

## CARBON CAPTURE AND STORAGE IN GERMANY – UPDATE ON THE LEGISLATIVE PROCESS

The German Government has announced that it will enable Carbon Capture and Storage (CCS) and facilitate Carbon Capture and Utilisation (CCU) on an industrial scale, paving the way for a future CO<sub>2</sub> pipeline network. To do so, the Government introduced a long-awaited draft bill to revise the Carbon Dioxide Act (*Kohlendioxid-Speicherungsgesetz (KSpG)*). Since its introduction to Parliament, the bill has undergone important changes during the ongoing legislative process.

### CONSIDERABLE POTENTIAL FOR CCS BOTH OFFSHORE AND ONSHORE

The Federal Institute for Geosciences and Natural Resources estimates that Germany has considerable potential for carbon dioxide storage both offshore and onshore based on preliminary analyses. CCS in Germany may therefore become a suitable business model for investors once its legal basis has been adopted by the German Parliament.

### Option for permanent onshore CCS on a Federal State Level

With the new bill, the German Government intends to extend the scope of the KSpG to allow permanent CO<sub>2</sub> storage. However, permanent CO<sub>2</sub> storage would generally only be permitted offshore, not onshore. When the draft bill was first introduced, it was unclear whether a legal basis in the KSpG allowing Federal States to opt in for onshore storage would be implemented later in the legislative process. However, the latest version of the bill contains said opt-in provision. This gives Federal States the (flexible) option to declare permanent onshore CO<sub>2</sub> storage permissible within their territory.

### Acceleration of planning procedures for CO<sub>2</sub> pipelines

Further, the bill introduces several measures to accelerate and facilitate planning procedures for CO<sub>2</sub> pipelines. The bill was therefore appropriately renamed as the Carbon Dioxide Storage and Transport Act (*Kohlendioxidspeicherung und -transportgesetz (KSpTG)*), making clear that the transport of CO<sub>2</sub> via pipelines is equally relevant to CCS and CCU.

Most importantly, the construction of CO<sub>2</sub> pipelines is declared to be in the public interest. This declaration of public interest will impact the competent

#### Key issues

- Federal Institute for Geosciences and Natural Resources estimates the CO<sub>2</sub> storage potential in Germany to be considerable both offshore and onshore.
- Federal States have the option to declare permanent CO<sub>2</sub> storage permissible onshore within their territory.
- Declaration of CO<sub>2</sub> pipelines being in the public interest and serving to protect the climate will benefit the planning procedures when weighing up conflicting interests.
- Easements for CO<sub>2</sub> pipelines that run directly next to a (future) hydrogen pipeline.
- Priority processing of CO<sub>2</sub> pipelines by authorities and shortened judicial review proceedings.

planning approval authority's decision-making process when weighing up the interests of stakeholders in the context of planning approval procedures. In this regard, special consideration is to be given to the fact that CO<sub>2</sub> pipelines serve to protect the climate and help to permanently reduce CO<sub>2</sub> emissions in Germany.

In cases where CO<sub>2</sub> pipelines are laid predominantly in the same path as or directly adjacent to (planned) hydrogen pipelines, the bill provides for easements in the planning process. A refutable legal presumption that the CO<sub>2</sub> pipeline will not lead to an additional impairment of other interests must be considered by the authorities when weighing up the interests, and a deviation from the presumption is only possible if there are concrete indications to the contrary. Such indications may result from the local situation, such as topographical or (urban) structural specifics.

Further acceleration for development of CO<sub>2</sub> pipelines is ensured by an "aim" for authorities to prioritise the processing of planning procedures for CO<sub>2</sub> pipelines. However, it remains to be seen what impact that "aim" will have in practice since it will likely not be enforceable.

Lastly, judicial proceedings that may be filed against CO<sub>2</sub> pipelines are somewhat "accelerated" by reducing the number of judicial stages. However, unlike other infrastructure proceedings – e.g. under the Energy Industry Act (*Energiewirtschaftsgesetz*) – the bill does not identify the highest German administrative court (the *Bundesverwaltungsgericht*) as the first and last judicial stage. Instead, the Higher Administrative Court (*Oberverwaltungsgericht*) is determined as the first judicial stage, leaving the possibility for time-consuming appeals to the highest German administrative court.

## **Further exclusion of CO<sub>2</sub> from coal combustion**

As regards CO<sub>2</sub> resulting from burning coal, the provisions of the bill have been tightened. CO<sub>2</sub> pipeline operators and CO<sub>2</sub> storage operators will now be obliged to reject connection requests if the CO<sub>2</sub> to be transported or stored results from the burning of coal, not only for the power generation but also for the generation of other forms of energy. This prohibition aligns with the German Government's general decision to phase out coal-fired energy generation in Germany.

## **OUTLOOK**

The current bill for the KSpTG must pass through the remaining legislative process, which is likely to take several more months. It remains to be seen how the final bill will look and how the acceleration mechanisms related to planning procedures for CO<sub>2</sub> pipelines will work in practice. However, one thing appears to be clear: the German Government intends to build a strong legal foundation for investments in CCS/CCU as well as CO<sub>2</sub> pipelines.

The Government recognises this legal foundation to be imperative for the quick ramp-up of CO<sub>2</sub> storage and transport capacities to ensure that by 2030 CO<sub>2</sub> can be captured and stored in significant amounts, which the Government considers necessary to reach its goal of carbon neutrality by 2045.

GERMAN GOVERNMENT INTRODUCES  
DRAFT BILL TO ENABLE CCS – NEW  
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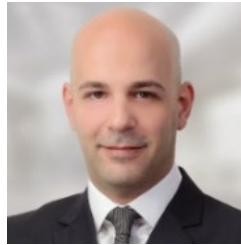
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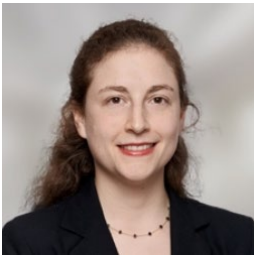
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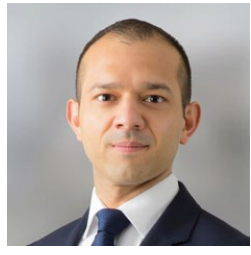
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