

GAVC LAW – GEERT VAN CALSTER

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Fracking litigation in France – Reference to the Constitutional Court

It has been reported that the challenge to the French moratorium on shale gas exploration, by US firm Schuepbach Energy, has been referred to the Constitutional Court. Schuepbach had initially challenged the freezing effect of the 2011 ban on the permits which the firm had been granted earlier in 2011, before the lower administrative court at Cergy Pontoise. This court referred for judicial review to the Conseil d'Etat which now has passed the file on to the Constitutional Court.

I have difficulty getting hold of the official court documents. Reports suggest that the challenge is based on Articles 16 and 17 of the French Déclaration des droits de l'homme et du citoyen, dealing with the separation of powers and the right to property.

The French challenge comes amidst the imminent publication of the report commissioned by the European Commission into the suitability, or not, of the current legal framework in the EU and the Member States for regulating shale gas. A little bird tells me (ok, it's a PhD student of mine, Leonie Reins, who co-authored the report) that the report will be published just after the summer.

In a related, more technical but not therefore less effective manner, Poland's roll-out of fracking licences arguably received considerable setback following the ECJ's end of June ruling in Case C-569/10, Commission v Poland: the court held that Poland should have put the licences out to open tender, in accordance with Directive 94/22 on hydrocarbons exploration. The case does not concern fracking licences alone, and the impact on licences that have already been issued is uncertain (although surely these licences cannot be held to be entirely kosher and free of challenge by competitors or NGOs, following the judgment).

Watch this space. I need not tell you that fracking is very controversial in the EU. See in particular this tour d'horizon /overview of contentious issues by Kathleen Garnett over at EU perspectives.

Geert.

➤ ENVIRONMENTAL LAW - EU, ENVIRONMENTAL LAW - INTERNATIONAL

BAN, C-569/10, CJEU, COJ, COJEU, COMMISSION V POLAND, DÉCLARATION DES DROITS DE L'HOMME ET DU CITOYEN, DIRECTIVE 94/22, ECJ, EU, EUROPEAN UNION, EXPROPRIATION, FRACKING, FRANCE, HYDROCARBONS, RIGHT TO PROPERTY, RISK, RISK MANAGEMENT, SCHUEPBACH ENERGY, SEPARATION OF POWERS, SHALE GAS, UNCONVENTIONAL GAS

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