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EU inbound transactions, legal issues and takeaways



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GOLD AWARD
BEST IP ADVISOR 2020
NORDICS

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EU inbound transactions, legal issues and takeaways

- Investment in the European Union
- Investment in the Nordics
- Incentives and Investment in Finland
- Regulation (EU) 2019/452 on foreign direct investment
- Standard Essential Patent licensing and litigation



CHINESE FOREIGN DIRECT INVESTMENT IN EUROPE

The EU is the world's main provider and the top global destination of foreign investment.

Foreign direct investment stocks held in the rest of the world by investors resident in the EU amounted to €8,750 billion at the end of 2018.

Meanwhile, foreign direct investment stocks held by third country investors in the EU amounted to €7,197 billion at the end of 2018.



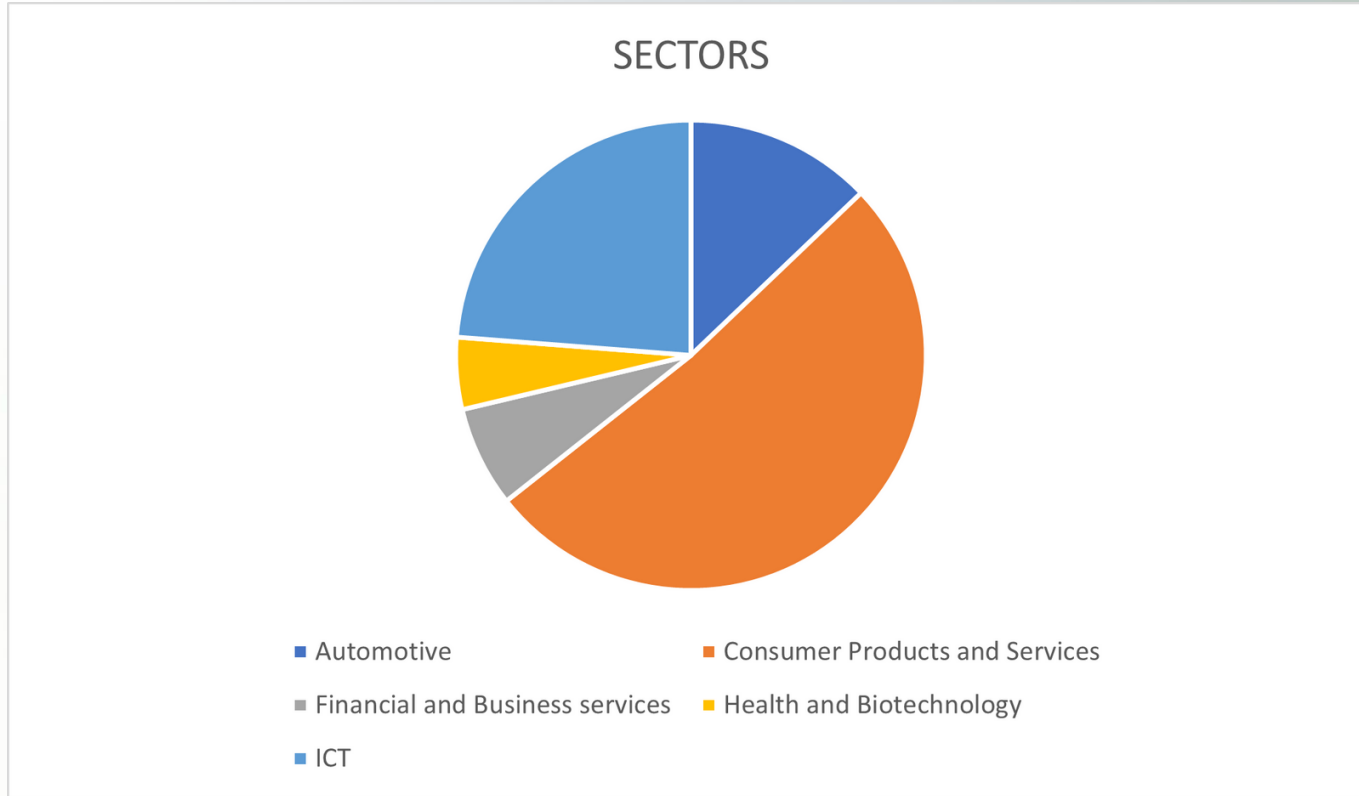
Source: European Commission

CHINESE FOREIGN DIRECT INVESTMENT IN EUROPE

- The “Big Three” economies (**UK, Germany, France**), have traditionally received the most Chinese capital.
- Investment into all three countries has recently declined, though the UK held up best. The UK remained the second largest recipient of Chinese FDI by volume in 2019, mostly due to Jiangsu Shagang’s acquisition of additional stakes in data center firm Global Switch (worth £1.8 billion, or EUR 2 billion).
- In 2019 **Northern Europe supplanted the “Big Three”** as the top region for the first time since 2010, receiving 53 percent of all Chinese investment.
- This was due mainly to a few large M&A deals including (1) Anta’s acquisition of Amer for EUR 4.6 billion (which made Finland the top recipient country for Chinese investment in 2019) and (2) China Evergrande’s investment in NEVS for EUR 830 million (making Sweden the third highest recipient country in 2019).
- Investment into Ireland has also increased and is set to grow further as a result of two large greenfield factories which are being established by Wuxi Biologics.



CHINESE FOREIGN DIRECT INVESTMENT IN EUROPE



Source: Rhodium Group

CHINESE FOREIGN DIRECT INVESTMENT IN EUROPE

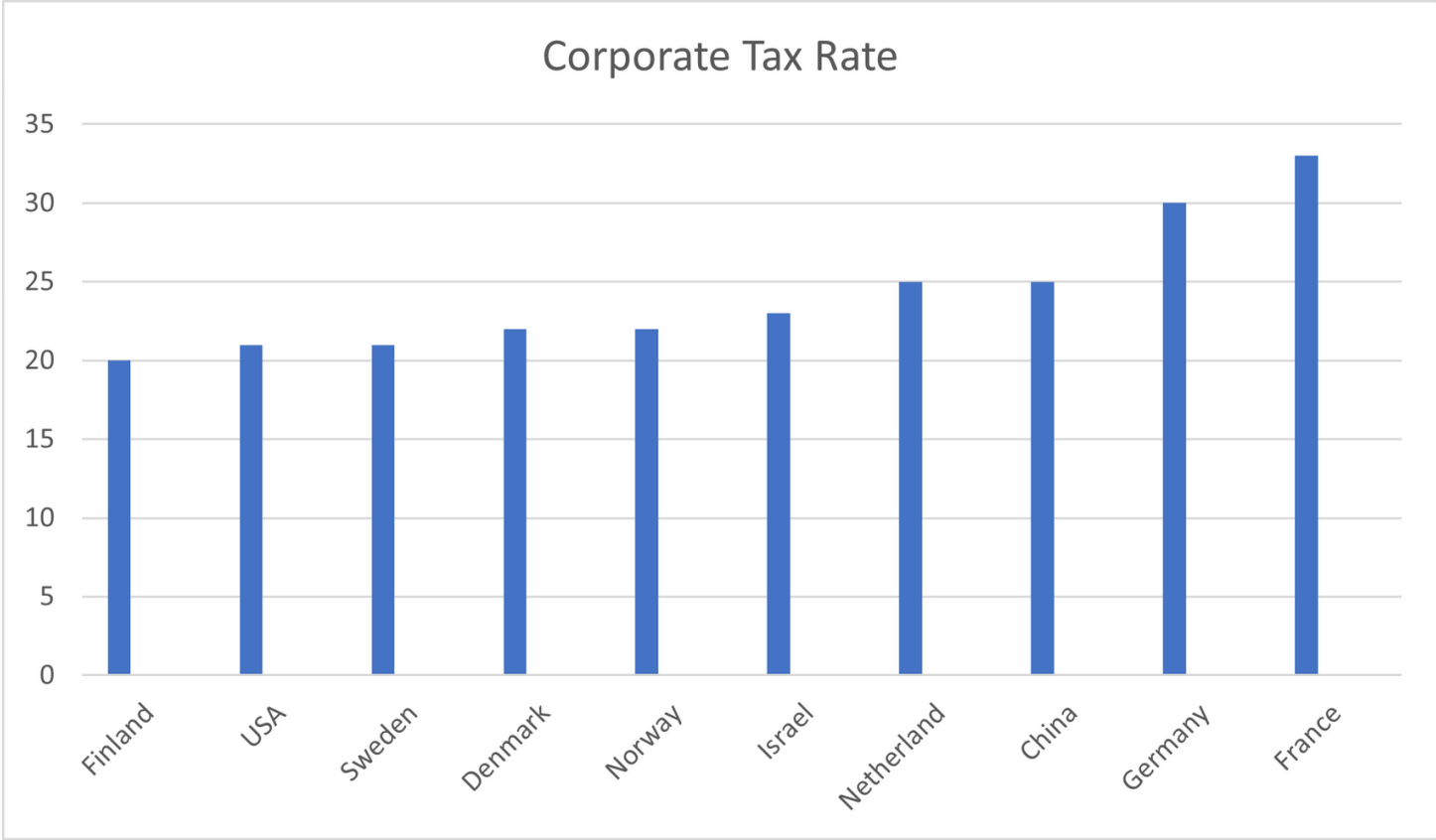
In 2019 consumer products and services was the largest sector.

SUCCESS STORIES:

- This was mainly as a result of Anta's acquisition of the Finnish sporting goods group Amer for EUR 4.6 billion. It was the fourth largest Chinese acquisition in the EU since 2000.
- Another significant acquisition was Haier's EUR 475 million acquisition of an Italian appliance manufacturer.



CORPORATE TAX RATE 2019



Source: Deloitte 2019

EASE OF SETTING UP A BUSINESS: THE NORDICS

According to the 2018 World Bank report "Ease of Doing Business Index", the highest ranked European countries are:

- Denmark (#3)
- Norway (#7) (non EU)
- UK (#9) (non EU)
- Sweden (#12)
- Finland (#17)

Other EU countries are ranked as follow:

- Ireland (#23)
- Germany (#24)
- Austria (#26)
- Spain (#30)
- France (#32)
- Poland (#33)
- Czech Republic(#34)
- Portugal (#36)
- Switzerland (#38)
- Italy (#51)



FOREIGN DIRECT INVESTMENT (FDI) PROJECTS IN THE NORDICS

NUMBER OF FDI PROJECTS IN NORDIC COUNTRIES 2018:

- Finland: 194
- Sweden: 73
- Denmark: 56
- Norway: 17

NUMBER OF FDI PROJECTS IN NORDIC CITIES 2018:

- Helsinki: 95
- Stockholm: 33
- Copenhagen: 32
- Tampere: 17
- Espoo: 12

Source: EY's Nordic Attractiveness Survey, 2019



FINLAND: INCENTIVES FOR FOREIGN-OWNED COMPANIES

- Business development aid is coordinated by the Centers for Economic Development, Transport and the Environment (ELY Centers) (www.suomi.fi)
- Training & Employment services are provided by ELY Centers
- Business Finland (a state-owned agency) provides funding services

SUCCESS STORY:

"Some European countries have similar government funding schemes in place, but there are big differences from country to country, and in certain aspects, Finland can be significantly more beneficial to foreign companies. The fact that companies are treated fairly and impartially regardless of their origin has been very appealing and important to us from day one."

DR GUOPING LUO DIRECTOR HUAWEI FINLAND

Source:

Business Finland, FINLAND TECHNOLOGY SUPERPOWER, 2020



FOREIGN DIRECT INVESTMENT IN FINLAND

MOST POPULAR SECTORS FOR INVESTMENT IN 2019

- ICT & Digitalization Business
- Services Health & Wellbeing
- Bioeconomy & Cleantech
- Retail

Source: Invest in Finland 2020

SUCCESS STORY:

FDI in Finland is often related to knowledge-driven business. Participation in business ecosystems and cooperation with Finnish firms can bring valuable R&D&I partnerships and new growth opportunities for international companies. For example, Finland has several high-tech clusters with many small technology companies that have cutting-edge expertise but lack capital and have limited access to the global markets. This creates win-win business opportunities.

Source:

Business Finland, FINLAND TECHNOLOGY SUPERPOWER, 2020



FOREIGN INVESTMENT IN THE EUROPEAN UNION



There are two main types of foreign investment:

- foreign direct investment (FDI) – where an investor sets up or buys a company (or a controlling share in a company) in another country, and;
- portfolio investment – where an investor buys shares in, or debt of, a foreign company without controlling that company.

Source: European Commission

<https://ec.europa.eu/trade/policy/accessing-markets/investment/>

FOREIGN INVESTMENT IN THE EUROPEAN UNION

On 19 March 2019, the EU adopted a **Regulation (EU 2019/452)** establishing a framework for the screening of foreign direct investments into the Union, which shall apply from **11 October 2020**

DEFINITION OF FOREIGN DIRECT INVESTMENT:

means an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

Article 3 - Screening mechanisms of Member States:

1. In accordance with this Regulation, Member States may maintain, amend or adopt mechanisms to screen foreign direct investments in their territory on the grounds of security or public order.

(omissis)

5. Foreign investors and the undertakings concerned shall have the possibility to seek recourse against screening decisions of the national authorities

FOREIGN INVESTMENT IN THE EUROPEAN UNION

Regulation (EU 2019/452) establishing a framework for the screening of foreign direct investments into the Union

Article 4 - Factors that may be taken into consideration by Member States or the Commission

1. In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may consider its potential effects on, inter alia:

- (a) **critical infrastructure**, whether physical or virtual, 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;
- (b) **critical technologies** and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009 (15), including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- (c) **supply of critical inputs**, including energy or raw materials, as well as food security;
- (d) **access to sensitive information**, including personal data, or the ability to control such information; or
- (e) **the freedom and pluralism of the media.**

STANDARD ESSENTIAL PATENTS LICENSING AND LITIGATION

Huawei Technologies Co. Ltd v ZTE Corp. and ZTE Deutschland GmbH (Case C-170/13) - decision of 16 July 2015: criteria for carrying out FRAND negotiations

Unwired Planet v Huawei and Conversant Wireless Licensing v Huawei & ZTE [2020] UKSC 37 [2020] On appeals from: [2018] EWCA Civ 2344 and [2019] EWCA Civ 38 - decision of 26 August 2020:

- English Courts may set the terms for global FRAND licenses to portfolios of declared SEPs
- The non-discrimination element in the FRAND undertaking is “general” and not “hard-edged” and that there had been no breach of it (par. 112). Put another way, there is to be a single royalty price list available to all (par. 114)
- Huawei had sufficient notice prior to the commencement of proceedings, that it was clear that issuing the proceedings did not represent a refusal to license, and that Huawei knew that Unwired wanted to license it. The issue of the proceedings did not prevent the parties from negotiating (para 752). Unwired provided key terms of its offer to Huawei a few weeks after commencing proceedings (para 753), but Huawei never made an unqualified offer to accept whatever were FRAND terms (para 754)



STANDARD ESSENTIAL PATENTS LICENSING AND LITIGATION

PRACTICAL TIPS for LICENSING

- KEEP A GOOD TIMING DURING THE NEGOTIATIONS (if you are an implementer there is a risk that you could be regarded as an unwilling licensee)
- create / join a POOL of licensor or licensees



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BERGGREN'S TOP PROFESSIONALS

- More than 170 IP professionals
- 70 European Patent Attorneys, Patent Attorneys and Patent Agents
- 20 IP Lawyers, EU Trademark and Design Attorneys
- 20 IP Management and Commercialization Specialists
- More than 50 Paralegal and IP Specialists

BERGGREN BROKERAGE



We identify the utilization potential of your IP assets and offer new solutions for their monetization.

Our Brokerage services:

- Monetization analysis
- Selling IP
- Technology sales and licensing
- IP licensing



IP DUE DILIGENCE

The outcome is a comprehensive IP Due Diligence report that has a significant impact on the realization of the transaction, risk assessment, the terms of the transaction and the final transaction price.



IP portfolio analysis

IP risk analysis

Evaluating the company's IP strategy, processes, activities and competencies

Analysis of IP-related agreements and conclusions

Summary of the company's IP situation

As a Berggren partner, you will obtain both technical and legal expertise to assess your overall IP situation.

BERGGREN

PATENTS

We put our expertise to use to identify and protect your technologies and inventions to create IP assets that generate added value for your business.

Our services

- Invention Hunt®
- Novelty searches
- Patenting the invention
- International patenting
- Utility model registration
- Opposition management (own patent)
- Drafting an opposition (another party's patent)
- Patent monitoring



BERGGREN BRANDS & DESIGNS

Our experts help to identify and protect your brands, designs and domain names to create IP assets that generate added value for your business.

Our services:

- Trademark search
- Trademark protection
- Design protection
- Domain services and consulting
- Trademark portfolio management
- Trademark monitoring



BERGGREN

LEGAL

Our legal expertise is at your disposal when you need assistance regarding agreements, public procurement, industrial property rights, copyrights, data protection, advertising and marketing, as well as issues related to actions taken by competitors.



Our legal services:

- Industrial property rights and copyrights
- Dispute resolution and litigation
- Agreements
- IP Due Diligence
- Advertising and marketing law
- Public procurement
- Data protection





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Thank you!



Photo credit: Robert Alderson