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.
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.
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 CO2 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).

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.
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)
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.