King & Spalding

Client Alert

Energy

JUNE 20, 2024

For more information, contact:

Dr. Peter Stainer
+ 49 69 257 811 300
pstainer@kslaw.com

Dr. Axel J. Schilder
+ 49 69 257 811 300
aschilder@kslaw.com

Dan Feldman
+971 2 596 7027
dfeldman@kslaw.com

Frederick Lazell
+44 20 7551 2143
flazell@kslaw.com

King & Spalding

Frankfurt
TaunusTurm
Taunustor 1
60310 Frankfurt am Main
Tel: +49 69 257 811 000

Abu Dhabi
Level 15, Al Sila Tower
Abu Dhabi Global Market Square
PO Box 130522
Abu Dhabi
United Arab Emirates
Tel: +971 2 652 3400

German Government Takes First Steps to Allow CCS

On May 30, 2024, the council of ministers of the German Federal Government adopted a draft bill (Bundesrats-Drucksache 266/24) allowing permanent storage of carbon dioxide (*Gesetz zur Demonstration der dauerhaften Speicherung von Kohlendioxid – Kohlendioxid-Speicherungsgesetz – KSpG)*. The bill would amend a 2012 law that only provided means to test ("*demonstrate*") various technologies of carbon capture and storage. By contrast, the draft bill at hand seeks to enable CCS on an industrial scale, particularly focusing on permanent offshore storage, potentially becoming the long-sought game changer in the German government's stance toward carbon capture and storage (CCS) and carbon capture and utilization (CCU). The draft bill was published along with a communiqué outlining the cornerstones ("*Eckpunkte*") of Germany's Carbon Management Strategy as well as a FAQ.

KEY ASPECTS OF GERMANY'S CARBON MANAGEMENT

The documents highlight the importance of CCS/CCU technologies in mitigating emissions from industries where alternative forms of decarbonization may be neither feasible nor cost-effective, such as the cement or limestone industry, steel, dispatchable power, basic chemicals and waste incineration. These industries face additional pressures to decarbonize due to the decrease of freely allocated EU emissions allowances, whilst CCS would relieve the relevant emitter from the obligation to surrender ETS allowances for the emissions captured and stored. The document states that in order to achieve climate neutrality by 2045, CO_2 must begin to be captured and stored in relevant quantities as early as 2030.

The existing legal hurdles to the use of CCS/CCU in Germany – no permissibility of carbon storage, no regulatory framework for CO_2 transportation infrastructure – are to be removed and guidelines for its use are to be established.

ALLOWING OFFSHORE CO2 STORAGE

An important element of the the KSpG bill is a new legal basis for the administrative approval and operation of offshore facilities for the permanent storage of carbon dioxide in underground rock strata. The bill allows exploration for offshore storage sites in the German exclusive economic zone and the continental shelf. The currently envisaged regime includes extensive environmental controls – including relating to specific elements of biodiversity within the German EEZ – that will likely limit search areas for potential CO_2 storage space and would need to be carefully analysed by potential developers.

The permissibility of long-term CO_2 storage remains limited to offshore locations, but it is intended to introduce an opt-in mechanism for the states without undermining laws regulating the search for a permanent storage for nuclear waste (*Gesetz zur Suche und Auswahl eines Standortes für ein Endlager für hochradioaktive Abfälle – StandAG*). This is because the StandAG stipulates that the search for a suitable site for the final disposal of highly radioactive waste has, generally, priority over any other onshore uses of subterranean spaces.

ALLOWING PIPELINE CONTRUCTION USING SYNERGIES WITH THE HYDROGEN CORE NETWORK

The KSpG bill also provides a regulatory framework for the (accelerated) administrative approval and operation of CO_2 pipelines and (domestic) CO_2 transportation to be constructed and operated by the private sector.

The German government has identified potential opportunities arising from the overlapping interests of CO2 pipeline and hydrogen core network operators and subjects both to comparable administrative procedures. The rededication of CO_2 pipelines to hydrogen pipelines is explicitly mentioned in the explanatory remarks to the draft bill.

FINANCIAL INCENTIVIZATION

State aid for CCS/CCU shall be limited to the capture of emissions that are difficult or impossible to avoid. However, there is a noteworthy reference to carbon contracts for difference (*Klimaschutzverträge*), which are being explored by the German government as a policy tool to incentivize decarbonisation of other heavily emitting industries. The FAQ holds out the prospect that CCS/CCU may also be promoted in future via such carbon contracts for difference, although the details have not yet been published.

NEXT STEPS

Next, the German Bundesrat – the second chamber of the German legislature representing its 16 federal states – will discuss the draft law. Due to the controversial reception of CCS/CCU by parts of the German population and conservation lobbyists, it remains to be seen whether the bill will be watered down in the course of the legislative process.

The King & Spalding Energy Industry Team is at the forefront of developments in the energy sector globally and is advising clients on many of the first and largest projects around the world.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

ABU DHABI	CHARLOTTE	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY
ATLANTA	CHICAGO	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
AUSTIN	DALLAS	GENEVA	MIAMI	RIYADH	TOKYO
BRUSSELS	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.