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EUs planer for kommersialisering av CCS

**Selected legal issues on CO<sub>2</sub>  
storage.**

**Which challenges for Norway and  
Norwegian stakeholders?**

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- Selected legal issues raised by the EU Draft Directive on CO<sub>2</sub> storage
- Short overview of the regulatory situation of CO<sub>2</sub> storage in Norway
- Recommendations for a new concession system in Norway
- Other specific legal considerations
  - Liabilities /EU ETS
  - Transboundary issues

## Exploration permit

- Exploration phase not a necessary step : decided at Member state level
- When exploration is decided, subject to a permit (article 5)
  - Period of validity
  - Will the exploration permit holder have a preferential right in the awards of a storage permit? Under discussion

## Storage permit

- Storage subject to a permit
- One operator for each storage site
- Issue relative to the transfer of the permit

## Transfer of responsibility to the State

- Conditions of the transfer :
  - *Draft Directive versus Davies Report*
    - “if and when all available evidence indicate that the stored CO<sub>2</sub> will be completely contained for the indefinite future”
    - and “after the site has been sealed and the injection facilities have been removed
    - The Davies report adds: “a post closure interim period of at least 50 years
  - *Expected position of the Council – more or less as in the draft Directive*

## Transfer of responsibility to the State (follow)

- Consequences for operators in case the 50 years interim period is adopted
  - 50 more years to remain responsible for maintenance, monitoring, reporting and corrective measures and ensuing legal obligations
  - 50 more years of financial contribution to a fund (*New Financial mechanism- Davies Report*)
- Suggestion
  - Transfer of responsibility should occur when one of the following alternative is met:
    - *Either the operator shows evidence of no risk of leakage*
    - *Or after a period of 10 to 15 years after site closure .*
  - Specify a criteria for storage integrity in the storage permit (as “*all available evidence*” and “*completely contained*” are open to wide interpretation)

## Access to transport and storage network

- Remaining legal barrier
- London Protocol, which was amended in 2006 to permit the CO<sub>2</sub> storage, still prohibits the cross border export of CO<sub>2</sub> for disposal into a sub-seabed formation. .

## Current regime for CCS in Norway (offshore)

- Projects carried out on a case by case basis, with support from existing legislation
- Complex and confusing regime – Depends on the type of injection
  - Petroleum Act and/or Pollution Control Act apply to the CO<sub>2</sub> injection, depending whether they are or they are not connected to petroleum activities

## How is CCS activity regulated through the Petroleum Act

- Only injections connected to petroleum activities are subject to the Petroleum Act
  - Example of injections connected to petroleum activities
- When applicable, Petroleum Act gives a satisfactory framework but important issues are not addressed (long term liability, monitoring)

## How is CCS activities regulated through the Pollution Control Act

- Geological storage of CO<sub>2</sub> falls within the definition of “pollution”
- Pollution permit required, issued by SFT
- Who? both for the company carrying out the injection and the capture activity
- So far two permits have been issued in Norway (Sleipner, Snøhvit)
- Pollution Control Act has a limited scope of application
  - Problem for injections performed by foreign vessels or foreign installations (in EEZ outside NCS).

## General recommendations

- Consider a free standing legislation, covering all aspects of CCS chain (capture, transport and storage)
- Remove distinction between injections connected to petroleum activities and injections not connected to petroleum activities
- Clearly identify who needs a permit for what for each activity in the CCS chain
- Clearly identify responsibilities between actors involved in the CCS chain

## Specific recommendations

- Competent authorities
  - Should Norway establish one or several authorities?
  - Should Norway use existing authorities or establish a new one?
  - Which authorities could be actual in Norway?
    - Mixture of competence required ?
    - Potential candidates ?: Gassnova, Pollution Control authority SFT, Gassco, SINTEF, DNV, OED (Energy and Petroleum authority)?
    - Which alliances could be made?

## Specific recommendations (follow)

- External controller
  - Independent accredited entity performing monitoring during operational phase
  - Independent accredited entity establishing the report documenting on no risk of leakage prior to transfer of responsibility
- Exploration permit
  - Limit in time the validity of the exploration permit to 3 years (as for petroleum activities), renewable if necessary
  - Ensure that the exploration permit holder of a site will have a time limited preferential right in the award of the storage permit in that site (valid only during the period of validity of the permit)
  - To ensure competition, establish in the exploration permit, a mechanism to determine the selling price of data collected during the exploration phase.
  - Introduce an obligation for permits holder to make publicly available their improving knowledge of a storage site during exploration work?

## Liability issues – Liability for damage to the environment

- Directive mostly addresses liability issues through the prevention of risks + refers to the ELD Directive – Environmental Liability Directive (not yet implemented in Norway). Not sufficient to cover all aspects
- In Norway, basis of liability can be the Pollution Control Act, and the Petroleum Act
  - Unclear whether liability provisions in the Petroleum Act can find application as “CO<sub>2</sub>” is not “petroleum”
  - But the “liable party” differs whether the Pollution Control applies or the Petroleum Act
  - Strict liability
  - Causality between leakage and damage : difficult to demonstrate

## Liability for damage to the climate

- CO<sub>2</sub> captured and safely stored will be recognised as not emitted
- However obligation to surrender allowances for the part of CO<sub>2</sub> which is not captured and in case of leakage
- Who is responsible to surrender allowances in case of leakage in the chain, particularly when there are different owners to different facilities?
  - Polluter pays principle implies that the person directly responsible for the emission is liable to surrender allowances – this would make each actor in the chain more responsible.

## Transborder issues

- Situations where the CO<sub>2</sub> chain has connection with several states
- How the emission allowances and duty to surrender allowances in case of leakage will be distributed between involved states?
  - The country having jurisdiction and/or control over the point of leakage?
    - Cross border reservoirs, cross border pipelines, leakage under ship transport

### States incentive to involve itself in transboundary CO<sub>2</sub> storage

- Emission allowances are in principle given to the State where the CO<sub>2</sub> is produced
- The other countries involved in the CO<sub>2</sub> chain do not get allowances but can only risk to have to surrender allowances in case of leakage
- How to create incentives for those states to be involved in CO<sub>2</sub> chain?

Current negotiations on the text of the Directive

Adoption expected at the end of this year

Implementation at Member States level in 2009

All legal issues might not be solved but the expected legal framework should give sufficient comfort to stakeholders