Wind farms in Hungary – legal overview

Summary

At present, the installation of new wind turbines in Hungary is not possible: not because of natural conditions or technological constraints, but by legislation. Of the latter, neither the regulation of energy law, nor the nature protection restrictions, nor the rules of possible support schemes (the wind is not excluded from these either), but the construction restrictions exclude in fact the construction of a wind power plant. The reason for this is the energy policy and also partially the legal consequences of a specific lawsuit in which our office has acted. New wind power plant capacities can only be established following a special tender procedure to be conducted by HEA based on a special Decree on the conditions of the tender for the construction of wind power capacity, the minimum content requirements of the tender and the rules of the tender procedure.

As for the wind turbines built and licensed before 2016 (a total of ~ 300 MW), some of them were built by owners attributed to the then (socialist) government. Most of them still operate today, they produce in a mandatory off-take system of electricity, the transmission system operator MAVIR buys the produced electricity at a fixed price established by law (indexed by the Hungarian Energy and Public Utility Regulatory Authority ("HEA"), after the capacity according to the decision of the HEA. All of these previously built power plants are marketable, and several changes of ownership have taken place in recent years, but the so-called a mandatory off-take (KÁT) permit of many will soon expire, after which it will only be possible to sell electricity on the open market. Here, in addition to the licensing side, special attention should be paid to issues related to balancing energy settlement and also to network use, as their rules have changed significantly since the original licensing and commissioning, mainly in 2020-2021, as well as to existing restrictions in case of expansion / modernization.

Detailed legal framework

In Hungary, the utilization of electricity obtained from wind energy began in the early 2000s. In June 2007, 40 wind farms were operating, with a total capacity of 61.675 megawatts. Windmills spun at 17 points in the country, most concentrated in a 12-turbine wind farm in the north-western corner of the country, next to the town of Letter. There were specific nature conservation aspects of the installation of wind farms that had to be taken into account during the designation of the plants, but apart from these, in all other aspects the general rules governing the establishment of the conventional power plants (construction, energy and mandatory acceptance) applied until 2006. By 2006, a total of 37 wind farms had been built or licensed in Hungary, with a total of 172 towers and an installed capacity of 329,325 kW. Most wind farms are located in the north-western part of the country, mainly in the vicinity of Komárom and Mosonmagyaróvár, but they are also located on the Tési Plateau, in the area of Csetény and Szápár.

The high demand for wind farm construction permits in Hungary was explained by the fact that a 2-megawatt wind turbine generated about HUF 100 million in revenue per year, which later remained largely unchanged. The TSO, MAVIR is obliged to take over the electricity obtained from this production at a price fixed by law, and this price was almost twice the average price of domestic power plants around 2006.

In 2006, however, there was a significant shift in energy policy and regulation, as shown in an earlier study by us with high publicity. [1]

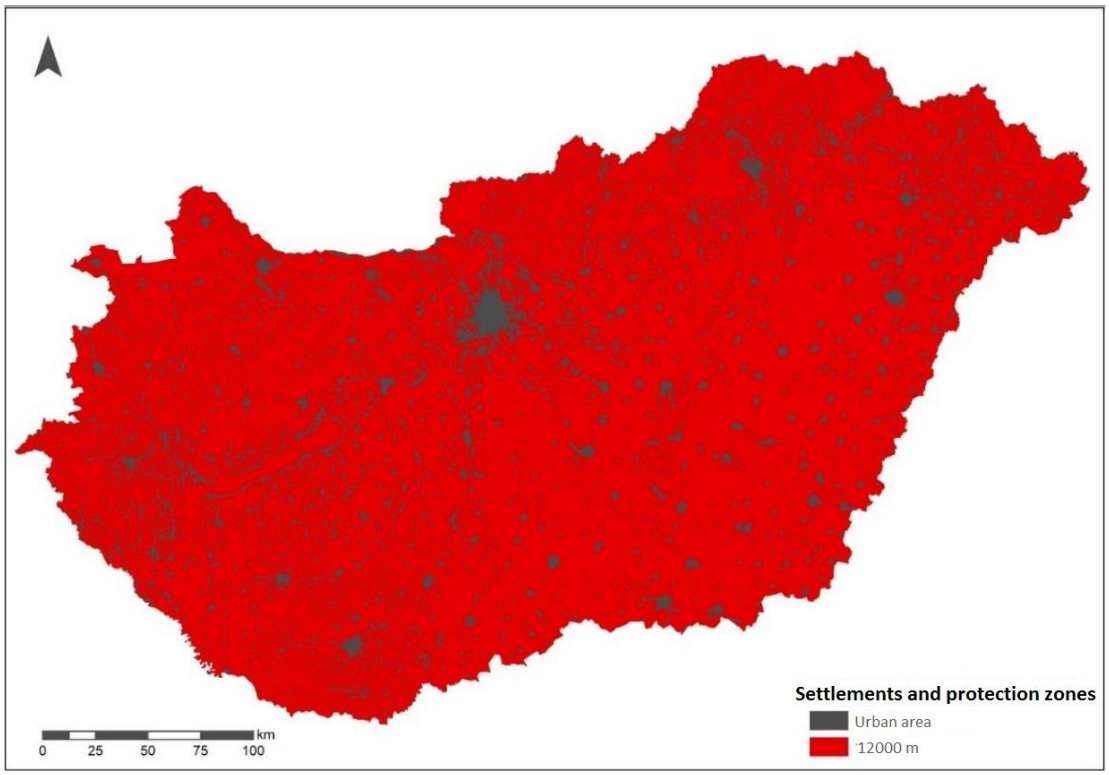
Following Hungary's accession to the European Union (2004), the green energy goals of the EU became binding targets for Hungary, as well. In order to comply with these, the Hungarian energy law regulation intended to solve the issue of promoting power plant investments producing electricity from renewable energy sources (RES) by introducing a so-called mandatory off-take system, accompanied by a feed-in tariff. In this off-take system, the wholesale electricity trader, then later the transmission system operator was obliged to off-take the electricity produced from RES. The expected return of investments with the profit as well was inbuilt in the tariffs of electricity produced that were officially set by law, whilst eligibility to participate in the mandatory off-take system was checked and criteria (for example, the amount of electricity to be sold, time of eligibility for the off-take) were set by HEA in public administrative resolutions.

However, in 2006, given that the guaranteed return (mandatory off-take and feed-in tariffs) made RES investments a very attractive business, countless applications for licenses were submitted to the HEA, in sum exceeding 1,000 MW new wind capacity in total, more than three times higher than what the electricity system could manage. The problem was simple. Given the volatility of wind energy (the wind is not always blowing, not always from the same direction and so on), each megawatt electricity produced from wind requires a certain level of electricity production from different sources as a 'back up', in case the production of the wind park stops (storage possibilities were almost null at that time). This 'back up' is provided through so-called system-level services, provided by old 'conventional', mainly gas-fuelled power plants in the system. That time, the maximum amount of wind energy that could be handled by system-level services was around 300 MW, whilst the total requested new wind capacity in the submitted license requests was the said 1,000 MW. A cascade of failures occurred. Given that the Hungarian electricity system was physically incapable to handle 1,000 MW wind power plant capacity, HEA arbitrarily decided which license application to accept and which to reject, though legally (concerning criteria set by law) all had to be accepted. HEA thus manifestly violated the law – though for a very good reason. HEA issued a so-called 'prospectus' with the arbitrarily set criteria – the problem with this doubtful paper was that as 'prospectus' it did not appear in the law concerning legislation, thus it could not have binding force at all. In terms of normativity, it was simply not law, but the HEA considered it necessary in order to *defend the robustness of law*. The investors whose license applications were rejected turned to the courts in a form of public administrative litigation. Thus, the perturbation manifesting in the HEA's dilemma was passed to a different branch of power: the judiciary. The court, measuring the interest of formal legality (stability) and the interest of the electricity system as a whole (though not manifested in law), decided in favour of the latter. The

[1] Máté Tóth: 'The direction of and lessons learned from the Hungarian wind energy regulation at the dawn of the new promotion scheme (*A hazai szélenergia-szabályozás iránya és tanulságai az új támogatási séma hajnalán, magyar*) – Magyar Energetika, 2012/3 ISSN 1216-8599

consequence was that dozens of investors left the country. The legislator also reacted in its slow way: the electricity act was amended saying that licensing of wind power parks should be subject to special rules in the future. However, the special law regulating such was enacted only one and a half year later, causing an unconstitutional omission.

The next turning point came in 2016 n the regulation. A government decree issued on 15 September 2016 stipulates a system of conditions for the construction of a wind farm that defines a protection distance of at least 12 km from the area to be built in, and also excludes the establishment in the vicinity of military facilities. This decree was a result of a change in energy policy, but it was partially also related to a specific court case,[2] and it makes virtually impossible to establish a new wind farm in the country due to the dense settlement network. The installation of state-of-the-art wind power is not allowed either by the regulations' restrictions on both power and height. This is Government Decre 277/2016 (IX. 15.), which is still in force, "on the Modification of the Rules for Wind Power Plants" defines a protection distance of 12 km for non-household-sized wind power plants from built-up and intended construction areas (by which we typically mean populated areas). The appearance of the unprecedentedly strict regulation was surprised not only by domestic and foreign professional and non-governmental organizations, but also by potential investors, and as the result of the protected



[2] Kúria [Supreme Court] case no. Pfv. V.14.180/2016. In this important case we represented the claimant, a wind park operator, who was previously rejected to prolong its building permit just because a special authority, the Ministry of Defence refused to grant consent to the permit renewal, because of a NATO locator radar that was started to be built nearby, but later then the claimant was originally granted by the building permit. The claimant was then forced to appeal against the resolution of the building authority, the latter becoming the defendant in a lawsuit where in fact they had nothing to do with the matter of fact at all: the law as an edge interconnected the nodes. Finally and before the claimant could win the case, the Government passed the decree prohibiting the building of wind parks close to military objects.

area defined in the decree, it can be stated that Hungary has practically no area that would not be affected by this exclusion (original source: Energiaklub):

A new support scheme, the so-called METÁR system came into force in Hungary in 2017 to support the production of electricity from renewable energy sources. Only renewable power plant units that are related to a new investment and the implementation of which has not yet started at the time of applying for the aid are eligible. The essence of this green premium system is that the producer sells the electricity itself and receives the aid above the market reference price. Irrespective of the aid, producers must bear the possible costs of deviating from the scheduling. *Wind farms are not excluded from these*. Accordingly, wind power plants also appeared in the METÁR call for tenders announced by HEA (2019-2021), as existing power plant units using renewable resources that are undergoing major renovation may also apply for support under the tender (see wind turbine repowering). No bids were submitted for the first METÁR tenders. Due to their size, wind turbines cannot compete with solar power plants in the capacity range below 2 MW.

New wind power plant capacities can only be established following a special tender procedure to be conducted by HEA based on Decree 33/2009 (VI.30) KHEM on the conditions of the tender for the construction of wind power capacity, the minimum content requirements of the tender and the rules of the tender procedure.

As no new wind power plant has been slowly built in Hungary for more than a decade, the question has been raised as to the fate of the power plants currently in operation but falling out of the KÁT support system. Most of them still operate today, they produce in a mandatory off-take system of electricity, the transmission system operator MAVIR buys the produced electricity at a fixed price established by law (indexed by the Hungarian Energy and Public Utility Regulatory Authority ("HEA")), after the capacity according to the decision of the HEA. All of these previously built power plants are marketable, and several changes of ownership have taken place in recent years, but the so-called a mandatory off-take (KÁT) permit of many will soon expire, after which it will only be possible to sell electricity on the open market. Here, in addition to the licensing side, special attention should be paid to issues related to balancing energy settlement and also to network use, as their rules have changed significantly since the original licensing and commissioning, mainly in 2020-2021, as well as to existing restrictions in case of expansion / modernization. Here the most important framework is the Act LXXXVI of 2007, but a huge number of decrees accompany the Act. Where KÁT entitlement still exists, its conditions and transferability must be examined in all cases.

In our experience, in most cases, power plants that fall out of the KÁT subsidy sell their energy fixed to the market price, most often in the Day-ahead market or the Intraday market. Based on the operating experience, it can be said that wind farms that have been excluded from the mandatory off-take (KÁT) support system in recent years or will be excluded in the near future will be able to operate economically for many years (10-15 years), but this is to be validated by technical due diligence. However, without the aid scheme, they are also exposed to market risks.

Today, 324.9 MW wind power plant capacity remain in operation, accounting for 3.8% of domestic electricity generation capacity, while covering 1.3-1.5% of electricity consumption, which is typically 2.2-2.8%. PJ means energy (HEA 2019). In terms of utilization, the domestic data are surprisingly good,

as the average capacity factor calculated between 2011 and 2018 is 23.3% in Hungary, compared to 22.1% in the EU and only 19.2% in Germany. In the background of the surprising data, two explanations seem to be the most probable: a) In Hungary, few wind farms were installed in the best possible locations; b) The installation started later than in the western part of Europe, so the poorer results of many old equipment do not degrade the domestic data series.