

General economic policy, industrial policy

# Public Engagement and CCS Regulation

## The German Experience

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## Overview of Presentation

- ▶ **Current Status** of Legislative Process: Where are we right now - 2011-Draft
- ▶ **History** of German CCS Legislation (The 2009-Draft)
- ▶ Factual side - 2009 – 2011: What happened to **German projects/Technology** Development meanwhile?
- ▶ The 2011-Draft – **Differences between 2011 and 2009-Draft**
- ▶ Especially: The so called **States' Clause**
- ▶ **Public Engagement** in Draft Process
- ▶ Measurable Improvement of **Public Participation in CCS Permit Procedures** (ie in 2011 Draft Law)
- ▶ **Conclusion:** Where and When did public sentiment have an effect on German CCS legislation?
- ▶ **Outlook** – Perspectives for CCS legislation and CCS Technology Development in Germany

## **Current Status of Legislative Process (2011 – Approach)**

- ▶ **Official Draft of German Govt. in April 2011**
- ▶ **The Bundestag/Parliament passed the Draft Law very recently (July 7, 2011).**
- ▶ **The Draft Law is scheduled for approval by the Bundesrat/Federal Assembly (Assembly of the German States) in September 2011. If Bundesrat does not consent: Conciliation Procedure**

## History of Framework Development – The 2009-Draft

- ▶ Draft Law of 2009 **envisaged full scale commercial deployment** of CCS.
- ▶ Legislative Process in spring of 2009 **coincided with first exploration activities in Schleswig-Holstein** (northernmost State in Germany) by RWE.
- ▶ **Lack of public acceptance** of exploration for storage sites: public concerned about risks of leakage, pollution of drinking water, long term safety etc whereas land owners feared infringement of property rights.
- ▶ The aim in 2009 had been to pass a CCS Law within same legislative period – ambitious as EU Directive had entered into force only in May 2009 and Federal Elections were in September of 2009.
- ▶ Due to (quite sudden) **public resistance and constraint time schedule** the Government Parties decided to **postpone draft law to next legislative period**.

## 2009 – 2011: Status of German Projects (1)

- ▶ **RWE**
  - ▶ **Capture Project/Power Plant in Hürth is suspended;**
  - ▶ **Exploration of Storage Site in Schleswig Holstein was stopped** in 2009 due to public protest.
- ▶ **RWE Exploration Permits** for brine in Schleswig Holstein (based on Mining Law) **ultimately returned to competent authority in May 2011** as a result of lack of acceptance of people and politics in Schleswig-Holstein.
- ▶ However, RWE has not stopped CCS-activities altogether.

## State of German Projects (2)

- ▶ **Vattenfall** still committed to Demonstration Project in Brandenburg
  - ▶ Capture Project of 250 MW Power Plant in Jänschwalde
  - ▶ Exploration of two potential storage sites in Brandenburg
- ▶ Vattenfall has already been granted **180 Mio. € funding** from European Energy Programme for Recovery (EEPR) and has applied for funding by **NER 300**.
- ▶ **Strong opposition of public in Brandenburg** against exploration of storage site. However, as Brandenburg's economy largely depends on coal, the **Government has been strongly committed to the demonstration of CCS** in Brandenburg so far. Investments of 1.5 Bill. € expected.

## 2011 Draft Law on CCS

- ▶ CCS Technology and hence Draft Law on CCS is a **highly controversial topic in Germany**.
- ▶ The approach in 2011 –guiding principle for new draft: The status of technology development of CCS was carefully reconsidered and as a consequence it was decided that German legislation should be limited to the **demonstration of CCS**.
- ▶ To that end the **scope of applicability was substantially diminished** –
  - ▶ In demonstration phase CCS must first prove to be economically, technically and environmentally feasible.
  - ▶ After evaluation process Germany will decide on commercial scale deployment of CCS.



## Instruments of 2011 Draft in comparison to 2009 Draft

- ▶ **Scope of applicability diminished**
  - ▶ **Storage amount of CO<sub>2</sub> per storage site and nationwide restricted** (3 Mio. Tonnes per year per storage site, 8 Mio Tonnes overall per year) – **thus max. 3 bigger demonstration projects**
  - ▶ **Strict time limit for application for storage permit (by end of 2016)** – not a sunset clause in strict sense as law stays valid for demonstration storage sites but would not allow future storage site if not amended in that respect.
- ▶ **Highest precaution standard**
  - ▶ Signal for public: Safety and environmental standards raised as far as possible whereas restrictions as to amount and time
- ▶ Rights of property owners enhanced
- ▶ Obligatory knowledge sharing
- ▶ Financial security also for the aftercare of the storage site (3 % of saved emission trading allowances)



## In particular: the States' Clause („Opt Out“) (1)

- ▶ **Origin:** **Public opposition** in Schleswig-Holstein led **governing state parties to agree on refusal of CCS** (although same parties as on federal level – Christian Democratic and Liberals).
- ▶ Although Draft law already restricted to max. 3 projects nationwide the northern German States, esp. SH, demanded a **possibility for states to exclude their territory from demonstration of CCS.**
- ▶ Long opposition against States Clause especially from Federal Ministry of Economics – fear **states' clause could be a precedent** for subsequent demands of States in following legislation (esp. energy infrastructure).

## States' Clause (2)

- ▶ **Intensive debate** among Federal Ministry of Environment and Federal Ministry of Economics about how to confer rights on the States.
- ▶ The discussion mainly focused on the question whether States should be allowed to exclude their territory on **political grounds** or only upon the assessment of **reasonable geological or other objective facts**.
- ▶ **Compromise: States can exclude parts of their territory if based on reasonable grounds** (however, the obligation to assess objective facts for exclusion is merely stated in the annexed explanation to the Draft Law).

## Formal public engagement in legislative process

- ▶ A legislation draft of the Government is regulated by the rules of procedure of the German Government.
- ▶ All stakeholders have to be involved in the process (States, NGOs, lobby organizations) and can give oral or written opinions which have to be considered.
- ▶ In Advance of Cabinet decision on draft law: usually a public hearing carried out.
- ▶ In our case: **six hours of emotional debate**, several grassroots initiatives of respective regions

## Enhanced public participation in Draft Law itself

- ▶ **Participation of public already at stage of exploration permit** (information of public with possibility to formally raise objections.
- ▶ **Early public participation in advance of planning approval procedure for storage permit.** Even though there has not been an official application the competent authority should try to motivate the future operator to initiate a dialogue with the public. (Amendment to Draft Law on suggestion of Federal Assembly)
- ▶ Early public participation also for planning approval procedure for pipelines.

## Résumé: Impact of public sentiment on framework development and on specific elements of the draft legislation (1)

- ▶ First public opposition in April 2009: **draft law was postponed in next legislative period.**
- ▶ New approach in 2010/11:
  - ▶ Clear restriction to mere **demonstration of CCS.**
  - ▶ Because of limited quantity draft law restricted to **max. three demonstration projects.**
  - ▶ Message: not at all a final decision on deployment of CCS yet, raise of safety level whereas at the same time comprehensive restriction of storage possibilities.

## Impact of Public sentiment on framework development (2)

- ▶ Schleswig-Holstein even incorporated opposition to CCS in its coalition agreement although same parties as on federal level – thus **public pressure finally led to States' Clause**.
- ▶ **Discussion about States' Clause delayed legislative process.**
- ▶ Overall: **Public pressure and opposition had substantial impact on legislative process.** Open approval of demonstration of CCS technology is rare.
- ▶ Legal improvements for public participation: **participation in earlier stages of the procedure** (exploration procedure etc)

## Outlook: Future of CCS Technology and Legislation in Germany

- ▶ Some CCS Experts claim that **because of the States' Clause the Draft Law rather prohibits CCS** than creates a safe framework for potential investors.
- ▶ Reactions in Brandenburg, the one state always committed to the demonstration of CCS: The Minister of Economics: „**How can we assure our people in Brandenburg, that the demonstration is safe whereas other states exclude their territory thereby implying that CCS demonstration is not at all safe.**“  
– Thus, some believe that BB will itself opt out alleging that the use of the States Clause in other states severely impedes public acceptance in Brandenburg.
- ▶ Own assessment: BB as well as Vattenfall have not finally decided on their future direction. Already, BB has stated to stick to its coal policy. In my view there still is a **chance of a successful demonstration project in Brandenburg/Germany**. There is too much at stake for that state: coal resources, innovations in clean coal, export technology, 1.5 Bill € of Investments, couple of hundred € of potential funding of EU etc.