



European legal frameworks for cross-border CCS

Workshop on CO₂ cross-border transport and storage (CCS) in Asia and the Pacific
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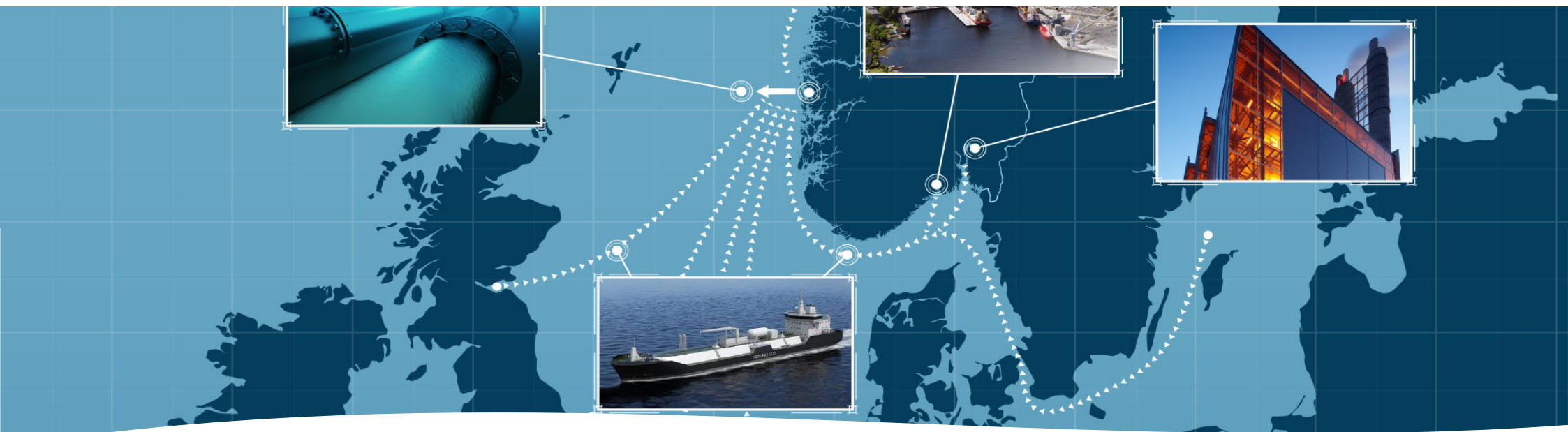
IOM Law

- Founded January 2017
- Specialized in CO₂ capture, transport, use and storage, including negative emissions, with extensive experience from oil and gas, international law and climate change law and policy
- Six team members, based in Son (Norway), Tasmania (Australia) and Copenhagen (Denmark)
- Formal education from Norway, England, Denmark, Belgium, Hong Kong, Japan, Australia, Egypt and the United States



The EU and EEA: An internal market “without borders”

- Starting point when talking about cross-border value chains in the European Union (EU) and European Economic Area (EEA) is the internal market
- The European Union is *“an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.”* (The four freedoms)
- The EEA agreement includes the non-EU Member States Norway, Iceland and Lichtenstein in the EEA with regards to the four freedoms



The EU CCS Framework: Some central instruments

- Directive 2009/31/EC (CCS Directive)
- Guidance Document 1-4 pursuant to the CCS Directive
- Directive 2003/87/EC (ETS Directive)
- Regulation 2018/2066 on Monitoring and Reporting under the ETS Directive
- Directive 2004/35/EC (Environmental Liability Directive (ELD))
- Directive 85/337/EEC (on the assessment of the effects of certain public and private projects on the environment (IEA Directive))
- Directive 2008/1/EC (integrated pollution prevention and control (IED Directive))
- Regulation 2022/869 on guidelines for trans-European energy infrastructure, amending Regulations (TEN-E Regulation)

CCS Directive (2009/31/EC)

- Creates a legal framework for the environmentally safe geological storage of CO₂ to contribute to the fight against climate change (Art. 1)
- Applies to both onshore and offshore storage exceeding 100 kilotonnes (Art.2)
- Does not require Member States to store CO₂ in their territories, but if the Member States open up for storage, the provisions of the CCS Directive are mandatory (Art. 4)
- *In cases of transboundary transport of CO₂, transboundary storage sites or transboundary storage complexes, the competent authorities of the Member States concerned shall jointly meet the requirements of this Directive and of other relevant Community legislation (Art. 24)*
- The Directive is conceived to be in compliance with the London Protocol
- Not all Member States are Contracting Parties to the London Protocol

CO₂ moving through a CCS value chain under EU ETS

- A cap-and-trade system for emission allowance trading
- Member States shall ensure that allowances can be transferred between persons **within the Union** and persons within the Union and persons in third countries
- Point of transfer provided in Monitoring and Reporting Regulation Art. 49:
- The operator shall subtract from the emissions of the installation any amount of CO₂ originating from fossil carbon in activities covered by Annex I to Directive 2003/87/EC that is not emitted from the installation, but:
 - (a) **transferred out of the installation to** any of the following:
 - (i) a **capture installation** for the purpose of transport and long-term geological storage in a storage site;
 - (ii) a **transport network** with the purpose of long-term geological storage;
 - (iii) a **storage site** [...] for the purpose of long-term geological storage;

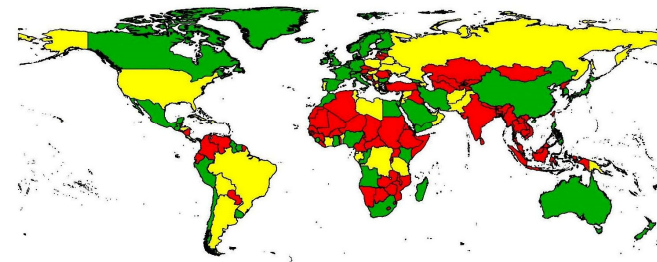
TEN-E Regulation: enables cross-border projects of common interest



- A policy that is focused on linking the energy infrastructure of EU countries
- The revised TEN-E Regulation is laying down new EU rules for cross-border energy infrastructure
- The revision includes three priority thematic areas, one of which is cross-border CO₂ networks
 - includes CO₂ transport and storage infrastructure between EU member states and with neighboring third countries
 - pipelines, CO₂ storage facilities linked to cross-border transport of CO₂ (excluded prior to the update), and fixed facilities for liquefaction and buffer storage that are associated with further transportation
- Enables Projects of Common Interest
 - Provides accelerated and streamlined permitting, improved regulatory conditions, lower costs, increased public participation, increased visibility for investors as well as rights to apply for funding

European Commission on the London Protocol Article 6.2

- The EU Commission suggests that because there is substantial alignment between the EU framework and the London Protocol, Contracting Parties to the LP that are also EU Member States do not need an agreement or arrangement to be concluded under article 6.2 when exporting between themselves.
- However good initiative;
 - The EU Commission's interpretation has no legal effect
 - Not following the requirements of article 6.2 would result in non-compliance of an international obligation
 - An art. 6(2) agreements and arrangements works as a safeguard as it effectively ensures that permitting authorities and mechanisms are identified and in place
 - The CCS Directive is mandated for the EU Member States, it does not automatically mean there is complete framework in place





Thank you!

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