

Energy & Natural Resources - Hungary

New supervisory authority for the energy sector

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On April 4 2013 Act 22/2013 establishing the Hungarian Energy and Public Utilities Office (HEPO) entered into force. According to the new law, HEPO has replaced the former regulatory body for the energy sector, the Hungarian Energy Office (HEO). The government has stated that the new authority will protect efficient energy consumption, security of supply and consumers' interests.

HEPO has been granted a considerably wider range of powers than its predecessor. HEPO will not only supervise the natural gas and electricity markets, but will also control heating, water and sewage utilities. Furthermore, the legal status of the authority has changed, as it will operate as an 'autonomous regulatory body' empowered to issue decrees in accordance with the Constitution. This implies that HEPO is considered a constitutional body.

The former HEO was originally established in 1994 with the task of supervising the operation of the natural gas and electricity markets. Its role changed continuously in line with developments in the Hungarian energy sector and, following Hungary's accession to the European Union in 2004, with EU legislation related to the energy sector. Over the past two decades, HEO operated as an authority subordinated to the government; however, the applicable laws always ensured its independence to a certain degree. The enhancement of HEO's position was also advocated by the European Union, which required member states to establish independent regulatory bodies in the energy sector in accordance with the Third Energy Package.

The expansion of HEO's competence commenced before 2010, although the process was accelerated by the current government. The scope of the infrastructure under HEO's supervision was extended to heating in 2011 and to public water utilities in 2012. In January 2013 the Ministry of National Development introduced a draft law to establish a new authority. The proposition originally included the integration of the Hungarian Atomic Energy Authority and the Hungarian Office for Mining and Geology into the new body; however, this proposal faced strong objections from experts and was thus dropped.

The newly established body qualifies as an autonomous regulatory body within the meaning of the Constitution. This means that it is responsible solely to Parliament and cannot be instructed by any other person or organisation. It is established by a cardinal act (therefore, any amendment thereto requires a two-thirds majority vote in Parliament), and its tasks and duties can be prescribed exclusively by an act of Parliament.

The powers of HEPO's president have increased considerably under the new structure. The president will be appointed by the prime minister to a seven-year term with the possibility of reappointment for one additional term. Vice presidents will be appointed personally by the president, who is also entitled to recall them without explanation. Furthermore, the act defines several professional criteria and conflict-of-interest rules in order to enhance the independence of HEPO. By virtue of the new act, the mandate of previous executives terminates when new rules enter into force; however, the current president is expected to be re-nominated.

The most important change is that the new HEPO is entitled to adopt decrees and thus becomes a legislative authority. According to the amended Gas Act and Electric Energy Act, the authority will adopt a decree to determine network access fees. According to the previous rules, HEO performed this duty by adopting an individual administrative resolution subject to court control.

The main reason for these changes was the government's new policy aimed at reducing public utility charges. The Cabinet intends to lower the cost of living and therefore announced in 2012 that public fees for gas, electricity and heating would be

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reduced by 10%, primarily by decreasing the basic prices and prohibiting the possibility to shift certain expenses to consumers. The resolution determining the applicable new fees entered into force on January 1 2013. The government subsequently announced its intention to expand the reduction programme to water, sewage, refuse collection and chimney sweeping services as well. Furthermore, Mr Antal Rogán, leader of the parliamentary majority party, has spoken about the possibility of further reductions in future.

The policy has been fiercely criticised by energy companies. Critics argue that due to the legal and economic difficulties of previous years, the cutbacks have caused a nearly unbearable situation and forced the postponement of necessary developments. Subsequently, six providers challenged the HEO resolution before the Administrative and Labour Court of Budapest, which abolished the resolution at first instance in March 2013. Prime Minister Viktor Orbán called the decision "scandalous" in one of his speeches and expressed his government's intention to "protect the fee reduction programme".

According to several experts, alongside EU requirements, this new governmental policy has caused significant changes. As the new authority is a legislative body, its decisions can no longer be challenged before a court. However, as a last resort, any person or entity that finds HEPO's acts to be illegal can have recourse to the Constitutional Court by submitting a constitutional complaint.

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