

Iraq Macro Flash

Supreme Court Ruling Does Not Presage Sustained KRG Exports

- On 27 June, the Ministry of Natural Resources of the Kurdish Regional Government (KRG) announced that the Iraqi Federal Supreme Court had ruled on 24 June against a petition by the Iraqi oil ministry to prevent the independent export of Kurdish crude. The KRG claimed that the ruling represented “an important clarification of its acquired rights as stated in the constitution” and that this was a “clear victory for justice and upholding KRG’s rights” (mnr.krg.org).
- Soon afterwards the Iraqi ministry of oil issued a rebuttal, pointing out that a case on the constitutionality of Kurdish contracts and oil exports remains pending since August 2012, and that the court ruling was limited to a request for an emergency injunction to prevent Kurdish exports. This was rejected on the basis that it contravened the legal process, which would require the court to first establish the illegality of Kurdish exports before issuing an injunction. This is supported by the original text of the court decision, which declined to issue an injunction on the basis that this “would constitute a prejudgement in regard to the process and ruling that will be issued [on the pending case]” (Iraq Oil Report, 28 June).
- It would therefore be premature to conclude that sustained Kurdish exports are imminent on the basis of this ruling, in our view. Not only is the constitutionality of Kurdish exports still a matter before the Iraqi courts, Baghdad’s legal challenge against Turkey and the pipeline operator Botas over the recent export of Kurdish crude through the port of Ceyhan rests on the export treaty first signed with Ankara in 1976. In 2010, this treaty was renewed, explicitly stipulating that Ankara recognises the sole rights of the Iraqi oil ministry and the SOMO to export Iraqi crude through the entire length of the Iraq-Turkey pipeline (ITP), as well as the storage and export facilities at the port of Ceyhan (Iraq Oil Report, 18 April). Baghdad’s legal challenge is therefore not over the constitutionality of the exports, but over the contractual obligations of Turkey and Botas under the oil export treaty.
- We think this means that as long as the KRG is dependent on infrastructure that falls under the 1976 oil export treaty, any exports using this infrastructure could be subjected to legal challenge, regardless of what the Supreme Court eventually rules with respect to their constitutionality. The shipments to date have used this infrastructure from the point where the new Kurdish pipeline joins the existing ITP at Fishkhaboor in Northern Iraq to the export terminal of Ceyhan.
- The decision to tie the recently completed Kurdish crude pipeline will mean that only a negotiated agreement between Baghdad and Erbil will result in sustained Kurdish exports given the necessity of having to co-ordinate the flow of crude through shared infrastructure. The alternative would be for a separate new pipeline to be built in Turkey to circumvent these legal and practical restrictions.

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