Liability regulation for CCS storage sites in Norway – A potential model for EU Member States

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Abstract

In Europe, CCS has its own dedicated legal framework (see in particular the CCS Directive, the Environmental Liability Directive, and the Emission Trading Directive). While many of the provisions in the framework were devised or amended with the intention to facilitate the deployment of CCS, a number of the relevant laws are perceived by certain stakeholders as hindering CCS and discouraging investment. Most notably, the uncertain size of the potential liability, the uncertainty about the amount of the financial contribution to be made, and uncertainty about the exact conditions under which responsibility is to be transferred to the competent authority. The legal framework for CCS does have some unfortunate solutions and phrasings indeed.

Having said that, in Norway – where the European framework is applicable as part of the EEA Agreement – two projects are in operation (Sleipner and Snøhvit, since 1996 and 2008 respectively) and a third is being developed at the time of writing (to operate from 2024). The third project is usually referred to as the ‘full-scale’ or ‘full-chain’ project because it will store CO2 coming from industrial sources on land rather than reinjecting produced CO2 from offshore operations.

Apart from the Norwegian case study, the now stopped ROAD project in the Netherlands reported to have overcome the legal obstacles and it received a draft storage permit. The new PORTHOS project is expected to build on this experience. In addition, at the review of the CCS Directive in 2015, it was considered that it fulfils its purpose and it was not reopened for amendment.

These considerations indicate that despite the concerns, it is possible to apply the European CCS framework in a way which is compatible with its deployment. The aim of the present discussion is to analyse in detail the legal arrangements of the Norwegian CCS projects and their compatibility with the European framework. Apart from the Norwegian case study, the Dutch experience in the ROAD project is considered and an outlook is given on non-EU jurisdictions that adopted a legal framework similar to that of the EU.

The submission finds that in order to encourage CCS in Europe, Member States must have a pragmatic interpretation of the relevant provisions and documents, closely cooperate with the industry, make reasonable estimates, and devise tailor-made solutions at storage site level. The discussed projects can inform Member States and stakeholders who

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wish to undertake CCS and serve as a template for devising solutions. The more Member States and stakeholders adopt such solutions, the stronger the signal will be for the CCS industry that investment is possible and safe.

Through the European framework, CCS legislation is harmonized in Europe to a large extent. However, this is only half of the regulatory process. The other half is its interpretation, application. This is particularly apparent in the case of CCS where one interpretation allows projects to come into existence, the other halts investment. If Member States and stakeholders adopt an interpretation of the law similar to the one described in this discussion, the CCS industry will not consider the legal framework to be a potential barrier but a uniform regulatory background.

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