

COMMISSION DECISION**of 10 February 2011****introducing the questionnaire to be used for the first report on the implementation of Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide***(notified under document C(2011) 657)***(Text with EEA relevance)**

(2011/92/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 ⁽¹⁾, and in particular Article 27(1), thereof,Having regard to Council Directive 91/692/EEC of 23 December 1991 on standardising and rationalising reports on the implementation of certain Directives relating to the environment ⁽²⁾,

Whereas:

- (1) Article 27(1) of Directive 2009/31/EC requires that Member States submit a report to the Commission on the implementation of Directive 2009/31/EC, including on the register referred to in Article 25(1)(b) of Directive 2009/31/EC, every 3 years.
- (2) Article 27(1) of Directive 2009/31/EC further requires that the report be drawn up on the basis of either a questionnaire or outline drafted by the Commission in accordance with the procedure referred to in Article 6 of Directive 91/692/EEC. A questionnaire with questions on all relevant elements of Directive 2009/31/EC appears to be best suited to ensure that the information provided by the Member States in their reports is complete and comparable.

- (3) The first report should be sent to the Commission by 30 June 2011. The questionnaire produced by the Commission should be sent to Member States at least 6 months before the deadline for the submission of the report.

- (4) The measures provided for in this Decision are in accordance with the opinion expressed by the Climate Change Committee, according to the procedure referred to in Article 6 of Directive 91/692/EEC,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall use the questionnaire set out in the Annex as a basis for the first report on the implementation of Directive 2009/31/EC.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 February 2011.

For the Commission
Connie HEDEGAARD
Member of the Commission

⁽¹⁾ OJ L 140, 5.6.2009, p. 114.

⁽²⁾ OJ L 377, 31.12.1991, p. 48.

ANNEX

Questionnaire on the implementation of Directive 2009/31/EC on the geological storage of carbon dioxide ('the Directive')**1. General description**

- 1.1. What are the main changes to national legislation and to the licensing system that were necessary in order to transpose the Directive into national law? Please indicate the dates on which the relevant transposition legislation entered into force.
- 1.2. Which competent authority or authorities are responsible for fulfilling the duties established under the Directive (Article 23)?

2. Coordination of the permitting procedure

- 2.1. How does national law ensure that the permitting procedure and conditions are fully coordinated where more than one competent authority is involved? How does coordination work in practice? In particular, give details on the coordination between the competent authorities for the implementation of the Directive and Directive 2003/87/EC of the European Parliament and of the Council ⁽¹⁾.

3. Transboundary cooperation

- 3.1. Which provisions have been made in the case of transboundary transport of CO₂, transboundary storage sites or transboundary storage complexes to ensure that the requirements of this Directive are jointly met (Article 24)?
- 3.2. Has there been any experience with transboundary cooperation in practice?

4. Selection of storage sites and exploration permits

- 4.1. Have areas from which storage sites may be selected been determined pursuant to Article 4(1)? Has storage been disallowed in parts or in the whole of the territory of the Member State, its exclusive economic zone and on its continental shelf within the meaning of the United Nations Convention on the Law of the Sea (Unclos)? Member States are not obliged to justify any such decision, but an indication of which territories are concerned, and why this has been done, would be useful.
- 4.2. Has an assessment of available storage capacity in parts or in the whole of the territory of the Member State, its exclusive economic zone and on its continental shelf within the meaning of the United Nations Convention on the Law of the Sea (Unclos) been undertaken (Article 4(2))? If so, please indicate how the assessment was carried out and the outcome of such an assessment.
- 4.3. How does national law ensure that the suitability of a geological formation for use as a storage site is determined in accordance with the criteria specified in Annex I of the Directive?
- 4.4. In which cases is exploration required for the selection of storage site (Article 5(1))?
- 4.5. How does national law ensure that exploration and storage permits are open to all entities possessing the necessary capacities and that the permits are granted or refused on the basis of objective, published and non-discriminatory criteria?
- 4.6. How will the competent authority verify that the volume that is being explored is within the limits of the volume established in the exploration permit (Article 5(3))?
- 4.7. How does national law ensure that no conflicting uses of the complex are permitted during the period of validity of the exploration permit (Article 5(4))?

5. Storage permit applications

- 5.1. How does national law ensure that permit applications contain all the information required by Article 7?

6. Storage permits: conditions and contents

- 6.1. Completeness of storage permit conditions

⁽¹⁾ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

- 6.1.1. How does national law ensure that all the requirements specified in Article 8 are fulfilled?
- 6.1.2. What processes are in place to ensure that all permit applications, draft storage permits and any other material taken into consideration for the adoption of draft decisions are made available to the Commission within the specified time-frame (Article 10(1))?
- 6.1.3. How is it ensured that any opinion issued by the Commission on the draft storage permit will be taken into account and that the final decision is notified to the Commission and, where it departs from the Commission opinion, its reasons are stated (Article 10(2))?
- 6.2. Completeness of storage permit contents
- 6.2.1. How does national law ensure that the storage permit contains all the requirements specified in Article 9?
7. **Changes, review, update and withdrawal of storage permits**
- 7.1. How does national law ensure that storage permits are reviewed and, where necessary, updated, or, as a last resort, withdrawn pursuant to Article 11(3)? In particular, give details on how each of the conditions referred to in Article 11(3) is provided for.
- 7.2. Withdrawal of storage permit
- 7.2.1. What are the provisions and procedures if, after a permit has been withdrawn pursuant to Article 11(3), the competent authority decides to issue a new storage permit in particular with respect to the temporary takeover of all legal obligations pursuant to Article 11(4)?
- 7.2.2. What are the provisions and procedures if, after a permit has been withdrawn pursuant to Article 11(3), the competent authority decides to close the storage site?
8. **CO₂ stream acceptance criteria and procedure**
- 8.1. What are the provisions and procedures to ensure that the CO₂ stream consists overwhelmingly of carbon dioxide and that no waste or other matter is added for the purpose of disposing of that waste or other matter? In particular, give details on how conditions are identified to meet the following criteria pursuant to Article 12(1):
- no adverse effect on the integrity of the storage site or the relevant transport infrastructure,
 - no significant risk to the environment and human health,
 - compliance with applicable Union legislation.
- 8.2. What are the provisions and procedures in place to ensure that the operator accepts and injects CO₂ streams only if an analysis of the composition, including corrosive substances, of the streams and a risk assessment have been carried out, and if the risk assessment has shown that the contamination levels are in line with the conditions referred to in Article 12(1)?
9. **Monitoring**
- 9.1. What measures have been taken to provide that the competent authority ensures that the approved monitoring plan fulfils the requirements laid down in Annex II and the monitoring and reporting guidelines for greenhouse gas emissions from the capture, transport and geological storage of carbon dioxide under Directive 2003/87/EC⁽¹⁾?
- 9.2. What are the provisions and procedures to ensure that the operator carries out monitoring of the injection facilities, the storage complex (including where possible the CO₂ plume) and, where appropriate, the surrounding environment as specified in the approved monitoring plan?
10. **Reporting**
- 10.1. What are the provisions and procedures on reporting by the operator? In particular, give details on the reporting frequency and how it is ensured that the criteria laid down in Article 14 are met.

⁽¹⁾ Measures to be taken pursuant to Commission Decision 2010/345/EU of 8 June 2010 amending Decision 2007/589/EC as regards the inclusion of monitoring and reporting guidelines for greenhouse gas emissions from the capture, transport and geological storage of carbon dioxide (OJ L 155, 22.6.2010 p. 34).

11. Inspections

- 11.1. What are the provisions and procedures in relation to the system of routine and non-routine inspection of all storage complexes to ensure compliance with the requirements of the Directive and of monitoring the effects on the environment and on human health (Article 15)? In particular, give details on the frequency of the inspections and the conditions specified for non-routine inspections.
- 11.2. To what extent does the system of routine and non-routine inspection include activities such as visits of the surface installations, including the injections facilities, assessing the injection and monitoring operations carried out by the operator, and checking all relevant records kept by the operator (Article 15(2))?

12. Leakages or significant irregularities

- 12.1. What are the provisions and procedures for the notification of the competent authority, including the competent authority pursuant to Directive 2003/87/EC, by the operator in the event of leakages or significant irregularities (Article 16(1))?
- 12.2. What are the provisions and procedures with respect to the implementation of corrective measures by the operator and, if the operator fails to do so, by the competent authorities (Article 16(2) to (5))?

13. Closure and post-closure obligations

- 13.1. What are provisions and procedures regarding closure and post-closure obligations?
- 13.2. How does national law ensure that the operator remains responsible for monitoring, reporting and corrective measures and for all obligations relating to the surrender of allowances in case of leakages and preventive and corrective measures until the transfer of responsibility (Article 17(2))?
- 13.3. What are the provisions and procedures for the approval of a definitive post-closure plan based on the provisional post-closure plan prior to the closure of a storage site (Article 17(3))?

14. Transfer of responsibility

- 14.1. What are the provisions and procedures for the transfer of responsibility to ensure that the conditions under Article 18(1) are met?
- 14.2. Does national law foresee a minimum period that has to be elapsed before the transfer of responsibility can take place that goes beyond the 20 years foreseen in the Directive? If yes, please specify.
- 14.3. What processes are in place to ensure that transfer reports pursuant to Article 18(2), all draft decisions of approval on the transfer of responsibility and any other material taken into consideration for the adoption of draft decisions are made available to the Commission within the specified time-frame (Article 18(4))?
- 14.4. How is it ensured that any opinion issued by the Commission on the draft decision will be taken into account and that the final decision is notified to the Commission and where it departs from the Commission opinion its reasons are stated?
- 14.5. What measures have been taken to ensure that after the transfer of responsibility monitoring is conducted at a level which allows for detection of leakages or significant irregularities (Article 18(6))?

15. Financial security

- 15.1. How does national law address the need that proof that adequate provisions can be established, by way of financial security or any other equivalent, is presented by the potential operator as part of the application for a storage permit (Article 19)? In particular, specify as to how it is ensured that the following issues are addressed:
- all obligations arising under the storage permit can be met,
 - it is valid and effective before commencement of injection,
 - periodical adjustment of the financial security,
 - provision is made for financial contribution referred to in Article 20.

16. Financial mechanism

- 16.1. Specify the procedures to ensure that the operator makes a financial contribution available to the competent authority before the transfer of responsibility pursuant to Article 18 has taken place and how these take account of the criteria referred to in Annex I of the Directive and elements relating to the relevant history of storing CO₂ (Article 20).
- 16.2. Does national law foresee any post-transfer obligations other than the anticipated cost of monitoring for a period of 30 years to be covered by the financial contribution?

17. Third party access

- 17.1. What measures have been taken to ensure that potential users are able to obtain access to transport networks and to storage sites in a transparent and non-discriminatory manner for the purposes of geological storage of the produced and captured CO₂ in accordance with Article 21?
- 17.2. What procedures are in place to ensure that an operator refusing access on the grounds of lack of capacity or a lack of connection makes any necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for them, provided this would not negatively impact on the environmental security of transport and geological storage of CO₂ (Article 21(4))?

18. Dispute settlement

- 18.1. What are dispute settlement arrangements, including an authority independent of the parties with access to all relevant information?

19. Registers

- 19.1. What measures have been taken to establish and maintain a register of the storage permits granted and a permanent register of all closed storage sites and surrounding storage complex, including maps and section of their spatial extent and available information relevant for assessing that the stored CO₂ will be completely and permanently contained?

20. Information and participation of the public

- 20.1. How does national law ensure that environmental information relating to the geological storage of CO₂, including reports on the results of inspections, are available to the public in accordance with relevant Union legislation?

21. Penalties

- 21.1. What are the national rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive? In particular, give details on how it is ensured that these rules are implemented and that the penalties are effective, proportionate and dissuasive.

22. Amendments to other legal instruments (Articles 31 to 37)

- 22.1. How does national law address the amendments to Annex I and Annex II of Council Directive 85/337/EEC ⁽¹⁾?
- 22.2. How does national law address the amendment to Article 11(3)(j) of Directive 2000/60/EC of the European Parliament and of the Council ⁽²⁾?
- 22.3. What measures have been taken to ensure that the new Article 9a of Directive 2001/80/EC of the European Parliament and of the Council ⁽³⁾ is implemented?
- 22.3.1. How it is ensured that operators of all combustion plants with a rated electrical output of 300 MW or more for which the original operating licence is granted after the entry into force of this Directive, i.e. after 25 June 2009, have assessed the conditions as specified in Article 9a of Directive 2001/80/EC?
- 22.3.2. What are the provisions and procedures to ensure that, if the conditions as specified in Article 9a of Directive 2001/80/EC are met, suitable space on the installation site for the equipment necessary to capture and compress CO₂ is set aside?
- 22.3.3. Are there any cases of practical application of this Article after 25 June 2009?

⁽¹⁾ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40).

⁽²⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

⁽³⁾ Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ L 309, 27.11.2001, p. 1).

- 22.4. How does national law address the amendment to Annex III of Directive 2004/35/EC of the European Parliament and of the Council ⁽¹⁾?
- 22.5. How does national law address the amendment to Directive 2006/12/EC of the European Parliament and of the Council ⁽²⁾?
- 22.6. How does national law address the amendment to Regulation (EC) No 1013/2006 of the European Parliament and of the Council ⁽³⁾?
- 22.7. How does national law address the amendment to Annex I of Directive 2008/1/EC of the European Parliament and of the Council ⁽⁴⁾?
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⁽¹⁾ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

⁽²⁾ Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ L 114, 27.4.2006, p. 9). Directive 2006/12/EC is repealed by Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3) with effect from 12 December 2010.

⁽³⁾ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

⁽⁴⁾ Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ L 24, 29.1.2008, p. 8).