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EU: Shale gas regulations will take years to emerge

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Abstract (summary)

Outlook for EU shale gas regulation.

Last week the Constitutional Council upheld the legality of legislation banning the development of France's shale gas and oil resources through fracking. The decision confirms that, notwithstanding positive sentiment in some countries, much of the political mainstream in Europe remains wary of exploiting this resource.

Full Text

SUBJECT: Outlook for EU shale gas regulation.

SIGNIFICANCE: Last week the Constitutional Council upheld the legality of legislation banning the development of France's shale gas and oil resources through fracking. The decision confirms that, notwithstanding positive sentiment in some countries, much of the political mainstream in Europe remains wary of exploiting this resource.

ANALYSIS: Impacts.

Shale gas development in France is unlikely to take place this decade.

With energy prices continuing to rise, the economic case for shale gas development in Europe is strong.

However, the political context for shale gas in much of the EU remains difficult.

According to most estimates of European unconventional oil and gas reserves, France has some of the most promising deposits. A number of companies sought and obtained licenses to explore for resources in the previous decade. However, concerns about environmental risks associated with the techniques of exploiting these reserves, specifically hydraulic fracturing, prompted widespread protests, the creation of a grassroots protest movement across the country and a ban in 2011.

Schuepbach Energy dispute.

Earlier this year, the US firm Schuepbach Energy, one of the companies whose licenses were revoked, launched a legal challenge against the French legislation, arguing that it was unconstitutional. Schuepbach Energy argued that the law had violated its property rights, that the ban went beyond the precautionary principle (which is supposed to govern national environmental policies) and that the sector was being unfairly treated, as fracking technologies continue to be permissible in geothermal development.

At the end of last week, the Constitutional Council ruled that the law was not in breach of the constitution and rejected the rest of Schuepbach Energy's arguments. While there remain other challenges to the legislation -- the company is reportedly seeking compensation of 1.0 billion euros (1.4 billion dollars) while another company, which was planning to explore for shale gas, Total, is awaiting the results of its appeal against the revocation of licenses -- the government's reaction to the ruling indicates that it considers the debate on shale gas development to be closed for the foreseeable future. It is possible that the issue will return to the political agenda when the government publishes its proposals for future energy and climate policy (legislation was supposed to be published this autumn, but has been delayed (see FRANCE: Energy shift will not lose gap with Germany - August 12, 2013)). However, a change of direction is unlikely to take place before a change of government (2017) and any successor is likely to face considerable opposition to a pro-shale policy.

European divisions over shale.

The decision comes at a time when European policies towards shale gas remain divided between those governments who plan to go ahead with development and those who remain hesitant in the face of public opposition (see EUROPEAN UNION: Member states will drive shale gas - September 27, 2012):

Netherlands.

As of the summer, the government appeared to be on the verge of supporting shale gas development. A report prepared for the Dutch government indicated that the environmental and health risks from exploitation were very low and the Liberal Party leading the coalition hoped that this would be enough to persuade its partners to support development. However, local opposition remained strong, and while the Labour leadership in the coalition appeared willing to back test drilling, MPs from the party were not. As a result, the government announced a further round of research to map the risks across the country, which will effectively delay any policy shift until 2015.

Spain.

Earlier in the year, a number of Spain's regional governments declared their opposition to shale gas development, prompting the national oil and gas company Repsol to postpone exploration plans indefinitely.

Germany.

While shale gas development is not banned in Germany, exploration activities have been on hold because of opposition from the public and from some industries, such as the brewing sector. The previous government drafted legislation that would have restricted the areas in which development would be possible. With the Greens opposed and the Social Democrats (SPD) wary, it seems unlikely to be a high priority for the next coalition government (see GERMANY: Merkel's third term will shift euro policy - September 23, 2013).

United Kingdom.

The UK government has become an enthusiastic advocate of shale gas development, offering fiscal incentives to companies and stressing the potential economic benefits (see UNITED KINGDOM: Case grows for shale gas fracking - May 2, 2012). However, the issue remains highly contentious, with developers facing public protests whenever they seek to carry out work on site.

Eastern Europe.

Eastern Europe is more supportive of shale gas than Western Europe, though a ban remains in place in Bulgaria (see BULGARIA: Shale gas exploration ban may be reversed - March 5, 2012) and development in the Czech Republic is also on hold. Moreover, even where governments appear to support shale gas, difficulties remain:

Lithuania. The oil company Chevron withdrew its bid to tender due to what it sees as tough environmental and fiscal rules.

Poland. A number of companies have abandoned their plans in the face of disappointing initial results, though some also complained about government red tape and interference.

Outlook.

The European Commission is due to present its ideas on shale gas regulation in December. If it considers an EU regulatory role to be necessary, it must decide whether to devise a specific legal framework for shale gas or to amend existing legislation that might have a shale gas dimension (land use, water quality, air pollution, etc). An indication of the likely political battles the latter option would entail came last week, when the European Parliament narrowly voted in favour of including shale gas within the purview of an amended law on environmental impact assessments (EIA).

The amendments would mean that a EIA would have to be performed on all unconventional gas and oil projects, increasing information, consultation and compliance requirements in a way that supporters of shale gas argue would impose additional burdens and costs on companies seeking to exploit the resource. Supporters of the amendment argue that the changes are needed to ensure that projects meet satisfactory standards and are not imposed without proper assessment. A similar call to extend the EIA rules has been backed by the EU's Committee of the Regions. However, a decision on whether or not to include the amendments will depend on negotiations between the EP and member states. The struggles over the EIA suggest that if the Commission opts for a piecemeal approach in addressing shale gas regulation, there is the risk of similar conflicts arising over changes to numerous pieces of existing legislation.

CONCLUSION: Given the diverging conditions within member states, it is unclear whether they are in a position to agree upon an EU position on shale gas. Meanwhile, the European Commission will publish its strategy for shale gas regulation by year-end, but any proposals resulting from it will likely be stalled by the run-up to the European Parliament elections in May 2014.

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