

# Shale gas decision in the Netherlands postponed to 2015

Revenues for the Dutch Government from the sales of natural gas amount to billions of Euros every year, but as new gas fields are rarely discovered in the Netherlands, in the long run natural gas may cease to be an important income source for the country. The aim of the Netherlands is to keep existing 'mature fields' in business for as long as possible, but opportunities also seem to exist for the safe development of new reserves, such as tight gas, shale gas and coal bed methane, although as with the rest of Europe, a number of environmental and safety concerns could hinder the future development of this sector. In fact, the Dutch Government has already announced that no test drilling will take place for shale gas in the country until the completion of another new nationwide study, due to be published in 2015.

## Background

**In 2012, the Minister of Economic Affairs announced a study would be undertaken to assess the risks and impacts of the exploration and production of shale and coal gas. The results of the Witteveen+Bos study were published towards the end of August 2013 by the Dutch Government. The main outcome of the study was that the risks from fracking could be overcome. Following the publication of the report, the Minister of Economic Affairs stated that the '... study shows that under the current legislation the risks from fracking can easily be controlled.'**

This statement was contradicted by the Environmental Impact Assessment (EIA) Commission, which advises the minister. According to advice from this Commission, published in September 2013, current laws and regulations are not sufficient to mitigate the potential risks of shale gas exploration and extraction, and the advice also goes on to say that currently, fracking has no clear place in Dutch regulations. The Commission did state, however, that the study provided a 'reasonable overview' of all aspects of shale gas.

## Current status of Dutch legislation

Currently in the Netherlands, special activities such as fracking must be reported to the State Supervision of Mines (*Staatstoezicht op de Mijnen* – SodM), but hydraulic fracturing is not specifically mentioned in Dutch mining legislation as a separate activity. It is considered part of well construction or well maintenance. A proposal to amend the current legislation will address this.

Earthquakes could be an issue during shale gas extraction due to the injection of fracturing fluids under high pressure in or near active fault zones in a seismic active area. Under Dutch mining law, the mining company can be required to determine the likelihood of induced earthquakes and monitor possible earthquakes.

Otherwise, the SodM can request a 'work programme' from a mining company in which any fracking and use of additives must be specified. These are additives which are mixed with water and proppant (often sand) to create the fluid used for hydraulic fracturing.

Also, in order to determine the local effects on people, nature and environment, location-specific investigations are needed in the Netherlands, mostly in the form of environmental impact assessments.

## New nationwide shale gas study ready in 2015

Partly as a result of the advice from the EIA Commission, mentioned above, the Dutch Government announced towards the end of September 2013 that no shale gas test drilling would take place in the Netherlands until the completion of another new nationwide study, and that a decision on test drilling would only be made after the results of the new study are published in 2015.

The government also announced that agreements have been made with companies that have already been granted exploration licences for certain sites, to ensure they do not undertake further activities until the new study is complete.

## Specifics of the new study

In November 2013, the Minister of Economic Affairs sent a letter to the Lower House of Parliament (*Tweede Kamer*), setting out further information on the upcoming study.

The aim, according to this letter, is for a structural plan to be prepared specifically for shale gas. In preparation for this plan, the minister states that first, an EIA will take place so that the environmental impact can be assessed for all areas where the potential for shale gas extraction exists. Included in this EIA will be the potential impact on safety, nature, and the landscape including cultural heritage. The minister adds that the EIA will provide important input for the preparation of the main shale gas structural plan.

The main aim of the structural plan is to identify the most suitable locations for the exploration and extraction of shale gas. These are locations that do not just show promise in relation to potential extraction, but also where the consequences for nature, humans and the environment can best be managed.

The minister explains that the structural plan will enable the government to provide more guidance in the future in relation to the locations where exploration and production of shale gas may take place. In the current situation, the initiator of a shale gas project determines the location in the first instance, following which the government assesses whether extraction at that location would be in accordance

with relevant laws and regulations. The structural plan will therefore give the minister a broader framework for making decisions in relation to permits for the exploration and production of shale gas.

## Next steps and upcoming legislative plans

According to letters sent by the Minister of Economic Affairs to the Lower House in November 2013 and January 2014, these will be the following steps:

- The minister appointed the external agency Arcadis to prepare the EIA at the end of 2013. This agency will at first produce a note containing the scope and detail of the EIA which the minister plans to send to the Lower House and to the EIA Commission for perusal in April. The actual EIA and the draft shale gas structural plan will then be simultaneously sent to the Lower House, towards the end of 2014/beginning of 2015. The structural plan will then be finalised following consultation with the Lower House. The minister states that the structural plan will among other things include an analysis of the social costs and benefits, and will explain the role of shale gas in the energy transition.
- In relation to legislation, the minister states that a number of amendments will be made to the Mining Act. The minister explains that he wishes to make fracking more recognizable within the regulations. The minister states that this process has already been put into motion, and that the amendments will take effect from 1 July 2014.
- The minister states that he plans to further elaborate on which sustainable technologies are available or will be available in the short term to minimise the risks of fracking. He expects related research on this point to be ready before the summer of 2014.
- In relation to regional impact, the minister states that he intends to create a model for the possible extraction of shale gas which could be paired with relevant compensatory measures, and that this model shall be sent to the Lower House simultaneously with the draft structural plan. He explains that he is treating 'regional impact' as a separate item as he considers it important to involve the affected areas. He adds that throughout the whole process and in every phase, residents and other stakeholders will be fully involved.

The final point in the minister's November 2013 letter relates to a separate structural plan for the subsoil. He explains that the shale gas structural plan will as expected form an integral part of the structural plan for the subsoil, when the latter will be ready. He plans to ensure that these two structural processes will be well matched. On this point, he adds that he will ultimately be looking for a suitable link in the Mining Act with these structural plans.

## The European perspective

From an EU perspective, the minister will need to take into account the European Commission's newly published recommendation which seeks to ensure that sufficient safeguards are in place for fracking. The Commission's recommendations, published in January 2014, include suggestions that Member States should, among other things, consider the potential cumulative effects prior to granting licences, analyse environmental impacts and risks carefully, monitor water, air and soil quality so that any

changes can be identified, and manage air emissions by capturing gases. Member States are encouraged to apply the principles within the next six months and the Commission has stated that it plans to monitor and publish details of adoption amongst Member States.

## Conclusion

The shale gas question in the Netherlands is not going to go away. This is partly due to the potential revenues for the government, and partly due to current estimates of reserves in the country. The estimates for one of the shale plays alone – the Posidonia Shale in the Roer Valley Graben – ranges from 70 to over 400 billion cubic metres according to State-owned Energie Beheer Nederland (EBN).

We will have to wait until after the publication of the new nationwide study in 2015, however, to find out the extent to which the Netherlands will be a part of the worldwide shale revolution.

## Further developments

Clifford Chance will be monitoring further shale gas developments in the Netherlands and will continue to publish updates on its [Alert: Energy online service](#). To subscribe to this service, please email our [Online Services team](#).

[Please click here to view our September 2013 client briefing](#) on this topic, 'Jury still out on shale gas in the Netherlands'.

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