

Carbon Capture and Storage and the Aarhus Convention

Key Findings of the Analysis of Provisions
Regarding Carbon Capture and Storage in
Connection with the Aarhus Convention

Position Paper

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In August 2011 Justice and Environment (J&E) analyzed compliance of the CCS Directive with the Aarhus Convention: ***Carbon Capture and Storage and the Aarhus Convention – A quick analysis*** – <http://justiceandenvironment.org/publications/climate-change>.

In this paper Justice and Environment identified critical boundary points of the CCS Directive and the Aarhus Convention. The Aarhus Convention has three pillars, one on access to information, one on public participation and one on access to justice.

CCS and Access to information

According to the analysis of the CCS Directive, public access to information as one of the crucial components of the Aarhus Convention is the only (out of three) pillar, where requirements of the Convention are satisfyingly met. The CCS Directive refers to access to information in its preamble and in Art 26. Indent 21 of the mentioned preamble states that *“Member states should make available to the public environmental information relating to geological storage of CO₂ in accordance with applicable Community legislation.”* Art 26 of the regarding Directive explicitly repeats indent 21 of the preamble which makes the obligation to provide environmental information available to the public mandatory.

According to the definition of environmental information stated in the Directive 2003/4/EC on public access to environmental information various provisions of the CCS such as Articles 4, 11, 12, 16 or 18 contain environmental information. In connection with Art 26 this kind of information has to be accessible for the public.

So requirements of the first pillar of the Aarhus Convention are met by the CCS Directive as mentioned above.

CCS and Public participation

Public participation in terms of the Aarhus Convention refers not only to permitting procedures (Art 6 of the Convention), but also to public participation as to the preparation of plans and programmes (Art 7 of the Convention). Not a single requirement of Article 7 of the Aarhus Convention is met in the CCS Directive. Public participation in proceedings concerning the selection of storage sites, the drawing up of monitoring plans, corrective measure plans or post-closure plans should be mandatory and subsequently would fulfil the requirements stipulated in the Aarhus Convention.

Whereas the CCS Directive contains a reference to the EIA directive (and by this to the corresponding public participation procedures) for certain aspects, this is not the case for the assessment procedure referring to certain combustion plants.

Concerning the second pillar of the Aarhus Convention, the CCS Directive needs revision.

CCS and Access to Justice

As far as access to Justice, the third pillar of the Aarhus Convention, is concerned the CCS Directive also lacks certain measures to assure compliance with the Convention. Whereas the directive complies with access to justice regarding environmental information and EIA-procedures, this is not the case for other matters.

For instance there is no possibility foreseen to request actions from the competent authority in cases regarding failures of operators concerning monitoring measures or failures of the authorities concerning carrying out inspections in case of leakages, irregularities at facilities or non-fulfilments of obligations under post-closure plans.

Access to justice proceedings as mentioned above should be established in the CCS Directive and would (in connection with corrections in the field of public participation) lead to an improvement of the Directive and (further more) of the transformation into EU-member state`s law.

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