**ENERGY POLICY WEEKLY**
Policy & Regulation from Brussels and beyond



Contents



# Syriza to shake up Greece's energy privatisation policies

**Country profile**

GREECE'S new government is expected to freeze privatisation of gas and electricity companies in the country – a move that might clash with EU law. The left-wing Syriza party, under new Prime Minister Alexis Tsipras, could also stop the ongoing bidding rounds for new hydrocarbon exploration in the Ionan Sea and around Crete.

"We expect a major shift in the [country's] energy policy as far as it relates to the abolition of the privatisation programme of the previous government," Marina Kolia, head of the energy group at law firm Zepos & Yannopoulos, told *Interfax*.

Greece's previous government, under Antonis Samaras, passed a law to privatise 30% of the majority state-owned Public Power Corp. According to Kolia, the privatisation plans now look to be abandoned.

The tender for the privatisation of the Greece's independent power transmission operator – which had reached the final phase of submission of bids – seems to have been frozen as well, according to Alexia Xeniti, an attorney at Moussas & Partners Attorneys at Law.

The privatisation processes were based on the need to liberalise the electricity market to comply with the EU's Third Energy Package.

Xeniti said that if the new government proceeds with its pre-electoral declarations and stops privatisation, the EU will soon ask Greece to present equivalent policies for the liberalisation of the country's lignite, gas and electricity markets.

Syriza has also indicated a preference for retaining state control over national gas system operator DESFA and public gas supply company DEPA, which were put up for sale by the previous government. The European Commission has opened an in-depth investigation to assess whether the proposed acquisition of DESFA by the State Oil Company of Azerbaijan Republic may reduce competition in the Greek gas market (see *Brussels to investigate SOCAR's takeover of DESFA*, 6 November 2014).

"The draft bill on the liberalisation of the [gas] market was ready to be passed in parliament but again, with this turn of events its future is unknown," Xeniti told *Interfax*.

Others played down the influence of Syriza's energy policy.

Anastasios Giamouridis, senior consultant at Pöyry Management Consulting, expects political changes in guiding principles but said these may result in few practical changes.

"In practical terms, these privatisations are faced with significant difficulties in their implementation as a result of relevant EU regulations... and a lack of market demand, rather than Syriza's policy goals in this framework," Giamouridis said.

## Syriza's victory

- Following Syriza's election win, privatisation plans in the energy sector are scheduled to be abandoned.
- Bidding rounds for hydrocarbon exploration could be stopped until the involvement of a state-owned company in joint ventures is safeguarded by law.
- Syriza has also said it will renegotiate the Trans-Adriatic Pipeline contract with the consortium of investors.
- Syriza's parliamentary spokesman Panayotis Lafazanis has been nominated as Greece's new minister for energy, industry and environmental affairs.

Sources: Zepos & Yannopoulos, Moussas & Partners Attorneys at Law

### Pipeline connections

Syriza has also announced it will try to enhance the role of the state in planned pipeline projects. Before the elections, Syriza said it would renegotiate the Trans-Adriatic Pipeline (TAP) contract with its consortium of investors in an attempt to maximise the benefits to Greece.

"However, it is doubtful such renegotiation is legally allowed – something that concerns Syriza's officials," according to Xeniti.

The Shah Deniz 2 project in the Caspian Sea

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## Syriza victory

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plans to deliver gas via the Trans-Anatolian Pipeline to the Greek-Turkish border, while TAP would cross northern Greece, Albania and the Adriatic Sea before connecting to the Italian gas network.

"Syriza's main concerns are to safeguard the strategic role of government in major infrastructure projects, to protect labour rights and to implement the projects with respect to the environment," Greek MEP Kostas Chrysogonos told *Interfax*.

Ongoing bidding rounds for hydrocarbon exploitation could be stopped and repeated after the involvement of a state-owned company in joint ventures is safeguarded by law, according to Syriza MP Apostolos Alexopoulos. However, according to the initial procedure, offers were to be accepted within six months of the publication of the tender in the *Official Journal of the EU* – roughly until March 2015.

"Binding offers have already been submitted for certain blocks, meaning that, besides the issue of legality, there seems to be no time left for any attempt to reverse the situation," Xeniti said.

"However, the same cannot be said for the 20 [offshore] blocks in the Ionian sea and around Crete," he added. ■

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# Commission delays decision on gas purchasing body

**Competition law**

THE European Commission is expected to present its proposal for an energy union at the end of February. However, a decision on setting up a common purchaser of gas has not yet been made.

"Central European states would prefer to have the possibility of common gas purchasing – they only purchase small quantities of gas individually and believe they can get better deals if they negotiate together," Maroš Šefcovic, the EU's vice president for energy union, told the European Parliament this week.

There is a political divide between west and east European countries on the issue. Eastern states support a common purchasing body – a concept originally proposed by Donald Tusk, the former Polish prime minister and current president of the European Council – while western states are broadly against the idea.

According to Šefcovic, the topic remains a "highly sensitive and highly technical issue" that needs thorough legal analysis. The commission is analysing the possibility of a voluntary purchasing body, which would comply with EU competition law and World Trade Organization obligations.

"[The commission is analysing] the use of such a mechanism in a situation that is difficult, not transparent, or when we are in a crisis," Šefcovic said.

Following Gazprom's cancellation of the South Stream pipeline – the planned onshore section of which would have crossed Bulgaria, Serbia, Hungary, Slovenia and terminated in Italy – the company said it will construct an offshore gas pipeline across the Black Sea towards Turkey instead.

The gas pipeline will have a capacity of 63 billion cubic metres per year, with nearly 50 bcm/y to be conveyed to a gas hub on the border between Turkey and Greece, Gazprom has said.

However, the commission has voiced clear concern about the change of route and Gazprom's plans to avoid Ukraine as a transit country altogether in the future.

"The system Gazprom is proposing to change transport routes will simply not work. There are long-term contracts that do not only show the volume of the gas but also include a destination clause. The place of delivery is simply not the Turkish or Greek border," Šefcovic said this week.

Turkey is already Gazprom's second-largest sales market behind Germany. The company supplied Turkey with 26.7 bcm of gas in 2013. Some energy experts have said Turkey does not need an additional 50-63 bcm pipeline, as Blue Stream's capacity has never been fully used (see *South Stream rerouting avoids TEP complications*, 4 December 2014).

"For a company like Gazprom, the standard procedure would also be to talk to its customers directly and not announce radical changes every couple of weeks. This is not standard behaviour and is undermining Gazprom's image as a reliable provider," Šefcovic added.

Šefcovic also said the commission is concerned about the what will happen in April after the 'winter package' determining gas deliveries from Russia to Ukraine expires.

"The Russian partners seem to maintain the position that after March they will return to the contract which was previously valid for trade with Ukraine – this will be very complicated," he said.

### Southern Gas Corridor

The EU is continuing its efforts to diversify its supply sources. A meeting with representatives of the Southern Gas Corridor consortium and countries that will host the Trans-Anatolian (TANAP) and Trans-Adriatic (TAP) pipelines is planned for next month.

TANAP and TAP aim to deliver gas from the Caspian region to Europe via Greece, Albania and Italy.

Previously failed pipeline projects – including South Stream and Nabucco – can be lessons for future projects, Šefcovic said. "We have to learn from Nabucco. We have to be clear what our political priority is and also to create a mechanism or roadmap showing how we are progressing with building up the pipelines and which problems have to be resolved," he told parliament.

"In February, we will have an important meeting with [Azerbaijan's] President Ilham Aliyev about the Southern Gas Corridor and how we proceed," Šefcovic added. ■

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# Energy companies unsettled by MiFID 2 obligations

**Market legislation**

ENERGY companies are struggling to come to terms with new trading obligations that will become binding under the revised Markets in Financial Instruments Directive and Regulation (MiFID 2).

At an industry event in London this week, stakeholders said many of the definitions under MiFID 2 lack clarity and that they are having difficulty preparing for the new obligations, which will apply across the 28 EU member states from January 2017.

As part of its remit, MiFID 2 will set position limits in commodities markets, including gas. Although the gas and power industry has secured some concessions for position caps on physical trades, cash-settled derivatives will fall under MiFID 2's scope.

"MiFID 2 represents a drastic change," said Anya Bissessur, senior commercial lawyer with Norwegian state-owned utility Statkraft. "It will mean more costs for companies. We can cry about it, but that won't change things."

The European Securities and Markets Authority (ESMA) has proposed that national regulators calculate a baseline position limit for commodity derivatives based on 25% of the deliverable supply of contracts. Stakeholders have until 2 March to respond to the proposal (see *MiFID 2 edges closer to completion*, 8 January 2015).

However, one of the issues addressed at the London event was that ESMA has given no clear definition of what constitutes deliverable supply. Some stakeholders also expressed concern that the position limits under MiFID 2 would prompt market participants to exit energy markets and thus reduce liquidity. Market participants may also exit long positions beyond 2017 to avoid the position caps.

## Significant consequences

"MiFID 2 really narrows the exemptions from MiFID 1 for commodities firms," said Christopher Leonard, a partner with law firm Akin Gump Strauss Hauer & Feld. "The consequences of falling within the scope of MiFID 2 for the first time are quite significant."

ESMA has proposed some exceptions for companies whose main trading activity – or less than 5% of their business – is not commodities trading. Commodities firms with a position in an energy market that is less than 0.5% of the EU total may also be exempt. However, stakeholders said these benchmarks would be hard for companies to comply with, especially as they would also depend on their competitors' market share.

"A lot of companies will have problems proving [their market share is below the threshold]," said Henrik Bramsnaes, a senior regulatory affairs manager with Dong Energy.

There will also be exemptions for hedging, or so-called 'risk-reducing activities'. Energy companies typically take big positions in derivatives markets to reduce risk and hedge against price volatility. However, MiFID 2 has yet to offer a clear definition of what constitutes hedging, as opposed to speculative trading.

"ESMA has not confirmed it will apply the same hedging definition as under the European Market Infrastructure Regulation (EMIR). But I think that would make sense," said David Beier of Germany's Wingas.

MiFID 2 is one of several laws drawn up by Brussels in response to the financial crisis. It aims to bring more transparency and stability to traded markets, including commodities. The Market Abuse Regulation/Directive and the Regulation on Energy Market Integrity and Transparency – as well as EMIR – are also in the process of being implemented.

"Energy companies, according to many, are behaving like banks – and they are now being regulated like banks," said Aviv Handler, managing director of ETR Advisory.

He urged companies to take action now to comply with the new rules in due course.

"We have been a bit baffled because many have not woken up to the fact that there is a lot to do here," he added.

The final rules of MiFID 2 – including exact benchmarks on position limits – are expected to be drawn up by mid-2016.

"By then, it will be too late [for companies] to take final decisions," said Riccardo Rossi, regulatory affairs manager with Gazprom. He said reduced liquidity in energy markets could be one of MiFID 2's repercussions. "I think companies will adapt and survive. The question is: at what cost?," he added.

The obligation for MiFID 2 licence-holders to comply with the Capital Requirements Directive and Regulation (CRD/R) – possibly from 2018 – was also addressed by stakeholders.

"CRR/CRD 4 significantly tightened the capital requirements for financial institutions, and it is not unlikely that energy companies will be hit by a similar regime," Martin Krause, a partner with law firm Norton Rose Fulbright, told *Interfax* (see *Energy companies urged to prepare for capital reserves regulation*, 22 January 2015). ■

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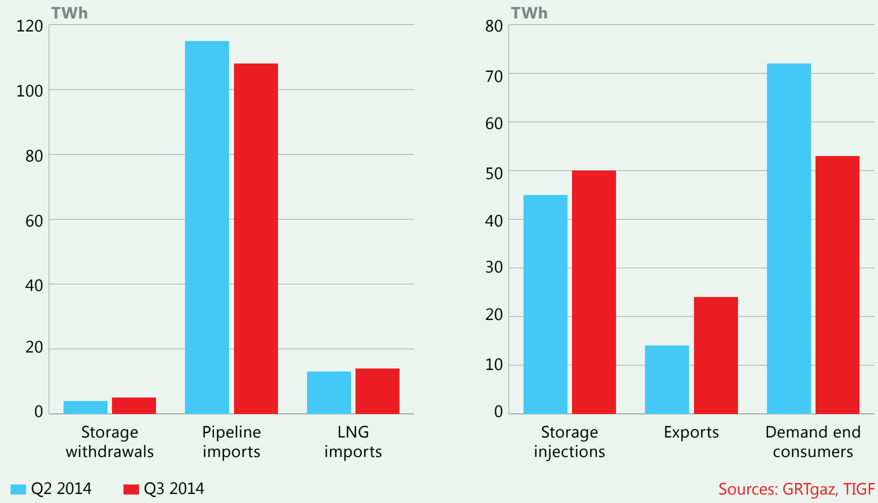
## News in brief

The Dutch energy exchange **APX** and Dutch energy regulator **ACM** have signed a memorandum of understanding on implementation of the EU's Regulation on Energy Market Integrity and Transparency (REMIT), they said this week. APX and ACM said they would exchange knowledge, experience and expertise on best practices on market surveillance. "This will enable them to detect and investigate potential market manipulation and insider trading," said a statement. REMIT is designed to clamp down on insider trading in energy markets, It obliges companies to publish information such as power plant and production outages in a timely manner. Traders will also be obliged to report transactions to a pan-European agency, starting later this year.

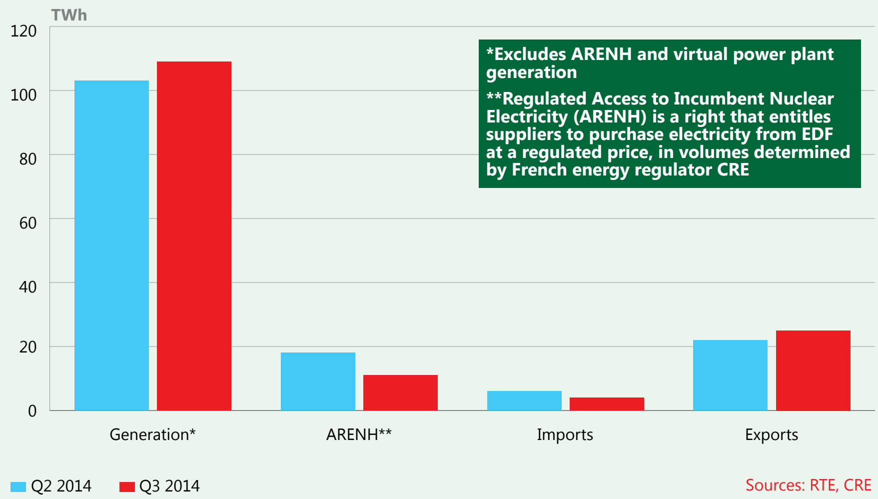
| Environmental policy | Market legislation | Investment and finance | Foreign affairs |
|---|---|---|---|

| Date | News | Country/ stakeholders | What this means |
|---|---|---|---|
| **1 Dec** | Russian President Vladimir Putin announced at a press conference in Ankara that Gazprom's South Stream gas pipeline project has been abolished. Gazprom said it will instead build a pipeline to Turkey with a capacity of 63 bcm/y – the same as South Stream. In total, an extra 14 bcm/y will go to the Turkish market and nearly 50 bcm/y will be shipped to Greece, where a delivery point will be constructed on the EU frontier. By focusing on a hub at the Turkish/Greek border, Gazprom is hoping to avoid EU jurisdiction while seeking to consolidate its market presence in southeast Europe. | EU28, Russia, Turkey, Energy Community | The sudden cancellation of South Stream came as a surprise, albeit not a complete shock. Many had raised questions about the multi-billion dollar pipeline – which would have bypassed Ukraine – for some time. The cancellation must be seen against a backdrop of relatively low energy demand in Europe as well a legal challenge filed with the World Trade Organization over the EU's third-party access regime – which Moscow seemed unlikely to win. South Stream's cancellation has opened up the prospect of alternative projects. One of them is a new bidirectional gas pipeline between Greece, Bulgaria and Romania, known as the 'vertical gas corridor'. |
| **9 Dec** | The government of Dutch Prime Minister Mark Rutte adopted a resolution banning shale gas extraction in the Netherlands until 2016. Dutch Minister of Economic Affairs Henk Kemp will continue his department's research into the risks and effects of the process to decide whether to allow shale drilling in the country. The study is expected to be finished by the end of 2015. The Netherlands holds 200-500 bcm of shale gas resources, according to estimates by the Netherlands Organisation for Applied Scientific Research. Of the 400 Dutch municipalities, 170 oppose shale gas extraction. However, these regions could be overruled by the Dutch government. | Netherlands, EU28 | With conventional resources declining in the Netherlands, shale development could become more relevant. The country's reserves-to-production ratio is estimated to be 12.4 years, according to the 2014 *BP Statistical Review of World Energy*. The Netherlands is expected to shift from being a net exporter to a net importer of gas by around 2025. However, Dutch shale gas is estimated to be 3-4 km underground, raising questions about the economic viability of extraction. Investment per well could amount to an average of €14-15 million ($17.5-18.7 million), according to a 2014 Triple-E Consulting report. Also, public opposition to fracking is widespread throughout the EU. |
| **19 Dec** | The revised Markets in Financial Instruments Directive (MiFID 2) took a step closer after the European Securities and Markets Authority (ESMA) issued its recommendations on position limits for commodities and related derivatives trading. ESMA said national regulators should calculate a baseline position limit for commodity derivatives based on 25% of the deliverable supply for the contracts, and that national regulators should be able to either increase or decrease the baseline position by an additional 15%. It is now up to the European Commission to adopt the authority's recommendations before 3 January 2017, when the legislation takes effect. | EU28 | MiFID 2 aims to curb speculative trading in commodities by setting out position limits for market participants. However, the gas industry secured certain concessions from the EU last year to avoid overlaps. Physically settled gas and power contracts will not be subject to position limits under MiFID 2 if they are already covered by the Regulation on Wholesale Market Integrity and Transparency. However, cash-settled derivatives will fall under the directive's scope, potentially reducing liquidity across EU energy markets, according to some stakeholders. Hedging activities will be exempt, but there is not yet a clear definition of hedging under the directive. MiFID 2 is expected to be finalised by mid-2016. |
| **13 Jan** | The commission announced it had temporarily suspended negotiations with the United States on a controversial investment protection and investor-to-state dispute settlement (ISDS) chapter in the proposed trans-Atlantic trade deal. The Transatlantic Trade and Investment Partnership Agreement (TTIP) has faced mounting public scepticism across the EU, particularly towards provisions on investment protection and ISDS that could allow foreign investors to sue EU governments over fracking bans. EU Trade Commissioner Cecilia Malmström told a press briefing in Strasbourg the commission would engage in an "open and frank discussion" about ISDS and table a new proposal by spring this year. | EU28, US | Sceptics see ISDS as one of several sensitive provisions under the proposed EU-US trade deal. They fear a similar situation to Canada, where Lone Pine Resources is suing the government under the North American Free Trade Agreement after Quebec introduced a moratorium on fracking. Another example is the lawsuit of Swedish utility Vattenfall against Germany for introducing environmental requirements for coal-fired power stations. The next round of TTIP negotiations will take place from 2-6 February, but ISDS will not be negotiated. Donald Tusk, president of the European Council, has said the EU and US should aim to conclude TTIP negotiations by the end of 2015. Many see this timeframe as unrealistic. |
| **22 Jan** | Supporters of early reforms to the EU's Emissions Trading System faced a setback after MEPs in the European Parliament rejected a draft opinion on the proposed Market Stability Reserve (MSR) in a non-binding vote. MEPs in the committee for Industry, Research and Energy (ITRE) blocked the opinion with 31 votes against, 28 for and seven abstentions. ITRE's vote was not a rejection of the MSR proposal itself, but of its timing and form of implementation. The parliament's Environment Committee (ENVI), which has the legislative responsibility on the file, is expected to vote on 24 February. The MSR proposal needs backing from both the parliament and the European Council to come into force. | EU28, global | Several stakeholders in the gas industry want the MSR to apply from 2017 instead of 2021 to address the estimated 2 billion surplus of carbon allowances. Under the MSR proposal, 12% of the surplus allowances would be taken out of the market and placed in a reserve each year. EU carbon allowances are currently trading at around €7 per ton ($8.11/t), compared with highs of around €30/t in 2008. The steep fall has been caused by a combination of the economic slowdown and an influx of international credits. A higher price for carbon could encourage fuel switching from coal to gas in power generation. All eyes are now on the ENVI vote on 24 February. |

**Supply of and demand for gas in France**

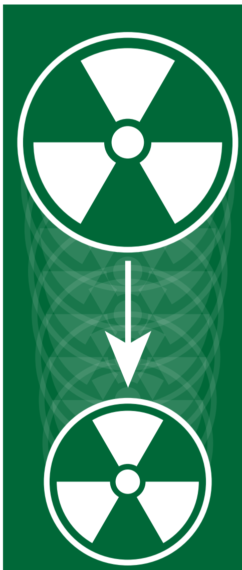



**Supply of and demand for electricity in France**




*Excludes ARENH and virtual power plant generation

**Regulated Access to Incumbent Nuclear Electricity (ARENH) is a right that entitles suppliers to purchase electricity from EDF at a regulated price, in volumes determined by French energy regulator CRE



**25%**

Anticipated reduction in nuclear power in France's electricity mix by 2025

Source: French Energy Ministry

**30%**

Anticipated reduction in fossil fuel consumption in France compared with 2012 levels

Source: French Energy Ministry

France's Energy Transition Law is expected to be finalised in the first half of 2015. The law aims to reduce the share of nuclear generation in France's electricity mix from 75% to 50% by 2025. It also calls for a reduction in fossil fuel consumption by 30% by 2030 and increasing the share of renewables in final energy consumption to 32% by 2030 (up from around 12% now).

The lower house in the French Parliament passed the law on 14 October 2014, and it is now being discussed by the Senate.

However, the proposal is short on detail in some areas. The lack of clarity on nuclear closures, for instance, may benefit incumbent nuclear power producer EDF, rating agency Standard & Poor's (S&P) said in a recent report. The proposal does not specify the closure of the Fessenheim nuclear plant in the Alsace region of France, as initially promised by French President François Hollande, leaving some flexibility for EDF to decide on the best option. Also, the law does not set a cap for the lifetime of nuclear assets, which was another risk perceived for EDF, according to S&P.

"That leaves the company with the option to extend the life of some plants, depending on the economic rationale, but also on French nuclear watchdog ASN's approval," said the report.

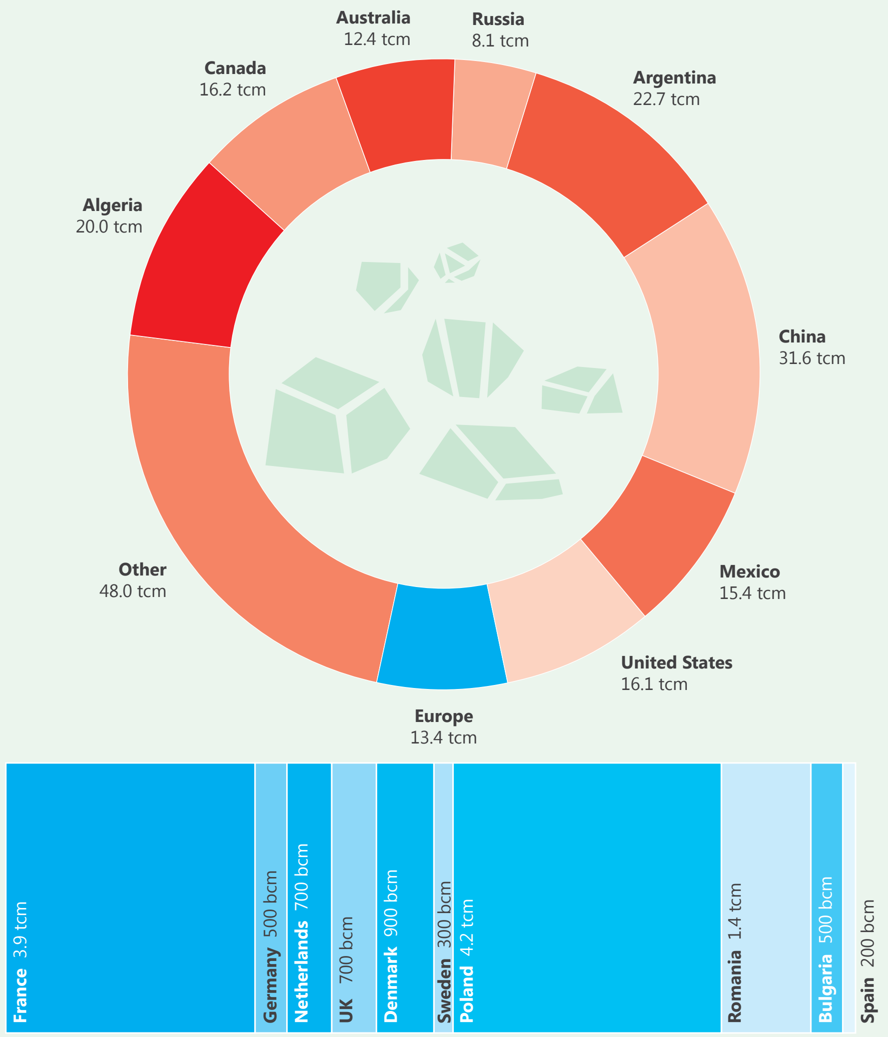
Moreover, the proposal did not specify the size of future incentives that could be allocated to renewables, and it did not mention how the state would indemnify EDF in case of forced nuclear plant closures.

"This lack of quantified measures means the law's implementation is subject to pending publication of decrees at a later date. In addition, it is fair to say such a long-term horizon can be seen as wishful thinking and can easily be modified, undone, or simply not implemented," said S&P.

Shale gas was not mentioned in the proposal.

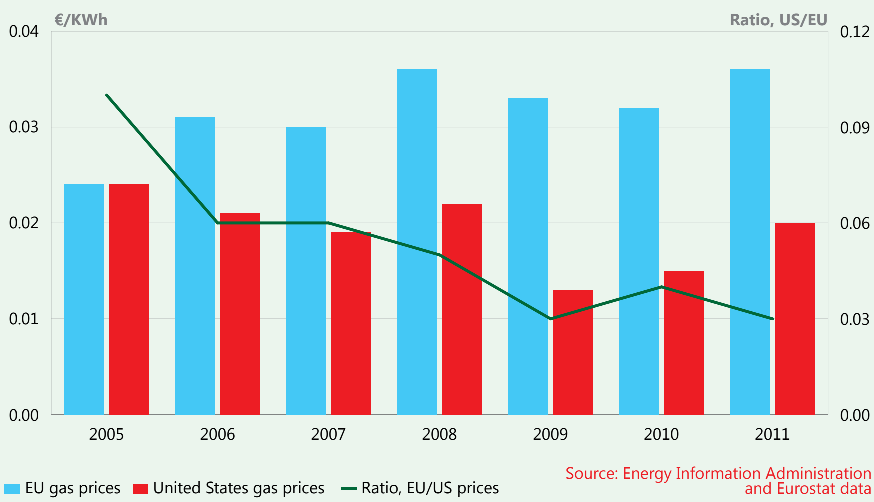
**Andreas Walstad**
in Brussels

**Unproved technically recoverable shale gas resources**




Source: Energy Economic Developments in Europe, European Commission, 2014

**End-user gas prices for industry**




Source: Energy Information Administration and Eurostat data

Approaches to the exploration and regulation of shale gas resources vary widely across the EU, according to a new report from the European Parliament.

Bulgaria imposed a moratorium on fracking in January 2012, and revoked licences for shale gas exploration.

Denmark approved exploratory drilling in Jutland in 2014. A majority of Danes support exploitation, according to the report.

Germany is taking a cautious approach to development, in line with a recent report from its federal environment agency.

The Spanish government supports shale gas development and about 70 hydrocarbon exploration permits have been issued, with a further 75 awaiting authorisation, according to the Spanish Oil and Gas Association.

France has some of the largest estimated shale gas reserves in Europe, but banned fracking in 2011 and cancelled exploration licences. France's constitutional court upheld the ban in October 2013.

Exploration in the Netherlands has been suspended until its environmental and social effects are studied.

Lithuania is in the process of introducing 'investor-friendly' regulations. "Earlier this year, Chevron, which had won a tender to explore in Lithuania, pulled out citing an uncertain legal framework," the report said.

Poland is estimated to have the largest shale gas resource in Europe, but poor geological potential. The government is introducing new regulations aimed at promoting exploration.

Romania lifted a ban in 2013, and is supportive of shale gas. Chevron started exploratory drilling there last May.

The UK government is in favour of development – although commercial production is unlikely before 2020.

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