



## ZEP Briefing – European Commission analysis paper on the London protocol

*Disclaimer: The paper described hereafter is complex from a legal and regulatory perspective. This briefing aims to provide a first analysis of its implications.*

### Background

The European Commission (EC) published an analysis paper called '[The EU legal framework for cross-border CO2 transport and storage in the context of the requirements of the London Protocol](#)' on 30 September 2022. This paper was published in the context of the Information Exchange Group of the CO2 storage directive. The paper provides an analysis of the EU ETS directive, the CO2 storage directive, and the London Protocol.

### Content

The following conclusions can be drawn:

- The exception to surrendering emission allowances does not apply to EU ETS installations that export CO2 for storage outside the European Economic Area (EEA) (e.g. the UK).
- The paper would entail that the EU legal framework – the EU ETS directive and the CO2 storage directive – and the EEA treaty can act as an arrangement under the meaning of article 6 of the London Protocol. This implies that the amended article 6 does not need to be ratified and countries do not need to engage in specific International Maritime Organization (IMO) bilateral agreements before CO2 can be exported for disposal. Instead, countries in the EEA that are parties to the London Protocol need to: a) deposit a formal declaration of provisional application with the Secretary-General of the IMO and b) notify the IMO that they are part of the arrangement created by this paper.
- The liability for the CO2 is transferred along the CCS value chain (capture, transport, and storage) from one EU ETS installation to the other.

### Key statements

The following key statements are made:

- *“storage outside the EEA cannot comply with the requirements of Article 12(3a)<sup>1</sup> [of the EU ETS directive]”*

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<sup>1</sup> Article 12(3a) of the EU ETS directive states that *“an obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide”*.

- “[the CO<sub>2</sub> storage directive and the EU ETS directive] can act as a relevant **“arrangement”** between the Parties in the meaning of Art. 6(2) of the London Protocol<sup>2</sup>”
- “the EU Member States parties to the London Protocol should **notify to the IMO** [...] **that EU law** [...] **is part of the relevant arrangements** for these exchanges between EU Member States, jointly with any additional bilateral arrangements concluded among MS on matters not contemplated by the two EU directives [...]”
- “Member States that are party to the London protocol could conclude additional bilateral arrangements with other EU Member States and EEA partner countries **only on issues that are not covered by the directives**”
- “The **liability for emissions** caused by the operation of CO<sub>2</sub> capture, transport or storage in the CO<sub>2</sub> value-chain is therefore **transferred from one ETS installation to the other**, without regard to the EEA country they are located in”
- “The European Commission is considering establishing a **public repository** listing, per Member State, the contact details of competent authorities and Single Point of Contacts for CO<sub>2</sub> export, the date of deposition of the declaration of provisional application of the 2009 amendment, and any additional bilateral agreement that countries have entered into, as notified to the IMO”

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<sup>2</sup> Article 6(2) of the London Protocol states that “[...] the export of carbon dioxide streams for disposal in accordance with annex 1 may occur, provided that an agreement or **arrangement** has been entered into by the countries concerned [...]”.