%曾因腐败影响丢掉合同。该报告还指出，公共采购腐败的表现形式主要包括为内定公司特制招投标条件、招投标和采购官员存在利益冲突、随意取消竞标人资格、随意适用特殊招标程序、投标公司串通投标、选标和评标标准不公平、收受回扣等。

（三）实际操作流程差别对待外企

在公共采购流程结束后，中标企业在开展项目过程中仍然遭遇来自政府主管机构的差别性、歧视性对待。受访企业反映，在中标波兰公共采购项目之后，政府在进口设备审核、项目规划、工厂验收等方面提出不合理的审核要求，且审核流程繁琐、耗时冗长，对中资企业的要求明显高于欧盟本土企业，造成事实上的歧视。

[40] Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, February 3, 2014.

三、我们建议

（一）提高公共采购程序的透明度

在公共采购中欧盟要杜绝随意采购和暗箱操作，严厉打击公共采购中的违法和腐败行为，依法整合采购流程。特别是建立规范的公共采购信息发布和披露制度，公共采购部门要规范信息发布的渠道，及时发布公共采购相关信息，确保所有参与者能够准确、清晰地获取和理解公共采购信息，消除信息不对称。删除公共采购规定和招标文件中的歧视性内容，对所有企业一视同仁，取消不合理的准入条件。在项目中标后的实施过程中，应当公平对待外资企业，不应设置歧视性的审查和管理要求。

（二）加快公共采购的数字化进程

建议欧盟利用数字化技术将采购流程进行信息化管理，减少人为因素的干扰，避免腐败风险，实现采购运行的公开化、透明化和信息化。推动欧盟公共采购一体化，实现欧盟范围内公共采购信息共享，尝试建立欧盟层面统一、可以共享的供应商信息网、商品信息网，以最大限度地节约人力和财力，提高采购效率，也可激发企业参与公共采购的积极性。

（三）建立公共采购监督管理体系

为保障公共采购流程的公平、公正，减少人为因素的干预，建议欧盟建立多层次、相互制约的公共采购监督体系，规范采购人、公共采购代理机构、供应商、公共采购管理机构各自的责任、权利、义务；建立健全公共采购的事后检查、追溯和问责制度。

（四）支持中国加入政府采购协定

《政府采购协定》是世界贸易组织关于政府采购市场开放的专项协定，中国加入《政府采购协定》将会极大改善国际贸易，为参加方提供更为广阔的市场。自启动加入《政府采购协定》的谈判以来，中国与参加方积极开展谈判，持续改进出价，不断扩大承诺的开放范围，彰显了进一步扩大开放的决心和维护多边贸易体制的诚意。中国加入《政府采购协定》对有关各方是互利共赢的，希望欧盟继续积极支持中国加入《政府采购协定》，共同努力，推动谈判尽早结束。

第十章

反垄断专题

一、近期发展

（一）德奥公布申报交易金额门槛

2018 年 8 月 18 日，德国和奥地利联合发布《并购申报交易金额门槛指南》（以下简称《指南》）最终稿。在《指南》生效前，只有交易方达到特定营业额门槛[41]，才需要进行申报，而《指南》引入交易金额门槛（德国为 4 亿欧元，奥地利为 2 亿欧元），未达到营业额门槛但达到交易金额门槛的交易被纳入申报范围。根据该交易金额门槛规定，即使目标公司或资产目前的营业额很少或没有营业额，但仍以高价被收购，监管机构也可依据竞争法审查该交易。

（二）发布促进欧盟产业发展声明

2018 年 12 月 18 日，法国、奥地利、克罗地亚、捷克、爱沙尼亚、芬兰、德国、希腊、匈牙利、意大利、拉脱维亚、卢森堡、马耳他、荷兰、波兰、罗马尼亚、斯洛伐克和西班牙签署关于促进欧盟产业发展的声明[42]。该声明提出，反垄断规则要充分考虑国际市场和竞争，以确保欧盟工业巨头能够应对来自中美的“激烈竞争”，使欧洲工业在全球保持竞争力。

（三）法德发布欧洲工业政策宣言

2019 年 2 月 19 日，德国经济与能源部和法国经济财政部联合发布《面向二十一世纪欧洲工业政策之法德宣言》[43]。宣言提出欧洲工业战略的三个支柱：大规模投资创新领域、调整欧洲监管框架、采取

41 欧盟一般性申报门槛为所有相关企业在全世界范围内的联合总营业额超过 50 亿欧元，并且至少有两个相关企业在欧盟范围内的总营业额都超过 2.5 亿欧元。

42 https://www.gouvernement.fr/sites/default/files/locale/piece-jointe/2018/12/929_-_declaration_finale_-_6eme_reunion_des_amis_de_lindustrie-en.pdf

43 https://www.bmwi.de/Redaktion/DE/Downloads/F/franco-german-manifesto-for-a-european-industrial-policy.pdf?__blob=publicationFile&v=2

自我保护的有效措施。其中在调整监管框架方面，法德建议欧盟改变现有竞争规则，在反垄断调查中要考虑国家控制和补贴的影响；更新现有并购控制指南，将全球竞争态势和潜在的竞争考虑在内，使欧委会在评估相关市场时更具灵活性。

（四）法德波呼吁反垄断法的改革

2019 年 7 月，法国、德国和波兰向欧委会提交题为《推动欧盟竞争政策现代化》[44]建议书。该建议书同样强调欧盟现有反垄断规定未充分考虑第三国政府资助和补贴的影响，欧委会的反垄断决定应具有“更大的灵活性”和“考虑全球竞争”，欧盟理事会应该在创造欧洲冠军企业的合并方面发挥作用。

二、问题分析

（一）外资企业被审查可能性提高

《指南》引入交易金额门槛作为审查触发条件之一，这将大幅扩大需要进行并购申报的交易范围。在营业额门槛和交易金额门槛的双重标准下，并购审查范围扩大。特别是当政府为避免本国中小新兴战略企业被外国企业收购时，可根据《指南》对收购进行审查，使《指南》成为保护主义工具。

（二）反垄断审查不符合国企实际

欧委会在审查企业间并购时，仅将直接提起申报的企业本身以及与其具备特定关系（例如母子公司）的企业营业额或市场份额加总。然而，在审查中国国有企业与欧盟企业间并购时，欧盟并未坚持《欧盟并购条例》所规定的非歧视原则。2016年，欧委会在审查中广核联

[44] https://www.bmwi.de/Redaktion/DE/Downloads/M-O/modernising-eu-competition-policy.pdf?__blob=publicationFile&v=4

合法国电力合建英国欣克利角C项目案件中明确指出，中广核公司身不享有独立决策权，在计算其在欧盟境内营业额的时候应当将中国国务院国资委控制下的所有其他能源行业类国有企业的营业额全部计算在内。欧委会将中国同一行业中所有的国有企业视为一个“单一经济体”，而不是考虑通常情况下“相关企业”的营业额或市场份额，这种错误的评价方法导致中国企业在接受欧盟反垄断审查时被计算远超实际的营业额。

（三）对于国有企业实行双重标准

国有企业作为一种企业经营组织形式，广泛存在于全球多个经济体。OECD发布的《国企所有权及管理：各国实践概略》[45]显示，在报告所涉及的31个国家中，所有国家的国有企业都在一定程度上受到国家或政府部门的管理。在反垄断审查涉及国有企业时，欧盟对中国国企和其他国企采取差别性待遇。在2009年法国电力集团收购比利时公司Segebel的全部股权的案例中，比利时政府认为，法国政府在法国电力集团和法国燃气——苏伊士集团的持股可能导致二者发生协同行为。而欧委会经审查却认为法国电力集团和法国燃气——苏伊士集团享有独立的决策权。欧委会在考虑所谓“政府对企业的影响因素”时对待中国和其他国家采用双重标准，构成对中国国有企业的歧视。

（四）反垄断审查易侵犯商业秘密

根据欧盟第 1/2003 号条例第 20 条授权，欧委会可以未经提前通知，进入企业的经营场所，搜查、复制经营文件，查封经营场所或经营文件，要求法人代表或职员回答调查事实或解释文件内容，并进行

45 http://www.oecd.org/corporate/ca/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices.pdf

记录。欧委会同样拥有处所的检查权，如果有合理理由认为企业行为的相关证据隐匿在包括私人住宅等场所，经过成员国司法机关审批，欧委会即可搜查，这可能会侵犯企业的商业秘密和个人隐私。

三、我们建议

（一）停止对中资国企的歧视行为

中国国企在欧投资均是企业自主独立的市场行为，建议欧盟承认中国国企在欧投资的“独立性”，放弃在反垄断审查中对中国国有企业采取同行业营业额合并计算的不公平做法，对所有外资国有企业一视同仁。

（二）反垄断检查减少对企业干扰

建议欧委会和成员国竞争主管机构尽可能降低反垄断搜查的频率，尽量避免搜查私人住宅等场所，减少对企业和企业管理人员的干扰。充分尊重企业保护商业秘密的权利，在进入企业经营场所开展检查时应当制定明确的检查程序和检查范围，不得以执法名义侵犯企业的商业秘密，保障公平竞争。

（三）进一步明确审查门槛等规则

建议德国和奥地利进一步出台明确的交易金额门槛审查规则，制定合理、清晰的审查前置条件，明确反垄断审查的标准，避免审查规则被当作保护主义工具滥用。

第十一章

标准认证专题

一、近期发展

（一）RoHS 限制目录进一步扩大

2015 年 6 月，欧盟发布(EU)2015/863 指令，对 RoHS 2.0(2011/65/EU)附录 II 进行修订，正式将四种邻苯二甲酸酯（DEHP、BBP、DBP、DIBP）列入 RoHS 附录，至此 ROHS 附录共有十项限制物质（见表 7）。

表 7 欧盟 RoHS 管控目录变化

原有管控物质	新增管控物质
铅(Pb)及其化合物	邻苯二甲酸二(2-乙基己基)酯(DEHP)
汞(Hg)及其化合物	邻苯二甲酸丁苄酯(BBP)
镉(Cd)及其化合物	邻苯二甲酸二丁酯（DBP）
六价铬(CrVL)化合物	邻苯二甲酸二异丁酯(DIBP)
多溴联苯(PBBs)	
多溴二苯醚(PBDEs)	

由于企业满足新的有害物质要求需要一定时间，所以(EU)2015/863 规定相应的过渡期：2019 年 7 月 22 日起，所有输欧电子电器产品（除医疗和监控设备）均需满足该限制要求；2021 年 7 月 22 日起，医疗设备（包括体外医疗设备）和监控设备（包括工业监控设备）也将纳入该管控范围。

RoHS 全称是《关于限制在电子电气设备中使用某些有害成分的指令》，是由欧盟立法制定的一项强制性标准，该标准已于 2006 年 7 月 1 日开始正式实施，主要用于规范电子电气产品的材料及工艺标准，使之更加有利于人体健康及环境保护。

（二）WEEE 可能适用所有产品

WEEE 指令分两个阶段实施，第一阶段为 2012 年 8 月 13 日至 2018 年 8 月 14 日，产品适用范围分为 10 大类；从 2018 年 8 月 15 日开始，适用范围为重新分类的 6 大类，新的分类扩大覆盖范围，几乎涵盖所有的电子电气设备范围，且采取开放式范围，即未列入的产品亦属管理范围内（见表 8）。

表 8 WEEE 适用范围变化

2012 年 8 月 13 日至 2018 年 8 月 14 日	2018 年 8 月 15 日之后
大型家电	温度交换设备
小型家电	灯类产品
信息和通讯设备	大型设备（外边长超过 50CM）
消费类设备和光伏电板	小型设备（外边长不超过 50CM）
照明设备	小型通讯设备（外边长不超过 50CM）
电动工具（大型固定工业用具除外）	显示器、监视器和带有表面积大于 100CM^2 显示屏的设备
玩具、休闲和运动设备	
医疗设备（植入和感染性产品除外）	
视频监控设备	
自动售货机	

欧盟于 2003 年正式颁布《废弃电子电气产品指令》（WEEE），该指令致力于减少废弃电子电气设备的生产数量，促进废弃电子电气设备的再利用、回收和再生，降低残存废弃电子电气设备，提高电子电气设备从生产到废弃整个过程的环保效率。

（三）REACH 频繁更新通报清单

根据 REACH 规定，具有致癌、致畸变、生殖毒性、强持久生物累积性有毒物质、非常持久和强生物积累物质以及对环境或人体健康造成不可挽回的损害或内分泌干扰的物质为高关注物质(SVHC)。如果物品中含有 SVHC 候选清单中的物质质量分数超过 0.1%，且该物质每年进入欧盟超过 1 吨/年/公司，则该物品的生产商或进口商必须向欧洲化学品管理局(ECHA)通报。SVHC 清单首次发表于 2008 年 10 月 28 日，首批清单 15 项；之后在 2010 年发布四次更新，清单增加到 46 项；自 2011 年开始，保持每半年更新一次的频率，2019 年 7 月 16 日，ECHA 发布第 21 批 SVHC 清单，加入 4 种物质，SVHC 清单总计 201 项。

REACH 全称化学品注册、评估、许可和限制，于 2007 年 6 月 1 日实施。REACH 要求证明日用产品中不含对人体有害的化学物质。因此，凡是在欧盟生产的或者是进口到欧盟市场的日用产品必须通过有害化学物质含量的注册、检验和批准，一旦超过规定的含量就不得在欧盟市场上销售。

二、问题分析

（一）指定第三方认证机构不透明

在标准认证过程中欧盟会指定实验室或者认证机构来开展，而欧盟认定的具备标准认证资质的机构数量过少会导致认证过程被操纵，使认证沦为保护主义工具，将部分外资企业和产品挡在欧盟市场之外。

（二）标准认证时间过长成本过高

在欧盟开展标准认证需承担较高的资金和时间成本。受访企业反映，在欧盟开展一个压缩机所覆盖产品型号的能效认证成本在 1 万人民币左右，而在中国能效认证成本仅为 3000 人民币左右，大幅低于欧盟；德国专业安全协会认证（VdS）主要是针对消防器材及系统、安全器材及系统的产品认证，受访企业表示，开展该认证的成本高昂，在还未进入欧盟市场且没有订单产生的前提下，开展认证的成本为每款产品 25 万人民币左右，极大提高企业进入欧盟市场的前期成本。

在认证时间方面，在欧盟开展能效认证时间长达 5-6 个月，甚至 1 年，而在中国认证时间仅需 3-4 个月；TüV 标志是德国专为元器件产品制定的安全认证标志，在德国申请需要半年左右，而在瑞士申请仅需半个月。过长的认证时间将拉低外资企业产品在欧盟的上市效率。

（三）标准频繁变化影响产品上市

欧盟产品标准更新过于频繁提升企业认证成本。ECHA 每半年会更新一次 REACH 目录，新增物质或是新增某项物质的某个危害属性，如 2018 年 1 月 ECHA 便新增 7 项物质，并第三次更新双酚 A 相关内容，不断更新的产品标准增加企业认证成本。受访外贸公司反映，由于其代理产品种类较多，频繁的标准变化会使其面临更大的成本压力。欧盟产品标准更新过于频繁降低产品上市效率。在照明领域，受访企业表示当涉及测试方式的变动、ERP 寿命测试时，测试时间长达 6000 小时，极大延缓产品的上市时间。甚至当企业还未根据标准要求完成认证工作时，欧盟又出台新的标准认证规定，不但造成企业经营成本的极大浪费，更是阻碍企业产品在欧盟的正常上市。

（四）标准执法不力影响公平竞争

公平、有效执法是优化营商环境的重要举措，是维护企业合法权益的重要保证，然而在标准领域的执法不力导致企业权益受损。受访中国企业反映，在 2017 年欧盟某成员国政府开展的能效标识检查中，某欧盟冰箱品牌被标注 A 级能效标志，但经中国企业检测后仅为更低的 B 级能效，欧盟能效检测结果准确性存疑；中国企业发现甚至部分小型进口商的产品在没有达到安全标准情况下进入欧盟市场，部分产品不符合安全规定却依然上市销售，对于严格遵守欧盟法规和标准，且投入大量认证成本的其他外资企业来说极为不公平。

（五）标准制定没有中国企业参与

中资企业参与欧盟标准制定意愿强烈，但欧盟却很少给予中国企业参与标准制定机会。调查显示，中国企业对参与欧盟标准制定积极性较高，89.7%的受访企业表示愿意参加欧盟标准制定（如图 17 所示），但同时，88.3%的企业却表示没有机会参加欧盟标准的制定。受访中国企业反映，在欧洲照明协会关于 ERP（CE 认证能效认证部分）规定起草过程中，飞利浦、欧司朗等欧盟大型企业有更多的话语权，中国企业没有参与标准制定的机会，欧盟未提供通畅的意见表达渠道。

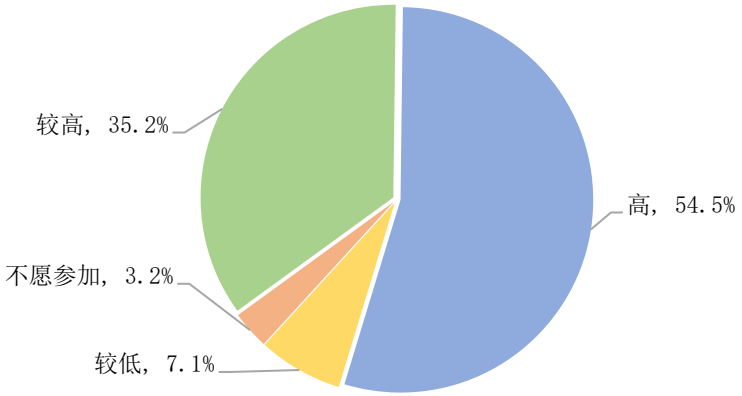


图 17 企业参与欧盟标准制定的积极性

数据来源：中国贸促会研究院。

三、我们建议

（一）认证机构多元化过程透明化

为避免高昂的认证成本和冗长的认证时间成为外国产品进入欧盟市场的壁垒，建议欧盟扩大认证机构的选择范围，实现认证机构的多元化，保证认证过程的客观、公正和透明；不断简化认证程序，提高认证效率，降低认证成本，并为企业开展认证提供完善的公共服务。

（二）保持标准相对稳定与可预期

稳定的标准更新预期有助于企业制定合理的生产与研发计划，建议欧盟避免产品标准过于频繁的更新或升级，根据产品特点制定明确的标准更新计划或规则。

（三）执法检查公平对待所有企业

建议欧盟在产品标准认证方面对所有国家和企业的产品一视同仁，在认证程序等方面采取统一标准，并加大执法检查的力度，避免不符合标准的产品进入欧盟市场，破坏公平的竞争环境。

（四）允许外企平等参与标准制定

建议欧盟在产品标准的制定方面充分听取、采纳所有企业的合理意见，建立政府、机构和企业的长效沟通平台和联系机制，及时接收企业的反馈意见。标准的制定应充分考虑发展中国家企业的实际发展水平，为发展中国家企业提供公平的市场环境。

第十二章

税收专题

一、近期发展

（一）增值税改革简化了征管流程

2017 年 10 月，欧委会启动增值税规则改革[46]，明确跨境贸易征税规则，并重点简化税收的征管流程。

对企业间跨境贸易课征增值税。增值税收入归属于最终消费者所在成员国，并按照该成员国税率课征，明确欧盟区域内货物贸易由销售商承担纳税义务。

简化增值税申报和缴纳程序。扩大使用“一站式注册机制”，跨境提供服务的欧盟成员国企业只需在注册国进行增值税申报和缴纳；简化发票相关要求。

引入“认证纳税人”概念。“认证纳税人”即得到信任的欧盟企业。企业无论大小，只要满足一定条件，就可被认定为欧盟可靠的增值税纳税人。“认证纳税人”身份将在欧盟所有成员国之间互认，经过认证之后，企业纳税将更便捷、更省时。

（二）统一成员国增值税最低税率

1992年，欧共体成员国达成协议，规定除特殊行业外，标准税率不超过25%，不低于15%。2018年6月，欧盟理事会通过指令，将最低增值税永久设为15%。最低税率标准的实施可以有效避免各成员国增值税税率出现过度分歧，降低由于增值税税率过低而引发不正当竞争的风险。

（三）法国比利时实施大规模减税

[46] https://ec.europa.eu/taxation_customs/business/vat/action-plan-vat/single-vat-area_en

法国于 2019 年 9 月公布减税措施，减税总额约 60 亿欧元，计划将个人所得税第一档次的税率下调 3 个百分点，降为 11%。实施住房税“阶梯式”减免计划，80%家庭主要居所的住房税于 2018 年底减少 30%，2019 年减少 65%，2020 年达到 100%减免。

比利时联邦议会于 2017 年 12 月 22 日通过税收改革法案，经国王签署后于 29 日正式发布。此次税收改革的内容主要涉及公司收入税率调整，最低税基、股息免税等。公司所得税从 2018 年到 2020 年由 33%逐步降低至 25%（见表 9）。

表 9 比利时不同性质企业公司所得税减税幅度

	非中小企业	中小企业（年收入低于 10 万欧元）	中小企业（年收入高于 10 万欧元）
2018-2019 年	29.58%	20.4%	29.58%
2020 年以后	25%	20%	25%

（四）波兰实施增值税拆分支付法

2018 年 7 月 1 日起，波兰增值税拆分支付法案正式生效。该法案引入一个新选择，将增值税发票的支付拆分为两部分，即货物净值款项支付到供应商普通账户，税款支付到供应商的特殊税务账户，税务账户资金将只能用于纳税或支付下级供应商的税款。

二、问题分析

（一）主要成员国税负总水平过高

《欧盟税收趋势报告 2019》[47]显示，欧盟企业和个人均面临沉重

[47] https://ec.europa.eu/taxation_customs/business/economic-analysis-taxation/taxation-trends-eu-union_en

的税负压力。2017 年，欧盟 28 国税收总额占 GDP 比重比 2016 年上升了 0.3 个百分点，达到 39%，超过美国 11.9 个百分点，超过日本 8.5 个百分点，超过新西兰 7 个百分点，超过韩国 12.1 个百分点。在欧盟境内，税收负担最重的成员国分别是法国 46.5%、丹麦 45.7%、比利时 44.9%、瑞典 44.4%、芬兰 43.3%。根据世界银行发布的《2020 年世界营商环境报告》，欧盟主要经济体在纳税项的排名较为靠后，德国 46 名、法国 61 名、比利时 63 名、希腊 72 名、波兰 77 名、意大利 128 名。过重的税收负担加大企业经营成本，直接导致欧盟营商环境退步。

（二）欧盟税制差异推升企业成本

在欧盟开展经营的企业需应对多个成员国的税收规则及复杂的征管体系，各成员国在会计账户惯例、应税所得额确定、税收征管等方面均存在较大差异，企业需遵循不同国家的规则，程序繁琐，极大提高财务成本，降低运营效率。

欧盟成员国之间存在的税收差异还导致事实上的税负不公。大企业由于具有更强的跨国资源配置能力，可通过在税收更优惠地区设立子公司等方式，享受低廉的税率，而中小企业在不同成员国经营在面临复杂税制带来的高昂成本，不利于中小企业的国际化成长。

（三）拆分支付挤占外资企业资金

波兰增值税拆分法案虽未强制要求将增值税发票拆分支付，但是在实施过程中波兰企业通常强制中国企业采取该拆分付款方式，导致了企业占款压力加大，提高了企业资金成本，削弱了企业在欧经营竞争力。

三、我们建议

（一）降低外资企业整体税务负担

近年来全球公司税率整体呈下降趋势，但欧盟企业的整体税收负担偏高，存在进一步降税空间。建议欧盟各成员国继续加大减税力度，降低企业税负，改善营商环境。

（二）推进成员国税制一体化改革

税制趋同有助于落实税收中性原则，提高生产要素在欧盟成员国之间的流动效率。建议欧盟推动欧盟内部税制改革，缩小税率差异，逐步实现税制趋同。

（三）成员国进一步规范税收征管

建议欧盟各成员国促进税收合规，扩大数字服务的使用范围，采用电子申报，同时为所有纳税人（特别是中小企业）简化繁琐的办税手续。保证税收政策的稳定，在税收政策发生变动前主动帮助企业适应和调整，并通过各种渠道及时提供相关信息。

（四）加强成员国之间的税收合作

建议欧盟通过跨境合作手段加强成员国之间的税收合作，如自动交换信息、国家间数据分析共享等，为外资企业在欧盟投资提供便利化的成员国税收信息，便利企业在欧盟各成员国开展投资和经营。

第十三章

金融专题

一、近期发展

（一）实施新版金融工具市场指令

2018 年 1 月 3 日，欧盟《金融工具市场指令》第 2 版（简称 MiFID II）在欧盟全面实施[48]，MiFID II 在原有 MiFID 的基础上进行大量调整，更加强调完善金融市场功能和结构，加强投资者保护，加大监管部门的权力。

赋予监管部门更大的权力。例如，当发现某些特定产品、交易有可能威胁投资者保护、金融稳定和市场正常运行时，在进行充分的信息沟通和协调后，监管部门可以禁止产品上市、限制产品头寸；当该市场或其他相关市场的某一金融工具在较短时间内出现显著的价格波动时，监管部门可临时停止或限制交易，并在特殊情况下撤销、变更或纠正任何交易。

实现产品和交易场所监管全覆盖。MiFID II 覆盖除外汇现货之外的几乎所有金融产品。

增加交易前后数据透明度。MiFID II 提高市场数据透明度要求，规定欧盟内部所有的投资公司、受管制的市场、多边交易平台以及有组织的交易平台必须根据相关信息披露标准，定期披露除外汇现货之外的所有现货及衍生品的相关交易数据。披露内容应包括但不限于价格、执行速度、执行可能性、结算规模及执行地点等，数据报告必须尽可能接近实时披露。

建立新的第三国公司市场准入机制。非欧盟成员国的第三国公司在欧洲开展投资服务，如果客户是零售群体，只需开设分支机构即可；

[48] https://www.esma.europa.eu/policy-rules/mifid-ii-and-mifir

如果客户为合格交易对手方，需在欧洲证券市场管理局注册。

限制大宗商品投机。MiFID II 要求市场参与者在大宗商品衍生品方面根据市场总规模衡量自己的业务活动，超过一定市场份额的市场参与者必须以投资公司身份申请相关部门的授权，接受其监管，从而避免由于仓位过于集中可能引发的系统性风险。

（二）要求非欧盟金融机构设 IPU

2018年5月，欧盟理事会审议通过欧委会提出要求区域内符合一定条件的非欧盟金融机构设立中间母公司（IPU）的提案，要求总资产超过300亿欧元的银行设立IPU。

（三）颁布欧盟反洗钱第五次指令

欧委会于2018年7月9日颁布《欧盟反洗钱第五次指令》（以下简称《反洗钱指令》），《反洗钱指令》在反洗钱义务主体、客户尽职调查、金融情报机构等方面做出重要改变，欧盟各成员国需在2020年1月前根据最新法令更新本国反洗钱制度。

扩大反洗钱的义务主体，将虚拟货币与法定货币兑换服务主体、托管钱包提供商纳入到反洗钱义务主体。

对于高风险国家的业务与交易强化尽职调查，包括获取客户和实际受益人附加信息、业务关系预期性质信息、客户和实际受益人资金来源和财富来源的信息、预计或已发生交易的原因、建立或继续业务关系高级管理层审批制度、加强业务关系监控。

加强金融情报机构合作，要求成员国应确保金融情报机构可自主或申请到任何涉及洗钱或恐怖主义融资的相关信息，特别是涉及恐怖主义的案件，信息要直接迅速，不得无故拖延。

二、问题分析

（一）大幅提升金融机构合规成本

MiFID II 监管改革涉及范围较广，法律条款多达 140 万节，而且法律内容晦涩难懂，一方面会大幅增加金融机构的运行和合规成本，另一方面严格的限制会阻碍金融机构创新步伐。

（二）IPU 干扰外资金融机构布局

欧盟将设立 IPU 的门槛定为 300 亿欧元（低于美国的 500 亿美元），会导致诸多外资金融机构需要按照新规设立 IPU，甚至不得不调整欧盟区域分支机构的股权架构、管理架构、人员和资产的分布，这将带来较大的成本支出。如果欧盟要求将分行也纳入 IPU，这些金融机构的欧盟 IPU 还可能面临较高的资本和流动性补充要求。非欧盟金融机构将重新审视欧洲业务的发展战略，可能促使部分机构将欧盟业务规模控制在 IPU 的门槛之下，也可能迫使部分机构将业务集中在特定的欧盟成员国，扩大欧盟内金融业的地区差异。

（三）子行化监管导致不公平竞争

在欧盟范围内，独立法人机构（子行）的银行监管规则趋于一致，但对欧盟外非独立法人（分行）各成员国却存在较大差异。例如，德国当地监管法律对欧盟外分行管理格外严苛。根据德国《联邦银行法》第 53 条的规定，总行在欧盟以外的银行在德国设立的分行，应视作子行要求管理，遵循与子行相当的监管要求，尤其是分行虽非独立法人，却无法共享其母行的资本金。在实际操作中，该规定从两个方面体现巨大的不公平性。

第一，分行子行化管理的豁免待遇仅适用于少数发达经济体。中资银行在当地接受类子行化管理，其母行资本金不被当地监管承认，然而，美国、日本和澳大利亚银行在德国的分行均享有母行资本金的待遇。

第二，分行子行化监管的问题仅在部分成员国存在，与欧盟监管体系日益趋同的目标不符。在卢森堡等国，外资银行的分行均被视为分行进行监管；近年来法国监管也开始对外资银行分行子行化管理逐步松绑，如 2016 年 9 月 21 日中国银行巴黎分行获得法国审慎监管和处置局（ACPR）的正式豁免通知，ACPR 同意对流动性覆盖率、净稳定资金比率、杠杆比率、大额风险敞口和信息披露等要求完全豁免，对资本充足率非欧元部分实施豁免。

（四）反洗钱过度溯源对外资更严

在欧中资银行反映，欧盟部分成员国对于反洗钱的监管过于严苛，一方面导致很多正常业务由于过度监管无法开展，另一方面过度监管导致金融机构的合规成本大幅上升。而且，欧盟在反洗钱监管中对资金来源过度溯源，超出合理的资金来源追溯范围和期限。

三、我们建议

（一）金融改革兼顾企业承受能力

MiFID II 监管改革应逐步推行，不应操之过急，改革过程应充分考虑降低金融机构的成本负担和不损害金融机构的创新能力。在反洗钱监管中，监管机构不应超限度干扰金融机构的正常经营，增加金融机构及其客户的负担。

（二）提升外资银行 IPU 设立门槛

2018 年 1 月，中国人民银行和银监会向欧洲议会、欧盟理事会及欧委会递交《关于设立欧盟中间母公司的联合意见书》[49]，希望欧委会应考虑提升外国金融机构设立 IPU 的门槛，不将非欧盟金融集团分行的总资产纳入资产计算范围，且分行不纳入新成立的 IPU。

（三）积极推动签订德中豁免协议

建议德方尽快同中方签署有关协议，使中资银行在德国业务发展不受自有资本金限制，这将明显增强在德中资银行的金融服务能力，同时亦将更加有力地支持中德贸易发展。

[49] http://www.cbrc.gov.cn/chinese/home/docView/BC32C359A3A14F0BBF556508ADB5615E.html

第十四章

物流专题

一、近期发展

（一）欧盟正式实施港口服务条例

2017年2月15日，欧盟议会通过《港口服务条例》（PSR），欧盟要求各成员国于2019年3月24日起开始实施PSR。PSR为欧盟各成员国提供港口服务、财务透明度、收费规则建立基本框架，包括加油、排放、系泊和拖船等，但旅客服务、理货和引航并不包括在内。PSR规定各项港口运营的最低标准，尤其强调港口在人事、安全与环保等方面需要达到的专业标准，但是没有对港口管理进行明确规定。各成员国实施PSR后，港口服务会普遍受新财务透明条款约束。

（二）德国发布多式联运补贴政策

第18届联邦议会联合政府协议审议通过德国多式联运补贴政策，德国联邦交通与数字化基础设施部（BMVI）发布的《多式联运补贴政策指引》在2017年1月4日至2021年12月31日之间生效。该指引说明补贴对象、补贴基础设施的条件与申请流程。BMVI制订的多式联运补贴政策只接受私人企业申请，并且只对其认定的多式联运形式给予补贴。

给予多式联运转运站的补贴。BMVI出台的多式联运补贴政策规定，申请补贴的多式联运转运站必须要保证运营10年或者20年以上，必须与公共交通网络紧密衔接，必须在规划阶段就与补贴发放机构进行沟通并在运营阶段提供运行的数据。德国政府对转运站的补贴比例最高达到80%，补贴的申请和发放由第三方专业机构提供，补贴只针对于转运站的基础设施给予支持。政策指引要求转运站接受补贴后平均货物处理成本不得高于每单位33欧元，如果转运站在海港附近，平均货物处理成本不得高于每单位15欧元。

给予物流园区中铁路专用线的补贴。德国政府给予符合要求的铁路专用线最高达到50%的补贴比例，由联邦铁路局负责补贴的发放。申请补贴的主体企业必须要提供具备额外的铁路货运需求的证明，且铁路专用线必须与公共铁路网衔接，在申请时必须提交货运量。货运周转量或者车厢数。此外，投建企业必须对补贴铁路专用线进行最多10年的货运量及货运周转量的年度统计。

（三）德国新包装法设置销售禁令

德国《关于投入流通、回收和高质量包装使用的法规》（VerpackG）已于2019年1月1日生效，并取代现行适用的包装条例（VerpackV）。新包装法适用于所有在德国投入流通、填充物品、在最终消费者处作为垃圾产生的包装。在德国市场销售商品的企业，如果不能遵守德国最新包装法，将面临高达20万欧元的罚款和销售禁令。德国专门建立包装注册中央办事处（ZSVR），该机构作为联邦管理部门监督循环再造的实施情况，并确保企业遵守规定。

德国新包装法主要规定

●法规涉及制造商、分销商、进口商和运输商，制造商指第一个将产品包装并投入流通的主体，包括外部包装、最终零售包装、饮食业所用的抛弃式容器/盛器、运送包装材料等。

●所有在德国销售商品的公司，包括跨境电商、在线零售商，所有参与者在将填充物品的包装投放流通市场之前，都有义务根据新的包装法进行注册并申领许可证，以保证市场准入。

●通过LUCID网站在“包装注册中央登记处”注册，任何错过的申报都将根据销售重量处罚上万欧元的滞纳金，甚至被禁止销售。

●所有参与者每年须申报出售的包装材料、种类和重量，生产包装使用超过8万公斤玻璃、5万公斤纸张和纸板以及3万公斤其他包装材质的企业，还须提交一份《符合性声明书（DOC）》。

表10 需要注册VerpackG的企业

需要注册企业	说明
产品制造商	产品制造商通常是德国首次供应商，因此有义务进行注册。
零售商	包含跨境电商卖家，都有义务进行注册。
产品进口商	如果该制造商的总部设在国外，那么国内进口商可以被视为德国的首次分销商，因此也被视为制造商。原则上，在进口的情况下，对货物负有法律责任的人有义务在过境时参与该制度。此外，如果不履行义务，最终分销商将受到分销禁令的约束。
邮购公司	邮购公司在VerpackG的规定下等同于制造商。邮购公司首次将货运集装箱装满货物，运输包装用于将产品交付给最终消费者，通常构成在最终用户处的包装浪费，因此该包装的系统参与和登记义务应该由邮购公司承担。

新包装法扩大产品包装责任范围。每个将填充物品包装投入流通市场的主体，都将承担回收和利用责任，即担负垃圾处理公司的特许使用费，这笔特许使用费将主要用于处理黄色垃圾袋、纸张、纸板、纸盒以及玻璃等包装物。

二、问题分析

（一）PSR 或加剧官僚主义和垄断

PSR没有为港口提供更大的经济自主权，使港口管理方没有权力根据自身商业策略与投资情况设置港口设施收费标准，也没有为用户和股东留出参与重大基础设施规划、建设、定价的权力。虽然PSR给予港口一定程度的额外经济协商权，但也为政府部门借国家港口政策

干预港口自主权留下空间，基于对无效干预的考量，PSR可能会导致不必要的官僚主义，从而损害港口的根本利益。PSR还巩固现存的双重收费标准，即一些港口可以自主制定价格标准，而其他港口则没有相应的权力，人为地制造不公平竞争。

PSR很有可能实质损害港口使用者的利益。欧洲共同体船东协会(ECSA)声称，PSR并不包含理货、引航、旅客服务、疏浚等服务，可能会进一步加剧港口的垄断地位。这意味着PSR会令港口的使用者变得更被动，因此该条例可能达不到预期的服务效果，反而使理货、旅客服务等成本剧增，引起客户不满。

（二）补贴政策可能损害公平竞争

德国《多式联运补贴政策指引》对私有企业多式联运的高比例补贴引发欧盟市场不公平竞争。根据BMVI统计，德国政府每年对多式联运高达约9300万欧元的补贴，政府补贴支持下的多式联运转运能力达到840万装载单元，占联运总能力67.2%，而得到政府补贴的基础设施完成总转运量550万装载单元，占联运总量64%。补贴极大地加强德国多式联运的竞争力，但是这种竞争能力的提升来自于补贴大幅降低德国企业操作成本，直接导致欧盟市场上的外资企业处于绝对竞争劣势。

（三）新包装法大大增加进口难度

德国新包装法的主要目的是提高包括材料的回收率，预计到2022年，包装材料的回收率从目前的36%提高到63%，出发点值得肯定。但是法案的普及率和推广率过低，影响全球上万家进口商、跨境零售商在内的法案没有英文版，企业不能及时按照规定进行注册与申报，直接导致当年销售损失。

过严的注册与申报要求增加企业运营成本，人为干扰市场秩序。新包装法涉及到所有在德国市场上销售商品的制造商、分销商、进口商与运输企业，即便只在德国市场上销售一件商品也要履行注册与申报义务，包装法中强制零售商在每年初必须在线注册，列出当年可能进入德国市场的所有品牌名称，申报出售商品的包装材料、种类和重量，并支付许可费用。如果没有及时在LUCID里注册，或者申报数据有错漏，最高可罚20万欧元，甚至被禁止在德国市场销售。这对销售特点为小批量、多品类的跨境零售商而言，无疑是增加巨额的工作内容，并且在日常销售中存在非常大的不可预估性，人为地限制进口商与跨境零售商的业务规模，干扰正常的市场秩序。

政府负责管控整个系统导致权力过大。新包装法要求过于严苛，对于部分企业来说基本不可能完成注册与申报义务，政府可以人为干预市场准入门槛，使包装注册中央办事处权力过大，增加寻租可能性。

三、我们建议

（一）更大程度向港口下放自主权

各成员国港口的所有制情况各有不同，包括国有企业、混合所有制企业、私营企业、外资有限经营使用权等，建议PSR充分考虑各成员国不同港口的实际情况，给予港口运营者和股东更大的经营自主权，允许其根据自身发展的实际情况自主规划、自主定价。

（二）PSR 应保障港口的充分竞争

PSR应保障港口的充分竞争，而不是加剧垄断。建议PSR规定的服务内容与制度的标准尽可能多地覆盖所有服务，从提供服务、提高效率的角度出发，给予港口使用者最大程度的便利。

第十五章

电子商务专题

一、近期发展

（一）新颁布电商增值税实施条例

2017 年 12 月欧盟颁布《电子商务增值税条例》，并于 2019 年 2 月公布《电子商务增值税改革实施条例》。改革主要内容包括：将一站式征税制度扩大到欧盟内部和非欧盟国家卖往欧盟的远程销售活动；在线交易平台承担对非欧盟电商在其平台上销售的货物申报和增值税缴纳义务；取消从非欧盟国家进口到欧盟的低价商品(低于 22 欧元)进口增值税豁免政策。

（二）实施新版支付服务修订法案

2018 年 1 月 13 日，欧盟支付服务修订法案第二版（PSD2）开始在欧盟范围内正式生效推行。PSD2 的主要内容包括以下三点：鼓励用户使用第三方服务商提供的支付产品管理个人或企业财务状况，禁止商家将付款成本转嫁给消费者，增强线上消费者权益的保护力度。

2019 年 3 月 14 日，银行和其他传统金融机构需为第三方企业创建和开放测试环境，以利用 API（应用程序编程接口）收集信息，目的是减少卖家对特定银行支付服务的依赖。2019 年 9 月 14 日，要求欧盟企业在所有在线购买中使用多重客户身份验证方式。

（三）推出反地域封锁的电商新规

2018 年 12 月 4 日，欧盟反地域封锁法规生效，该法规是为解决欧盟市场内不合理地理封锁，以及因为客户国籍、居住地或营业地点而带来的其他形式歧视，适用于向欧盟客户提供商品和服务的企业。该法规不仅会影响到欧盟内部市场，还将影响服务于欧盟客户的其他国家或地区企业。法规禁止卖家根据客户的特征在以下几个方面进行区别对待：访问在线界面、获得商品和服务、支付交易的条件。

（四）加强跨境包裹递送信息采集

2018 年 5 月，欧盟有关跨境包裹递送服务的新法规正式生效。该法规要求包裹递送服务业者向成员国主管机关提供包括企业注册信息、服务范围、服务条款等在内的相关信息，以助于欧盟市场透明化并改善法规监管[50]。

二、问题分析

（一）跨境交易管辖权归属不明确

虽然欧盟通过大量的法律和法规来建立数字单一市场，但目前在欧盟开展跨境电子商务业务仍存在诸多障碍，特别是在涉及跨境问题时，成员国间的管辖权规则不明确问题突出。例如，当某一成员国电子商务企业在另一成员国销售产品时，包括消费者权利、许可要求、产品标签等方面的规定，适用哪一成员国法规尚不明确，消费者在跨境电子商务网站购物遭遇维修、退换货等问题时维权难度大。

（二）欧盟内部跨境支付存在障碍

欧盟电子商务企业通常为其客户提供多种支付选项，如借记卡、信用卡、分期付款等。但是，欧盟各成员国在支付方面的立法存在差异，这使得在线卖家难以在整个欧盟地区提供相同的支付选择。《欧盟电子商务报告 2019》[51]显示，几乎在所有欧盟成员国，支付不方便或担心支付安全都是阻碍欧盟居民进行网上购物的首要问题，其中该问题在葡萄牙、匈牙利及希腊表现最为突出。

跨境支付的另一个问题是欧盟成员国跨境交易中税收制度的复杂性和分散性。虽然有欧洲增值税框架，但增值税税率因国家而异，意味着在线交易的费率因成员国不同而有所差异。

[50] https://ec.europa.eu/growth/sectors/postal-services/parcel-delivery_en
[51] https://www.ecommercewiki.org/reports/792/european-ecommerce-report-2019-free

（三）跨境物流体系建设水平落后

跨境物流体系是发展电子商务的重要基础，落后的物流体系直接限制电子商务快速发展。根据《欧盟电子商务报告 2019》，物流缓慢或收件不方便是影响居民网上购物的重要因素，仅次于在线支付问题。此外，欧盟各国物流体系建设水平参差不齐，部分国家物流基础条件落后，也是影响跨境交易的重要因素，拉脱维亚、马耳他、罗马尼亚等成员国的物流基础设施较为落后。

（四）成员国间管理制度差异较大

欧盟虽然不断推进一体化进程，但各成员国之间的制度差异仍然存在，各国政府在跨境电商的业务开办、市场监管、征税等方面也存在法律不协调和多头管理等问题，电子商务从业者在各国开办业务需要克服制度、文化、配送与物流等障碍。

三、我们建议

（一）消除欧盟内部跨境支付障碍

欧盟目前关于跨境支付的法律法规不能满足企业发展需求，建议欧盟尽快解决目前跨境支付存在的诸多障碍，包括消除跨境支付服务壁垒，提高跨境支付安全性，降低跨境支付成本等。

（二）完善欧盟内部跨境物流体系

建议欧盟进一步消除影响跨境物流的制度障碍，确保商品跨境运输可靠性，推出物流跟踪系统标准，建立统一物流运营规范，完善欧盟物流体系建设。

（三）推进欧盟层面电子商务立法

建议欧盟通过在联盟层面开展电子商务立法的方式消除各成员国电子商务管理方面的立法和执法差异，减少企业在各成员国间开展电子商务的制度性障碍，降低企业成本。



中国贸促会研究院

ACADEMY OF CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE

欧盟营商环境报告 2019/2020

Business Environment of the European Union 2019/2020



中国贸促会研究院
ACADEMY OF CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE

Business Environment of the European Union 2019/2020

The information contained in this report is for reference only and none of the contents of this report is to be used as a commercial or legal recommendation. The CCPIT Academy is not responsible for the accuracy or integrity of the information contained in this report.

All rights reserved. No person or organization may reproduce or print some or all of the contents of this report without written permission of the CCPIT Academy.

CCPIT Academy

Research group:

Leader：

Zhao Ping

Director and Research Fellow

International Trade Research Department of the CCPIT Academy

Members：

Zhou Jinzhu

Deputy Director of International Trade Research Department of the CCPIT Academy

Zhao Liyan

Director of Economic Research Division, Department of Development Research of CCPIT

Yang Ting

Director of Investment Research Division, Department of Development Research of CCPIT

Zhang Jixing

PhD. of International Trade Research Department of the CCPIT Academy

Zhang Yujing

PhD. of International Trade Research Department of the CCPIT Academy

Zhang Qingbo

PhD. of International Trade Research Department of the CCPIT Academy

Zhou Lei

Economic Research Division, Department of Development Research of CCPIT

Li Rongxiang

Economic Research Division, Department of Development Research of CCPIT

Gong Yuwen

Associate Professor of Anhui University of Finance and Economics

Li Jingwei

Associate Professor of University of International Business and Economics

Proofreaders： Wang Chen, Wang Huiming, Wang Pengfei, Liu Yujin

Table of Contents

Preface **1**
Chapter One Annual Review of EU Reforms **3**
I. Limited effect of the multiple stimulus measures in lifting the economy **4**
1. The Investment Plan for Europe supports small and medium-sized companies 4
2. The InvestEU program promotes financial access 5
3. The Connecting Europe Facility supports infrastructure 6
4. The EU economy is still mired in low growth 6
II. Slow progress in developing the Single Market of the Union **7**
1. Digital Single Market Strategy makes progress 7
2. Slow progress in implementing the capital markets union action plan 9
III. The European Union's backsliding on trade and investment liberalisation **10**
1. Tightening foreign security review policies 10
2. Market distortions run counter to World Trade Organisation rules 11
Chapter Two General Issues with the Business Environment **13**
I. The overall business environment of the European Union is less than optimistic **14**
1. Companies reckon that the EU business environment has declined 14
2. Major Member States have poor business environment rankings 15
II. Rising market access thresholds in the European Union **16**
1. Barriers to foreign investment access impede foreign investment growth 16
2. Abuse of trade remedy measures increases business costs 17
3. Frequent changes in standards prevent market entry 18
III. Overregulation increases business risks **19**
1. Excessive regulatory intervention disrupts daily operations 19
2. Excessive government power increases rent-seeking opportunities 19
3. Visa restrictions impairs reasonable personnel mobility 20
4. Complex regulations increase compliance costs 21
5. Long-arm jurisdiction undermines the sovereignty of other nations 21
IV. Implicit discrimination runs counter to the principle of justice and fairness **22**
1. The European Union fails to adhere to the principle of competitive neutrality for state-owned enterprises 22
2. Discriminatory law enforcement weakens foreign companies' competitiveness 24
V. The political and social environment adds to foreign investor concerns **25**
1. Low government efficiency adds to business costs 25
2. Deterioration of public security affects everyday life 26
VI. Over-protection adding to business operating cost **28**
1. Labour system rigidity boosts labour costs 28
2. Cognitive bias increases financing difficulties for foreign enterprises 29
VII. Foreign investor confidence in the European Union declines **29**

1. Significant reduction in the number of enterprises choosing the European Union as their top investment destination.....30
2. Mergers and acquisitions by Chinese-funded enterprises may suffer the largest decline. ..30
Chapter Three General Recommendations.....31
I. Eliminate unreasonable market protection measures.....32
1. Formulate fair and reasonable rules for foreign direct investment screening 32
2. Strictly regulate the use of trade remedy measures.....32
3. Ensure that standard certification is fair and predictable 32
II. Mitigate the impact of overregulation on the economy 33
1. Avoid excessive government intervention in the market.....33
2. Regulate emerging business types in an inclusive and prudent manner.....33
3. Promote free movement of the human resources of foreign-invested enterprises 34
4. Fully solicit the opinions and suggestions of foreign-invested enterprises.....34
5. Promote the European Union's labour reform 34
6. Exercise long-arm jurisdiction reasonably.....34
III. Stop all types of discriminatory behaviours.....35
1. Treat foreign-invested enterprises of all ownerships equally.....35
2. Enforce laws in strict accordance with standard operation procedures.....35
IV. Strengthen the government public service system 36
1. Improve the capacity of government workers to provide public services.....36
2. Increase investment in public security management.....36
3. Effectively meet the reasonable demands of foreign-invested enterprises.....36
Chapter Four The Market Access Section.....37
I. Recent developments.....38
1. The first EU regulation on foreign direct investment screening came into force.....38
2. The European Union's strategic document on China targets Chinese-funded enterprises..39
3. Germany expanded the scope and raised the standard for reviews.....39
4. Italy extended the screening scope to cover 5G.....40
5. France tightened control of foreign investment in strategic areas.....41
6. The Netherlands took a more critical attitude towards China 42
7. Hungary published a security review list 42
II. Analysis of problems.....43
1. The foreign direct investment screening list of the European Union continues to grow 43
2. Time costs and uncertainty increased.....44
3. The concept of national security was abused in the review 45
III. Our recommendations.....46
1. Develop a stable and exhaustive review list.....46
2. Clarify review authority and improve efficiency 46
3. Define the specific scope of national security review.....47
4. Treat enterprises of all ownerships equally.....47
Chapter Five The Administrative Enforcement Section 48
I. Recent developments.....49
1. The eGovernment Action Plan has made progress.....49
2. The eIDAS Regulation entered into force.....50

II. Analysis of problems **50**
1. The implementation of the Once-Only-Principle has been less than effective 50
2. Transparency in public service delivery needs to be enhanced 51
3. Credibility of some Member State governments needs to be improved 51
4. Service capacity of Member State governments needs to be improved 52
III. Our recommendations **52**
1. Modernise government service capacity 52
2. Speed up the integration of public services in the European Union 53
3. Vigorously raise the government's credibility 53
Chapter Six The General Data Protection Regulation Section **54**
I. Recent developments **55**
1. The six principles for personal data processing 55
2. Data subjects' eight rights 55
3. Potential jurisdiction over companies across the world 57
4. Significantly increased requirements for corporate data compliance 57
5. Maximum fines based on total worldwide turnover 58
II. Analysis of problems **59**
1. Extensive regulation markedly drives up compliance costs 59
2. Ambiguities make compliance much more difficult 59
3. Stringent regulation disrupts normal business operations 61
4. The efforts of financial institutions to develop the credit system suffer a setback 62
5. Brakes on technological advances hinder business innovation 62
III. Our recommendations **62**
1. Formulate operable supporting implementing rules 62
2. Conduct business training based on judicial interpretations 62
3. Balance data protection against credit system development 62
Chapter Seven The Digital Economy Section **64**
I. Recent developments **65**
1. Release of the Commission Recommendation on Cybersecurity of 5G Networks 65
2. Issuance of the cybersecurity risk assessment report 65
3. Entry into force of the EU Cybersecurity Act 66
4. Digital taxes introduced in France, Austria and Spain 66
5. The European Parliament's adoption of the China tech threat resolution 67
6. Poland-US joint declaration on 5G 68
7. Resolution passed on mitigating 5G-related risks 68
II. Analysis of problems **69**
1. Concocting and magnifying the China tech threat 69
2. Exclusion of Chinese companies by the Poland-US declaration 69
III. Our recommendations **69**
1. Stop the discrimination against Chinese companies in 5G 70
2. Refrain from over-intervention in 5G 70
Chapter Eight The Intellectual Property Section **71**
I. Recent developments **72**
1. Cooperation on unitary patent protection lacks progress 72

2. The Directive on Copyright in the Digital Single Market has been implemented 72
3. The EU Geographic Indication Register has been launched 73
II. Analysis of problems 73
1. Discrimination against foreign investors acquiring intellectual property 73
2. Events like Brexit increase business costs 74
3. Disclosure rules can easily lead to trade secret leakage 74
4. The cancellation process is susceptible to abuse 75
III. Our recommendations 75
1. Give equal treatment to IP acquired by foreign investors 75
2. Accelerate legislation for unitary patent 75
3. Protect trade secrets in GI registration 76
4. Fairly enforce GI cancellation 76
Chapter Nine The Public Procurement Section 77
I. Recent developments 78
1. Strategic priorities of EU public procurement were unveiled 78
2. International procurement mechanism is actively promoted 78
3. Guidance for third-country bidders was issued 78
II. Analysis of problems 79
1. Public procurement bids discriminate against foreign-invested companies 79
2. Public procurement procedures are opaque and unfair 79
3. Foreign-invested companies face differential treatment in practice 80
III. Our recommendations 80
1. Raise the transparency of public procurement procedures 80
2. Accelerate public procurement digitisation 81
3. Establish a monitor and management system for public procurement 81
4. Back China's accession to the Government Procurement Agreement 81
Chapter Ten The Anti-trust Section 83
I. Recent developments 84
1. Germany and Austria announced the value threshold for transaction notification 84
2. A Joint Statement to promote industrial development in the European Union was released 84
3. France and Germany released the Manifesto for a European Industrial Policy 84
4. France, Germany and Poland call for reform of the anti-trust law 85
II. Analysis of problems 85
1. Foreign-investd enterprises are more likely to be subject to review 85
2. Antitrust reviews do not fit the realities of Chinese SOEs 85
3. Double-standards are applied on Chinese SOEs 86
4. Anti-trust reviews are prone to infringe on trade secrets 86
III. Our recommendations 87
1. End discrimination against Chinese SOEs 87
2. Reduce business disruption caused by anti-trust inspections 87
3. Further clarify review thresholds and rules 87
Chapter Eleven The Standard Certification Section 88
I. Recent Developments 89

1. RoHS restrictive catalog was further extended 89
2. WEEE may be applicable to all products 90
3. REACH has frequently updated the notification list 91
II. Analysis of problems 91
1. The designation of third-party certification organizations is not transparent 91
2. The standard certification process is lengthy and costly 91
3. Frequent change of standards hampers product marketing 92
4. Poor standard enforcement undermines fair competition 92
5. Chinese companies are not engaged in standard-setting. 93
III. Our recommendations 94
1. Certification organizations should be diversified and certification process should be transparent 94
2. Keep the standards relatively stable and predictable 94
3. Treat all enterprises equally in enforcement inspection 94
4. Engage foreign-invested enterprises in standard-setting on an equal footing 94
Chapter Twelve The Taxation Section 95
I. Recent developments 96
1. VAT reform has simplified the collection and administrative process 96
2. Minimum VAT among Member States have been unified 96
3. France and Belgium have implemented large-scale tax cut 96
4. Poland has implemented the VAT split-payment mechanism 97
II. Analysis of problems 97
1. Overall tax burden in major Member States is too heavy 97
2. Tax system divergence in the European Union raises business cost 98
3. Split-payment strains the funding flow of foreign-invested enterprises 98
III. Our recommendations 98
1. Ease the overall tax burden for foreign-invested enterprises 98
2. Push reforms to unify tax systems across Member States 98
3. Standardize tax collection and administration among Member States 99
4. Step up tax cooperation among Member States 99
Chapter Thirteen The Finance Section 100
I. Recent developments 101
1. The new MiFID has been implemented 101
2. Non-EU financial institutions are required to set up IPU 102
3. The 5th EU anti-money laundering directive was issued 102
II. Analysis of problems 103
1. Compliance cost for financial institutions is raised significantly 103
2. The plannings of foreign financial institutions are disrupted by IPU 103
3. Regulating branches as subsidiaries leads to unfair competition 103
4. Money laundering tracing treats foreign capital more strictly 104
III. Our Recommendations 104
1. Financial reform should account for business affordability 104
2. Raise the IPU threshold for foreign banks 104
3. Press ahead with the China-German exemption agreement 105

Chapter Fourteen The Logistics Section 106
I. Recent developments 107
1. The European Union has officially implemented the Port Service Regulation 107
2. Germany issued funding policies for combined transport 107
3. Packaging Act in Germany imposes distribution ban 108
II. Analysis of problems 109
1. PSR may aggravate bureaucracy and monopoly 109
2. Funding policy may undermine fair competition 110
3. The new Packaging Act increases difficulties for import 110
III. Our recommendations 111
1. Delegate more autonomy to ports 111
2. PSR should ensure full competition among ports 111
Chapter Fifteen The E-commerce Section 112
I. Recent Developments 113
1. The Implementing Regulation on E-commerce VAT Reform was introduced 113
2. PSD2 has been implemented 113
3. New anti-geoblocking regulation was launched 113
4. Information collection on cross-border parcel delivery has been strengthened 113
II. Analysis of problems 114
1. Jurisdictions over cross-border trading remain ambiguous 114
2. Intra-EU cross-border payment faces obstacles 114
3. Cross-border logistics system-building lags behind 114
4. Administration among Member States are discrepant 115
III. Our recommendations 115
1. Remove the barriers to cross-border payment in the European Union 115
2. Enhance cross-border logistics within the European Union 115
3. Promote EU-level e-commerce legislation 115

Preface

China and the European Union are important players and shapers of the world's multi-polarisation and economic globalisation process. China-EU relationship is one of the most important bilateral relations in the world. China regards Europe as an important partner and one of the diplomatic priorities. Although its development has been affected by such events as the Brexit in recent years, the European Union has not changed its direction of integration and remained committed to advancing reforms and facing up to challenges. China has always supported the process of European integration.

In 2019, China-EU relations have maintained a momentum of solid and steady progress. The two sides concluded the negotiations on Geographical Indication, and signed two agreements on aviation cooperation. Smooth progress was made with regard to the Belt and Road Initiative and Eurasian connectivity. On the economic and trade front, there were also abundant achievements. In 2019, the value of China-EU trade amounted to 4.86 trillion RMB, up by 8 percent year-on-year; by the end of 2018, a total of more than 3,200 Chinese-invested firms had been established in the European Union, covering all Members States, hiring nearly 260,000 local employees. Chinese firms are contributing to the European Union's economic development in various differently forms.

The European Union and China committed in the *Joint Statement of the 21st China-EU Summit* to ensure equitable and mutually beneficial cooperation in bilateral trade and investment. Both sides reiterated their willingness to enhance bilateral economic cooperation, trade and investment and to provide each other with broader and more facilitated, non-discriminatory market access. However, the European Union and some Member States have continued to strengthen foreign investment screening, abuse trade remedy measures, discriminate against foreign investment in 5G and other fields, and disrupt business operations as a result of overregulation. On 12 February 2019, the European Commission published the *EU-China Strategic Outlook*, in which it sees China as "an economic competitor" and "a systemic rival", and put forward 10 actions seeking to "rebalance" its relations with China. The various measures of the European Union have directly led to the decline of the Union's business

environment. Our survey shows that the share of respondents which chose the European Union as their primary investment destination in 2019 was only 24 percent, which was far lower than the 78.63 percent in 2018.

In order to help the European Union improve its business environment and to promote the further deepening of China-EU economic and trade cooperation, the Academy of China Council for the Promotion of International Trade (hereinafter referred to as the CCPIT Academy) has carried out a research project of *Business Environment of the European Union 2019/2020*. The project group researched 163 businesses operating in the European Union by making field visits at home and in the Union and organising discussion meetings in order to gain a full and accurate picture of their demand; and 500 questionnaires were sent out through different channels, and 268 valid responses were received. The survey finds that the European Union has been constantly raising its market access threshold, overregulation has led to rising operating risks for business, implicit discrimination has run counter to the principle of justice and fairness, the political and social environment has given rise to business anxiety, overprotection has increased operational costs for businesses and the confidence of foreign-invested enterprises in investing in the European Union has declined.

The year 2020 marks the 45th anniversary of the establishment of diplomatic relations between China and the European Union. It is also the first year in office of the new EU leadership. China and the European Union have broad space for cooperation in addressing climate change and expanding trade and investment. We hope that the European Union could take the demands of the businesses very seriously, eliminate unreasonable market access thresholds, avoid overregulation that curbs market economic development, stop all forms of discriminatory behaviours, strengthen government public service systems, continue to improve the business environment, and shore up the confidence of the businesses in investing and doing business in the Union.

Chapter One
Annual Review of EU Reforms

In recent years, the European Union has taken multiple measures to promote integration as well as trade and investment liberalisation. While some results have been achieved, the progress of reform and integration remains slow and the economy is still lacklustre. Measures such as the strengthening of foreign investment screening and 5G security review have reflected that the European Union is going backwards on the path towards trade and investment liberalisation.

I. Limited effect of the multiple stimulus measures in lifting the economy

In June 2010, the European Union officially adopted the blueprint for its development in the next decade, i.e., the *Europe 2020: A strategy for smart, sustainable, inclusive growth*, which identifies the three strategic priorities of smart, sustainable, and inclusive growth. Guided by this strategy, the European Union subsequently published such initiatives as the Investment Plan for Europe, the InvestEU program and the Connecting Europe Facility to stimulate economic development.

1. The Investment Plan for Europe supports small and medium-sized companies

As of October 2019, the Investment Plan for Europe had boosted EU GDP growth by 0.9 percent and added 1.1 million jobs. In terms of investment, the Investment Plan for Europe created an additional investment of EUR439.4 billion within the Union, while investment was restored to pre-crisis level and kept rising steadily. In terms of assisting small and medium-sized companies, more than one million start-ups and small businesses received financing through the Investment Plan for Europe. In terms of promoting people's livelihood, through the Investment Plan for Europe a total of 531,000 homes were built or renovated, 28.3 million smart electric meters were installed, 33.3 million EU residents gained access to better sewage treatment, and 10.4 million households used renewable energy[1].

The EU forecasts that by 2022 the Investment Plan for Europe will have boosted the EU GDP by 1.8 percent and added 1.7 million jobs.

[1] https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/investment-plan-results_en

In November 2014, European Commission President Jean-Claude Juncker proposed the Investment Plan for Europe to promote growth, employment and investment, and established the European Fund for Strategic Investment (EFSI), which mainly helps to finance reform and expansion projects in infrastructure such as energy pipelines and networks, transport, and broadband, and in such sectors as education, research and innovation. In September 2016, the European Commission upgraded the strategic investment goals, and launched the EFSI 2.0, extending the plan to 2020, and raising the investment target to EUR500 billion, with a greater focus on financing small projects.

2. The InvestEU program promotes financial access

In April 2019, the European Parliament officially approved the InvestEU program to boost the economy for 2021-2027. This initiative consists of three projects: the InvestEU Fund, the InvestEU Advisory Hub and the InvestEU Portal, bringing together, under one roof, the European Fund for Strategic Investments and 13 EU financial instruments currently available[2]. Triggering at least EUR650 billion in additional investment, the program aims to give an additional boost to investment, innovation and job creation in Europe[3].

The InvestEU program supports four main policy areas: **sustainable infrastructure**, including sustainable energy, digital connectivity, transport, circular economy, environmental infrastructure and more; **research, innovation and digitisation**, including taking research results to the market, digitisation of industry, artificial intelligence and more; **small businesses**, facilitating access to finance for small and medium-sized companies and small startup companies; and **social investment and skills**, including science, education, social innovation, healthcare, integration of migrants and refugees, and more.

[2] Including the CEF debt instrument, the CEF equity instrument, loan guarantee facility under COSME, Equity facility for Grouwth under COSME, Innovfin Equity, the Innovfin SME Guarantee, Innovfin Loan Service for R&I Facility, the Private Financing for Energy Efficiency instrument, the Natural Capital Financing Facility, the EsSI capacity building investments, the EsSI Microfinance and Social Enterprise Guarantees, the Student Loan Guarantee Facility, and the Cultural and Creative Sectors Guarantee Facility.

[3] https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/whats-next-investeu-programme-2021-2027_en

3. The Connecting Europe Facility supports infrastructure

In March 2019, the Council and the European Parliament reached agreement on the Connecting Europe Facility (hereinafter referred to as the CEF) proposal, as part of the next long-term EU budget 2021-2027, making clear that the project will continue to be implemented after 2020, and it is planned to expand the fund's size in 2021-2027 to EUR42.3 billion, of which EUR30.6 billion will be used for European transport infrastructure networks, EUR8.7 billion for energy investments, and EUR3 billion for digital investment. **In the transport sector**, the CEF will give priority to cross-border projects with EU added value in the trans-European transport networks; **in the telecommunications sector**, the scope of funding will be expanded to support the Union's digital single market and projects to enhance the level of EU connectivity, giving priority to projects providing digital services to residents; **in the energy sector,** the European Union will continue to promote European energy market integration, improve cross-border and cross-sectoral energy network connectivity, support low-carbon development, ensure energy supply security, and provide funding support for cross-border renewable energy projects[4].

The CEF is a key funding instrument to promote investment, jobs and competitiveness through providing funding support for key infrastructure projects in the transport, digital and energy sectors at European level. The CEF has been implemented since January 2014 and its first phase will end in 2020, with a planned budget of EUR30.4 billion. The CEF also emphasises synergy between the transport, digital and energy sectors to increase the effectiveness of EU actions and optimise implementation costs.

4. The EU economy is still mired in low growth

Although the stimulus measures instituted by the EU have invigorated the economy and investment to a certain extent, the economic development of the Union is still in the doldrums. Since the fourth quarter of 2017, the quarterly growth rate of the EU GDP has continued the downward trend (as shown in Figure 1). On 7 November 2019, the European Commission released its economic forecast, in which it lowered the growth forecast for the Eurozone in 2020 from 1.4 percent to 1.2 percent.

[4] https://ec.europa.eu/inea/en/connecting-europe-facility

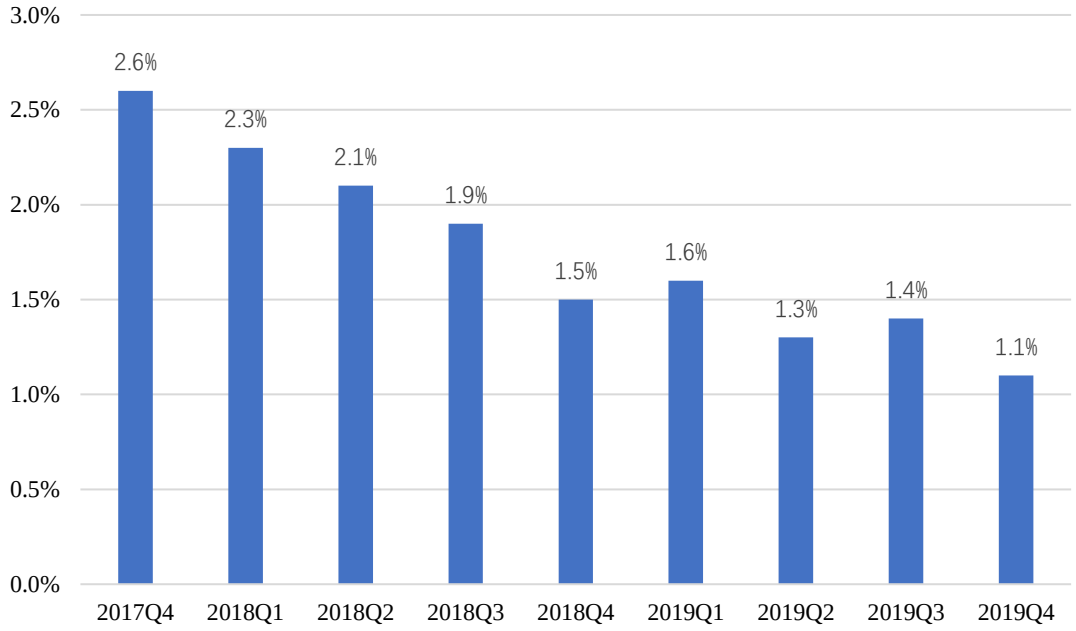


Figure 1 Quarterly GDP growth rates of the European Union

Source: Eurostat.

II. Slow progress in developing the Single Market of the Union

1. Digital Single Market Strategy makes progress

Since the implementation of the Digital Single Market Strategy, the European Union has put forward 30 legislative proposals with regard to the "digital single market", of which 28 have been adopted by the European Parliament and the Council. Revolving around the six key areas of "digital culture", "digital future", "digital life", "digital trust", "digital shopping" and "digital connection", progress has been made in developing the European Digital Single Market (see Table 1) .

On 6 May 2015, the European Commission formally announced the "Digital Single Market" strategy, identifying the three pillars of building the digital single market: providing better digital products and services for individuals and businesses; creating a favourable network environment for the prosperous development of the digital network and services; maximising the growth potential of the digital economy.

Table 1 Progress in developing the EU Digital Single Market

Area	Major Progress
Digital Culture	Protection of EU cultural diversity; Since 1 April 2018, cross-regional portability of digital content and services within the European Union; Development of digitised cultural archives.
Digital Future	Formulation of a plan to build a top-ranked supercomputer by 2023; Drafting of the AI ethics guidelines; Establishment of the European Blockchain Partnership to ensure collaboration across Member States; Establishment of the Pan-European network of Digital Innovation Hubs.
Digital Life	Digitisation and facilitation of public services among EU governments; Secure electronic interactions between businesses, citizens and public authorities in EU countries; Sharing of health information by citizens of EU Member States and promotion of the use of digital technologies in the health sector; Introduction of a skills agenda to bridge the digital skills deficit; Plans to build 5G cross-border corridors.
Digital Trust	Protection of personal data; Protection of minors; Cooperation on protecting cybersecurity.
Digital Shopping	Cross-regional delivery of online shopping services in the European Union since December 2018.
Digital Connectivity	Guarantee of a good internet connection in EU countries; Launch of the Wifi4EU initiative.

Source: https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market

2. Slow progress in implementing the capital markets union action plan[5]

As of 2018, risks facing the European Union's banking sector were under effective control, and the percentage of defaulted loans was significantly reduced. From 2015 to 2018, some key cornerstones building the capital markets union were laid. However, there is still need for further efforts to ensure financial stability and integration. Ten of the 13 proposals on the capital markets union have not yet been agreed upon (see Table 2). In addition, the three proposals on sustainable financial classification, disclosure and low-carbon standards are yet to be resolved[6].

Table 2 Status of legislative proposals on capital markets union

Adopted legislative proposals	Unadopted legislative proposals
Proposal to review the Prospectus Directive Proposal for Regulations on the European Venture Capital Funds and European Social Entrepreneurship Fund Proposal for an EU framework for simple, transparent and standardised (STS) securitisation	Proposal to the amendments to the functioning of European Securities and Markets Authority (ESMA) and other ESAs to promote the effectiveness of consistent supervision across the EU and beyond; Proposal to improve the proportionality of prudential rules for investment firms; Proposal on a pan-European personal pension product; Proposal to develop a secondary market for non-performing loans (NPLs); Proposal for an EU framework on convered bonds; Proposal on specifying the conflict-of-laws rules for third party effects of transactions in securities and claims; Proposal to ensure the European Systemic Risk Board (ESRB) has the capacity to monitor potential risks to financial stability arising from market-based finance; Proposal for pan-European venture capital fund-of-funds and multi-country funds; Proposal on the central counter-party mechanism; Proposal for the Common Consolidated Corporate Tax Base.

Source: https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en

[5] https://ec.europa.eu/info/publications/action-plan-building-capital-markets-union_en

[6] http://europa.eu/rapid/press-release_IP-18-6548_en.htm

In September 2015, the European Commission published the "Action Plan on Capital Markets Union" to strengthen financial support for enterprises, facilitate corporate financing, promote infrastructure investment, facilitate individual and institutional investment, and support economic development through banking business and facilitate cross-border investment, with the following main objectives:

●Reducing barriers to cross-border investment by establishing a single capital market;

●Lowering financing threshold, expanding project funding sources and reducing financing costs;

●Enhancing the role of the capital market in economic development and job creation;

●Improving financing facilities for small and medium-sized companies;

●Enhancing the European Union's attractiveness to foreign direct investment.

III. The European Union's backsliding on trade and investment liberalisation

1. Tightening foreign security review policies

On 14 February and 5 March 2019, the European Parliament and the Council of the European Union respectively adopted the new framework to screen foreign direct investments coming into the European Union, and on that basis formally promulgated the Regulation establishing a framework for screening foreign direct investment in the European Union(hereinafter referred to as the Regulation), which will fully apply 18 months after its entry into force in April 2019. The Regulation is the first foreign investment screening legislation at EU level. Although the final approval power in foreign investment screening still rests in the hands of the Member States, the Regulation provides the principles and directions for the Member States in foreign direct investment screening legislation and practice, and establishes an information sharing mechanism among the Member States, which in effect strengthen the screening of foreign direct investment.

After the Regulation establishing a framework for screening foreign direct investment in the European Union came into effect, France and Italy have amended their domestic laws according to the requirements of the Regulation. In May 2019, France published the draft Action Plan for Business Growth and Transformation (PACTE), which strengthens the executive power of the French Ministry of Economy and Finance and provides that the Ministry may, without the sending of a formal notice, directly veto an investment in emergencies relating to public order, public security and national defence. On 11 July 2019, the Italian government promulgated the Law Decree No. 64/2019 (DL64/2019), supplementing the Golden Power Law to strengthen the government's power to review foreign investment in such "strategic industries" as defence, national security, telecommunications, energy and transport, and to list a company's "control by the government" as a factor that affects "national security" or "public order".

In 2017, the governments of Germany, France, and Italy submitted a letter to the European Commission accusing that some countries are putting up barriers to EU investment, whereas investment from these countries are having unimpeded access to the European Union. They proposed the establishment of foreign investment screening mechanism at EU level. The Commission adopted a proposal for a regulation establishing a framework for screening foreign direct investment in the European Union in September 2017, recommending the establishment of a security screening system for foreign acquisition and investment at EU level, focusing on examining foreign investment in key infrastructure, key technologies, key inputs, and sensitive information, and on reviewing whether foreign investors are directly or indirectly controlled by a third country government.

2. Market distortions run counter to World Trade Organisation rules

The European Union amended its trade remedy rules, and published in June 2018 Regulation No 2018/825, whereby it introduced the concept

of "distortions on raw materials"[7], and on that basis partly abandoned the lesser duty rule. According to the pre-amendment rules, the European Union would compare the calculated damage margin with the dumping margin and determine the final duty level based on the lesser margin (i.e. the lesser duty rule). However, the new rules stipulate that in the presence of distortions on raw materials, the Commission may determine that the lesser duty is not sufficient to fully compensate for the damage, which in effect increases the penalties of the trade remedy measures.

The concept of the "significant distortions" of the market does not exist in the WTO rules. The new EU anti-dumping methodology lacks legal basis under WTO rules. Using the European Union's unilaterally-developed standards to determine whether other countries have "significant distortions" of the market will weaken the authority of the WTO anti-dumping regime.

On 19 December 2017, the European Union published the Regulation adopted by the European Parliament and the Council amending the original antidumping regulation of the European Union (REGULATION (EU) 2017/2321), in which a "significant distortions" calculation methodology was added. The European Commission regards the existence of market distortions as the prerequisite for the adoption the costs and prices of the exporting country as the basis for comparison in anti-dumping investigations, and uses the influence of government policies, and the independence of state-owned enterprises and financial institutions as indicators to measure market distortions.

[7] Distortions on raw materials consist of the following measures: dual pricing schemes, export taxes, export surtax, export quota, export prohibition, fiscal tax on exports, licensing requirements, minimum export price, value added tax (VAT) refund reduction or withdrawal, restriction on customs clearance point for exporters, qualified exporters list, domestic market obligation, captive mining if the price of a raw material is significantly lower as compared to prices in the representative international markets.

Chapter Two
General Issues with the Business Environment

In recent years, the European Union's stand on trade and investment liberalisation has been wavering. It has regarded China as a "systemic" rival, continuously tightened foreign direct investment screening, and modified trade remedy methodologies. Overregulation in the digital single market and in the Union's integration reforms has increased costs and burdens for companies. In general, the uncertainty of the European Union's policy formulation and implementation has increased, leading to the worsening of the business environment and declines in business confidence in investing in the Europe.

I. The overall business environment of the European Union is less than optimistic

The *Doing Business 2020* released by the World Bank shows that the global ranking of China's business environment rose by another 15 places to 31 in the world in 2019, following a 32-places jump in 2018. For two consecutive years, China has been one of the top ten economies with the biggest improvement in global doing business rankings. France, the Netherlands, Belgium, Italy, Luxembourg and other major EU Member States, as developed countries, are lagging behind some developing countries.

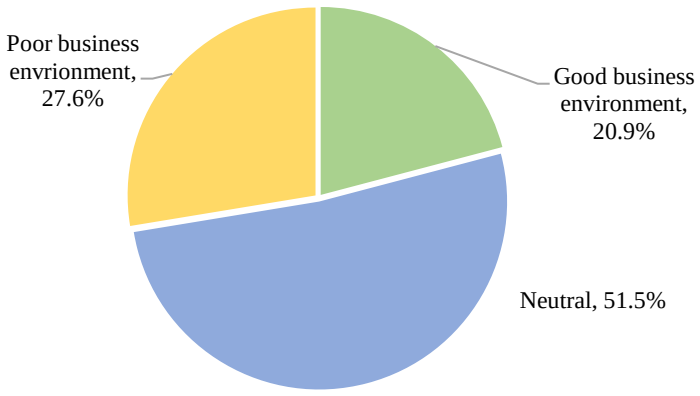


Figure 2 Assessments of the European Union's Business Environment

Source: CCPIT Academy.

1. Companies reckon that the EU business environment has declined

The European Union's overregulation and unclear policy environment in foreign direct investment screening, data protection,

finance and other fields has directly led to a decline in the business environment and a more difficult life for foreign companies operating and investing in the Union. Our survey shows that the percentage of companies that reported negatively about the European Union's business environment reached 27.6 percent, which is higher than the percentage of companies that reported positively (as shown in Figure 2).

2. Major Member States have poor business environment rankings

The *Doing Business 2020* shows that most of the EU Member States are ranked below 30. Especially on the indicator of starting a business, the EU Member States performed poorly, and Member States like Germany and Poland even ranked below 100 (see Table 3). The business environment rankings of 17 Member States have declined compared to the previous reporting period, and Poland, the Netherlands, Italy, Greece, and Luxembourg have all fallen by more than 5 places.

Table 3 Rankings of EU Member States by business environment and ease of starting a business

Member States	Business environment rankings (2018)	Business environment (2019)	Change in rankings	Starting a business index rankings (2019)
Denmark	3	4	Down	45
Sweden	12	10	Up	39
Lithuania	14	11	Up	34
Estonia	16	18	Down	14
Latvia	19	19	No	26
Finland	17	20	Down	31
Germany	24	22	Up	125
Ireland	23	24	Down	23
Austria	26	27	Down	127
Spain	30	30	No	97
France	32	32	No	37
Slovenia	40	37	Up	41

Table 3 Rankings of EU Member States by business environment and ease of starting a business

Member States	Business environment rankings (2018)	Business environment (2019)	Change in rankings	Starting a business index rankings (2019)
Portugal	34	39	Down	63
Poland	33	40	Down	128
Czech	35	41	Down	134
Netherlands	36	42	Down	24
Slovakia	42	45	Down	118
Belgium	45	46	Down	48
Croatia	58	51	Up	114
Hungary	53	52	Up	87
Cyprus	57	54	Up	50
Romania	52	55	Down	91
Italy	51	58	Down	98
Bulgaria	59	61	Down	113
Luxemburg	66	72	Down	76
Greece	72	79	Down	11
Malta	84	88	Down	86

Source: *Doing Business 2019* and *Doing Business 2020*, World Bank.

II. Rising market access thresholds in the European Union

Market access refers to the degree to which a country allows foreign goods, services, and capital to participate in the domestic market. Raising the market entry threshold for foreign capital violates the non-discriminatory principle, makes it more difficult for foreign-invested companies to enter the market, and even blocks them from the market, and increasing the cost of entry of foreign products into the market when it comes to trade.

1.Barriers to foreign investment access impede foreign investment growth

Measures of the European Union and some Member States to strengthen foreign investment screening have raised the threshold for foreign companies to enter the European Union, increased investment costs, and dampened foreign investor confidence in investing in the European Union. The survey shows that among the surveyed companies that have been subject to EU foreign direct investment screening, 48.8 percent of them reported discriminatory treatment, and 78.8 percent believed that foreign direct investment screening had caused damages to the company(as shown in Figure 3).

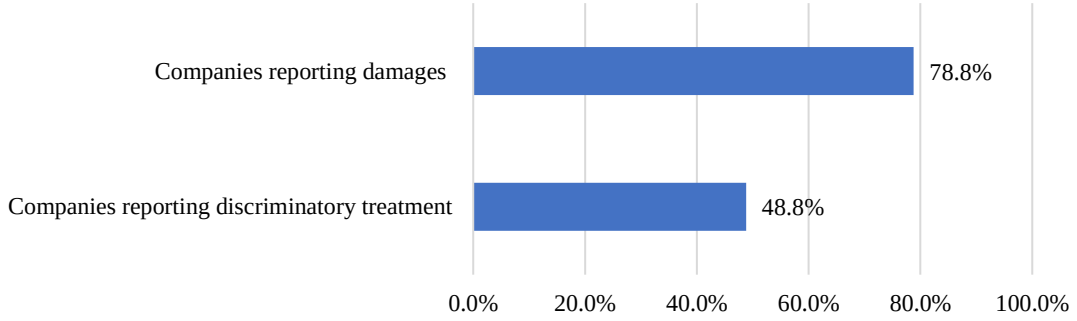


Figure 3 Views of companies with FDI screening experience on FDI screening

Source: CCPIT Academy.

2. Abuse of trade remedy measures increases business costs

China is the European Union's second largest trading partner, and the European Union is China's largest trading partner and largest source of imports. In 2019, China's trade with the European Union was valued at 4.86 trillion RMB, an increase of 8 percent year-on-year, accounting for 15.4 percent of China's total foreign trade value during the same period. However, China is the largest target country for the European Union as far as the Union's trade remedy measures are concerned. The frequent adoption of trade remedy measures has gravely harmed Chinese firms exporting to the European Union. According to WTO statistics, from 2001 to 2018, the European Union initiated 99 anti-dumping investigations and 12 countervailing investigations against China. It is the third largest economy in terms of the number of anti-dumping and anti-subsidy investigations it had initiated against China, next only to the United States and India. As of the end of 2018, among the economies against which the European Union imposed trade remedies, China accounted for the highest proportion of anti-dumping, safeguard measures and special safeguard measures, far higher than other economies (see Table 4).

The abuse of punitive trade remedy measures has increased the costs for products to enter the EU market and put companies at a disadvantage in competition. On 3 May 2019, the European Commission issued an announcement about the final determination of the sunset review of the anti-dumping and countervailing investigations on organic coated steel products originating in China, and decided to extend the antidumping and countervailing measures for the products involved. The measures targeting organic coated steel products originating in China were first implemented in 2013, and have now been extended for another five years. With antidumping duties ranging from 0 to 26.1 percent and countervailing duties from 13.7 percent to 44.7 percent, Chinese organic coated steel makers involved will face very high cost burdens in the European Union.

Table 4 Statistics of countries subject to EU trade remedies (as of the end of 2018)

	Antidumping		Anti-subsidy		Safeguards		Special Safeguard	
	Number of cases	Percent（%）	Number of cases	Precent（%）	Number of cases	Percent（%）	Number of cases	Percent（%）
China	133	27	12	15	5	71	10	100
India	38	8	22	28	0	0	0	0
Korea	28	6	7	9	0	0	0	0
Russia	27	5	0	0	0	0	0	0
Thailand	21	4	0	0	0	0	0	0
US	18	4	4	5	0	0	0	0
Others	236	46	35	43	2	29	0	0
Total	501	100	80	100	7	100	10	100

Source: China Trade Remedies Information website.

3. Frequent changes in standards prevent market entry

The European Union's product standards are updated too frequently, resulting in the disruption of the pace of research and development, production, and operations on the part of the companies. The surveyed companies reported that before they completed product testing and updating in accordance with existing standards, the European Union introduced new standards, which greatly increased the production costs of the companies, reduced the efficiency of which products are marketed, and constituted *de facto* barriers to entry.

Chinese enterprises find it difficult to participate in the development of EU standards. The survey shows that Chinese enterprises are enthusiastic about participating in the development of EU standards, which reflects the Chinese companies' proactive attitude towards participating in EU economic development and fulfilling their social responsibilities. However, Chinese enterprises reported a lack of a clear and unimpeded path towards participating in EU standard development, which has hindered their integration into the EU economy.

III. Overregulation increases business risks

In recent years, the European Union has promulgated many laws and regulations to regulate business operations in multiple respects. These laws and regulations cover data protection, the digital economy, standard development, foreign investment access, competition and other fields. Many regulations have exceeded the reasonable boundaries for government intervention in the market, thus disrupting the normal operation of the market, weakening the autonomy of business operations, and greatly increasing the cost of compliance.

1. Excessive regulatory intervention disrupts daily operations

The European Union's excessive intervention in markets and business operations has run counter to the principle of liberalisation. The overly complex legal provisions and excessively stringent regulatory requirements have made companies feel perplexed.

For example, in terms of data protection, overregulation of the General Data Protection Regulation (GDPR) has prevented companies from operating properly. Companies reported that they could not even contact Chinese-funded enterprises through communication apps, or transmit resumes via email during recruitment, and their normal operations were therefore impeded. In the financial sector, the surveyed companies reported that the European Union's excessive regulation in finance has led to an infinite increase in the cost of compliance, making it more difficult for companies to operate.

2.Excessive government power increases rent-seeking opportunities

Overregulation facilitates government intervention in market mechanisms. It means that the government has more jurisdiction and dominance, and as a result the space for private interest groups to protect their own interests through rent-seeking has expanded. In foreign direct

investment screening, the government can block a normal investment behaviour of the enterprise on the grounds of the vague concept of "national security"; in trade remedy investigations, the government has adopted the "market distortion" methodology in calculating the punitive duties for goods and services exported to the European Union, while the European Commission, as the trade remedy investigating agency of the European Union, formulates and issues the so-called "Market Distortion Report" and makes investigation determinations based on the report produced by itself, thus increasing the space for government rent-seeking.

3. Visa restrictions impairs reasonable personnel mobility

The visa issue remains one of the important challenges facing companies investing and operating in Europe. The strict control of work visas by EU Member States hinders the effective movement of human resources. The companies surveyed generally reported that strict and cumbersome visa application procedures have increased the financial and time costs of the companies, the European Union's requirements for employee visas were becoming stricter, and the probability of refusal has increased. For example, in Belgium, the work visa is valid for one year, and it usually takes companies eight months to apply for one. As a result, the moment this year's visa application is granted, it is time to start preparing for next year's visa renewal. In 2019, it became more difficult for foreign-invested companies to apply for work visas for their employees in the European Union. The process became more cumbersome, and the rate of visa denials with no reasons provided has increased. For example, Chinese-funded enterprises in Poland reported that they had never been denied visas in the past, and yet visa denials started to occur in 2019.

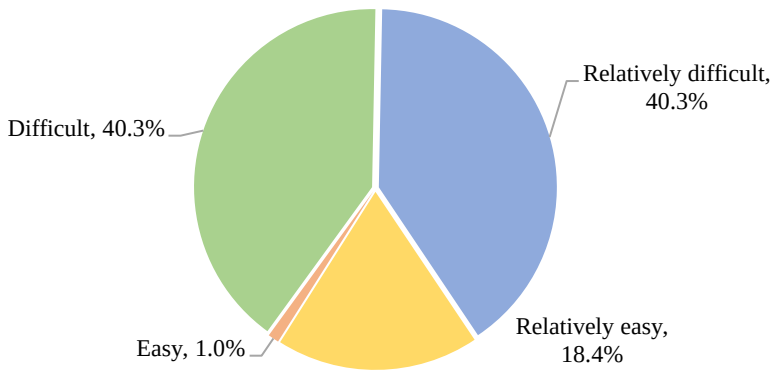


Figure 4 Level of difficulty for obtaining work visas and residence permits in the EU

Source: CCPIT Academy.

According to the survey, 80.6 percent of the companies surveyed found it difficult to obtain work visas and residence permits in the European Union. Only 19.4 percent of the companies surveyed found it easy or relatively easy (as shown in Figure 4).

4. Complex regulations increase compliance costs

The laws of the European Union and its Member States are very complex. As a consequence, companies had to invest huge time and capital costs in order to meet compliance requirements. The surveyed companies reported that no matter it is greenfield investment or mergers and acquisitions they are engaged in within the European Union, they all need services provided by professionals (including finance, taxation, law, etc.). However, some laws and regulations are so complicated that even internationally renowned third-party professional service agencies may not be able to handle them properly, and that sometimes governments, business associations and service agencies may even give completely different interpretations, which not only makes enterprises confused, but also increases the company's risks of "non-compliance".

Government officials are also unable to accurately handle some of the issues that are in their areas of competence. The survey shows that 56.1 percent of the companies surveyed reported that they had encountered problems with different interpretations of the same laws and regulations by different government agencies in the European Union. On the one hand, this is due to the lack of professional capabilities on the part the government officials; on the other hand it shows that the laws and regulations of the European Union are too complex that even the employees of the competent authorities fail to understand them accurately.

5. Long-arm jurisdiction undermines the sovereignty of other nations

Long-arm jurisdiction derives from the legal terminology used by the legal profession in the United States. It refers to the ability to exercise jurisdiction in a place outside the jurisdiction of the local court. The European Union's GDPR provides that GDPR applies to the processing of personal data of data subjects in the European Union, even if the controller and processor are not established in the EU. That is, regardless of whether the company is in the EU, it is subject to the GDPR stipulations as long as it has processed the personal data of EU residents, and the EU has the right

to impose penalties should it violate the relevant provisions of the GDPR. The use of long-arm jurisdiction means the expansion of "extraterritorial jurisdiction", which would easily lead to the groundless expansion of the use of that jurisdiction, and undermine the protection of the legitimate rights and interests of enterprises.

IV. Implicit discrimination runs counter to the principle of justice and fairness

The European Union has always adhered to the concept of liberalisation and built an open market environment based on the multilateral trading system and a sound legal system. However, "implicit discrimination" exists in daily practice, and it is wrong. "Implicit discrimination" creates a "glass door" that is difficult for foreign-funded enterprises to pass through. For example, although state-owned enterprises can invest in the European Union together with other foreign-invested enterprises, they face stricter oversight during the review process, which put them at a disadvantage in competition. In the process of law enforcement, the regulatory agencies carry out selective law enforcement and put forward additional regulatory requirements with regard to some foreign-invested enterprises, thus increasing their operating costs.

1. The European Union fails to adhere to the principle of competitive neutrality for state-owned enterprises

The European Union has adopted a discriminatory method of "calculation of aggregated turnover" in anti-monopoly reviews of Chinese state-owned enterprises, in which case the so-called "government factors" are taken into consideration in the security review. The European Union is also planning to adopt legislation to deal with the so-called "distortion effect" in the internal market of the European Union by Chinese state-owned enterprises and government funds. The European Union's discriminatory treatment of state-owned enterprises will greatly discourage them from investing in Europe, making it difficult for them to promote European economic development through investment.

The survey shows that 42.7 percent of the surveyed state-owned enterprises have been subjected to stricter reviews due to their status as state-owned enterprises, and 69.7 percent of the surveyed state-owned enterprises have faced stricter supervision in their daily operations due to their status(as shown in Figure 5).

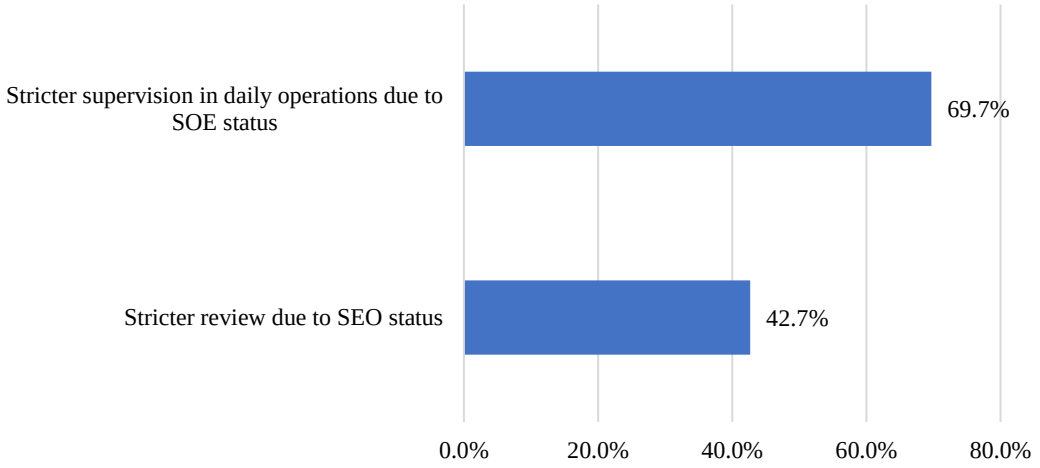


Figure 5 Stricter reviews and supervision due to SOE status

Source: CCPIT Academy.

China adheres to the principle of competitive neutrality when it comes to treatment for state-owned enterprises, and provides equal treatment to domestic and foreign investors. According to the OECD, the principle of competitive neutrality means that the same rules are applied to public and private enterprises within the regulatory framework, and the relationship with the government does not give any participant in the market a competitive advantage. On 26 March 2019, the executive meeting of the State Council of China announced that China will expedite the cleanup and modification of a series of policies and measures that restrict the development of private enterprises and violate the principle of equal treatment of domestic and foreign investment in accordance with the principle of competitive neutrality[8]. Meanwhile, China has continued to reform state-owned enterprises to further clarify their independent legal person status and status as a market player. On 28 April 2019, the State Council of China issued the *Reform of the Authorised Operation System for State-owned Capital*[9], stating clearly that: the separation of the government and business and the separation of the government and capital should be adhered to; the separation of the government's public management functions and state-owned capital investor functions should be adhered to so as to sort out according to law the investment relationship between the government and state-owned enterprises, establish according to law the status of state-owned enterprises as market players and minimize

[8]http://www.gov.cn/premier/2019-03/26/content_5376991.htm
[9]http://www.gov.cn/zhengce/content/2019-04/28/content_5387112.htm

direct government intervention in market activities; with clearly defined representative agency of the government-authorised investor performs the role of the investor in the state-owned enterprises according to the proportion of the investment, thus scientifically defining the boundaries of power and responsibility of the agency representative of the investor; the state-owned enterprise is entitled to complete corporate property rights and full autonomy in business operation.

The *Business Confidence Survey 2019*[10] published by the European Union Chamber of Commerce in China also points out that in the past 24 months, a quarter of European companies have participated in the mixed ownership reform of Chinese state-owned enterprises. EU companies have become beneficiaries of China's implementation of the "competitive neutrality" principle.

2. Discriminatory law enforcement weakens foreign companies' competitiveness

The Report on the Investment Environment of the European Union 2018/2019 of the CCPIT Academy points out that due to the misperception of Chinese companies, some Member State governments had discriminatory and selective law enforcement vis-a-vis Chinese companies, creating obstacles for Chinese companies operating in Europe. This problem still exists today. Some Member State governments inspected Chinese companies significantly more frequently than they did with other companies, and after the inspection, they would raise more stringent requirements for the Chinese companies, resulting in disruptions to their normal operations and increase in their operating costs.

The survey shows that discriminatory law enforcement is an important issue facing Chinese-funded enterprises. 32.1 percent of the companies surveyed have encountered discriminatory law enforcement in the European Union, and 30.1 percent of the companies believe that the EU governments' enforcement is relatively unfair when it comes to foreign investors (as shown in Figure 6).

Chinese companies in Poland reported that the Polish government has a discriminatory attitude towards Chinese design agencies, and has repeatedly reviewed design plans produced by Chinese design agencies,

[10]https://www.europeanchamber.com.cn/en/publications-business-confidence-survey

resulting in the project being unable to proceed smoothly. As a result, Chinese companies were forced to hire local Polish design agencies. Because the design plans were produced by these Polish design agencies, Chinese companies were unable to use Chinese raw materials in the project and could only purchase local Polish raw materials. During project acceptance, the acceptance of the work of the Polish building contractor was fast and the process simple, while the acceptance of the work of the Chinese building contractor was cumbersome and came along with various unreasonable requirements, which was discrimination against Chinese companies.

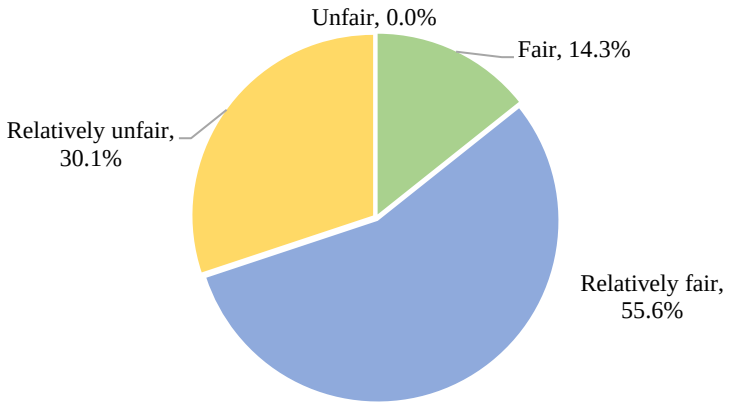


Figure 6 Fairness of EU governments' foreign investment law enforcement

Source: CCPIT Academy.

V. The political and social environment adds to foreign investor concerns

1. Low government efficiency adds to business costs

Efficiency in government services and government work is the administrative guarantee for foreign companies to invest and operate in the European Union. However, surveyed companies generally reported that the work efficiency of some EU Member State governments is low, which has caused obstacles to the normal operation of Chinese companies in Europe. The survey shows that 73.4 percent of the companies surveyed maintained that the work efficiency of government employees in the European Union is low or relatively low; 43.4 percent of the companies believed that the European Union has procedural delays in the process of administrative approval and supervision (as shown in Figures 7 and 8).

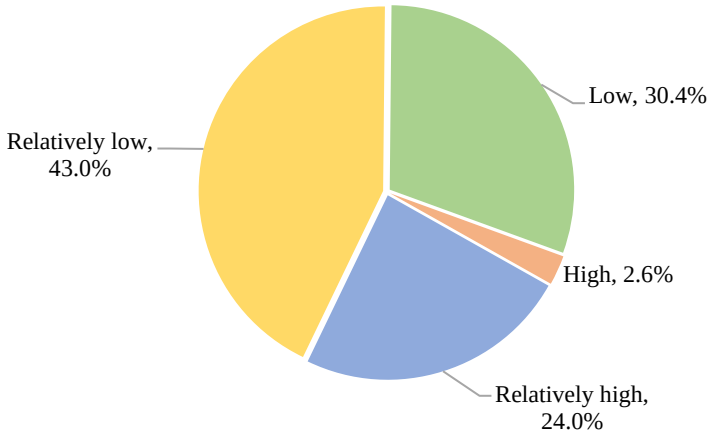


Figure 7 Work efficiency of government employees in the European Union

Source: CCPIT Academy.

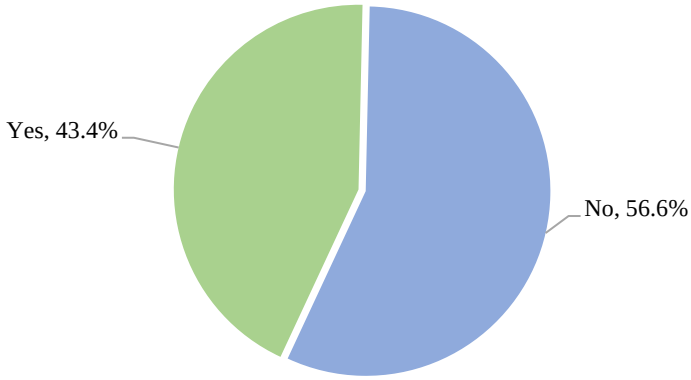


Figure 8 Whether the European Union has procedural delays in the process of administrative approval and supervision

Source: CCPIT Academy.

2. Deterioration of public security affects everyday life

The public security environment is the basic element of the business environment. Only if the personal safety of the employees is effectively guaranteed can foreign-invested enterprises conduct normal investment and operations. In recent years, however, the European Union's public security environment has been not so good, and the frequent terrorist attacks have affected the investment confidence of foreign-invested enterprises.

The *2018 Global Law and Order Report*, published by Gallup, a US consultancy, ranks the security environment around the world based on feedback from residents in 142 countries and regions. China is ranked 10th, while EU Member States such as Belgium, Croatia, Poland, Italy and Hungary are ranked below 40th. Poor security environment means the

safety of the employees of foreign-invested companies cannot be effectively guaranteed. Chinese-funded enterprises reported that public security in Brussels has not improved significantly over the past years, theft cases occur from time to time, and the police work remains inefficient.

Frequent strikes in the EU have led to the deterioration of public security environment. On 3 September 2019, France's public transport system went on strike, involving 90 percent of all the metro workers in Paris. On 5 December 2019, a massive strike broke out in France, with more than 200 demonstrations staged across the country. Almost all traffic was disrupted, with 90 percent of the country's high-speed trains suspended and 11 of the 16 metro lines in Paris shut down. There were even people vandalising cars and shops, and posing threat to the lives of residents. Prior to the strike, the Chinese Embassy in France had issued a message asking Chinese citizens to raise personal security awareness.

Table 5 Major terrorist incidents in the EU since 2016

Time	Location	Terrorist incidents
22 March 2016	Belgium	At least 30 people were killed and 300 injured in a series of explosions at Zaventem airport on the outskirts of Brussels and at a metro station near the EU headquarters in the city
14 July 2016	France	At least 84 people were killed and 202 injured when a truck ploughed into a crowd watching a fireworks display in the southern French tourist city of Nice
24 July 2016	Germany	An explosion in the Bavarian city of Ansbach killed the bomber and injured 12 others, three of which were critically wounded
19 December 2016	Germany	Twelve people were killed and 49 injured when a van ploughed into the sidewalk of a Christmas market in the busy area of Berlin's city west
7 April 2017	Sweden	At least 4 people were killed and 15 injured in a terrorist attack in central Stockholm when a van rammed into a crowd
23 March 2018	France	Three people were killed and 16 injured in a terrorist attack by an armed terrorist in the towns of Carcassonne and Trèbes in the southern French province of Ode
29 November 2019	UK	A man armed with a knife attacked passers-by on London Bridge, killing three people, including the killer, and injuring three others, police said

Source: Summarised according to public information.

The frequent occurrence of terrorist incidents is also an important factor giving rise to the deterioration of the security environment. In recent

years, frequent terrorist attacks took place in several EU Member States (see Table 5). According to the *EU Terrorism Situation and Trend Report 2019* published by Europol[11], the total number of terrorist attacks in EU Member States in 2018 was 129, posing a threat to the personal and property safety of the employees of foreign-invested enterprises.

VI. Over-protection adding to business operating cost

Stringent laws and discriminatory regulation lead to the over-protection of the domestic market. In the field of human resources, the rigid labour system curbs the flexibility of enterprises to operate, significantly increases costs and hinders day-to-day operations. In the financial sector, discriminatory practices against foreign-invested enterprises increase the cost and difficulty of financing.

1. Labour system rigidity boosts labour costs

Excessive labour regulations and too much union power not only increase business cost, but also create interference with normal business activities. According to the survey, 46.4 percent of the companies had been subjected to local hiring requirements, 49 percent believed that trade union activities affected their normal business activities (see Figure 9) and 66.9 percent believed that trade unions and the labour system significantly increased their cost (see Figure 10). The companies surveyed generally reported an increase in human resource costs, with 76 percent of them having an increase in human resource costs in 2018.

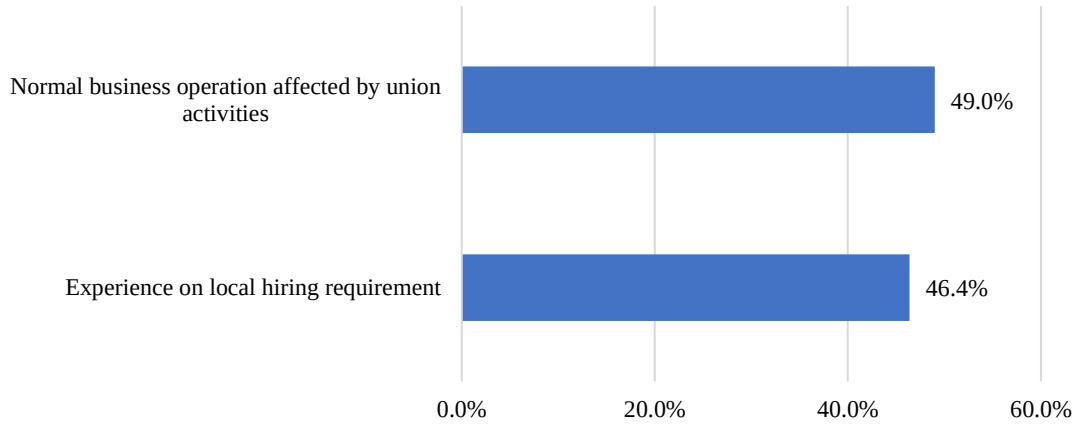


Figure 9 Normal business operation affected by union activities and experience of local hiring requirement

Source: CCPIT Academy.

[11] https://www.europol.europa.eu/activities-services/main-reports/terrorism-situation-and-trend-report-2019-te-sat

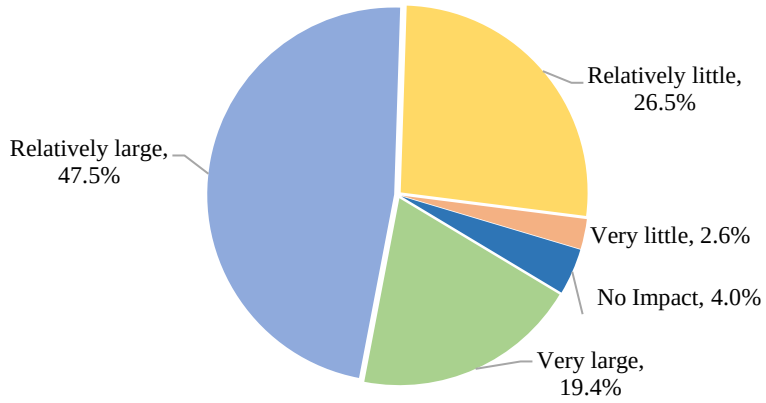


Figure 10 Impact of unions and the labour system on business cost

Source: CCPIT Academy.

2. Cognitive bias increases financing difficulties for foreign enterprises

Facilitation of financing is an important basis for foreign-invested enterprises to invest in the European Union. Nevertheless, foreign-invested enterprises are still facing obstacles in financing in the Union. The companies surveyed reported that some EU Member States did not understand the business model of Chinese enterprises, and implemented discriminatory screening procedures and additional documentation requirements for Chinese enterprises in loan approval, hence increasing the financing difficulty for the latter. According to the survey, 46.4 percent of the companies said their financing costs in the European Union were higher than in the previous year. Increased financing difficulties and rising costs have prevented enterprises from operating normally in the Union under existing investment plans, and their development has been held back by the lack of funds.

VII. Foreign investor confidence in the European Union declines

Uncertainties in business environment directly lead to a decline in investor confidence. According to the survey, the confidence of Chinese companies investing and operating in Europe has fallen sharply in 2019. A survey by Ernst & Young also shows that the satisfaction of multinationals with the investment climate in Germany was declining, and that out of the more than 700 multinational executives surveyed, the proportion of those who rated Germany negatively rose from 22 percent in 2017 to 37 percent in 2018; while the proportion of those who rated positively was only 11 percent , down by 14 percentage points from a year earlier.

1. Significant reduction in the number of enterprises choosing the European Union as their top investment destination

According to the survey, only 24 percent of companies chose the European Union as their top investment destination (see Figure 11), while in the previous year, 78.63 percent of the companies chose the EU as their top investment destination, a significant drop in the proportion of companies ranking the European Union as their top investment destination.

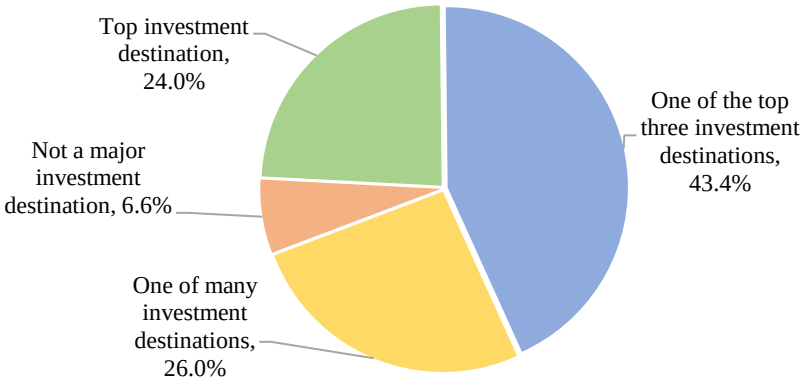


Figure 11 The European Union's importance in companies' global investment plans
Source: CCPIT Academy.

2. M&A by Chinese enterprises may suffer the largest decline

China's investment in the European Union slowed down in 2018, with investment flows at USD8.866 billion, down 13.6 percent from a year earlier, according to the Ministry of Commerce of China[12]. In breakdown, China's investment flows to Germany amounted to USD1.468 billion, down 45.9 percent YoY, accounting for 16.6 percent of the investment flows to the European Union (26.5 percent in 2017). According to the OECD, the European Union as a whole saw a decline in foreign direct investment by as much as 62 percent in the first half of 2019 as compared with the previous half year, while 19 Member States saw a decline in inward foreign direct investment[13]. The value of China's acquisitions in the European Union has also fallen sharply, with Ernst & Young data showing that the value of acquisitions by Chinese companies in Europe fell by 57.1 percent to just USD20.53 billion in 2019[14]. In 2019, the European Union accounted for just one of the China's top 10 target countries for overseas mergers and acquisitions by value, with UK ranking the second, whereas in 2018 six EU Member States made it to the top 10 target economies of China's overseas mergers and acquisitions.

[12] Ministry of Commerce: 2018 Statistical Bulletin of China's Outward Foreign Direct Investment.
[13] http://www.oecd.org/investment/FDI-in-Figures-October-2019.pdf
[14] Ernst & Young: 2019 China's Outward Foreign Direct Investment Overview.

Chapter Three
General Recommendations

I. Eliminate unreasonable market protection measures

1. Formulate fair and reasonable rules for foreign direct investment screening

Foreign investment screening should be based on a fair and reasonable footing. The EU, regardless of the reality that China has different national conditions, emphasises the so-called "reciprocal openness" and abuses the concepts of "national security" and of the so-called "government control", and violates the non-discrimination principle.

We recommend that the European Union should establish fair, reasonable, transparent and predictable rules for foreign direct investment screening; streamline the review catalogue and increase the transparency of the screening process so as to increase investor confidence in the European Union.

2. Strictly regulate the use of trade remedy measures

The EU uses the existence of so-called market distortions as a precondition for determining whether the cost and price of the investigated country should be used as the basis for comparison in anti-dumping investigations, and views government policy influence and financial institution independence as factors to measure market distortion. These new practices have no basis in WTO rules, and would easily become a tool for trade protection. As one of the world's largest economies and a major WTO member, the EU should take the lead in strictly observing the rules of the WTO and should adopt trade remedy measures according to the rules so as not to send the wrong signal of trade protectionism to the world.

3. Ensure that standard certification is fair and predictable

Standard certification is an important threshold for foreign companies and products entering the EU market. Discriminatory treatment may directly lead to the failure of access to the EU market. Unstable and opaque standard development and revision processes would hinder the normal product marketing of foreign-invested enterprises and constitute unfair barriers to entry. In terms of standard development, foreign-invested enterprises have strong enthusiasm for participating in developing EU standards, and their participation can further improve the openness and transparency of the Union's standard development work and expand the influence of EU standards.

In terms of choosing standard certification agencies, we recommend that the European Union should stick to the non-discrimination principle,

and ensure fairness and transparency in choosing certification agencies and developing certification standards; we recommend that the European Union should formulate clear processes and roadmaps for standard update in order to give companies stable expectations. We recommend that the European Union should provide reasonable and smooth channels for foreign-invested enterprises to participate in standard development, and should take into full consideration the reasonable suggestions of foreign-invested enterprises with regard to EU standards.

II. Mitigate the impact of overregulation on the economy

1. Avoid excessive government intervention in the market

Excessive regulation is a departure from the original intention of correcting the externality of the market. Rather, it serves the other intentions of the government, enhances the government's power, increases the space for government rent-seeking, and further increases the difficulty of business operation.

We recommend that the European Union should avoid over-regulating the businesses in such aspects as legislation and administrative enforcement, and give them reasonable space for development; reduce excessive government intervention in microeconomic behaviours, and strengthen its functions as a service supplier for the business; improve the supervision and checks mechanism of government power and reduce the occurrence of rent-seeking.

2. Regulate emerging business in an inclusive and prudent manner

In the Internet age, the development of new business types has challenged the traditional model of government control. Because the traditional regulatory model is no longer suited to the development of the new business type, and the regulatory authorities also lack a comprehensive and accurate understanding of it, the original regulatory system can easily lead to the overregulation of the new business type, thus hindering the innovation and development of the latter.

We recommend that the EU should adopt an inclusive regulatory attitude and approach to scientific and technological innovation, especially with regard to the new business types, provide a policy environment for business development with a balance between regulation and inclusive innovation, strengthen service and guidance for the emerging business types, and build a standardised and efficient risk control system to promote the development of emerging business types on the basis of risk control.

3. Promote free movement of the human resources of foreign-invested enterprises

Foreign-invested enterprises investing in the European Union not only provide funding and technology, but also bring in professionals in various fields. However, EU restrictions on the work visas and residence permits of the employees of foreign-invested enterprises have prevented these enterprises from dispatching business and technical personnel to the European Union based on their business needs and in a timely manner, thus affecting their operation in Europe.

We recommend that the European Union should relax the control over work visas and residence permits and make sure that foreign-invested enterprises with stable investment and long-term business projects receive a reasonable number of visas, in order to ensure the normal operation of foreign-invested enterprises in the European Union.

4. Fully solicit the opinions and suggestions of foreign-invested enterprises

Foreign-invested enterprises are an important part of the EU economy. In formulating laws and regulation relating to foreign direct investment, the European Union should listen to the opinions and suggestions of the foreign-invested enterprises, which can not only help improve the quality of legislation and enable the law to lead and guide foreign investment, but also further boost the enthusiasm of foreign-invested enterprises to participate in the Union's legal and economic development.

We recommend that the European Union should solicit on a larger scale the opinions of foreign-invested enterprises on legislation and to seriously consider their reasonable suggestions. After the introduction of laws and regulations, we recommend that the European Union should introduce detailed rules and provide targeted training for enterprises, and promptly clean up invalid and outdated laws and regulations.

5. Promote the European Union's labour reform

The European Union's rigid labour system restricts the normal development of enterprises, and also to a certain extent hinders foreign direct investment in the Union, thus weakening the its international competitiveness. We recommend that the EU should step up efforts to promote labour reform and stimulate the vitality of the labour market.

6. Exercise long-arm jurisdiction reasonably

All legal systems are to safeguard the social order of the country and

protect the interests of her nationals. Various economic and trade conflicts and frictions are inevitable, and extraterritorial jurisdiction has become a constant concern of various countries. However, extraterritorial jurisdiction must be maintained within a reasonable scope, and it must not be used as an excuse to arbitrarily interfere in the economic governance and business operation of other countries.

We recommend that the EU should comply with the provisions in international laws and make reasonable use of the "long-arm jurisdiction" clause in order to prevent the unreasonable expansion of jurisdiction.

III. Stop all types of discriminatory behaviours

1. Treat foreign-invested enterprises of all ownerships equally

A level playing field is a basic element of a sound business environment. Foreign-invested enterprises of all ownerships all contribute to the economic development of the European Union. Taking a differentiated approach to enterprises of different ownerships and subjecting them to discriminatory treatment will dampen the confidence and enthusiasm of foreign-invested companies in investing in Europe.

We recommend that the European Union should follow strictly the principle of competitive neutrality, treat enterprises of all ownerships equally, protect their rights and interests equally, and provide equal treatment to enterprises of all ownerships with regard to market access, licensing and certification, government procurement, project application, and standard development.

2. Enforce laws in strict accordance with standard operation procedures

In the process of law enforcement, subjecting some foreign-invested enterprises to discriminatory and selective enforcement not only harms the interests of enterprises, but also undermines the European Union's environment for the rule of law and reduces the attractiveness of the EU business environment.

We recommend that the European Union and its Member States should develop sound law enforcement standards and procedures and keep foreign-invested enterprises informed of them, so as to improve law enforcement transparency and give enterprises stable law enforcement expectations; treat various market players equally in the course of law enforcement, and avoid discriminatory and selective enforcement; establish and perfect the supervision mechanism for law enforcement,

take seriously the suggestions and inquires of the business, and severely punish violations in law enforcement.

IV. Strengthen the government public service system

1. Improve the capacity of government workers to provide public services

The survey shows that the lack of capacity and the low efficiency of government workers in some Member Countries have already affected the normal operation and investment confidence of foreign enterprises.

We recommend that Member State governments should step up training for government workers on administrative and operational capabilities, take the needs of enterprises as the guide, and formulate strict and reasonable administrative work guidelines and norms.

2. Increase investment in public security management

A good public security environment is the most basic thing that foreign-invested enterprises investing and operating in the EU ask for. It is an important factor affecting a foreign investor's decision-making. Investor confidence will not increase unless there is stable public security.

We recommend that the Member States should increase their investment in public security management, improve the public security environment, and ensure the effective protection of the personal safety of local residents and the employees of foreign-invested enterprises.

3. Effectively meet the reasonable demands of foreign-invested enterprises

Foreign-invested enterprises are faced with all sorts of problems when investing and operating in the European Union. Governments of the Member States are required to pay attention to these problems and provide targeted solutions. This is not only a basic thing that foreign-invested enterprises ask for, but also a measure that the European Union must take to shore up investor confidence and improve the business environment.

We recommend that the European Union should attach great importance to the decline in confidence in the European Union and the downbeat expectations of the EU business environment, strengthen communication and exchanges with foreign-invested companies, heed their demand for an improved business climate, and make every effort to improve the business environment.

Chapter Four
The Market Access Section

I. Recent developments

1. The first EU regulation on foreign direct investment screening came into force

The Regulation establishing a framework for the screening of foreign direct investments into the Union[15] came into force in April 2019 and will fully apply in October 2020, making it the first foreign direct investment screening tool based on security and public order at EU level. Its formal entry into force indicates that the European Union has begun to tighten foreign investment review. The Regulation establishes a list of "non-exhaustive" screening items relating to "security and public order of the European Union", and a system of law enforcement cooperation and information exchange between Member States and the European Commission, whereby the Commission may issue non-binding opinions to the Member States that the investment involves.

Key areas for screening under the Regulation

●Critical infrastructure, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.

●Critical technologies and dual use items, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies.

●Supply of critical inputs, including energy or raw. materials, as well as food security.

●Access to sensitive information, including personal data, or the ability to control such information.

●The freedom and pluralism of the media.

●Whether the foreign investor is directly or indirectly controlled by the government of a third country, including through ownership structure or significant funding.

●Whether the foreign investor has already been involved in activities affecting security or public order in a Member State.

●Whether there is a serious risk that the foreign investor engages in illegal or criminal activities.

[15] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0452&from=EN

2. The European Union's strategic document on China targets Chinese-funded enterprises

On March 12, 2019, the European Commission released its strategic document on China, *EU-China – A Strategic Outlook*[16], which positions China as a systemic rival and an economic competitor. The European Union believes that the existing policy does not fully appreciate the impact of government subsidies in foreign direct investment, and makes it clear that it will step up supervision of Chinese investment in the European Union, and strengthen through legislation intervention with regard to Chinese investments.

Part of the European Union's strategic document on China

●Step up supervision on investment in 5G. The document points out that foreign investment in strategic sectors such as critical assets, technologies and infrastructure in the European Union can pose risks to the European Union's security. This is particularly relevant for critical infrastructure, such as 5G networks, that closely involves sensitive information and supply of critical equipment of the European Union. The European Commission will propose to the European Council for the adoption of policies to guarantee the security of 5G networks.

●Step up implementation of the Regulation. Member States should ensure the expeditious, complete and effective implementation of the laws on foreign investment screening, make adjustment to their domestic systems according to the Regulation, and strengthen coordination among the Member States.

3. Germany expanded the scope and raised the standard for reviews

On 19 December 2018, the German cabinet discussed and adopted a draft amendment to the *Foreign Trade and Payments Act* (hereinafter referred to as the *Foreign Trade Act*).

First, the threshold for screening was lowered. When companies involved in German defence and critical infrastructure are acquired by non-EU capital, for example, a foreign investor directly acquiring more than 10 percent of the voting rights of the target company, the federal government can step in to review the acquisition. Previously, the German government would only initiate the review mechanism if more than 25 percent of the voting rights of the company are acquired.

[16] https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf

Second, the period for the exercise of the right of review was extended. Under the original system, the German Federal Ministry for Economic Affairs and Energy exercising the right of investigation would notify the direct acquirer of the transaction and the domestic company affected by the transaction the opening of the investigation procedure within one month of acquiring knowledge of the relevant acquisition and the conclusion of the contract. Paragraph 3 of Section 55 of the *Foreign Trade Act* extends the that period to three months. At the same time, the *Foreign Trade Act* extends the period of the "main investigation procedure" from the original two months to four months.

Third, the company's obligation is increased as they are asked to report. Paragraph 4 of Section 55 of the *Foreign Trade Act* introduces for the first time the "obligation for the acquirer to report", i.e., if a non-EU entity acquires a domestic company in Germany of the six types mentioned above, or directly or indirectly acquires 10 percent or more of the voting rights in the above-mentioned company as set forth by the Act, such information should be provided to the Federal Ministry of Economic Affairs and Energy in writing after the conclusion of the contract.

4. Italy extended the screening scope to cover 5G

In March 2019, Italy's *Golden Power Law* was supplemented with additional provisions, stipulating that when a company signs purchase contracts or agreements for goods or services related with the design, construction, maintenance and management of 5G networks, or acquires the high-tech components that are functional to the network itself, the government will carry out a review if the company is cooperating with a non-EU company and may compromise the integrity and security of the network.

On 11 July 2019, the Italian government promulgated the Law Decree No. 64/2019, further supplementing the *Golden Power Law* to strengthen the government's power to review foreign investment in such "strategic industries" as defence, national security, telecommunications, energy and transport.

First, the review period is extended. The original law provided that the government should make a decision on whether to approve the investment within 15 days of receiving the material submitted by the investor or target company, and the new law extends the 15-day review

period to 45 days; the original law provided that, during the review process, the government could extend the review period by an additional 10 days by requesting additional materials from the parties to the transaction, and the new law extends the additional time limit to 30 days.

Second, whether a company is "controlled by the government" is listed as a factor that affects "national security" or "public order". When a non-EU company acquires Italy's strategic assets in the areas of communications, energy and transport, the acquisition will be examined for harm to Italy's "national security" or "public order" if the company is directly or indirectly controlled by a non-EU government in the form of ownership or financial subsidies.

5. France tightened control of foreign investment in strategic areas

In May 2019, France published the *Action Plan for Business Growth and Transformation* (PACTE)[17], which strengthens the executive power of the Ministry of Economy and Finance and reinforces the protection of and support for strategic industries. The reform measures mainly involve the company law, the labour law, as well as legal provisions relating to areas such as taxation, investment, import and export, and intellectual property. The "Protecting Strategic Companies" section provides for the strengthened screening of foreign investment in the strategic sectors.

First, the executive power of the Ministry of Economy and Finance as the competent authority has been strengthened. The Ministry of Economy and Finance can handle investment behaviours that are unauthorised or inconsistent with the conditions attached to the approval, and may, in cases of emergencies relating to public order, public security and national defence, make decisions directly without sending a formal notice.

Second, the scope of administrative penalties has been expanded. PACTE steps up the penalties for such behaviours as the "passing pre-screening through fraud" and the "failure to perform, as required, in part or in full, the administrative decisions for correction".

Third, the power of the Ministry of Economy and Finance to obtain company information has been expanded. Investors or relevant target companies shall, in accordance with the requirements of the competent departments, provide the Ministry of Economy and Finance

[17] https://www.gouvernement.fr/en/pacte-the-action-plan-for-business-growth-and-transformation

with all the documents and information necessary for the examination and approval procedures. The company may not refuse to provide such documents to the Ministry of Economy and Finance on the ground that they contain trade secrets protected by law.

Fourth, the government's obligation to disclose relevant information has been established. The government shall publish statistics on foreign investment control measures on a regular basis each year and submit a work report to the Special Parliamentary Committee on the protection of the country's economic, industrial and scientific interests, as well as specific statistics (quantity, penalties, etc.) relating to the pre-screening of foreign direct investment.

6. The Netherlands took a more critical attitude towards China

On 15 May 2019, the Dutch government released its policy paper on China, *"The Netherlands & China: a new balance"*[18], stating that although China is an important partner, the Netherlands should treat China with a more critical attitude.

The document points out that on the trade front, China is not a market economy and the Netherlands wants China to change the so-called unfair trade practices, and that Sino-Dutch trade relations must be more "balanced and reciprocal"; on the investment front, the Dutch government will pay more attention to the protection of intellectual property, avoid forced technology transfer, and effectively control investment risks coming from China.

7. Hungary published a security review list

On 1 January 2019, the *Law on the Control of the Foreign Investments Offending the National Security of Hungary* (hereinafter referred to as the *Foreign Investments Control Law*)[19], entered into force, establishing a mechanism for conducting national security reviews in specific areas and a clear list of national security review industries. When foreign investors invest in the industries on the list, regulatory authorities can initiate national security reviews.

[18] https://www.government.nl/documents/policy-notes/2019/05/15/china-strategy-the-netherlands--china-a-new-balance

[19] https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157938.pdf

List and requirements of Hungary for national security review

List of activities applicable for review:

●weapon and ammunition production, production of military technology, equipment subject to authorisation;

●dual-use product production;

●production of intelligence tools;

●provision of financial services and functioning of payment systems;

●services falling within the scope of the Law on electricity, the Law on supply of natural gas, the Law on water utility services and the Law on electronic communications;

●special activities foreseen by the Government Decree related to the electronic information systems falling within the scope of the Law on electronic information security of state bodies and municipalities.

Review period:

The regulator's national security review period for foreign direct investment is 60 days, with a maximum extension of 60 days.

Thresholds triggering reviews:

●in case of these rights are higher than 25 per cent;

●exceeding the 10 per cent in the case of a public limited liability company;

●in case of acquiring dominant influence according to the Hungarian Civil Code.

II. Analysis of problems

1. The foreign direct investment screening list of the European Union continues to grow

The Report of the Investment Environment of the European Union 2018/2019 produced by the CCPIT Academy points out that the project list as required in the Regulation is "non-exhaustive", and that the increasing industrial restrictions will lead to greater uncertainty for enterprises investing in the European Union and greater risks of investment for companies. The Confederation of German Industries (BDI) commented that the list was too broad.

In 2019, the European Union and Member States such as Italy have begun to expand their lists of projects subject to screening. With the continuous development and growing influence of the 5G technology, and the rising attention of the European Union and its Member States to 5G, 5G has become a key area subject to investment screening by the European Union and its Member States. In its strategy document on China, the European Union made clear that 5G is a critical infrastructure and that its protection should be enhanced to prevent foreign direct investment in 5G from posing risks to EU security. Italy has also added 5G to its list of sectors for foreign investment screening.

The vague definition of "critical infrastructure" in the Regulation also leaves room for the expansion of the "non-exhaustive" list. 1(a) of Chapter 4 of the Regulation lists critical infrastructure such as energy and transport and provides that "land and property critical to the use of such infrastructure" also fall within the scope of critical infrastructure, and that enterprises' investment on assets such as real estate and land may also be placed under screening. This significantly extends the scope of critical infrastructure beyond what is a reasonable definition of concept, and leads to blurred boundaries for the screening.

2. Time costs and uncertainty increased

At EU level, according to the procedures for the cooperative mechanism under the Regulation, regardless of whether or not a Member State in which the investment is located has a foreign investment screening mechanism, other Member States and the European Commission may request information on relevant investments from this Member State and make comments and opinions on the investment. This inevitably leads to the prolonging of the original review period of that Member State. Furthermore, foreign direct investments will be subject to interference as a result of the opinions from other EU Member States, thus substantially increasing investment uncertainty.

At Member State level, Germany and Italy have extended the review period, while the *Law on the Control of the Foreign Investments Offending the National Security of Hungary* provides for a maximum period of 120 days for national security review in Hungary. The companies surveyed reported that the *Law on the Control of the Foreign Investments Offending the National Security of Hungary* has begun to affect investment projects

of Chinese enterprises, and that the regulatory authorities have added items intended for approval during the review process, leading to a three-months delay of the investment process. Furthermore, the respondents reported that the Hungarian authorities' review rules and standards were not clear.

On the one hand, the increase in approval time and uncertainty increases the capital cost of enterprises, and on the other hand, puts foreign-invested enterprises at a disadvantage in competition with EU enterprises. Only by paying a higher amount can foreign-invested enterprises be competitive in bidding. This further increases the investment cost for foreign enterprises in the European Union.

3. The concept of national security was abused in the review

The concept of "national security" is vaguely defined. The Regulation does not explain the concept of "public order", leaving a great deal of leeway for Member States in the practical operation of foreign direct investment screening. In its opinion on the Regulation[20], the BDI points out a precise definition of what is to be understood by national order and security could improve the legal certainty for investors and prevent new forms of hidden protectionism. At Member State level, the French PACTE strengthens the government's power in the "national security" review of foreign direct investments and allows the government to make direct decisions in emergency situations concerning public order, public security and national defence without sending a formal notice. Under this provision, the government can veto any investment it opposes on the ground of "national security", in which case "national security" can easily be used as a tool of protectionism.

The so-called "government control" is deemed as an important consideration for national security review. The Regulation provides that, in determining whether a foreign direct investment affects security or public order, special consideration should be given to "whether a foreign investor is controlled directly or indirectly, for example through an ownership structure or significant funding, by the government of a third country, including a state body". Italy, in updating the *Golden Power Law*, makes full reference to the "government control" provisions of the Regulation; the European Union's strategy paper on China[21] also states that China's

[20] https://ec.europa.eu/info/law/better-regulation/feedback/8162/attachment/090166e5b71ed952_en
[21] https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf

state-owned enterprises and government funding support have caused damage of the EU market. Such is the European Union's subjective speculation and has no factual basis[22]. The European Union over-interprets the relationship between enterprises and the government, and wrongly defines the government's reasonable and legitimate support for enterprises as the so-called "government control", constituting discrimination against the normal investment behaviour of enterprises.

III. Our recommendations

1. Develop a stable and exhaustive review list

We recommend that the European Union and the Member State governments should change the way in which the scope of the review is determined by the "non-exhaustive" list, and establish a clear review list to give investors a stable expectation; regularly evaluate the rationality of the project review list, timely remove those unreasonable items on the list and continuously shorten the list.

2. Clarify review authority and improve efficiency

In foreign direct investment screening, we recommend that the European Union and its Member State governments shorten the statutory time limit for the review as much as possible, improve the efficiency of the review, disclose the progress of the review to enterprises in a timely manner during the review process, give foreign enterprises a clear expectation of the review time, and reduce the investment cost of the enterprises. They should define the scope and boundaries of the expression of views by other Member States in the foreign investment screening process of the host country, and formulate a list of the circumstances under which Member States express their views so as to prevent the increase in the financial and time costs of the enterprises due to excessive interference by other Member States in the foreign investment review of the host country.

[22] The Commission Staff Working Document "Foreign Direct Investment in the EU" released in March 2019 even suggested that all mergers and acquisitions from China can be considered government-backed, partly because companies need approval and authorisation from the Chinese government for outward investment, and partly because investors often use loans from Chinese banks, most of which are directly controlled by the Chinese government. The government will direct enterprises to carry out acquisitions in the EU for so-called "strategic purposes", rather than for commercial purposes. As a result of this, these investments with government background and support will offer a higher bidding price than others, thus gaining an additional competitive advantage due to government support. If the EU holds such a view in foreign direct investment screening, not only state-owned enterprises investing in the EU will face discriminatory treatment, non-state-owned enterprises in the EU may also be discriminated against on the grounds of receiving government support.
http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157724.pdf

3. Define the specific scope of national security review

We recommend that the European Union should determine the target and scope of foreign direct investment screening in accordance with clear and specific rules, stop the arbitrary expansion of the scope of application of national security and prevent national security review from becoming a tool for protectionism. It is recommended that other EU Member States should develop a clearly defined list of national security reviews and should not carry out national security reviews with regard to foreign direct investments unspecified on the list.

4. Treat enterprises of all ownerships equally

We recommend that the European Union should strictly protect the rights and interests of enterprises on an equal footing according to law, uphold the basic values of contract and fair competition, and ensure that enterprises of different ownership systems enjoy equal treatment in market access. The European Union should recognise the status of Chinese enterprises as independent legal persons and market players, and treat all Chinese enterprises equally on the principles of “competitive neutrality” and “ownership neutrality”.

Chapter Five
The Administrative Enforcement Section

I. Recent developments

1. The eGovernment Action Plan has made progress

On 18 October 2019, the European Union published the eGovernment benchmark report 2019, entitled "Empowering Europeans through trusted digital public services" (hereinafter referred to as the eGovernment report [23]). The eGovernment report measures the development of eGovernment in the European Union by four indicators: user-centricity, referring to the degree of development of online services, such as network availability, usability and mobility; transparency, including the transparency of government authorities' operations, service delivery procedures, etc.; cross-border mobility, referring to the extent to which public services are available to European citizens across national borders; key enablers, referring to the availability of the four key technologies of eID, eDocuments and Authentic Sources, and Digital Post.

The eGovernment report notes that Malta, Estonia and Austria are European front-runners in eGovernment, with Latvia, Lithuania and Finland following closely behind. Of the four dimensions of eGovernment, the European Union has fared least well on cross-border mobility, indicating that EU citizens are not yet able to make full use of eGovernment services in other Member States; Europe is most advanced in terms of user-centricity, although there is most room for improvement for mobile friendliness; in terms of key enablers, eID and Authentic Sources need to be further developed and applied; in terms of transparency, further efforts are needed to uplift the transparency of government services.

In 2016, the European Union launched the eGovernment Action Plan (2016-2020), under which it was committed to the principle of digitalisation and the "Once-Only-Principle", to improving the openness, transparency, interoperability and security of eGovernment, and to building a faster, more facilitated, user-centric digital public service system.

[23] https://ec.europa.eu/digital-single-market/en/news/commissions-report-egovernment-shows-narrower-gap-between-leading-and-lower-performing-european

2.The eIDAS Regulation[24] entered into force

From 29 September 2018 onwards, the European Union's Electronic Identification and Trust Services Regulation (eIDAS) will apply directly in its entirety in the European Union. The services include eID, eSignature, eSeal, eTimestamp, Qualified Web Authentication Certificate, and Electronic Registered Delivery Service. After the eIDAS came into force, EU citizens, businesses and public organisations can conduct cross-border online activities within the Union, including cross-border enrolments, online completion of tax returns, signing electronic contracts for online transactions, online bankcard opening, online procurement and bidding. For business, eIDAS can improve the security of cross-border transactions, reduce the administrative burden of electronic transactions, improve operational efficiency, and reduce operating costs.

II. Analysis of problems

1. The implementation of the Once-Only-Principle has been less than effective

Although the European Union vigorously promotes the implementation of the "Once-Only-Principle", the survey found that the principle has not been effectively implemented, and the actual result of the implementation less than satisfactory. Belgium, for example, has introduced the facilitated initiative to put work and residence permits in one. This initiative in theory could save the processing time for the applicant. However, in actual fact, the time of application has not been reduced.

The problem of administrative inefficiency also defeats the original purpose of the "Once-Only-Principle", which is to reduce the burden and improve the efficiency of the business. Companies operating in the Netherlands reported that it took a month to receive replies from government staff to their mail. Chinese companies in Poland reported that the environmental impact assessment process for setting up a workshop in Poland lasted up to a year, greatly increasing the investment cost of the company; in contrast, the same process took only 3 to 6 months in China. Some Belgian government agencies have only two full work days a week, and are extremely inefficient.

[24] https://ec.europa.eu/digital-single-market/en/news/eidas-made-easy-quickstart-guide-and-checklist-your-business

2.Transparency in public service delivery needs to be enhanced

The eGovernment report notes that the transparency of services delivery by the governments in EU Member States needs to be improved. The survey found that the low transparency of government services has prevented enterprises from obtaining relevant information in a timely and accurate manner. Companies operating in Italy reported that in terms of government procedures, and bank, tax and accounting issues, the government has not released sound information channels, making it difficult for companies to know the provisions of local laws and regulations, and affecting their work efficiency. Because there is no clear and specific channel of information, companies have to delegate legal and financial affairs to local third-party intermediaries, leading to increased business cost.

3.Credibility of some Member State governments needs to be improved

Government credibility is the guarantee for foreign investor confidence. The theme of the eGovernment report is "Empowering Europeans through trusted digital public services", which shows how much the European Union values the credibility of the government. However, in practice the European Union's commitment to government credibility has not been fully and effectively honoured. Chinese companies investing in Poland reported that the local government promised to give foreign companies a subsidy of 24,000 zlotys (about EUR5,600) for each local job created. Yet after the company completed local recruitment (hiring about 90 local employees), the government publicly broke its promise and paid only EUR200,000 in a one-off employment subsidy, less than the initial commitment of about EUR500,000. The Polish government also re-examined tender documents and project contracts in the energy sector in order to find loopholes, and use the loopholes as a reason to demand the revision of the terms of the contract or the dissolution of the contract for the purposes of cancelling the original preferential policies or subsidies. The dishonest practices of some Member State governments have not only disrupted the original investment plans of the companies, but also dampened the confidence of the companies to invest in Europe.

4. Service capacity of Member State governments needs to be improved

Although the European Union is improving administrative efficiency through digitisation, especially through the rapid adoption of such new technologies as eIDs and eDocuments, the government's capacity to provide service for e-commerce and other new technologies and new business types has not improved simultaneously. Lack of familiarity and knowledge about the new business types on the part of government agencies of the European Union has led to overregulation or even mis-regulation, and undermined business efficiency. Cross-border e-commerce is a relatively new business type. European government agencies are lagging behind in understanding this new type of business, and cannot keep pace with the rapid development of cross-border e-commerce as far as government services and regulation are concerned. For example, the companies surveyed reported that German customs authority is not familiar with cross-border e-commerce and unwilling to take the initiative to know more about this new business, resulting in low supervision efficiency and prolonged customs clearance.

III. Our recommendations

1. Modernise government service capacity

In promoting the digitisation of public services, the European Union should not neglect the modernisation of government public service capabilities. We recommend that Member States should focus on improving the administrative and operational capacity of government staff, and strengthen professional skills training to better serve the business; increase investment in public service capacity building, introduce at government level regulatory and service measures for emerging business types such as cross-border e-commerce, and organise training for government staff and front-line law enforcement personnel so as to better equipment them with the knowledge of emerging business types; optimise all the approval processes involved in business operation, reduce the time and expenses required by related links, improve efficiency and speed up the actual implementation of the "Once-Only-Principle".

2.Speed up the integration of public services in the European Union

We recommend that the European Union should take the opportunity of building the digital single market to strengthen the development of an integrated public service system, make full use of electronic and digital means to break down the barriers of public services among Member States; strengthen unified public information delivery capacity at EU level, and solve the problems of information asymmetry and of the lack of transparency faced by enterprises when investing in the Union.

3.Vigorously raise the government's credibility

Government credibility is an assurance for businesses investing in the European Union. For the governments of the European Union and its Member States, they must vigorously raise government credibility in order to attract foreign direct investment. Information asymmetry between the government and the business is an important reason for the loss of government credibility. We recommend that the European Union should take the opportunity of the eGovernment development to step up the government information disclosure effort, and ensure the integrity, timeliness and accuracy of the information disclosed to keep enterprises well-informed of government policies; establish an electronic platform for communication between the government and the business, and build a sound communication relationship between the government and the business, so that the government can win the trust of enterprises; improve the supervision and accountability system of government administrative behaviour, ensure that government behaviour is under effective scrutiny, and ensure that enterprises can be effectively and reasonably compensated in the event of a breach of contract on the part of the government.

Chapter Six
The General Data Protection Regulation Section

On 25 May 2018, the European Union put into effect the GDPR[25], with a view to coordinating the data privacy laws of Europe and protecting the data privacy of EU citizens.

I. Recent developments

1.The six principles for personal data processing

To effectively protect personal data, the GDPR provides six principles for personal data processing: **lawfulness, fairness and transparency** — Processing must be lawful, fair, and transparent to the data subject; **purpose limitation** — One must collect and process data for the legitimate purposes on the principle of specificity, clarity and legitimacy; **data minimisation** — One should process only as much data as absolutely necessary for the specified business, and shall not collect any non-necessary personal data; **accuracy** — One must keep personal data accurate and up to date and take all reasonable measures to promptly remove or correct inaccurate personal data; **storage limitation** — One may only store the data for as long as necessary for the specified purpose while circumstances under which extensions are allowed are also identified, such as processing for the purposes of public interests, scientific or historical research, and statistics. That said, the data controller must take reasonable technological and organisational measures to ensure data security; **integrity and confidentiality** — Processing must be done in such a way as to ensure appropriate security. In course of such processing, strict authorisation is imperative for data acquisition to avoid unlawful disposal or inappropriate leakage.

2. Data subjects' eight rights

It's a basic right of the natural person to enjoy protection in the course of personal data processing. GDPR has established a clear system of the rights of data subjects. The rights of the data subject to personal data include, among others: **the right to be informed,** the data subject has the right to require the controller to provide related information in an easily accessible and intelligible form; **the right of access,** the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and related information; **the**

[25] https://gdpr-info.eu/

right to rectification, the data subject shall have the right to obtain the rectification of inaccurate and incomplete personal data concerning him or her; **the right to erasure/be forgotten,** where the data subject requests for erasure or the controller loses the legal grounds for retaining the data, the personal data shall be erased without undue delay; **the right to restrict processing,** the data subject shall have the right to obtain from the controller restriction of the processing of the personal data concerning him or her; **the right to data portability,** the data subject, under particular circumstances, shall have the right to receive the personal data concerning him or her in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller; **the right to object,** the data subject shall have the right to object to processing of personal data concerning him or her. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests and rights of the data subject; **rights in relation to automated decision making,** the data subject shall have the right not to be subject to a decision based solely on automated processing, which produces legal effects concerning him or her or similarly significantly affects him or her.

GDPR's definitions of key terms

- **'Personal data'** means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- **'Processing'** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means.
- **'Controller'** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.
- **'Processor'** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

3. Potential jurisdiction over companies across the world

The GDPR has extensive territorial scope. Companies whether or not established in the EU may come under its jurisdiction. Specifically, its regulatory scope includes: the processing of personal data in the context of the activities of an establishment of a controller or a processor in the EU, regardless of whether the processing takes place in the EU or not; the processing of personal data of data subjects who are in the European Union by a controller or processor not established in the Union, where the processing activities are related to the offering of goods or services to such data subjects in the Union, or the monitoring of their behaviour as far as their behaviour takes place within the EU; and the processing of personal data by a controller not established in the EU, but in a place where Member State law applies by virtue of public international law.

4.Significantly increased requirements for corporate data compliance

The GDPR provides that data controllers shall take appropriate technological and organisational measures to ensure and prove that their data processing is GDPR-compliant. Companies are important data controllers. Data compliance requirements for companies mainly include the following three aspects.

Recording data processing activities. Each controller and the controller's representative shall maintain a record of processing activities under its responsibility in writing, including in electronic form. Bu this obligation shall not apply to an enterprise or an organisation employing fewer than 250 persons unless the processing it carries out is likely to result in a risk to the rights of data subjects.

Data protection impact assessment. Where a type of processing in particular using new technologies is likely to result in a high risk to the rights of natural persons, the data controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.

Designation of the data protection officer. The controller and the processor shall designate a data protection officer in any case where the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope or their purposes, require regular and systematic monitoring of data subjects on a large scale.

A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.

5. Maximum fines based on total worldwide turnover

The GDPR imposes hefty punishment of up to EUR20 million or 4 percent of the total worldwide annual turnover of the preceding financial year, whichever is higher, on infringements. But since the GDPR became effective, with the exception of the huge fine of EUR50 million on Google, the fines of other cases are relatively small (see Table 6).

Table 6 Fine levies since GDPR became effective

Country	Date	CASE	Fine
Germany	December 2018	Knuddels.de, a messaging network, failed to encrypt user passwords.	EUR20,000
France	January 2019	Google's lack of transparency when processing user data; inconvenience for user to access data; and absence of effective principle of voluntariness in personalized advertising	EUR50 million
Denmark	May 2019	"Taxa 4 X 35", a car rental company breached the principle of minimum data	DKK 1.2 million (approximately EUR160,000)
Lithuania	May 2019	MisterTango, a fintech company, inappropriately processed data, leaked personal information and failed to report the leakage to the regulator	EUR61,500
Poland	September 2019	Morele.net, a retail website failed to take reasonable measures to protect data security, which resulted in the leakage of the data of 2.2 million customers	PLN 2.80 million (approximately EUR650,000)

Source: Summary of public information.

II. Analysis of problems

1. Extensive regulation markedly drives up compliance costs

With 99 articles in 11 chapters, the GDPR features numerous clauses and complex rules, considerably increasing the subjects' control over data while laying out the requirements for controllers. For instance, data controllers shall process the subjects' personal data in a lawful, fair and transparent manner; keep a record of data processing activities and take appropriate measures to provide related processing information to data subjects; and ensure the subjects' right to access, rectify, delete, restrict the disposal of, reject and make self-determined decisions regarding personal data. Complicated and stringent rules will inevitably raise the compliance costs of companies.

Hefty compliance costs. To fully comply with the GDPR, companies have to commit enormous energy and funds, including substantial upfront costs and compliance costs throughout the operation. A survey by Price Waterhouse Coopers Consulting finds that 77 percent of the responding companies will each spend over USD1 million in response to the GDPR[26].

Huge time costs. Most of the respondents note that it will take them more than 10 years to fully meet GDPR requirements. Surveyed Belgian companies indicate that by hiring professionals and engaging consultancies, they can only meet 50 percent of the requirements in two years with many gaps to fill and have already spent EUR1 million.

The survey points out that with 96.1 percent of the companies reporting higher costs due to the GDPR. An overwhelming majority of 90.3 percent attribute the increase to management costs, followed by labour costs (70.3 percent) and customer service costs (63.9 percent). Only 3.9 percent of the respondents report no impact from the regulation (see Figure 12).

2. Ambiguities make compliance much more difficult

The great number of ambiguities and complex technicalities in the GDPR make it difficult for businesses to understand and follow. The survey data show that among the GDPR-literate respondents, 65.2 percent find its provisions lack clarity and are difficult to put into practice. Deliotte's

[26] https://4f0imd322ifhg1y4zfwk3wr7-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/pwc-gdpr-series-pulse-survey-1.pdf

research suggests that 54 percent of the 1000 polled small- and medium-sized companies find GDPR rules extremely confusing. For instance, the GDPR requires companies to provide a reasonable level of protection for personal data without defining the specific criteria for 'reasonable'.

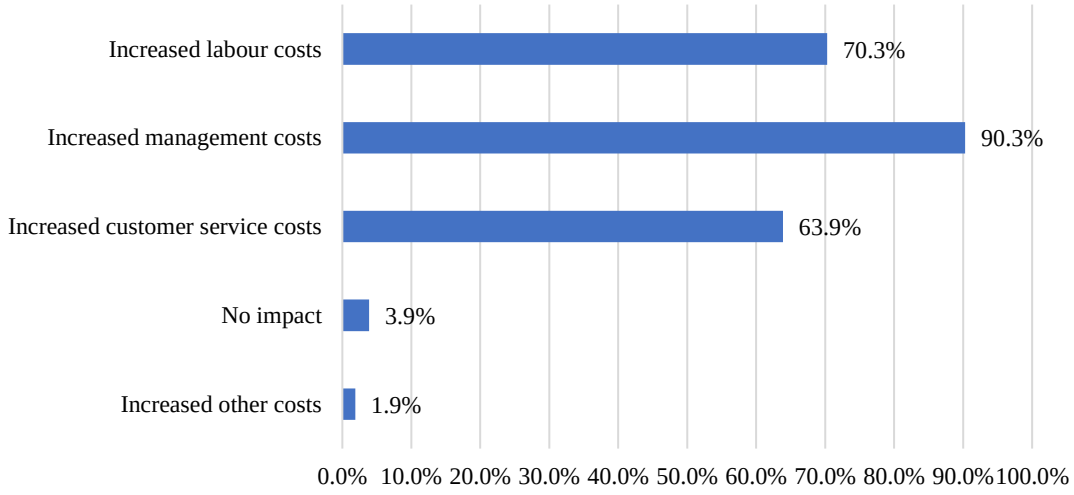


Figure 12 GDPR impact on business costs

Source: CCPIT Academy.

In order to balance the rights and obligations of data owners and data users, the GDPR has done much balancing and compromising, including on the rights of data subjects, where the regulation sets quite a few exceptions or restrictions for the right of access and the right to be forgotten, among others. There is even a special chapter titled 'Provisions relating to specific processing situations', granting mandate to member states to enact related rules in accordance with the GDPR to address specific situations. These balancing mechanisms introduced to make the articles more scientific and reasonable, also complicate the rules and defy business efforts to identify legal boundaries.

BITKOM of Germany conducted a survey of 500 companies in September, which points to legal uncertainty as the biggest challenge facing companies enforcing the GDPR (see Figure 13).

Ambiguous provisions create difficulty in the mastery of compliance requirements by businesses implementing the GDPR and thus the correct conduct of compliance work in accordance with the regulation. As businesses are at a loss to identify the boundaries of compliance, their infringement risks in data protection mount as a result of poor understanding of the rules.

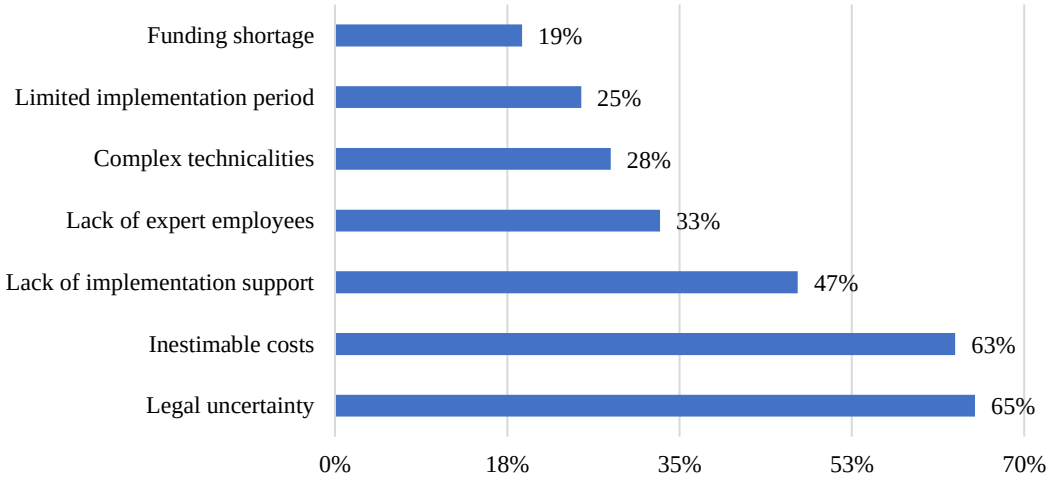


Figure 13 Key challenges facing companies' implementation of the GDPR

Source: Bitkom.

3. Stringent regulation disrupts normal business operations

The GDPR assigns many rights to data subjects, directly interfering in business' process of data processing and disrupting normal business operation. For example, personal users may cite GDPR requirements repeatedly and even unreasonably demand that companies delete or rectify personal data information, among others, upsetting normal business order.

The GDPR's exacting compliance requirements for businesses disrupt their operations related to data collection, processing and transmission. Research shows that curtailed ties between EU businesses and their parent companies, undermined data sharing and joint R&D businesses among global companies, and restricted industry scope of businesses investing in the European Union are among the Top 3 impacts of GDPR on business operations (see Figure 14).

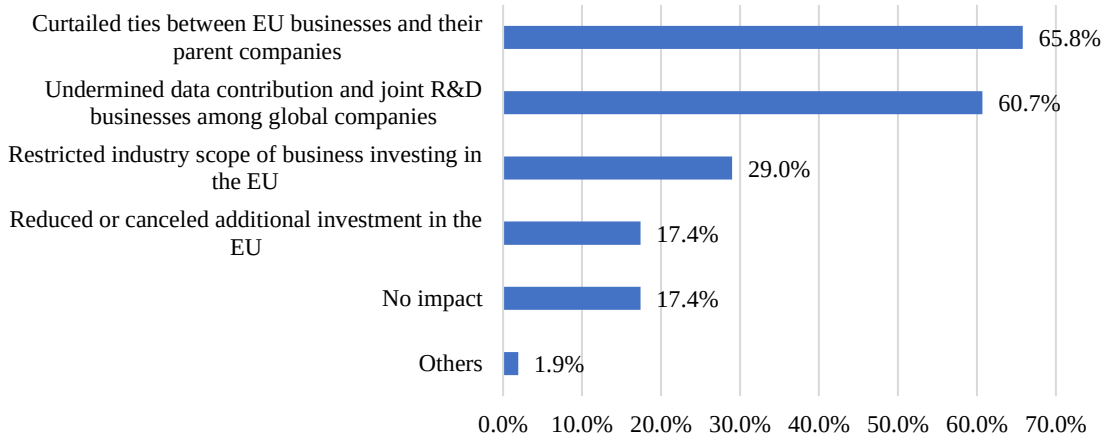


Figure 14 GDPR's impacts on business operations

Source: CCPIT Academy.

4. The efforts of financial institutions to develop the credit system suffer a setback

The credit blacklist approach can help financial institutions effectively mitigate operational risks and avoid defaults. Following the promulgation of the GDPR, credit defaulters demand that financial institutions remove their names from the blacklists on the grounds of personal data privacy, while the institutions may have to face GDPR penalties for protecting the integrity and efficacy of their credit system. In this case, the over-regulation of the GDPR hinders the development of the social credit system, increasing the risks of distressed debts and even financial frauds for businesses due to inadequate credit system.

5. Brakes on technological advances hinder business innovation

The right to deny internet companies user information provided by the GDPR will make it difficult for internet companies to collect user data. The lack of or incomplete user data will definitely affect the results of big data and artificial intelligence analytics. This is the most vivid illustration of the GDPR's outright restriction of technological innovation in big data, IoT, cloud computing, blockchain and AI, etc.

III. Our recommendations

1. Formulate operable supporting implementing rules

We recommend that the European Union introduce judicial interpretations and implementing rules for GDPR provisions that are as detailed as possible and highly operable to provide clear enforcement criteria and straightforward guide for business execution and avoid needless infringements due to poor understanding of the regulation.

2. Conduct business training based on judicial interpretations

To help businesses meet GDPR requirements effectively and better understand the regulation, we recommend that the European Union should create targeted guide manuals and papers for GDPR enforcement and application based on judicial interpretations, and allocate funds for business training to conduct training sessions irregularly as a public service.

3. Balance data protection against credit system development

We recommend that the European Union set more clarified and reasonable criteria for business responsibilities and avoid the obstruction

of reasonable and legal operations by over-protection of personal privacy. The development of the credit system is a key foundation for economic development. As data is an essential part of corporate credit system, it is advisable that the European Union should prevent over-protection from hindering the credit system while protecting personal data and balancing data protection against credit system development by providing data norms in credit system development.

Chapter Seven
The Digital Economy Section

I. Recent developments

1. Release of the Commission Recommendation on Cybersecurity of 5G Networks

In March 2019, the European Commission issued its recommendations on cybersecurity of 5G networks [27] to strengthen cybersecurity legislation and introduce a host of policy instruments, conduct a comprehensive assessment of potential threats in 5G networks and step up cybersecurity precautions. The Commission recognises that any vulnerabilities concerning 5G networks in one Member State would bring security threat to the Union as a whole, so cooperation across the Union should be enhanced in cybersecurity.

At Member State level, by 30 June 2019, Member States should carry out a risk assessment of the 5G network infrastructure and update accordingly the security requirements for network suppliers. In particular where 5G is concerned, obligations on suppliers and carriers should be further clarified to ensure the security of 5G networks. Risk assessment should look at technical factors and the conduct of suppliers and carriers. Member States have the right to ban suppliers or carriers that fail to meet their national risk assessment standards from their markets on the grounds of national security.

At EU level, Member States should exchange information and by 1 October 2019, complete a joint review of Union-wide exposure to cybersecurity risks and form a whole set of risk management measures, including certification, security tests, and risk mitigating measures.

2. Issuance of the cybersecurity risk assessment report

In accordance with the Commission's Recommendation, the European Union published the report on risk assessment on cybersecurity in 5G networks on 9 October 2019, which appraises Union-wide cybersecurity risks and underlines that a) the trust in third-country suppliers and their role in 5G supply chains should be reviewed. In particular, as non-EU suppliers or those receiving support from third-country governments increase the vulnerability of 5G networks to attacks, all suppliers should go through effective security assessment; and b) dependence on a single supplier raises 5G risks.

[27] https://ec.europa.eu/digital-single-market/en/news/cybersecurity-5g-networks

3. Entry into force of the EU Cybersecurity Act

On 27 June 2019, the EU Cybersecurity Act[28] officially became effective, laying down specific measures for technological means, supporting facilities, security education and Member States' cooperation related to cybersecurity assurance, and include the following five aspects.

Establishing the agency for cybersecurity. The European Union Agency for Cybersecurity (ENISA) is designated the permanent agency for cybersecurity, whose key responsibilities include developing the EU cybersecurity certification framework and ensuring that EU ICT products, services and processes meet an adequate level of cybersecurity standards while preventing disagreements over cybersecurity certification within the EU.

Strengthening cross-border cooperation. Measures will be introduced to enhance EU cybersecurity cross-border cooperation, including summarising and analysing Member State cybersecurity reports, ensuring the effective flow of cybersecurity information, and providing public communications support.

Raising the security standards of cyber infrastructure. ENISA is to develop and maintain the European Cybersecurity Competence Centre and enhance the security standards of cyber infrastructure.

Improving cybersecurity communication and training. Efforts will be made to raise the cybersecurity awareness of EU citizens, including communicating the cybersecurity strategy, conducting cybersecurity training, and providing cybersecurity guidance.

Formalising cybersecurity certification. A unified cybersecurity certification system will be established to avoid discrepancies resulting from varying certification standards.

4. Digital taxes introduced in France, Austria and Spain

Compared to traditional businesses, the effective tax rates on EU digital economy are unduly low. The average tax rate of 9.5 percent on the digital economy is less than half of the 23.2 percent facing traditional companies, which is a gross breach of the principle of tax neutrality[29].

To address the taxation of digital economy, in March 2018, the

[28] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0881&from=EN

[29] https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf

European Commission proposed new rules for digital tax featuring higher levies on companies operating digital business in the EU. However, due to opposition from Ireland, Sweden and Denmark, the Commission was forced to put the scheme on hold and announced in March 2019 a suspension in Union-wide roll-out of the tax. Supportive Member States will advance the digital taxation respectively, with national plans developed by France, Spain and Austria.

France introduced its own digital tax in March 2019. Companies reporting global annual revenues of over EUR750 million with France accounting for more than EUR25 million will pay 3 percent in tax for 'digital transactions' (in the main digital advertising and cross-border data flow) while online direct sale, payment platform and internet financial services are exempt.

In 2020, Austria will start to impose a 5 percent digital tax on companies with global annual revenues of over EUR750 million as compared to the current 0.8 percent corporate income tax paid by internet companies.

The cabinet meeting of the Spanish government passed the digital service tax plan in January 2019 to place a levy of 3 percent on companies reporting global annual revenues of over EUR750 million with Spain contributing more than EUR3 million.

5. The European Parliament's adoption of the China tech threat resolution

In March 2019, the European Parliament passed the resolution on security threats connected with the rising Chinese technological presence in the European Union and possible action on the EU level to reduce them[30] (the resolution on reducing China tech threats), calling upon the European Commission to develop a strategy for strengthened cooperation among Member States, reduced dependence on foreign technologies in cybersecurity and enhanced EU cybersecurity standards, while establishing a cooperation mechanism between the Union and Member States to raise the capability for foreign investment review and avoid cybersecurity risks generated by foreign direct investment.

The resolution notes the EU's deep concern about Chinese-

[30] http://www.europarl.europa.eu/doceo/document/TA-8-2019-0156_EN.html?redirect

manufactured 5G equipment. The European Union believes that the obligation prescribed by Chinese State Security Laws of Chinese citizens and companies to cooperate in government activities as required by national security may be extended beyond the Chinese territory, so Chinese network equipment manufacturers may work with the Chinese government and obtain the private data from EU without authorisation, thus posing security threats to the EU. The resolution also mentions the Czech national authority for cybersecurity's warning against security threats posed by Huawei and ZTE, and Czech tax authorities excluded Huawei from a tender to build a tax portal.

6. Poland-US joint declaration on 5G

In September 2019, US and Poland signed Poland-US Joint Declaration on 5G in Warsaw[31], endorsing the Prague Proposals[32] and vowing to strengthen cooperation on 5G network security and ensure that all suppliers in their networks are 'trusted and reliable'. The declaration also lists the elements to be considered when evaluating 5G network suppliers, such as whether the supplier is subject to control by a foreign government, whether the supplier has a transparent ownership structure, and whether the supplier has a record of ethical corporate behaviour and enforces transparent corporate practices.

7. Resolution passed on mitigating 5G-related risks

On 3 December 2019, the Council of the EU adopted the Council Conclusions on the significance of 5G to the European Economy and the need to mitigate security risks linked to 5G[33], underlining that a) in addition to the technical risks related to cybersecurity of 5G networks, also non-technical factors such as the legal and policy framework to which suppliers may be subject to in third countries, should be considered; b) Member States should consider the need to diversify suppliers in order to avoid or limit the creation of a major dependency on a single supplier; and c) trust in 5G technologies must be firmly grounded in the core values of the European Union such as human rights and fundamental freedoms, rule of law, protection of privacy, personal data and intellectual property.

31 https://www.premier.gov.pl/files/files/deklaracja_en-1.pdf
32 From 2-3 May 2019, the Prague 5G Security Conference was held in the Czech capital. Chinese companies were not invited. The meeting issued the non-binding Prague Proposals, emphasising the need to take into account the general risk of third-country governments' influence on suppliers. https://www.vlada.cz/assets/media-centrum/aktualne/PRG_proposals_SP_1.pdf
33 https://www.consilium.europa.eu/media/41595/st14517-en19.pdf

II. Analysis of problems

1. Concocting and magnifying the China tech threat

The Council Conclusions seriously misrepresents and exaggerates the China tech threat. No country or organisation can by far provide solid evidence to prove that Chinese equipment and technology pose cybersecurity threats to other countries. In the absence of factual basis, the hype of national cybersecurity and China tech threat and discrimination against Chinese companies not only violate the market principle of fairness, but will also damage the EU's digital economy. The truth is the Chinese government takes the protection of data privacy very seriously and has never engaged in any way or supported any individual or company in the infringement of cyber privacy. China's Cybersecurity Law is aimed at protecting its own national security, rather than hurting others' interests. At the same time, Chinese companies faithfully abide by related EU laws and regulations and actively cooperate with the cybersecurity authorities of Member States in their reviews, which have found no security threat from Chinese companies to EU cybersecurity.

2. Exclusion of Chinese companies by the Poland-US declaration

By signing the joint declaration, Poland and the US mean to protect 5G network security and strengthen cooperation for this purpose. The declaration includes no reference of communications companies of a third country, but in effect constitutes discrimination against Chinese companies.

The declaration endorses the Prague Proposals. But as key participants in global 5G network development, China and its 5G equipment manufacturers were not invited to the Prague 5G Security Conference. Nor did China take part in the consultations of the Proposals, which one-sidedly emphasise the general risk of third-country government's influence on suppliers and oversteps 5G's technological bounds.

The review standards for equipment suppliers provided by the declaration are very ambiguous and linked to their ownership structure and corporate governance model, which facilitates the governments' discriminatory measures against foreign companies.

III. Our recommendations

1. Stop the discrimination against Chinese companies in 5G

Cybersecurity is essentially a technological issue that requires a technological solution. It is not justified to set up unnecessary barriers to normal business operations on the grounds of unproven cybersecurity threats. To discriminate against businesses in 5G goes against the principle of fair play and the common interests of the international community. We recommend that the European Union should provide a fair and just environment for 5G cooperation of companies from across the world.

2. Refrain from over-intervention in 5G

The choice and use of 5G network equipment and suppliers are market behaviour that should be based on objective decisions by companies in view of their countries' actual needs and the technological specifications of related equipment. 5G is the bellwether of technological progress. Man-made market access barriers will only obstruct technological advances and sap the endogenous vitality of the world economy. The government should not meddle with and restrict normal business operations at every turn in the name of national security. It is suggested that the European Union take an accommodating approach to developing the 5G industry so as to promote technological and industrial progress.

Chapter Eight
The Intellectual Property Section

I. Recent developments

1. Cooperation on unitary patent protection lacks progress

Austria, France, Sweden, Belgium, Denmark, Malta, Luxembourg, Bulgaria, the Netherlands, Portugal, Finland, Italy, Estonia, Lithuania, and Latvia, had ratified the Agreement on a Unified Patent Court (UPC Agreement)[34]. According to the rule, the Agreement will only enter into force after being ratified by at least all 13 Member States including the France and Germany. By far, the ratification process in Germany has been suspended due to challenge from the Federal Constitutional Court.

On 17 December 2012, the European Parliament and the European Commission passed the Regulation (EU) No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with the decision to develop the Unitary Patent and Unitary Patent Court. On 19 February 2013, 25 EU member states signed the Agreement on a Unified Patent Court in Brussels, Belgium, deciding to set up European Union's unified patent court.

2. The Directive on Copyright in the Digital Single Market has been implemented

On 13 February 2019, the European Commission, the Council of Ministers and the European Parliament officially agreed on the Directive on Copyright in the Digital Single Market[35] (the Copyright Directive) aimed at addressing the legal uncertainties facing right holders and users when using copyrighted works in the digital environment and providing rules to facilitate cross-border access of cable TV and broadcast contents within the Union.

The Copyright Directive carried the Council of the European Union on 15 April 2019 with 19 Member States voting in favour, six against and three abstentions before officially coming out on 17 May 2019. Member States are obligated to transpose the Directive through domestic legislation in two years.

---

[34] In the order of ratification by Member States, https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2013001

[35] https://ec.europa.eu/digital-single-market/en/copyright

The European Union published the Digital Single Market Strategy in May 2015 and accordingly drew up the draft Directive on Copyright in the Digital Single Market in September 2016.

3. The EU Geographic Indication Register has been launched

In 2013, Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs, which is the European Union's new GI protection law, entered into force, after a third revision of the EU's GI protection system. As compared with the original regulation, the new system includes additions such as the purpose of GI protection, protection during the transition period, local farming and direct sale reporting while specifying and improving the provisions on GI requirements, dispute settlement and protection measures.

On 1 April 2019, the European Commission launched a brand-new public data base named eAmbrosia—EU geographical indications register that provides access to all EU GI information, including status (applied, published or registered), information of protected products, and a link to legal basis for GI protection.

II. Analysis of problems

1. Discrimination against foreign investors acquiring intellectual property

To acquire intellectual property in the course of investing is a normal activity between businesses. However, foreign-invested companies often face discrimination from government and business when acquiring EU intellectual property, which has become an impediment to business investing in the EU.

A survey shows that among respondent businesses that have purchased IP, 62 percent have suffered discrimination or opposition; with the congress of some EU Member States creating barriers for foreign investors' normal purchases citing key technology and IP protection, 19 percent of the companies met with intervention from the European Union or Member States; and 71.4 percent of the companies were required to provide related information in the review process (see Figure 15).

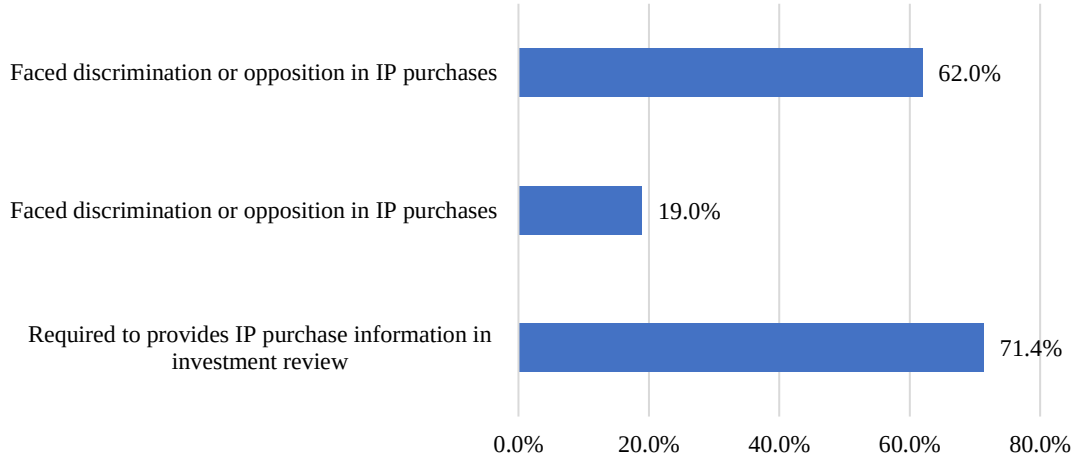


Figure 15 Issues facing businesses acquiring IP in the EU

Source: CCPIT Academy.

2. Events like Brexit increase business costs

It remains unclear whether the UK will be subject to the EU's unitary patent system post-Brexit. Though the UK has ratified the UPC Agreement and indicated its wish to stay in the unitary patent system after Brexit, given that the legal basis for the UPC is EU law, Brexit will increase the uncertainty facing the EU's unitary patent system.

Germany's ratification of the UPC Agreement has stalled. Despite the early clearance at both chambers of the Bundestag, in June 2017, the Federal Constitutional Court of Germany started to hear the case contesting the constitutionality of the UPC Agreement, bringing the ratification process to a halt. So far no verdict has been issued regarding the constitutionality of the UPC Agreement[36].

The repeated delays of the entry into force of the Agreement hold up the patent costs of investors. Due to disunity in the judicial systems of Member States, companies have to pay separate patent fees in each country. When the patent becomes effective in Member States, the applicant is granted rights separately protected by the law of Member States. In case of patent infringement litigation, the right holder has to sue separately and face high costs to protect their rights.

3. Disclosure rules can easily lead to trade secret leakage

Regulation No 1151/2012 provides for the submission of a product

[36] Alan Johnson, Will 2019 be the year of the UPC?, https://www.bristowsupc.com/commentary/will-2019-be-the-year-of-the-upc/

specification in order to register GI with the European Union and lays down disclosure requirements in Article 7 and Article 19: the specification shall include a description of the product, including the raw materials, as well as the principal physical, chemical, microbiological or organoleptic characteristics of the product; a description of the production method that the producers must follow, including, the nature and characteristics of the raw materials or ingredients used, and the method by which the product is prepared. These disclosure requirements can very likely cause the leakage of trade secrets.

4. The cancellation process is susceptible to abuse

Article 54 of Regulation No 1151/2012 provides that the Commission may, on its own initiative or at the request of any natural or legal person having a legitimate interest, adopt implementing acts to cancel the registration of a protected geographical indication where compliance with the conditions of the specification is not ensured; or where no product is placed on the market under the protected geographical indication for at least seven years. As a result, even a company successfully registers a GI with the EU, it is vulnerable to bad faith litigation and might be stripped of the registration if no product is placed on the market under the protected geographical indication for at least seven years.

III. Our recommendations

1. Give equal treatment to IP acquired by foreign investors

Foreign investors' procurement of IP is a self-determined and market-oriented activity aimed at strengthening innovation and promoting joint R&D so as to drive EU employment and economic growth. We recommend that the European Union should stop discrimination against foreign-invested companies in IP trading and treat them in a market-oriented way to promote the EU's technological exchange with the rest of the world.

2. Accelerate legislation for unitary patent

To effectively reduce patent costs such as translation fees, licensing fees and litigation fees, encourage science and technology innovation and improve IP protection, we recommend that the European Union should speed up the unitary patent process. Especially Germany should expedite the domestic ratification of the UPC Agreement.

3. Protect trade secrets in GI registration

We recommend that the EU's disclosure requirements for GI registration give full consideration to the protection of business privacy and trade secrets and set reasonable bounds for disclosure.

4. Fairly enforce GI cancellation

The exercise of power needs legal definition and restriction. It is suggested that the conditions whereby the European Commission has the right to cancel the GI registration be further clarified to avoid excess discretion, spell out the cancellation process, and improve the scrutiny of power.

Chapter Nine
The Public Procurement Section

I. Recent developments

1. Strategic priorities of EU public procurement were unveiled

In October 2017, the European Commission published *Making Public Procurement Work in and for Europe*[37], underlining the need for the EU to pay more attention to public procurement and ensure that public procurement funds meet efficient, sustainable and strategic purposes. The European Union set six strategic priorities to promote public procurement modernisation: ensuring broader adoption of innovative, green and social procurement; making procurers more professional; increasing the chances for companies to access the EU's procurement market and for EU companies to access non-EU market through trade agreements; raising transparency, integrity and data reliability; facilitating public procurement digitisation; and promoting cooperation on joint procurement.

2. International procurement mechanism is actively promoted[38]

In 2012, the European Commission proposed the establishment of an international procurement mechanism. Products from trading partners without a reciprocal public procurement policy will face restricted access to EU public procurement market. Furthermore, the European Union can investigate and retaliate against non-reciprocal procurement conduct of other countries. In 2016, the European Commission tabled the amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement; In March 2019, the European Commission urged the Parliament and the Council to pass the international procurement mechanism in accordance with the amended proposal by the end of 2019.

3. Guidance for third-country bidders was issued

On 24 July 2019, the European Commission published the Guidance on the participation of third-country bidders and goods in the EU procurement market[39], setting forth to ensure a level-playing field in cooperation with China and aiming to create more balanced and mutually beneficial international economic relations through the Guidance underlining strict labour, social and environmental access standards.

---

37 https://ec.europa.eu/docsroom/documents/25612

38 http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154187.pdf

39 https://ec.europa.eu/docsroom/documents/36601

II. Analysis of problems

1.Public procurement bids discriminate against foreign-invested companies

The discriminatory rules in the EU public procurement access criteria keep foreign-invested businesses out of its public procurement market. The EU's public procurement documents stated clearly that the procurement scope is the EU and North America, excluding other countries and economies. The documents of some Member State governments define the tender process too narrowly, favouring domestic businesses and technically excluding foreign-invested companies. In Poland's public procurement, companies complain that though the bidding process is nominally open to foreign-invested companies, public bids often name target companies (by and large EU companies) and in effect discriminate against foreign investors. Poland revised the bidding criteria in 2015 and 2016 to require EU construction experiences of bidders and Polish qualifications of builders, in effect excluding many non-EU companies.

The survey shows that 66.7 percent of the respondents having participated in EU public procurement report unfair treatment(as shown in Figure 16).

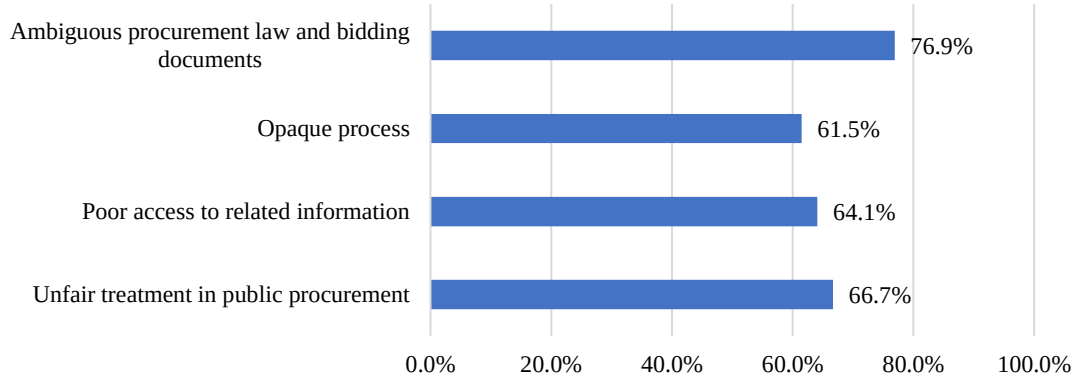


Figure 16 Issues facing businesses participating in EU public procurement

Source: CCPIT Academy.

2. Public procurement procedures are opaque and unfair

In public bidding projects, ambiguities in bidding documents often make them difficult to understand and thus create barriers for foreign investors while giving local players advantages. As regards products standards and testing, foreign investors face opaque or discriminatory product certification procedures whereas local companies can benefit from better

access to information and avoid such issues, which causes de facto discrimination against foreign-invested companies. Among the respondents having participated in the process, 64.1 percent are unable to access related information effectively; 61.5 percent believe that EU public procurement procedures are not transparent enough; and 76.9 percent report ambiguities in EU regulations and bidding documents (as shown in Figure 16).

Corruption also affects the fairness of public procurement. The 2014 Report from the Commission to the Council and the European Parliament on EU Anti-Corruption[40] names public procurement of Member State as one of the most corruption-prone areas. Over 50 percent of the respondent companies see corruption in public procurement as common. Of these 56 percent find corruption common in central government procurement as compared to 60 percent that hold the same opinion of local government procurement. 32 percent of the companies having participated in public procurement bidding attribute failure to corruption. The Report also lists the main forms of corruption in public procurement, namely, tailor-made bidding conditions for pre-designated companies; conflict of interests between projects and procurement officials; random disqualification of bidders; wanton application of special bidding procedures; collusion among bidders; unfair selection and assessment; and taking kickbacks.

3. Foreign-invested companies face differential treatment in practice

After the public procurement process, bid winners are often subject to differential and discriminatory treatment from competent authorities. One respondent reported that after they won contracts in Poland, the government imposed unreasonable verification requirements on equipment import, project planning, and plant acceptance inspection with cumbersome approval procedures and protracted processes. Having to comply with higher requirements than their EU peers, Chinese businesses are in effect discriminated against in the country.

III. Our recommendations

1. Raise the transparency of public procurement procedures

[40] Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, February 3, 2014.

The European Union should avoid random procurement and backroom dealings and combat illegal and corrupt acts in public procurement and integrate the processes in accordance with law. In particular, formalised information sharing and disclosure systems should be established and access to information regulated by procurement departments to ensure timely issuance and accurate and clear access to and understanding of information by all participants and eliminate information asymmetry. Public procurement rules and bidding documents should be free from discriminatory elements to treat all companies equally and remove unreasonable access conditions. In post-bidding implementation, foreign-invested companies should be treated fairly and subject to no discriminatory review and management requirements.

2. Accelerate public procurement digitisation

We recommend the European Union should apply digital technology to apply IT-enabled management to the procurement process, so as to reduce artificial interference and mitigate corruption risks for open, transparent and informatised procurement. The integration of public procurement should be promoted for Union-wide information sharing. Unitary and shared EU-level information networks of supplier and products should be piloted to maximise the utility of manpower and funds, raise procurement efficiency and incentivise business participation in public procurement.

3.Establish a monitor and management system for public procurement

To ensure a fair and just procurement process and minimise artificial interference, we recommend that the EU set up a multi-layered public procurement monitor system with checks and balances to regulate the responsibilities, rights and obligations of procurers, agencies, suppliers and administrators. Systems are also needed for post-procurement inspection, tracking and accountability.

4.Back China's accession to the Government Procurement Agreement

The Government Procurement Agreement is a WTO deal specially aimed at liberalising the government procurement market. China's accession would significantly improve international trade and create a

broader market for other parties. Since the inception of its accession negotiations, China has actively engaged with the parties and continuously improved offers and expanded scope of commitment, highlighting its resolve to expand open-up and the goodwill to safeguard the multilateral trading system. China's accession would produce mutual benefits and win-win outcomes for all parties. It is hoped that the European Union will further its active support for China's accession efforts for an early conclusion of the talks.

Chapter Ten
The Anti-trust Section

I. Recent developments

1. Germany and Austria announced the value threshold for transaction notification

On 18 August 2018, Germany and Austria released the final version of the *Joint Guidance on the New Transaction Value Threshold* (hereinafter referred to as the "Guidance"). Prior to the Guidance, a transaction only had to be notified if the turnover achieved by the companies concerned reached certain minimum turnover thresholds[41]. The Guidance now establishes value thresholds (EUR400 million in Germany and EUR200 million in Austria), requiring transactions below the turnover thresholds and above the value thresholds to be notified. As a result, mergers where companies or assets which (as yet) generate little or no turnover but are purchased at a high price can now be examined by the regulators under competition law.

2. A Joint Statement to promote industrial development in the European Union was released

On 18 December 2018, a Joint Statement[42] by France, Austria, Croatia, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Romania, Slovakia, and Spain was released to promote industrial development of the European Union. The Joint Statement noted that antitrust rules must better take into account international markets and competition, so that EU industrial giants can withstand the "fierce competition" from China and the US and the competitiveness of European industry can be maintained.

3. France and Germany released the Manifesto for a European Industrial Policy

On 19 February 2019, Federal Ministry for Economic Affairs and Energy of Germany and the Ministry for the Economy and Finance of France jointly released *A Franco-German Manifesto for a European Industrial Policy Fit for the 21st Century*[43], proposing three pillars for European industrial strategy: massive investment in innovation, adaptation

[41] A concentration has to be declared in the EU if the parties' combined worldwide turnover exceeds 5 billion euros and the EU-wide turnover of at least two parties exceeds 250 million euros.

[42] https://www.gouvernement.fr/sites/default/files/locale/piece-jointe/2018/12/929_-_declaration_finale_-_6eme_reunion_des_amis_de_lindustrie-en.pdf

[43] https://www.bmwi.de/Redaktion/DE/Downloads/F/franco-german-manifesto-for-a-european-industrial-policy.pdf?__blob=publicationFile&v=2

to regulatory framework, effective measures for self-protection. In terms of regulatory adjustment, French and Germany proposed to: change existing European competition rules to take into greater consideration the impact of state-control and subsidies in antitrust review; update current merger guidelines to take greater account of competition at the global level and potential future competition, so that the European Commission has flexibility when assessing relevant markets.

4. France, Germany and Poland call for reform of anti-trust law

In July 2019, France, Germany and Poland submitted to the European Commission the proposal titled *Modernizing EU Competition Policy*[44]. The proposal emphasized that current EU merger control does not sufficiently take into account the impact of third countries' state control and subsidies for undertakings, and stated that the European Commission should "introduce more flexibility" and "better take into account competition at global level", and that Council of the European Union should play its role in the consolidation of European champion enterprises.

II. Analysis of problems

1. Foreign enterprises are more likely to be subject to review

With value thresholds as one of the triggers for merger review under the Guidance, the scope of transaction notification is greatly expanded, which means the scope of merger review is enlarged by the double thresholds of turnover and value. In particular, governments trying to impede the acquisition of emerging SMEs by foreign companies can use the Guidance as a protectionist tool to carry out merger review.

2. Antitrust reviews do not fit the realities of Chinese SOEs

In merger review, the European Commission simply adds up the turnovers or market share of the company filing the notification and companies specially related to it (such as parent company and subsidiaries). However, the European Union failed to uphold the non-discrimination principle set forth by the *Merger Regulation* when it comes to mergers between Chinese SOEs and European companies. In 2016, in the review of the joint investment by China General Nuclear Power Corporation(CGN) and Electricite De France(EDF) in the Hinkley Point C project, the European Commission claimed that CGN did not enjoy independent power

[44] https://www.bmwi.de/Redaktion/DE/Downloads/M-O/modernising-eu-competition-policy.pdf?__blob=publicationFile&v=4

of decision, and as such its turnover should also cover that of other SOEs in the energy sector under the State-owned Assets Supervision and Administration Commission of the State Council. That is to say, the European Commission regards all the Chinese SOEs in the same sector as the "same economic unit", as opposed to the normal practice of aggregating the turnover or market share of "related businesses" only. Such wrongful approach to calculation has led to results that are much higher than the actual turnover of Chinese companies in merger reviews.

3. Double-standards are applied on Chinese SOEs

State-owned enterprise, as a form of business organization and operation, is broadly present in numerous economies around the world. According to the *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*[45] published by OECD, SOEs in the 31 countries involved are all subject to the administration of the state or government to a certain degree. But Chinese SOEs are treated differently than those from other countries in the EU merger review. In 2009, when EDF sought exclusive control of Segebel, a Belgium company, the Belgian government believed that the French government having stakes in EDF and GDF Suez may create a synergy effect of the two. But the European Commission concluded in the review that EDF and GDF Suez enjoyed independent power of decision from each other. The double standards applied on China by the European Commission in considering "government impact on businesses" constitute discrimination against Chinese SOEs.

4. Anti-trust reviews are prone to infringe on trade secrets

Mandated by Article 20 of EU Regulation 1/2003, the European Commission is empowered to: enter any business premises without advance notice; to examine and copy the books and other records related to the business; to seal any business premises and books and records; to ask any representative or member of staff for explanations on facts or documents and to record the answers. If a reasonable suspicion exists that books or other records related to the business are being kept in any other premises, the Commission is also empowered, subject to the authorization

[45] http://www.oecd.org/corporate/ca/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices.pdf

of the judicial authority of Member States, to enter the premises, including private homes. Such power may infringe upon trade secrets and personal privacy.

III. Our recommendations

1. End discrimination against Chinese SOEs

The Chinese SOEs invest in the EU independently and based on market terms. We recommend that the European Union acknowledge the independence of Chinese SOEs with investment in the European Union, refrain from the unfair practice of aggregating all the turnovers of SOEs in the same sector in anti-trust review, and treat all foreign SOEs equally.

2. Reduce business disruption caused by anti-trust inspections

We recommend that the European Commission and the competition authorities of Member States minimize the frequency of anti-trust inspections and refrain from entering private homes as much as possible to reduce the disruption to businesses and their management. They should pay full respect to the right of businesses in trade secret protection, clarify the procedures and scope of inspection before entering business premises, and must not infringe on trade secrets under the pretext of enforcement to ensure fair competition.

3. Further clarify review thresholds and rules

We recommend that Germany and Austria introduce further rules to clarify the value thresholds, draft reasonable and clear pre-review conditions, and clarify the review criteria, so that review rules are not abused as protectionist tools.

Chapter Eleven
The Standard Certification Section

I. Recent Developments

1. RoHS restrictive catalog was further extended

In June 2015, the European Union published directive (EU) 2015/863 to revise Annex II of RoHS 2.0 (2011/65/EU), formally including four types of phthalate (DEHP, BBP, DBP, DIBP) into the Annex and bringing the restricted substances to ten (see Table 7).

Table 7 Changes to the EU RoHS control catalog

Originally controlled substances	Newly-added controlled substances
Lead(Pb)and its compounds	DEHP
Mercury(Hg)and its compounds	BBP
Cadmium(Cd)and its compounds	DBP
Hexavalent chromium(CrVL)compounds	DIBP
PBBs	
PBDEs	

Considering the time needed to satisfy the new requirement on hazardous substances, (EU) 2015/863 allows a transition period: starting from 22 July 2019, all the electrical and electronic equipment to the European Union (except medical and monitoring equipment) must meet the requirements; starting from 22 July 2021, medical equipment (including non-invasive medical equipment) and monitoring equipment (including industrial monitoring equipment) must be put under control.

RoHS, short for the *Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment*, is a mandatory standard introduced by EU legislation. The RoHS standard, effective on 1 July 2006, serves to set the requirements on materials and techniques for electrical and electronic products to protect human health and environment.

2. WEEE may be applicable to all products

WEEE directive is implemented in two phases, the first from 13 August 2012 to 14 August 2018, covering 10 categories of products; starting from 15 August 2018, the applicable scope was revised and enlarged into six categories, covering almost all electrical and electronic equipment. Plus, the list is open-ended, which means unlisted products can also be subject to the scope of control (see Table 8).

Table 8 Change of scope of WEEE

13 August 2012 to 14 August 2018	After 15 August 2018
Large household appliances	Temperature exchange equipment
Small household appliances	Lamps
IT and telecommunications equipment	Large equipment (any external dimension more than 50 cm)
Consumer equipment and photo voltaic panels	Small equipment (no external dimension more than 50 cm)
Lighting equipment	Small IT and telecommunication equipmen (no external dimension more than 50 cm)
Electrical and electronic tools (with the exception of large-scale stationary industrial tools)	Screens, monitors, and equipment containing screens having a surface greater than 100 m^2
Toys, leisure and sports equipment	
Medical devices (with the exception of all implanted and infected products)	
Monitoring and control instruments	

The EU Directive on Waste Electrical and Electronic Equipment was officially introduced in 2003, with the objective to reduce the generation of WEEE, promote re-use, recycling and other forms of recovery, reduce the quantity of such waste to be disposed, and improve the environmental performance of WEEE from production to disposal.

3. REACH has frequently updated the notification list

Under REACH, substances of very high concern (SVHC) are defined as substances that are carcinogenic, mutagenic, toxic to reproduction, persistent, bioaccumulative and toxic, or very persistent and very bioaccumulative, or substances that cause irreparable damage to environment and human health such as endocrine disrupting. Producers and importers of articles must notify European Chemicals Agency (ECHA) if any SVHC included in the Candidate List is present in their articles above the threshold of 0.1percent weight by weight and if the quantity of such substance in those articles is over 1 tonne per producer/importer per year. The SVHC list was first published on 28 October 2008 and contained 15 items; four updated lists were released in 2010 and the items increased to 46; starting from 2011, it has been updated every half a year. On 16 July 2019, ECHA released the 21st version of SVHC list which added four items, bringing the total items to 201.

REACH stands for registration, evaluation, authorization, and restriction of chemicals and entered into force on 1 June 2007. It requires companies to prove that daily goods do not contain chemical substances posing risks to human health. All the daily goods manufactured in or imported into the European Union must be registered, tested, and approved for hazardous chemical substance. Once the substances are above the designated level, they may not be marketed in the European Union.

II. Analysis of problems

1. The designation of third-party certification organizations is not transparent

In the standard certification process, laboratories or certification organizations are designated by the European Union, while eligible organizations with EU recognition are so few that the process may be manipulated and reduced to a protectionist tool that excludes some foreign companies and products from the EU market.

2. The standard certification process is lengthy and costly

The standard certification process in the European Union incurs high financial and time cost. The companies surveyed reported that it takes

about RMB10,000 to certify the energy efficiency of all models of a compressor in the EU, compared with the much lower RMB3, 000 in China; Certification by VdS, a Germany organization for the certification of firefighting equipment, security equipment and systems, can be quite expensive, according to our respondents. It costs around RMB250, 000 to certify one product before it even enters the EU market or receives any order, pushing up the early input of businesses attempting to enter the EU market.

As regards the time period, it takes as long as five to six months or even a year to get energy efficiency certification in the European Union, compared with three or four months in China; it takes about half a year to apply for TüV, a German safety logo for components and parts, compared with only half a month in Switzerland. The lengthy process will reduce the efficiency for foreign companies and products to enter the EU market.

3. Frequent change of standards hampers product marketing

The EU certification standards are updated so frequently that it raises the cost for businesses. ECHA updates its REACH catalogue every six months by adding substances or hazardous attributes of a certain substance. For example, in January 2018, ECHA added seven new SVHCs and updated for the third time standards for BPA, pushing up the certification cost for businesses. The surveyed international trading companies complained that as they represented numerous types of products, the frequent change of standards would burden them with higher cost.

The frequent update of standards also reduces the efficiency of product marketing. In the lighting area, respondents said that the approaches to testing changed and the ERP life-cycle test would take as long as 6,000 hours, delaying the marketing of their products. Sometimes, new standards are introduced before companies have yet completed certification by the old standards, leading to substantial waste of the operational cost and hampering the successful marketing of their products in the European Union.

4. Poor standard enforcement undermines fair competition

Fair and effective law enforcement is an important measure to improve business environment and protect the legitimate rights and interests of businesses, while poor standard enforcement would harm

business interests. According to the surveyed Chinese companies, in the 2017 energy efficiency examination by a Member State, a European refrigerator brand was graded level A, only found to be level B according to testing by Chinese companies, calling into question the accuracy of the energy efficiency test by the European Union; Chinese companies found that the products of some small importers were allowed into the EU market even when they failed to meet the safety standards. Some products are sold on the market even when they do not satisfy the safety requirements. This is unfair for those who comply with EU regulations and standards and other foreign-invested enterprises that have invested heavily in certification.

5. Chinese companies are not engaged in standard-setting

Chinese companies have a strong desire to engage in the EU standard-setting process, but are allowed few such opportunities. According to our survey, Chinese companies are very enthusiastic about engaging in EU standard-setting, with 89.7 percent companies responding affirmatively (as shown in Figure 17), while 88.3 percent companies said they do not have the opportunities to get involved. In the drafting of ERP rules by Lighting Europe, Philips, OSRAM, and other large European enterprises had greater voice while Chinese companies were excluded and lacked effective channels to make comments.

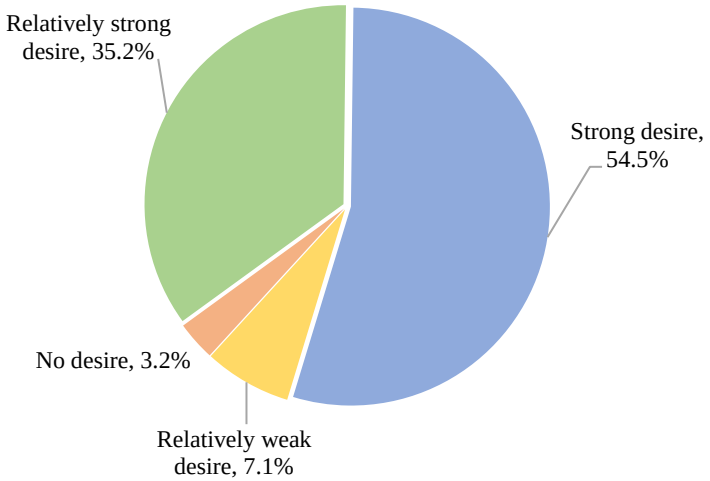


Figure 17 Desire of Chinese companies to engage in EU standard-setting

Source: CCPIT Academy.

III. Our recommendations

1.Certification organizations should be diversified and certification process should be transparent

To prevent costly and lengthy certification from obstructing access to the EU market, we recommend that the European Union diversify and expand the scope of selection of certification organizations, and ensure the certification process is objective, fair and transparent; we recommend the European Union to make the certification process more simplified, efficient, and less costly, and provide well-developed public services for businesses seeking certification.

2. Keep the standards relatively stable and predictable

Stable and predictable updates of standards are conducive to informed planning of production and R&D. We recommend that the European Union refrain from frequent updates and upgrade of standards, and make clear plans or rules for standards update that are suitable to the products.

3. Treat all enterprises equally in enforcement inspection

We recommend that the European Union treat products from all companies and countries equally in standard certification, adopt unified certification procedures, and step up enforcement inspection to prevent substandard products from entering the EU market and damaging the level playing field.

4. Engage foreign-invested enterprises in standard-setting on an equal footing

We recommend that the European Union listen to and adopt reasonable inputs from all businesses in standard-setting, establish long-term communication platforms and contact mechanisms between the governments, certification agencies, and businesses to timely receive responses from the businesses. In standard-setting, the European Union should take into full consideration the situation of enterprises from developing countries and provide them with a level playing field.

Chapter Twelve
The Taxation Section

I. Recent developments

1. VAT reform has simplified the collection and administrative process

In October 2017, the European Commission launched reform to the VAT rules[46], clarifying the rules for cross-border VAT collection and simplifying the process for levy and regulation.

Levy VAT on cross-border trade between businesses. The VAT is paid to the Member State of the final consumer and at the rate of that Member State. VAT will be declared and paid by the seller of goods within the European Union.

Simplify VAT declaration and payment procedures. The use of "one-stop shop" was expanded for cross-border service suppliers to declare and pay VAT in the country of registration; invoicing requirements were simplified.

Introduce the notion of "certified taxable person". "Certified taxable person" refers to trusted EU companies. Companies, big or small, can be considered reliable taxpayers once certain criteria are fulfilled and would benefit from faster and easier taxpaying. The status of "certified taxable person" is mutually recognized among Member States.

2. Minimum VAT among Member States have been unified

Members of the European Community reached agreement in 1992 that the standard tax rate should be no more than 25 percent and no less than 15 percent with the exception of special industries. In June 2018, Council of the European Union adopted the directive to set the minimum VAT rate at 15 percent permanently. Application of the minimum standard tax rate can effectively avoid sharp discrepancies of VAT among Member States and reduce the risks of unfair competition arising from extremely low VAT.

3. France and Belgium have implemented large-scale tax cut

In September 2019, France announced tax reduction measures totalling EUR6 billion and planned to cut the first band of personal income tax by three percentage points to 11 percent. Tax d'habitation will be reduced step by step, granting a 30 percent tax reduction by 2018 for 80

[46] https://ec.europa.eu/taxation_customs/business/vat/action-plan-vat/single-vat-area_en

percent principal residence, and a reduction of 65 percent by 2019, leading finally to complete exemption for all principal home owners in 2020.

The tax reform bill was adopted by the Belgian Federal Parliament on 22 December 2017 and was officially issued on the 29th after signed by the King. The agenda of the tax reform mainly involves adjustment of corporate income tax rates, minimum tax bases, and dividend exemption. Corporate income tax will be gradually reduced from 33 percent to 25 percent from 2018 to 2020 (see Table 9).

Table 9 Corporate income tax reduction for different types of businesses in Belgium

	Non-SMEs	SMEs（annual revenue below EUR100,000）	SMEs (annual revenue above EUR100,000)
2018-2019	29.58%	20.4%	29.58%
Post 2020	25%	20%	25%

4. Poland has implemented the VAT split-payment mechanism

The bill to introduce the VAT split-payment mechanism was effective on 1 July 2018. The bill introduced an alternative for buyers to decide whether it will pay using the split-payment mechanism, so the net amount would be transferred to the regular bank account, whereas the VAT amount would be transferred to the special "VAT account", which can only be used to pay tax or pay tax for sub-suppliers.

II. Analysis of problems

1. Overall tax burden in major Member States is too heavy

The *Report on Taxation Trends in the European Union*[47] shows that European businesses and individuals are burdened with heavy tax. In 2017, tax revenue in the 28 Member States accounted for 39 percent of GDP, 0.3 percentage points higher than 2016. Tax level in the European Union is 11.9 percentage points (pp) above the level in the United States and almost 8.5 pp above that recorded by Japan, 7 pp higher than New Zealand, 12.1 pp higher than South Korea. Within the European Union, the most heavily taxed Member States are France (46.5%), Denmark (45.7%), Belgium (44.9%), Sweden (44.4%), and Finland (43.3%). According to *Doing Business 2020* report by the World Bank, leading EU economies are large tax contributors, with Germany ranking 46th, France, 61st, Belgium, 63rd,

[47] https://ec.europa.eu/taxation_customs/business/economic-analysis-taxation/taxation-trends-eu-union_en

Greece, 72nd, Poland, 77th, Italy, 128th. Heavy tax has raised the operational cost and directly led to the degradation of business environment in the European Union.

2. Tax system divergence in the EU raises business cost

Businesses operating in the European Union have to deal with the tax systems and complicated collection and administrative schemes of multiple Member States, which differ greatly in accounting practices, determination of taxable income, and tax collection and administration. Businesses have to follow different rules and navigate red tapes, which greatly raises financial cost and reduces operational efficiency.

The tax differences among Member States have also led to unfair tax burdens in reality. Large companies, with stronger capacity in cross-border resource allocation, may establish subsidiaries in the region with lower tax rate; while SMEs operating in different Member States have to struggle with the high cost of complicated tax systems, and therefore face difficulties in expanding globally.

3. Split-payment strains the funding flow of foreign-invested enterprises

The VAT split-payment mechanism in Poland is not mandatory, but in implementation Polish companies would often force Chinese companies to choose split-payment, straining corporate liquidity, raising financial cost and undercutting their competitiveness in the European Union.

III. Our recommendations

1. Ease the overall tax burden for foreign-invested enterprises

Amid the declining trend of overall corporate tax around the world, corporate tax burden in the European Union remain high, leaving room for further tax cut. We recommend that the Member States continue to ease business burdens through tax reduction and improve the business environment.

2. Push reforms to unify tax systems across Member States

Tax system convergence helps to uphold tax neutrality and enables more efficient cross-border flow of production factors among Member States. We recommend that the European Union move forward tax system reforms to narrow the gaps and gradually achieve tax convergence.

3. Standardize tax collection and administration among Member States

We recommend that the Member States promote tax compliance, expand the use of digital services, adopt electronic declaration, and simplify tax procedures and cut red tapes for all taxpayers (especially SMEs). They are expected to keep tax policies consistent, and reach out to businesses before adjusting tax policies to help them adapt and adjust, and release information through various channels in a timely manner.

4. Step up tax cooperation among Member States

We recommend the Member States strengthen cross-border tax cooperation, such as through automatic information sharing and inter-state data analysis sharing, and provide foreign-invested enterprises with readily-available taxation information of Member States to facilitate their investment and operation in the European Union.

Chapter Thirteen
The Finance Section

I. Recent developments

1. The new MiFID has been implemented

The second edition of the Markets in Financial Instruments Directive (MiFID II)[48] has been applicable across the European Union since 3 January 2018. Building on MiFID, MiFID II has made significant adjustments to emphasize improvement of the financial market function and structure, stronger investor protection, and greater regulator authority.

Greater power to regulators. For example, when certain products or transactions are found likely to threaten investor protection, financial stability and market function, the regulators may, after full communication and coordination, prohibit product launch or limit positions; Member States shall require a regulated market to be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction.

Full coverage of products and trading venues. MiFID II covers almost all financial products other than foreign exchange spot.

Greater pre-and post-trading data transparency. MiFID II has intensified market data transparency, requiring all the investment firms, regulated markets, multilateral trading facilities, and organized trading facilities to regularly disclose trading data of all the spot and derivatives except foreign exchange spot in accordance with the information disclosure rules. The disclosure should include but not limited to price, speed, venue and likelihood of execution and settlement. Data reporting must be as timely as possible.

New market access mechanism for third-country companies. Companies from third countries seeking to provide investment services in Europe need only to open branches if the service is provided to retail client; need to register at the European Securities and Markets Authority if the client is eligible counterparty.

[48] https://www.esma.europa.eu/policy-rules/mifid-ii-and-mifir

Limits on commodities speculation. MiFID II requires market operators to measure their business activities against the market scale of commodities derivatives. Market operators above a certain market share must apply for authorization from regulators as investment firms and be subject to regulation, so that positions are not too concentrated to pose systemic risks.

2. Non-EU financial institutions are required to set up IPU

In May 2018, the proposal by the EU Commission that requires eligible non-EU financial institutions to set up Intermediate Parent Undertakings (IPU) was approved by Council of the European Union, requiring banks with asset of EUR30 billion or above to set up IPU.

3. The 5th EU anti-money laundering directive was issued

The Commission issued on 9 July 2018 the 5th EU anti-money laundering directive, making important changes to the fulfilment of obligations, customer due diligence, and Financial Intelligence Units (FIUs). Member States are supposed to bring national anti-money laundering systems in line with the latest directive by January 2020.

Extend the scope of obligations to include providers engaged in exchange services between virtual currencies and fiat currencies as well as custodian wallet providers.

Enhance due diligence of business and transactions involving high-risk countries, including by obtaining information on the customer and actual beneficiaries, the intended nature of the business relationship, the source of funds and wealth of the customer and of the beneficial owners, the reasons for the intended or performed transactions, obtaining the approval of senior management for establishing or continuing the business relationship, conducting enhanced monitoring of the business relationship.

Strengthen cooperation among FIUs. Member States should ensure that FIUs have access to information on their own volition or through application about cases involving money laundering or terrorist financing. The information should flow directly and quickly without undue delays especially when cases are related to terrorism.

II. Analysis of problems

1. Compliance cost for financial institutions is raised significantly

MiFID II, covering broad scope and consisting of over 1.4 million paragraphs of rules, would for one thing significantly raise the operational and compliance cost for financial institutions, and for another hamper the pace of innovation because of its strict restrictions.

2. The plannings of foreign financial institutions are disrupted by IPU

To keep in line with the EU IPU threshold of EUR30 billion (lower than the EUR50 billion threshold in the US), numerous foreign financial institutions will have to establish IPU or even change the equity architecture, management structure, people and capital distribution of their branches in the European Union. Immense cost will be incurred. If the European Union requires them to include branches into IPU, these financial institutions may have to meet demanding requirements on capital and liquidity. Non-EU financial institutions will have to review their business strategy in the European Union and be tempted to keep business scale below the IPU threshold or concentrate business in certain Member States, which would widen the regional gaps of the European financial industry.

3. Regulating branches as subsidiaries leads to unfair competition

Regulatory rules for independent legal entities (subsidiaries) within the European Union tend to be convergent, while that for non-independent legal entities (branches) outside the European Union are quite divergent in different Member States. For example, Germany has strict regulation over branches outside the European Union. According to Article 53 of the Federal Banking Act, branches of banks headquartered outside the European Union should be regulated as their subsidiaries and be held up to the same requirements as subsidiaries, and cannot the capital of their parent banks despite the fact that they are not independent legal persons. In practice, these provisions are highly unfair in two ways.

First, the exemption from being regulated as subsidiaries is only applicable in a few advanced economies. Since Chinese banks are regulated as equals to subsidiaries, the capital of their parent banks are not

recognized by the regulators. By contrast, branches of banks from the US, Japan and Australia in Germany can all share the capital of their parent banks.

Second, banking branches are treated as subsidiaries only in some Member States, a departure from the trends of convergence in the EU regulation system. In countries like Luxembourg, branches of foreign banks are treated as branches in regulation; in recent years, France is getting loose on the regulation of branches as subsidiaries. On 21 September 2016, the branch of Bank of China in Paris received the official notice of French Prudential Supervision and Resolution Authority (ACPR) to exempt it from requirements on liquidity coverage ratio, net steady finance ratio, leverage ratio, large exposure, information disclosure, and capital adequacy ratio for non-euros.

4. Money laundering tracing treats foreign capital more strictly

According to Chinese banks in the European Union, stern anti-money laundering rules and over-regulation in some Member States have affected their normal business and pushed up the compliance cost significantly. In addition, the European Union traces funding sources beyond reasonable scope and time frame.

III. Our Recommendations

1. Financial reform should account for business affordability

MiFID II reform should be implemented step by step, not in haste. The reform should help lower cost and ease burden for financial institutions, rather than undermining their innovation capability. In the fight against money laundering, regulators should not disrupt the normal operation of financial institutions beyond the reasonable degree, otherwise they will become burdens on them and their clients.

2. Raise the IPU threshold for foreign banks

In January 2018, PBoC and CBRC sent the *Joint Comment Letter on the Intermediate Parent Undertakings Proposal*[49] to European Parliament, Council and Commission, expressing hopes that the Commission considers

[49] http://www.cbrc.gov.cn/chinese/home/docView/BC32C359A3A14F0BBF556508ADB5615E.html

raising threshold for foreign financial institutions to set up IPU. They also asked for the reconsideration on the appropriateness of calculating total assets including those of branches and incorporating existing branches into the new IPU.

3. Press ahead with the China-German exemption agreement

We recommend that Germany sign related agreement with China as soon as possible to free Chinese banks in Germany from restrictions on equity capital. This will beef up their capacity to provide services and lend robust support to trade between China and Germany.

Chapter Fourteen
The Logistics Section

I. Recent developments

1. The European Union has officially implemented the Port Service Regulation

On 15 February 2017, the European Parliament adopted the Port Service Regulation (PSR) and required Member States to begin its implementation from 24 March 2019. PSR provides a basic framework for port service, financial transparency, and charging rules for Member States, covering refilling, discharge, mooring, and tug boat, but not passenger services, tallying, and piloting. PSR sets forth the minimum standards for port operation and emphasizes the professional standards on personnel, security and environment protection, but does not contain clear provisions on port management. After it is implemented by Member States, port services will largely be subject to the new provision on financial transparency.

2. Germany issued funding policies for combined transport

The combined transport subsidy policy of Germany was deliberated and adopted by the 18th Federal Parliament-Government Joint Agreement. The *Guidelines on Funding for Combined Transport Terminals Operated by Private Undertakings* published by Federal Ministry of Transport and Digital Infrastructure (BMVI) would go into effect between 4 January 2017 and 31 December 2021. The guidance explains the recipients of subsidies, terms for infrastructure subsidies and application process. Applications from only private firms will be accepted and combined transport in only recognized forms can be funded.

Funding for forwarding station. The BMVI combined transport funding policy provides that the interchanges applying for subsidies must ensure over 10 or 20 years of operation, be closely connected to public transport network, and must communicate with the fund issuers from the stage of planning and provide data at the operation stage. The subsidies provided by German government to forwarding station will be as high as 80 percent, and will be applied and granted by third-party professional agencies and used for the sole purpose of interchange infrastructure building. The Guidelines requires forward station receiving subsidies to process freight at a cost of no more than EUR33 per unit on average, or EUR15 per unit if they are located near sea ports.

Funding for special railway lines in logistics parks. Eligible special railway lines will receive up to 50 percent of subsidies from German government, issued by DEUTSCHE BAHN. The applicant must provide proof of extra demand in railway freight, and the special railway line must be connected to the public railway network. Freight volume, freight turnover or number of carriage must be submitted for application. In addition, investment enterprises must collect annual statistics on freight volume and freight turnover of subsidized railway lines for up to 10 years.

3. Packaging Act in Germany imposes distribution ban

The new Packaging Act of Germany(VerpackG) took effect on 1 January 2019, replacing the Packaging Ordinance(VerpackV). The Packaging Act applies to all actors who put packaged products (including padding material) into circulation and which end up as waste with the consumers. Companies failing to comply with the new Packaging Act will be fined up to EUR200,000 and be subject to a sales ban. A new federal authority, Central Agency Packaging Register(ZSVR) has been established to oversee package recycling and reuse and oversee business compliance.

Main provisions of the new Packaging Act

●The Act involves manufacturers, distributors, importers and shippers. Manufacturers refer to the first entity who bring packaged products into market circulation, including external package, final retail package, disposable containers in service packaging, and shipment packaging;

●To ensure market access, all companies with sales in Germany, including cross-border e-commerce firms and online retailers, are obliged to register and receive licensing before bringing packaged products onto the market;

●Registration should be completed at the Central Agency Packaging Register on the LUCID website. Failure to file declarations on time will be fined tens of thousands of euros based on the weight of products or even be banned from sales;

●All participants must declare the packaging materials, types and weight annually. If the packaging exceeds the following thresholds: 80,000 kg of glass, 50,000 kg of paper and cardboard, 30,000 kg other composites, a Declaration of Completeness has to be submitted.

Table 10 Businesses that need to register under VerpackG

Who needs to register	Explanation
Manufacturers	Manufacturers are often first suppliers and therefore are obliged to register.
Retailers	Retailers, including e-commerce sellers, are obliged to register
Importers	If the headquarters of a manufacturer are abroad, then the domestic importer may be deemed the first distributor in Germany and hence considered to be the manufacturer. In principle, people with legal responsibilities for imported products are obliged to engage in the system. If they do not fulfil the obligations, the final distributors will be subject to a distribution ban.
Shipment companies	Shipment companies are considered manufacturers by VerpackG, for they are the first to fill containers with freight. The entire packaging material is marketed as part of the shipping to the end consumer and accumulates there for disposal. Therefore the system participation and registration obligation should fall on the part of the shipment companies.

The principle of extended product responsibility applies. Every market entity that brings packaged products (including padding material) onto the German market will be responsible for recycling and reuse by paying the waste disposal companies for the disposal of packages like yellow bags, paper, paper board, card board, and glass.

II. Analysis of problems

1. PSR may aggravate bureaucracy and monopoly

PSR fails to accord greater economic autonomy to ports that would enable port managers to set facility tolls based on their business strategies and investment. Nor does it allow users and shareholders to engage in major infrastructure planning, construction, and pricing. Though it grants extra economic bargaining power to ports, it also leaves space for government departments to interfere with the port autonomy under the pretext of national policy. Considering the possibility of ineffective intervention, PSR may cause unnecessary bureaucracy that is detrimental

to port interests. PSR also solidifies the existing double charging standard, whereby some ports may set prices independently while others do not have such power, thus artificially creating unfair competition.

It is likely that PSR will cause material damage to the interests of port users. European Community Shipowners' Association claims that since PSR does not cover tallying, piloting, passenger services, dredging, etc., it may aggravate the monopoly of ports. This means that port users will become more passive, and PSR may fail to achieve its intended effect. Instead, it will push up tallying and passenger service cost and cause customer dissatisfaction.

2. Funding policy may undermine fair competition

Unfair competition in the European Union was triggered by the high proportion of combined transport subsidies to private firms by the *Guidelines on Funding for Combined Transport Terminals Operated by Private Undertakings* in Germany. According to BMVI, German government grants as high as EUR93 million of subsidies to combined transport annually, which underpins transshipment capacity of 8.4 million loading units, taking up 67.2 percent of the total combined transport capacity. Infrastructure receiving government subsidies undertake transshipment of 5.5 million loading units, or 64 percent of the aggregate. Subsidies have greatly beefed up the competitiveness of Germany in combined transport. But such competitiveness comes from lower operational cost covered by the subsidies, putting foreign-invested enterprises in the European Union at a severe disadvantage.

3. The new Packaging Act increases difficulties for import

The VerpackG mainly aims to enhance materials recycle rate. It is predicted that the package recycle rate will jump from 36 percent to 63 percent by 2022. Despite the good intention, the Act is not popularized or promoted well. The fact that an Act that affects tens of thousands of importers and cross-border retailers around the world does not have an English version prevents companies from registering and declaring on time and in accordance with regulations, which directly leads to sales losses.

Overly strict registration and declaration requirement have raised business operational cost and disrupted the market. The new Packaging Act involves all the manufacturers, distributors, importers and shippers on the

German market, requesting them to fulfill the registration and declaration obligations even if only one product is sold on the German market. VerpackG mandates retailers to register online at the beginning of every year by listing all brand names that may enter the German market that year and declaring the packaging materials, type and weight, and to pay the licensing fee. Failure to register in LUCID on time or erroneous declaration data would result in a fine of up to EUR200,000 or even sales ban. This is undoubtedly a huge amount of work and creates huge unpredictability for cross-border retailers whose sales are characterized by small consignment and numerous categories. As a result, business scale of importers and cross-border retailers will be restricted artificially and normal market order will be disrupted.

Excessive power is given to government authorities when they are responsible for controlling the entire system. The demanding requirement of the new Packaging Act makes it basically impossible for some enterprises to fulfill the registration and declaration obligations. The government can therefore artificially intervene in the market access threshold, giving ZSVR excessive power that would increase room for rent-seeking.

III. Our recommendations

1. Delegate more autonomy to ports

Port ownership in different countries may vary, spanning state, mixed, private ownership and foreign limited operation and user right. We recommend that the PSR grant greater autonomy to port operators and shareholders that suits their respective situations, and allow them to make plans and set prices independently according to their own development.

2. PSR should ensure full competition among ports

PSR should ensure full competition among ports, not aggravate monopoly. We recommend that PSR cover as many services as possible in its service content and standard-setting, so as to provide the utmost convenience to port users with better services and greater efficiency.

Chapter Fifteen
The E-commerce Section

I. Recent Developments

1. The Implementing Regulation on E-commerce VAT Reform was introduced

The European Union released the E-commerce VAT Regulation in December 2017 and the Implementing Regulation on E-commerce VAT Reform in February 2019. The reform agenda mainly includes: extension of the scope of One Stop Shop to intra-EU distance sales of goods and distance sales of goods imported from third countries; the online trading platforms are responsible for the declaration and VAT payment for goods sold by non-EU retailers on its platform; abolition of the current VAT exemption for goods imported from third countries in small consignment of a value of up to EUR22.

2. PSD2 has been implemented

On 13 January 2018, the new Payment Services Directive (PSD2) became effective in the European Union. PSD2 has three key points: encourage the use of third-party payment products to manage personal or corporate finances; prohibit sellers from transferring payment cost to consumers; intensify protection of the interests of online consumers.

By 14 March 2019, banks and other conventional financial institutions need to create and open testing environment for third-parties that include APIs to reduce the dependency of sellers on special bank payment services. By 14 September 2019, all EU businesses have to use multiple customer authentication in online shopping.

3. New anti-geoblocking regulation was launched

On 4 December 2018, the EU anti-geoblocking regulation entered into force to address the unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market, applicable to goods and service providers to EU customers. The regulation affects not only the internal market, but companies from other countries or regions that provide service to EU customers, as it prohibits traders from treating customers differently in the following aspects: access to online interfaces, access to goods and services, conditions for payment transactions.

4. Information collection on cross-border parcel delivery has been strengthened

The new EU regulation on cross-border parcel delivery went into force in May 2018. The regulation requires operators in parcel delivery business to send to the authorities of host countries information about business registration and scope and terms of service, with a view to contributing to market transparency and improved regulation.[50]

II. Analysis of problems

1. Jurisdictions over cross-border trading remain ambiguous

For all the EU laws and regulations that aim to establish a single digital market, numerous barriers exist when it comes to conducting cross-border e-commerce in the EU, especially when border issues are involved. Ambiguous jurisdiction rules among Member States remain an acute problem. For example, when an e-commerce firm in one Member State sells products in another, it is unclear as to which Member State's laws and regulations should apply as regards consumer rights, licensing requirements, product labeling, among others. Online-shoppers also face difficulties defending their rights to get product maintenance, return and refund.

2. Intra-EU cross-border payment faces obstacles

EU e-commerce firms usually offer their clients several payment methods, such as debit card, credit card or installment. However, different legislation in Member States makes it hard for online sellers to offer the same payment choices across the European Union. *European E-commerce Report 2019* [51] shows that in almost all EU countries, payment inconveniences or concerns over payment security are primary barriers to online shopping for EU citizens, and such problems are most acute in Portugal, Hungary and Greece.

Another problem is complex and fragmented tax regimes governing cross-border trading among Member States. Despite the EU VAT framework, VAT rates vary among countries, which means online transaction rates can be different in different Member States.

3. Cross-border logistics system-building lags behind

Cross-border logistics system is a critical underpinning to e-commerce, while backward logistics can be an impediment to the rapid

[50] https://ec.europa.eu/growth/sectors/postal-services/parcel-delivery_en
[51] https://www.ecommercewiki.org/reports/792/european-ecommerce-report-2019-free

development of e-commerce. According to *European E-commerce Report 2019,* slow logistics or inconvenient delivery are important factors affecting online shopping, second only to online payment. In addition, the logistics system development is patchy in EU Member States, with some countries constrained by backward logistics infrastructure that hamper cross-border trading. Such problems are most acute in countries like Latvia, Malta, and Romania.

4. Administration among Member States are discrepant

For all the efforts to promote European integration, institutional differences between Member States still exist. Lack of legal coordination and overlapping regulation among governments are main problems for e-commerce business start-up, market regulation, and tax collection. E-commerce operators have to overcome institutional, cultural, delivery and logistics barriers when they try to start a business in different countries.

III. Our recommendations

1. Remove the barriers to cross-border payment in the European Union

The existing laws and regulations on cross-border payment are far from meeting the development needs of businesses. We recommend that the European Union resolve the numerous obstacles to cross-border payment expeditiously, including by removing cross-border payment barriers, increasing cross-border payment security, and reducing cross-border payment cost.

2. Enhance cross-border logistics within the European Union

We recommend that the European Union take further steps to tackle the institutional obstacles to cross-border logistics, ensure the reliability of cross-border transportation of goods, launch logistics tracking systems and standards, establish unified logistics operation standards, and enhance logistics system-building within the European Union.

3. Promote EU-level e-commerce legislation

We recommend that the European Union enact e-commerce legislation at the Union level to bridge the gaps in e-commerce legislation and enforcement among Member States, reduce the institutional barriers for businesses to carry out e-commerce business across Member States, and cut business costs.

中国贸促会研究院

ACADEMY OF CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE

