Teknologi- og prosjektsamarbeid

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BKK

GCE Ocean Technology

Cluster Management Excellence
GOLD
PROVEN FOR CLUSTER EXCELLENCE

Velkommen til frokostseminar om teknologi- og prosjektsamarbeid

Kai Stoltz

BUSINESS DEVELOPMENT MANAGER

GCE Ocean Technology

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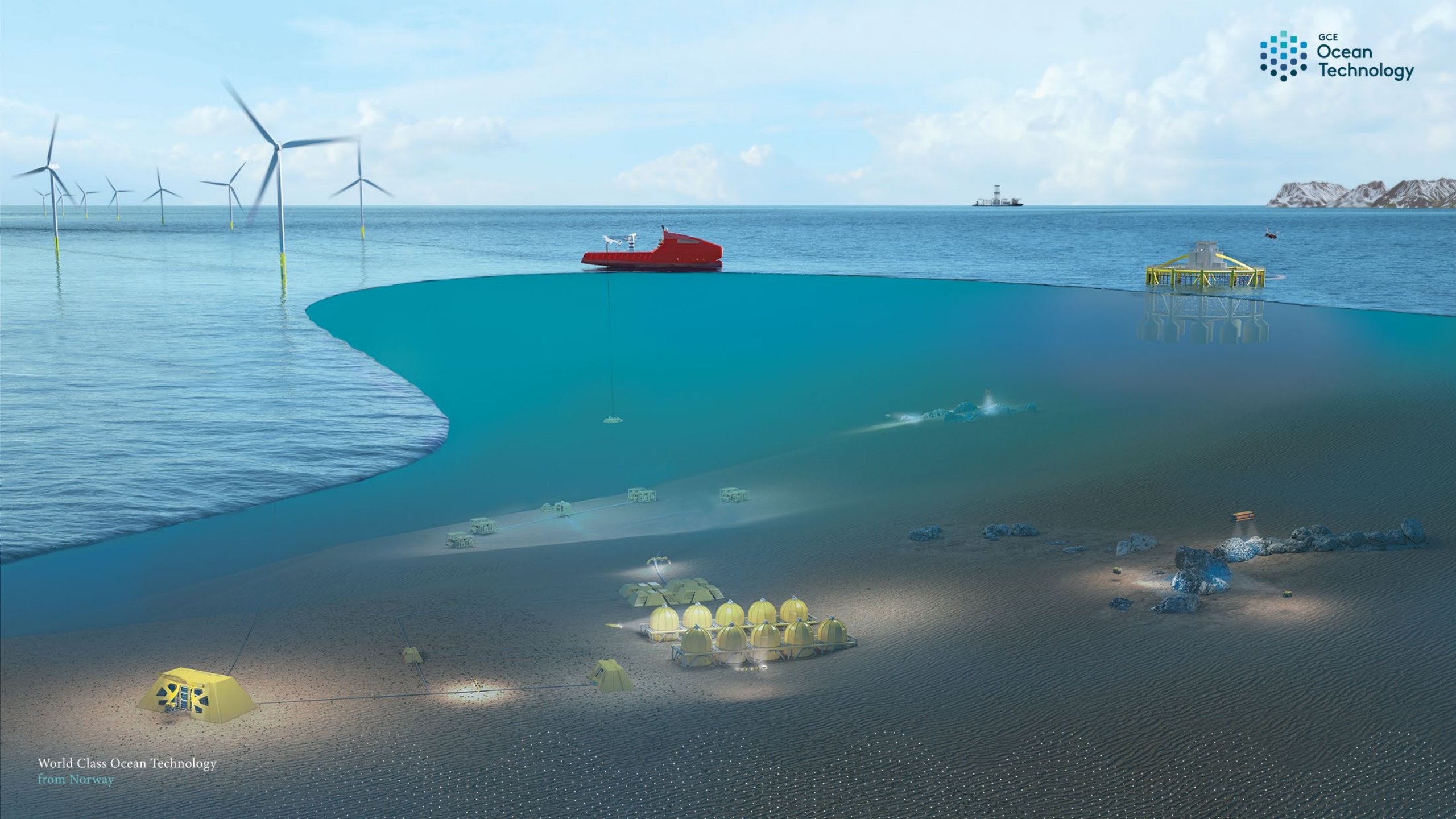
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Collaboration projects, key legal considerations

GCE Ocean Technology

Christian James-Olsen and
Knut Hausken Magnussen

11 November 2021

Agenda

- Introduction and background
- An overview of collaboration projects
- Key legal considerations

The trend – from goals to regulatory duties

- Goals are converted to regulatory duties:
  - The European Union's "Fit for 55"-package
  - IMO's Energy Efficiency Existing Ship Index (EEEI) and Carbon Intensity Indicator (CII)
  - New regulations within offshore wind – preparing for auctions and development
  - Future developments – new regulations likely to come into force
- Pressure and expectations from the market
  - "Equinor supports the Paris Agreement and a net-zero future"
  - "Maersk Hybrid Drilling Rig Starts Up Offshore Norway"
  - "Amazon, Ikea and Unilever pledge zero-carbon shipping by 2040"
  - "Shipping industry calls for new global carbon tax"
  - "Norwegian shipping climate neutral by 2050"
  - "EU Taxonomy" and "EU funding programmes"

New markets and need for developments

- The transition requires development of new technology
  - Existing projects / vessels – need to be able to transition and make use of new technology
  - New offshore projects need to be more sustainable / less impact on the environment
  - Newbuilds need to take into account (potential) future requirements
- The transition also creates new market opportunities:
  - New technology and new designs
  - New fuels and energy carriers
  - New (Norwegian) markets within e.g. offshore wind and energy
- Complex to achieve this, but some things are clear:
  - The need to involve different companies with different expertise / current business
  - The need for financial aid / financing of projects
  - The need to protect and agree on intellectual property rights / commercialisation
  - The complexity and scope of the projects necessitate collaboration

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An overview of collaboration projects

Different types of collaboration projects

- Technology development / FoU-projects
  - Companies with different competence collaborate in order to develop new or improved technology
  - From a legal perspective, the key concern is normally protection and ownership of IPR
  - Many "standard forms / templates" which may be used directly, or tailored to specific needs
- Alliance agreements / non-incorporated collaboration
  - Normally not development of new technology, rather a focus on combining resources from different companies
  - Separate types of agreements, different key considerations compared to other collaboration agreements
  - Who does what, obligation to provide resources, exclusive or non-exclusive, execution-phase and liability
  - Key principle; distributing risk among participants, sharing profits (and losses)
- Complex collaboration- / "value chain"-projects
  - More complex than technology development agreements
  - Typically includes participants from different levels / involved in different activities
  - May include / cater for the possibility to have sub-projects, with separate agreements
  - May contain certain elements from alliance agreements, e.g. sharing risk in commercialisation (joint venture)

Illustration of a project "life-cycle" – example

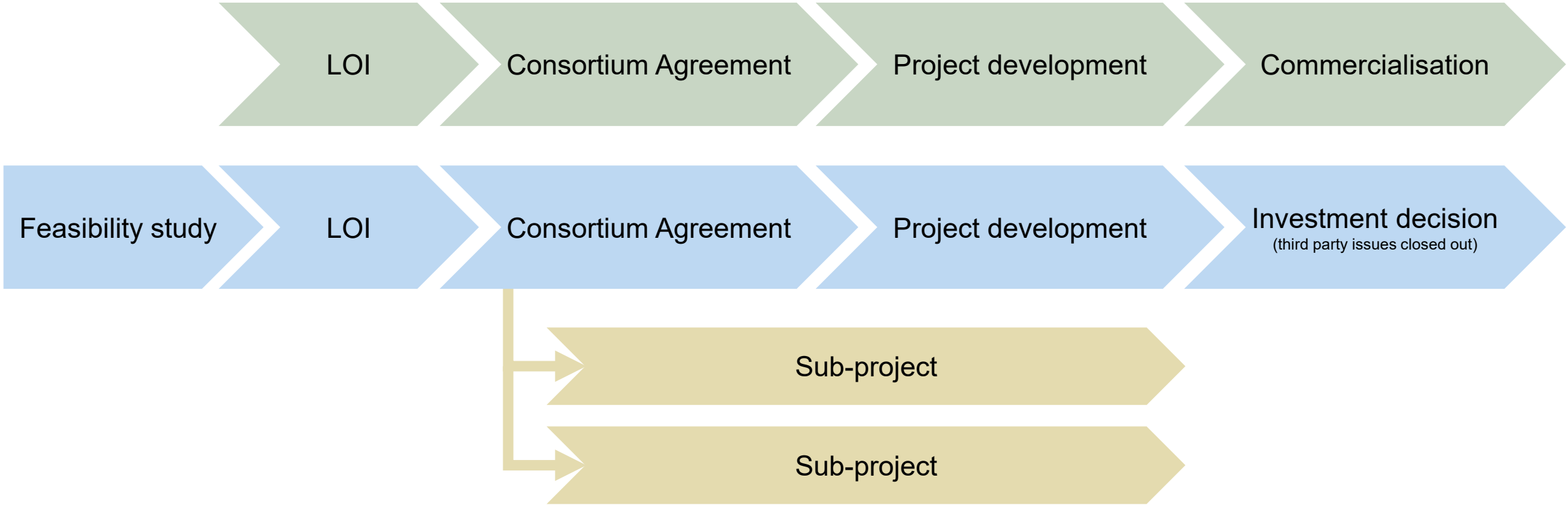
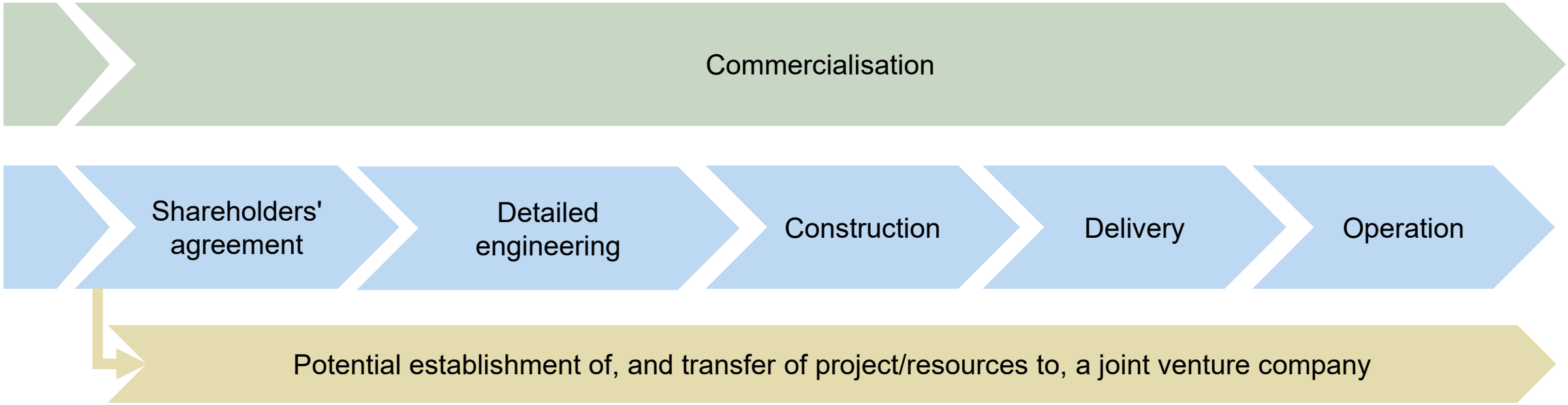


Illustration of a project "life-cycle" – example



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Key legal considerations

Introduction – different legal set-ups

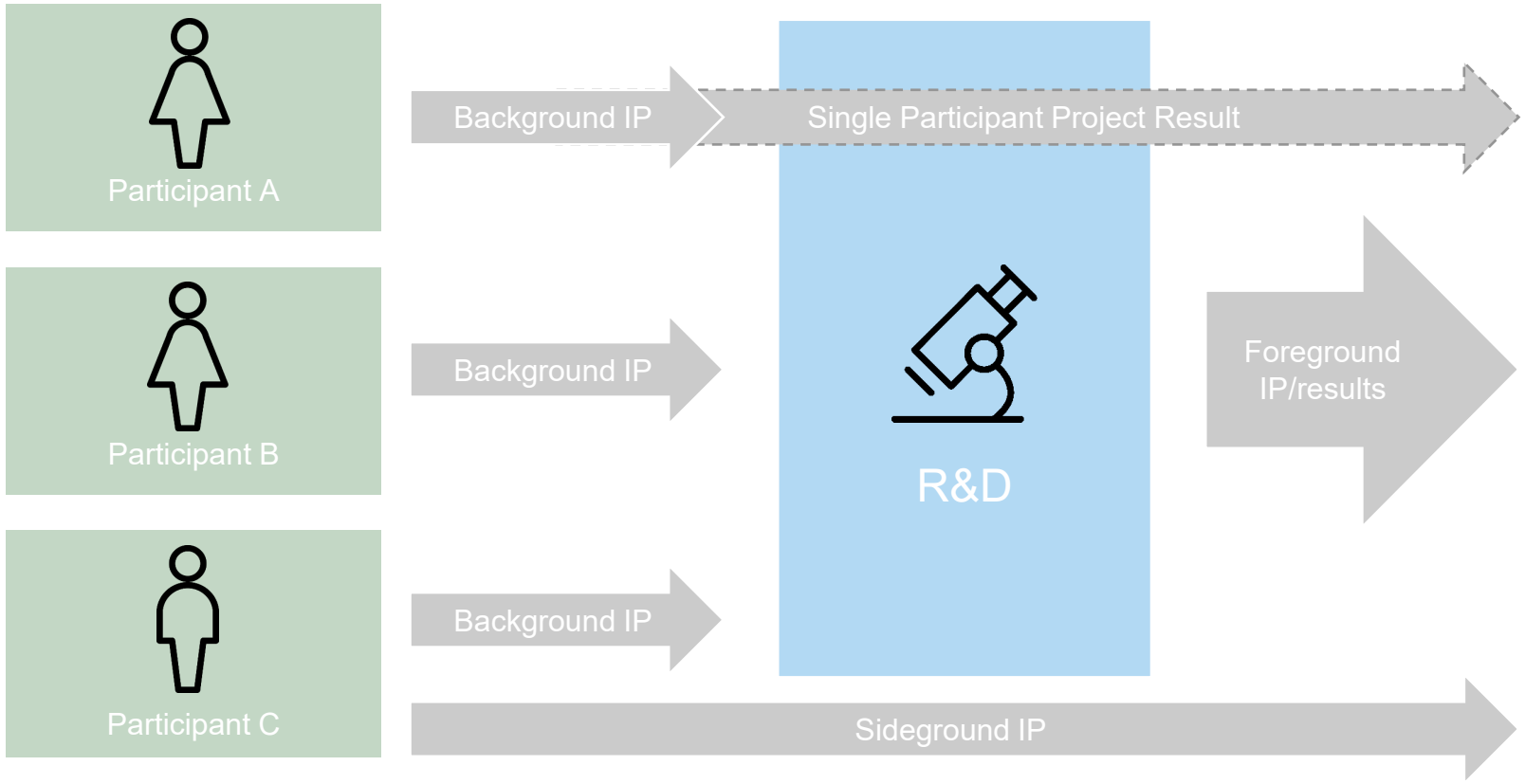
- Different names on agreements, same meaning?
  - Consortium Agreement / Collaboration Agreement / Alliance Agreements
  - Shareholders' Agreement / Joint Venture Agreement / Partnership Agreement

- Simplified structure in Consortium / Collaboration Agreements:
  - Description of the Project / Work
  - Contributions by each of the Parties / financing and state aid
  - Organisation of the Project
  - Obligations, default and consequences of default
  - Term and termination
  - (Limitation of) Liability and Warranties
  - Intellectual Property Rights (and Commercialisation)
  - "Boilerplate clauses", for example confidentiality, amendments, competition law, etc.
  - Dispute resolution and choice of law

Same model for all, or tailored approach?

- Key considerations at an early stage:
  - Are the participants actual or potential competitors?
    - Avoid structuring the project which is in breach of competition law
    - Not necessarily a problem that the parties are actual or potential competitors
      - But needs to be taken into account and handled accordingly during the project
  - Development of new or improved technology?
    - Legal framework to ensure sharing and development
    - Important to consider and have a view on use / commercialisation
    - Agree to transfer intellectual property rights, or secure user rights / licences?
      - Secure no need for future "third party willingness"

Intellectual property rights – models



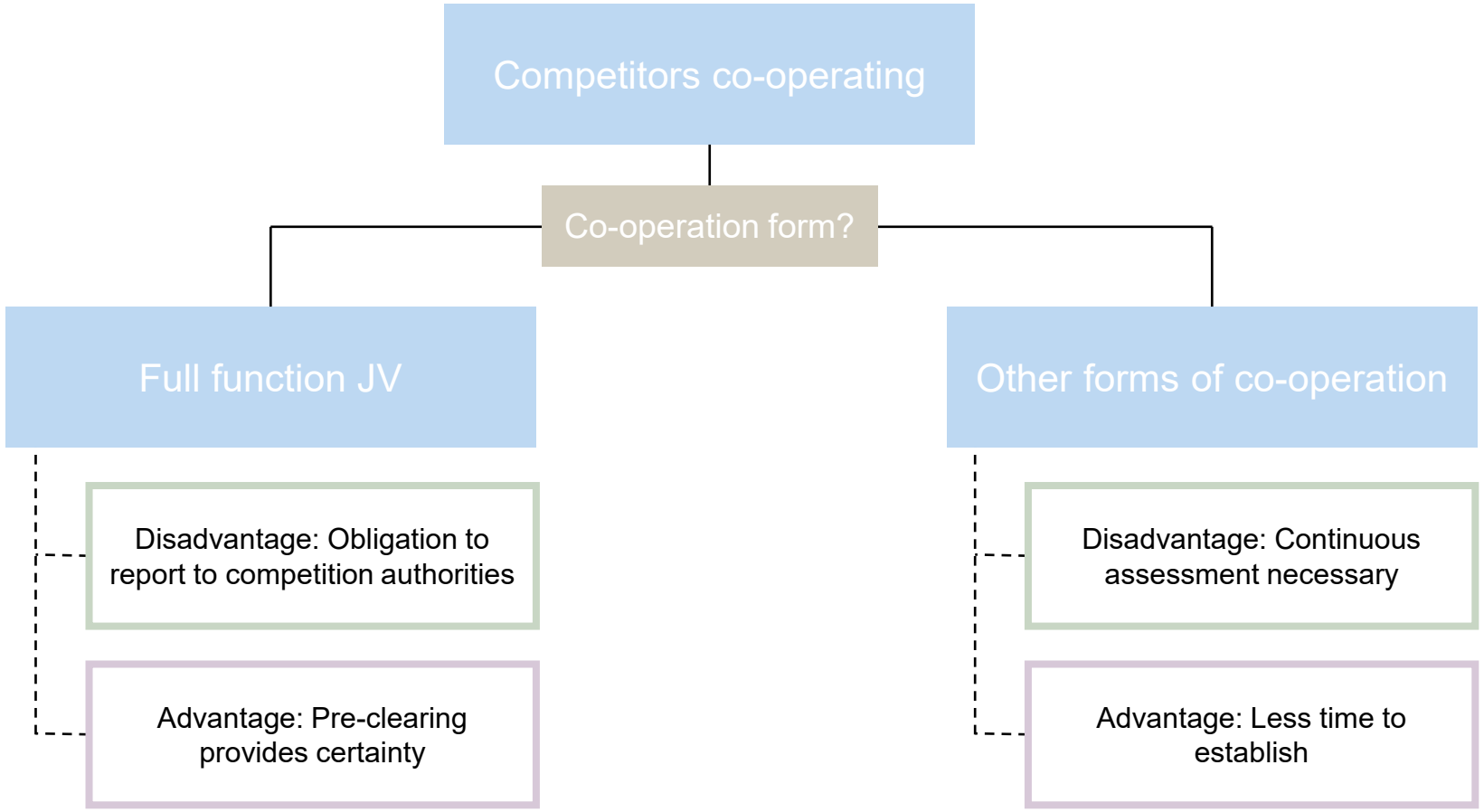
Key considerations and principles – IPR

- Background IPR:
  - No transfer of Background IPR, but Background IPR is made available during the Project
  - A need for licences in order to make use of Foreground IPR?
- Foreground IPR:
  - Model depends on type of project and interests of each Party, examples:
    - Ownership distributed dependant on connection to Background IPR
      - "Improvements", "mainly based on", or similar terms
    - Ownership distributed to one or more specific Parties
      - With obligation to commercialise?
    - Ownership distributed based participation in work packages
      - Irrespective of Background IPR / efforts?
- Alternatives to ownership in Foreground IPR:
  - A perpetual right to use / licence?
  - A "preferred customer" status?

Competition law – early considerations

- Consortiums may include companies which are actual or potential competitors
- While due care is necessary at all stages, the risk of breach is normally low in the development-phase and before commercialisation
- Primarily necessary to take into account in the commercialisation-phase
  - Two or more actual or potential competitors to jointly commercialise?
- How should the cooperation be structured (in the future)?
  - Full function joint venture?
  - Other (non-incorporated) basis of cooperation?
- Advantages and disadvantages with both models:
  - Full function joint venture; requirements to joint venture, notification and "stand-still period"
  - Other (non-incorporated) basis of cooperation; continuous assessment
- Key strategic decision, necessary to be taken early on in order to avoid "surprises"

Competition law



Other practical (legal) issues

- Many factors may impact efficient negotiations:
  - Participants with cultural, organizational and legal differences
  - Examples; Norway, Russia and China
- Agree on key terms, principles and contractual basis:
  - Easier to agree on key terms and principles
  - More important than "getting into the details" early on
  - Which agreement should form the basis for negotiations?
- Coordinating the different workstreams and processes:
  - Who does what, when will it be delivered, consequences if not delivered?
  - Representatives with power to act and make decisions during execution

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Intergovernmental
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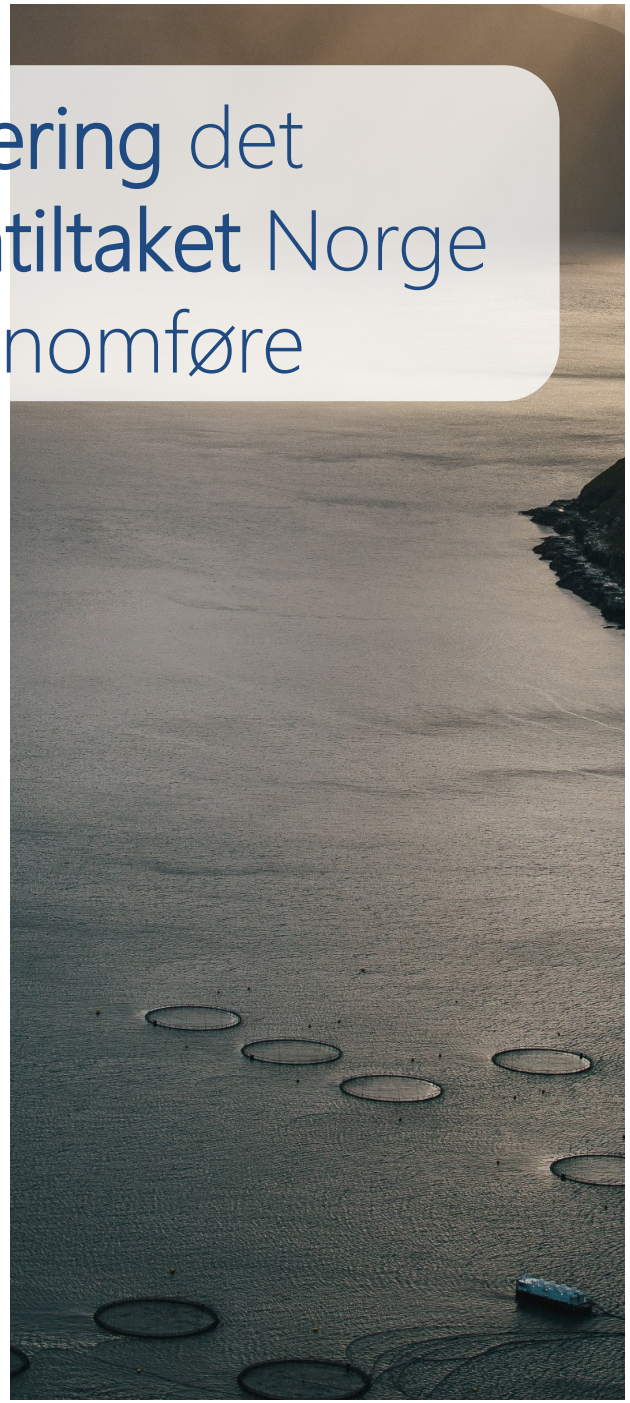
Commission
2021
2030
United Nations Decade
of Ocean Science
for Sustainable Development
ONEOCEAN
EXPEDITION
Coffee Break

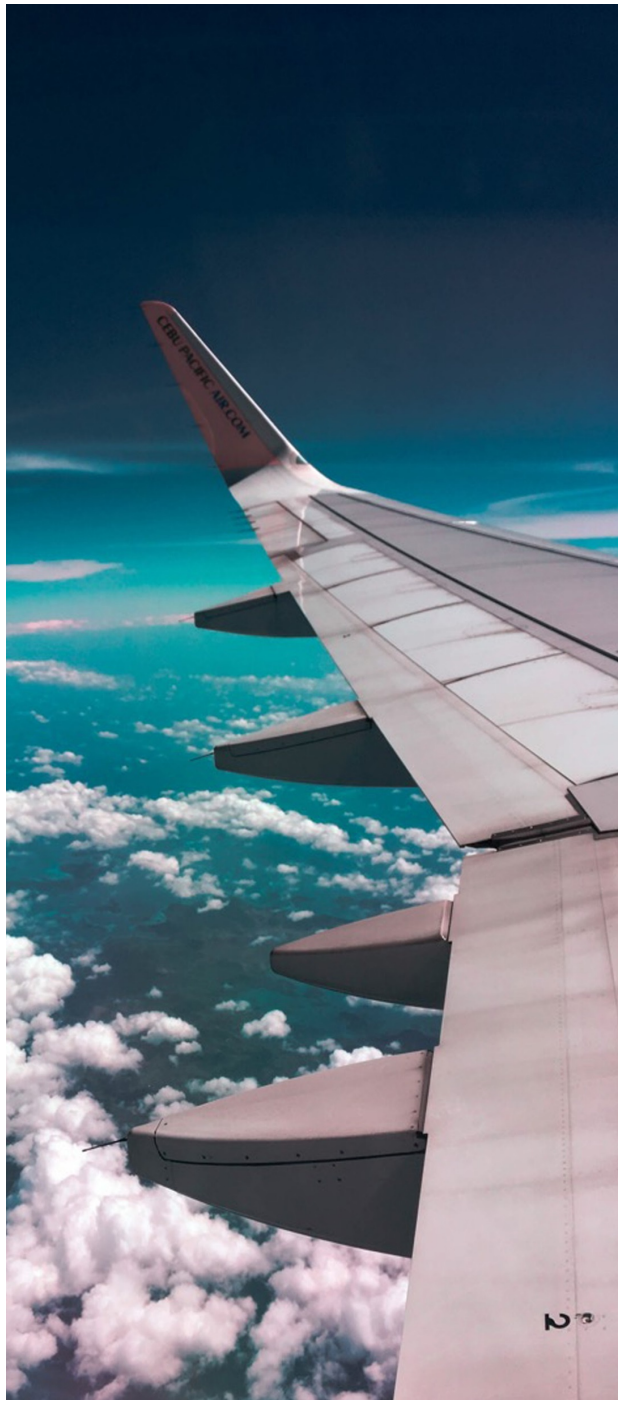

eviny


8,7 TWh
Vannkraftproduksjon (2020)
1355
medarbeidere
38
Vannkraftverk
100 % eid
av Statkraft og
norske kommuner
259 862
nettkunder
Stor verdiskaper
for våre eierkommuner


SEUL LE RHUM DEVRAIT FAIRE MONTER LA TEMPÉRATURE
CHANGEONS LE SYSTÈME PAS LE CLIMAT
BLA BLA BLA BLA
ACTION NOW!

Elektrifisering det viktigste klimatiltaket Norge kan gjennomføre



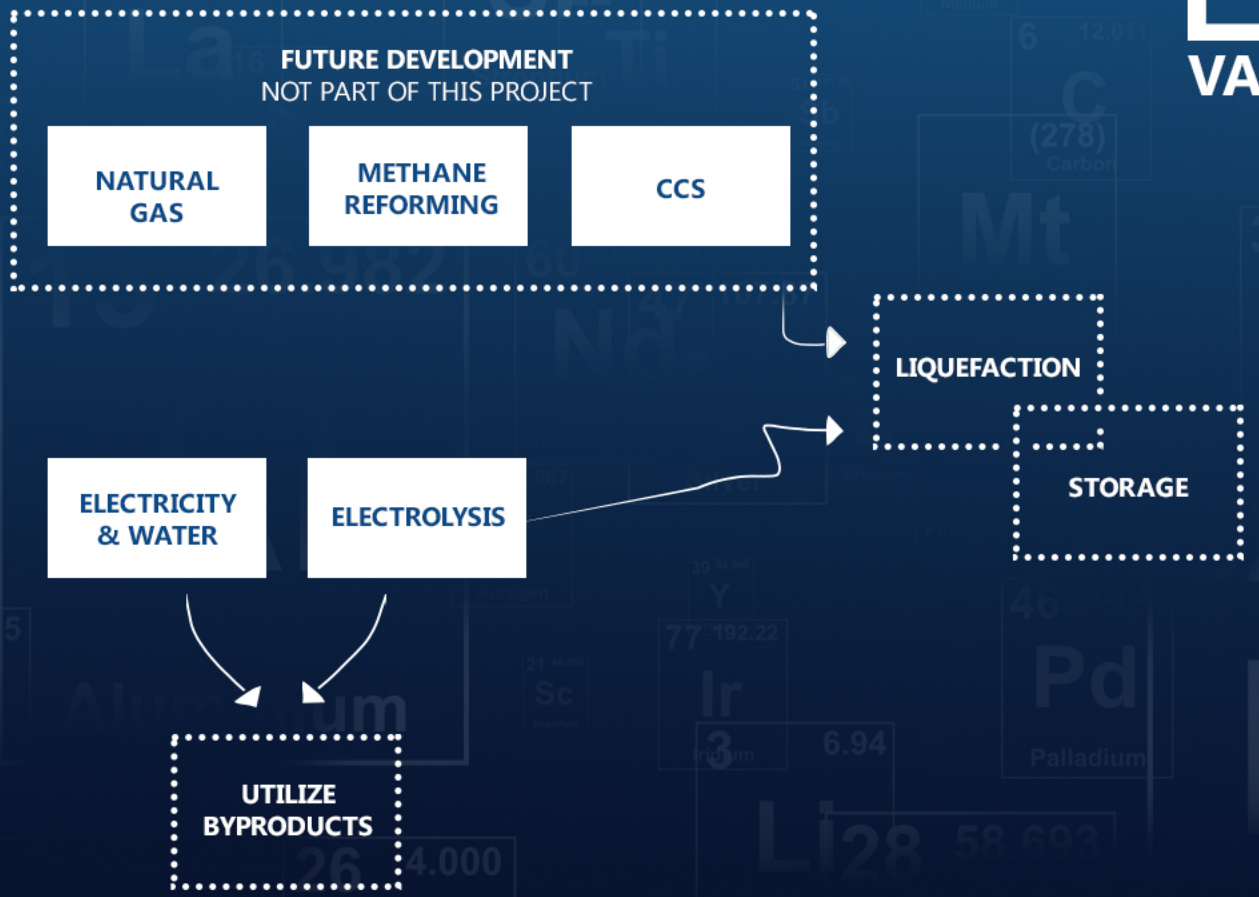



GOAL 17
STRENGTHEN THE MEANS OF IMPLEMENTATION AND REVITALIZE THE GLOBAL PARTNERSHIP FOR SUSTAINABLE DEVELOPMENT
SUSTAINABLE DEVELOPMENT GOALS
More at sustainabledevelopment.un.org/sdgsproposal

Ship of The Year 2021: MF «Hydra»

Årets Ship of the Year fra Skipsrevyen går til verdens første ferge på hydrogen; MF «Hydra ». Samferdselsminister Knut Arild Hareide overrakte prisen i dag. 8. september, om bord i fergen i Hjelmeland. MF «Hydra» er bygget for Norled ved Westcon Yards i Ølen og designet av LMG Marin.

LH2
VALUE CHAIN



ZERO-EMISSION DISTRIBUTION

FLEXIBEL H2-TERMINAL

BUNKERING AND STORAGE ON BOARD

FILLING STATIONS FOR TRUCKS, BUSES AND OTHER PORT FACILITIES

FAST FERRIES

CAR FERRIES

CRUISE SHIPS

CARGO SHIPS

TRUCKS

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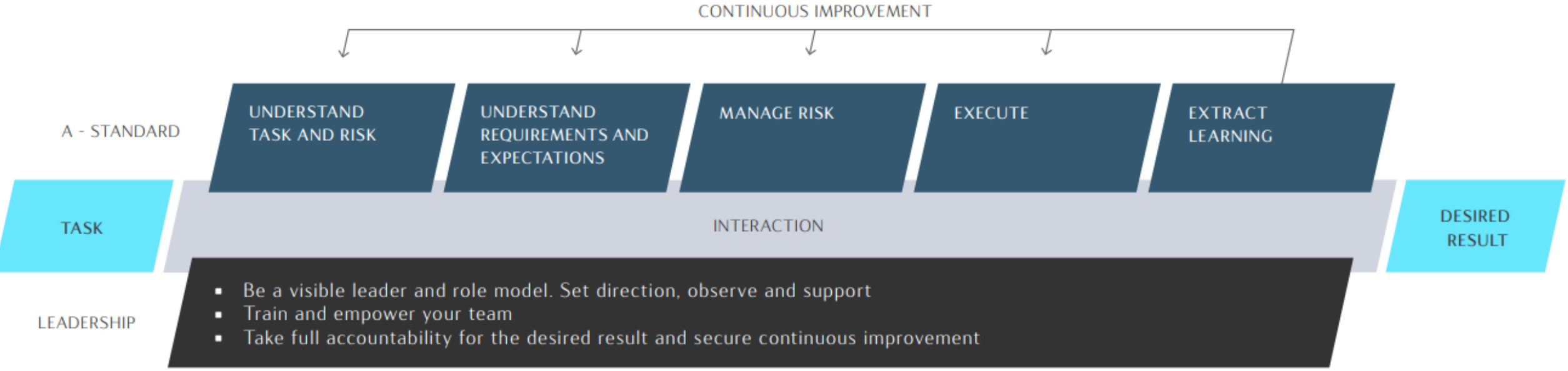
Hydrogen-
anlegg
Akvaanlegg

"***TRUST*** is like the air we breathe. When it's present, nobody really notices. But when it's absent, everybody **notices**."

–Warren Buffett

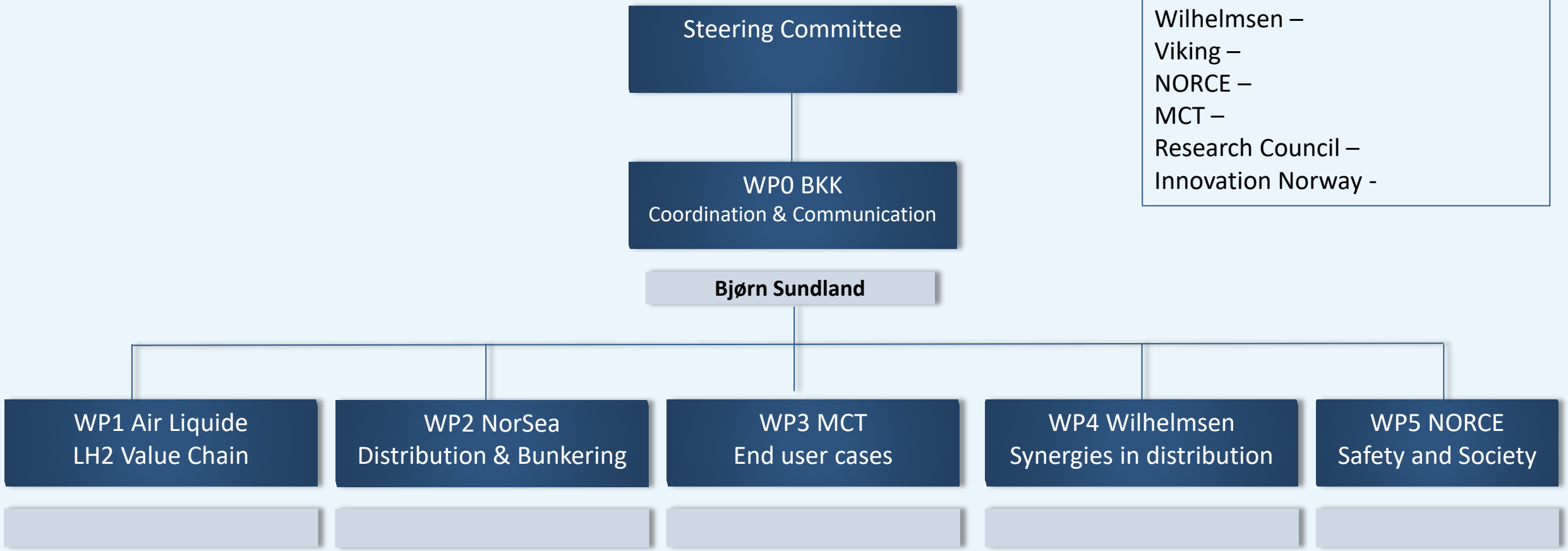

PARTNERSHIP
AGREEMENT

- Viktig å bruke tid på en felles forståelse av oppgaven risiko, forventinger og krav
- Viktig å ha god forståelse for partenes posisjoner og interesser
- Med ulike interesser og ulike bedriftskulturer tar det tid å bygge tillit
- Rett kompetanse i forhandlinger gir effektive prosesser
- Juridisk bistand er viktig for å komme frem til gode løsninger
- Bruk tilstrekkelig tid på avtaler for å bygge sterke partnerskap med tillit og felles mål
- Målsetningen er å etablere avtaler som best mulig ivaretar partenes ulike interesser
- Målet med avtalen er å bidra til å redusere risiko for fremtidige konflikter

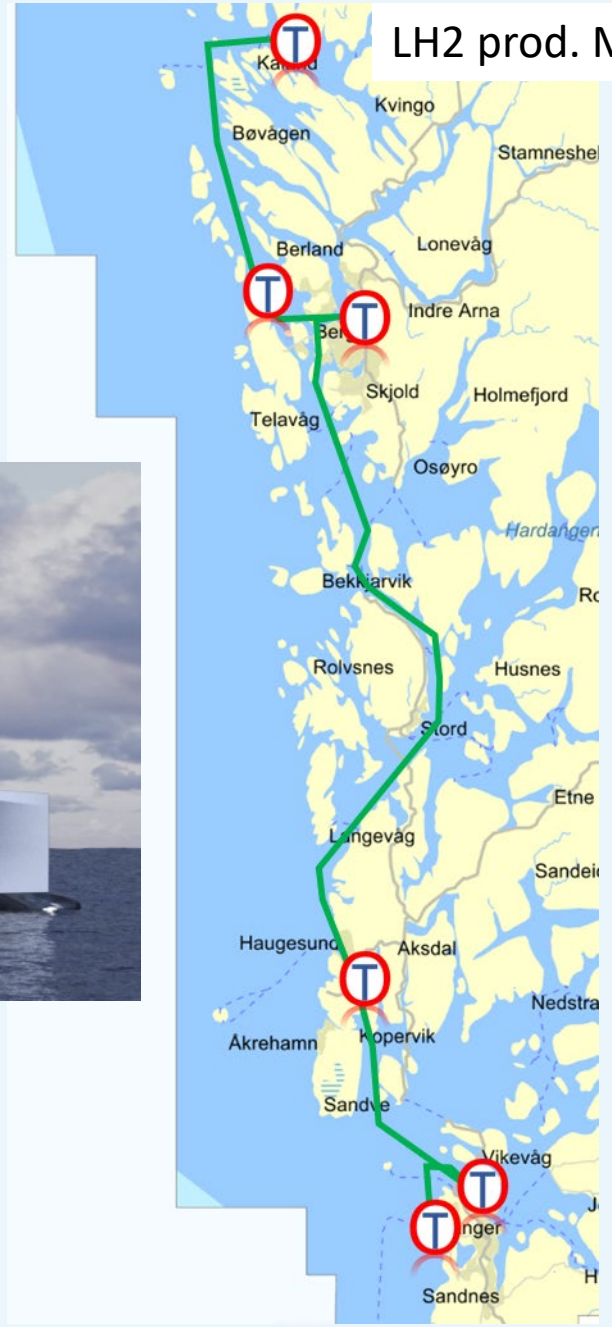


Hydrogen Value Chain Governance

Steering Committee Participants:
BKK –
Air Liquide –
Equinor –
Norled –
NorSea –
Wilhelmsen –
Viking –
NORCE –
MCT –
Research Council –
Innovation Norway -



Topeka Overnight RoRo service; the **zero emission seaborn alternative**



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United Nations Educational, Scientific and Cultural Organization

Intergovernmental Oceanographic Commission

2021 2030 United Nations Decade of Ocean Science for Sustainable Development

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