

Second Panel: “*The Hidden European Investment Screening Mechanism Already in Place*”

**Existing EU Secondary Legislation on (Discriminatory)
Treatment of Third Country Investments –
A Plurality of Regulatory Approaches**

The TRANSPORT Sector

AT A GLANCE

2019



[https://www.
wmu.se/docs
/wmu-glance](https://www.wmu.se/docs/wmu-glance)

Second Panel: *“The Hidden European Investment Screening Mechanism Already in Place”*

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Upcoming EU Investment Screening Regulation:

- mentioned in **Art. 4 (1) (a)** - as part of the list on „critical infrastructure“
- listed in **No. 4 of the Annex to the Regulation** (reference to trans-European Transport Network (TEN-T) Regulation)
- Reference to the Annex in Art. 8 (3) - *Foreign direct investments likely to affect projects or programmes of Union interest*

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- **infrastructure managers, operators, contractors,**
 - **local and regional authorities,**
 - **logistics service providers,**
 - **shippers, users and equipment suppliers in the**
 - **maritime,**
 - **inland waterways,**
 - **railways,**
 - **road (incl. cycling),**
 - **aviation,**
 - **intermodal sectors,**
 - **as well as supporting industries and companies**
- Transport Modes**

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Example: AVIATION

REGULATION (EC) No 1008/2008

on common rules for the operation of air services in the Community

- **no investment screening mechanism...!**
- **provides as one of the conditions for granting an operating license to an undertaking permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire that MS and/or nationals of MS **own more than 50% of the undertaking and effectively control it (Article 4).****

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Example: AVIATION

**REGULATION (EC) No 1008/2008
on common rules for the operation of air services in the Community**

Exception: EU-US “Open Skies” Air Transport Agreement

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EU Competition Law is applicable:

General Treaty rules relating to State Aid	Arts. 107-109 TFEU
General Treaty rules relating to Transport	Arts. 90-100 TFEU
Specific Treaty rules relating to State Aid and Transport (i.e., road, rail and inland waterway)	Arts. 93 and 96 TFEU
State Authorities	Art. 106 TFEU

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EU Competition Law is applicable:

Regulations	Several including Regulation 1370/2007
Decisions	Specific to each case
Case Law	Commission Decisions and CJEU / General Court / Member State judgments
Soft Law	Communications and Guidelines are critical in this area

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EU Competition Law is applicable:

Issue	Example
Seeking Entry into a Port	<i>Holyhead II; Roscoff</i>
Improving Conditions in a Port	<i>Holyhead I</i>
Challenging Pricing in a Port	<i>Helsingborg</i>
Challenging State Aid	<i>Port W</i>
Challenging Merger/Acquisition	<i>Entity X</i>
Challenging Trade Association	<i>Entity Y</i>
Challenging Anti-Competitive Behaviour	Complainants; negotiations; parties to arbitration; parties to contract disputes

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- **requires massive investment**

“[...] studies have identified infrastructure development needs which represent approximately **€ 700 billion** of financial investment until 2030.”

Press Release 15/01/2015: European Commission identifies the infrastructure priorities and investment needs for the **Trans-European Transport Network** until 2030.

2014



*“Many governments across the world encounter
‘infrastructure financing gaps’
due to increasing investment demand for infrastructure with shrinking public finance.*

*In Europe, **investment needs for transport infrastructure are € 1.5 trillion by 2030;**
TEN-T alone requires
€500 billion by 2020.*

*How to bridge
infrastructure financing gaps?”*

**Attracting
investments**
towards transport infrastructure
potential lines for action

2014

***“At the same time,
the volume of
private participation
in financing
infrastructure
projects in the EU
remains relatively
modest.”***



**Attracting
investments**
towards transport infrastructure
potential lines for action

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The TRANSPORT Sector

- **requires massive investment**
- **“Connecting Europe package” 2013 /
est. the “*Connecting Europe Facility*”**

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The TRANSPORT Sector

- **requires massive investment**

Art. 170 TFEU:

- *“the Union shall contribute to the establishment and development of **trans-European networks** in the areas of **transport**, telecommunications and energy infrastructures*
- *promoting the **interconnection** and **interoperability of national networks** as well as access to such networks.*

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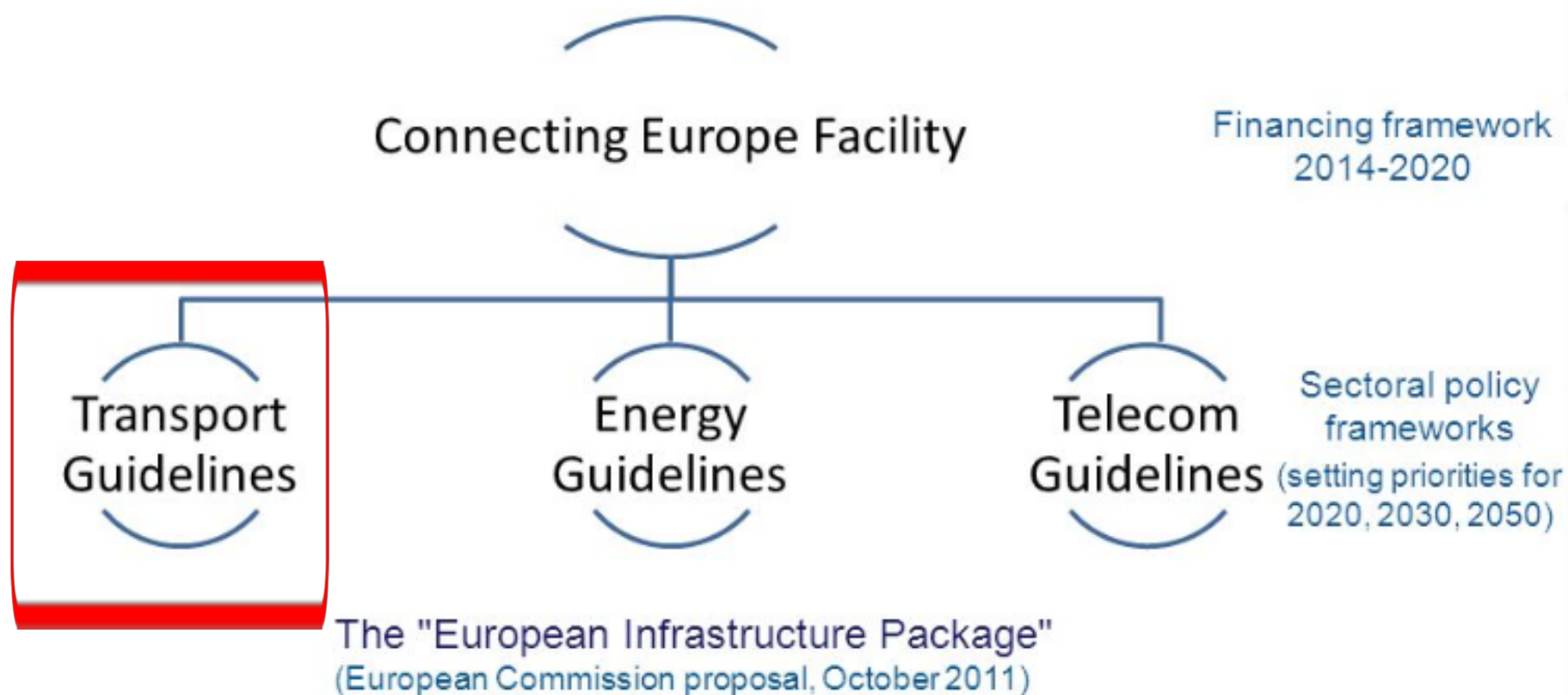
- **requires massive investment**

Art. 171 TFEU:

- *In order to achieve the objectives referred to in Art. 170, the Union:*
- *[...]*
- *may support **projects of common interest** supported by Member States, [...], particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the **Cohesion Fund** set up pursuant to Article 177, **to the financing of specific projects in Member States in the area of transport infrastructure.***

Connecting Europe Facility

One instrument – three sectors



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- requires massive investment
 - “Connecting Europe package” 2013 / est. the
“Connecting Europe Facility”
- initially designed to fund € 50 billion
- **initial transport component**: € 32 billion
- € 24 billion is made available from the EU's 2014-2020 budget to co-fund **priority transport projects** in the EU (more than 90% committed)

CONNECTING EUROPE FACILITY

Developing sustainable and innovative transport infrastructure in Europe

€695.1 million
49 projects



2019 CEF TRANSPORT CALL

€100 MILLION

#CEFTransport



CONNECTING EUROPE FACILITY

#CEF

€24 billion available for investment in transport in 2014 -2020.

€6.7 billion now attributed to:



building
cross-border infrastructure

€ 5.4 bn



deploying
sustainable and efficient transport

€ 0.1 bn



combining
transport modes and IT

€ 1.2 bn

€ 6.7 bn



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Upcoming EU Investment Screening Regulation:

- The transport sector forms part of “**critical infrastructure**”

Art. 8 para. 3 :

*“For the purpose of this Article, ■ projects or programmes of Union interest shall include ■ those projects and programmes which involve a **substantial amount or a significant share of EU funding**, or which are covered by Union legislation regarding **critical infrastructure**, critical technologies or critical inputs which are essential for security or public order. The ■ list of projects or programmes of Union interest is included in the Annex ■ .”*

 **Trans-European Networks
for Transport (TEN-T)**

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20.12.2013

EN

Official Journal of the European Union

L 348/1

I Trans-European Networks for Transport (TEN-T), (Legislative acts) 128 pages...

REGULATIONS

REGULATION (EU) No 1315/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 December 2013

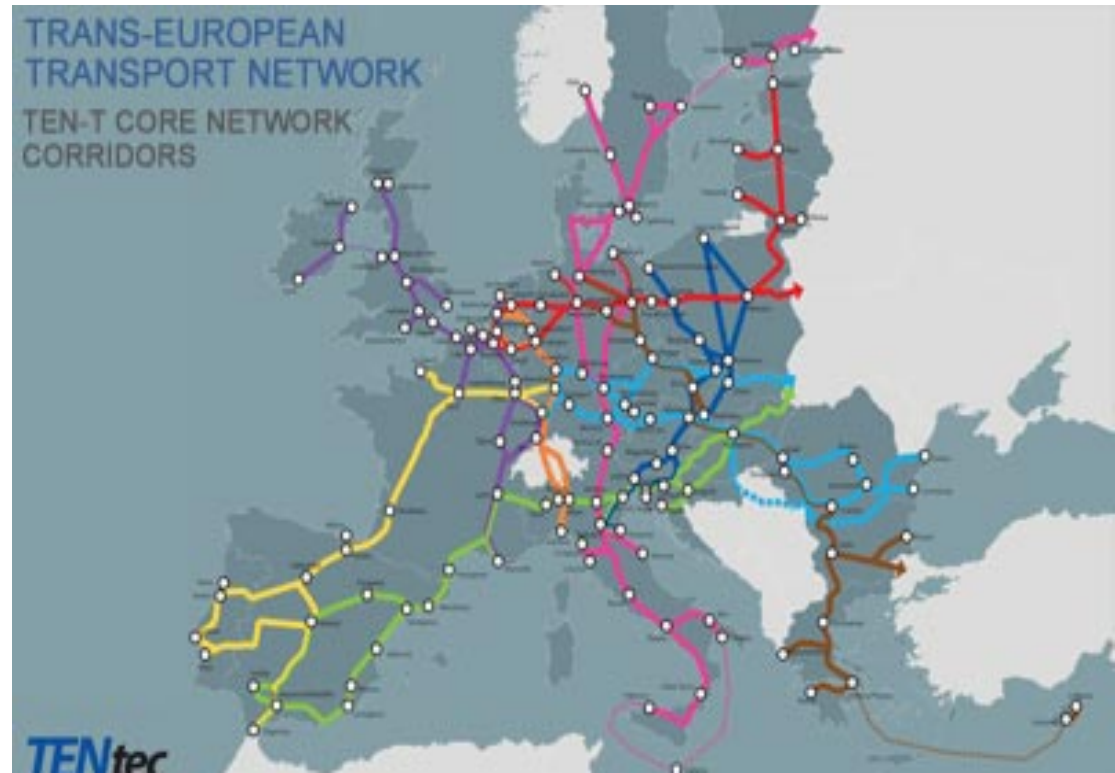
on Union guidelines for the development of the trans-European transport network and repealing
Decision No 661/2010/EU

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Trans-European Networks for Transport (TEN-T), 128 pages...

- Nine TEN-T core network corridors to connect:
- 94 main EU ports
- 38 key airports with rail connections
- upgrades of 15,000 km of railway lines to high speed
- 35 cross-border projects to reduce bottlenecks



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“TEN-T Regulation”

Recital (6):

The trans-European transport network policy has to take into account the evolution of transport policy and infrastructure ownership. Member States are still the principal entity in charge of creating and maintaining transport infrastructure.

*However, **other entities, including private- sector partners, have also become relevant for the implementation of a multimodal trans-European transport network and the related investments, including regional and local authorities, infrastructure managers, concessionaires or port and airport authorities.***

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“TEN-T Regulation”

Recital (44):

[...], the European Coordinators provided for in this Regulation should facilitate measures to design the right governance structure and to identify the sources of financing, both private and public, for complex cross-border projects for each core network corridor. [...].

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“TEN-T Regulation”

- objective: unlocking public and private co-financing
- Instrument: „**Blending calls**“ (CEF Transport Blending Calls)
- EU grants to be combined with financing from the European Fund for Strategic Investments, the European Investment Bank, National Promotional Banks and/or private sector investors
- Huge demand triggers positive investment environment for public and private co-financing / public grants will not be enough!

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LJUBLJANA DECLARATION

by the Stakeholders of the CEF Transport Campaign

<https://www.moreEUbudget4transport.org/>

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The TRANSPORT Sector: PORTS

Private Investment in Ports facilitated since 2017 by:

“Port Services Regulation” (2017/352/EU) establishing a framework for the provision of port services and common rules on the financial transparency of ports

“[...] to contribute to a climate that is more favourable to investment in ports [...]” → three objectives:

Better seaports for a stronger economy

New rules will unleash the economic potential of 329 main ports in Europe helping to sustain 3 million jobs.

Better market access
and higher quality of service



More investments and jobs

More transparency for the use of public
funds and better governance



More efficient use of public money
and fair competition

People



Infrastructure



Cargo owners



Logistic operators



Port services



75%

of EU external trade goes by ship

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The TRANSPORT Sector: PORTS

“Port Services Regulation” (2017/352/EU), three objectives:

- a framework for the provision of port services, including stable rules for **transparent and open access to the market** and adequate training of employees
- **financial transparency for port entities through their accounts and port charges in order to ensure a transparent and rational use of public funds**
- principles for local consultation of port stakeholders and mechanisms to handle disputes

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Conclusion:

- **Foreign investors are expected to address and meet the strategic (sustainability and innovation) objectives of the TEN-T framework**
- **Transparency will be vital**
- **Generally, foreign investors will meet a “friendly” (but complex) investment environment**