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ENERGY

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**The Energy Community Secretariat
&
The Energy Union Law Area of the Florence School of Regulation
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One step beyond
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**Chinese Investments in Europe's Energy Sector and EU Regulation
(EU) 2019/452 establishing a framework for the screening of FDIS into the Union**

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I. THE RISE OF CHINESE FDI IN EUROPE (?)

- CHINESE FDI IN THE EU HAVE INCREASED BY ALMOST 50 TIMES IN ONLY 8 YEARS (FROM LESS THAN 800M€ IN 2008 TO 37 BIO € IN 2016 (2.2%)¹).
- EU INVESTMENTS IN PRC IN 2016 WAS 8 BIO € (4%)
- LOW COMPARED TO US INVESTMENTS (38%) OR TO EU INVESTMENTS IN THE US (36%)
- CHINESE FDI WERE 17.3 BIO € IN 2018 (DECLINES ALMOST 40% FROM 2017 AND OVER 50% FROM 2016 LEVELS).
- BETWEEN 2013 AND 2017 THE HIGHEST AMOUNT (28%) OF CHINESE FDI IN THE EU IS IN THE ENERGY SECTOR.

¹ Rhodium Group Statistics

II. MAIN TARGETS

- THE “BIG 3” EU ECONOMIES (UK, DE, FR) RECEIVED THE LION’S SHARE 71% IN 2017, 45% IN 2018 (SWEDEN & BENELUX).
- SOUTH (ITALY, SPAIN, GREECE AND PORTUGAL) 24% OF CHINESE FDI IN THE ENERGY SECTOR BETWEEN 2000 AND 2014.
- CNBM GROUP CORPORATION ACQUISITION OF GERMAN CTF SOLAR AND AVANCIS (2012)
- HENERGY ACQUISITION OF SOLIBRO (DE) (2014).
- XINJIANG GOLDWIND ACQUISITION OF 70% OF VENSYS (WIND TURBINE) (2008).
- CNNC AND CHINA GENERAL NUCLEAR POWER GROUP ACQUISITION OF SIGNIFICANT AMOUNT OF SHARES OF AREVA (FR) IN 2017.
- CGN ACQUIRED 35% IN THE BRITISH HINKLEY POINT NUCLEAR POWER STATION IN 2017.
- ACQUISITION OF 30% STAKE (3.3 BIO US\$) OF SUEZ BY CHINA INVESTMENT CORPORATION (CIC) IN 2017.

III. WHY CHINESE COMPANIES INVEST IN THE EU ENERGY SECTOR?

- TECHNOLOGY TRANSFER FROM EU COMPANIES.
- ACQUISITION OF INTANGIBLE ASSETS (BRANDS, MARKETING KNOW HOW).
- COMMERCIAL BENEFITS (E.G. CIRCUMVENTING ANTIDUMPING MEASURES AGAINST PHOTOVOLTAICS THROUGH FDI's).
- FDI's BY MAINLY STATE OWNED CHINESE COMPANIES (70%) – POLITICAL INTERESTS (E.G. SUPPLY CHAIN SECURITY OF FOSSIL FUELS, GLOBAL PRESENCE ETC).
- EU HAS ONE OF THE WORLDS MOST OPEN INVESTMENTS REGIME, FEWER RESTRICTIONS ON FDI's (OECD IN FDI REGULATORY RESTRICTIVENESS INDEX). [ON THE OTHER HAND, UNFAIR TREATMENT IS A SERIOUS PROBLEM FOR EU COMPANIES INVESTING IN PRC].

IV. PROS & CONS.

A. PROS

- ECONOMIC GROWTH (ESPECIALLY WITH RESPECT TO COUNTRIES HIT HARDED BY CRISIS)
- JOBS
- EU IDEOLOGICAL PRINCIPLE OF OPEN EXCHANGE OF TRADE & INVESTMENTS.
- DIVERSIFICATION (LOWERING TRADITIONAL DEPENDENCIES, E.G. POLAND - GERMANY)

B. CONS

- GEOPOLITICAL RISK – ACQUISITIONS COULD LEAD TO ENERGY SECURITY ISSUE.
- TECHNO-REGULATORY RISK (REGULATORY PRESSURE BY CHINESE CONTROLLED COMPANIES)
- STATE SUPPORTED ATTACK ON EU TECHNOLOGY KNOW HOW CAN HURT EU COMPETITIVENESS
- LACK OF RECIPROCITY
- NATIONAL & PUBLIC INTEREST CONSIDERATIONS
- INCREASE OF PRC POLITICAL LEVERAGE IN SOME EU (SMALL) COUNTRIES.

V. THE GREEK EXAMPLE

- GREEK INVESTMENT GAP

IN 2010 FDIs 30.2 BIO €, IN 2015 15.3 BIO €...

- CASE STUDY

1. PRC FLAGSHIP PROJECT IN GREECE IS INVESTMENT MADE BY COSCO IN THE PPA:
 - A. 11/2008 30 YEAR CONCESSION OF 2/3 PIERS 831.2 MIO €
 - B. 2016 PURCHASE OF 51% OF PPA (280.5MIO €) + OPTION FOR 16% IN 2021 AGAINST 88 MIO € ON CONDITION OF INVESTMENT OF ANOTHER 350 MIO €.
- PART OF “BELT AND ROAD INITIATIVE” – PRC MARITIME GATEWAY TO EUROPE – REDUCTION OF TRANSPORTATION COST (2 MIO US\$/TRIP) AND TIME (1 WEEK SAILING/TRIP) WITH RESPECT TO PORTS OF N. EUROPE.
- SUCCESSFUL PRIVATISATION: IN 2008 433,582 CONTAINERS. IN 2014 3.2 MIO IN 2014, 6.2 MIO IN 2016 (80% PIERS II & III).

V. THE GREEK EXAMPLE

2. 2016 PURCHASE BY CHINA STATE GRID INTERNATIONAL DEVELOPMENT LTD OF 24% OF IPTO (ADMIE) AGAINST 320 MIO €. IPTO OWNED IN 2017 11K Km OF HIGH VOLTAGE CABLES ACROSS THE COUNTRY. RESULT OF “UNBUNDLING” L. 4336/2015, COMMITMENT TO PRIVATIZE THE ELECTRICITY TRANSMISSION BUSINESS.
3. IN 2017 SHENHUA RENEWABLES ANNOUNCED THE ACQUISITION OF 75% STAKE IN 4 WIND FARMS DEVELOPED BY COPELOUZOS GROUP. ANNOUNCED A 3 BIO € JOINT INVESTMENT ON GREEN ENERGY PROJECTS.

- **WHY ?**

1) POLITICAL REASONS. GREECE WALKS ON A TIGHT ROPE BETWEEN EU AND FLEXIBILITY TOWARDS PRC (SCREENING REGULATION)

2) FAVORABLE PUBLIC OPINION

- GREECE IS THE MOST POSITIVE EU COUNTRY VIS-À-VIS PRC ²

- CHINA IS POPULAR WITH GREEK GENERAL PUBLIC (53%)

- SECOND MOST PREFERRED NATION TO PURSUE CLOSER RELATIONS (39.5%), AFTER RUSSIA (47.5%). US COMES 3RD (36.5%) AND GERMANY 4th (20%)³!

² 2012 Pew Survey

³ 2016 Kappa Research Survey

VI. EU SCREENING REGULATION (2019/452)

1. BACKGROUND

- **ON 13/9/2017** PRESIDENT J-C JUNKER STATED IN ANNUAL STATE OF THE UNION ADDRESS:
“WE ARE NOT NAÏVE FREE TRADERS. EUROPE MUST ALWAYS DEFEND ITS STRATEGIC INTERESTS. THIS IS WHY TODAY WE ARE PROPOSING A NEW EU FRAMEWORK FOR INVESTMENT SCREENING. IF A FOREIGN, STATE OWNED COMPANY WANTS TO PURCHASE A EUROPEAN HARBOUR, PART OF OUR ENERGY INFRASTRUCTURE OR A DEFENSE TECHNOLOGY FIRM, THIS SHOULD ONLY HAPPEN IN TRANSPARENCY WITH SCRUTINY AND DEBATE. IT IS A POLITICAL RESPONSIBILITY TO KNOW WHAT IS GOING ON IN OUR OWN BACKYARD SO THAT WE CAN PROTECT OUR COLLECTIVE SECURITY IF NEEDED”
- V-P JYRKI KATAINEN SAID:
“THE EU IS AND WILL REMAIN ONE OF THE MOST OPEN INVESTMENT REGIMES IN THE WORLD. FDI IS AN IMPORTANT SOURCE OF GROWTH, JOBS AND INNOVATION. HOWEVER, WE CANNOT TURN A BLIND EYE TO THE FACT THAT IN CERTAIN CASES FOREIGN TAKE – OVERS CAN BE DETRIMENTAL TO OUR INTERESTS”

2. THE PROVISIONS OF THE REGULATION

- **RELATES TO SCREENING OF FDI ON GROUNDS OF SECURITY OR PUBLIC ORDER INTO THE EU. CREATES COOPERATION MECHANISM BETWEEN MEMBER STATES AND COMMISSION, EXCHANGE INFORMATION AND RAISE CONCERNS RELATED TO SPECIFIC INVESTMENTS (ART. 1 PAR. 1).**
- **FDI: ANY INVESTMENT BY A FOREIGN INVESTOR AIMING TO ESTABLISH OR TO MAINTAIN LASTING AND DIRECT LINKS BETWEEN THE INVESTOR AND THE ENTREPRENEUR TO WHOM THE CAPITAL OF THE INVESTOR IS MADE AVAILABLE IN ORDER TO CARRY ON AN ECONOMIC ACTIVITY IN A MS. INCLUDES INVESTMENTS THAT ENABLE EFFECTIVE PARTICIPATION IN THE MANAGEMENT OR CONTROL OF A COMPANY THAT CARRIES OUT AN ECONOMIC ACTIVITY (ART 2, PAR.1).**
- **MS MAY MAINTAIN OR ESTABLISH NEW MECHANISMS TO SCREEN FOREIGN DIRECT INVESTMENTS IN THEIR TERRITORY ON THE GROUNDS OF SECURITY OR PUBLIC ORDER (ART. 3 PAR.1).**
- **EACH MS SHALL NOTIFY THE COMMISSION REGARDING EXISTING SCREENING MECHANISMS IN USE OR NEW MECHANISMS AND COMMISSION PUBLISHES LIST OF MECHANISMS (ART. 3 PAR. 8).**

2. THE PROVISIONS OF THE REGULATION

- **“SCREENING MECHANISM”**: ANY INSTRUMENT OF GENERAL APPLICATION (LAW OR REGULATION) AND ACCOMPANYING ADMINISTRATIVE MEASURES TO INVESTIGATE FDI ON GROUNDS OF SECURITY OR PUBLIC ORDER (ART. 2 PAR. 4).
- FACTORS DETERMINING WHETHER FDI LIKELY TO AFFECT SECURITY OR PUBLIC ORDER MAINLY BASED ON EFFECT OF FDIS TO THE FOLLOWING SECTORS:
 - A. CRITICAL INFRASTRUCTURE INCLUDING ENERGY, TRANSPORT, WATER, HEALTH, COMMUNICATIONS, MEDIA,
 - B. CRITICAL TECHNOLOGIES INCLUDING A.I., DEFENSE, ENERGY STORAGE AND OTHER TECHNOLOGIES,
 - C. SUPPLY OF CRITICAL INPUTS INCLUDING ENERGY OR RAW MATERIALS AND FOOD SECURITY,
 - D. ACCESS TO SENSITIVE INFORMATION AND CONTROL OF THIS INFORMATION,
 - E. FREEDOM AND PLURALISM OF MEDIA (ART. 4 PAR. 1).

2. THE PROVISIONS OF THE REGULATION

OTHER FACTORS (ART. 4 PARA. 2):

- I. INVESTOR IS DIRECTLY OR INDIRECTLY CONTROLLED BY A FOREIGN GOVERNMENT THROUGH OWNERSHIP STATUS OR SIGNIFICANT FUNDING,
- ii. INVESTOR PREVIOUSLY INVOLVED IN ACTIVITIES AFFECTING SECURITY IN A MS OR IN ILLEGAL OR CRIMINAL ACTIVITIES.

PROCESS OF SCREENING: EACH MS NOTIFIES THE COMMISSION AND OTHER MSS OF FDIS UNDERGOING SCREENING IN ITS TERRITORY. OTHER MSS CAN PROVIDE COMMENTS IF THEY BELIEVE THAT THE FDI LIKELY TO AFFECT SECURITY OR PUBLIC ORDER IN THIS OR ANOTHER MS (ART 6).

- INFORMATION ON THE FDI ALSO INCLUDED IN THE ANNUAL REPORT OF EACH MS TO THE COMMISSION FOR FDIS IN THEIR TERRITORY.

2. THE PROVISIONS OF THE REGULATION

- A MS CAN PROVIDE COMMENTS FOR FDI LIKELY TO AFFECT IT EVEN IF THIS FDI IS PLANNED OR COMPLETED IN ANOTHER MS. IF FDI LIKELY TO AFFECT PROJECTS OF THE UNION, COMMISSION SHALL PROVIDE COMMENTS (ART. 7).
- MSS HAVE FINAL DECISION ON WHETHER A SPECIFIC FDI SHOULD BE ALLOWED OR NOT IN THEIR TERRITORY (ART. 1 PAR. 2 AND 3 AND PREAMBLE PAR. 17).
- REGULATION SHALL APPLY FROM 11 OCTOBER 2020 (ART 17).

3. CHINA REACTION

RESPONSE SO FAR HESITANT AND ACCOMODATIVE; OUTRAGE IN CHINESE MEDIA AND CONFERENCES BUT AWARENESS THAT CHINESE SYSTEM IS MORE RESTRICTIVE.

4. COMMENTARY

- SIGNIFICANT REGULATION, 1st EU INSTRUMENT ON FDI.
- REGIME IS QUITE MODEST: NOT REQUIRING
 - (1) HARMONISATION OF FDI RULES
 - (2) MS TO IMPLEMENT A NATIONAL FDI SCREENING REGIME – NATIONAL DIVERGENCES IN EU IN OPENESS TO FDI LIKELY TO CONTINUE.
- COOPERATION OBLIGATIONS MAY ACCELERATE A HARMONISED EU POLICY ON FDI OR URGE A MOVE TOWARDS A CENTRALIZED DECISION MAKING BY COMMISSION.
- BROAD SPECTRUM OF SECTORS IDENTIFIED.
- PRACTICAL IMPACT DEPENDS ON HOW MS AND COMMISSION WILL ENGAGE UNDER COOPERATION PROVISIONS (DELAYS, DEAL UNCERTAINTY, RISK ALLOCATION CONSIDERATIONS).

THANK YOU FOR YOUR ATTENTION

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