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ARTICLE

CHINESE INVESTMENT IN THE EUROPEAN UNION & NATIONAL SECURITY REVIEW: IS THE EU LEGAL REGIME ABOUT TO FOLLOW THE US MODEL?

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Rapidly increasing foreign direct investment from China within the European Union over the past decade has been, in general, greatly fostered by an open and non-discriminatory legal regime. However, 28 Member States retain control over the review of such investment for purposes of evaluating national security concerns within their respective borders. Current trends reveal a strong likelihood of substantial increases within the coming years in Chinese investment touching upon so-called "strategic" or "sensitive" sectors within the European Union nations. Similar Chinese investment in the United States has raised some strong opposition from the federal government on national security grounds. Accordingly, this article compares and contrasts the European Union's current fragmented system of national security review with that of the United States — a centralized legal regime which provides for exclusive federal government national security review of foreign investment. The question is then posed as to the likelihood of the European Union adopting an American-style unified national security review system to replace the existing fragmented system, especially in light of the newly enhanced legal competence of European Union authorities over issues concerning foreign investment. This article then concludes with an analysis of the advantages to Chinese investors stemming from the creation of such a European-wide system of national security review.

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INTRODUCTION

Although not yet amongst the top sources of foreign direct investment (FDI),[1] the stock of Chinese worldwide outward foreign direct investment has exploded over the past twelve years as reported by the United Nations — going from a mere $27.8 billion in 2000 to a staggering total of $509 billion in 2012.[2] Chinese worldwide outward FDI flows more than tripled from $26.5 billion in 2007 to over $84 billion in 2012.[3] The United States (US) and the European Union (EU) each receive a substantial share of this total Chinese FDI, and increasingly compete to attract foreign investment from all corners of the planet.[4] But, as revealed by a recent study undertaken by the Rhodium Group, a strong divergence in Chinese FDI flows into these two investment hubs has developed over the past few years:

> *Both Europe and the United States attracted increasing flows of Chinese direct*

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[1] FDI will be defined for purposes of this article according to the following definition adopted by the EU Commission: "Foreign direct investment (FDI) is generally considered to include any foreign investment which serves to establish lasting and direct links with the undertaking to which capital is made available in order to carry out an economic activity." See *Communication from Commission to Council: Towards a comprehensive European international investment policy*, COM(2010)343 final, at 2, at http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147884.pdf. ["Commission Communication on Investment"]

[2] UN Conference on Trade and Development, *World Investment Report 2013: Global Value Chains: Investment and Trade for Development*, Annex Table 2, at 218, at http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf.

[3] Id. Annex Table 1, at 214.

[4] For a comprehensive analysis of Chinese FDI flows to the EU in general, and investment promotion within the EU in particular, see Jeremy Clegg & Hinrich Voss, *Chinese Overseas Direct Investment in the European Union*, ECRAN, 2012, at http://www.euecran.eu/publications-2011/chinese-overseas-direct-investment-into-the-european-union. ["ECRAN-Chinese Overseas Direct Investment in the European Union"]