

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.5.2009
COM(2009) 236 final

2009/0071 (CNS)

Proposal for a

COUNCIL DECISION

concerning the approval on behalf of the European Community, of the Amendments of Annex II and Annex III to the Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention) in relation to the storage of carbon dioxide streams in geological formations

EXPLANATORY MEMORANDUM

1. The European Community is a Contracting Party to the Convention for the protection of the marine environment of the north-east Atlantic (OSPAR Convention) pursuant to Council Decision 98/249/EC of 7 October 1997¹.
2. The aim of the Convention is to prevent and eliminate pollution and to protect the maritime area against the harmful effects of human activities. The Convention entered into force on 25 March 1998.
3. The executive body of the OSPAR Convention (the OSPAR Commission) may adopt amendments to the Convention and to its Annexes and Appendices. It has adopted by consensus of the Contracting Parties amendments of Annexes II and III to the Convention at its meeting in June 2007 in Ostend (Belgium) in relation to the storage of carbon dioxide streams in subsoil geological formations, with a view to legally enabling Carbon Capture and Storage (CCS) operations in the OSPAR maritime area.
4. The Commission Communication on Sustainable Power Generation from Fossil Fuels (COM (2006) 843) identified the need for a regulatory framework on CCS and supported the adoption of amendments to the OSPAR Convention to permit environmentally sound geological storage of CO₂ under the seabed.
5. The European Council, at its March 2007 meeting concluded the following on Carbon Capture and Storage in the context of its Action Plan (2007-2009) Energy Policy for Europe (EPE):

"Aware of the huge possible global benefits of a sustainable use of fossil fuels, the European Council:

 - underlines the importance of substantial improvements in generation efficiency and clean fossil fuel technologies;
 - urges Member States and the Commission to work towards strengthening R & D and developing the necessary technical, economic and regulatory framework to bring environmentally safe carbon capture and sequestration (CCS) to deployment with new fossil-fuel power plants, if possible by 2020;
 - welcomes the Commission's intention to establish a mechanism to stimulate the construction and operation by 2015 of up to 12 demonstration plants of sustainable fossil fuel technologies in commercial power generation."
6. Through Community coordination in the context of the OSPAR negotiations, there was substantial improvement of the draft OSPAR Decisions on CCS accompanying the amendments to the Annexes, in terms of more explicit requirements for risk management and public participation. The Community delegation at the OSPAR Commission meeting that adopted these instruments stated that, with respect to matters relating to EC competence, it was pleased to be able to be part of the

¹ OJ C 104, [3.4.1998], p. [1-1].

consensus accepting the package and that it would provide a good basis for the development of European legislation following the conclusions of the European Council on CCS. However, the EC also stated that they may have to notify OSPAR that they will have to suspend the 200-day entry into force [of the OSPAR Decisions 2007/1 and 2007/2] if unable to comply with the timeframe. Such a letter of suspension should not be considered as negative as they will wish to ratify when appropriate.

7. It is the intention of the European Commission that all the elements of the CCS regulatory framework should be in place to allow CCS to proceed in the best possible circumstances in line with the European Council conclusions. The European Commission has proposed a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide, which will establish a permitting regime covering *inter alia* composition of the CO₂ stream, site selection, monitoring and reporting, site closure, corrective measures in case of leakage, financial security and the conditions for transfer of responsibility to the state, so as to ensure that the necessary requirements are in place for safe and secure CO₂ storage.

It is therefore appropriate for the Community to approve the Amendments to the OSPAR Convention Annexes II and III as set out below.

Proposal for a

COUNCIL DECISION

concerning the approval on behalf of the European Community, of the Amendments of Annex II and Annex III to the Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention) in relation to the storage of carbon dioxide streams in geological formations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175 (1), in conjunction with the first sentence of the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3), thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) The Community is a Contracting Party to the Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention) pursuant to Council Decision 98/249/EC of 7 October 1997(1);
- (2) The aim of the Convention is to prevent and eliminate pollution and to protect the maritime area against the harmful effects of human activities; it entered into force on 25 March 1998;
- (3) The Commission took part in negotiating these amendments, in accordance with the Council Conclusions concerning negotiating directives for the Convention for the protection of the marine environment of the North-East Atlantic, and in the adoption by consensus of the Amendments to Annexes II and III at the meeting of the executive body of the OSPAR Convention (the OSPAR Commission) on 25-29 June 2007 in Ostend (Belgium);
- (4) The European Council has urged Member States and the European Commission to work towards strengthening R & D and developing the necessary technical, economic and regulatory framework to bring environmentally safe carbon capture and sequestration (CCS) to deployment with new fossil-fuel power plants, if possible by 2020, and this could be expected to imply removing legal obstacles to CCS from the OSPAR Convention;

² OJ C , , p. .

³ OJ C , , p. .

(5) Whereas the Community should approve this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

The Amendments to Annexes II and III of the Convention for the protection of the marine environment of the North-East Atlantic agreed at Ostend in June 2007 are hereby approved on behalf of the European Community.

The text of the Amendments is set out in the Annex to this Decision.

Article.2

The President of the Council is hereby authorised to designate the person or persons empowered to deposit, on behalf of the European Community, the instrument of approval with the Government of the French Republic, in accordance with Article 17 (1) and 15 (4) of the Convention for the protection of the marine environment of the North-East Atlantic.

Article.3

This Decision will be published in the *Official Journal of the European Communities*.

Done at Brussels,

*For the Council
The President*

ANNEX

Amendments of Annex II and Annex III to the Convention in relation to the Storage of Carbon Dioxide Streams in Geological Formations

RECALLING the general obligations in Article 2 of the Convention for the Protection of the Marine Environment of the North-East Atlantic;

BEING SERIOUSLY CONCERNED by the implications for the marine environment of climate change and ocean acidification due to elevated concentrations of carbon dioxide in the atmosphere;

EMPHASISING the need to further develop renewable and low carbon forms of energy generation and use;

RECALLING that carbon dioxide capture and storage is not a mandatory obligation for the Contracting Parties to the Convention but an option which the individual Contracting Parties can choose to allow the use of;

RECOGNISING that carbon dioxide capture and storage is one of a portfolio of options to reduce levels of atmospheric carbon dioxide, and that it represents an important interim supplement to measures for the reduction or prevention of carbon dioxide emissions and should not be considered as a substitute for other means to reduce carbon dioxide emissions;

NOTING that, since the adoption of the Convention, developments in technology have made it possible to capture carbon dioxide from industrial and energy-related sources, transport it and inject it into sub-seabed geological formations for long-term isolation from the atmosphere and the sea;

NOTING ALSO that regulating such activity is within the scope of the Convention;

WELCOMING the work of the Intergovernmental Panel on Climate Change and in particular its Special Report on Carbon Dioxide Capture and Storage;

EMPHASIZING the need for the storage of carbon dioxide streams to be environmentally safe;

WELCOMING FURTHER the adoption of the amendment to include carbon dioxide streams from carbon dioxide capture processes for sequestration in sub-seabed geological formations in Annex I to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Protocol);

RECOGNISING the work of the Intersessional Technical Working Group on Carbon Dioxide Sequestration of the Scientific Group established under the London Convention and its Protocol and its conclusions, as set out in its report LC/SG-CO2 1/7;

RECOGNISING ALSO the work of the Offshore Industry Committee, the Biodiversity Committee and the Intersessional Correspondence Group on the placement of carbon dioxide in sub-seabed geological formations;

DESIRING to regulate under this Convention the storage of captured carbon dioxide streams in sub-soil geological formations to ensure protection of the maritime area;

RECALLING Article 15 and Article 17 of the Convention relating to the amendment of annexes to the Convention;

CONFIRMING that these amendments are restricted to the storage of carbon dioxide streams in geological formations;

STRESSING that such amendments may not be interpreted as legitimising the disposal of any other waste or other matter for the purpose of their mere disposal;

RECOGNISING that a regulatory framework and guidance on the storage of carbon dioxide streams in geological formations will contribute to the short-term and long-term protection of the maritime area. Recognizing the need for rules to be developed to establish clear rights and responsibilities relating to access to the property and that clarify the responsibilities during pre- and post-closure. The guidance will be integral to the subsequent pursuit of activities relating to the storage of carbon dioxide streams in geological formations;

The Contracting Parties to the Convention for the Protection of the Marine Environment of the North-East Atlantic adopt the following amendments of the Annexes II and III to the Convention:

In Annex II Article 3 Paragraph 2 a new sub-paragraph “f” is added as follows:

- f. carbon dioxide streams from carbon dioxide capture processes for storage, provided:
 - i. disposal is into a sub-soil geological formation;
 - ii. the streams consist overwhelmingly of carbon dioxide. They may contain incidental associated substances derived from the source material and the capture, transport and storage processes used;
 - iii. no wastes or other matter are added for the purpose of disposing of those wastes or other matter;
 - iv. they are intended to be retained in these formations permanently and will not lead to significant adverse consequences for the marine environment, human health and other legitimate uses of the maritime area.

In Annex III Article 3 new paragraphs 3 and 4 are added as follows:

- 3. The prohibition referred to in paragraph 1 of this Article does not apply to carbon dioxide streams from carbon dioxide capture processes for storage, provided
 - a. disposal is into a sub-soil geological formation;
 - b. the streams consist overwhelmingly of carbon dioxide. They may contain incidental associated substances derived from the source material and the capture, transport and storage processes used;
 - c. no wastes or other matter are added for the purpose of disposing of those wastes or other matter;

d. they are intended to be retained in these formations permanently and will not lead to significant adverse consequences for the marine environment, human health and other legitimate uses of the maritime area.

4. The Contracting Parties shall ensure that no streams referred to in paragraph 3 shall be disposed of in sub-soil geological formations without authorisation or regulation by their competent authorities. Such authorisation or regulation shall, in particular, implement the relevant applicable decisions, recommendations and all other agreements adopted under the Convention.