

# The EU takes an option on developing shale gas

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From his first days in Brussels, European energy commissioner Günther Oettinger has stressed the right of the European Union's member states to choose which energy resources to exploit and the general structure of their energy supply.

This principle, enshrined in the EU treaty, has also made the European Commission hesitant about proposing binding legislation throughout the EU on shale gas and other unconventional hydrocarbons. This is all the more the case given the very different strategies that individual member states have so far adopted towards shale gas. National approaches range from government support in Poland and the UK to mediated moratoria and even bans on hydraulic fracking in France and Bulgaria.

Politically, the Commission may have chosen the wisest option. It did not propose a binding EU regulation that would govern the extraction of unconventional hydrocarbons in the same way throughout all 28 EU member states. The Commission also avoided a more

flexible but still binding directive that would have to be implemented by member states. The option chosen was that of a non-mandatory recommendation. This is Brussels' relatively lightweight approach: member states are under no legal obligation to follow the recommendation.

The Commission's non-binding recommendation was not 'market-moving', partly because its accompanying estimates of European shale gas reserves, and of the price impact of their exploitation, were relatively low. The Commission is following estimates of approximately 16 trillion cubic metres (tcm) of technically recoverable shale gas resources in the EU, which is substantially smaller than comparable estimates for the US. Officials in Brussels also expect the direct price effect on European regional gas markets to remain "moderate" with relatively low volumes and higher production costs than in the US. Prices in Europe are still largely set through long term oil-indexed contracts.

But even if not market-moving, this tentative step towards a policy framework covering 28 EU countries on unconventional hydrocarbons may be significant in the long term. Significantly, EU member states are being asked to implement the recommendation's principles within six months. The Commission will then review implementation. Officials talk of possible legislation after 18 months, depending on how well the recommendations have been implemented.

The recommendation also signals a shift towards a systemic overview of the legal tools available to the Commission when regulating unconventional oil and gas. One of the main relevant pieces of legislation

**Shale gas operations in Poland, which is keen on developing this unconventional resource**





relates to the EU's 2006 regulation on the registration, evaluation and authorisation of chemicals (Reach). The 2011 environmental impact assessment (EIA) directive also requires a full impact assessment for projects extracting over 500,000 cubic metres of gas per day as well as a screening for deep drilling projects. Water framework and groundwater directives are also applicable.

**“The shale gas revolution is probably going to leave our continent as the only one dependent on energy imports.”**

**— Herman Van Rompuy, President of the European Council**

The Commission certainly sees the need to ensure a level playing field arising from a fragmented and complex operating framework. Differing national interpretations of existing EU legislation may also be legally challenged. The Commission is also seeking to fill perceived gaps in EU environmental legislation that pre-dates the use of high volume hydraulic fracturing in Europe. Particular issues are strategic environmental assessment and planning, underground risk assessment, well integrity, baseline and operational monitoring, capture of methane emissions and disclosure of fracturing fluid composition on a well-by-well basis.

Aside from clearing up ambiguities in existing EU legislation, another rationale for the EU's involvement is the cross-border nature of several shale plays, whether between the UK and Ireland, Bulgaria and Romania as well as Poland and the Baltic States. The Commission also notes that public health and environmental effects risks or concerns may also be of a cross-border nature.

Reactions to the Commission's recommendation have been predictable on both sides. Carl Schlyter, a Green Member of the European Parliament (MEP), claims “serious” proposals on shale gas and fracking would have to include binding measures. He stressed the need for compulsory environmental impact assessments for exploration, and bans in environmentally-sensitive areas. On the other side, Polish MEP Jerzy Buzek urges Europe not to set unrealistic climate targets but to follow the US example. Mr Buzek, a former Polish prime minister, calls for a focus on indigenous sources of energy like shale gas.

The International Association of Oil and Gas Producers (OGP) welcomed the recommendation as a step in the right direction. But OGP expressed concerns about what the European Commission will do after reviewing implementation of the recommendation in 18 months. OGP maintains that there is adequate legislation at both EU and national level.

EU energy ministers, too, have been predictable in their responses. The French environment and energy minister was “comforted” by recent confirmation of a ban on shale gas exploration by France's highest court. But during recent debates between EU ministers, Belgium was the most vociferous in its opposition. The proposed Commission recommendation provides “insufficient” guarantees for the necessary harmonisation of EU law in this area, according to Belgium which calls for the Commission to come up with legislation.

On the other side of the argument are Poland and the UK. Polish environment minister Maciej Grabowski said that the Commission, by and large, had chosen a good approach by not proposing any legislation. Grabowski sees the current legal framework as safe enough for the shale gas industry. At national level, Poland is to propose enhanced powers for environmental inspection as far as shale gas is concerned. For his part, Ed Davey, the UK energy and climate change secretary, pointed to US shale gas, rather than EU renewable and climate policy costs, as the competitiveness issue for European industry. Shale gas would allow Europe to change the terms of trade with US industry and keep Europe's energy-intensive sectors in the global game.

### What Brussels recommends

The Commission recommendation on the exploration and production of hydrocarbons using high-volume hydraulic fracturing calls on member states to ensure that: strategic environmental assessments also evaluate possible cumulative effects before granting licences; site specific assessments identify risks of underground exposure such as induced fractures, existing faults or abandoned wells; wells are properly insulated to avoid groundwater contamination; water, air and soil quality are checked before operations to monitor changes; venting and flaring is minimised with gas captured for use. Member states must inform the public about chemicals used in individual wells and ensure operators apply best practices throughout the project. ■