

Recent Legal Developments

European Union Law

> March 2023:

> Net Zero Industry Act

- > 2023 Proposal of the EU COM, February 2024 political agreement between Council and European Parliament as legislative institutions of the EU
- > Part of the **European Green Deal Industrial Plan's** pillar for a simpler and more predictable legal framework for net-zero industries in the EU
- > Focus on “strategic net-zero technologies”, incl. CCS, but no mention of (m)CDR
- > Aims at, inter alia, facilitating and enabling CCS projects, including by **enhancing the availability of CO2 storage sites, and establishing a EU level objective of CO2 injection capacity**



Solar photovoltaic and solar thermal



Electrolysers and fuel cells



Onshore wind and offshore renewables



Sustainable biogas/biomethane



Batteries and storage



Carbon capture and storage



Heat pumps and geothermal energy



Grid technologies

Article 16

Union level objective of CO2 injection capacity

1. An annual injection capacity of at least 50 million tonnes of CO2 shall be achieved by 2030, in storage sites, *meaning geological storage sites permitted under Directive 2009/31/EC including depleted oil and gas fields and saline aquifers*, located in the territory of the Union, its exclusive economic zones or on its continental shelf within the meaning of the United Nations Convention on the Law of the Sea and which are not combined with Enhanced Hydrocarbon Recovery (EHR).

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> February 2024:

> **Industrial Carbon Management Strategy of the EU COM (COM(2024) 62 final)**

> Based on the insight that “additional measures are needed to continue reducing and manage carbon emissions in industrial processes in the EU, notably where other mitigation options are limited” (p. 1)

> Focus on **CCS and CDR**

> EU COM has already been tasked to **assess by 2026** if and how the CO₂ removed from the atmosphere and safely and permanently stored **could be accounted**

for and covered by emissions trading (without offsetting emission reductions and while ensuring environmental integrity)

Industrial carbon removals are not currently covered by the EU ETS Directive nor the Effort Sharing⁴⁴ or the Land, Land Use Change and Forestry (LULUCF)⁴⁵ regulations. Since the EU ETS does not recognise negative emissions, capture and storage of biogenic and atmospheric CO₂ is not incentivised by the EU compliance carbon market price, and currently the only incentive at EU level comes from the Innovation Fund. In this context, investment decisions for this type of operations mainly rely on state subsidies or voluntary carbon markets. The voluntary EU carbon removal certification framework, accounting for life cycle emissions of carbon removals activities, will help mobilise financing while ensuring the environmental integrity of carbon removals but it is important that the Commission assesses how best to provide incentives for industrial carbon removals in existing EU legislation or through new instruments.

Recent Legal Developments

Germany

- > February 2024: Announcement of key elements of “**Carbon Management Strategy**”
 - > Bezug auf schwer vermeidbare Emissionen (z.B. aus der Zement- und Kalkindustrie, der thermischen Abfallbehandlung und der Energiegewinnung aus fossilen Quellen – aber ohne Kohle!)
 - > Unvermeidbare Emissionen sind hingegen Gegenstand der **Langfriststrategie Negativemissionen** (Eckpunkte ebenfalls im Februar 2024 beschlossen); Emissionen aus fossilen Energiequellen sollen hier vollständig ausgeschlossen sein; Ziele mit geplantem § 3b KSG (zu sog. technischen Senken)

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- > Offshore-Speicherung:
 - > Germany **will allow exploration of offshore storage sites in its Exclusive Economic Zone (EEZ) or the continental shelf**; if suitable, safe and in line with ecological criteria, CCS shall be developed for industrial utilization
 - > Injection of carbon dioxide in marine protected areas excluded
 - > **No onshore carbon storage**, but Federal States can request opt-in possibility to be put in law

Recent Legal Developments

- > Export of CO₂:
 - > Planned ratification of 2009 amendment to the London Protocol
 - > Declaration on provisional application of Article 6 LP in order to enable export of CO₂
 - > Construction of privately-owned pipeline network, abolish hurdles for new projects
- > mCDR:
 - > Potential amendment of High Seas Dumping Act (but still uncertain and under discussion)

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> Umsetzung:

> **Gesetz zur dauerhaften Speicherung und zum Transport von Kohlendioxid (Kohlendioxid-Speicherungs- und -Transportgesetz, KSpTG)**

- > = **Änderungsgesetz** zum KSpG (Referentenentwurf liegt vor, derzeit in der Ressortabstimmung)
- > regelt Verfahren zur Zulassung von Kohlendioxidleitungen und von Anlagen zur dauerhaften Speicherung von Kohlendioxid in unterirdischen Gesteinsschichten
- > Bei der Planfeststellung Beachtung der Ziele der Raumordnung und des Flächenentwicklungsplans nach dem Windenergie-auf-See-Gesetz

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- > Betreiber von Kohlendioxidleitungsnetz müssen Zugang zum Netz verweigern, „sofern das aufzunehmende Kohlendioxid durch die Verbrennung von Kohle in einer Anlage im Anwendungsbereich des Treibhausgas-Emissionshandelsgesetzes entstanden ist, die überwiegend der Erzeugung von Strom dient“