PROMOTioN
PROGRESS ON MESHED HVDC OFFSHORE TRANSMISSION NETWORKS

Recommendations for the Legal Regulatory Framework of the MOG

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Presentation Outline

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Introduction

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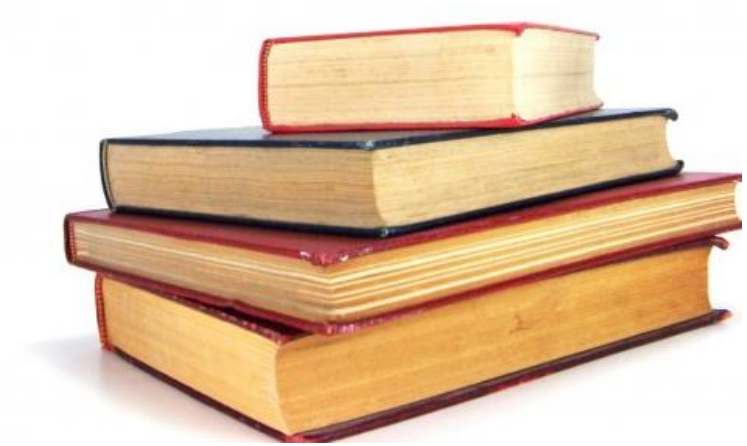
Introduction

- About myself & this presentation
- Legal barriers offshore grid
- Need for a “Target Legal Framework”
- Legal Backbone Structure

Task 7.1 output:
- Deliverable 7.1 (June 2017)
- Deliverable 7.2 (May 2019)



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KEY FINDINGS
Legal Backbone Structure

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↗No One-size-fits-all: multiple instruments needed

↗Three levels: international, European and national law

↗Backbone: **North Sea Agreement**

ISSUE	INSTRUMENT
Lack of clarity on asset classification under international law	Mixed partial agreement including the North Sea coastal states connected to the MOG, as well as the EU: North Sea Agreement
Lack of clarity on asset classification under EU law	First step: Amendment of existing EU law (Regulation) Second step: Mixed partial agreement
Governance of the MOG; formalized regional cooperation in the North Sea, long term vision and principles	Mixed partial agreement including the North Sea coastal states connected to the MOG, as well as the EU
Planning and Permitting Issues	Amendment of various instruments of national law
Support Schemes for OWFs connected to hybrid/meshed grid	Amendment of various instruments of national law
Decommissioning of OWFs and offshore electricity infrastructure	Guidelines (soft law) at international law level, through OSPAR or the IMO

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North Sea Agreement

↗Examples: Rhine Convention, Alpine Convention

↗International law agreement between North Sea coastal states + EU = “mixed partial agreemeent”

↗Brexit-proof

↗To adopt a common point on the horizon

↗Common interpretation of the law of the sea

↗Governance of the MOG

↗Regulatory supervision

↗Conflict resolution

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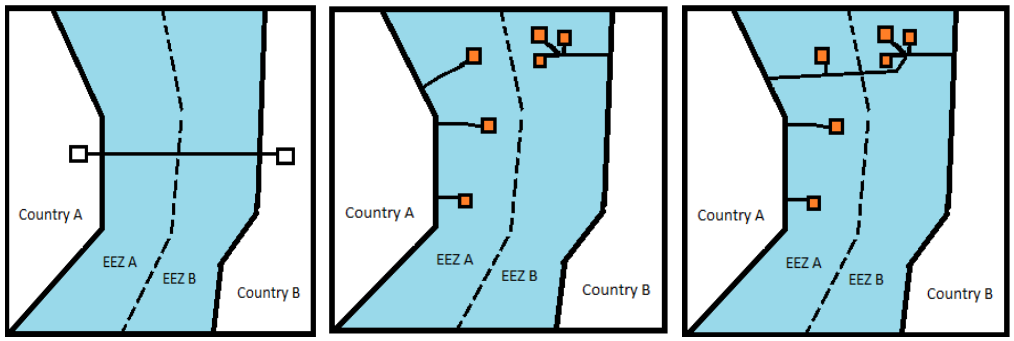
KEY FINDINGS
Asset Classification

Asset Classification for Hybrid Assets

- International Law: jurisdiction or not?
  - Jurisdiction over interconnectors
  - In interest of legal certainty: agreement on common interpretation of UNCLOS



- Regulatory asset classification: interconnector, grid, exemption?
  - Recital 66 in the Recast E-Regulation is a good first step
  - Next step: legal status hybrid assets needs to be substantiated in operative part
  - Finally: should be adopted in North Sea Agreement

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KEY FINDINGS
Governance

Governance

- Coordinated Planning & Timing OWFs and Grid Development
  - Why?
    - Avoid stranded assets
    - Provide ‘point on the horizon’ for investors: create pipeline of projects without overburdening the market
    - Most cost-effective grid development
  - How?
    - Central Role for Governments: Define OWF zones/spots and create timeline
    - TYNDP-like process:
      - regional approach
      - Long time horizon: specific for the first few years, different scenarios for the long future
      - Regular revision of the plan

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Governance

- ↗Ownership of the grid assets:
  - ↗Not sufficient capital available inside TSOs: need for private capital
  - ↗Different possible ownership models available (as presented before)
  - ↗Political choice

- ↗Operational Rules
  - ↗Uniform rules for the entire MOG: EU Network Codes could work, if…
  - ↗Fair dispatch rules needed when many OWFs are connected

- ↗Innovation
  - ↗Balance between long-term stability and adaptation to new developments
  - ↗Special attention to energy storage!

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Governance

- ↗Regulatory Governance
  - ↗Cooperation between national NRAs seems most beneficial
- ↗Financial Regulation
  - ↗MOG income should NOT be based on congestion income: stable regulated income needed in the long term
- ↗Procedures and Legal Certainty
  - ↗Currently: NRAs, then ACER and finally CJEU (example: Aquind)
  - ↗Future (political) developments are unclear

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KEY FINDINGS
Planning & Permitting

Planning and Permitting

RISK	CAUSE	MITIGATION	WHO?
Changes to the legal framework during project development	Long project development and permitting phase, often-changing legislative system	- Centralised OWF planning, preparation by authorities - Decouple OWF permitting process from cable permitting process - All other measures below	- L - L/A/P
Complexity of the permitting process	Many different permits, process not designed for MOG	- Simplification of the permitting process - Create a one stop shop for key project permits	- L - L
Confusion about asset classification and regulation for hybrid assets	Many different permits, legislative framework not designed for hybrid/meshed projects	- Adoption of clear definition of hybrid projects in EU and national law - Anticipation on future developments - Early communication with authorities about new projects	- L - A - P
Litigation and public resistance	Insufficient, poor-quality or delayed stakeholder interaction	- Early communication with stakeholders and involvement in the decisionmaking process	- A/P
Different EIA processes per country	Different evolution of EIA processes and standards at national level	- Move towards joint EIA procedure - Pilot project with intensive coordination of the authorities involved	- L/A - A/P

L: legislature, A: regulatory authorities, P: project developer

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KEY FINDINGS
Support Schemes

Support Schemes

- Short term: KFCGS as a model
  - OWFs bid into country in whose EEZ they are located
  - Receive subsidies from the same country
  - Cooperation mechanisms could be used for joint projects

- Long Term: Nodal (small zones) Pricing?
  - Tentative conclusion: introduction of small zones pricing for the MOG
  - Influence on income patterns OWFs: need to be compensated differently
  - If subsidies still needed, based on common fund with calculation *ex post*
  - Other possibility: support based on PCI-fund for energy projects

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KEY FINDINGS
Decommissioning

Decommissioning

↗New Topic, but relevant for CBA and grid development
↗Differing Lifetime OWFs (25 yr) / Cable infrastructure (40+ yr)
↗What happens after OWF end-of-lifetime?

Recommendations:
↗Take into account environmental aspects: artificial reef creation
↗New tender for same connection
↗Responsibility for remaining parts: ringfenced fund or to gov't
↗Adoption of OSPAR/IMO Guidelines

↗This topic requires more research

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Conclusion

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Conclusion

↗Need for a new legal framework, with the North Sea Agreement as backbone

↗No time for waiting: it may take a long time to adopt legislation

↗Hybrid assets are the building blocks of the MOG – facilitate their development

↗More research needed on the topic of decommissioning!

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Q&A and discussion:

Any questions?
Any other remarks?

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APPENDIX

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