



# European Union The EU Hydrocarbon Directive

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## Summary

With Europe's energy prices at levels double those of the United States, unconventional fossil fuels are gaining visibility on the European policy agenda, and the U.S. shale gas technology boom is boosting the debate in the EU. Today, EU Member States have diverging policies on shale gas exploration. While some are starting to develop policies aimed at encouraging shale gas exploitation, others are banning fracking. Nonetheless, the debate on high energy costs across the EU is leading European authorities to envision a common regulatory framework for a responsible expansion of unconventional oil and gas technologies that take into account today's environmental risks. This report outlines the current EU Hydrocarbon Directive 94/22/EC, which determines "The Conditions for Granting and Using Authorizations for Prospection, Exploration and Production of Hydrocarbons", and expands on recent shale gas discussions at the EU level.

## Introduction: EU Directive 94/22/EC

The EU Hydrocarbon Directive was introduced to establish binding guidelines on Member States for non-discriminatory access to the activities of prospecting, exploring and producing hydrocarbons and to prevent Member States from granting one single entity exclusive rights to these resources through non-competitive procedures. Since Member States have exclusive rights to any hydrocarbon resources located within their territories, the process of exploiting these assets is entirely at the discretion of each individual country and could lend itself to irregular and non-transparent decision-making.

## Specifics

The goal of the Hydrocarbon Directive is to reinforce the integration of the internal energy market, encourage competition within it and improve the security of supply.<sup>1</sup> With the introduction of shale gas into the European energy market, any company looking to capitalize on this energy source must be aware of the strict guidelines Member States are obligated to follow under the Hydrocarbon Directive.

These guidelines include:

1. Ensuring authorizations to access shale gas reserves are granted following a public procedure. This procedure must be initiated by the publication of a notice in the EU Official Journal, at least 90 days before the closing date for applications. Notices should specify the type of authorization, the geographical area(s) for which the application has been made, and the proposed date or time limit for granting the authorization.

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<sup>1</sup> Europa Summary on Hydrocarbon Directive:  
[http://europa.eu/legislation\\_summaries/energy/internal\\_energy\\_market/l27007\\_en.htm](http://europa.eu/legislation_summaries/energy/internal_energy_market/l27007_en.htm)

2. Selecting an applicant based on:
  - a. The applicant's technical and financial capabilities;
  - b. The way in which the applicant proposes to prospect, explore and/or bring into production the geographical area in question; and
  - c. The price which the applicant is prepared to pay in order to obtain the authorization (if applicable).
3. Requiring Member States to provide an annual report to the European Commission describing:
  - a. The geographical areas which have been opened;
  - b. The authorizations that have been granted;
  - c. The companies, or entities, that hold these authorizations; and
  - d. The available reserves in their territory.

### Safeguards and Reciprocity

The Directive provides that Member States may refuse, on grounds of national security, to allow access to and exercise of these activities, to any entity which is effectively controlled by third countries and/or by third country nationals. The Directive also provides for reciprocity provisions with third countries. This allows the EC to establish whether it is necessary to enter into negotiation with third countries' authorities to obtain comparable treatment for European companies.

### Exceptions

Member States have the right to diverge from the EU Hydrocarbon Directive under the following circumstances<sup>2</sup>:

- o Considerations of national security, public safety, public health;
- o Security of transport, protection of the environment, and/or the protection of biological resources;
- o Planned management of hydrocarbon resources (for example the rate at which hydrocarbons are depleted or the optimization of their recovery); or
- o The need to secure tax revenues.

### Future of Shale Gas in Europe

Currently, shale gas in the European Union faces an uncertain future. Some Member States could potentially benefit from the energy independence that shale gas provides. However, negative public perception of the safety and environmental risks could limit the role of shale gas in Europe's energy mix.

The European Commission's Directorate-General for Environment is currently drafting recommendations on the responsible development of an unconventional oil and gas risk-management framework, and expects to publish a communication or a proposal before the end of 2013. This report will draw on feedback from a public consultation and a June 2013 stakeholder meeting on Unconventional Fossil Fuels (e.g. shale gas) in Europe. This event gave all interested parties the opportunity to express their views on the possibility of the European Union taking the lead on regulatory issues regarding shale gas.<sup>3</sup> In short, the majority of respondents agree on the lack of adequate legislation, the need for better public information and the lack of public acceptance of unconventional fossil fuels. (The entire meeting and presentations can be viewed [here](#).)

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<sup>2</sup> Directive 94/22/EC, Article 6 Paragraph 2

<sup>3</sup> [http://ec.europa.eu/environment/integration/energy/uff\\_event\\_7june2013\\_en.htm](http://ec.europa.eu/environment/integration/energy/uff_event_7june2013_en.htm)

Along with the public consultation and the stakeholder meeting, the President of the European Commission Jose Manuel Barroso has publically reached out to Member States about the future of shale gas and believes that the best way to handle shale-gas prospecting is on a European-wide scale. As of October 2013, no legislative initiative has been taken by the European Commission to move this idea forward. In the absence of a Commission proposal, and recognizing the importance of the discussions on the future of shale gas for Europe, the European Parliament adopted two resolutions in November 2012. An Industry and Energy committee (ITRE) report prepared by MEP Niki Tzavela concluded that each Member State has the right to decide on whether to exploit shale gas. At the same session, an Environment committee (ENVI) report prepared by MEP Boguslaw Sonik was adopted stating that the prospect of expanding exploitation of unconventional fossil fuels suggests that "a thorough analysis" of EU regulation on these fuels is needed. An amendment urging Member States not to authorize any new fracking operations in the EU was rejected.

The American Chamber of Commerce to the EU drafted a Position paper on "Shale Gas Development in the EU" in January 2013, which can be viewed on their website:  
<http://www.amchameu.eu/Advocacy/Transportenergycommittee/Positionpapers/tabid/223/Default.aspx>

### Useful links

[European Commission's information page on the Directive](#)

[Directive 94/22/EC](#)

[Summary of Directive 94/22/EC](#)

[Summary of Shale Gas Regulation in Europe](#)

### For More Information

The U.S. Commercial Service at the U.S. Mission to the European Union can be contacted via email at: Isabelle Maelcamp, [Isabelle.Maelcamp@trade.gov](mailto:Isabelle.Maelcamp@trade.gov); or visit our website: <http://www.export.gov/europeanunion>.

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