

FROM THE
OVERSEAS NGO LAW
TO THE
EU-CHINA COMPREHENSIVE
AGREEMENT ON INVESTMENT

**ADDRESSING THE
CIVIL SOCIETY
BLIND SPOT
IN EUROPEAN
CHINA POLICY**

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EXECUTIVE SUMMARY

The surprising inclusion of a “non-profit organizations” clause in the annexes to the EU-China Comprehensive Agreement on Investment (CAI) caused a stir among European NGOs, foundations, and business chambers in early 2021. In response, the European Commission and national governments have sought to characterise any related criticism as baseless and are trying to portray the investment agreement as irrelevant to civil society organisations. The present study questions this official line of argument and calls for much greater attention to civil society in the EU’s trade and investment negotiations.

Although the CAI would not directly alter the legal situation for European non-profit organisations in China, its ratification in the current state would amount to a *de facto* acceptance by the EU of restrictive policies adopted by the Chinese government since 2016, while also pre-emptively acquiescing to potential additional restrictions. An analysis of the broader context of non-profits’ role in international investment arbitration further demonstrates that the CAI is another missed opportunity for the EU to protect transnational civil society cooperation and philanthropic funding in ways similar to commercial investments.

More fundamentally, the CAI negotiation process has exemplified the European side’s disregard for civil society concerns in its bilateral relations, which is linked to the problematic doctrine of ‘keeping business and politics separated’. Following a compartmentalised approach, the European Commission’s Directorate-General for Trade negotiated the investment agreement with a narrow focus on offensive European business interests and without sufficient consultation and input from other departments and independent experts. The “Civil Society Dialogues” on CAI convened by DG Trade served primarily as a communication tool and mostly attracted business representatives rather than genuine civil society actors.

The study shows how the resulting civil society blind spot in EU foreign policy undermines European values and interests while signalling to the Chinese side that all restrictions and discriminatory measures targeting non-profit organisations and civil society activists are acceptable as long as the (short-term) business interests of corporate players are taken into consideration.

Particularly when dealing with such an important and challenging negotiation partner as China, EU institutions would greatly benefit from seeking more substantive input from civil society actors due to their expertise and insider knowledge. At the same time, EU negotiations need to adequately account for the potential effects of trade and investment agreements on non-profit organisations due to their importance for the EU’s global presence and their specific vulnerability to government restrictions. This study concludes with detailed recommendations as to how different EU actors could contribute to improving the inclusion and protection of civil society actors, in the course of their China-related work and beyond.

LIST OF ACRONYMS

BIT	Bilateral Investment Treaty
CCP	Chinese Communist Party
CSO	Civil society organisation
CAI	EU-China Comprehensive Agreement on Investment
DG Trade	Directorate-General for Trade, European Commission
EEAS	European External Action Service
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German development agency)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	International Centre for the Settlement of Investment Disputes
MPS	Ministry of Public Security of the People's Republic of China
NGO	Non-governmental organisation
ONGO Law	Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China
TTIP	Transatlantic Trade and Investment Partnership
VDMA	Verband Deutscher Maschinen- und Anlagenbau e. V. (German Mechanical Engineering Industry Association)
WTO	World Trade Organisation

INTRODUCTION

Civil society cooperation and exchanges have been a crucial pillar of Europe-China relations since the 1980s. Yet, with the Chinese Communist Party (CCP) regime's growing distrust of civil society, working conditions for European NGOs have significantly deteriorated under Xi Jinping. Since 2017, the Overseas NGO Law subjects international NGOs, think tanks and business chambers to onerous registration and reporting requirements vis-à-vis public security authorities. Many long-standing partnerships with local Chinese NGOs have been disrupted and valuable programmes have been put on hold. The Covid-19 pandemic and growing antagonisms between the Chinese party-state and Western democracies have reinforced this trend.

The EU lacks a coherent strategy for defending civil society spaces in the context of its China policy.

Nonetheless, many European non-profit organisations still see value in their work in China and with Chinese partners. Cooperation remains essential on issues such as climate change mitigation, environmental conservation, transnational corporate accountability, or academic, cultural and youth exchanges, precisely in times of 'systemic conflict'. However, the EU lacks a coherent strategy for defending civil society spaces in the context of its China policy, which remains dominated by a problematic

doctrine of keeping business and politics separated. For civil society actors, this has meant that they are the first victims of Chinese government reprisals – as in the case of the Chinese countersanctions against European politicians, think tanks and NGOs in March 2021 – while (short-term) corporate interests are meant to remain largely protected from any political tensions thanks to the EU-China Comprehensive Agreement on Investment (CAI) signed in December 2020.

The analysis section of this study reviews China's restrictive civil society policies and European reactions to them to put the neglect for non-profit actors' concerns in CAI negotiations into a broader political perspective. The recommendations section focuses on concrete efforts that EU and national-level policymakers could take to better support civil society actors working in and with China, while also strengthening expertise on China's global societal outreach in the EU and in partner countries.

THE IMPORTANCE OF CIVIL SOCIETY IN EU-CHINA RELATIONS

Civil society organisations (CSOs), including philanthropic foundations, membership-based associations, internationally fundraising NGOs and other non-profit organisations such as Germany's publicly funded political foundations have played an important role in the development of Europe-China relations since the beginning of China's reform-and-opening-up policies in the 1980s. They have contributed directly to China's economic trajectory through development cooperation programmes and established non-governmental channels for societal exchange and learning between Chinese and European citizens.¹ US-American and European CSOs have also served as role models for the development of Chinese NGOs since the 1990s,² as well as for the incipient internationalisation of China's non-profit sector since the late 2000s.³

¹ Xie, Xiaoqing 谢晓庆 (2011): 国际非政府组织在华三十年: 历史、现状与应对. [International NGOs in China after 30 years: history, current situation and responses]. *东方法学 (Oriental Law)* (6), 118–126.

² Spires, Anthony J. (2012): Lessons from Abroad. Foreign Influences on China's Emerging Civil Society. *The China Journal* 68, 125–146.

³ Lang, Bertram (2019): Anpassung, Einhegung, Aneignung: Chinesische Strategien im Umgang mit internationalen Normen und Akteuren der Zivilgesellschaft [Adaptation, Domestication, Appropriation: Chinese Strategies in Dealing with International Civil Society Norms and Actors], *ASIEN* 152-153, 24-48.

Han, Junkui 韩俊魁 (2011): 全球公民社会语境下的 境外在华 NGO: 兼论中国本土 NGO 的国际化 [International NGOs in China in the Context of Global Civil Society: With a Discussion of the Internationalization of Local Chinese NGOs]. *中国非营利评论 (China Nonprofit Review)* (2).

From the mid-1990s until 2013, the whole idea of “civil society” was eagerly debated by Chinese scholars and activists who sought for possible translations into the Chinese social and political context.⁴ The Chinese state’s approach to the presence of international NGOs in China was long dominated by ‘regular ambiguity’.⁵ Many programme activities were tolerated in legal grey areas without formal endorsement from the central government or a clear regulatory framework.⁶ Their success often relied on informal support from local authorities who were seeking international expertise, funding, or recognition, or simply interested in international exchange activities.⁷

Civil society exchanges have thus greatly contributed to China’s opening to the world and have offered many opportunities for fruitful discussions and mutual learning between Chinese and European citizens. Moreover, in times where diplomatic relations sour due to political differences, ‘systemic rivalry’ or geopolitical tensions, civil society exchanges offer important alternative channels for engagement – unless they are themselves disrupted and cut off.

SHRINKING SPACES AND EUROPEAN SELF-SHRINKING SINCE THE ONGO LAW

Growing restrictions on cross-border activism and philanthropic funding are part of a wider global trend. Governments have amplified and fine-tuned their legal tools of harassing CSOs not only in autocratic but also in hybrid regimes and fragile democracies over the past 15 years.⁸ Back in 2012, the *Defending Civil Society Report* warned that

*Governments have tried to justify and legitimize such obstacles as necessary to enhance accountability and transparency of CSOs; to harmonize or coordinate CSO activities; to meet national security interests by countering terrorism or extremism; and/or in defense of national sovereignty against foreign influence in domestic affairs.*⁹

Governments’ use of foreign funding restrictions to undermine the work of independent civil society organisations is thus no China-specific phenomenon. It even represents a mounting threat within the EU, most notably in Hungary. As previous civil society reports and legal opinions have shown in detail, many of these restrictions constitute “violations of international treaties and conventions to which the states concerned are signatories”.¹⁰ This, in turn, also shows that standing up for NGOs’ freedom of association is a foreign policy challenge with implications far beyond the bilateral Europe-China relationship.

Standing up for NGOs’ freedom of association is a foreign policy challenge with implications far beyond the bilateral Europe-China relationship.

⁴ Chan, Kin-Man (2010): Civil Society and Social Capital in China. In: Helmut K. Anheier, Stefan Toepler (Eds.): *International Encyclopedia of Civil Society*. New York: Springer.

Yu, Keping (2011): Civil Society in China: Concepts, Classification and Institutional Environment. In: Zhenglai Deng (Ed.): *State and civil society. The Chinese perspective*. New Jersey: World Scientific (Series on developing China, 2), 63–96.

⁵ Shieh, Shawn (2018): The Chinese State and Overseas NGOs. From Regulatory Ambiguity to the Overseas NGO Law. *Nonprofit Policy Forum* 9 (1), 109–118.

⁶ Deng, Guosheng (2010): The Hidden Rules Governing China’s Unregistered NGOs: Management and Consequences. *The China Review* 10 (1), 183–206.

⁷ Interview with Asia director of a European foundation, 27/08/2021.

⁸ van der Borgh, Chris; Terwindt, Carolijn (2012): Shrinking operational space of NGOs – a framework of analysis. *Development in Practice* 22 (8), 1065–1081.

Mayer, Lloyd H. (2018): *Globalization Without a Safety Net: The Challenge of Protecting Cross-Border Funding of NGOs*, Minn. L. Rev. 1205, available at: https://scholarship.law.nd.edu/law_faculty_scholarship/1326 [31/07/2021].

⁹ International Center for Not-for-Profit Law (ICNL) & World Movement for Democracy Secretariat at the National Endowment for Democracy (NED) (2012): *Defending Civil Society Report*. Second Edition, June 2012, <https://www.icnl.org/post/report/defending-civil-society-report-toolkit-second-edition> [25/08/2021].

¹⁰ Ibid.

SECURITISATION OF CIVIL SOCIETY GOVERNANCE IN CHINA

Throughout the reform-and-opening era, China remained an authoritarian country where civil society activities always took place in politically confined spaces and with high personal risks especially for Chinese activists. However, in most accounts of European non-profit workers, the 1990s and 2000s retrospectively appear as an era of relative freedom, where candid dialogues and fruitful controversies were possible on a regular basis.¹¹ Chinese authorities' shift towards a more distrustful approach to civil society accelerated in the wake of the "Arab Spring". 2013, Xi Jinping's first year in office, marked the arrest of swathes of human rights lawyers and activists, while the notion of "civil society" (公民社会) was officially included into a list of allegedly harmful "Western values" supposedly abused by "anti-China forces".¹²

For international NGOs, the real turning point came with the announcement of a draft *Law on the Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China* in mid-2015.¹³ Although Chinese authorities have promoted it as "protecting [overseas NGOs'] legitimate rights and interests and facilitating communication and cooperation"¹⁴, the ONGO Law's substance epitomises a highly securitised and mistrustful approach towards civil society and imposes onerous bureaucratic obligations on covered entities.¹⁵ Its most salient feature is that overseas NGOs – as opposed to domestic associations – are subjected to supervision by the Ministry of Public Security (MPS) and public security bureaus, i.e., police authorities,¹⁶ whereas foreign foundations could previously get registered under the Ministry of Civil Affairs' *Regulations on Foundation Management* (基金会管理条例) of 2004.¹⁷ The ONGO Law's scope is very broad, covering all activities of "foundations, social groups, think tanks and other non-profit, nongovernmental social organizations legally established overseas".¹⁸ In addition to business chambers, all of which had to get registered, this also includes research institutes except from those in "natural sciences and engineering technology" which are exempted via a supplementary provision.¹⁹

At the same time, the development of Chinese domestic foundations has been promoted – albeit in a politically highly controlled way – with the adoption of China's first *Charity Law* in 2016, the extension of tax benefits and the political promotion of charitable giving.²⁰ The conjunction of the ONGO Law and the Charity

¹¹ Interview with Asia director of a European foundation, 27/08/2021; Interview with staff member of a European NGO, 16/07/2021; see also the 17 case study accounts of European non-profits gathered by a Ford Foundation monitoring project at Nottingham University: Fabian, Horst, Andreas Fulda, Nicola Macbean, Patrick Schroeder & Martin Thorley (2018): "Monitoring the implementation of China's Overseas NGO Law: The view from Europe", University of Nottingham/ Ford Foundation, available at: <https://www.nottingham.ac.uk/asiaresearch/projects/ford-foundation-project.aspx> [04/09/2021].

¹² Chinafile (2013): Document 9. A ChinaFile Translation, 8 November, available online: www.chinafile.com/document-9-chinafile-translation [10/08/2021].

¹³ 中华人民共和国境外非政府组织境内活动管理法 [Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China], adopted 28 April 2016, effective 01 January 2017 (ONGO Law).

All English translations of the legal text are from a bilingual Chinese-English version provided by The ChinaFile NGO Project, available at: <https://www.chinafile.com/ngo/laws-regulations/law-of-peoples-republic-of-china-administration-of-activities-of-overseas> [29/08/2021].

¹⁴ ONGO Law art. 1.

¹⁵ Lang, Bertram & Heike Holbig (2018): "Civil Society Work in China: Trade-Offs and Opportunities for European NGOs", *GIGA Focus Asia*, 6/2018, available at: <https://www.giga-hamburg.de/en/publication/civil-society-work-in-china-trade-offs-and-opportunities-for-european-ngos> [20/08/2021].

¹⁶ Pissler, Knut B. (2016): Foreign NGOs in China Revisited: Zwischen Zivilgesellschaft und Überwachungsstaat. *Zeitschrift für Chinesisches Recht* 23 (2), 117–124.

¹⁷ Lang, Bertram (2019): "Authoritarian Learning in China's Civil Society Regulations: Towards a Multi-Level Framework", *Journal of Current Chinese Affairs* 47(3), 147-86, here: pp.172-173.

¹⁸ ONGO Law, art. 2 (2).

¹⁹ ONGO Law, art. 53.

²⁰ Lang 2019, *Authoritarian Learning*, p. 168.

International Center for Not-for-Profit Law [ICNL] (2021): China Philanthropy Law Report. Updated May 2021, <https://mk0rofifiqa2w3u89nud.kinstacdn.com/wp-content/uploads/China-PLR-report-July-2021.pdf> [20/08/2021].

Law thus suggests an ‘import substitution’ approach to non-profit funding that has obvious parallels with Beijing’s plans for key industrial sectors under the ‘Made in China 2025’ strategy.²¹

Upon publication of the draft law, some Chinese third sector scholars criticised aspects of it, while EU representatives in Beijing used diplomatic channels to mitigate its most draconian aspects.²² This may have contributed to postponing the adoption of the law until April 2016 and to minor technical changes, such as the possibility to register more than one representative office and to accept donations at least passively from Chinese citizens – although public fundraising remains prohibited.²³ The law’s essence, however, the securitisation of international civil society activities remained unchanged.²⁴

EUROPEAN REACTIONS: PIECEMEAL, LOW-KEY, INEFFECTIVE

The ONGO Law sparked an outcry in the international NGO sector, however to little effect. The European political reaction remained low-key at best: The EEAS merely issued a “Local Statement” by the EU Delegation to China in May 2016, in which the EU “supports the promotion of law-based governance in China” and “welcomed the opportunity to submit comments”.²⁵ The statement adds that “[t]he Delegation of the

European Union to China [*nota bene*: not the EU and its member states!] is concerned that the new law is likely to hamper the development of civil society in China.”²⁶



“A big mistake of many organisations and governments was to not approach this in a coordinated way. That was really not very strategic. And that's often China's way of dealing with things, to bilateralise it, and it really weakens our position.”

Malin Oud, Raoul Wallenberg Institute, on Europe’s response to the Overseas NGO Law (Interview on 26/08/2021)

European CSOs’ situation was not helped by the fact that they themselves failed to establish a joint position and engage in effective advocacy because most organisations were trying to find their own ways of getting registered and continuing their activities to the best extent possible. For instance, several German political foundations secured high-level diplomatic support from the Federal Foreign Office to get their representative offices registered.²⁷

Other European non-profits have made different experiences in the registration process, ranging from relative continuity to total disruption of their activities.²⁸ Two

problems were salient especially for smaller NGOs or those working in politically sensitive areas between 2017 and 2019: first, the difficulty in finding a Chinese sponsor, i.e., a government agency from the official

²¹ The “Made in China 2025” strategy, first proposed in central policy plans in 2014, aims to decrease China’s reliance on imports and foreign technological know-how and sets out concrete domestic production quotas for a range of strategic sectors to be attained by 2025.

²² Interview with an EU official, 30/08/2021; Interview with Asia director of a European foundation, 27/08/2021.

²³ Lang & Holbig 2018, pp. 4-5.

²⁴ Sidel, Mark (2018): Managing the Foreign. The Drive to Securitize Foreign Nonprofit and Foundation Management in China. *Voluntas* 30 (4), 664–677; Shieh 2018, *The Chinese State*.

²⁵ European External Action Service (2016): Local Statements. Comments by the Delegation of the European Union to China following the adoption of China’s law on the management of foreign NGO activities within mainland China, Brussels, 4 May, available at: https://eeas.europa.eu/delegations/china/2387/comments-delegation-european-union-china-following-adoption-chinas-law-management-foreign-ngo_en [03/09/2021].

²⁶ Ibid.

²⁷ Gießen, Christoph & Kai Strittmatter (2018): Wie Peking deutsche Stiftungen drangsaliert, in: Sueddeutsche Zeitung, 9 July, available at: <https://www.sueddeutsche.de/politik/exklusiv-wie-china-deutsche-stiftungen-drangsaliert-1.4045372> [06/09/2021].

²⁸ See Fabian et al., *Monitoring the implementation*.

MPS whitelist,²⁹ that would agree to supervise and thus take on political responsibility for all activities of the NGO; and second, the withdrawal of previous Chinese NGO partners, many of whom felt strongly discouraged from accepting foreign funding.³⁰

THE END OF HONG KONG AS A HUB FOR CIVIL SOCIETY ENGAGEMENT

Another concerning issue from a European perspective is that the crackdown on civil society actors and academic freedom has been extended to Hong Kong with the adoption and rigid enforcement of the so-called “National Security Law” since June 2020 – notwithstanding the PRC’s commitments under international law to protect the city’s legal autonomy until 2047. Hong Kong used to be a haven for Chinese and international civil society groups willing to maintain as close a link to the Chinese mainland as possible while working on ‘sensitive’ topics such as labour rights, LGBTQ+ issues or religious freedom. At the same time, Hong Kong also used to be a hub of open engagement between Chinese and European CSOs as well as critical scholars.³¹ As of 2021, even officially EU-funded events in Hong Kong are being reconsidered due to concerns for the security of participants.³²

In sum, the situation for China-related civil society work has fundamentally shifted within a few years: On the one hand, human rights advocacy groups without a physical presence in China, which until recently struggled to attract public and political attention, are now given much more attention by European media, politicians and even business leaders as China’s oppressive policies in Xinjiang are being widely condemned. On the other, CSOs working in fields where a physical presence on the ground and direct exchanges with Chinese actors are absolutely essential have encountered ever-growing restrictions, risks and suspicion. At a time where the Chinese regime is readily portrayed in Western public discourses as the authoritarian ‘other’, European CSOs are also finding it harder to justify the difficult compromises required to continue their core activities.



“This lack of a political reaction, this political disinterest in civil society really has done no favour to the European position. It clearly shows the Chinese side that they can do what they want. And it has encouraged hardliners to exhaust the restrictive potential of the ONGO law.”

*Asia director of a European foundation
(Interview on 27/08/2021)*

CAI AND THE NEGLECT FOR CIVIL SOCIETY IN EUROPE’S CHINA POLICY

It is in this increasingly oppressive context for domestic and international non-governmental organisations in China that the EU concluded the agreement in principle for the Comprehensive Agreement on Investment (CAI) in December 2020,³³ after seven years of lingering negotiations. The agreement is widely considered an ‘early harvest’ deal pushed through by the German Council presidency despite reluctance from other

²⁹ Ministry of Public Security 中华人民共和国公安部 (2017): 业务主管单位名录 (2017) [Professional Supervisory Unit List (2017)], 境外非政府组织办事服务平台 [Overseas NGO Service Platform], available at: <https://ngo.mps.gov.cn/ngo/portal/toGuideml.do> [06/09/2021].

³⁰ Lang & Holbig 2018.

³¹ Lang, Bertram (2019) : “Strengthening the adaptive and collaborative capacity of internationally-operating civil society organisations (ICSOs) related to the rise of China”, Sector Guide, ed. by International Civil Society Centre (ICSC), Berlin, November 2019.

³² Interview with an EU official, 30/08/2021.

³³ EU – China Comprehensive Agreement on Investment (CAI). Agreement in principle, signed 30 December 2020. All quotes from CAI in this paper are from the preliminary version published by the European Commission on 22 January 2021, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2237> [20/08/ 2021].

member states and criticism from the European Parliament, many European China experts³⁴ and even business groups.³⁵

All were kept off guard by Annex II, in which the Chinese government reserves the right to maintain or adopt a set of restrictive measures on non-profit organisations.

The CAI's potential benefits and shortcomings in terms of labour standards or commitments to sustainable development have already been discussed elsewhere.³⁶ Yet, the later publication of the CAI annexes in March 2021 sent additional shockwaves through the European non-profit world, including NGOs, political and private foundations but also business chambers (see further below) working in and with China. All were kept off guard by Annex II, Entry 9 in the Chinese Schedule of Commitments, in which the Chinese government reserves the right to maintain or adopt a set of restrictive measures on non-profit organisations, including a potential obligation to appoint Chinese citizens to senior executive positions.³⁷

ANALYSIS OF CAI ANNEX II ENTRY 9 ON NON-PROFIT ORGANISATIONS

The necessary context for understanding the CAI's Annex II is that it

sets out, pursuant to Article 7 (Non Conforming Measures and Exceptions), the specific sectors, subsectors, or activities for which China may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations.

Following the “negative list approach” to investment liberalisation that has been heralded by the Commission as a major achievement,³⁸ activities included in Annex II would otherwise be covered by the protective clauses agreed between the two parties in the CAI's Section II on Investment Liberalisation. In the words of the Commission:

In Annex II, the Parties list the sectors for which they reserve the right to derogate from those same commitments, including in cases where no non-conforming measures currently exist (this results on the so called ‘policy space’).³⁹

This, in turn, means the Chinese government would only include sectors and activities where its own legal experts identified potential breaches or legislators wish to reserve space for future regulation that does not conform with CAI obligations. Annex II Entry 9 carries the heading “Non-Profit Organizations”.⁴⁰ In it, the Chinese side “reserves the right to adopt or maintain” a series of restrictive measures which “do not conform

³⁴ Godement, François et al. (2020): EU should not rush investment deal with China, *EU Observer*, 18 December, available at: <https://euobserver.com/opinion/150432> [04/09/2021].

³⁵ Interview with China expert based in Brussels, 24/08/2021; Interview with China expert based in France, 09/08/2021.

09/08/2021; Interview with representative of a German business association, 09/08/21.

³⁶ See Damian Wnukowski & Marek Wasiński (eds.) (2021): EU-CHINA COMPREHENSIVE AGREEMENT ON INVESTMENT: POLITICAL AND ECONOMIC IMPLICATIONS FOR THE EUROPEAN UNION. PISM & Polish Economic Institute, March 2021, notably pp. 25-27, available at: <https://reinhardbuetikofer.eu/2021/04/19/study-eu-china-comprehensive-agreement-on-investment-political-and-economic-implications-for-the-european-union/> [27/07/2021].

Lawrence, Jessica, Tara van Ho & Anil Y. Vastardis (2020) EU-China Comprehensive Agreement on Investment. A Scoping Study, edited by Heinrich Böll Foundation, December 2020, pp. 17-22, available at: https://www.boell.de/sites/default/files/2020-12/E-Paper-EU-China-Investment-Agreement-on-Investment.pdf?dimension1=division_ip [06/09/2021].

³⁷ CHINA- EU INVESTMENT AGREEMENT NEGOTIATIONS - SCHEDULES OF CHINA. Published by the European Commission, Directorate General for Trade, March 2021, available at: <https://trade.ec.europa.eu/doclib/html/159483.htm> [05/09/2021].

³⁸ European Commission, Directorate General for Trade (2021): “Commission publishes market access offers of the EU-China investment agreement”, 12 March, available at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2253> [06/09/2021].

³⁹ Ibid.

⁴⁰ It should be noted that the term “non-profit organizations” is very broad and can refer to a range of organizational forms within the Chinese legal system. As shown in Table 1 below, the language of Entry 9 is so closely related to the Overseas NGO Law that it obviously refers to “overseas NGOs” as defined in the law.

with obligations” under CAI Article II 4 (National Treatment) and Article II 6 (Senior Management and Board of Directors).⁴¹ Table 1 presents a systematic comparison of these restrictive measures with relevant provisions in the CAI and traces them back to similar clauses in the Overseas NGO Law.

Table 1: Comparing the Chinese Annex II with CAI and ONGO Law Provisions

Schedules of China, Annex II Entry 9	Relevant provision in CAI (agreement in principle)	Relevant provision in Overseas NGO Law (in potential contradiction with CAI)
“Unless approved by the Chinese government: [...]”	“neither Party shall adopt or maintain with regard to market access through constitution, acquisition or maintenance of an enterprise by an investor of a Party [...] measures that:	Art. 9 (3): Where an overseas NGO has not registered an established representative office, nor submitted documents for the record stating that it intends to carry out temporary activities, it shall not carry out or covertly engage in any activities, nor shall it entrust or finance, or covertly entrust or finance, any organization or individual to carry out activities in the mainland of China on its behalf.
[...] foreign investors and covered investments may not invest in non-profit organizations within the territory of China; [...]	(a) impose limitations on [...] the total value of transactions or asset [...] the total number of operations [...] the total number of natural persons that may be employed in a particular sector or subsector...” (CAI Section II Art. II 2)	<i>The ONGO Law uses a restrictive “positive list” approach whereby activities are only permitted in sectors that are explicitly mentioned in the law and respective government whitelists:</i> Art. 3: “Overseas NGOs may [...] engage in undertakings of benefit to the public in the areas of the economy, education, science, culture, health, sports and environmental protection, as well as in the areas of poverty and disaster relief.” Art. 34: “The Ministry of Public Security [shall] compile lists of the areas and projects of overseas NGOs, publish lists of organizations in charge of their operations and provide guidance to overseas NGOs in carrying out their activities.”
[...] non-profit organizations established outside of China may not set up representative offices or branches in China. [...]	“Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their enterprises, with respect to establishment and operation in its territory.” (CAI Art. II 4, “National Treatment”)	Art. 6: “The Ministry of Public Security [...] and public security organs of provincial-level people’s governments shall be the registration authorities for activities of overseas NGOs in the mainland of China.” Art. 9 (1): “An overseas NGO engaging in activities in the mainland of China shall, in accordance with the law, register an established representative office.” <i>Domestic non-profit organisations also need government approval but are managed by the Ministry of Civil Affairs, not by public security organs.</i>
To conduct activities temporarily in China, foreign non-profit organizations shall cooperate with domestic entities, [...]	“neither Party shall [...] restrict or require a specific type of legal entity or joint venture through which an enterprise may carry out an economic activity” (Art. II 2 (1)(b))	Art. 9 (2): “Where an overseas NGO has not registered an established representative office but needs to carry out temporary activities in the mainland of China, it shall submit documents for the record to this effect in accordance with the law.”
[...] and the term for such temporary activities shall not exceed one year.	<i>See Art. II 4 on “National Treatment”. The limitation to one year and the joint venture requirement may be seen as discriminatory since there is no corresponding restriction for domestic non-profit organisations</i>	Art. 17 (6): “the duration of temporary activities shall not exceed 1 (one) year. Where there is a need to extend this deadline, documentation and information shall be re-submitted for the record.
The senior executives of non-profit organizations which	“Neither Party may require that an enterprise of that Party that is a covered enterprise appoint to senior management	Art. 29: “Representative offices of overseas NGOs shall appoint a chief representative and between one and three other representatives based on their operational

⁴¹ For an earlier analysis of Annex II Entry 9 and its implications by the author, see Lang, Bertram (2021): Shielding Corporate Interests, Europe Leaves NGOs Working in China by the Wayside. ChinaFile. The China NGO Project. 30 March 2021, available online: <https://www.chinafile.com/ngo/analysis/shielding-corporate-interests-europe-leaves-ngos-working-china-wayside> [05/09/2021].

have been approved to be established within the territory of China shall be Chinese citizens.”	or the board of directors positions natural persons of any particular nationality” (Art II 6, “Senior Management and Boards of Directors”)	requirements. A person who meets any of the following criteria may not serve as a chief representative or representative: (1) Lacks legal capacity or has limited legal capacity; (2) Has a criminal record; (3) Has been chief representative or representative of a representative office that has had its registration revoked or its registration certificate suspended in accordance with the law for not more than five years; (4) Other circumstances stipulated by laws and administrative regulations.”
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Table 1 shows that all but the last stipulation in Annex II Entry 9 have a direct counterpart in the Overseas NGO Law. In terms of the Chinese bureaucratic process, this suggests that this entry was included because Chinese authorities, when checking the CAI text for potential conflicts with domestic legislation, considered the ONGO Law to be in contradiction with the CAI’s National Treatment principle for covered entities. Thus, the Chinese side did not consider the CAI irrelevant to the issue of NGO regulation. Instead, it is unwilling to grant the same “level playing field” to non-profit investors which it offers – at least in theory – to European for-profit entities.

Chinese authorities considered the ONGO Law to be in contradiction with the CAI’s National Treatment principle for covered entities.

So far, Entry 9 reiterates restrictions on the freedom of association already in force domestically, while seeking to get them transposed into international law. The last clause on senior executives, however, has no corresponding provision in the ONGO Law as of September 2021. The requirements for NGO “chief representatives” are set out in article 29 and do not refer to nationality. Article 29 (4), however, leaves ample room for interpretation and additional obligations (cf. Table 1). It means a Chinese nationality requirement for chief representatives could be introduced by means of administrative regulations, without even directly amending the ONGO law.

ASSESSING THE EUROPEAN COMMISSION’S OFFICIAL REACTION

In response to German media reports and the ensuing outcry from NGOs,⁴² the European Commission in May 2021 bluntly dismissed any related concerns by stating that non-profits should not be concerned about an investment agreement meant to protect only for-profit investors. Given the conspicuous absence of a public clarification from the Chinese side, the following analysis dissects the Commission’s arguments with reference to the CAI main text as well as the broader context of Chinese NGO policies and international investment treaty practice.

The Commission’s official standpoint, which was also communicated to journalists and non-profit representatives in subsequent outreach meetings, is that the CAI naturally concerns only “economic activities” and therefore has and should not have any implications for civil society organisations:

[CAI] is an investment agreement and, as all trade and investment agreements of the EU, can only apply to commercial companies and economic actors.⁴³

⁴² Böhmer, Daniel-Dylan (2021): “Investitionsabkommen: Künftig nur noch Chinesen an der Spitze deutscher Parteistiftungen?”, Welt am Sonntag, 09 May, <https://www.welt.de/politik/ausland/article230984961/Investitionsabkommen-Kuenftig-nur-noch-Chinesen-an-der-Spitze-deutscher-Parteistiftungen.html> [03/09/2021].

Kirchner, Ruth (2021): “Deutsche Stiftungen unter Pekings Leitung?“, Tagesschau, 11 May, <https://www.tagesschau.de/ausland/asien/china-deutsche-stiftungen-101.html> [03/09/2021].

⁴³ Vertretung der Europäischen Kommission in Deutschland (2021b): Politische Stiftungen, NGOs und Wirtschaftsverbände bleiben von EU-China-Investitionsabkommen unberührt, Second Version, dated 19 May, available at: https://ec.europa.eu/germany/news/20210519-politische-stiftungen-wirtschaftsverbaende-cai_de [05/09/2021]. Translation from the German original by the author.

To start with, this claim deliberately conflates “commercial” with “economic” activities, whereas the CAI itself distinguishes between the two notions. Regarding the CAI’s scope of application, Section II Article 1 stipulates that the liberalisation of investment “applies to measures or treatment adopted or maintained by a Party affecting the establishment of an enterprise or the operation of a covered enterprise by an investor of the other Party in its territory”. Subsequently, Article 3bis distinguishes between ‘covered entities’ as such⁴⁴ – which unambiguously include non-profit organisations – and separate provisions for “covered entities when engaging in commercial activities”⁴⁵ Thus, non-commercial activities by non-profit organisations should indeed be covered except where the agreement explicitly refers to “commercial activities”. Section II also does not mention the term “economic activities” used in the Commission’s public statements at all. Instead, it defines rules for “market access through constitution, acquisition or maintenance of an enterprise by an investor of a Party”.⁴⁶

Notably, Section I of the CAI adopts a broad definition of the terms “enterprise” and “investor”:

“investor of a Party’ means a Party, a natural person or an enterprise of a Party, other than a branch or a representative office, that seeks to make, is making, or has made an investment in the territory of the other Party;” [...]

“enterprise’ means any entity constituted or otherwise organised under the applicable laws, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation”⁴⁷

Thus, “not for profit” entities including “association[s]” or “similar organisation[s]” are explicitly included within the scope of the agreement. This follows a trend in bilateral investment treaties (BITs) since the 2000s, whereby the scope of agreements has gradually been expanded to cover not only “commercial” actors. The tricky question is what kind of activities of a non-profit organisation might be covered by BIT protection and whether such clauses would realistically be enforceable.

The European Commission’s response therefore raises two crucial issues:

1. Under what conditions could non-profit organisations rely on bilateral investment agreements to fight against discriminatory behaviour from host states (*the legal issue*)?
2. Does it conform with the EU’s values, interests and international commitments to exclude non-profit organisations from protections which it obtains for corporate actors (*the normative issue*)?

A) THE LEGAL ISSUE: IN HOW FAR ARE NON-PROFIT ORGANISATIONS COVERED BY BILATERAL INVESTMENT TREATIES?

The European Commission’s claim that non-profit organisations need not care about investment treaties such as CAI because they are not covered by them is, at best, a gross over-simplification of a complex question that has been discussed controversially by legal scholars and arbitration tribunals for more than two decades.

The Commission’s claim that non-profit organisations are not covered by investment treaties is, at best, a gross over-simplification.

Indeed, compared to multinational corporations, NGOs enjoy very limited enforceable protection in international law, except from human rights protections in some regional conventions. Thus, the possibility for NGOs to rely on the rapidly expanding network of BITs was first discussed by legal scholars in the mid-1990s.⁴⁸ Gallus and Petersen

CAI “ist ein Investitionsabkommen und kann wie alle Handels- und Investitionsabkommen der EU nur für kommerzielle Unternehmen und Wirtschaftsbeteiligte gelten.”

⁴⁴ CAI art. II 3bis (1).

⁴⁵ CAI art. II 3bis (3).

⁴⁶ CAI art. II 2.

⁴⁷ CAI art. I 2; emphasis added by the author.

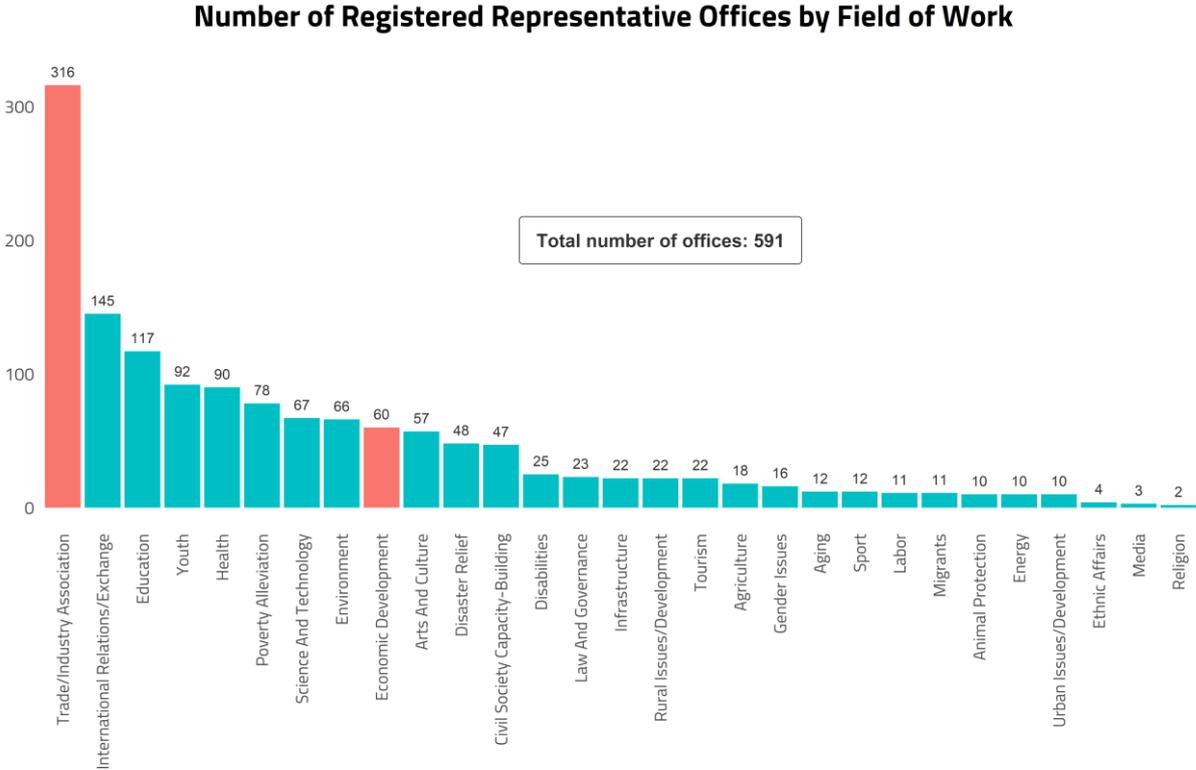
⁴⁸ Timothy Evered, 'Foreign Investment Issues for International Non-Governmental Organizations: International Health Projects in China and the Former Soviet Union' in *Buffalo Journal of International Law* 153 (1996) 3.

noted that “NGOs may be exposed to many of the same types of threats as commercial actors”, such as expropriation or freezing of funds, since they

*[...] are often important economic actors in their host states. They may rent offices, build facilities (for example, clinics, schools, community centres, food relief centres), purchase or import vehicles and other supplies and enter into contracts with local actors. While not impelled by a profit motive, NGO activities, at least at the operational level, may have a number of meaningful economic dimensions.*⁴⁹

Like commercial investors, NGOs may also rely on promises, e.g., regarding tax exemptions or co-funding agreements, made by host states before investing their scarce resources in a particular country. Where the scope of BITs is not explicitly limited to commercial actors (which is not the case with CAI), non-profit organisations could enjoy protection of their investments at least insofar as they conduct “economic activities”. Indeed, according to official registration data as of August 2021, 316 of the 591 Representative Offices were registered in the area “Trade/Industrial Association” (53%), another 60 in “Economic Development” (10%) and 22 in “Infrastructure” (3.7%) (cf. Figure 1).

Figure 1: Many NGO Offices Engage in Economic Activities.



Source: Ministry of Public Security data, curated by The ChinaFile NGO Project, as of 5 October 2021
 Note: One office can have several fields of work.

Business chambers registered as NGOs in China could be concerned because their activities include representation of business interests and lobbying. And even if grant-making activities are excluded from the realm of “economic activities” (which is controversial), philanthropic foundations endowed with private capital also have a legal obligation in most member states to engage in “economic activities” in the narrowest sense, namely by investing their endowment to ensure their financial sustainability. Indeed, the integration of ethical considerations, social impact and sustainability assessments into foundations’ investment policies,

⁴⁹ Gallus, Nick & Luke E. Peterson (2006): International Investment Treaty Protection of NGOs, in: *Arbitration International*, 22 (4), pp. 527–548, <https://doi.org/10.1093/arbitration/22.4.527>, here pp.529-30.

also referred to as “impact investing”⁵⁰ or “mission investing”,⁵¹ is a crucial component of philanthropy’s role in society, since the amounts involved often exceed the size of foundations’ philanthropic grants.⁵² Such investments by non-profit organisations, which seeks to generate social and/or environmental benefits while delivering a financial return, can for instance play an important role in global climate crisis mitigation and adaptation efforts.⁵³ While China may not be a priority country due to the political risks involved, it must be in Europe’s interest to ensure that such investments in the public interest enjoy similar protection in global markets as those undertaken by for-profit corporations.

In international comparison, the United States has been leading the way by explicitly including non-profit entities into the scope of its BITs. Citing the example of the US-Singapore Free Trade Agreement, Correa already observed in 2004 that “some investment agreements have explicitly expanded the concept of ‘investor’ to include not only nationals and enterprises of the Party, but non-profit organisations, such as research institutes or NGOs”.⁵⁴

Resorting to international arbitration to claim compensation from host states remains extremely difficult for non-profit organisations.

Nonetheless, resorting to international arbitration to claim compensation from host states remains extremely difficult for transnationally operating non-profit organisations despite convincing arguments for arbitration tribunals’ personal and subject matter jurisdiction where “non-profit” entities are explicitly mentioned in BIT texts.⁵⁵ This is despite the tremendous growth in arbitration rulings – often to the benefit of large multinational corporations and to the detriment of developing countries – over the past two decades. The main reason lies within the highly problematic architecture of the international investor-state dispute settlement system under the Convention of the International Centre for the Settlement of Investment Disputes (ICSID). Among their many flaws,⁵⁶ ICSID proceedings are extremely costly and uncertain affairs and thus require high upfront investments that only large multinational companies can afford. Additionally, some ICSID tribunals have limited their own subject matter jurisdiction to commercial investments, while others have decided to the contrary.⁵⁷ In any case, after the failure of TTIP negotiations the EU has itself recognized the need to fundamentally reform the international arbitration system and should therefore consider making the system more open to less well-endowed and non-profit claimants.

B) THE NORMATIVE ISSUE: WILL THE EU STAND UP FOR THE PRINCIPLE OF FREEDOM OF ASSOCIATION ENSHRINED IN INTERNATIONAL LAW?

Whereas the possibility for non-profit organisations to legally enforce their rights under an investment treaty may be remote in practice, the normative obligation for the EU to stand up for non-profit organisations’ cross-border activities is all too clear, both under international law and based on the EU’s own foreign policy commitments.

⁵⁰ Brest, Paul (2016): Investing for Impact with Program-Related Investments. A report on strategic investing at the Bill & Melinda Gates Foundation, in: Stanford Social Innovation Review, Summer 2016, available at: https://ssir.org/pdf/Summer_2016_Investing_for_Impact_with_Program_Related_Investments.pdf.

⁵¹ John Goldstein & Margaret Laws (2011) Foundations as Investors, in: Stanford Social Innovation Review, Fall 2011, available online: https://ssir.org/images/articles/Fall_2011_HCSupplement_Foundations.pdf.

⁵² The debate on “impact investing” is far more advanced in the United States but these principles are also increasingly adopted in the European non-profit world.

⁵³ Dubb, Steve (2020): Philanthropy beneath the Hood: Why Investment Practice Matters Nonprofit Quarterly, 07/10/2020, <https://nonprofitquarterly.org/philanthropy-beneath-the-hood-why-investment-practice-matters/>.

⁵⁴ Correa, Carlos (2004): “Bilateral investment agreements: Agents of new global standards for the protection of intellectual property rights?”, Grain, 3 August, https://grain.org/en/article/125-bilateral-investment-agreements-agents-of-new-global-standards-for-the-protection-of-intellectual-property-rights#_ftnref79 [20/08/2021].

⁵⁵ Gallus, Nick (2012): Protection of Non-Governmental Organizations in Egypt under the Egypt-U.S. Bilateral Investment Treaty, in: International Journal of Not-for-Profit Law, Vol. 14, Issue 3 (September 2012), pp. 62-92, here: pp. 28-29.

⁵⁶ See for instance Ante Wessels (2014): Investor-to-state dispute settlement is a rigged system, FFII, 28 March, <https://ffii.org/investor-to-state-dispute-settlement-is-a-rigged-system/>.

⁵⁷ Gallus 2012, p. 9.

The principle of freedom of association is notably enshrined in Article 22 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁸ As further elaborated by the UN Human Rights Committee on various occasions, restrictions on NGOs' establishment and access to funding are "only permissible if they are narrowly tailored for a legitimate interest".⁵⁹ This includes restrictions on access to foreign funding which must be sufficiently narrow and, if justified on "national security" grounds, must be proven to respond to specific threats.⁶⁰ Unreasonable limitations on access to foreign funding violate the right to freedom of association.⁶¹

With the adoption of resolution 15/21 on "Rights to Freedom of Peaceful Assembly and of Association",⁶² the United Nations Human Rights Council established the first mandate for a UN Special Rapporteur on the issue in 2010. In subsequent reports, the Special Rapporteur helped establish several general principles of international law which are directly relevant here. They notably call upon States

- *To ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments*
- *To recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights"⁶³*

Notably, unlike the ICCPR, China has ratified the ICESCR.⁶⁴ The UN report also asserts that "[i]t is crucial that civil society not bear any more restrictions and obligations than private corporate bodies"⁶⁵ – an important principle to be highlighted in the context of investment treaty protections.

In addition to these principles of international law, the EU and its member states have specifically pledged to protect the freedom of association principle worldwide on numerous occasions. For instance, the EU Action Plan on Human Rights and Democracy 2020-2024 committed the EU to

*Prevent and take action against violations of the freedom of peaceful assembly and association, including where civil society organisations as well as workers and employers are affected.*⁶⁶

What better reality test for such a commitment than instances where the operations of European for-profit or non-profit entities overseas, their workers and employers are affected? Without any prejudice to other countries' sovereign right to regulate their non-profit sectors, the EU has a vital interest in ensuring that European non-profit organisations can exercise their legitimate activities independently and free from bureaucratic harassment and political intimidation on a global scale.

The EU and its member states have specifically pledged to protect the freedom of association principle worldwide on numerous occasions.

⁵⁸ International Covenant on Civil and Political Rights (ICCPR), art. 22, 23 March 1976, 999 U.N.T.S. 171.
⁵⁹ American Bar Association (2015): International And Comparative Law Analysis Of The Right To And Restrictions On Foreign Funding Of Non-Governmental Organizations, ABA Center For Human Rights, Washington, DC, p. 40, available online: <https://www.icnl.org/post/report/international-and-comparative-law-analysis-of-the-right-to-and-restrictions-on-foreign-funding-of-non-governmental-organizations> [31/08/2021].
⁶⁰ Ibid., p. 6-7.
⁶¹ The American Bar Association elaborates that "Most NGOs, and especially human rights organizations, function on a "not-for-profit" scheme and therefore depend heavily on external sources of funding to carry out their work. Therefore, barriers and restrictions to funding sources directly undermine the ability of NGOs to function and thus the right of their members to freedom of association and the right to freedom of expression." (ibid., p. 7).
⁶² UN HRC Resolution A/HRC/RES/15/21, October 2010.
⁶³ UN A/HRC/23/39, June 2013, V(82)(b) & V(82)(c).
⁶⁴ China signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1997 and the ICCPR in 1998 in the course of ongoing WTO accession negotiations, but only ratified the former in 2001.
⁶⁵ Ibid., V(79).
⁶⁶ EU Action Plan on Human Rights and Democracy 2020-2024, Brussels, 18/11/2020, 12848/20, 1.3(f), available at: <https://www.consilium.europa.eu/media/46838/st12848-en20.pdf> [09/09/2021].

C) OTHER PROBLEMS WITH THE COMMISSION'S OFFICIAL POSITION

An earlier version of the Commission's statement, published on 14 May, also asserted that "China has made such reservations to regulate these investments in all its previous trade agreements, including the WTO."⁶⁷ This sentence has been removed from the updated version of the same statement five days later, for good reason: It is clearly misleading since CAI uses a "negative list" approach whereas China's WTO accession protocol used a "positive list" approach under which excluded sectors did not have to be separately mentioned.⁶⁸ Indeed, this means that while under the WTO the issue was left completely open, CAI would imply a locking-in under international law of the Chinese NGO legislation.

The Commission has also argued that the Chinese schedule of commitments is a "unilateral" document that does not prejudice the EU's position on the ONGO Law:

*The frequently cited Annex II (Entry 9) is a unilateral Chinese offer, which is not binding (sic!) for the EU. This reservation from the Chinese side in no way prejudices the EU's views on China's policy towards foreign non-governmental organisations.*⁶⁹

This is an especially spurious argument since the schedules of commitments are of course full part to any investment agreement. In fact, the annexes are the place where the actual investment liberalisation is defined. They were thus key to the negotiations and are binding on the parties like the main body of the text of the agreement once ratified. Moreover, due to the CAI's negative list approach, the annex is not a "unilateral Chinese offer" but serves to spell out Chinese reservations, which must logically be agreed upon by all contracting Parties.

Otherwise, either side could easily undermine the core purpose of the agreement by unilaterally excluding key industry sectors. Suffice it to imagine the European Commission's reaction had Entry 9 stated that National Treatment and Senior Executive Clause do not apply to the automotive or chemical industry... It follows that the EU negotiating team must have seen Annex II Entry 9 without voicing any objections.

For lack of a better explanation from the European Commission, it

must be assumed that they simply didn't care about the issue of non-profit organisations before it became a public bone of contention in Germany. One interviewee close to the negotiations reasoned that DG Trade only had a small team for such a huge deal and was very apparently focussed on specific, narrow offensive



In theory the EU only confirms China's right to regulate in those sectors [covered by Annex II]. But now after the fact the Commission is saying all of this is not a problem...but the real issue is: For what kind of behaviour can I get blessing in international agreements? That is why the CAI annex is such a devastating signal."

*Representative of a German business association
(Interview on 09/08/2021)*

⁶⁷ „China hat sich in all seinen früheren Handelsabkommen, einschließlich der WTO, die Möglichkeit vorbehalten, solche Investitionen zu regulieren.“

Vertretung der Europäischen Kommission in Deutschland (2021a): Politische Stiftungen, NGOs und Wirtschaftsverbände bleiben von EU-China-Investitionsabkommen unberührt, First Version, dated 14 May, available at: https://ec.europa.eu/germany/news/20210514-eu-china-investitionsabkommen-ngos_de [06/09/2021].

⁶⁸ US-China Business Council (2016): China's Implementation of its World Trade Organization Commitments, available at: https://www.uschina.org/sites/default/files/uscbc_comments_on_chinas_wto_compliance_-_2019.pdf [04/09/2021].

⁶⁹ Vertretung der Europäischen Kommission in Deutschland (2021b).

business interests and therefore simply overlooked the NGO issue.⁷⁰ However, had DG Trade better coordinated its approach with the European External Action Service and EU Delegations, they could not have overlooked so many important issues on which they did not have own expertise. This only underscores the problem of the European Commission's siloed approach to trade negotiations, which almost exclusively focus on offensive business interests.

In any case, ratification of the CAI in its current form would amount to a *de facto* acceptance by the European side of the stipulations listed in the Overseas NGO Law and repeated in Annex II Entry 9. Their explicit inclusion in the annexes shows the Chinese side is fully aware that these various forms of discrimination of foreign organisations run counter to the spirit of the CAI, which is meant to deliver an "ambitious opening and level playing field for European investments"⁷¹ in China, notably by abolishing obvious forms of discrimination against organisations that are based in the other Party's territory.

To be clear, the CAI would not – as suggested in some German media reports – directly lead to European NGOs being forced to appoint Chinese chief representatives. It does, however, give China free reign to tighten the grip potentially further on European non-profits, including business chambers, in the future. CAI Article II 6 (Senior Management and Board of Directors) is a key protective clause for European corporate actors investing in China who do not want the Chinese party-state to interfere with their choice of senior executives. Then why should European business chambers, trade associations and foundations not be concerned about the possibility of such interference,⁷² especially when the EU has pre-emptively acquiesced to it through the CAI?

D) THE GERMAN GOVERNMENT POSITION ADDS FURTHER CONFUSION.

In response to a parliamentary inquiry ("Kleine Anfrage") by a German Member of Parliament in May 2021, the German government basically reiterated and quoted the Commission's position:

*The CAI regulates economic activities and aims at improving the legal position of EU investors in China through the establishment of obligations under international law. "Non-profit organisations" would therefore only fall within the scope of the CAI insofar as they pursue economic activities.*⁷³

The response concludes with a contradictory statement that is problematic in several regards:

*The political activity of German foundations on Chinese territory is subject to regulation by China as a sovereign country. [...] The occupation of executive posts must continue to be decided exclusively by the concerned foundations themselves in the future.*⁷⁴

Thus, the German government first subscribes to a hands-off approach by referring to China's "sovereignty" – an argument that is rarely heard when it comes to host countries restrictions of *for-profit* investments in non-EU countries. The next sentence, by contrast, does formulate a political position which goes beyond the

⁷⁰ Interview with China expert based in France, 09/08/2021.

⁷¹ European Commission, Directorate General for Trade (2021): "EU and China reach agreement in principle on investment". Brussels, 30 December 2021, available online: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2233> [06/09/2021].

⁷² A prominent example are the publicly voiced concerns by VDMA, the powerful industry association of German mechanical engineers, in the German Handelsblatt: Koch, Moritz & Klaus Stratmann (2021): "Angst vor chinesischen Chefs – Deutsche Wirtschaft rückt vom Investitionsdeal mit China ab", Handelsblatt, 19 May 2021, <https://www.handelsblatt.com/politik/international/handelsbeziehungen-angst-vor-chinesischen-chefs-deutsche-wirtschaft-rueckt-vom-investitionsdeal-mit-china-ab/27204564.html?ticket=ST-6991485-t0HFc2sgQhziQFgOmxB5-ap3> [15/09/2021].

⁷³ „Das CAI regelt wirtschaftliche Tätigkeiten und zielt durch die Begründung völkerrechtlicher Verpflichtungen auf die Verbesserung der rechtlichen Stellung von EU-Investoren in China ab. ‚Non-Profit-Organisationen‘ würden dem Anwendungsbereich des CAI daher nur unterfallen, sofern sie einer wirtschaftlichen Tätigkeit nachgehen.“

Antwort des Staatssekretärs Miguel Berger vom 19. Mai 2021 auf Anfrage des Abgeordneten Frank Müller-Rosentritt (FDP), in: Deutscher Bundestag (2021): „Schriftliche Fragen mit den in der Woche vom 17. Mai 2021 eingegangenen Antworten der Bundesregierung“, Drucksache 19/29975, 21 May 2021, p. 24.

⁷⁴ „Die politische Tätigkeit von deutschen Stiftungen auf chinesischem Territorium unterliegt der Regulierung durch China als souveränem Staat. [...] Die Besetzung von Leitungsposten muss auch in Zukunft ausschließlich Entscheidung der betroffenen Stiftungen selbst bleiben.“ (Ibid.).

European Commission's vague responses. It can be objected, however, that today already, the "occupation of executive posts" in China is by no means "decided exclusively by the concerned foundations" since it requires approval from the Chinese public security authorities and even some formally approved representatives are effectively denied entry into China by means of obscure and prolonged visa procedures.

At the same time, the government's response problematically implies that foundations only engage in "political activity". Foundations themselves explicitly deny this as they see one of their main roles in international affairs precisely as creating spaces for open dialogue outside the sphere of politics.⁷⁵ Speaking of "political activities" in the context of foundation work in China is also ill-advised because the ONGO Law explicitly stipulates that "Overseas NGOs shall not engage in or finance profit-making or *political activities* in the mainland of China".⁷⁶ Like the Commission's statements, this governmental response by a State Secretary of the Federal Foreign Office suggests a lack of in-depth knowledge and interest in the real-life concerns of NGOs and business chambers.

BEYOND THE ANNEXES: THE FLAWED LOGIC OF 'KEEPING BUSINESS AND POLITICS SEPARATED'

These official reactions point to more fundamental issues in Europe's China policy: As the situation for European civil society actors striving for engagement with Chinese actors has become more and more cumbersome during Xi's reign, top decisionmakers in Europe have neglected or silently accepted the shrinking of spaces for civil society dialogues in the interest of 'keeping business and politics separated'. This hands-off approach is in open contradiction to the EU's overall commitment to strengthen the role of civil society in international affairs. It also weakens Europe's normative power which relies on a plurality of actors

and voices in its foreign policy. As China's global impact and the need for more substantive expertise in this regard are increasingly acknowledged across Europe, it is imperative to think about how civil society expertise can be fostered and better integrated into policy-making processes.

Top decisionmakers in Europe have neglected or silently accepted the shrinking of spaces for civil society dialogues in the interest of 'keeping business and politics separated'.

The flawed logic of keeping business and politics separated has also contributed to a problematic habit of bureaucratic sectionalism whereby different parts of the EU bureaucracy have advanced their own goals without coordination with – or even consultation of – other relevant departments. While genuine China country expertise, particularly concerning civil society and human rights issues, is located in the EU Delegation in Beijing and the EEAS, both were also taken off guard by the fast-tracked conclusion of the CAI in late December 2020.⁷⁷

Background talks conducted for this study even suggested a lack of understanding in DG Trade that business chambers are also covered by China's non-profit regulation and that relevant restrictions put at risk European businesses' ability to coordinate among each other or engage with local stakeholders.

⁷⁵ Interview with programme officer of a European non-profit organisation, 03/09/2021; Interview with China representative of a European foundation, 06/08/2021.

⁷⁶ ONGO Law art. 5 (2); emphasis added.

⁷⁷ Interview with an EU official, August 2021.

DISREGARD FOR CIVIL SOCIETY IN THE CAI NEGOTIATION PROCESS

DG Trade has indeed organised annual “Civil Society Dialogues” on CAI since 2016, mostly to inform interested stakeholders about the progress of negotiations and the social impact assessment.⁷⁸ However,



“Who are those actors that are integrated in the negotiation processes, in civil society dialogues? As a small NGO with limited resources, we have the China expertise but we do not have the means to proactively follow up on everything that is happening in Brussels.”

*Staff member of a European NGO
(Interview on 16/07/2021)*

two factors have made these meetings almost meaningless: First, the information provided at the meetings has been so shallow that constructive criticism was almost impossible. This may also be due to the fact that as late as November 2020, the EU’s negotiating team did not believe in a conclusion of the deal, which was later rushed through due to pressure from Berlin in the last days of the German Council presidency. The potential inclusion of an entry about Non-Profit Organisations in the CAI annexes was never mentioned.⁷⁹ To the knowledge of the author, the issue was not even flagged to members of the European Parliament’s INTA committee.

Second, the so-called “civil society” participants in the meetings were overwhelmingly European business associations and lobby groups: Based on the lists of participants available for eight CAI-related civil society dialogues in DG Trade’s online archive,⁸⁰ the author of this study calculated that 145 of the 211 organisations ever present at those meetings are business chambers and

industry lobby groups, whereas only 50 organisations were NGOs, philanthropic foundations or trade unions. The “civil society organisations” who sent the highest number of representatives to the eight meetings according to DG Trade’s online archive are the European Services Forum (a self-declared “network of representatives from the European services sector committed to actively promoting the liberalisation of international trade and investment in services”, with 25 participants), the European Economic and Social Committee (24 participants), and the Austrian Economic Chamber (14) (cf. Figure 2).

The few non-business groups represented at those meetings, such as Friedrich Ebert Stiftung, Bertelsmann Foundation or GIZ, are large organisations with sufficient staff and funding. Smaller NGOs specialised in China or Asia-related work, by contrast, do not have the resources to proactively keep track of all potentially relevant outreach activities in Brussels. They would need to be actively informed about such opportunities and be listened to, rather than just hear general talking points about the state of negotiations.

Smaller NGOs specialised in China or Asia-related work do not have the resources to proactively keep track of all potentially relevant outreach activities in Brussels.

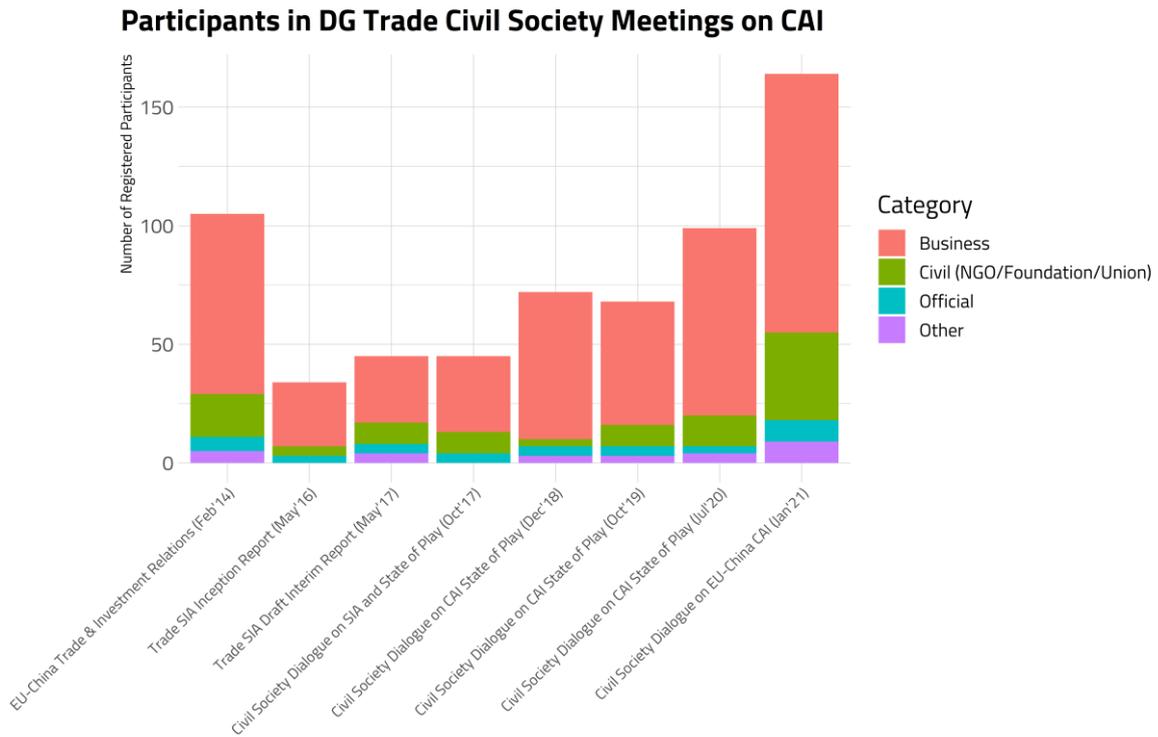
Moreover, contrary to the practice introduced by DG TRADE since the politically sensitive TTIP negotiations, no EU textual proposal was made public during the negotiations. This very low level of transparency has certainly added to the lack of genuine civil society mobilisation.

⁷⁸ An overview of past meetings and registered participants is made available by the European Commission at <https://trade.ec.europa.eu/dialogue/>.

⁷⁹ Interview with China expert based in France, 09/08/21; Interview with representative of a German business association, 09/08/21.

⁸⁰ See <https://trade.ec.europa.eu/dialogue/> [15/10/21].

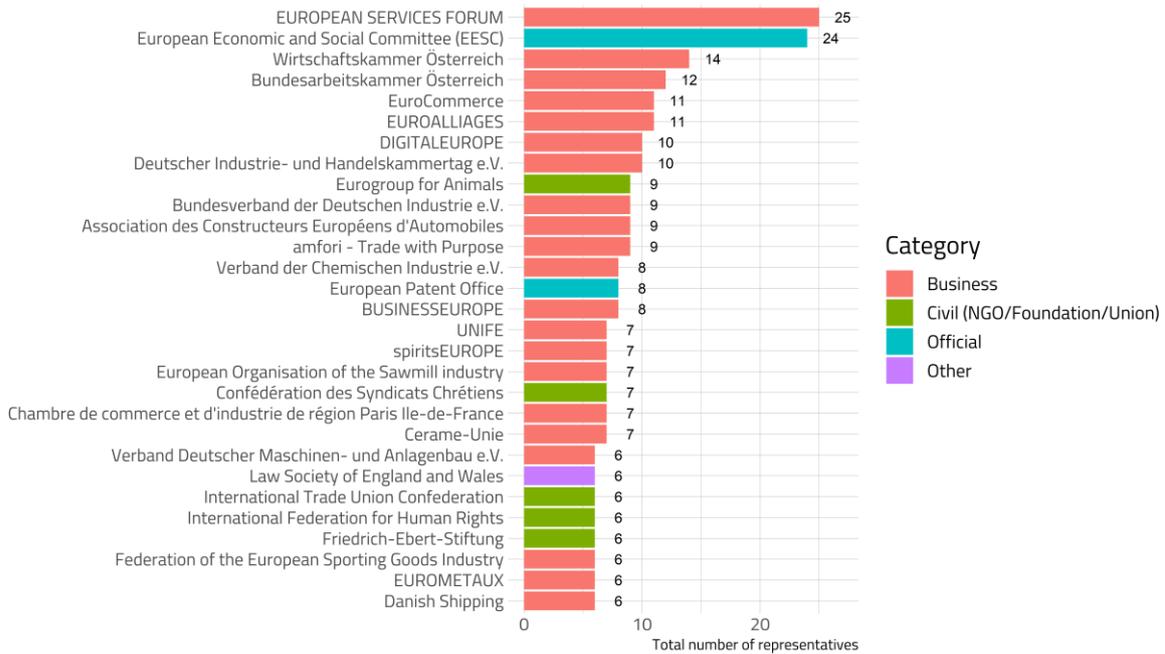
Figure 2: Business Groups Dominate DG Trade's "Civil Society" Dialogues on CAI.



Source: DG Trade's archive of civil society dialogue meetings, compiled and classified by the author, September 2021

Number of Total Representatives Sent to CAI Civil Society Dialogues

Organisations with >5 representatives in 8 meetings between February 2014 and January 2021



Source: DG Trade's archive of civil society dialogue meetings, compiled and classified by the author, September 2021

A similar lack of interest for civil society issues and global public goods more broadly also characterised the Social Impact Assessment conducted by the Dutch consultancy Ecorys “in support of an Investment Agreement” between the EU and China until 2017.⁸¹ This limited inclusiveness to real civil society actors in the negotiation process of international agreements has implications far beyond the direct organisational concerns of CSOs and the conditions for cross-border non-profit investments. CSOs with relevant country expertise and well-established contacts to local stakeholders can also provide crucial input regarding possible externalities of trade and investment agreements in partner countries, which are often neglected or denied by governmental negotiating partners.⁸²

Eventually, the message conveyed by CAI is that the backing of the powerful European trade bureaucracy is only available to organisations investing money in China for their own financial gain.

Investments that are geared toward a public interest and not-for-profit will continue to face miles of red tape deployed by a distrustful Chinese security apparatus, and you’ll invest without any expectation of support from your own government.⁸³



“As part of the team that did the CAI social impact assessment in the beginning of negotiations, I have to say it was not resourced properly, and the methods were inadequate for getting stakeholder input on the CAI. So the whole way the social impact assessment was done was very unsatisfactory and insufficient.”

*Malin Oud, Raoul Wallenberg Institute
(Interview on 26/08/2021)*

ADDITIONAL CHALLENGES TO EUROPEAN CSO ACTIVITIES IN AND WITH CHINA

Looking beyond CAI, the compartmentalisation of China policy in Europe creates additional problems for CSOs, especially for those actors who are trying to pursue engagement with Chinese actors despite the increasingly adverse political context.

While the NGO Law directly targets international civil society, European CSOs’ and business chambers’ work in China has also been challenged by other policies, such as the Cybersecurity Law (2017), the Data Security Law (2021), Covid-19-related travel restrictions since 2020 and Chinese countersanctions against European civil society actors in March 2021. In the latter case, the European Commission and member state governments failed to even demonstrate solidarity with the concerned NGOs and individuals, although the countersanctions had been triggered by their use of the EU Global Human Rights Sanctions regime against four Chinese officials over human rights abuses in Xinjiang.

⁸¹ Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the European Union and the People's Republic of China. Final report. Ecorys December 2017, available at: <http://www.trade-sia.com/china/wp-content/uploads/sites/9/2014/12/SIA-EU-China-Investment-Agreement-final-report.pdf> [03/09/2021].

⁸² See further: Nadia Ashraf and Jeske van Seters (2020): Making it count: civil society engagement in EU trade agreements, ECDPM DISCUSSION PAPER No. 276, July 2020, available at: <https://ecdpm.org/wp-content/uploads/Making-Count-Civil-Cociety-Engagement-EU-Trade-Agreements-Discussion-Paper-276-July-2020-ECDPM.pdf> [03/09/2021].

⁸³ Lang 2021, *Shielding Corporate Interests...*

FUNDRAISING CHALLENGES IN THE CHINA CONTEXT

The mounting funding difficulties of civil society activities in China are not only due to the restrictive political context. European development cooperation funds, which represent a major source of CSO income in other parts of the world, have been phased out due to China's overall economic development. Private donations for China-related activities have similarly dried up, partly due to China's deteriorating image in Europe. Until 2019, large fundraising NGOs relied on Hong Kong as a major hub for raising private donations for their work in support of rural development, left-behind children, or ecological conservation in mainland China.⁸⁴ But since the escalation of tensions around the extradition law and the subsequent political clampdown, the enthusiasm of Hong Kong citizens to donate for activities in the Chinese mainland has collapsed.⁸⁵



“There is a bizarre contrast in Europe today between an ever-growing political and public interest in what is happening in China on the one hand, and an absence of real efforts to ensure that working in the country remains possible for independent civic actors on the other.”

*Interview with staff member of a European NGO
(Interview on 16/07/2021)*

The dearth of accessible funding instruments also means that more service-oriented international NGOs (e.g., in the fields of poverty alleviation, disaster relief, biodiversity conservation, rural-urban migration) are seeking out Chinese funding – public or private – to maintain at least some of their work.⁸⁶ This, however, comes with obvious political trade-offs: Working in China for CSOs has always involved caution with respect to taboo issues and open criticism of the Chinese party-state. Increasingly, however, the Chinese state is pressuring foreign CSOs and scholars to actively endorse Beijing's positions, be it with supportive quotes in newspapers, benign assessments of China's human rights record or programme activities in contributing to the 'Belt and Road Initiative'. This is similar to what European and American corporate actors and business associations have experienced in recent years.

LEGAL DOUBLE-BINDS FOR GRANT-MAKING FOUNDATIONS

Whereas grant-making foundations do not need to worry about their own funding, they encounter legal challenges of their own. As explained by one foundation representative, “we are moving in two totally different legal worlds.”⁸⁷ On the one hand, Chinese supervisors want to be informed in advance about every detail in an organisation's annual planning. Implementation is however highly inconsistent, and bureaucratic red tape remains much less onerous for business chambers than for foundations; organisations from smaller EU countries also tend to encounter more problems,⁸⁸ pointing to the need for solidarity from larger member states. On the other side, tax authorities in Europe – particularly in Germany – object to the funding of Chinese social organisations which have all been obliged to enshrine loyalty commitments to the CCP into their statutes in the wake of Xi Jinping's “party-building” agenda.

⁸⁴ Lang 2019, *Strengthening the adaptive...*

⁸⁵ Personal and remote conversations with staff members of major NGOs in Hong Kong, September 2019–November 2020.

⁸⁶ Lang 2019, *Strengthening the adaptive...*

⁸⁷ Interview with representative of a European foundation, 06/08/2021.

⁸⁸ Interview with representative of a German business association, 09/08/2021; Interview with China representative of a European foundation, 06/08/2021.

SUMMARY AND RECOMMENDATIONS

This report has outlined several shortcomings in the EU's approach to civil society issues in the context of its China policy. Diplomatic efforts by the EU Delegation in Beijing and some member state embassies have certainly helped in individual cases but have failed to address the broader challenges and risks for CSOs working in mainland China or Hong Kong. Europe's 'business first' approach has demonstrated to Chinese leaders that they can gradually eliminate critical and independent voices from Europe-China relations – both European and Chinese, and from business as well as civil society – without any implications for economic cooperation and interdependence.

The international work of CSOs is not some disposable appendix to business and high politics, but an essential part of Europe's global presence.

Significant improvements will first require political recognition that the international work of CSOs is not some disposable appendix to business and high politics, but an essential part of Europe's global presence and key to reaching many of the EU's purported policy goals in view of the UN sustainable development agenda or the Paris Agreement. Based on the author's interviews and background talks with stakeholders over the past years, the final section makes several recommendations as to how European policymakers can better protect the interests of civil society organisations while strengthening their role and contributions to the EU's China policy.

DG TRADE: ADDRESS THE NGO ISSUE IN CAI REVISION NEGOTIATIONS AND THE ENVISIONED INVESTMENT PROTECTION NEGOTIATIONS.

- CAI is unlikely to be ratified as it currently stands. In case of revision negotiations, DG Trade could make up for some shortcomings of the previous negotiation process. "Offensive" European corporate interests should not be prioritised over matters of principle, including the defence of civil society spaces or supply chain transparency.
- Entry 9 on "Non-Profit Organisations" should ideally be removed entirely from Annex II of the Chinese schedule of commitments. If this is not possible, the EU side should at least insist on a commitment that no additional restrictive measures will be introduced in the future, while publicly reiterating its disapproval of existing restrictions on the operations of European CSOs in China.
- The free operation of European business chambers and industry associations in partner countries should also be a priority in the envisioned follow-up negotiations on investment protection and investment dispute settlement, which DG Trade aims to complete "within 2 years of the signature of the CAI".⁸⁹

The free operation of European business chambers and industry associations in partner countries should also be a priority.

EUROPEAN COMMISSION/DG TRADE/EEAS: END THE SILO APPROACH TO TRADE AND INVESTMENT NEGOTIATIONS.

- With a small negotiating team narrowly focused on corporate interests, DG Trade is visibly unable to take other important societal issues into account.
- The Commission's trade policy needs to better integrate country expertise and sectoral knowledge on civil society, sustainable development and human rights, all along the preparation and negotiation phase of any trade and investment agreement. A dedicated EEAS team should be fully

⁸⁹ European Commission, Directorate General for Trade (2021): "EU and China reach agreement in principle on investment". Brussels, 30 December 2021, available online: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2233> [06/09/2021].

and permanently integrated at least in negotiations with non-democratic governments to give more attention and weight to the non-business implications of envisioned agreements.

EU AND MEMBER STATES: ISSUE A PRINCIPLED STATEMENT ON THE IMPORTANCE OF FREEDOM OF ASSOCIATION AND FREE FLOWS OF TRANSNATIONAL CIVIL SOCIETY FUNDING.

- Previous “local statements” and “comments” by the EU Delegation in China concerning the NGO Law and further restrictions on civil society have been diplomatically weak and easy to ignore for the Chinese side.⁹⁰ At the same time, freedom of association and especially transnational funding for civil society is under siege not only in China but in many countries worldwide.
- The EU and member states should live up to their normative commitments by defending spaces for non-state actors.⁹¹ They should agree on a common foreign policy principle – complementary to but separate from the [Global Human Rights Sanctions Regime](#) – that upholds civil society dialogues and transnational cooperation as a necessary complement to the EU’s official diplomatic relations and all trade and investment negotiations. A principled statement by the EU and member states that mentions China’s NGO Law as one area of concern would be a first step in this direction.

EUROPEAN PARLIAMENT AND COMMISSION: CALL FOR A REVISION OF INTERNATIONAL INVESTMENT ARBITRATION MECHANISMS TO MAKE THEM ACCESSIBLE FOR NON-PROFITS.

- While investments made by non-profit actors can theoretically enjoy protection from BIT provisions, the current international arbitration system is completely unsuited for them due to its expensiveness, exclusivity, and opaqueness.
- The EU has demonstrated its willingness to improve on existing dispute settlement mechanisms with the recent establishment of its [investment court system](#) (ICS) model. In this vein, and hoping that the EU will remain open to further improvements, the EU should also fight for a “level playing field” for non-profit investments compared to commercial ones.

STRENGTHEN EU-WIDE SOLIDARITY WITH CIVIL SOCIETY ACTORS.

- The Chinese government has identified civil society actors as the weak link in Europe’s global presence and increasingly targeted them through explicit sanctions and informal pressure. Actors from smaller member states are particularly vulnerable to informal pressure.
- The only remedy is for the EU as a whole to systematically demonstrate solidarity whenever European civil society organisations or individuals suffer from such undue pressure. An unambiguous, common policy in this regard is also crucial to prevent the sort of hostage diplomacy previously used by against a staff member of the International Crisis Group, an NGO headquartered in Brussels.⁹²
- The EU and member states should also use their diplomatic leverage to systematically insist on including diverse CSOs in official dialogues wherever possible. In the case of China, this means resisting pressure to exclude specific actors and be ready to freeze dialogue formats on matters important to the Chinese side if necessary.

EU INSTITUTIONS: STRENGTHEN CIVIL SOCIETY INPUT MECHANISMS AND IMPROVE OUTREACH TO COUNTRY EXPERTS FROM CIVIL SOCIETY.

- There are several civil society consultation mechanisms today which are spread over different EU Institutions and, within the European Commission, across different DGs.

⁹⁰ European External Action Service 2016: *Local Statements...*

⁹¹ On the broader issue of civil society support in EU foreign policy, see also Youngs, Richard (2020): *New Directions for EU Civil Society Support*, Carnegie Europe, 18 February, <https://carnegieeurope.eu/2020/02/18/new-directions-for-eu-civil-society-support-pub-81092> [24/09/2021].

⁹² International Crisis Group (2018): *Detention of Michael Kovrig*, 12 December, <https://www.crisisgroup.org/detention-crisis-group-senior-adviser> [02/10/2021].

- At least in the case of China affairs, these formats often fail to reach those CSOs and activists who are most knowledgeable of the local Chinese context. These actors do not necessarily have in-depth knowledge of the EU system or sufficient advocacy resources to deal with the complex input mechanisms theoretically available to them. EU decisionmakers should actively seek their input, e.g., by inviting them to public as well as confidential meetings.

DG TRADE: REVISE THE CIVIL SOCIETY DIALOGUE FORMAT TO FOCUS ON NGOS AND INCREASE RESPONSIVENESS.

- The analysis of DG Trade’s CAI-related civil society dialogues has shown that, while there was no shortage of meetings, these were primarily attended by business representatives and very few NGOs with demonstrated China expertise were reached.
- The current format also serves mainly as a communication instrument for DG Trade, rather than a meaningful input mechanism. CSOs need to be able to see that their recommendations are being taken seriously to increase participation in the future.
- To reach actors beyond the ‘usual suspects’ of well-resourced organisations with a Brussels office, there should be additional, separate dialogue formats – including in digital form – with civil society organisations and independent experts with demonstrated country experience. EU institutions need to actively reach out to these external actors because they require their expertise, rather than seeing this as a generous ‘transparency’ offer from their side.

Very few NGOs with demonstrated China expertise were reached by “civil society dialogues”.

EU AND MEMBER STATES: STRENGTHEN EUROPEAN CHINA EXPERTISE IN CIVIL SOCIETY AND ACADEMIA.

- European China policy is an essential element of the EU’s overall foreign policy strategy. It therefore needs to be informed by a plurality of independent expert voices from different member states.
- EU institutions and member state governments should invest in the long-term build-up of China expertise both in civil society and academia. This includes long-term strategic funding, training, and networking offers that go beyond short-term project budgets and guarantee the necessary intellectual freedom from both state and corporate interests.

EU INSTITUTIONS: RECONSIDER THE DESIGN OF EU FUNDING INSTRUMENTS FOR CIVIL SOCIETY.

- The EU’s civil society-related funding instruments are overly complex and often favour large organisations (notably for-profit development consultancies) that do not necessarily possess the best local knowledge and access. Co-funding requirements raise the threshold for smaller organisations, while the limitation of funding to project activities and a strong outcome orientation favour short-term thinking over the kind of long-term engagement and trust-building necessary in the China context.⁹³ Instead, demonstrated knowledge of the country context and established contacts should be made a priority criterion for prospective recipients of civil society funding.
- With spaces for civil society engagement in mainland China as well as Hong Kong in rapid decline, much more attention should be paid to Global China, i.e., the presence of Chinese actors outside of China. EU Delegations in third countries, particularly in the EU’s Neighbourhood, should develop funding instruments for China-related activities on the ground. This includes support for local civil society actors as well as trilateral dialogues between NGOs from the EU, China and third countries.

EU Delegations in third countries should develop funding instruments for China-related activities on the ground.

⁹³ Interview with staff member of a European NGO, 16/07/21.