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The EU Draft CCS Directive – Background

Grounds for and objectives of the proposal

- Energy efficiency and renewable energies are in the long term the most sustainable solutions both for security of supply and climate.
- However, reduction of greenhouse gas emissions requires to use the possibility of CCS
- Legal framework necessary to ensure that CO₂ capture and storage is an available mitigation option, and that it is done safely and responsibly.

The EU Draft CCS Directive – Background

General context

- The Commission Communication on meeting the Community's objective of limiting climate change to 2° C: all mitigation options must be harnessed, among them carbon dioxide capture and storage.
- The Second European Climate Change Programme (ECCP II) – Working Group on Carbon Capture and Geological Storage: Need for the development of both policy and regulatory frameworks for CCS.
- The Communication on Sustainable Power Generation from Fossil Fuels of January 2007: action plan - development of a sound management framework for CCS.
- Brussels European Council of March 2007: develop the necessary technical, economic and regulatory framework to bring environmentally safe CCS to deployment.

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Existing provisions in the area of the proposal

- Where possible, existing provisions have been used to manage the risks of CCS.
- Directive 96/61/EC concerning Integrated Pollution Prevention and Control (IPPC)
- Directive 85/337/EEC on the assessment of the environmental impact of certain projects (EIA)
- Directive 2004/35/EC on Environmental Liability
- Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading

The EU Draft CCS Directive – Background

Context of international Law developments

- OSPAR-Convention
- London Convention and Protocol

The EU Draft CCS Directive – Background

- The Legal Basis for Community Action

Art. 175 EC – so called „environmental competence“ of the EC

- Community Legislative Process

Art. 251 EC – so called „procedure of codecision“

EP can propose amendments to the Draft Directive

Main Elements of the Draft - Purpose, Focus, Scope

Purpose

- Establish legal framework to manage environmental risks
- Remove existing legal barriers

Focus on storage

- Capture regulated in IPPC- and EIA-Directives, transport regulated in EIA-Directive and at national level

Scope

- Territory, exclusive economic zones and continental shelves of the Member States
- Not applicable to research projects (but for Demo-projects)
- Storage in the water column not permitted (OSPAR)

Site selection and exploration

Site selection

- Crucial for storage integrity and security
- Assessment pursuant to criteria listed in Annex I
- Storage site may only be selected, if no significant risk of leakage or negative impacts on human health or environment

Problems: Scientific uncertainties, indefinite legal terms

Exploration

- MS decide on exploration procedure
- If exploration procedure is carried out, exploration permit has to be issued to protect holder against conflicting uses of the site during validity

Storage permits

Storage permits

- No storage without storage permit
- Provisions on application, conditions and contents of the storage permit

Problems: Applicable European law, specific requirements

Commission review

- Draft storage permits have to be submitted to the COM, which may issue an opinion within six months
- MS may deviate from opinion, but have to justify
- Review will take place with the aid of a scientific panel

Purpose: Control of implementation, secure consistent employment, public confidence, learning

Acceptance, Monitoring, Reporting

Acceptance of CO2 streams

- Substances other than CO2 must be limited to levels that do not adversely affect the security of the transport or storage
- To be verified by operator prior to injection

Monitoring, Reporting

- Operator has to regularly monitor storage site to assess behaviour of injected CO2 and detect leakages
- Monitoring on the basis of a monitoring plan (established by the operator pursuant to Annex II, agreed by the authority)
- Results of monitoring have to be reported at least once a year to the competent authority
- At least once a year inspection by the competent authority

Leakages

Corrective measures

- Operator has to immediately notify competent authority and take necessary corrective measures
- If operator does not take the necessary measures, the competent authority takes the measures itself and recovers the costs incurred from the operator

Additional provisions

- Environmental Liability Directive for local environmental damage
- Emissions Trading Directive for climate effects
 - ➔ Captured and stored CO₂ emissions are recognised as not emitted under the ETS, but in case of a leakage, the operator has to hand in ETS allowances

Closure, post-closure obligations and transfer of responsibility

Closure (= definite cessation of injection)

If conditions in permit met or upon decision by the authority

Post-closure obligations

Operator remains responsible for storage site after closure (monitoring, corrective measures etc.)

Transfer of responsibility

Transfer to the competent authority, when all available evidence indicates complete containment of CO₂ for the indefinite future

Financial security

Financial security

To be made prior to the submission of the permit application

To ensure that requirements pursuant to this Proposal and the ETD can be met (including closure and post-closure)

Released when responsibility is transferred to the competent authority

Removing legal barriers

Community legislation

- Water Framework Directive amended to allow storage of CO₂ in saline aquifers
- Waste Framework Directive and Waste Shipment Regulation amended to remove CO₂ for the purposes of storage pursuant to this Proposal from their scope of application

International level

- 2006 Amendment of the London Protocol (1996) to the London Convention (1972) on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
- 2007 Amendment of the OSPAR Convention (1992) for the Protection of the Marine Environment of the North-East Atlantic