

INTERNATIONAL MARITIME AND TRANSPORT LAW COURSE
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6-10 Sept. 2021



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA



<https://site.unibo.it/beltandroad/it>

'Challenges in legal regulation of seaports considering application of the European Union law and national legal tradition' project, Adriatic Institute of the Croatian Academy of Sciences and Arts, Zagreb

'El transporte ante el desarrollo tecnológico y la globalización: nuevas soluciones en materia de responsabilidad y competencia' project, Universitat Jaume I, Castellon de la Plana

The Development of Transport Infrastructures in the EU States under the EU Digital Strategy and the Green Deal within the Constraints of the EU State Aid Policy

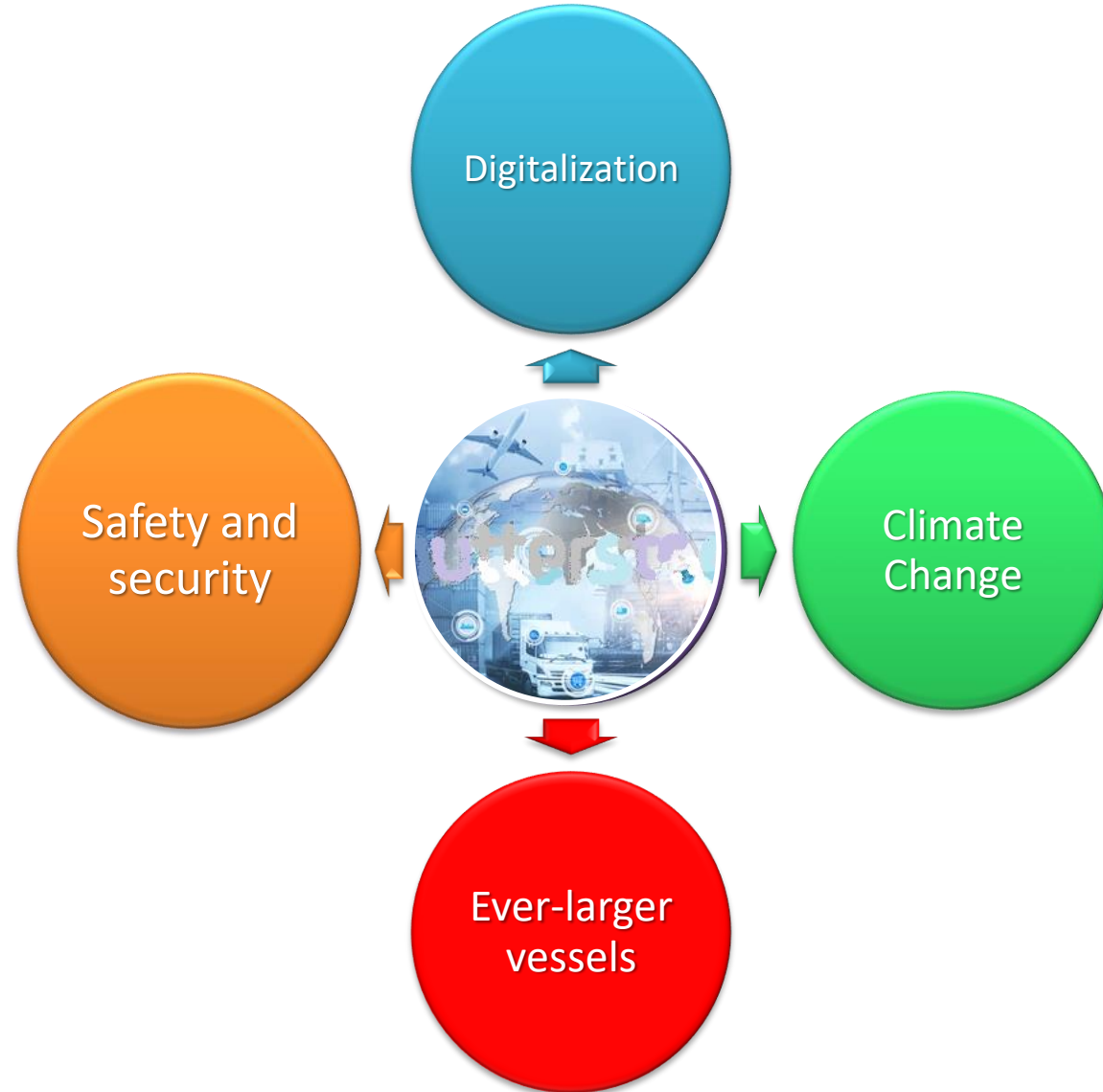
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Current Challenges and Trends in Transport Infrastructures



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Digital Transformation in the Transport Sector

- Autonomous vehicles → Smart mobility and infrastructures
- Digital supply chain networks / consortia → Need of involving public authorities; uniform technical standards and regulation
- National and Centralized Single Windows – «One stop shop»

What is Digital Transformation ...

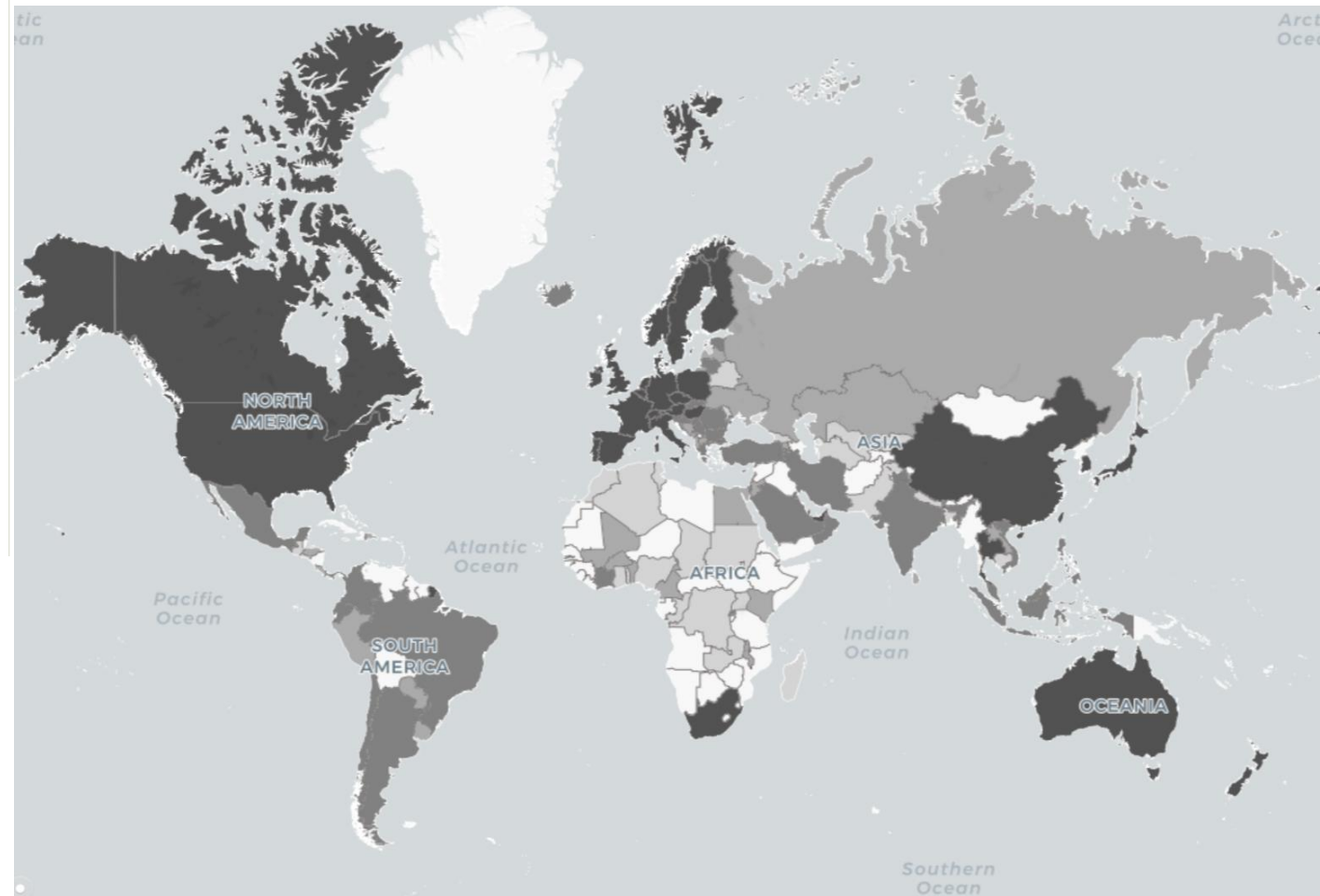
... and what is not?

- A simple integration of digital technologies in a given business?
- A new way of comprehensive thinking a business or sector, revolutionizing it. It is not limited to organizational aspects, but involves cultural and social challenges, including in the process intermediate or even final users of the service/product.

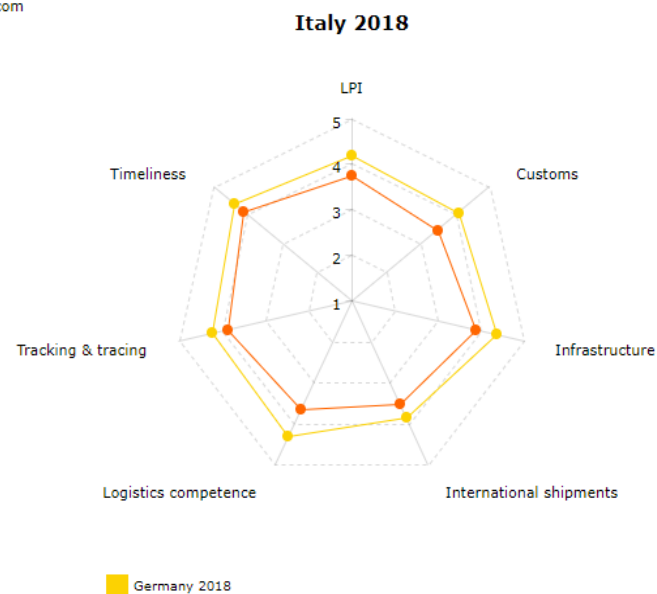
(Toggle Rank and Score for Subindicators) 

Country	Year	LPI Rank	LPI Score	Customs	Infrastructure	International shipments	Logistics competence	Tracking & tracing	Timeliness
Germany	2018	1	4.20	4.09	4.37	3.86	4.31	4.24	4.39
Sweden	2018	2	4.05	4.05	4.24	3.92	3.98	3.88	4.28
Belgium	2018	3	4.04	3.66	3.98	3.99	4.13	4.05	4.41
Austria	2018	4	4.03	3.71	4.18	3.88	4.08	4.09	4.25
Japan	2018	5	4.03	3.99	4.25	3.59	4.09	4.05	4.25
Netherlands	2018	6	4.02	3.92	4.21	3.68	4.09	4.02	4.25
Singapore	2018	7	4.00	3.89	4.06	3.58	4.10	4.08	4.32
Denmark	2018	8	3.99	3.92	3.96	3.53	4.01	4.18	4.41
United Kingdom	2018	9	3.99	3.77	4.03	3.67	4.05	4.11	4.33
Finland	2018	10	3.97	3.82	4.00	3.56	3.89	4.32	4.28
United Arab Emirates	2018	11	3.96	3.63	4.02	3.85	3.92	3.96	4.38
Hong Kong, China	2018	12	3.92	3.81	3.97	3.77	3.93	3.92	4.14
Switzerland	2018	13	3.90	3.63	4.02	3.51	3.97	4.10	4.24
United States	2018	14	3.89	3.78	4.05	3.51	3.87	4.09	4.08
New Zealand	2018	15	3.88	3.71	3.99	3.43	4.02	3.92	4.26
France	2018	16	3.84	3.59	4.00	3.55	3.84	4.00	4.15
Spain	2018	17	3.83	3.62	3.84	3.83	3.80	3.83	4.06
Australia	2018	18	3.75	3.87	3.97	3.25	3.71	3.82	3.98
Italy	2018	19	3.74	3.47	3.85	3.51	3.66	3.85	4.13
Canada	2018	20	3.73	3.60	3.75	3.38	3.90	3.81	3.96
Norway	2018	21	3.70	3.52	3.69	3.43	3.69	3.94	3.94
Czech Republic	2018	22	3.68	3.29	3.46	3.75	3.72	3.70	4.13
Portugal	2018	23	3.64	3.17	3.25	3.83	3.71	3.72	4.13

The World Bank's Logistics Performance Index -
<https://lpi.worldbank.org/>



Radar Column Line
chart by amcharts.com



Level of Fees and Charges

Based on your experience in international logistics, please select the options that best describe the operational logistics environment in your country of work

	Percent of respondents answering high/very high
Port charges	38%
Airport charges	58%
Road transport rates	50%
Rail transport rates	45%
Warehousing/transloading charges	33%
Agent fees	25%

Quality of Infrastructure

Evaluate the quality of trade and transport related infrastructure (e.g. ports, roads, airports, information technology) in your country of work

	Percent of respondents answering low/very low
Ports	31%
Airports	17%
Roads	17%
Rail	67%
Warehousing/transloading facilities	17%
Telecommunications and IT	27%

Competence and Quality of Services

Evaluate the competence and quality of service delivered by the following in your country of work

	Percent of respondents answering high/very high
Road	42%
Rail	9%
Air transport	50%
Maritime transport	54%
Warehousing/transloading and distribution	50%
Freight forwarders	58%
Customs agencies	33%
Quality/standards inspection agencies	17%
Health/SPS agencies	25%

Customs brokers	33%
Trade and transport associations	42%
Consignees or shippers	25%

Efficiency of Processes

Evaluate the efficiency of the following processes in your country of work

	Percent of respondents answering often or nearly always
Clearance and delivery of imports	92%
Clearance and delivery of exports	92%
Transparency of customs clearance	69%
Transparency of other border agencies	58%
Provision of adequate and timely information on regulatory changes	45%
Expedited customs clearance for traders with high compliance levels	42%

Sources of Major Delays

How often in your country of work do you experience

	Percent of respondents answering often or nearly always
Compulsory warehousing/transloading	0%
Pre-shipment inspection	8%
Maritime transshipment	25%
Criminal activities (e.g., stolen cargo)	0%
Solicitation of informal payments	8%

Changes in the Logistics Environment Since 2015

Since 2015, have the following factors improved or worsened in your country of work

	Percent of respondents answering improved or much improved
Customs clearance procedures	69%
Other official clearance procedures	42%
Trade and transport infrastructure	50%
Telecommunications and IT infrastructure	58%
Private logistics services	67%
Regulation related to logistics	17%
Solicitation of informal payments	27%

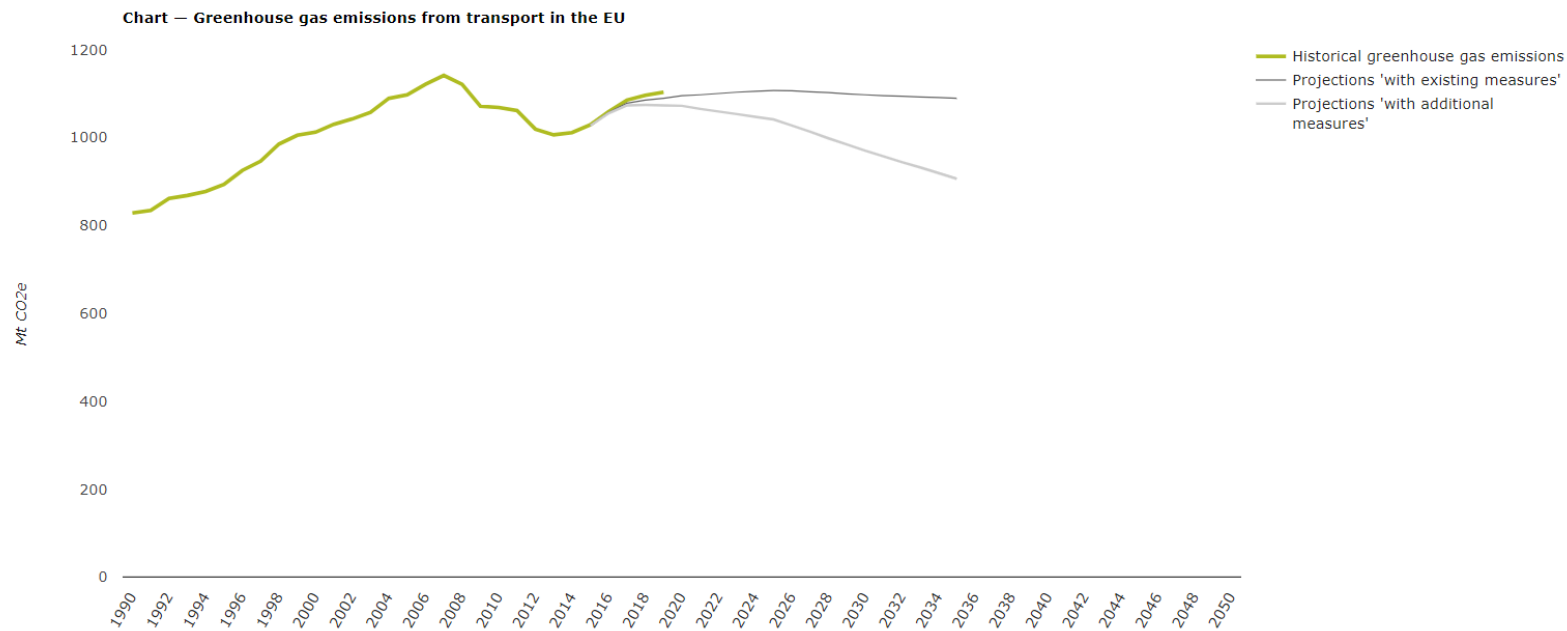
Developments since 2015

	Percent of respondents indicating much decreased or decreased
Demand for traditional freight forwarding as a commercial service	0%
increased use of electronic trading platforms (B2B and B2C) by shippers mean that business volumes have	0%
Cybersecurity threats in logistics	0%
Firms preparedness for cyber threats	0%



Climate Change and Transport Sustainability

In the European Union, transport represents approx. the 29% of total economy-wide greenhouse gas emissions in the EU (source: <https://theicct.org/blog/staff/eu-carbon-budget-apr2021>).



Note

- The figure shows the trend in the greenhouse gas (GHG) emissions in the transport sector since 1990 and projections to 2035, at EU level (EU-27).
- The values shown include all domestic transport emissions as well as international aviation and international maritime transport.
- 2019 value is a preliminary estimate based on approximated GHG inventories reported by Member States under the MMR Regulation (EU) No 525/2013. This does not include shipping (assumed unchanged).
- The 'with existing measures' scenario reflects existing policies and measures and the 'with additional measures' scenario also includes further planned policies and measures reported by Member States until March 2020.

Source of the chart: <https://www.eea.europa.eu/data-and-maps/indicators/transport-emissions-of-greenhouse-gases-7/assessment>

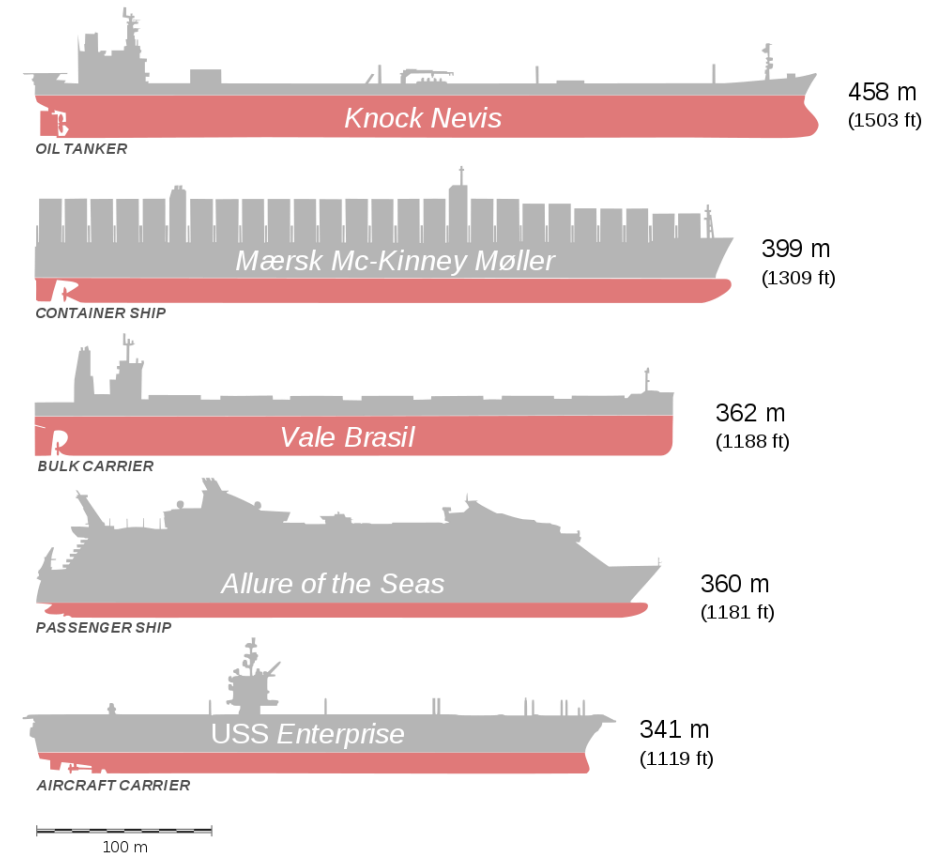


Ever-larger Vessels and Their Impact on Port Infrastructures

Especially in certain sectors, ships are getting bigger and bigger (so-called **mega-ships**)



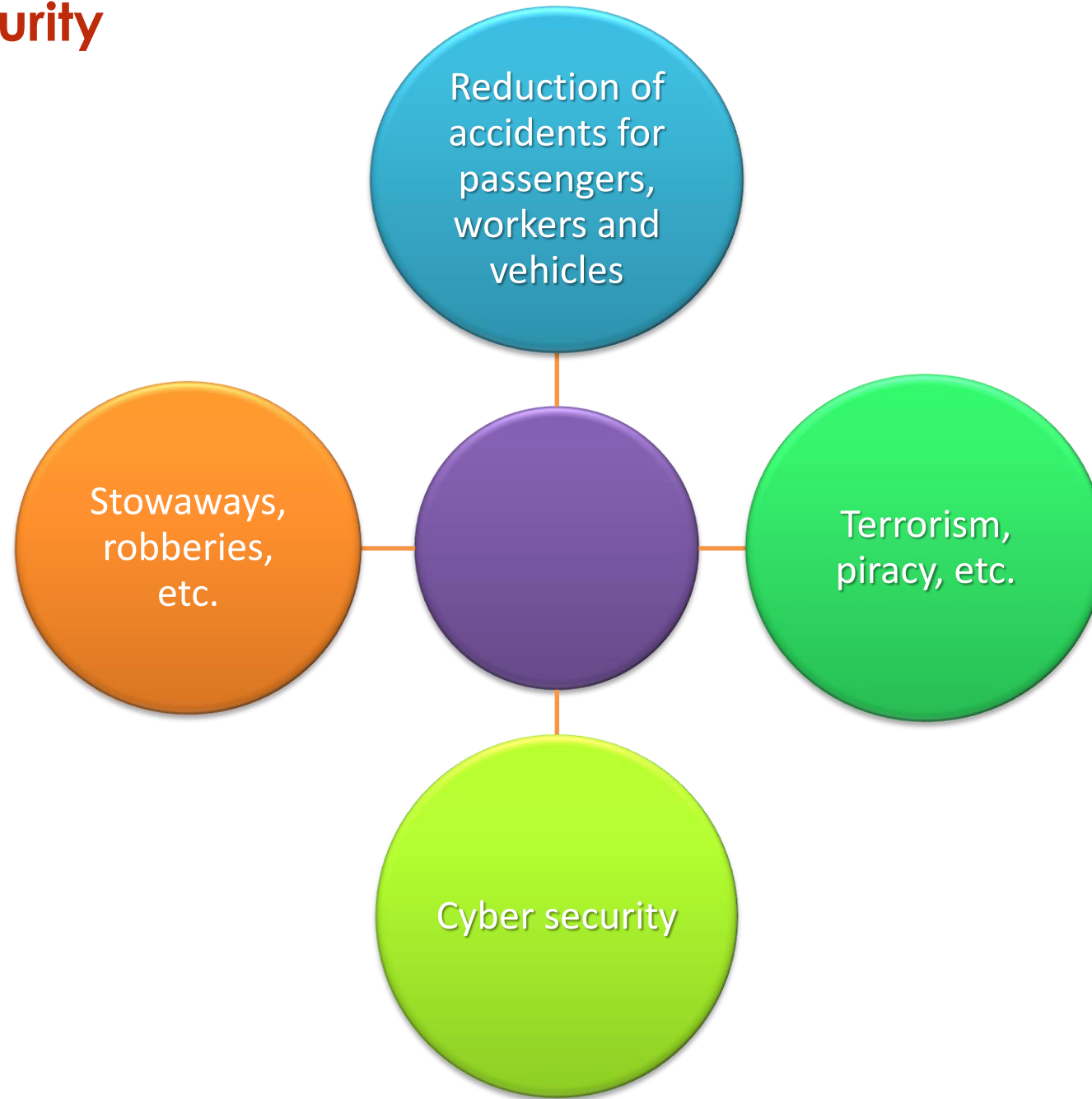
- Need of adequate infrastructures
- Hub-and-spoke systems



Pictures' authors and sources: Delphine Ménard (notafish) derivative work: Tupsumato - This file was derived from: Bateaux comparaison2.svg.; CC BY-SA 2.0 de, <https://commons.wikimedia.org/w/index.php?curid=23348292>; Di Contains modified Copernicus Sentinel data [2021], processed by Pierre Markuse - Container Ship 'Ever Given'; stuck in the Suez Canal, Egypt - March 24th, 2021, CC BY 2.0, <https://commons.wikimedia.org/w/index.php?curid=102400564>



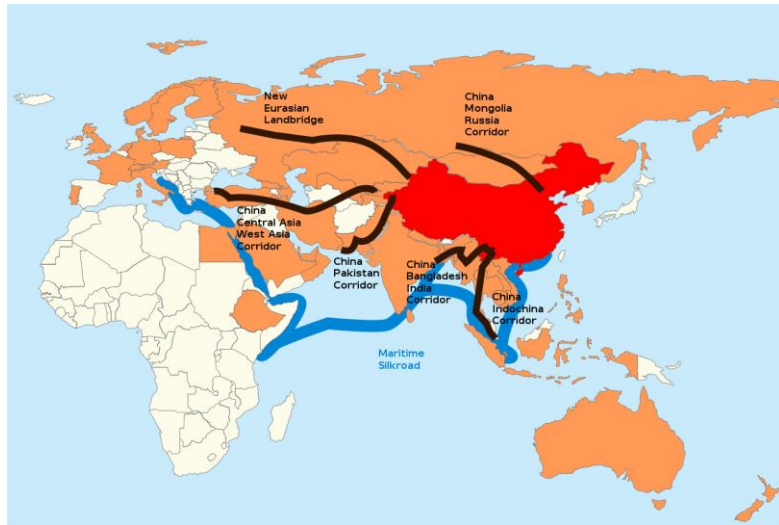
Safety and Security



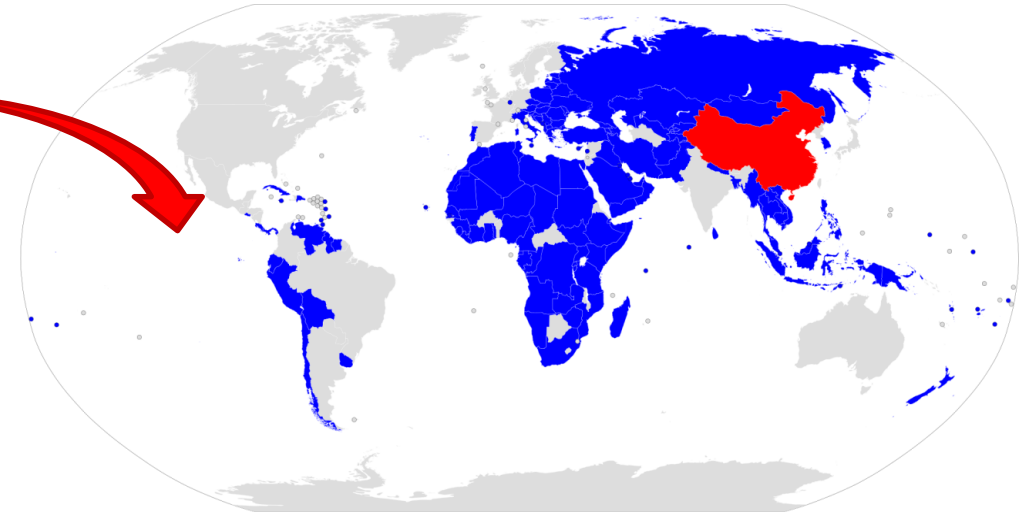
Strategies and Policies: the PRC's Belt and Road Initiative

From this ...

... to this



The original project



Countries that signed cooperation documents related to the Belt and Road Initiative

Pictures' authors and sources: by Lommes - own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=58884083>;
by Owenson - own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=78386561>



**Not only
transport infrastructures ...**



The Digital Silk Road (DSR) and BRI's Sustainability

Digitalization

- The 2015 OBOR White Paper: the Digital Silk Road (DSR), a.k.a. the Digital Belt and Road (DBAR)

Sustainability



- April 2019 – 2nd Belt and Road Forum for International Cooperation: the Belt and Road Initiative International Green Development Coalition (BRIGC).

The European Union

➤ EU Digital Strategy



- 2010 – 2020: Digital Single Market;
- Sustainable and Smart Mobility Strategy

➤ EU Green Deal (July 2020)



Goal of the first climate-neutral continent by 2050.



✓ Communication from the Commission “Sustainable and Smart Mobility Strategy – putting European transport on track for the future” of 9.12.2020;

✓ Green Ports;

✓ Green Airports.

} H2020 – 22 Sept. 2020 – 27 Jan. 2021

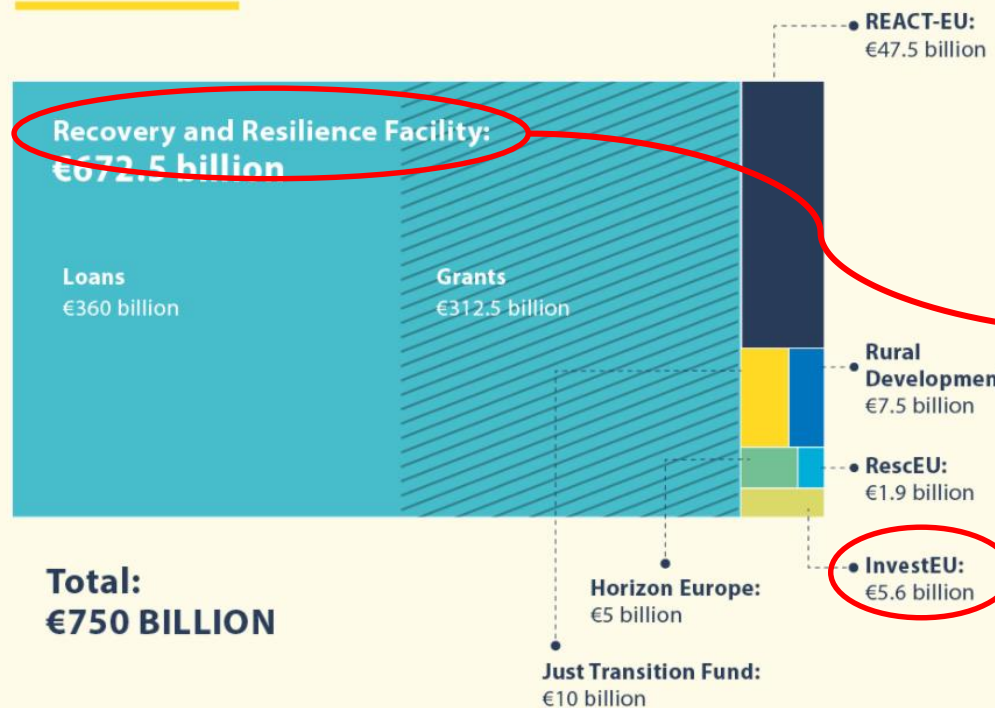


Other Opportunities

➤ July 2020 → Next Generation EU (NGEU)



Investing in a green, digital and resilient EU



Investments and reforms, including in green and digital transitions.

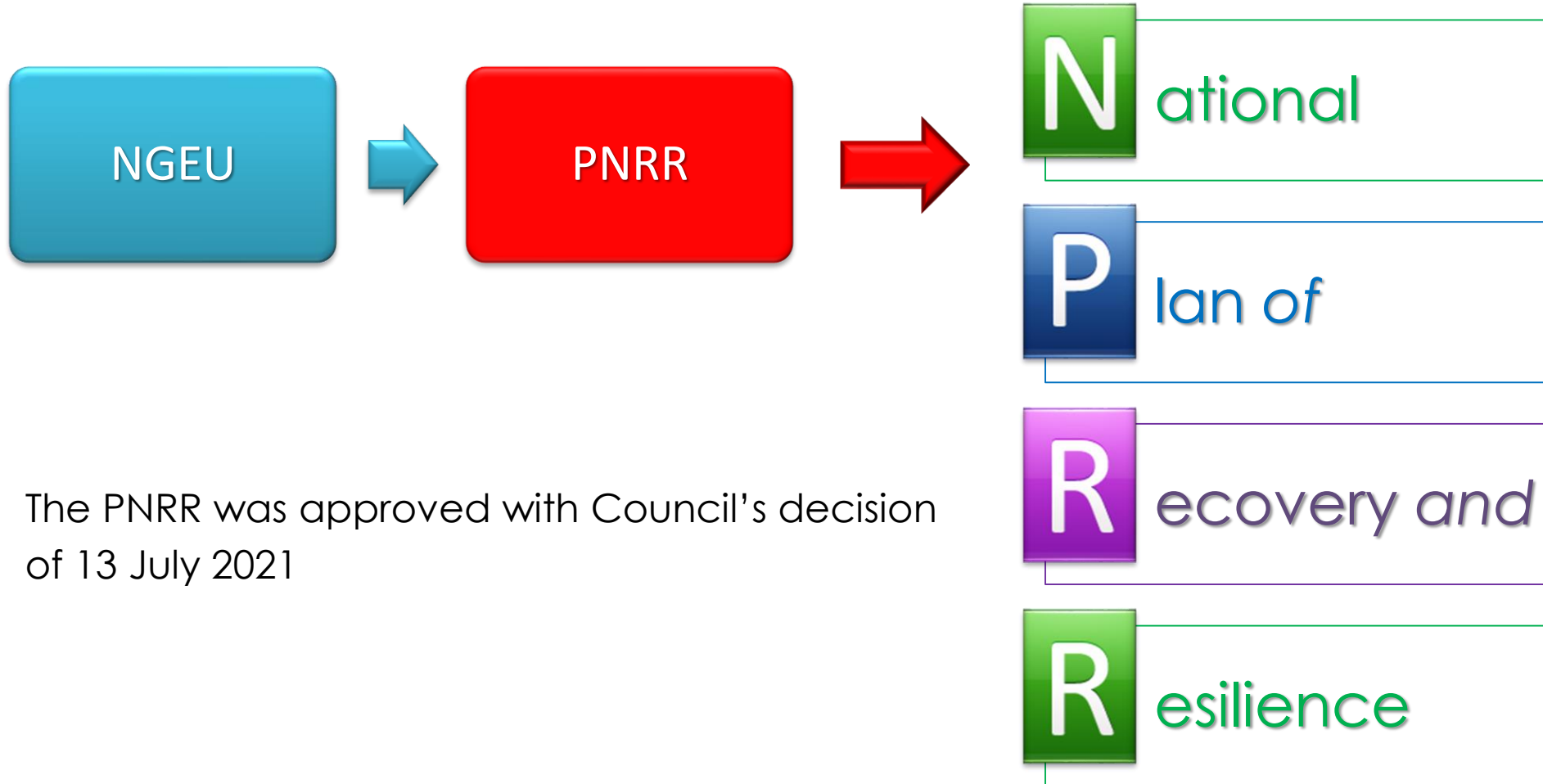
Investments in – among the others – sustainable infrastructure and digitisation.

- Legal commitments: by 31 December 2023
- Payments: by 31 December 2026

Source of the pictures: <https://www.consilium.europa.eu/>



What about Italy?



The PNRR was approved with Council's decision of 13 July 2021

Source of the letter icons: [iconarchive.com](https://www.iconarchive.com)



The Italian PNRR

6 missions:

1. Digitalization, Innovation, Competitiveness, Culture and Tourism;
2. Green Revolution and Ecological Transition;
3. Infrastructures for a Sustainable Mobility.
4. Education and Research;
5. Inclusion and Cohesion;
6. Health.

- Decarbonization and reduction of green house gas emissions through a modal shift from road transport to rail one;
- Improvement of connectivity and territorial cohesion;
- Digitalization of transport networks and air traffic control;
- Enhancement of competitiveness through the improvement intermodal connections;
- Improvement of ports' sustainability, climate resilience and energetical efficiency.

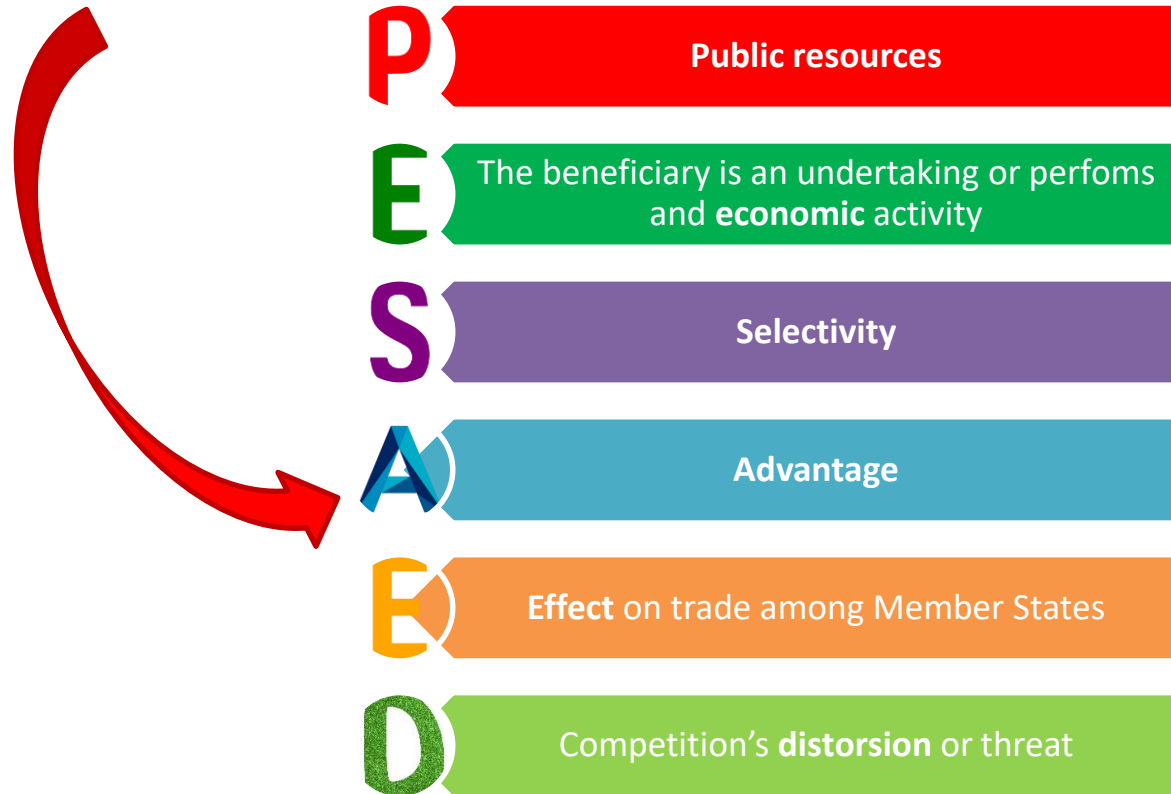
- Investments in railways;
- Intermodality and integrated logistics;
- Improvement of infrastructures and digital services in airports and ports;
- Safety and climate resilience of bridges and viaducts.



The Limits: the State Aids Regime

Art. 107 TFEU:

«1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market».



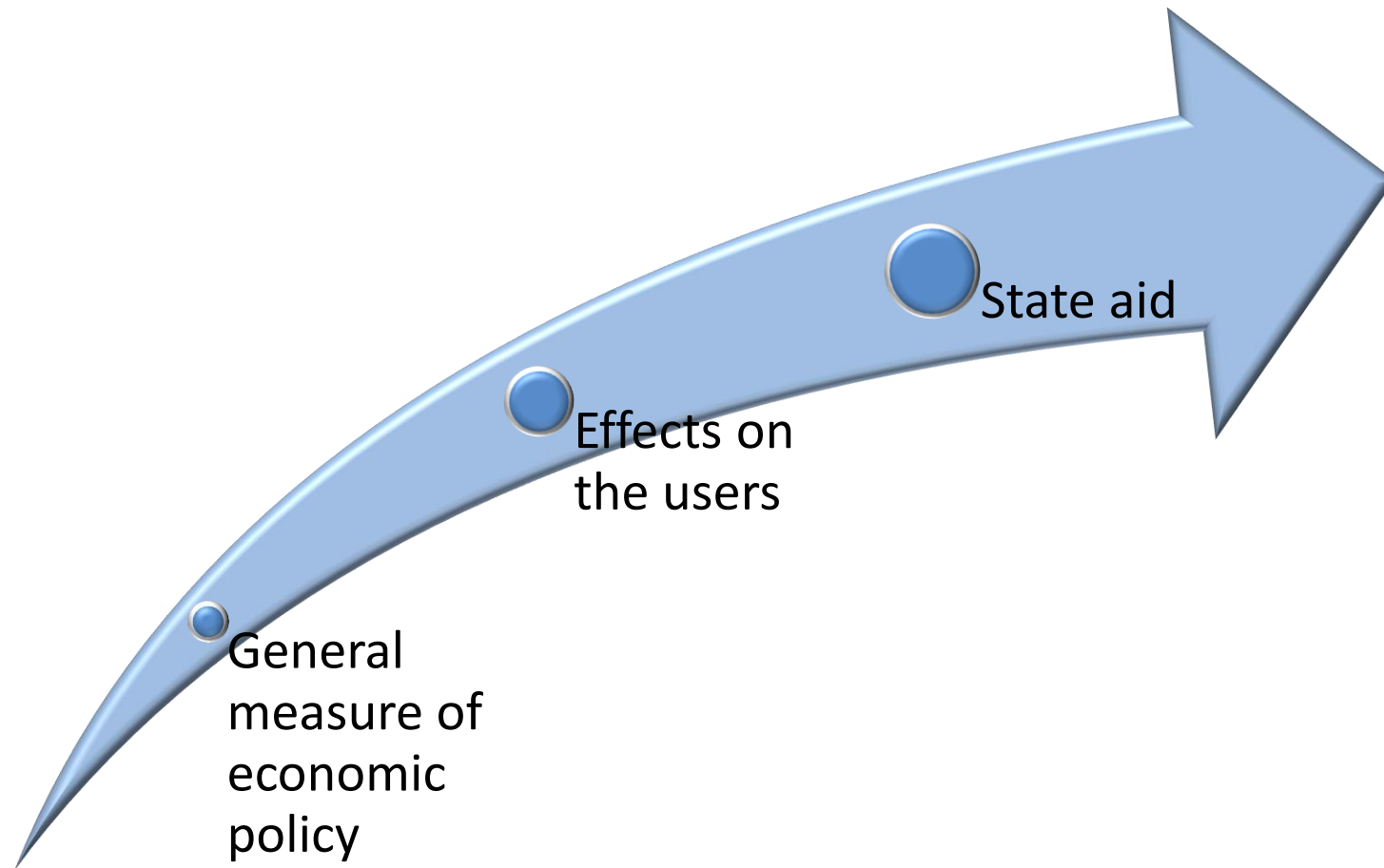
Does the Construction of Transport Infrastructures Falls Within the Scope of Art. 107 TFEU?



Picture by Jay Mantri, on EveryPixel



The Evolution of the EU Institutions' Approach



The Nature of the Development of Transport Infrastructures – Ports

2004 Community guidelines on State aid to maritime transport:

«Investments in infrastructure are **not normally considered to involve State aid** within the meaning of Article 87(1) of the Treaty **if the State provides free and equal access to the infrastructure for the benefit of all operators concerned**. However, the Commission may examine such investments if they could **directly or indirectly benefit particular shipowners**. Finally, the Commission has established the principle that no State aid is involved where public authorities contribute to a company on a basis that would be acceptable to a private investor operating under normal market-economy conditions».



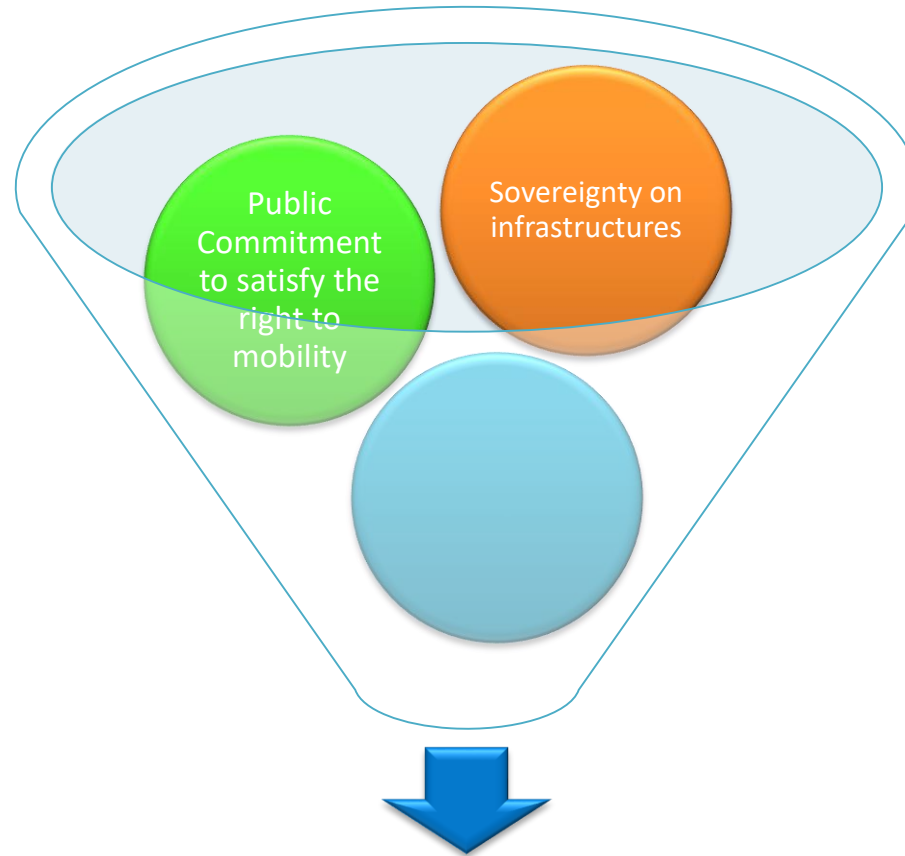
The Nature of the Development of Transport Infrastructures – Airports

1994 Guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector:

«the **construction and enlargement of infrastructures projects** (such as airports, motorways, bridges, etc.) represents **a general measure of economic policy which cannot be controlled by the Commission under the Treaty rules on State aids.** Infrastructure development decisions fall outside the scope of the application of (...) [the] communication in so far as they are aimed at meeting planning needs or implementing national environment and transport policies.

This general principle is valid only for the construction of infrastructures by Member States, and is without prejudice to evaluation of **possible aid elements resulting from preferential treatment of specific companies when using the infrastructure.** The Commission, therefore, may evaluate activities carried out inside airports which could directly or indirectly benefit airlines».



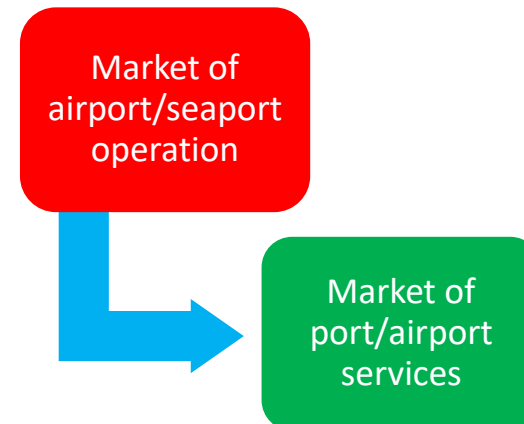


MS' Economic Policy on Transports



The Airport and Seaport Sector

1. From 1957 to 1970 approx.: art. 84.2 TEEC (now art. 100.2 TFEU) was interpreted as ruling out the maritime and air transport sectors from the **Common Transport Policy**.
2. From 1970s to 1990 approx.: Common Maritime Policy; but still the so-called **non-intervention policy**.
3. From 1990s to 2005 approx.: the so-called **Horizontal Approach** → liberalization of port services
The 1998 Resolution of the European Parliament on the Commission's Green Paper on sea ports and maritime infrastructure, recommended the Commission to break port and maritime infrastructure down into the following **three categories for the assessment of public financing**:
 - a) public port infrastructure measures (i.e., infrastructure accessible to all users),
 - b) port infrastructure measures for undertakings,
 - c) port superstructure measures related to undertakings.
4. Since 2006 approx.: public financing to port infrastructures can amount to State aids.



The Analytical Grids

2011/2012: the *Leipzig-Halle* decisions:

The construction, replacement or upgrade and maintenance of a transport infrastructure which is commercially exploited, offering services for a charge, constitute an economic activity

2012/2014 State Aid Modernisation (SAM)



Analytical grids for transport infrastructures.



The Assessment on the Existence of State Aids in the Transport Sector



Picture by Jlong Truong, on EveryPixel



The Beneficiary

Irrelevance of the public/private nature (**organic condition**):

- Principle of neutrality of the Treaties as regards the system of property ownership in the Member States (Art. 345 TFEU).

Functional condition:

- Economic relevance of the beneficiary's activity;
- It's irrelevant that the beneficiary does not seek to make a profit;
- It is necessary to distinguish between activities with economic nature and the exercise of public powers/State's essential functions;
- The economic exploitation of a public facility is an economic activity;
- Construction / operation / improvement of port infrastructures: it is necessary to ascertain the infrastructure's future use (function).

Aids to the developer/owner

Aids to the operator

Aids to the user



Other requirements

- **Public resources:** any public body or public undertaking ... including the EU.
- **Economic advantage:**
 - An economic benefit (in any form) that cannot be spontaneously achieved in the market.
 - Principle of the market investor.
 - *De minimis* aids.
- **Selectivity:** this requirement is not met when the beneficiary is selected through a competitive procedure.



EU Commission's Analytical Grids: the Example of Seaports

No State aids:

1. Infrastructures destined to **exercise public powers**;

Ex.: traffic control; protection against extreme weather conditions, coastal erosion; police; customs; antipollution surveillance; safety of navigation, light houses)

2. **Access infrastructures**, such as public roads, rivers, railways, locks, dredging of rivers, access routes and channels, where which are **available free of charge and on equal and non-discriminatory terms to the general public and located outside a port**;

Ex.: the dredging in an estuary that would improve access to the river and benefit indistinctly all the operators located in the estuary and along a further inland waterway is a general measure for the benefit of the maritime community as a whole.

3. **Access infrastructures located within the area of a port** where **part of an access infrastructure** crossing the port and **which serves also other destinations** than the port itself (such as a river crossing one port and leading also to other ports).

4. **De minimis**, for seaports with only local relevance.

5. **Principle of a market investor**.



Exceptions – Art. 107, par. 2 and 3

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences; (...)

3. The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.



Conclusions

- The current important strategies at the EU level cannot justify unlawful infringements of the State aids rules.
- They are meant to improve the digitalization and sustainability of transport infrastructures and therefore their competitiveness by the specific measures outlined by the single financing instrument within the specific limits set by it.





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Thank you!

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