

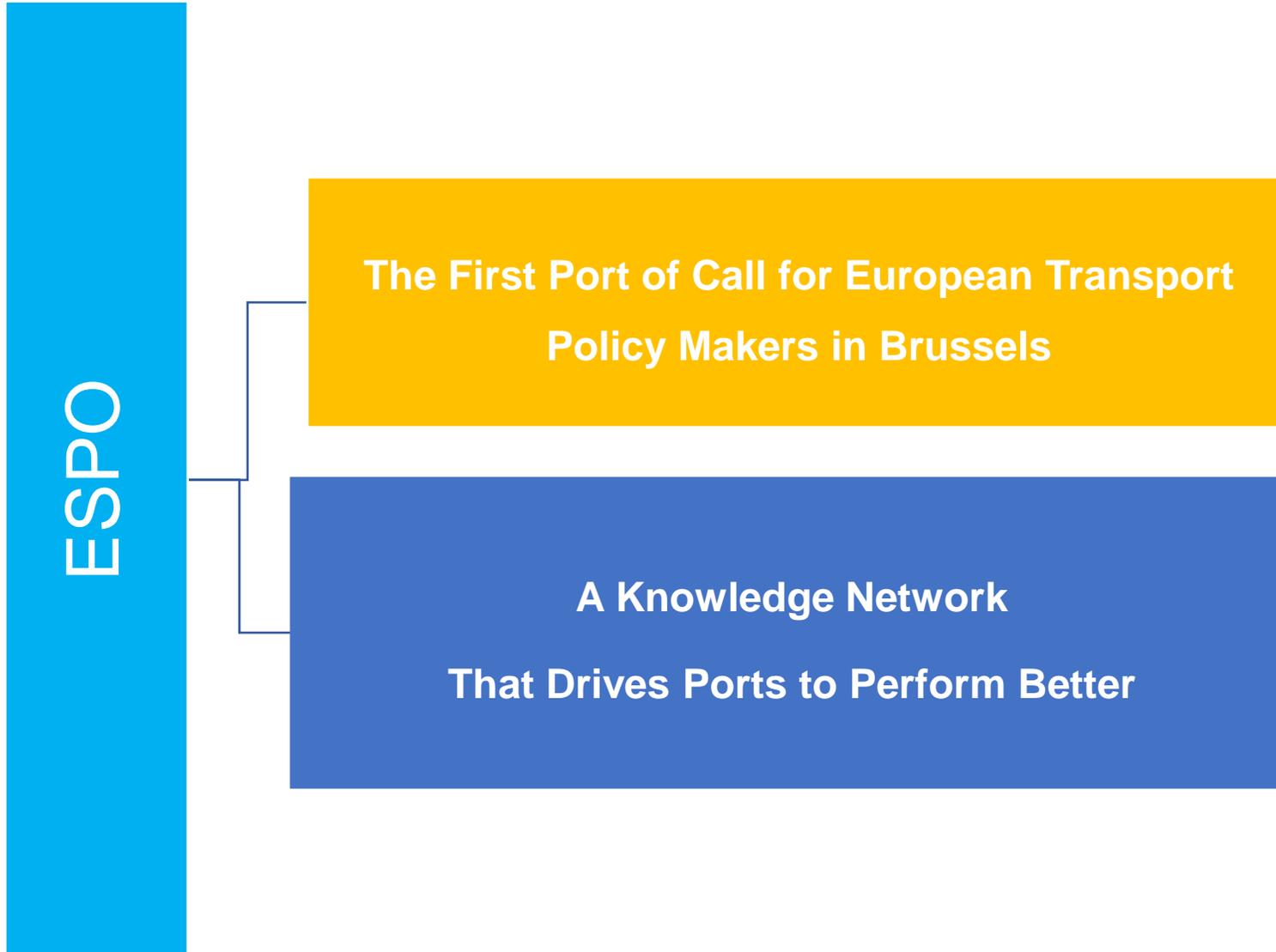


De rol van Europa in havensector

Isabelle Ryckbost - Cursus Havenbeheer Universiteit Gent – 17 September 2021



European Sea Ports Organisation (ESPO)



Summary



- 1. The difficult start of the EU Transport policy**
- 2. EU Ports policy in the strict sense**
 - 1 The path towards the 3rd port regulation proposal
 - 2 The port regulation 2013
 - 3 Concessions directive
 - 4 State aid
- 3. EU Ports policy in the large sense**
- 4. Concluding remarks and information**

The difficult start of the EU Transport policy

The difficult start of the EU Transport and Port policy (ETP)



- **EU Transport policy**
- **1957:** Four freedoms enshrined in the Treaty of Rome: goods, services, persons and capital
- + Title IV: => Common Transport Policy
- **1985:** Parliament files a complaint before the European Court of Justice against the Council of Ministers for “**failure to act**” => failure to implement a EU transport policy.
- Court’s decision: there is a breach of the Treaty by not introducing a common transport policy as required by (Article 74).
- **1992:**
 - Treaty of Maastricht: the co-decision procedure
 - First White paper on Transport (2001/2010)

The difficult start of the EU Transport and Port policy (



What is a port?

- « *A seaport may be understood to be **an area of land and water** made up of such **improvement works and equipment** as to permit, principally, the **reception of ships**, their loading and unloading, the **storage of goods**, the receipt and delivery of these goods by **inland transport** and can also include the **activities of business linked to sea transport** »*



Ports evolve towards
being
nodes in the supply chains, hubs of energy, industry and
blue economy

THE DIFFERENT ACTIVITIES AND RESPONSIBILITIES OF EUROPEAN PORTS

Gateways to the world

Essential nodes of the multimodal transport chain

Hotspots for Europe's industrial activity

Nodes of energy

Safe and secure shelters

Hubs of innovation and digitalisation

Linking Europe's peripheral regions and islands to the mainland

Key players in the transport of passengers

Essential part of an emergency supply chain and facilitators of military mobility

Clusters of blue growth

PORTS ARE MULTITASKERS

Port environment, stakeholders and interests



Source: Deloitte ESPO study June 2021

https://www.espo.be/media/Deloitte-ESPO%20study%20-%20Europe%E2%80%99s%20ports%20at%20the%20crossroads%20of%20transitions_1.pdf

Port Governance – The different actors operating in the port area



EU ports policy in the strict
sense

EU ports policy in the strict sense



The difficult path towards the port regulation



- **1997: Green paper on seaports and maritime infrastructure**
 - Integrating the ports in the TEN-T
 - Public financing of seaports (competition between seaports)
 - Access to the market of port services (competition within seaports)
 - **2001: “port package I”(Port services directive)**
 - Reflection on state aid
 - Legislative proposal on access to market services:
 - Technical-nautical services
 - Cargo handling (docker issue)
 - Self handling by the user of the port
 - Limitations on the market access (space, environment, safety,...)
 - Autorisations (conditions and durations)
 - = applying free movement of services to ports
- ⇒ **voted down by EP in 2003**
- **2004: 2nd proposal for a port package (Port package II)**
 - => voted down again by EP in 2005



The difficult path towards the 3rd port regulation proposal



- **Communication on ports 2007**
- Soft law communication: “to-do list”:
 - Certain guidelines on concessions
 - Need for guidelines state aid
 - Need for guidelines on environment
 - Integration of ports into the TEN-T
 - Social dialogue
- **8 September 2011: the then-Commissioner Kallas announces new initiative in Rotterdam.....**



- **EU ports policy: 3rd time, right time**

Port package 1 and 2 (2001=> 2005)	Proposal port regulation (May 2013)
<ul style="list-style-type: none">•Regulates freedom to provide services•Cargo handling + “selfhandling” included•Port concessions	<ul style="list-style-type: none">•Regulates freedom to provide services•Transparency of accounts/public funding•Regulates port infrastructure and port service charges•User committee/stakeholder consultation•Independent supervisory body <p>NOT:</p> <ul style="list-style-type: none">•cargo handling and passenger services (market access)•“selfhandling”•Concessions: horizontal directive

SCOPE



Principle: All TEN-T ports

But Member States can decide to exempt comprehensive ports in the outermost regions, subject to notification to the Commission.

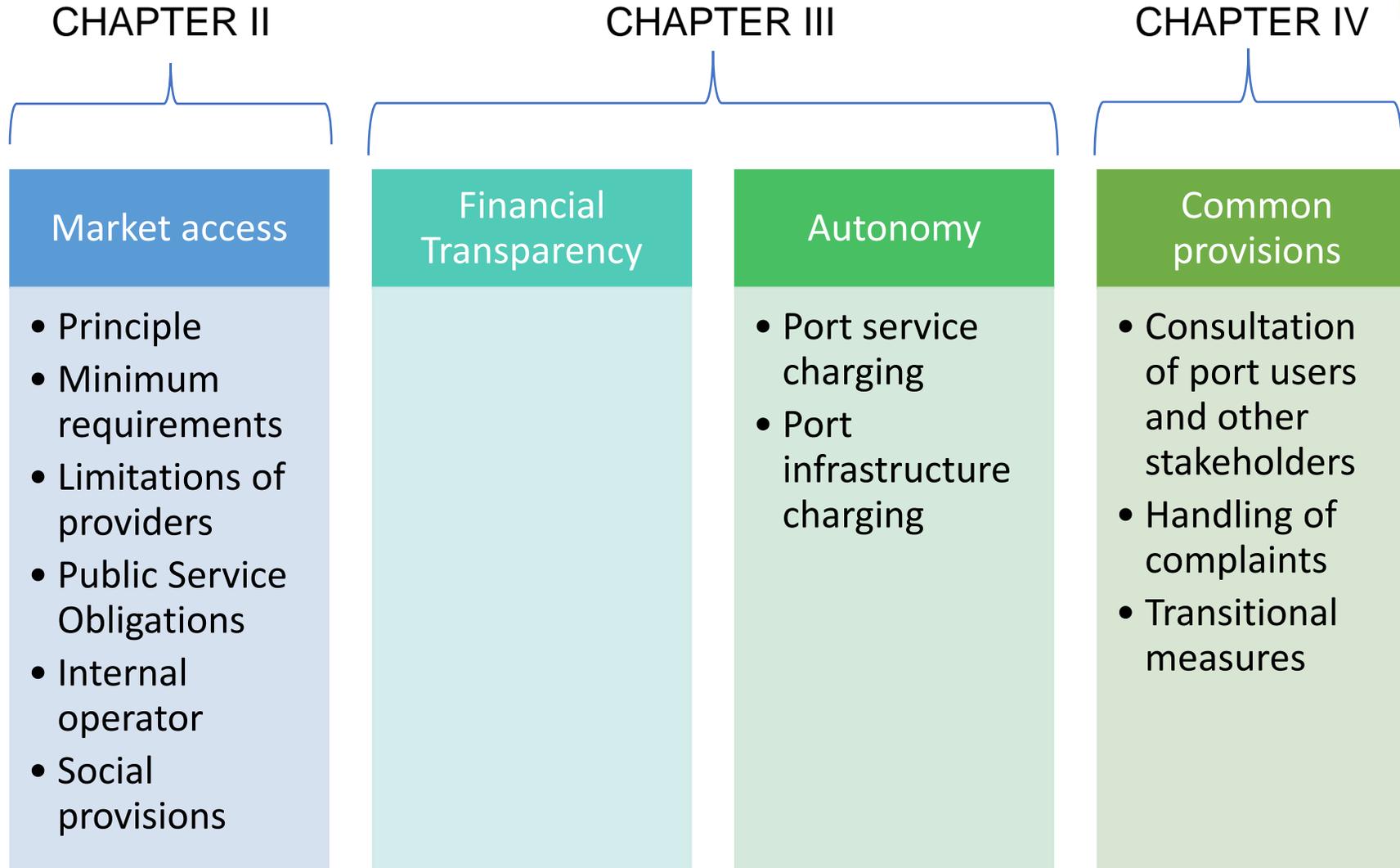
Member states can decide to apply the Regulation also to non-TEN-T ports.

7 port services: Bunkering, Mooring, Port reception facilities, Towage, Pilotage, Cargo handling and Passenger services

- BUT1: Cargo handling, passenger services and pilotage out of market access chapter.
- BUT2: Member States may decide to apply the market access chapter to pilots.

Dredging is not a port service but transparency provision (article 11) applies to dredging.

4 pillars



Port Regulation – 2017



- 15 February 2017
- Typical result of a difficult political compromise
- Applicable since March 2019
- List of complaint mechanisms is published on Commission Website
- Commission monitors application: complaints to follow?

The concession directive



- **Horizontal** directive 2014 (not sector specific)
 - Concession directive is not a new system but is **applying Treaty principles** to specific sectors
 - Only deals with contracts with third parties (outsourced services or works) to perform works or services – does **not interfere with the governance model** of ports.
 - If works or services in ports are « outsourced » and the contracts are falling under the definition of concessions as foreseen in the directive, they have to respect the requirements of the directive.
 - **The most difficult question: delimitation of the scope => *Which port related contracts fall under the directive, are considered as***
 - « **concessions** »
- ⇒ « **land lease contracts?** »
- **Pure land lease contracts are excluded in final agreement**
 - as long as the conditions the port is imposing are « general conditions » related to the use of the land, and not related to the service (quality, criteria,...) => Risk of « grey zone », case by case approach will remain
 - **Important:** if not under concessions directive => under Treaty rules (=less specific, but same principles of non-discrimination and transparency)

State aid to ports



•Ports and state aid: a special case?

- - Basic principles are foreseen in the Treaty
- - State aid is in principle not compatible with the Common market (article 107, 1 TFEU)
- - **What is « state aid »**: 4 conditions:
 - Transfer of state resources
 - Economic advantage
 - Selectivity
 - Effect on competition/ trade between member states
- If these conditions are met = state aid => **notification** to the CE, who decides on compatibility
- **Compatibility (article 107, 3 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 »

State aid to ports

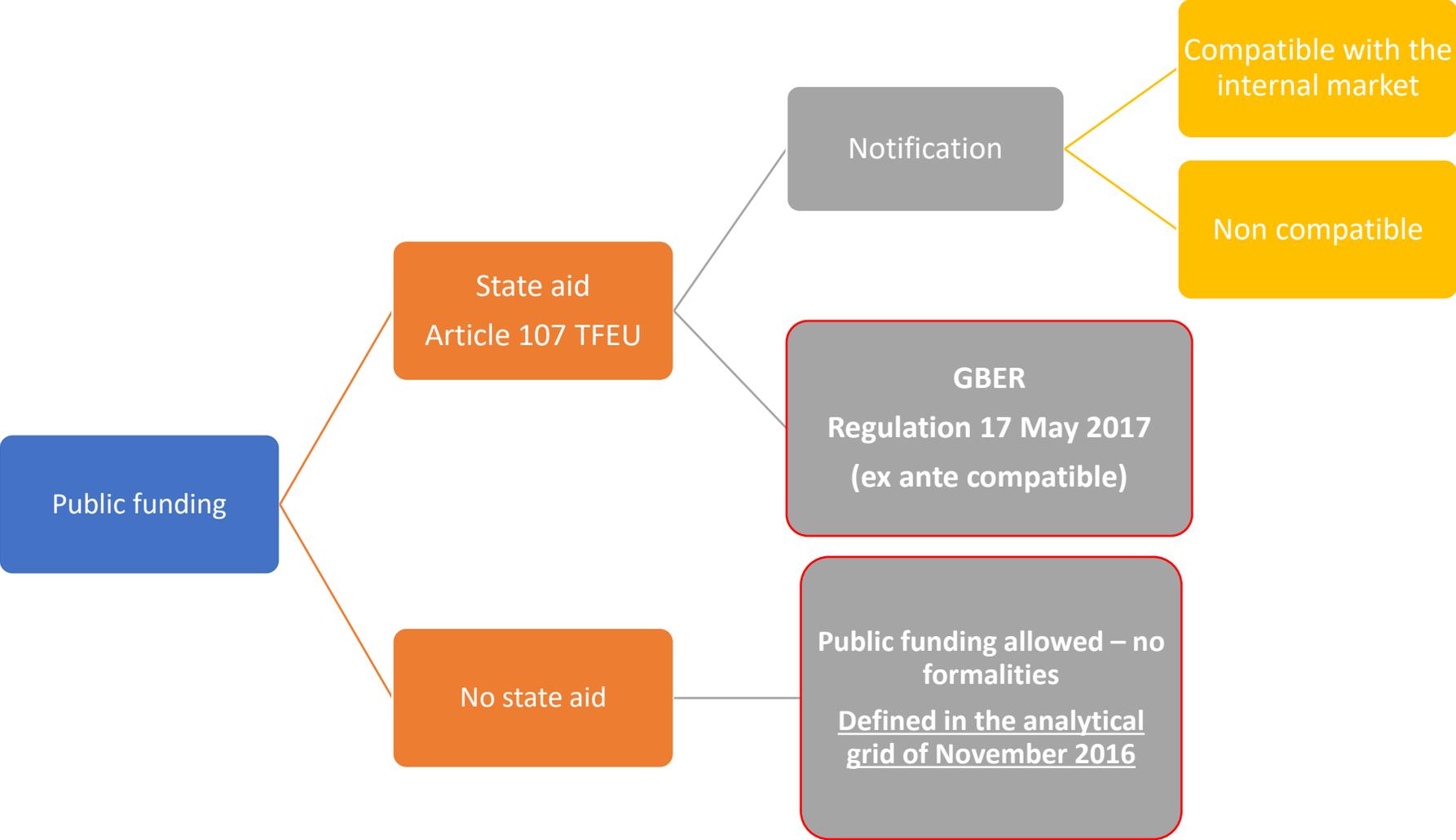


State aid: application to the port sector

- The traditional approach was (is):
 - Financing of **development of general port infrastructure** is **no state aid** if the infrastructure is generally available/accessible to all users
 - Financing of **dedicated/user-specific port infrastructure** and **provision and/or operation of ports superstructure = state aid, should be notified**
 - **Financing of ports services providers = state aid, unless** the public funding is compensation for **PSO** (Altmark criteria, « advantage »)
 - **Market investor principle => no state aid**

What is GBER?

“General block Exemption Regulation”





*We want to ensure that companies can compete on equal terms in the Single Market – and we want to do so in the most efficient way. EU state aid rules are the same for all Member States. Today's changes will save them time and trouble when investing in ports and airports, culture and the EU's outermost regions, whilst preserving competition. They also allow the Commission to focus attention on state aid measures that have the biggest impact on competition in the Single Market, to be "**big on big things and small on small things**" to the benefit of all European citizens".*

Content final GBER – Regulation 17 May 2017



Starting point



- Strategic importance of maritime and inland ports
- Investment needs in particular to adapt ports to increased size of vessels and complexity of the fleet, use of alternative fuel infrastructure and to stricter environmental requirements
- Reference to TEN-T ports of the core network
- No reference in GBER to what should not constitute state aid (this is stipulated in the analytical grid)

GBER: Investment thresholds and Maximum aid intensities for **port infrastructure**



Investment amount “per project”	Intensity accepted for investments in port <u>infrastructure</u>
< 20 million	100% (*)
20-50 million	80%
50- 130 million (150 million for core network corridor ports)	60%

Aid intensities in **assisted areas** : article 107 3 a) (cohesion) +10%, article 107 3 c) + 5% (development of certain economic activities or certain economic areas)

*The investment threshold for **inland ports** was raised to 40 million (50 million for core network corridor ports)*

GBER: Investment thresholds and Maximum aid intensities for **access infrastructure and dredging**



Investment amount “per project”	Intensity accepted for <u>access infrastructure and dredging</u>
Up to 130 million (150 million for core network corridor ports)	100%

As concerns “dredging” is considered as “one project” all dredging activities carried out within one calendar year”. So all dredging activities performed each year up to 130 million (150 million) can be publicly financed up to 100% without having to be notified.

Which investments can fall under GBER?



The **eligible costs** shall be the **costs, including planning costs**:

- (a) Investments for the construction, replacement or upgrade of maritime port infrastructures; and
- (b) Investments for the construction, replacement or upgrade of access infrastructure
- (c) Dredging (both investments and maintenance)

Investment costs relating to non-transport related activities, including industrial production facilities in a port, offices or shops, as well as for **port superstructures shall not be eligible costs.**

The aid amount shall **not exceed the “funding gap”** (eligible cost – operating profit of the investment or dredging)

Other conditions



Any **concession** or other entrustment to a third party to construct, upgrade, operate or rent **aided** port infrastructure shall be assigned on a **competitive** transparent, non-discriminatory and unconditional basis.

⇒ The reference to the duration of the concession has been left out completely.

Availability to all users:

The **aided** port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.

The **reference to the “single investment project” has completely disappeared**. It is now to the Member States to assess what is to be considered one project. Only for dredging a clear delimitation of “one project” has been defined (= all costs within one calendar year)

Exception for small investments



For aid not exceeding EUR 5 million, the maximum amount of aid may be set at 80 % of eligible costs.

For very small projects with small aid amounts there is no need to use a funding gap calculation. (eligible cost – operating profit of the investment or dredging). A simplified approach is accepted to reduce the administrative burden.



Year	MS under investigation
2013	COM asked information on corporate tax regimes to all Member States
2013	Netherlands
2014	Belgium
2014	France
2019	Spain
2019	Italy

Corporate taxation – main findings



Undertakings

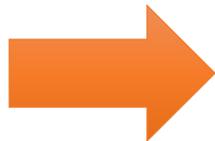
Entities are considered undertakings, if they carry out an economic activity (regardless if they also carry out non-economic activities)

Economic activity

The granting of concessions and access to the port against a fee is considered an economic activity

Ancillary or inseparable activities

If the economic activities are inseparable from or only ancillary to the public function, the entity is not considered an undertaking



Port authorities are considered undertakings, as they carry out economic activities, which are not inseparable or ancillary to their public function

EU ports policy in the large sense

Broader policy perspective becomes more important



1. Climate and environmental policy: Green Deal
2. Europe's Infrastructure policy: TEN-T
3. Europe's Trade policy

Green Deal: Ursula Von der Leyen: “Man on the Moon Moment”



- More than lowering emissions = New Growth strategy
- Transforming the economy, transforming the way we produce and consume
- Sustainable product policy
- “Will frame everything that is happening”

**14 July 2021:
Fit for 55?**



Part of delivering on the EU goal of reducing emissions by at least 55% in 2030

Fit for 55% Package – key elements for ports



Proposal	Key elements	Possible Impact ports
Alternative Fuel Infrastructure Regulation "AFIR"	<ul style="list-style-type: none"> • OPS for all ports by 2030 (Core and Comprehensive) for container, cruise, passenger, ro ro (>12 lorry drivers): complex scope and thresholds • OPS exemptions: min 2 hours at berth, (low) thresholds, enough shore side power output to cover 90% of demand • Treatment of LNG remains (more or less) unchanged from AFID 	<ul style="list-style-type: none"> + Will boost development OPS - Complexity of scope - Big investments - What in case alternative solutions are used - LNG no clear vision
FuelEU Maritime	<ul style="list-style-type: none"> • Gradual reduction of GHG intensity of energy on board ships • Requirement for passenger, ro-pax and ro-ro and container vessels to connect at berth • Port Authorities to issue certificate for non-OPS use • Exemptions: limited as from 2035 • Requirement for ship operator to prove fuel compliance 	<ul style="list-style-type: none"> + Obligation to use OPS for ships - Administrative burden for ports - Role of port authority?

Fit for 55% Package – key elements for ports



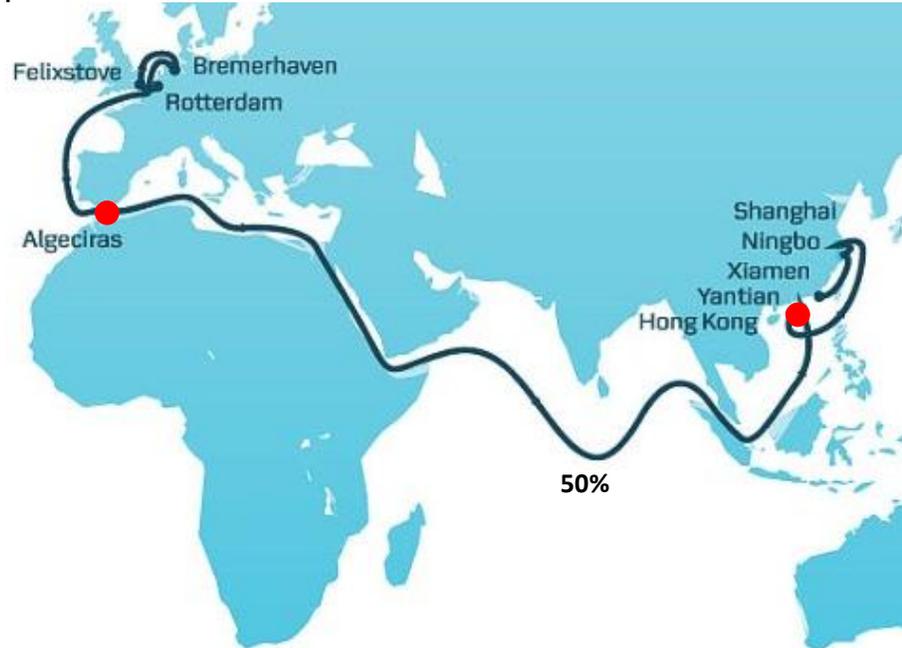
Proposal	Key elements	Possible Impact ports
REDIII	<ul style="list-style-type: none"> • 40% renewables in the EU by 2030 • 13% GHG reduction target in transport by 2030 	<p>+ Ports active in renewables (wind) - Oil ports</p>
Energy Taxation Directive	<ul style="list-style-type: none"> • Conventional marine fuels to be taxed as from 2023 (gradually) • Taxation on bunkering in EU only: unclear scope of proposal • Easier to apply OPS/renewables tax exemption through opt-in 	<p>- Bunkering ports - SSS?</p>
EU ETS	<ul style="list-style-type: none"> • Scope: intra-EU + 50% incoming and outgoing maritime voyages • Possible carbon leakage through evasion not really addressed/no legal recourse • Funding for alternative fuels infrastructure in maritime? 	<p>- Competitiveness transshipment?</p>
Carbon border Adjustment Mechanism “CBAM”	<ul style="list-style-type: none"> • putting a carbon price on imports of energy intensive products from less climate-ambitious countries. • Sectors: steel, iron, cement, fertilisers, aluminium and electricity. 	<p>- Impact on imports and exports through ports?</p>

Example of carbon leakage through transshipment



A container vessel goes from Hong Kong to Algeciras.

If the vessel calls on Algeciras (a port in the EU), 50% of emissions from that voyage (between the two red dots) are covered by the maritime EU ETS and 100% of the emissions between Algeciras and other EU ports.



The container vessel goes from China and calls on Tanger Med in Morocco.

In Tanger Med, it unloads containers onto smaller feeder vessels

These feeders go from Tanger Med instead (the thick red line below)

-> Only 50% of the emissions from feeder vessels going to the EU would be covered



EU Transport Infrastructure Policy



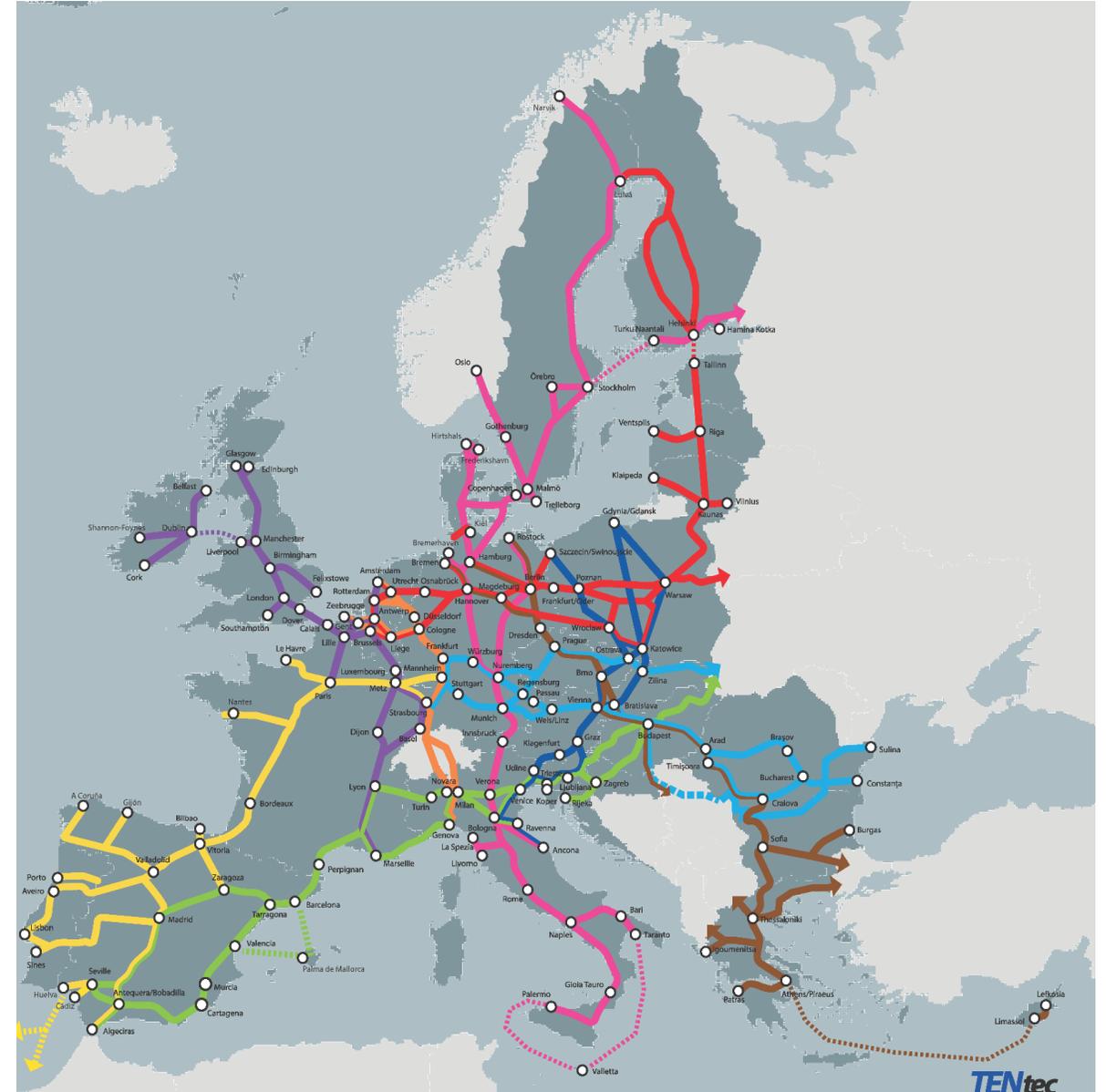
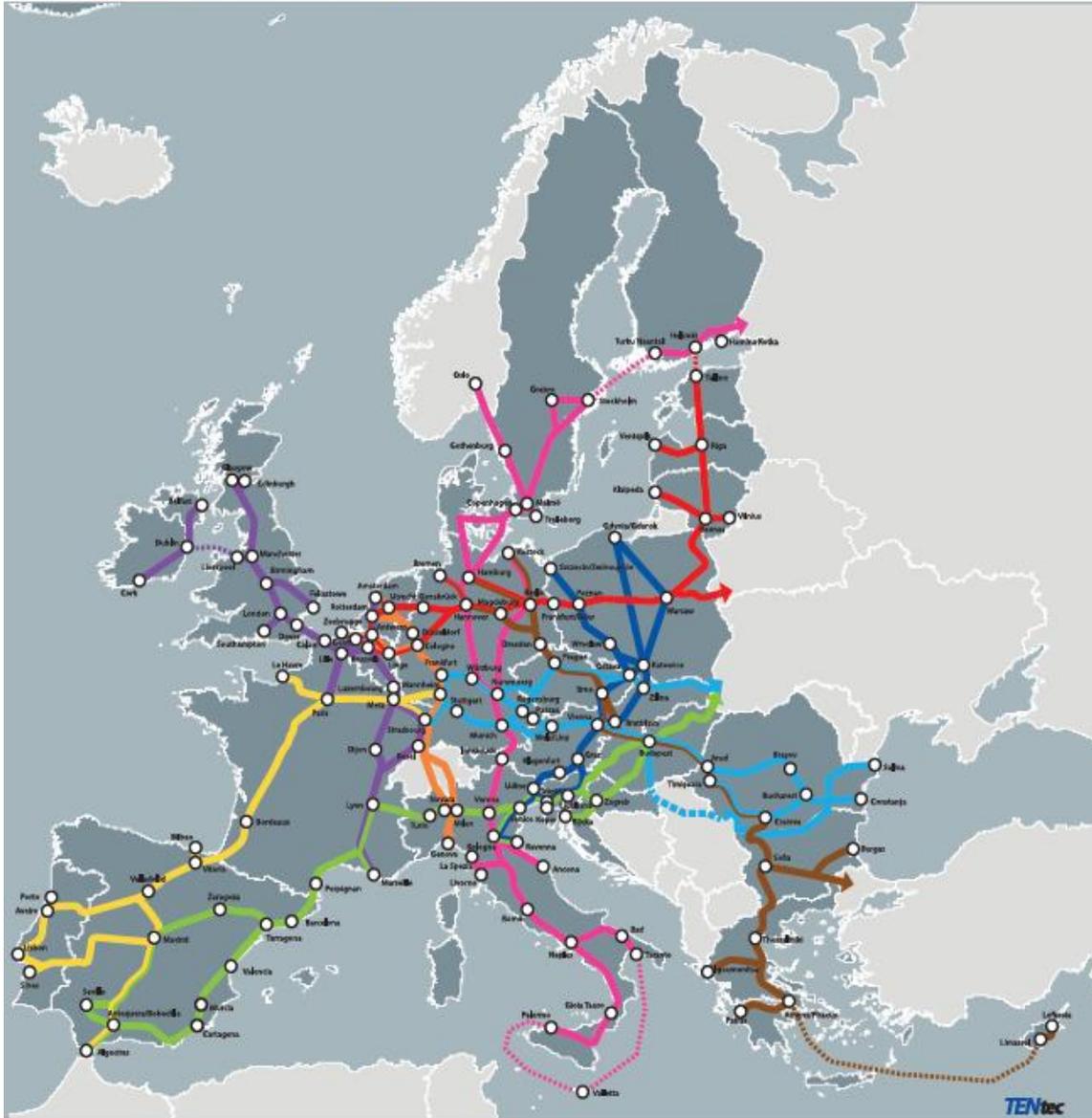
- **TEN-T Policy 2013**

- Central role for ports as « primary nodes » (104 core ports, more than 200 comprehensive ports)
- Emphasis on sustainable hinterland connections for core ports (rail, IWT)
- Corridor approach (multimodal): 9 multimodal corridors
- Financial Pillar: Connecting Europe Facility

Corridors in 2013 and corridors in the new CEF II (Brexit not taking into account yet)



TRANS-EUROPEAN TRANSPORT NETWORK
TEN-T CORE NETWORK CORRIDORS







-
- **Corridors crossing Belgium and the Netherlands**
 - The North Sea-Baltic Corridor
 - The Rhine-Alpine Corridor
 - The North Sea-Mediterranean Corridor

Budget: CEF vs. CEF II

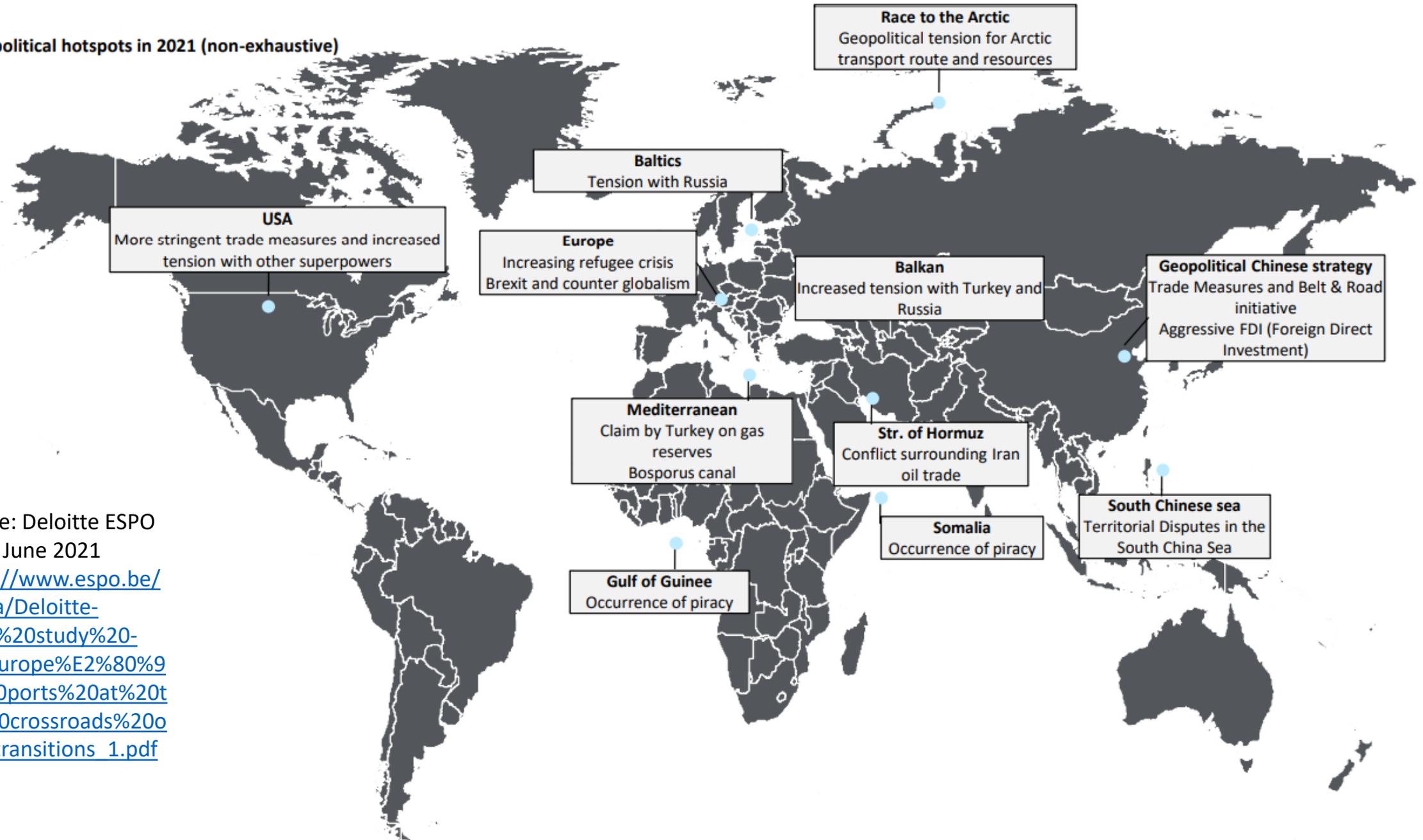


	CEF	CEF II
Climate objectives	At least 20%	60%
Infrastructure/Horizontal pillar Cohesion	80%/20%	60%*/40% 85%*/15% *15% for comprehensive network
Cohesion	100% national envelopes (until Dec 2016) 85% co-funding	70% nat. envelopes (until Dec 2023) 30% competitive (max. cap) 60% (transition regions), 85% less dev.
Co-funding	50% studies 20% ports 30% MoS	50% studies 30% ports & MoS 50% cross-border, border checks, military mobility
Synergies	Increased funding rate 10%	20% synergetic element Increased funding rate 10%

Trade policy : Changing geopolitical context: less openness, more barriers

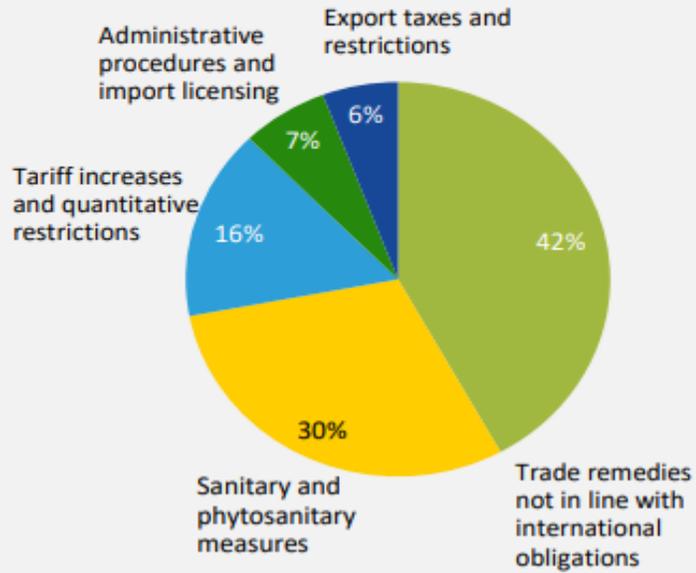


Geopolitical hotspots in 2021 (non-exhaustive)



Source: Deloitte ESPO study June 2021
https://www.espo.be/media/Deloitte-ESPO%20study%20-%20Europe%E2%80%99s%20ports%20at%20the%20crossroads%20of%20transitions_1.pdf

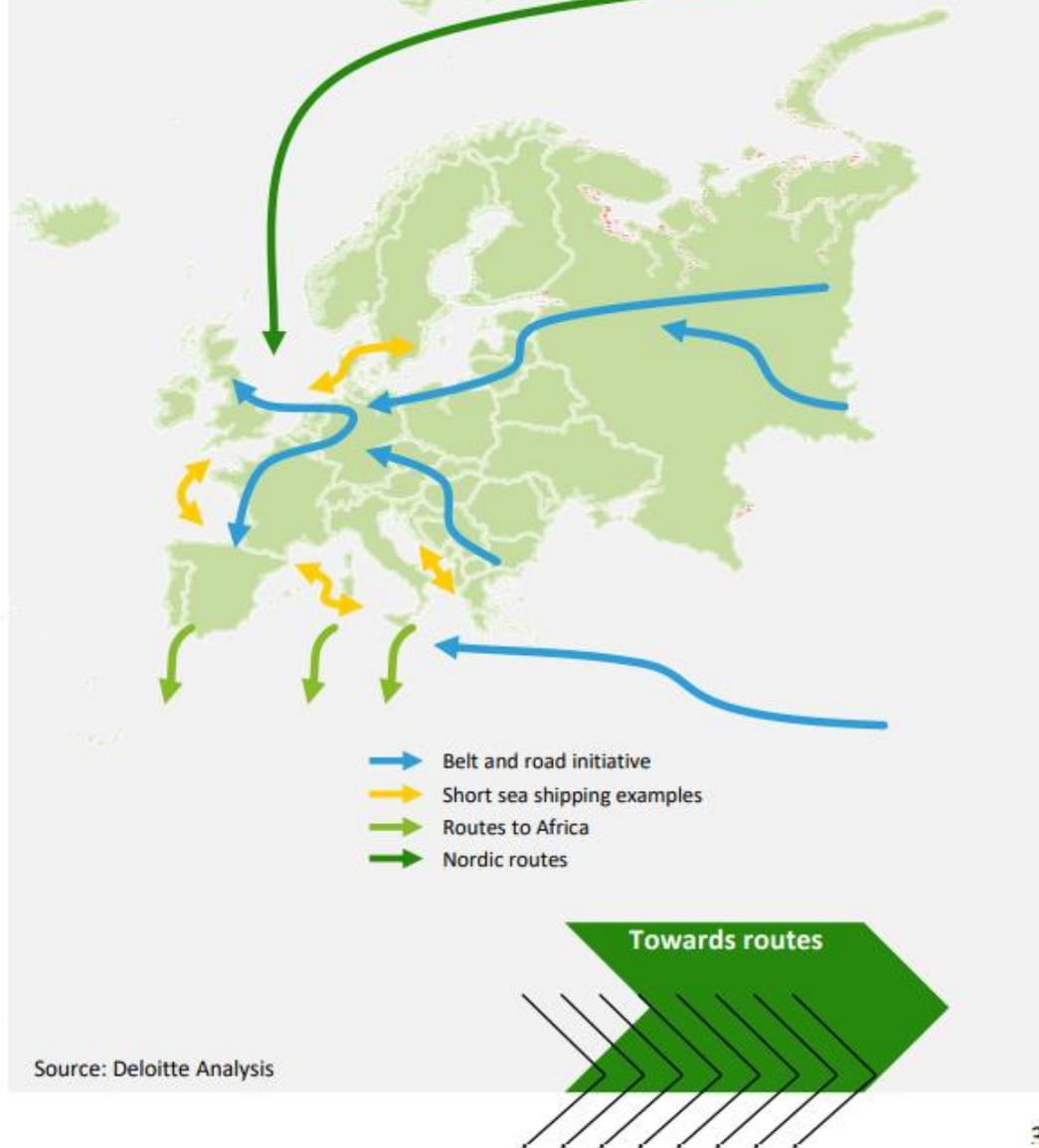
Total trade-restrictive border measures against the EU registered in 2019



On a European level, 438 active trade and investment barriers in 58 third countries were present in 2019. This indicates that protectionism is becoming structurally ingrained in EU's trade relations with many partners. In 2019, for the first time, border measures (52%) took up the largest share, followed by behind-the-border measures (43%). From the newly added trade measures in 2019, 65% consisted of border measures.

Source: European Commission, Report on trade and investment barriers, 2020

Visual representation of examples of changing and new trade routes (Non-exhaustive).



European policy



China Strategic Outlook 2019

*“China is, simultaneously, in different policy areas, a **cooperation partner** with whom the EU has closely aligned objectives, a **negotiating partner** with whom the EU needs to find a balance of interests, an **economic competitor** in the pursuit of technological leadership, and a **systemic rival** promoting alternative models of governance.”*

EU policy instruments

- Screening of Foreign Direct Investments
- Carbon Border Adjustment Mechanism
- Trade policy: Open Strategic Autonomy
- Global Gateway ↔ China's Belt and Road Initiative

"We want to create links and not dependencies!" von der Leyen

Brexit: long term impact unclear



Border Checks

Outside customs union

Space, cost, time

36 UK agencies can intervene at the border

Custom agents, vets?

How to maintain “frictionless” trade?

Land bridge Ireland-EU stopped, but could restart over time (TEN-T?)?

+ Implementation of agreement?

Until October 2021 and Jan/March 2022: UK facilitations for border checks

+ New EU : Entry exit system?

Costs?

No tariffs

- Custom paper costs
- Some extra charges at terminals
- Shortage of lorry drivers in UK

Diverging Legislations (Standards – Authorisations)

No impact in the very short term: UK leaves EU with ‘acquis Communautaire’

First signs:

- More public funding for ports in UK
- Upcoming regime of Freeports

“LEVEL PLAYING FIELD” as part of the UK-EU agreement (social, environment, state aid, etc.)

Arbitrage

Trade follows path of the least resistance...

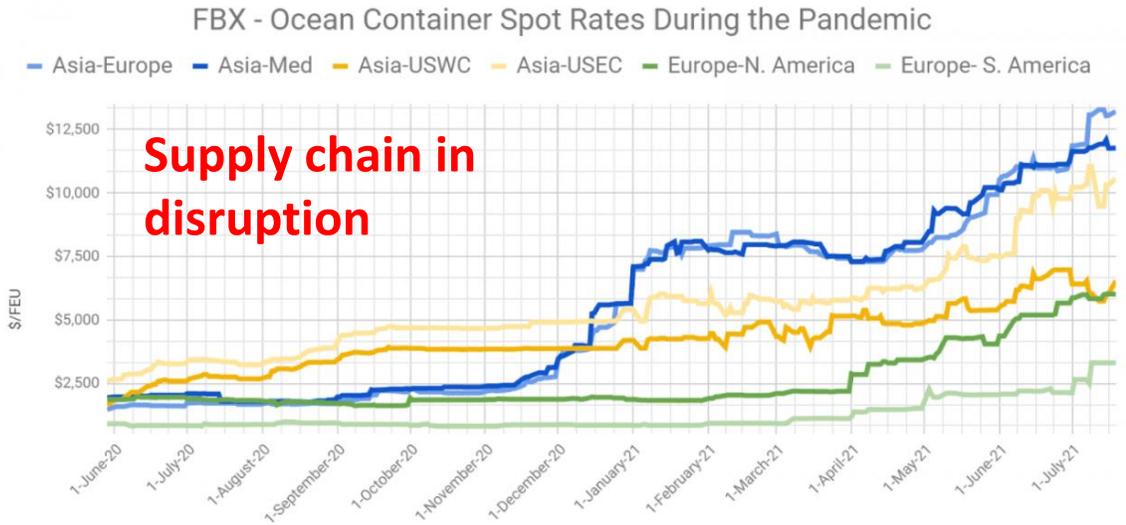
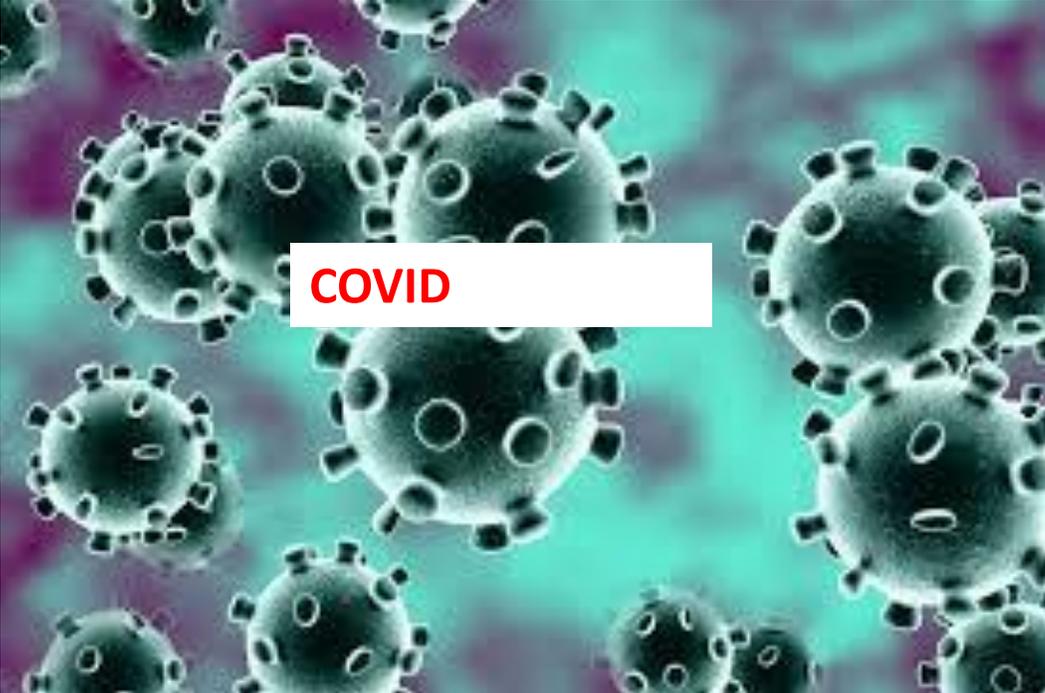
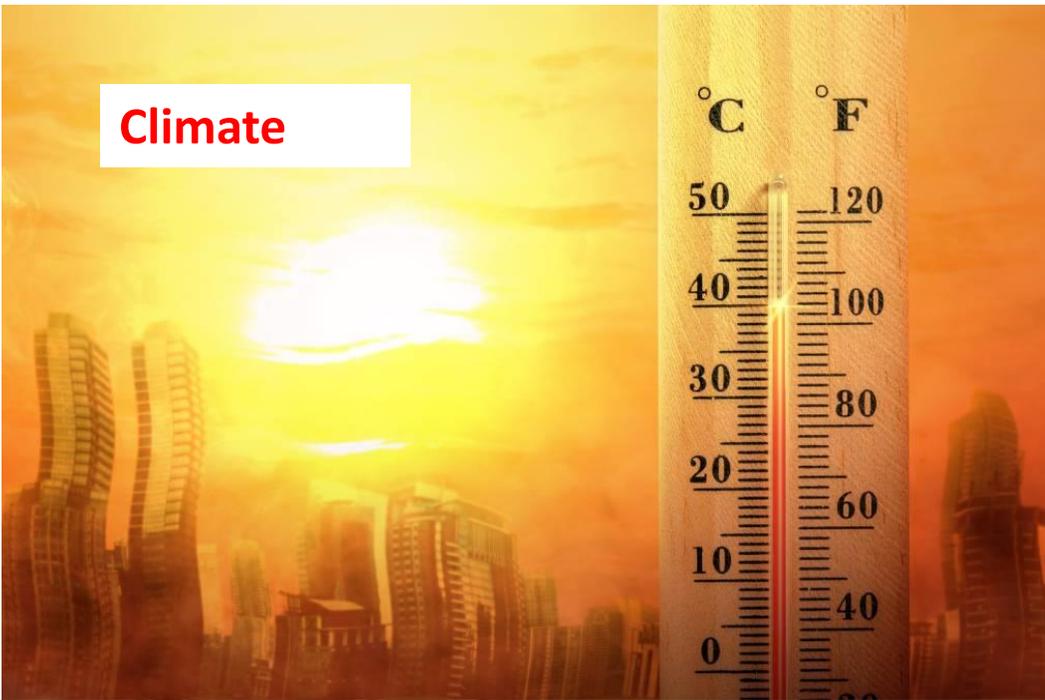
Land bridge to sea bridge

- CEO Port of Dublin, Eamonn O'Reilly: "The effects of Brexit on the pattern of trade through Dublin Port are now becoming clearer with very strong growth of 40% on Ro-Ro and Lo-Lo services to Continental European ports compared to a decline of -19% on services with ports in Great Britain. As a result, our unitised volumes are now split 50/50 between GB ports and ports in Continental Europe. Before Brexit, GB ports accounted for almost two-thirds."

Freeports?



Concluding remarks
and information



Some reflections



1. **Uncertainty** obliges ports to react quickly and be agile
2. To react quickly **more flexibility** needed: **role of port as (pro)active manager** making choices and developing strategies
3. Short term changing realities **conflict** with long term planning of port investments (heavy assets)
4. **Change => chance**: ports can show more added value (strategic role): from transport hubs to green hubs, hubs of energy, blue growth, circular economy
5. New roles: **ports do more than before (impact space, financing, etc.)**
6. **Both public and business roles of ports are growing**
7. **New roles as an opportunity to revitalise the port-city dynamic**
8. More than ever, **cooperation** needed to face challenges that are too big to handle alone: both vertical (stakeholders) and horizontal cooperation (between ports)
9. **Transparency** is crucial for licence to operate and grow

The background is an abstract composition of various colored paper scraps and textures. A large blue shape is prominent in the lower-left, while green and yellow shapes are scattered throughout. In the top right, there is a dark red shape containing the ESPO logo, which consists of the letters 'ESPO' above three wavy lines, all surrounded by a circle of yellow stars. The Deloitte logo is in the top left.

Deloitte



Europe's ports
at the crossroads of transitions
A Deloitte and ESPO Study

June 2021



**THE INFRASTRUCTURE
INVESTMENT NEEDS
AND FINANCING
CHALLENGE OF
EUROPEAN PORTS**

PortinSights

European Ports' Data Platform

www.portinsights.eu



Let's discuss!



Thank you

Isabelle.Ryckbost@espo.be

