

EU-CHINA OBSERVER

DEPARTMENT OF EU INTERNATIONAL RELATIONS AND DIPLOMACY STUDIES



"EXCHANGING IDEAS
ON EU-CHINA RELATIONS:
AN INTERDISCIPLINARY
APPROACH"

College of Europe
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Baillet-Latour Chair of
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EU-CHINA STRATEGIC PARTNERSHIP: EXECUTIVE VISIONS OF PARLIAMENTARY INVOLVEMENT

DAVOR JANCIC

Introduction

The complexities and sensitivities of strategic partnerships, as a distinct area of EU external action, are particularly pronounced in the case of EU-China relations, because the rise of China has become one of the EU's most important global challenges.¹ While literature on EU-China relations is abundant, there is little scholarly work on the role of parliaments in shaping them. This article aims to address one aspect of this gap by examining the changing executive narratives and conceptions of the role of the European Parliament (EP) and the National People's Congress (NPC) in the EU-China Strategic Partnership. This is carried out through an analysis of the European Commission's and the Chinese Government's policy documents that have structured this partnership since its establishment in 2003. By doing so, the article investigates the oft-neglected political component of the 'people-to-people exchanges' advocated by the EU-China 2020 Strategic Agenda for Cooperation.

This is important to investigate for three key reasons. First, the manner in which executive institutions envision parliamentary involvement greatly informs the latter's action. Second, the expanding and increasingly intricate bilateral political agenda is characterised not only by heightened economic interdependence and ever more tangible global repercussions of the EU's and China's policy choices, but also by obstacles and tensions caused by their different understandings of the founding consti-

tutional values – such as democracy, the rule of law, and human rights – which lie at the heart of parliamentary activism.² Third, EU-China interparliamentary exchanges have been evolving for almost 40 years and they have been an integral albeit understudied element of the overall bilateral diplomacy. While the NPC has gradually developed capacities to act internationally,³ the EP has had a China Delegation since its first direct election in 1979. The EP has since demonstrated the ability to engage in autonomous diplomatic action and adopt strong and politically controversial positions on EU-China relations.⁴

This article makes a twofold argument. First, parliamentary contribution in EU-China relations is defined by the continuous process of striking the fine balance between the competing visions of liberal democratic values and the persisting precedence of economic self-interest over norm entrepreneurship. Second, there is a rising trend of shaping the partnership through legislative activity and regulatory cooperation, which complement the classic channels of treaty-making and interstate diplomatic dialogue.

The Ambitions and Challenges of the Sino-European Relationship: The Politico-Legal Fundamentals of an Intractable Strategic Partnership

After the establishment of EU-China diplomatic relations in 1975, bilateral cooperation significantly intensified. It developed over four phases: the 'starting-up' period

(1975–1988), the ‘low tide’ period (1989–1992), the ‘honeymoon’ period (1993–2005), and the ‘turbulent’ period (2006 onwards).⁵ The announcement of the comprehensive strategic partnership in 2003 was the heyday of the Sino-European relationship and marked its transformation from a purely bilateral one to one that also focuses on influencing global affairs.⁶ In the EU’s and China’s policy papers adopted that year, parliamentary cooperation was approached differently.

The European Commission only mentioned the EP once and this was in the context of the Human Rights Dialogue, which had been established in 1995. The Commission called for greater visibility and transparency of this Dialogue, inter alia by briefing the EP after each session.⁷ The NPC was also mentioned once, but merely to take note of the fact that it had received the first ever draft of a civil code. The EU’s approach was one of evaluation of China’s improvements regarding the rule of law and the legal system in general.⁸ Parliaments were therefore mainly viewed as passive actors operating without much mutual interaction.

The Chinese Government, conversely, presented parliaments as vehicles for strengthening the political dimension of EU-China cooperation. Two action points were specifically devoted to the enhancement of interparliamentary relations between the NPC, the EP and national parliaments, explicitly recognising them as ‘an important link in China-EU ties’.⁹ The first action point concerned legislative cooperation, aimed at increasing mutual understanding and exchanges between the Chinese and European legislative bodies in search of ‘common ground while shelving differences’.¹⁰ The second action point related to party political cooperation. A wide-ranging inter-party dialogue, advocated in the Chinese Government’s 2014 and 2018 policy papers, was to enable the Communist Party of China (CPC) to liaise with all major political parties, groups and organisations in the EU.

The institutionalisation of inter-party links eventually materialised in May 2010, when the first session of the EU-China High Level Political Parties and Groups Forum was held in Beijing. Yet although the Chinese Government insisted on the principles of independence, equality, mutual respect and non-interference, it has used the Forum as a backdoor to European politics in search of influence.¹¹ By forging closer ties with populist and Eurosceptic parties, the Chinese Government has sought to legitimise its political and economic governance and shape the European public sphere in an attempt to enhance its image.¹² This has been

successful despite some populist and nationalist parties in Europe – like Italy’s League, France’s Rassemblement National, and Britain’s UKIP – being opposed to globalism, which China pursues in earnest.¹³ Other populist parties – like Hungary’s Fidesz, Poland’s Law and Justice Party, and Italy’s Five Star Movement (M5S), embrace Chinese economic influence in Europe, as a credible counterweight to perceived EU interference in their domestic affairs.¹⁴ For instance, the close ties with Beijing that the Italian vice prime minister and M5S leader, Luigi Di Maio, has been nurturing since the formation of the coalition government in June 2018, were instrumental to Italy’s joining the Belt and Road Initiative in March 2019, despite opposition by Italy’s other vice premier, coalition partner and League leader – Matteo Salvini, who had won more seats in the parliamentary election than Di Maio.¹⁵ However, the Forum is merely a part of China’s broader agenda of political influence, which involves a wide variety of friendship groups and inter-party dialogue within the 17+1 platform of cooperation with Central and East European countries.¹⁶ The Chinese Government has built an ‘extensive network of contacts of all political persuasions’,¹⁷ including pro-China parties and politicians. Indeed, ‘it’s about gaining influence from the far left to the far right’, underlines Reinhard Bütikofer, a senior

THE CHINESE GOVERNMENT, CONVERSELY, PRESENTED PARLIAMENTS AS VEHICLES FOR STRENGTHENING THE POLITICAL DIMENSION OF EU-CHINA COOPERATION.

member of the EP’s Delegation for relations with China.¹⁸ Therefore, while interparliamentary cooperation is primarily envisaged as a channel for information exchange at the institutional level, it has also been utilised for public diplomacy and partisan position-taking at the party political level.

The difference in the Commission’s and the Chinese Government’s attitudes towards parliamentary involvement can be explained by the differing constitutional positions of the EP and the NPC. While the NPC is engrained in a one-party system and operates under the direction of the executive, the EP is not only constitutionally independent from the Commission, it exercises political oversight over it and engages in its own diplomatic action in EU foreign affairs.¹⁹ Hence, while the Chinese Government can significantly gain from enhanced parliamentary links by enabling

it to promote its politico-economic worldview, the Commission may see the EP as an institutional rival with whom it must cooperate if its policies are to be enacted into EU legislation and whose views it should take into account if it is to fortify the legitimacy of its foreign affairs agenda. Furthermore, different approaches to parliamentary rapprochement reflect the wider scholarly doubts concerning the very nature of the EU-China strategic partnership. The latter has indeed been assessed as elusive, limited and unequal,²⁰ and its future trajectory questioned due to diverging values, interests, priorities and visions of the world order.²¹ The lack of normative and political consensus brought the Sino-European relationship into a 'turbulent' phase.

In 2006, three years after the inauguration of the strategic partnership, when the 'honeymoon' phase had passed, the Commission adopted a new policy document, expressly calling for the expansion of EP-NPC cooperation.²² It was recognised that, apart from the civil society, the EP had a central role in the strengthening of non-governmental institutional links and in providing support and impetus to political and trade relations. EU-China interparliamentary links were promoted under the rubric of developing the 'full range of people-to-people links'.²³ In the Commission's 2003 Policy Paper, these links only referred to tourist, educational and cultural exchanges.²⁴ The Commission also warned about mutual policy impact and called on both sides to take this into account in their policy-formulation processes.²⁵ A more palpable recognition of interparliamentary ties stems from the realisation that the employment of all EU institutional resources would be advantageous to its policy of engagement and partnership. It has correspondingly been argued that people-to-people relations between the EU and China are a 'precious tool' which complements traditional high-level interstate diplomacy.²⁶ The intensifying relations between parliamentarians thus aid the informal development of low-level non-governmental channels of collaboration in pursuit of mutually beneficial goals: greater understanding and greater soft power projection.

When in 2013 the EU and China adopted the 2020 Strategic Agenda for Cooperation, no mention was made of parliamentary relations. However, by encouraging exchanges

on energy legislation and policy, they recognised the significance of legislative means for addressing matters of common concern, which are the domains of EP and NPC decision-making. Similarly, the fostering of people-to-people exchanges was promoted merely from the perspective of closer cultural, educational and youth exchanges.

In 2016, the Commission and the EU High Representative adopted a new strategy for China. This brought notable developments regarding interinstitutional interaction both internally and externally. Internally, two considerations stand out. On the one hand, the strategy revision explicitly took the EP's views into account,²⁷ thus demonstrating cross-fertilisation in formulating the EU's China policy and acknowledging the important status that the EP had accrued. On the other hand, it proposed a so-called 'joined-up' or 'whole-of-EU' approach to China. Given the latter's size and rising power, the Commission and the European External Action Service (EEAS) were urged to work closely with the EP, because the latter 'has shown itself to be a strong advocate of effective EU policy-making towards

China'.²⁸ Externally, the document evoked what can be likened to Anne-Marie Slaughter's concept of the thickening networks of officials from different branches of government that are developing in the environment of disaggregated sovereignty.²⁹ The new strategy calls for EU engagement in networking

LEGISLATIVE AND REGULATORY COOPERATION HAS FURTHERMORE BECOME INSTITUTIONALISED IN THE FORM OF THE EU-CHINA LEGAL AFFAIRS DIALOGUE, LAUNCHED IN JUNE 2016.

in order to better analyse the motivations underlying Chinese policies. Not only governmental and civil society actors, but also legislators and political parties are invited to improve mutual contacts.³⁰ Although these statements are declaratory, they symbolise the awareness that the EP is an integral part of the EU decision-making apparatus not only at the stage of consent giving, but far sooner – at the informal and political level of agenda setting and policy shaping. As the EU seeks to strike the right balance between the maximisation of reciprocal economic benefits and the constructive management of normative differences with China, the EP can serve as a valuable diplomatic asset both internally and externally. The Commission can play the multilevel game and rely on the EP's pronouncements to exert pressure on Chinese authorities and enhance the credibility of the EU's demands when their views converge, while distancing itself from the EP when their views diverge. The EP is therefore caught between strong

advocacy of liberal democratic values and the pursuit of economic ends, which the Commission tends to balance by favouring the latter over the former.

The latest strategic EU document on China was adopted in March 2019. Its key leitmotifs are the shift towards understanding EU-China relations as a challenge that requires containment and the consequent need for a more realistic EU policy. The most encapsulating is the portrayal of China not only as the EU's cooperation and negotiation partner, but also as its economic competitor and, crucially, as its systemic rival.³¹ In relation to the EP, an essential development has been that the Union's strategy no longer only focuses on China's domestic law and politics, but has turned to EU law and politics. It is the EU legislative action, rather than only treaty-making, that is highlighted as a means of addressing China-related problems. Directives and regulations, jointly adopted by the EP and the Council, constitute an increasingly important tool for influencing EU-China relations in diverse policy areas, among which trade defence,³² foreign direct investment,³³ and cybersecurity.³⁴ On the contrary, the Chinese Government's latest policy paper, adopted in 2018, continues to portray the EU as an 'indispensable partner' and diagnoses 'no fundamental strategic conflicts'.³⁵

Legislative and regulatory cooperation has furthermore become institutionalised in the form of the EU-China Legal Affairs Dialogue, launched in June 2016. Yet while this forum facilitates exchange on existing and future legislation and regulatory approaches, its drawback is its entirely executive make-up. It gathers the Chinese State Council Legislative Affairs Office, the European Commission, the EEAS, various stakeholders and academics, but not parliamentarians. Discussions on legislative dossiers as significant as e-commerce and artificial intelligence should involve lawmakers too.

Conclusion

In examining the institutional narratives of the EU and Chinese executives, this article has shown a high degree of congruence between the status of the EU-China strategic partnership and the design and salience of parliamentary involvement in shaping it. On the Chinese side, the Congress consistently acts as a vehicle for attaining the diplomatic goals of the ruling CPC. On the EU's side, the more China is perceived as a normative and security threat, the more salient the EP's action becomes. Diplomatic fragilities and declining EU pre-eminence in the bilateral relationship trigger calls for parliamentary engagement to diversify the avenues for communication and widen the space for the ironing out of disagreements.

There is a growing awareness within the European Commission and the EEAS of the EP's added value in nudging China to accommodate the EU's concerns. Whereas the former two institutions engage with Chinese authorities officially, the EP does so unofficially as it has no formal legal role in the Union's negotiation processes. The EP's marked assertiveness and strong claims-making regarding China facilitate the EU's diplomacy by enabling it to speak boldly with one of its voices, that of the EP, without incurring responsibility or committing the entire Union. This fosters flexibility and expands the room for manoeuvre in EU foreign affairs.

These findings are evidence of the EU's twofold concern: one about political inclusion and public participation, and another about the legitimacy and robustness of its foreign policy towards an increasingly self-confident and self-aware partner. ☺

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THE URBANISATION DIALOGUE BETWEEN THE EU AND CHINA. A REALITY CHECK.

TOMASZ KAMIŃSKI

Introduction

In the EU-China 2020 Strategic Agenda for Cooperation a whole chapter addressed urbanisation. Both sides resolved to improve the governing framework of the EU-China Partnership, support the development of numerous relevant city pairings and steer EU-China urbanisation cooperation by a Joint Steering Committee of the EU-China Urbanisation Partnership.

A few years later officials from the European Commission (EC) and European External Action Service (EEAS) express feelings of disappointment with the results of the EU's actions aimed at promotion of sub-state cooperation with China and urbanisation has disappeared from the top of the EU-China political agenda. In the EU's strategy on China, published in 2016, the urbanisation partnership was not even mentioned. The Joint Steering Committee of the EU-China Urbanisation Partnership has never been established.

The paper¹ focuses on why the urbanisation dialogue with China has not been developed as planned. The author also sketches a list of activities that should be undertaken if the EU wants to benefit from the development of city-to-city contacts with China.

Urbanisation as a strategic area of collaboration with China

The first activities of the EU to promote sub-state cooperation with China were organised as regional policy dialogues. Since 2006, when the First EU-China High Level Dialogue and Seminar on Regional Policy took place in

Beijing, the European Commission has been sharing its experience and knowledge about the EU's regional policy.² The importance of sub-state cooperation was officially acknowledged in the EU-China dialogue on urbanisation.

Following an announcement from the EU-China Summit in Beijing on 14 February 2012, Jose Manuel Barroso, President of the European Commission and Chinese vice-Prime Minister, Li Keqiang, signed a joint declaration to establish a China-EU Partnership on Urbanisation in May 2012. The partnership was aimed at promoting exchange and cooperation at "all appropriate levels, including national, regional and local"³. Europeans have viewed urban development in China as an opportunity to sell European products and technologies as the Chinese are in need of technologies and technological know-how and expertise.⁴

In September 2012, the first China-EU Mayors' Forum was held at the Committee of the Regions (CoR) in Brussels, where the EU-China Mayors Charter was signed.⁵ To strengthen the political declaration of the mayors, the EU announced the start of a project to help Chinese cities adopt energy and resource-efficient ecological solutions shared from European experience on sustainable urbanisation.⁶

In November 2013 during the 16th EU-China Summit, Europe and China signed the EU-China 2020 Strategic Agenda for Cooperation (hereafter referred as the Agenda).⁷ In the document the topic of urbanisation has a very prominent place - a whole chapter addressed this issue and both sides declared the will to "strengthen collabo-

ration" in this field of "strategic interest". The dialogue on urbanisation was to cover various challenges faced by cities in Europe and in China from urban planning and design, through socio-economic issues and natural and cultural heritage preservation, to climate change. Even if "green development" and transition to low-carbon economy were perceived as the core areas of cooperation, it was not to be limited to it. The EU-China cooperation was to be built on various initiatives that had been developed before.

Firstly, both sides declared further development of the EU-China Urbanisation Partnership set up in 2012. The governing framework of the partnership was to be improved and the Joint Steering Committee established. The development of numerous relevant city pairings was to be supported and both sides agreed to "promote advanced technology and managerial experience in sustainable urban development planning, urban infrastructure and management and urban-rural integration, including transparent and equitable consultative procedures with public and business stakeholders".

Secondly, a few specific existing initiatives were mentioned in the document, such as the EU-China City Expo and the EU-China Mayors' Forum. On the top of that the 10 million EUR "Europe-China Eco-Cities" EC-LINK project was launched at the 2013 summit. The main aim of the project was to offer technical assistance and best practice sharing for the Chinese Ministry of Housing and Urban-Rural Development, as well as cities in China chosen for this pilot project⁸.

To sum up, in the Agenda both sides praised city-to-city cooperation as the "flagship" of the strategic partnership and declared their intent to promote cooperation between cities and joint research and innovation initiatives in area of sustainable urbanisation.

Reality check. The effects of the EU-China urbanisation dialogue

A few years after the inauguration of the Urbanisation Partnership, officials from the European Commission and EEAS express fatigue and feelings of disappointment with the results. We can identify three main weaknesses of the dialogue. First of all, the clear concentration of the EU on

pilot projects and annual events proved to be inadequate. The real impact of such activities turned out to be limited. Secondly, the dialogue has never become as institutionalised as planned. Finally, the EU lacks strategic approach to the subnational layer of European contacts with China.

Limited resources

As far as pilot projects are concerned, the EU financed few of them. The first was the already mentioned EC-Link, a flagship project for the whole Partnership. According to an official in DG Regio, "there were a lot of problems related to this project and it has not delivered in time the result that were expected". One of the problems was the inefficient work of the project secretariat in China.⁹

The two-year long "China Component" of the much wider "World Cities" programme started in 2015, engaging a few Chinese and European cities and regions¹⁰. This project was a continuation of the CETREGIO project, which promoted commercial, educational and cultural cooperation on the sub-state level.

In December 2016, the EU approved a new project called "International Urban Cooperation: Sustainable and Innovative Cities and Regions" (IUC)¹¹. In the first selection round, cooperation between five Chinese and five European subnational units was supported.¹²

IN DECEMBER 2016, THE EU APPROVED A NEW PROJECT CALLED "INTERNATIONAL URBAN COOPERATION: SUSTAINABLE AND INNOVATIVE CITIES AND REGIONS" (IUC).

The URBAN-EU-CHINA project, launched in March 2017 during the EU-China Forum on Sustainable Urban Development in Chinese city of Putian, is dedicated to fostering EU-China sustainable urbanisation cooperation. However, struggling with limited resources, it is also far away from its goals. According

to an interview with a project officer from Eurocities, one of the project partners, the initial goal of creating 10 new city-to-city partnerships a year under the frame of this project proved to be impossible to reach. The project has a limited budget and cannot offer any substantial incentives for cities to established new links.

There is not even budget for travel - I mean to cover travel costs for cities' officials going to China. In the end of all we can hope for is to create a nice environment and some tools for cities to do that job.¹³

Even if the project activities seem to be quite useful (for example, it has produced guidelines for cities that want to establish cooperation with China), the actual impact on the creation of partnerships is very limited. The project supported some existing partnerships, but no new connections have been established “because of the project”.

Besides pilot projects, the EU was also engaged in organising big conferences on urbanisation, such as the Urbanisation Forum, which gathered hundreds of participants from regional authorities. The first Forum was held in Beijing on 21 November 2013, with high-level political participation from presidents Barroso and Van Rompuy as well as premier Li Keqiang. As one of the participants put it: “Shocking event. I think that it was the largest in my life, because it was in the Great Hall of the People at Tianamen Square (...) with over one thousand people invited (...)

The event was great, and the day after there was nothing for months, and the Chinese did not answer the telephone”¹⁴.

Another big event was organised in June 2015 in Brussels but with the same result: huge organisational efforts, success in terms of number of participants but almost no follow-up. The EU official engaged in the organisation of the events believed the Chinese were too focused on the events itself, but much less committed to daily cooperation with their European partners.¹⁵

The concentration of the EU-China urbanisation dialogue on pilot projects and events was the natural result of the limited allocation of resources. Initially, the urbanisation dialogue with China was delegated to DG ENER, without any substantial human and financial resources. Later, it was moved to the DG REGIO, but the budget for cooperation with China remained too little to organise anything substantial. In the 2014-2020 EU budget framework there are no resources for anything more ambitious than IUC, a project with only 5.6 million EUR assigned to Asia, including China.¹⁶

Institutionalisation

As for the institutionalisation of the dialogue, one can say that goals have not been met. The Joint Steering Committee of the EU-China Urbanisation Partnership, announced in the Agenda, has never been established¹⁷. Moreover, sub-state cooperation with China and the urbanisation quickly disappeared from the top of the EU-China political agenda. In the EU's Elements for a new EU strategy on China, published in 2016, the urbanisation partnership was not even mentioned.

IN 2017 THE URBANISATION DIALOGUE WITH CHINA WAS TAKEN FROM DG ENER AND DELEGATED TO DG REGIO. HOWEVER, THE COLLABORATION WITH THE CONVENT OF MAYORS FOR CLIMATE AND ON ENERGY HAS REMAINED IN DG ENER.

Secondly, activities related to the urbanisation partnership have been spread among different parts of the Commission (mainly DG ENER and DG REGIO), with EEAS hardly being able to coordinate them. From the very beginning, the urbanisation dialogue has been based on the experience of the Convent of Mayors for Climate and Energy launched in 2008, with the goal of local governments voluntarily committing to achieving the EU climate and energy targets. In consequence, the topic has been delegated to DG ENER, part of the European Commission responsible for energy policy. It limited the urbanisation dialogue initiative to the problem of sustainable development, despite the sub-state collaboration with China naturally having much broader scope. As DG ENER officer explained: It was put upon the principles of the Covenant. Because of that something that was a very broad subject, urbanisation, came to a very specific topic, energy. It was a nonsense from my point of view, but it was because the Chinese and the Commission wanted to benefit from the experience of the Covenant.¹⁸

In 2017 the urbanisation dialogue with China was taken from DG ENER and delegated to DG REGIO. However, the collaboration with the Convent of Mayors for Climate and on energy has remained in DG ENER. In consequence, some initiatives have to be realised by both DG's. This is the case of IUC project which has different components: the one concerning city-to-city cooperation is supervised by the DG Regio and the second regarding the Global Covenant of Mayors by DG ENER.¹⁹ The other projects related to the urbanisation are financed and implemented in the framework of Horizon 2020 by the DG RTD. It is worth noting that the urbanisation dialogue is institutionally linked neither with climate change dialogue, led by DG CLIMA, nor with China policy led by the EEAS.

Such location in the institutional matrix of the EU has at least three weaknesses. Firstly, it creates potential for institutional conflict, what is characteristic for the institutional configuration of the EU external relations²⁰. Secondly, it strengthens the tendency to view urbanisation as technical area of policymaking, which is the remit of specialists, rather than an element of the broader strategic framework of policy towards China. Finally, project officers from DGs lacked the authority to coordinate activities of other DGs. In practice, it means that activities related to urbanisation are realised separately in institutional “black boxes” what do not reflect at all the multi-dimensional character of sub-state cooperation between cities.

Strategic vision

The third and last problem is the lack of strategic vision in the European Commission on how to approach the subnational layer of EU-China contacts. The fast-growing network of sub-state contacts in Sino-European relations creates new opportunities for the EU to implement its foreign policy. Theoretically, the EU can use city-to-city

contacts to advance its interests, norms and values. However, in practice, acknowledgement of the potency of such a political instrument in Brussels has been limited. Neither EEAS nor European Commission monitor the sub-state level of European relation of China. The last review of sub-state partnerships with China was commissioned in 2012. Since then, the sub-stated dimension of EU-China contacts has been developed rapidly in many European countries.²¹ This phenomenon of the rising number of partnerships in recent years has been overlooked by EU institutions.²² Nobody in the EU knows, for example, if the scope of undertaken activities by cities is in line with European policy priorities, including those related to climate change dialogue with third countries. Nobody knows, because nobody monitors those activities.

Moreover, the EU does not treat subnational relations as an instrument of its foreign policy, in contrast to the Chinese government which instrumentally uses local authorities to conduct international activities in frames of foreign policy strategy of the state²³. The EU's approach to the role of

local actors manifests itself in the fact that nobody has made any strategic plans to pursue opportunities afforded by sub-state EU-China relations.²⁴

The future of the urbanisation dialogue

Surprisingly, or not, city-to-city cooperation with Chinese partners has been developing rapidly without the EU support and supervision. Cities establish bilateral links and collaborate through international networks. In 2012 the EC made a list of 700 existing partnerships between European and Chinese regions and cities. Now the list would be

probably much longer due to the increasing internationalisation of Chinese sub-state actors under the umbrella of the Belt and Road Initiative²⁵.

The development of city partnerships with China, despite their limited role in the EU within the frame of the Urbanisation Partnership, shows, that, perhaps, there is a limited need for the EU intervention in this area. The pluralisation of the international relations²⁶ will impel cities to develop links with China regardless

of the position and engagement of the European Union. Assuming that city-to-city contacts with China will further develop, the question is what the EU should do to benefit from the growing interconnections on sub-state level?

First of all, the EU should acknowledge the importance of the subnational dimension of EU-China relations and pay much more attention to it. Potentially, it may be a useful channel of communication with China in many policy areas. Therefore, the dialogue should not be limited to sustainable urbanisation, but this topic should be one of at least several. It means that European diplomacy should build a coordination mechanism for activities executed by different DGs in EC.

Secondly, the EU should abstain from financing pilot projects and conduct some systematic activities instead. The EC or EEAS should monitor international activities of cities (and regions!) to provide policy makers with up-to-date knowledge about the sub-state layer of the Sino-European relations. It helps to identify opportunities as well

THE EU DOES NOT TREAT SUBNATIONAL RELATIONS AS AN INSTRUMENT OF ITS FOREIGN POLICY, IN CONTRAST TO THE CHINESE GOVERNMENT WHICH INSTRUMENTALLY USES LOCAL AUTHORITIES TO CONDUCT INTERNATIONAL ACTIVITIES IN FRAMES OF FOREIGN POLICY STRATEGY OF THE STATE.

as potential threats for the EU policy towards China. Apart from monitoring, the EU should communicate with city authorities, informing them about European policy priorities. Even if the EU has no legal right to impose anything on sub-state authorities, it can influence them in soft way by showing what are European interests in relation to China. Some local authorities stressed in interviews that they want to be aware of the European policy plans towards China because it would help them in planning their own activities²⁷. In other words, cities should be recognised as stakeholders and partners in the EU's China policy.

Thirdly, the EU should continuously support the development of city-to-city links through capacity building in cities (eg. teaching officials from municipalities how to deal with China, what are the opportunities and threats) and facilitating networking. Even if big pan-European events were disappointing it does not mean that smaller, thematic ones should not be supported. ©

¹ This paper results from the project "The Role of the Regions in the European Union Policy Towards China", financed by the Polish National Science Centre (Grant Agreement No. 2015/19/B/HS5/02534). ² M. Dąbrowski, I. Musiałkowska, & L. Polverari, "EU-China and EU-Brazil policy transfer in regional policy" *Regional Studies*, 52(9), 2018, pp. 1169–1180. T. Kamiński, "China's Regional Policy and the influence of the EU Assistance", *European Spatial Research Policy*, n 16, 2009, pp. 93–114. ³ The European Union and People's Republic of China, Joint Declaration on the EU-China partnership on urbanisation, Brussels, May 3rd 2012. ⁴ K. R. Kunzmann, "Urbanization in China: learning from Europe? A European perspective", *International Journal of Urban Sciences*, vol. 19 no 2, 2015, pp. 119–135. ⁵ EU Covenant of Mayors & China Association of Mayors, The EU-China Mayor's Charter, Brussels, 20 September 2012. ⁶ European Commission, The European Union and China join forces to address environment, urbanisation and climate change challenges, Brussels, 20 September 2012. ⁷ The European Union and China, The EU-China 2020 Strategic Agenda for Cooperation, Brussels, 23 November 2013. ⁸ See also project website: <http://www.eclink.org/eclink/en/about> Retrieved 16.06.2019. ⁹ Interview with an official, DG REGIO, the European Commission, Brussels, 16 November 2017. ¹⁰ Guangzhou, Tianjin, Wuhan and Chengdu from China and Lyon, Lazio, Barcelona, and Birmingham/West Midlands. See the project website: <http://world-cities.eu/> ¹¹ See the project website: <http://www.iuc.eu/> ¹² Interview with an official, DG REGIO, op. cit. ¹³ Interview with a project officer, EURO CITIES, Brussels, 30.01.2019. ¹⁴ Interview with an official, DG ENER, Brussels, 17.01.2018. ¹⁵ Ibidem. ¹⁶ Interview with an official, DG REGIO, op. cit. ¹⁷ Interview with an EEAS officer, 2017. ¹⁸ Interview with an official, DG ENER, op. cit. ¹⁹ Interview with an official, DG REGIO, op. cit. ²⁰ D. Torney, "Challenges of European Union Climate Diplomacy: The Case of China", *European Foreign Affairs Review*, Vol 19 no 3, pp. 119–134. ²¹ See eg. T. Kamiński, "What are the factors behind the successful EU-China cooperation on the subnational level? Case study of the Lodzkie region in Poland", *Asia Europe Journal*, Vol 17, no 2., pp. 227–242; A. Goette & G. Qinlan, *Deutsch-Chinesische Kommunalbeziehungen, Servicestelle Kommunen in der Einen Welt*, Bonn 2018. ²² Interview with an official, EEAS, Brussels, 15 November 2017. ²³ See eg. D. Mierzejewski, *Local Governments in China's Policy Towards ASEAN: Roles, Structures and Implications*, CRISEA Policy Briefs, Brussels, August 2018, <http://crisea.eu/publications/crisea-policy-brief-1-local-governments-in-chinas-policy-towards-asean> ²⁴ Interview with an official, EEAS, op. cit. ²⁵ D. Mierzejewski, "The Role of Local Governments in the New Silk Road" in C. Mendes (Ed.), *China's New Silk Road. An Emerging World Order* London-New York 2018, Routledge pp. 135–151. ²⁶ Diplomatic practices, institutions and discourses are no longer limited to traditional inter-state diplomacy. ²⁷ Interview with an official, Lodzkie Marshall Office, Lodz, 17.07.2017.



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PUBLIC PROCUREMENT IN CHINA: EVOLUTION AND WAY AHEAD FOR EU-CHINA COOPERATION

DEXINE SHEN

Introduction

Across the world, public procurement is a major component of economies. Governments procure goods and services necessary for providing public infrastructure and services as diverse as education, security, public health, utilities, and transportation. Public procurement has increased since the recent economic crisis, as governments have sought to stimulate domestic economies through government spending. At the same time, growth in emerging economies like China results in greater infrastructure demand.¹

According to the Organisation for Economic Cooperation and Development (OECD), aggregate average procurement spending accounts for 12 percent to 20 percent of a country's gross domestic product (GDP). In 2014, the total value of tenders contracted by the EU Member States was about €420 billion, which amounted to around 13 percent of the EU's GDP.² In China, the total government procurement regulated by the Government Procurement Law (GPL) reached about €237 billion in 2013.³ According to the European Chamber of Commerce in China, the entire Chinese public procurement market is estimated between RMB7 and 22 trillion.⁴ It is not only regulated by the GPL, which applies to government agencies, institutions and social organisations, but also by the Tendering and Bidding Law (TBL). The latter applies to tendering activities of both public and private sectors. No official data exist for public tenders carried out by state-owned enterprises (SOEs) and private companies under the TBL.

Approximately €352 billion in value of EU public procurement is open to bidders from member countries of the WTO agreement on government procurement (GPA). However, this magnitude of market access is not matched by other countries due to protectionist measures. Consequently, only €10 billion of EU exports (0.08% of EU GDP) reach foreign procurement markets, leaving an estimated €12 billion of unrealized EU exports because of such third-country restrictions.⁵ The EU has the largest open procurement market in the world and has no favourable treatment and no discrimination towards foreign operators from third countries that are signatories of agreements such as GPA or other international agreements by which the Union is bound.⁶ This article will focus on the very specific Chinese Procurement regime, its trade barriers and suggest constructive steps for future cooperation in procurement, and to reconcile the interests of the EU and China.

The Chinese Procurement Regime

In China, two national laws on bidding activities and government procurement, as well as numerous ministerial and local pieces of legislation cover most aspects of public procurement. The first public procurement legislation, enacted in 1999, was the TBL⁷ which was followed by the GPL,⁸ enacted in 2002. The latter provides a narrow definition of "government procurement", which refers to procurement of construction works, goods and services listed in certain catalogues or above certain threshold by

government agencies at all levels, institutions and social organizations using fiscal funds.

Table 1: Chinese legal and institutional framework ⁹

| | GPL | TBL |
|-----------------------|--|---|
| Competent authorities | Ministry of Finance (MoF) | National Development and Reform Commission (NDRC) |
| Procuring entities | Government agencies and public institutions at all levels (national, provincial, municipal, etc.), public schools and universities; hospitals; and research institutions | SOEs and private companies |
| Scope | Supplies, works and services: listed in the centralised procurement catalogue or exceeding the threshold (except works carried out under the TBL) | Works of public interest: publicly-funded works, related supplies, services or research and development |
| Thresholds | Supplies/services: central government: over €156 000 and others: over €65 000 Works: central government over €260 000, and others over €78 000 | Design: over €65 000. Works: over €260 000. Materials: over €130 000 Works projects: over €390 000 |
| Remedies | Yes | No |

The GPL covers goods and services required by government organs to operate and applies to all purchases by central and sub-central government, but does not apply to projects undertaken by SOEs using public funds or to public goods provided by SOEs such as energy supply or infrastructure projects. Projects that are partially covered by public funds are not regulated by the GPL either. Most importantly, it gives preferential market access to ‘domestic products’, defined as those with over 50% or more of value added in China.¹⁰ Under the GPL, the Chinese government is thus obliged to prefer domestic goods, projects, and services.¹¹

IN CHINA, TWO NATIONAL LAWS ON BIDDING ACTIVITIES AND GOVERNMENT PROCUREMENT, AS WELL AS NUMEROUS MINISTERIAL AND LOCAL PIECES OF LEGISLATION COVER MOST ASPECTS OF PUBLIC PROCUREMENT.

Foreign ‘imported goods’ may still be purchased under the GPL in exceptional circumstances. Authorities can purchase foreign goods if the domestic equivalent is over 20% more expensive. Although many countries give domestic preferential treatment, a margin of 20% is, however, very large and could distort the market and hinder the normal price competition and R&D investment.¹²

In practice, this has led to a three-tier system of market access (in decreasing order of ease):

1. Domestic products made in China by Chinese-controlled firms;
2. Domestic products made by Foreign Invested Enterprises (FIEs);
3. Imported products.

On the other hand, the TBL does not specify which procuring entities the law covers; instead, it sets out different tests, types of purchasing transactions where the TBL applies. Therefore, the scope of compulsory coverage is considerably wider than the GPL. The following public or private projects must be subject to tendering under the TBL: ¹³

1. Projects such as large-scale infrastructure facilities and public utilities involving the social and public interests and public safety (e.g. Olympic installations such as the “Bird’s Nest”);
2. Projects which are, in whole or in part, financed by state-owned funds or funded through state financing (e.g. an automobile manufacturer –necessarily a joint venture - expanding its production facilities);
3. Projects using loans or aid funds from international organizations or foreign governments (e.g. projects funded by bodies such as the World Bank or Asian Development Bank).

Trade barriers in China

Preferential government industrial policy, laws and regulations including those issued by government agencies, as well as of easy access to government funds are trade barriers in China. This policy drives results from discriminatory treatment of other players in the market of public procurement and hampering competition. Major trade barriers in this regard are illustrated below.

SOEs

Chinese SOEs have been reformed through stages. The first stage focused on decentralisation and profit-sharing, when the SOEs and their employees began to have autonomy in making operational decisions as well as in enjoying profits. Reforms in the second stage (1987-92) saw

SOE ownership separated from management to ensure further operational autonomy. The third stage consisted of restructuring, converting SOEs into modern corporate entities, while the government only sought to exercise its control on large monopolies and strategic resource sectors such as oil and gas, petroleum refining, construction, automobile, telecoms, utilities and banking sectors.

Many SOEs function as private enterprises in appearance, follow market rules and are exposed to competitive pressure, but are still privileged in obtaining funding from state banks whose primary mission is to implement the government's policy. This characteristic renders the SOEs' identity ambiguous as they act as state and private enterprises. In 2014, 154 companies of the 2,473 companies listed in the Shanghai and the Shenzhen Stock Exchange received about €12.7 million and 105 of these companies are SOEs from the Chinese government.¹⁴

Art 10 of GPL 'buy national'

Article 10 of the GPL provides that domestic goods, construction and services shall be procured for government procurement except in following cases:¹⁵

- (i) When the needed goods, construction or services are not available within the territory of People's Republic of China; or though available, cannot be acquired on reasonable commercial terms and conditions;
- (ii) When the items to be procured are for use abroad;
- (iii) In other circumstances provided for by laws and administrative regulations.

Indigenous innovation

In 2006, China introduced the Medium and Long Term National Plan for Science and Technology Development, which is a national policy directing government agencies to buy products listed in certain procurement catalogues including only qualified indigenous innovation products. It provides, inter alia, that once approval is granted to pur-

chase foreign products, the contract should preferably be awarded to the foreign enterprise that which undertakes the transfer of core technology to China (Art. 11), and that indigenously innovated products are to be given preference at a margin of 5-10 percent in cases where price is the sole determining factor, or 4-8 percent otherwise (Art. 13-17).¹⁶

Small and Medium Enterprises

The Promotion of Small and Medium Enterprises Law, which entered into force in 2003, provides in Art. 34 that 'government procurement shall give preference to products or services supplied by Chinese SMEs'. This ostensibly gives priority to SMEs when bidding for government procurement contracts.¹⁷

Way ahead in EU-China cooperation

China on the way to GPA accession

As it moved toward WTO accession, China stated that its SOEs operated in accordance with the rules of the market economy. In 2013, China announced a new wave of SOE reform measures dealing with the dissolution of state holdings.¹⁸ In September 2015, SOEs were divided into profit-making entities and public services entities. This reform initiative put a further hurdle in the way of China expanding its offer to join the GPA by including additional SOEs. Internal proposals within the Chinese Ministry of Finance (MOF) to offer SOEs (other than financial ones) for GPA coverage has made little progress, mainly due to the fact that such SOEs are supervised by other government agencies, such as SASAC,¹⁹ and MOF does not have the jurisdiction to propose such coverage."

On the one hand, the scope of the GPA extends only to procurement by covered entities "for governmental purposes" and not to goods "procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale". In other words, what matters is the nature of the procurement rather than the nature of the covered entities. Therefore, the GPA does not actually prevent China from offering even SOEs classified as commercial SOEs operating in a fully competitive market for inclusion, although such entities are unlikely to discriminate against foreign suppliers in their procurement.

On the other hand, the majority of the procurement by Chinese SOEs, even those serving the public interest, is for commercial resale, therefore not "for governmental purposes" and not covered by the GPA, for example a state-owned bus company purchasing buses to provide public

**IN SEPTEMBER 2015,
SOEs WERE DIVIDED INTO
PROFIT-MAKING ENTITIES
AND PUBLIC SERVICES
ENTITIES.**

transportation services paid for by customers. Moreover, Chinese standard practice of setting up a new SOE for each major infrastructure project means that even if China lists all its existing SOEs at this point, the GPA coverage would not extend to a major infrastructure project procured by a newly created SOE.²⁰

In its sixth GPA offer in 2014, China proposed to open the drinking water, electricity, energy, transportation, telecoms, postal services sectors, universities, hospitals and two financial SOEs.²¹ Moreover, 63 central government entities and hundreds of sub-central government entities have been offered.²² The implementation period from the initial offer of 15 years has been reduced to five years.

On 26 December 2018, the Standing Committee of the National People's Congress issued a second draft of its Foreign Investment Law, which will come into effect on 1 January 2020. Article 16 provides that the Chinese government would guarantee fair participation in government procurement activities to FIEs and that the products manufactured by such enterprises in China would receive equal treatment under its procurement regime.

International Procurement Instrument (IPI)

In its 2012 resolution on unbalanced trade between the EU and China, the European Parliament expressed its concern about “the fact that foreign businesses face difficulties in accessing Chinese public procurement”. This stands in contrast to the fact that the EU has not imposed legal barriers on procurement, so that a contracting authority can always accept bidders from a third country such as China and does not have the obligation to reject it. In response, the Commission drafted a proposal in 2012, aiming at improving the conditions under which EU businesses could compete for public contracts in third countries.

To level the playing field with non-GPA members that are reluctant to open public procurement, the European Commission in January 2016 submitted a proposal for a revised IPI based on ‘financial adjustment measures’. These would avoid EU market closure, as government procurement is not included in the scope of the future

EU-China comprehensive agreement on investment (CAI) under negotiation since 2013.²³ The proposed measures include the exclusion of tenders originating in a non-EU country from a particular sector or to imposing a price penalty on the non-EU bids.

The IPI Proposal provides a tool to increase EU advantage when negotiating access to public procurement markets of other trading partners that are not currently party to the WTO GPA or its Regional Trade Agreements, and consequently improve the opportunities for EU businesses to compete for public procurement contracts outside the EU.²⁴

Conclusions

Starting from its original philosophy centered on SOEs acting in a market relatively protected from open competition, Chinese public procurement has achieved progressive convergence with the Western philosophy focused on private enterprises acting in market economy. This convergence results from China's effort to become, in a first phase, a WTO member and, in a second phase, to access the plurilateral GPA. Subjecting Chinese SOEs to market rules is necessary to achieve fair competition with European firms.

CHINESE PUBLIC PROCUREMENT HAS ACHIEVED PROGRESSIVE CONVERGENCE WITH THE WESTERN PHILOSOPHY FOCUSED ON PRIVATE ENTERPRISES ACTING IN MARKET ECONOMY.

Access to China's public procurement market has been a key issue in EU-China bilateral trade relations. While Chinese businesses generally agree that the public procurement market in the EU is open and transparent, EU businesses are hampered by the limited access to the market in China, the lack of reciprocal treatment and the privileges that SOEs enjoy.

However, only procurement according to the GPL is part of the GPA accession negotiation and not of the TBL. For this reason, the EU has pressed China to offer more covered entities at more administrative levels, in wider provincial territories, with lower thresholds, and upon a more transparent and non-discriminatory institutional framework. To cope with these issues, the IPI created by the EU and to be adopted by the end of 2019 may help enforce the principles of reciprocity and non-discriminatory treatment vis-à-vis China. EU-China cooperation on public procure-

ment would not be possible without both sides reaching an agreement on SOEs' coverage.

The EU should deepen its engagement with China to promote common interests at global level, to seek more balanced and reciprocal conditions for market access on

each side. At the same time, the EU must adapt itself to the changing economic realities and strengthen its own domestic policies and industrial base. These goals must be achieved by the EU member states as a group – rather than individually – and within sub-regional cooperation frameworks to ensure consistency with EU law, rules and policies. ©

1 Arrowsmith & Anderson. Government Procurement in the WTO. 2012. **2** John Tizard. Public Finance 1 April 2016 <https://www.publicfinance.co.uk/opinion/2016/04/how-eu-procurement-rules-affect-public-sector>, accessed on 14/04/2019. **3** Ping Wang, Impacts of China's GPA Accession and the Way Forward, p. 5. **4** Public Procurement in China: European Business Experiences Competing for Public Contracts in China report. <https://www.publictendering.com/pdf/PPStudyENFinal.pdf>, accessed on 29/03/2019, accessed on 28/03/2019, p. 18. **5** See http://trade.ec.europa.eu/doclib/docs/2012/march/tradoc_149242.pdf, accessed on 20/03/2019, p. 8-9. **6** Art 25 Conditions relating to the GPA and other international agreements, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance. **7** Bidding and Tendering Law: http://www.foreigner.cn.com/index.php?option=com_content&view=article&id=1221:law-of-the-peoples-republic-of-china-on-tenders-and-bids&catid=55:chinese-law&Itemid=99, accessed on 14/04/2019. **8** Government Procurement law: http://www.gov.cn/english/laws/2005-10/08/content_75023.htm, accessed on 14/04/2019. **9** "Why China's public procurement is an EU issue?" European Parliament. December 2016. **10** Public Procurement in China: European Business Experiences Competing for Public Contracts in China report. <https://www.publictendering.com/pdf/PPStudyENFinal.pdf>, accessed on 03/03/2019, p.8. **11** Article 10, GPL. **12** European Union Chamber of Commerce in China, Public Procurement Working Group Position Paper 2010/2011. **13** Article 3, Tendering and Bidding Law of the People's Republic of China. **14** Tomorrow's silk road. CEPS report 2018. Dr Weinian Hu. p.186. **15** See http://www.gov.cn/english/laws/2005-10/08/content_75023.htm, accessed on 21/04/2019. **16** "Openness of public procurement markets in key third countries" study, European Union, 2017, p.37. **17** Ibid. **18** See Covington & Burling (2015), pp. 60-61. **19** The State-owned Assets Supervision and Administration Commission of the State Council. **20** Impacts of China's GPA Accession and the Way Forward. Ping Wang. p.124. **21** See <https://gettingthedealthrough.com/area/33/jurisdiction/27/public-procurement-china/>, Zoe Qiao and Joline Chen, Shanghai Lee, July 2018, accessed on 03/04/2019. **22** Since China's second offer, a third category had been added to covered procurement entities, called "other entities", to be subject to GPA rules. **23** "Why China's public procurement is an EU issue". European Parliament. December 2016. **24** See https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm, accessed on 15/04/2019.



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