

Key Legal Issues arising from the Transposition of the EU CO₂ Storage Directive

4th IEA International CCS Regulatory Network Meeting
Paris 9 May 2012

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The EU Directive as a legal instrument

- ‘A directive shall be **binding, as to the result** to be achieved, upon each Member State to which it is addressed, but **shall leave to the national authorities the choice of form and methods**’.

(art 249. 3 Treaty on European Union)

- By a deadline specified in the Directive, MS must:
 - adopt necessary national laws/administrative measures
 - communicate them to the European Commission
 - Failure to communicate=> infringement procedure

Where are Member States now? Distinctive approaches...

Some examples:

- United Kingdom: ‘the *potential* first-mover’
- Romania: ‘the new entry’
- Spain: ‘the timely transposer’
- Germany: ‘the challenge’
- Poland: ‘the hesitant’
- The Netherlands: ‘the *real* first-mover?’

... and different transposition techniques

- Integration within existing frameworks (UK, Poland, the Netherlands, France and Norway)
- Dedicated pieces of legislation (Spain, Romania, Germany, Italy)
- Amendments to existing legislation (All)

Legal issues arising from the transposition of the CCS Directive

- Novelty of regulating CCS
(e.g. how does CCS fit within the national envt'l/energy law?
Integrated dimension of CCS chain)
- Public participation
Regulated by pre-existing EU law, *but* form of public participation largely left to discretion and tradition of Member States
- Devolved powers and CCS choices
Tensions between different level of government may impact on transposition process/deployment (eg. UK, Germany, Spain, Belgium)

Legal issues ...(cont'd)

- Limits to the transposition
 - Is a MS obliged to transpose if CCS prohibited in its territory?
 - Can transposition be limited to 'demonstration purposes only'?
- Long-term liability (20 years or more)
 - MS to establish the details
- Financial security (amount, conditions...)
 - MS to establish the details
- Conflicting uses of the storage site
 - Meaning and implications

Concluding remarks

- Transposition not concluded but progressing
- Impact of legal issues varies across jurisdictions
- ‘Learning by doing’ is important to assess outstanding legal/regulatory issues
- Next months crucial to assess fate of CCS in Europe

Thank you!

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