



university of  
 groningen

faculty of law

groningen centre of energy law

Date 22-09-2011 | 1

# The CCS Directive from a cross-border perspective

Avelien Haan-Kamminga  
Marijn Holwerda

[www.gcel.nl](http://www.gcel.nl)





# Outline

- I Overview approach Directive 2009/31/EC (CCS Dir)
- II Cross-border legal issues
- III Conclusion



# I Approach CCS Directive (1)

- > Enabling Directive
- > 2008 European Council:
  - "...the objective of proposing a regulatory framework on CCS is to ensure that this novel technology is deployed *in an environmentally safe way*"
- > Recognizes possibility cross-border CCS (e.g. Art 24)
- > But: EU-wide CCS markets not an *objective*



# I Approach CCS Directive (2)

- › Conservative approach Commission
- › Existing regulation of similar risk activities
- › Appropriate for capture and transport
- › CCS Dir amends e.g. IPPC and EIA Dirs
- › Free-standing legal framework for storage



# I Approach CCS Directive (3)

- › Large role Commission
  - Review draft permits
  - Guidelines
- › Some provisions quite general
- › Learning by doing



# I Approach CCS Directive (4)

- › Important choices left to Member States:
  - Allow for CO<sub>2</sub> storage in own territory or not?
  - Which storage locations to designate?
  - Which regime for access to CO<sub>2</sub> transport and storage infra?
  - What criteria for financial security?
  - What criteria for transfer of responsibility (including financial contribution)
  - Which liability regime for third-party damages?



# I Approach CCS Directive (5)

- › Regulation cross-border CCS very limited:
  - Art. 22 – MS shall consult each other in the case of a cross-border dispute over access to transport/storage infra
  - Art. 24 – MS shall cooperate in the case of transboundary transport/storage
- › Wide MS discretion and limited cross-border regulation could lead to legal issues



## II Cross-border issues (1)

- › Mostly about cross-border CO<sub>2</sub> *transport*
- › Potential relevant issues:
  - Siting and construction of pipeline
  - Environmental and safety standards
  - Use of the relevant infrastructure





## II Cross-border issues (2)

- › Risk of:
  - Complicated permitting procedures
  - Different environmental and safety standards
  - Multiple competent authorities
- › “Solution” provided by CCS Dir:
  - Mandatory MS cooperation



## II Cross-border issues (3)

- > Nevertheless
- > Cross-border transport of substances not new
- > Gas sector has long-standing experience
- > Possible solutions:
  - Companies create a joint venture
  - Governments sign bilateral treaties per pipeline



## II Cross-border issues (4)

- › Difference between coast-to-coast and coast-to-field:
  - Coast-to-coast: one regime is applied
  - Coast-to-field: sending state takes lead, but receiving state gets more and more competencies
- › Competencies depend on aspect regulated
- › Difference between onshore and offshore



## III Conclusion

- > Need for separate regulation of cross-border issues?
- > Considering:
  - Length of procedure for permitting CO<sub>2</sub> transport and storage
  - Solutions to be found in gas sector
  - Number of market parties involved



university of  
 groningen

faculty of law

groningen centre of energy law

Date 13-05-2011 | 13

# Thank you for your attention!

