ENERGIA KONTROLL PROJEKT

DYSFUNCTIONS IN THE STATE ENERGY SECTOR AND ENERGY LEGISLATION

Budapest, November 30. 2009

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CONTENT

ABOUT THE RESEARCH (AN INTRODUCTION TO THE METHODOLOGY)

This report contains the results of research carried out by the Energy Club between April and November 2009, within the scope of the Control Energy Project, undertaken with the intention of mapping out the Hungarian state energy sector[1] and revealing any related dysfunctioning. At the same time, as another part of the project, the first thematic area of research was completed; a study of corruption concentrating on the Hungarian energy sector. Control Energy was supported financially by the Open Society Institute and the CEE Trust for Civil Society. The aim of the whole project is to promote fair play and transparency in energy and the state energy sector. One Control Energy project area's aim was to shed light on the state energy sector's disfunctions, doing so from many different perspectives. On the one hand, the state energy institutions inspected themselves from the perspective of how they operate within the state energy sector. In addition to this an important aspect of our investigations was the complex exploration of Hungarian energy legislation. The exploration of the most important regulations of the Hungarian energy regulator and systemisation of these findings provided the opportunity for us to draw conclusions concerning Hungarian energy legislation (and Hungarian legislation in general). The theoretical nature of the research allowed for a wide analysis of sources: we processed the most important Hungarian and foreign literature on the field. On the basis of these we defined the most important areas of dysfunction in national energy and those requiring the most urgent rectification. To conclude the sub-project we compiled a list of professional proposals in respect of the discovered dysfunctions.

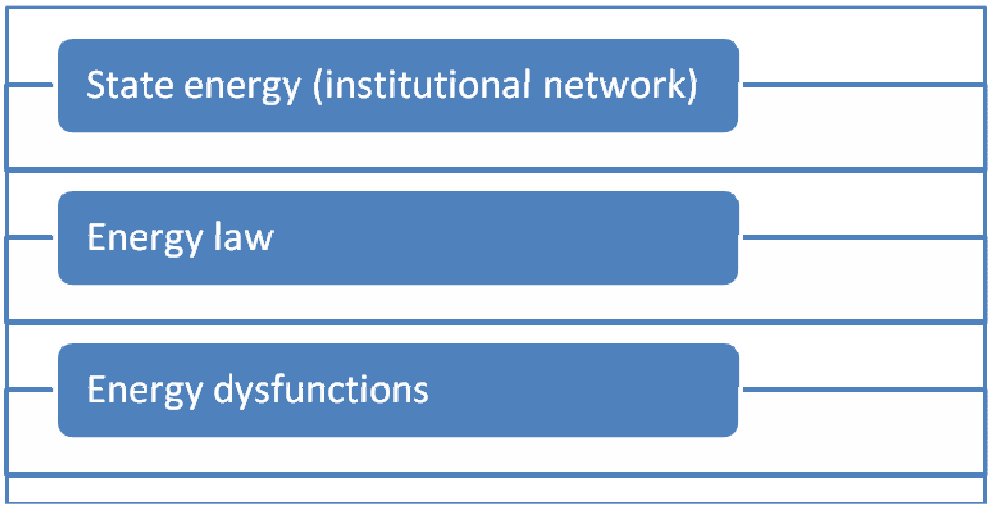


Diagram 1. The areas investigated

[1] From now *state energy sector* will be understood to be the system of bodies created and maintained by the state, according to legislation. It is expedient - at least for the purpose of this report,– to separate this methodologically from „private energy sector", which primarily refers to an energy institution network, institutionally separated from the state sector (nonetheless connected to it in a 1000 ways)

EXECUTIVE SUMMARY

The value and novelty of our report lies partly in its thematical, summarising and structuring qualities, as well as the Energy Club's practice-based definition of dysfunctions, their description, and some related proposals. Having unravelled the complex systems of the state energy sector, we identified the most important state energy bodies which, based on legislation, hold the most significant scope of tasks and influence. The institutions were primarily selected according to the description of their responsibilities, bearing in mind the complex nature of the energy sector, which cannot be disregarded when choosing particular institutions. On the basis of all this 5 main types of bodies were distinguishable, with some 26 institutions[2] related to them.

Table 1. Institutional networks introduced in the report

Type of body	**Name of body**	
Those public representative and state bodies influencing energy policy and other relevant policy areas (legislation, policy planning)	– Parliament – Local Government – Government – Ministry of Justice and Law Enforcement – Ministry of Environment and Water – Ministry of Finance – Ministry of Economics and Development – Ministry of Local Government and the Regions – Ministry of Transport, Telecommunications and Energy	
Energy administration and the relevant sub-bodies (implementation)	<u>Primer energy administration</u> – Hungarian Energy Office – National Atomic Energy Authority – Hungarian Mining and Geological Office	<u>Bodies related to the administration</u> – Registrar – State administration office – Environmental protection agencies – Fire services – Land Registry
Network of companies related to state energy sector	– Hungarian Electricity Company Ltd., and its company network and holdings network (MVM Zrt.) – Hungarian Oil and Gas Industry Plc.and its company network (MOL Zt.) – Paks Nuclear Power Plant Ltd. – Radioactive Waste Management Non-profit Ltd. – „Energy Centre" Energy Efficiency, Environmental and Energy Information Agency Non-profit Ltd.	
Other bodies and institutions	– Central Nuclear Financial Fund – Hungarian Competition Authority – National Consumer Protection Authority – Hungarian Trade Licensing Office – Ombudsman for Civil Rights and Ombudsman for Future Generations	
Justice services (Permanent Court of Arbitration concerning Energy)		

[2] Of course, this does not cover the giant corporate networks behind the energy companies.

The section introducing the institutions is followed by a résumé of background information concerning energy legislation. In this chapter, besides naming the actual elements of legislation, we analyse the comprehensive framework of the national energy legislation, drawing conclusions about the state of the legislation, its substance. Furthermore, - to achieve greater transparency – we have placed legislation on energy subjects in thematic order.

Besides introducing the Hungarian state energy sector and energy legislation we shed light on a few such characteristic dysfunctions – stemming from these areas –, which, while far from covering the whole array, have a fundamental effect on the area investigated, precisely for which they could be a starting point for prospective reform of the state energy sector. Above all else, this chapter attempts to provide an abstract definition of dysfunctions, defining what we regard as such within the scope of the report.

It is only following this that we expand on dysfunctioning in particular, namely in the following scheme:

A) Incoherence between strategical planning (policy making) and planning documents	B) Problematic areas in policy making and implementation	C) Funds, special financing systems
• Lack of participation, transparency and bancground analysis; • A lack of strategical documnats and incoherence in existing ones.	• A shift in emphasis on legislating within the energy legislation; • Confusion in thematic areas in legislation; • Absurdity; • 'Ownerless' renewables.	• The crisis fund; • Central nuclear financial fund; • The green investment scheme.

Diagram 2. The framework of dysfunctioning introduced in the report

1. STATE SECTORS INVESTIGATED WITHIN THE SCOPE OF THE CONTROL ENERGY PROJECT

Most of the new energy sector institutions were created along with diversified energy usage in the 1990s. The first step in restructuring the energy sector institutions happened in 1992, with the winding up of the monopoly status-enjoying economic units from earlier times, the creation of economic companies from these state monopolies, the entrance of the Hungarian Energy Co. Ltd. onto the market , as well as the creation of MOL Plc.. This was followed – mostly in 1995 - by privatisation of the sector. Presently the electricity and natural gas suppliers and most of the power stations are majority owned by foreign investors. Energy policy brought in in 1993 and the measures since then have reshaped the larger part of the energy sector's structure. The fundamental goal of the Parliamentary Resolution on Energy Policy, 21./1993. (IV. 9.) was the creation of a secure, economic, environmentally-sensitive energy supply, with the gradual phasing-out of the one-sided energy dependency. The broad goals of Parliamentary Resolution on Energy Policy 40/2008. (IV. 17.), for the period 2008–2020, were the following: security of supply, the prevalence of competitiveness and sustainability together as priority, long term goals, meeting the needs of the population and the economy safely and economically, with respect to environmental perspectives; strengthening the energy market; as well as the realisation of goals set within the framework of the European Union.
The state, then, takes a central place in energy, and is in contact with the field in many ways:

- Through the different public representative and state bodies influencing energy policy and other relevant policy areas (legislature, policy planning);
- Through energy administration and other relevant fields (implementation);
- Through companies connected with state energy sector;
- Through other bodies, institutions and funds;
- Through justice services (Permanent Court of Arbitration concerning Energy)
  In the following part – continuing with this theme - we will introduce the scope of activities of the most important energy actors. Central to our investigation is what type of energy related activities (direct or indirect) particular actors have.

1.1 A thematic network of the state energy sector area analysed

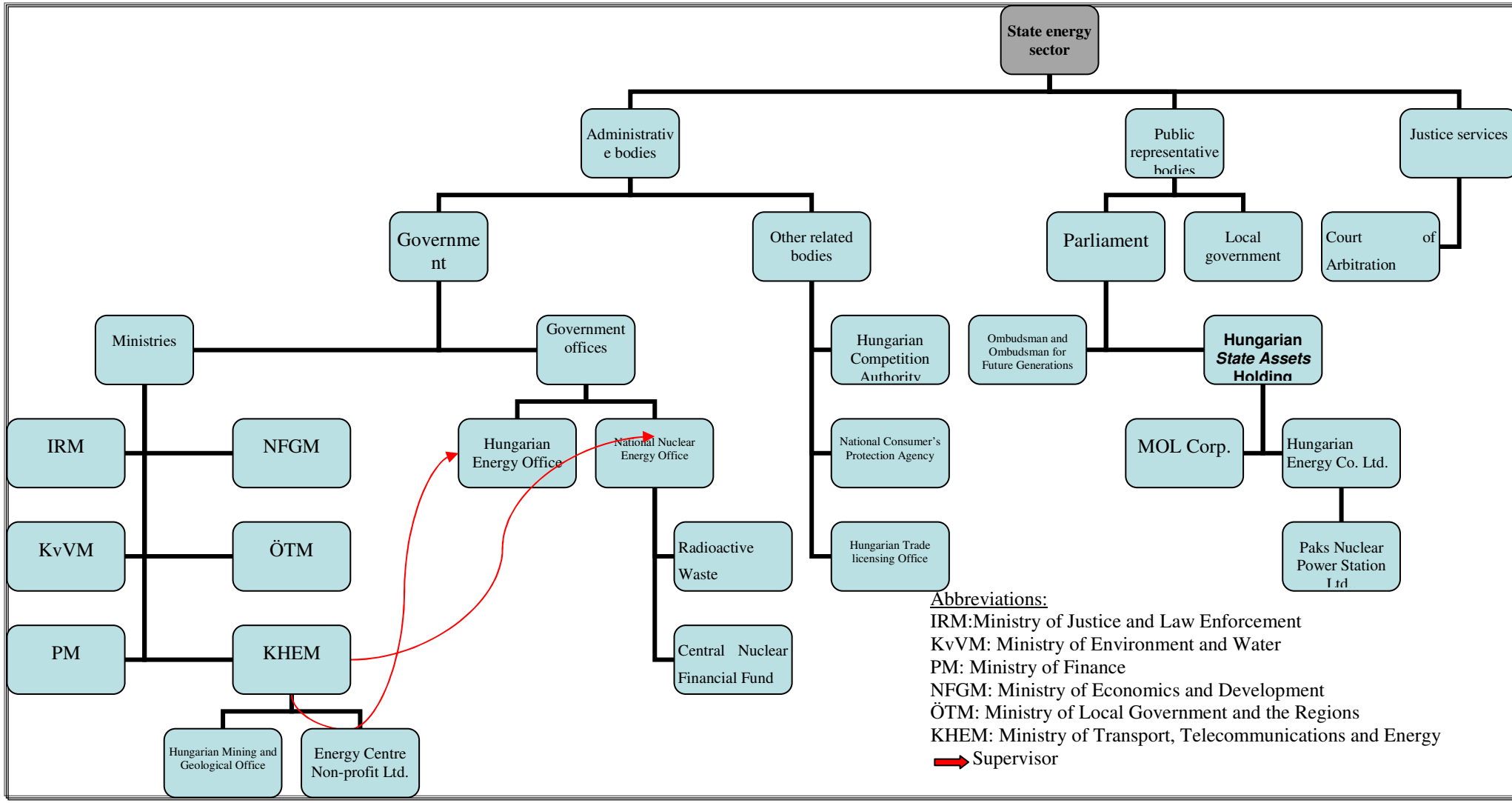


Diagram 3. *The thematic network of the state energy sector area analysed*

1.2 Those public representative and state bodies influencing energy policy and other relevant policy areas

Public representative bodies (the Parliament and local government), as well as the government, play a role of primary significance in the creation of energy policy. The related bodies and institutions are:

The Parliament [3] (based on submission from the Government of the day) decides upon the country's energy policy. So far such public policy documents have been accepted twice [Government Resolution on Energy Policy 21./1993. (IV. 9.); Government Resolution on Energy Policy 40/2008. (IV. 17.) for period 2008–2020]. Besides this the Parliament forms the legal and decision-making foundations for energy legislation, ratifies the international documents, as well as creating the financial laws - something of outstanding importance from an energy perspective.

The **Local Government**[4] as „authority's local representative"– within the legal framework – can independently regulate, and regarding particular cases has a free hand to administer those local public affairs falling within scope of its competence.[5.] Like the Parliament, Local Governments also have the possibility to create legislation and influence public affairs: they can issue statutes, and –which is particularly significant from the point of view of creating local energy policy – prepare an energy supply report within a separate legislation for the Annual General Meetings of the capital, the county, and the county towns, based on the area development plan[6.]

The **Government's**[7] role in preparing legislation (public policy recommendations, programmes) is prominent, but its role as a legislator is also significant: a large proportion of national energy legislation is by Governmental Decree. The Government also plays a big part in the implementation of the legislation. As a body it is an important actor, but within energy questions a lot depends on individual ministers too. It is because of this that it would serve us well to briefly introduce the most important ministerial activities which exercise some influence on the energy sector. We chose those actors from the ministerial structure in place at the time of writing, who, due to their roles in creating legislation, supervision, or in cooperating with other ministries, constitute an important part of the state energy apparatus Hence we deal with transport, telecommunications, energy issues; environment and water issues; justice and order; Local Government and development; finance; as well as the national development and economic ministers.

Minister of Transport, Telecommunications and Energy[8] is the Government member responsible for transportation, energy policy, mining issues and postal services.[9] The minister's activities notably include preparation of legislation as well as creation of Decrees.
As well as this, being responsible for energy policy, the minister is charged with preparation of legislation on:[10]

- electricity;
- natural gas supply;
- cross-border transport of electricity and natural gas;

[3] Law on the Hungarian Constitution of year 1949..XX. law (referred to from now as the constitution) 19. §
[4] Constitution 41–44/C. §§; as well as the Law on Local Government of year 1990, LXV. law (referred to from now as: LGL.)
[5] Local affairs include; providing local inhabitants with public services, the exercise of authority as local government, provision of local organisational, personnel, and financial means for these.
[6] The local government and its offices, the officials of the republic, as well as those activities of bodies subordinate to local government law of year 1991. XX. 65. § (2) paragraph.
[7] Constitution 35. §
[8] Government Decree on the activities and sphere of influence of the **Ministry of Transport, Telecommunications and Energy** 133/2008. (V. 14.) (referred to from now as: KHEM statute
[9] KHEM statute 1. §.
[10] KHEM statute 3. § (2) paragraph

- district heating;
- district heating and hot-water services;
- reserves of imported oil and oil;
- use of biofuels and other renewable fuels in transportation;
- the use of renewables in heat and energy production;
- legislation in the interest of improving energy efficiency and energy saving, as well as issuing related ministerial Decrees.

The minister exercises the right of agreement within the scope of energy policy[11]

a) Issue of greenhouse gas emission credits in respect of issues connected with other minister's remits, with the exception of the reserve units put aside for new entrants.

b) use of income from sale of greenhouse gas emission credits, in respect of issues connected with other minister's remits

The minister, within the scope of his responsibility for energy policy, supervises the implementation of the Energy Efficiency Action Plan, which serves the goal of achieving energy efficiency. Within this framework the directors of the organisation implementing the Action Plan regularly report on the progress of the Action Plan, as well as preparing an annual monitoring report about the results of their measures.[12] The minister, within the scope of his responsibility for mining issues, prepares the legislation applicable to mining, as well as issues the ministerial Decrees on related issues. As part of his mandate he directs the Hungarian Mining and Geological Office.[13] The minister is substituted by the Minister for National Development and Economy, according to the Year 2006. LVII. law 31. § (2) concerning the legal status of central state administrative bodies, members of the Government and state secretaries.[14]

The scope of the **Minister of Environment and Water**'s[15] activities, due to the relation between energy and the environment, can touch the field of energy. The ministry's statutes even state clearly that the minister, within the scope of his responsibility for environmental protection, cooperates with the minister responsible for supervising the National Atomic Energy Authority, regarding protection from radio-active pollution.[16]

The **Minister of Justice and Law Enforcement**[17] may have a role to play in energy legislation, as well as in relation to meeting obligations related to the European Union.

As Local Government has the right to create legislation concerning energy, and their activities include cooperation in local energy provision, it follows that the Minister of **Local Government and Development**[18] also has a role to play as the member of Government responsible for Local Governments.

The Minister of Finance[19] is a notable energy actor because he is the member responsible to the Government for the budget, the fiscal policy, regulation of the management of the state's properties, as well as the supervision of the states assets.

[11] KHEM statute 5. §
[12] KHEM statute 5/A. §
[13] KHEM statute 3. § paragraph (3), 4. § paragraph (2)
[14] KHEM statute 6. §
[15] Government Decree 165/2006. (VII. 28.) (from now on: KVVM decree) on the sphere of authority and tasks of the Minister for the Environment and Water
[16] KVVM statute 3. § paragraph (2)
[17] Government decree 164/2006. (VII. 28.) (from now on: IRM decree) on the sphere of authority and tasks of the Minister for Justice and Law Enforcement.
[18] Government decree 132/2008. (V. 14.) (from now on: ÖTM decree). on the sphere of authority and tasks of the Minister for Local Government
[19] Government decree 169/2006. (VII. 28) (from now on: PM decree) on the sphere of authority and tasks of the Minister for Finance.

The significance of the **Minister for National Development and Economy** to energy issues is based on the responsibility for the following areas of governance: economic policy; industrial concerns; trade; foreign; external sector; construction; development policy; further to this research and development and technological innovation.[20] The previously mentioned, general ministerial authority is also held.

1.3 Energy administration and other relevant fields

1.3.1 Primer energy administration

The **Hungarian Energy Office** is the key central body in Hungarian energy administration, which won its present day status in the reorganisation of the state administration in 2006. It operates as a government office, a central state administrative body under the direction of the Government, brought about by the Law on Government Office[21]. The supervision of this Government Office is carried out by a minister appointed by the prime minister. In the case of the Hungarian Energy Office this means that the Minister of Transport, Telecommunications and Energy holds this responsibility.

The applicable laws determine the scope of the office's activities and influence: its activities are prescribed according to particular parts of laws.

Four laws fundamentally determine the Hungarian Energy Office's activities:

- The 2007. Year LXXXVI. Law on Electricity (from now referred to as: VET Law);
- 2008. Year XL. Law on Gas Supply (from now referred to as: Law on Gas Supply);
- 1994. Year XLI. Law on Gas Services;
- 1998. Year XVIII. Law on District Heating.

Based on the VET Law, the office has a wide remit concerning primarily electricity provision, security of supply, supervision of the efficient working of the electricity market, as well as ensuring the requirement of non-preferential treatment and the encouragement of effective competition.[22]

The other important group or activities of the Hungarian Energy Office is defined by the Law on Gas Supply. In general, the activities concerning the provision of gas supply, the safety of supply, supervision of the efficient working of the market, as well as ensuring the requirement of non-preferential treatment and the encouragement of effective competition include, amongst others, are the following:

a) On the basis of the Law on Gas Supply, and legislation issued with its authority, **ensuring the proper operation** of natural gas industry companies and those activities requiring licensing, according to the gas market legislation and the authorities' regulations.
b) Promotion of an efficient and sustainable competition on the natural gas market.
c) **Enforcement** of efficiency requirements, the preferred technical-economic optimum, and the lowest cost principle
d) The **protection and improvement** of security of supply
e) The **enforcement** of the **sustainable development requirement** and **energy policy goals**
f) **Informing the public**
g) Protection of the rights of **consumers** and **licensees.**
h) Preventing the abuse of technological monopoly and restricting competition through the

[20] Government decree on the activities and remit of the Minister of National Development and Economy 134/2008. (V. 14.) (from now referred to as: NFGM statute)
[21] Law of Year 2006. LVII. on legal status of central state administration bodies, members of the Government and state secretaries.
[22] Notes on the activities to be carried out by the Hungarian Energy Office, according to the VET law, can be found in ANNEX I.

practice of authorities regarding the activities of market players and the pricing of system usage fees, universal service and last resort service, complying with the requirements of the European Union.

Similarly, the **National Atomic Energy Authority** (OAH) is a central energy administration body. Therefore –as with the Hungarian Energy Office – it is directed by the Government, and the Minister of Transport, Telecommunications and Energy supervises it.

The fundamental task of the OAH [according to the 114/2003. (VII. 29.) Governmental Decree], is to provide and coordinate the tasks of an authority, independently of those bodies with an interest in the use of nuclear energy. These tasks are related to the safe use of nuclear energy, especially the safety of nuclear materials and facilities, tasks associated with protection from nuclear accidents, and guaranteeing full public information, as well as previewing legislation and regulations related to the use of nuclear power .

The operation of the National Atomic Energy Authority is determined by four pieces of legislation and other documents:

- The Law on Nuclear Energy, year 1996. CXVI.
- The Government Decree 114/2003. (VII. 29.) on National Atomic Energy Office's activities, scope of influence and right of penalty, as well as the Government Decree 114/2003. (VII. 29.) concerning the activities of the Nuclear Energy Coordination Council
- The Government Decree 89/2005. (V. 5.) on the requirement for safety for nuclear facilities and the authorising activities associated with this
- The founding statutes of the National Atomic Energy Authority

The OAH's mandate extends to evaluating and harmonizing research and development activities associated with the use of nuclear energy, and the financing of underlying technical activities required for official inspection. Its mandate also includes the harmonization of international cooperation concerning the use of nuclear power, the preparation of intergovernmental conventions related to the field, and the unifying of cooperation with international organisations. The OAH is responsible for the final placement of radioactive waste, as well as the creation and operation of facilities for the temporary and final placement of spent fuel, and the handling of the Central Nuclear Financial Fund for financing the dismantling of nuclear facilities.

The National Atomic Energy Authority activities by topic[23]

- Official supervision of nuclear facilities
  - Licensing
  - Supervision and inspection
  - Safety evaluation
  - Validation
  - Official supervision of nuclear and radioactive materials
  - Inspection of nuclear materials
  - Nuclear import-export
- Traffic in radioactive materials
- Treatment of radioactive waste
- Protection from nuclear accidents
- Regulation
- International relations
- Participation in the European Union's work
- Underlying technical activities
- Public information

[23] For details see: http://www.haea.gov.hu/web/v2/portal.nsf/feladatok_hu

The **Hungarian Mining and Geological Office** is the third central body of energy administration. In contrast with the two offices previously introduced, this is not a government office, rather a central office, and, having been brought into being by a Governmental Decree, constitutes a central administrative body under ministerial control. The Hungarian Mining and Geological Office is directed by the Minister of Transport, Telecommunications and Energy, related to activities on mining.

1.3.2 Bodies connected with state administration

In order to give the whole picture – simply as a reference – mention must be made of those other offices of public affairs connected to the central administration (and the related legislation), which place the primary role in licensing procedures.

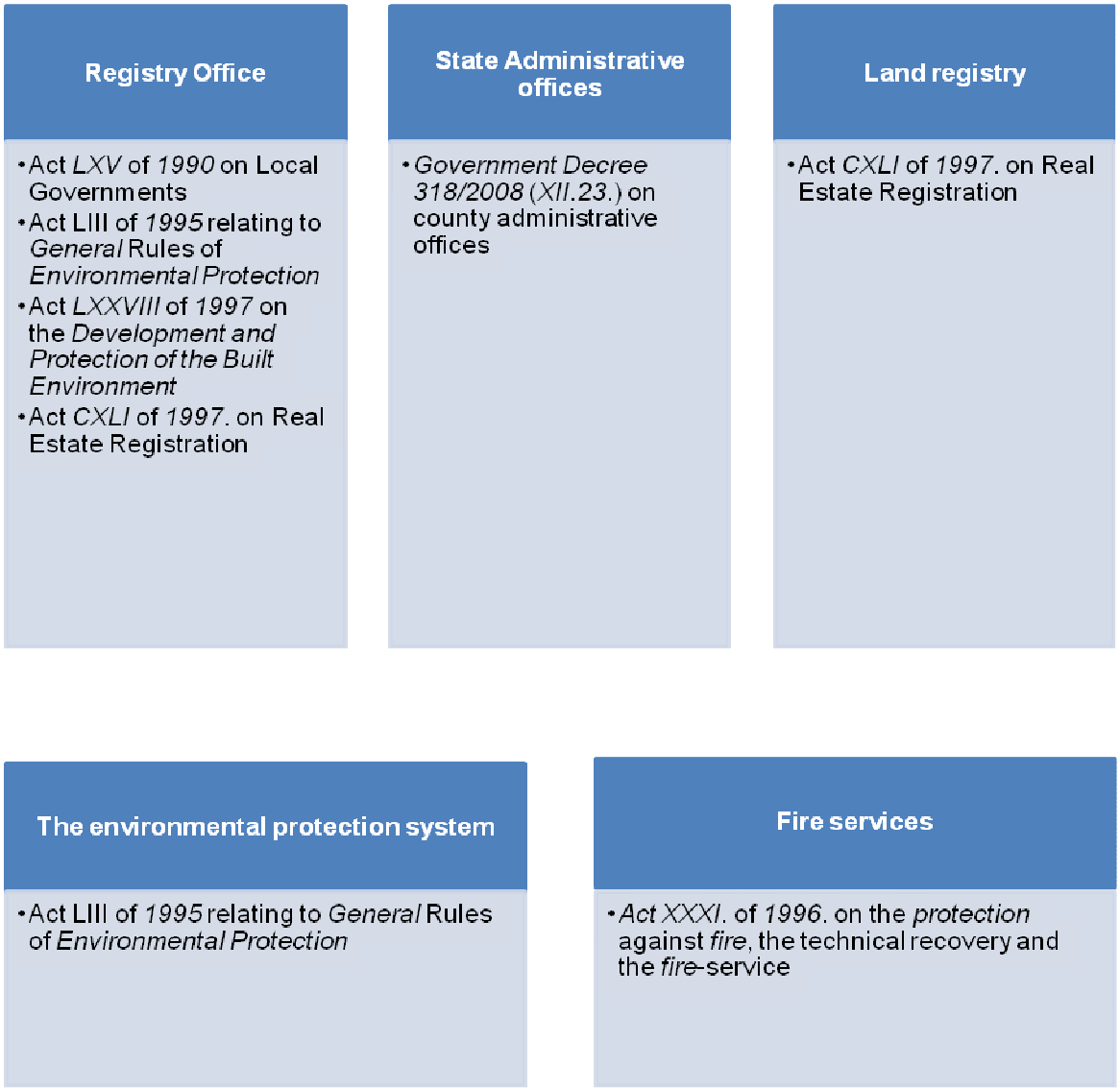


Diagram 4. Bodies connected to public administration

1.4 Companies connected with the state energy sector

Those companies connected with the state administration, while they do not have any administrative functions, are significant actors as they are financed from public funds. The Hungarian Privatization and State Holding Company's (ÁPV Ltd.) legal successor, the Hungarian State Assets Holding Company (MNV Ltd.).[24] is the founder and only stakeholder of MNV Ltd, MOL Plc., HIDROTECH Mining and Environmental Protection Ltd, E.ON Southern Transdanubian Gas network Ltd, Tisza Regional Water Works, the Recski Oremines Ltd, as well as the Hungarian Gas Suppliers Ltd. It is also of significance that the Hungarian Electricity Co. Ltd (MVM Lt.) and MOL Plc., both owned by the MNV Ltd, have their own extensive network of companies. Another important energy company is the Paks Nuclear Power Plant Ltd. MOL Plc. leads the list of energy companies with connections to other companies with 44 connections, followed by MVM Ltd. with 10 connections, and with Paks Nuclear Power Plant Ltd closing the list with 6 connections.

Table 1. The most important state energy companies' connections

Form of connection	**MVM Ltd.**[25]	**MOL Plc.**	**Paks Nuclear Power Station Ltd.**
Company member (Ltd.)	6	29	2
Founder / only stakeholder	4	11	0
Member of an Ltd.	0	1	0
Member of Association	0	2	1
Member of Public Company	0	1	3
Total	10	44	6

It is characteristic of the energy companies to participate in limited companies, to found shareholder companies, or to be the only stakeholder in the latter.

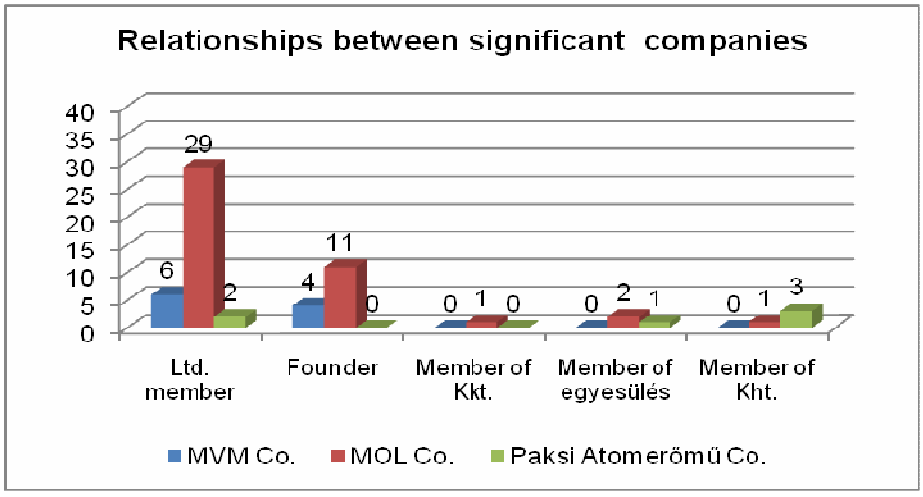


Diagram 5. Relationships between significant companies

[24] It needs noted that with the winding up of the ÁPV Ltd., the Hungarian State Assets Holding Company. , has since January 1st, 2008 exercised ownership rights in the state's behalf.

[25] For background on MVM Ltd. see Annex II.

Beyond those mentioned above, two other companies deserve attention.

Radioactive Waste Management Non-profit Ltd.

Paragraph 40 of the Atomic Act which came into force on June 1st., 1997 states the following concerning the decommissioning of nuclear facilities: „As an issue of national interest, the body appointed by the state is responsible for the long-term disposal of radioactive waste, the temporary storage and final repository of spent fuel, as well as managing the tasks associated with decommissioning of nuclear facilities." According to paragraph 62 of the Act, the costs of the fore-mentioned activities have to be covered from Central Nuclear Financial Fund.

The Government, in Parliamentary Resolution 2414/1997. (XII. 17.), mandated the National Atomic Energy Authority to create a public interest company named „Radioactive Waste Management Non-profit Ltd" by July 1st. 1998, which should be charged with the tasks in paragraph 40 of the Act.

TASKS OF THE RHK KFT (RHK LTD.):

Planning and making reports

- Compiling research and investment plans
- Calculation of the sums to be paid into the Fund
- Making technical and financial reports
- Making and reviewing the decommissioning plans of nuclear facilities.

Research, development, investment

- Choosing the location of the disposal sites of low and medium level activity waste, building the container, having it licensed
- Expanding the temporary storage of spent fuel
- Preparing the final disposal of high level activity waste, choosing the waste disposal site, building it and having it licensed

Operation

- Operating the disposal sites of low and medium level activity waste
- Operating the temporary disposal site of spent fuel
- Operating the disposal site of high level activity waste

Transporting radioactive waste to the disposal sites

The core activity of the „**Energy Centre" Energy Efficiency, Environmental and Energy Information Agency Non-profit Ltd**[26] (based largely on the example of the American type governmental agency): performing the tasks of the national energy efficiency and statistical agency; the promotion of energy efficiency the strengthening and support of international cooperation for environmental protection; contributing to the work of Governmental bodies in developing strategy for energy efficiency and to spread renewable energy sources, in laying the basis for decision-making procedures, as well as their realisation and implementation. The Energy Centre's tasks also include: handling grants for national energy efficiency and renewable energy use targets (National Energy Saving Programme); the partly European Union funded National Development Plan (NFT); the tender constructions called in the framework of the New Hungarian Development Plan (ÚMFT) for which the realisation tasks are handled by the Energy Centre Non-profit Ltd. Other important tasks include energy management, energy efficiency planning, as well as environmental forecasting techniques, dissemination of analysis, research results and organisation and strengthening of experience exchange between the Governmental, administrative, and economic actors and other institutions. To provide background information for the ministries' strategic documents the latter activities are supplemented by; the preparation, acquisition, and analysis of professional materials; continuous observation and supervision of the field; if necessary the initiation and coordination of economic research; project, expert and training support for implementation of Governmental resolutions related to the field. The only member of this Non-profit Ltd. is the Hungarian state, which is represented in this case by the Ministry of Transport, Telecommunications and Energy.

[26] Government Decision 1107/1999. (X. 8.) gave basis for the founding of the „Energy Centre" Energy Efficiency, Environmental and Energy Information Agency Non-profit Ltd. as well as Government Decree 1031/2000. (IV. 7.) on its implementation.

1.5 Other bodies, institutions and foundations requiring investigation

1.5.1 Central Nuclear Financial Fund

The Central Nuclear Financial Fund (CNFF) is a state reserve fund[27] which provides funding for the final repository of nuclear waste, the establishment and operation of storage facilities for the temporary and long-term repository of spent fuel, as well as the decommissioning and dismantling of nuclear facilities: according to the Act XXXVIII of 1992 on Public Finances, (from now on referred to as: Áht.), it serves exclusively this purpose. The fund is held by the minister charged with overseeing the atomic energy supervisory body (presently the Minister of Transport, Telecommunications and Energy). The fund is handled by the atomic energy supervisory body (National Atomic Energy Authority).

License-holders are obliged to make payments into the fund to cover the costs of the final repository of radioactive waste, the spent fuel's temporary and long-term disposal, as well as the decommissioning and dismantling of nuclear facilities. The size of the amount to be paid is decided by the annual state budget, according to the cost estimations made by the responsible body as stated in Atomic Act 40. §,, based on cost estimations made by - in the case of nuclear power stations - the Hungarian Energy Office and appraised by the atomic energy supervisory body.

1.5.2 Hungarian Competition Authority[28]

As the energy sector is – following national energy liberalisation – the battleground for competing market actors, it is important to mention the activities of the important state body with the responsibility for making sure the rules of market competition are abided by, the Hungarian Competition Authority (GVH). Parliament created the GVH on passing the Act outlawing unfair competitive activity, Act LXXXVI of 1990 on the Prohibition of Unfair Market Practice. The agency started operating at the same time as the act entered into force, on January 1st, 1991. Economic efficiency, brought about through free market competition and protection of transparency, was the motive behind the enactment of the law prohibiting anti-competitive behaviour and the creation of the authority to ensure its enforcement.

If we examine the Authority's practical energy activity, we have to highlight the report entitled „Questions of competition in the electricity sector", published in October 2002,[29] as well as the Hungarian Competition Authority's competition policy statement on the main issues concerning the opening of the electricity sector,[30] July 1999. The GVH has brought an uncountable number of resolutions and orders in relation to energy issues,[31] (especially in respect of mergers, misleading consumers and misuse of power) forming with this the national energy competition precedents.

[27] The Central Nuclear Financial Fund is a fund financing particular state activities from non-state sources. The fund can only be created by legislation, which has to decide its function, sources of income, allowed expenditure, the scope of allowed expenditure, as well as the minister responsible for the operation of the fund and its application. The fund can be created on the condition that the state's execution of the required activities should not be directly met from the state budget, but partly from targeted tax payments, contributions or fines. The minister responsible for the operation of the fund and its application ensures that the funds used are harmonised with other sources.
[28] Source: www.gvh.hu
[29] http://www.gvh.hu/domain2/files/modules/module25/pdf/ert_allp_villenerg2002_m.pdf
[30] http://www.gvh.hu/domain2/files/modules/module25/pdf/hu_allas_allaspont02_m.pdf
[31] Decisions are brought on cases by the Competition Authority: it decides on the permission to merge, it decides on cases of offence or of the lack of offence. All other decisions become orders, including those brought on procedural questions. Hence, an order is decided if the infringement is not provable, there is no need to launch or continue procedures as public interest is not infringed, or if due to administrative reasons the procedures are terminated.

1.5.3 National Consumer Protection Authority[32]

If we regard energy services as a complex, then we have to address the question of quality of service. While considering this it would be expedient to briefly introduce the National Consumer Protection Authority (NFH) and those of its activities relevant to the issue in question. The authority – like the Hungarian Mining and Geological Office – is a central office, and is directed by the minister responsible for consumer protection (presently the Minister for Labour and Social Affairs).
The National Consumer Protection Authority was brought about by Governmental Decree 225/2007. (VIII. 31.) and has been operating since September 1st, 2007. The official consumer protection procedures are determined by Act CLV of 1997 on Consumer Protection.
The NFH inspection and monitoring programme of 2009[33], approved by the Minister for Labour and Social Affairs, contains the following (explicit) energy aspects:

Accentuated inspection and monitoring

- The intelligibility of district heating and gas bills, as well as the testing of validity of energy benefits, with special attention to consumer complaints received in relation to this.
- The monitoring of the legal adequacy and intelligibility of electricity bills, with special attention to householders' complaints received in relation to this.

Market supervisory inspection and monitoring

- Market supervisory inspection of energy efficiency labelling

1.5.4 Hungarian Trade Licensing Office[34]

The office was brought into being by Governmental Decree 260/2006. (XII. 20) on the Hungarian Trade Licensing Office. The office is a central office working under the direction of the Minister for National Development and Economy.

- Its main professional activities include its exercise of public authority concerning the state administration of foreign trade, munitions production and services, other trade issues, market supervision, public warehousing, precious metal testing and validation, as well as measurements and technical safety.

1.5.5 „General Ombudsman" and Ombudsman for Future Generations

Regarding civil rights, both bodies are particularly important. From an energy aspect, the primary significance of the civil rights commissioner for the Parliament (the 'General Ombudsman') is related to its work dealing with individual complaints. The commissioner for future generations (the „Green Ombudsman") is of paramount importance, promoting environmental standpoints (as one of those areas directly connected with energy).

The former was brought about by Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman), and the latter, the newest 'separate' commissioner, the Ombudsman for Future Generations, was created by a modification to this Act in 2008, and became part of the Hungarian constitutional structure.

While it is rare for the commissioners to make statements explicitly about energy, most statements on environmental issues can have some indirect relevance to energy.

[32] Source: http://www.nfh.hu
[33] http://www.nfh.hu/portal/informaciok/2009
[34] Source: http://www.mkeh.gov.hu/hivatal/tevekenyseg

1.6 The role of justice services (Permanent Court of Arbitration concerning Energy)[35]

The Hungarian Energy Office (MEH), with the Act LXXI of 1994 on Arbitration, based on the Act LXXXVI of 2007 on Electricity, and with attention to Act XL of 2008 on Natural Gas Supply, 130. §-, founded the Permanent Court of Arbitration concerning Energy (Court of Arbitration) on December 15th 2008. The Court of Arbitration is a legal entity, with its seat in Budapest.

The Court of Arbitration's procedures have a place in disputes concerning activities which, according to the Electricity Act and the Gas Supply Act, require authorization, as well as in disputes about activities falling under its legislation, or in disputes over rights and responsibilities included in contracts based on this legislation, if they stipulated the Court of Arbitration's procedures in the Court of Arbitration contract, and they are free to decide on the object of the procedure.

The scope of influence of the Court of Arbitration can also be stipulated by paragraph 3. § (1) of the Act on Arbitration. The Court of Arbitration is allowed to conduct conciliation procedures meeting the regulations of the Act LV of 2002 on Mediation appropriately. Its arbitration panel members are nominated by the president of the Hungarian Energy Office (MEH) for a specific length of time. The President of the MEH and particular employees cannot be members of the Court of Arbitration's arbitration panel. Against a third person, before the court and authorities the Court of Arbitration is represented by members of its presidency, or someone authorised by them, in the way stipulated in the Court of Arbitration's code. The sources for operation of the Court of Arbitration: contribution from founders, fees, income from assets and other incomes.

The Court of Arbitration's organisation comprises of:

1. Board of the Court of Arbitration;
2. A presidentship made up of at least 3 and at the most 5 members, nominated from amongst the boardmembers;
3. Secretariat of the Court of Arbitration
4. Economics Agency

The presidentship is the Court of Arbitration' general leadership body. The rules for nominating and operating a presidency are laid out in the founding statutes and the Court of Arbitration's code.

[35] http://www.eavb.hu/

2. HUNGARIAN ENERGY LEGISLATION

In the following section we introduce and analyse the national energy legislation and the statistics on legislation on relevant side areas. In a wide interpretation of the expression energy legislation, here we include legislation that focuses primarily on Hungarian energy (or at least as part of its main subject), and we understand the energy-related side areas as those related to energy legislation, but not legislation primarily on energy subjects (for example, construction).The latter legal material – although it plays a supplementary role – is an essential peripheral area of national energy legislation.

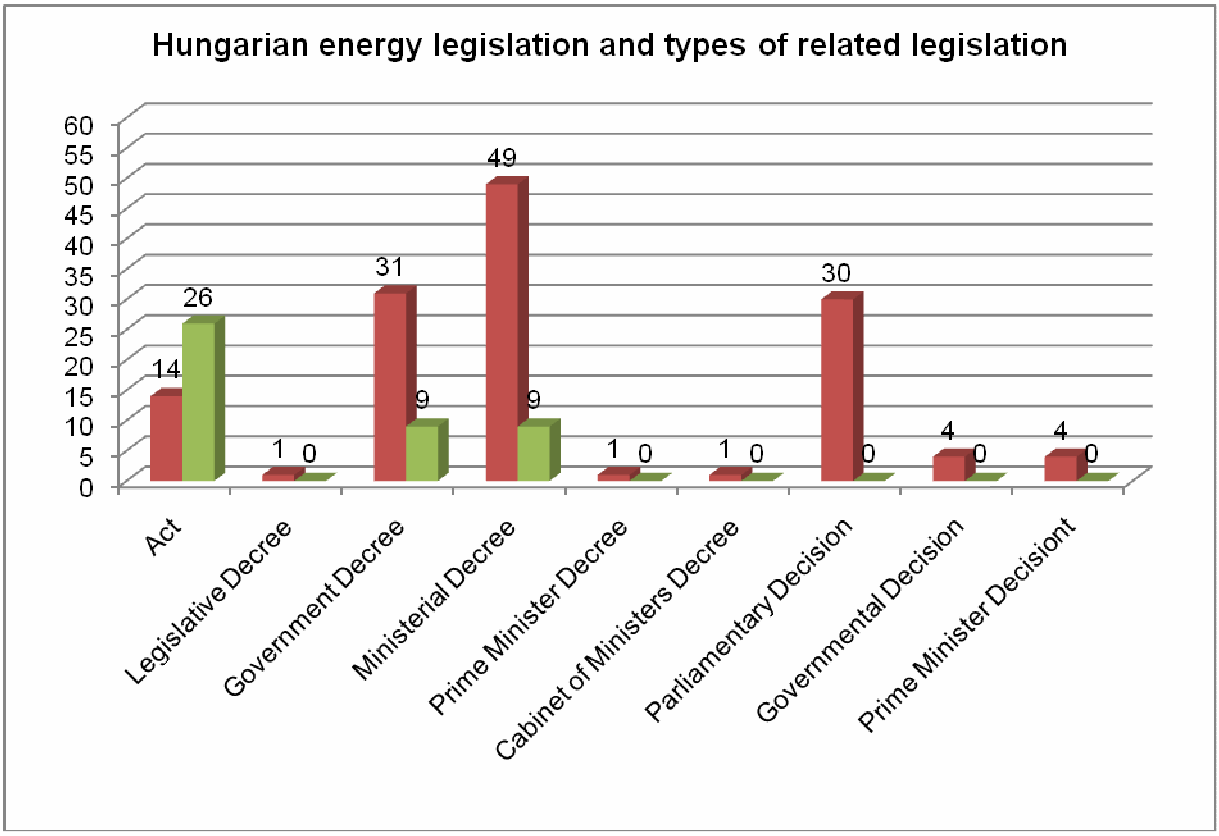


Diagram 6. The Breakdown of Hungarian energy legislation and related legislation

2.1 National energy legislation and related fields of legislation[36]

We can see in Table 4 that there are more than 170 pieces of energy legislation and supplementary legislation related to energy. In both areas the Decree is the almost overwhelming legislative level (Governmental Decree, Ministerial Decree).

Table 2. National energy legislation and related fields of legislation

Legislation	Energy legislation	Related areas	Total
Act	13	25	39
Legislative Decree	1	0	1
Governmental Decree	31	9	39
Ministerial Decree[37]	49	9	59
BM-Decree	1	0	1
EüM-Decree	1	0	1
GKM-Decree	27	1	28
GM-Decree	1	0	1
HM-Decree	1	0	1
IRM-Decree	1	0	1
IKIM-Decree	1	0	1
IKM-Decree	1	1	2
KHEM-Decree	6	0	6
FVM-Decree	8	0	8
TNM-Decree	1	0	1
KvVM-Decree	0	4	4
KHVM-Decree	0	2	2
ÖTM-Decree	0	1	1
Prime Minister Decree	1	0	0
Cabinet of Ministers Decree	1	0	1
Parliamentary Resolution	30	0	30
Governmental Resolution	4	0	4
Prime Minister Resolution	4	0	4
Total	134	44	178

[36] For data on the legislation see ANNEX III.

[37] A ministerial decree contains all operative decrees, and also those ministerial posts which have been terminated or transformed. Issuing ministers in order: Minister of Home Affairs; Minister of Health Services; Minister of Economy and Transport; Minister of Economy; Defence Minister; Minister of Justice and Law Enforcement; Minister of Trade, Industry and Tourism; Minister of Industry and Trade; Minister of Transport, Telecommunications and Energy; Minister of Agriculture and Rural Development; Minister without Portfolio; Minister of Environment and Water; Minister of Transport, Communication and Water; Minister of Local government and Development.

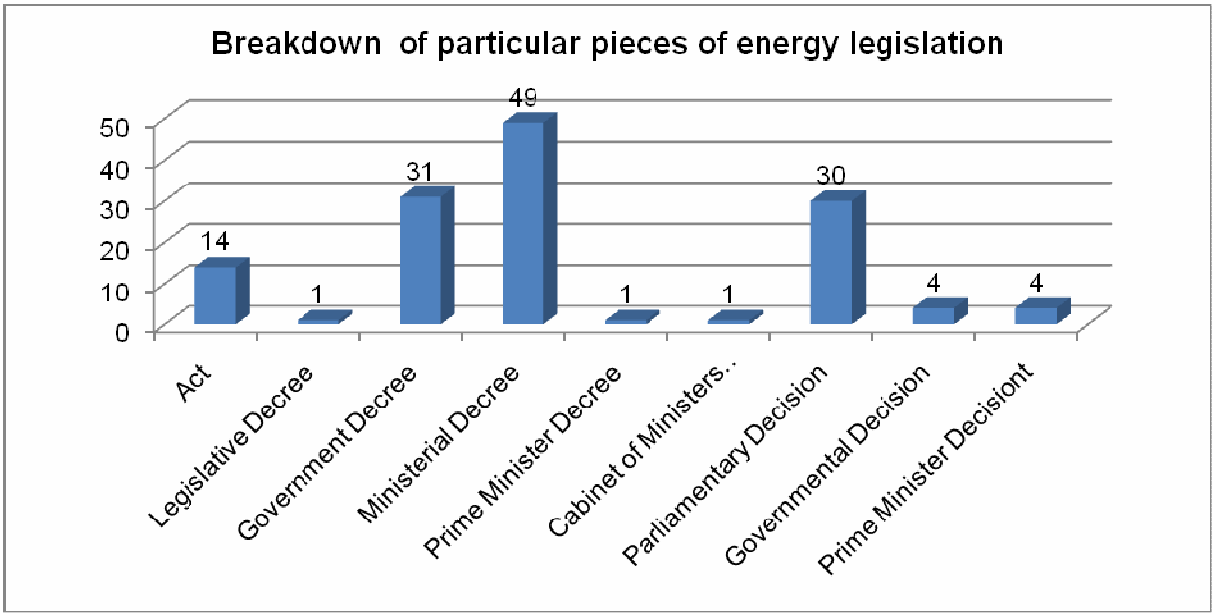


Diagram 7. Breakdown of particular pieces of energy legislation

2.2 The thematic system of national energy legislation

Apart from the general description of the body of energy related legislation –national energy legislation – it is useful to go through those most important areas of regulation which can be significant to the field of energy.[38] In the following section we introduce the thematic system of Hungarian energy legislation, then, in particular areas we shed light on the actual legislation.

Table 5: The thematic system of national energy legislation

Legislation/Categories	General, technical rules	Nuclear energy	Conventional energy resources	Electricity, district heating	Renewable energy, environment	Climate Protection	Energy policy	Mining	Related areas	Conventions	total
Act	1	2	2	4	0	0	0	1	1	2	13
Legislative Decree	0	1	0	0	0	0	0	0	0	0	1
Governmental Decree	3	5	4	8	5	0	1	1	0	4	31
Ministerial Decree	16	4	11	10	8	0	0	0	0	0	49
Ministerial Decree	1	0	0	0	0	0	0	0	0	0	1
Cabinet of Ministers Decree	0	0	0	0	0	0	0	0	0	1	1
Parliamentary Resolution	14	1	4	0	3	2	1	0	2	3	30
Government Resolution	1	0	0	1	1	0	1	0	0	0	4
Prime Minister Resolution	4	0	0	0	0	0	0	0	0	0	4
Total	40	13	21	23	17	2	3	2	3	10	134

[38] The basis for classification was decided upon after investigating the system of national energy related legislation. Obviously, it is difficult to create accurate and comprehensive categories for such heterogeneous legislation, but in spite of this we attempted to create 10 manageable factors, which can be of good use in analytic procedures. While creating the categories we took the content of the particular piece of legislation, the area to be regulated, as well as the relationship to the other legislation and categories into account.

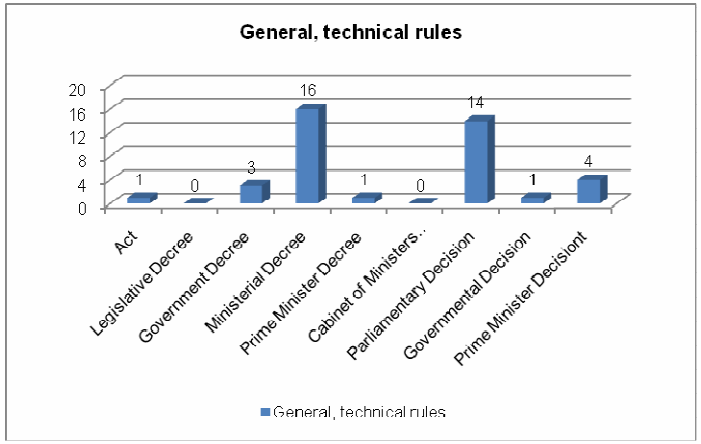


Diagram 8. Breakdown of general and technical rules

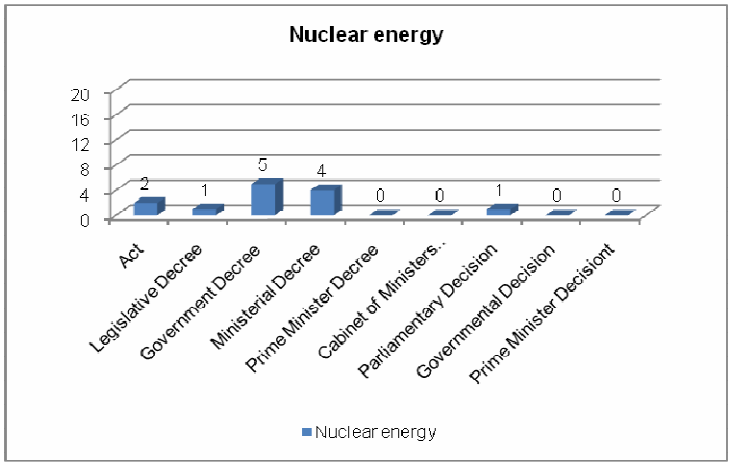


Diagram 9. Breakdown of legislation dealing with nuclear power

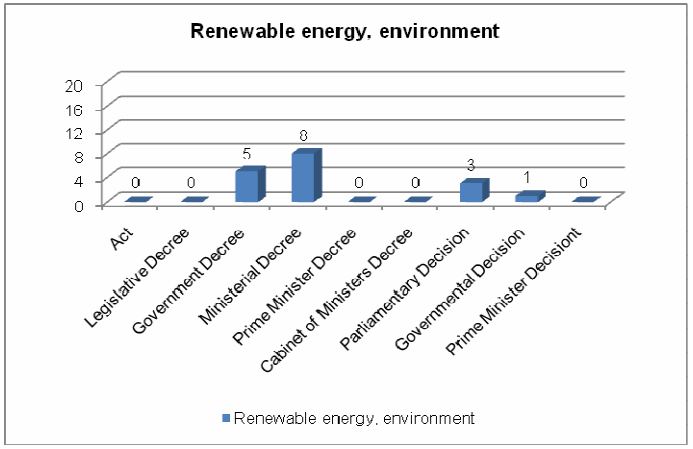


Diagram 10.Breakdown of of legislation dealing with renewable energy and the environment

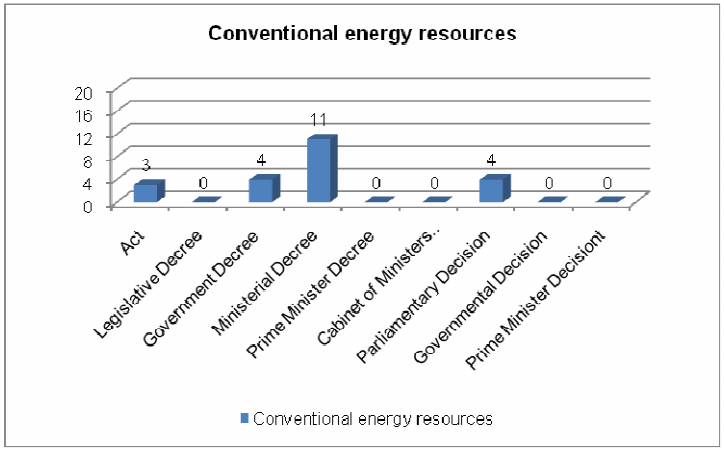


Diagram 11.Breakdown of of legislation dealing with conventional energy resources

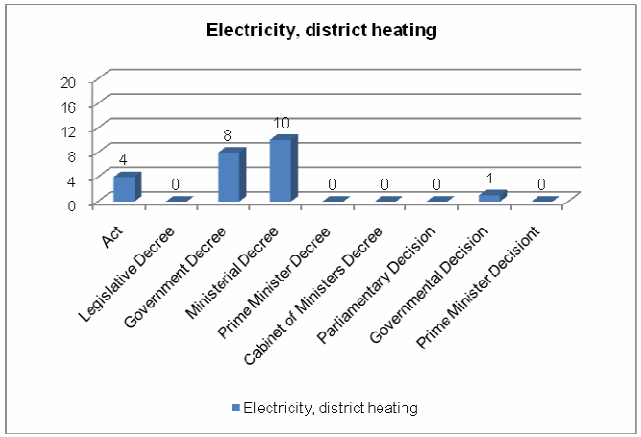


Diagram 12. Breakdown of legislation dealing with electricity and district heating

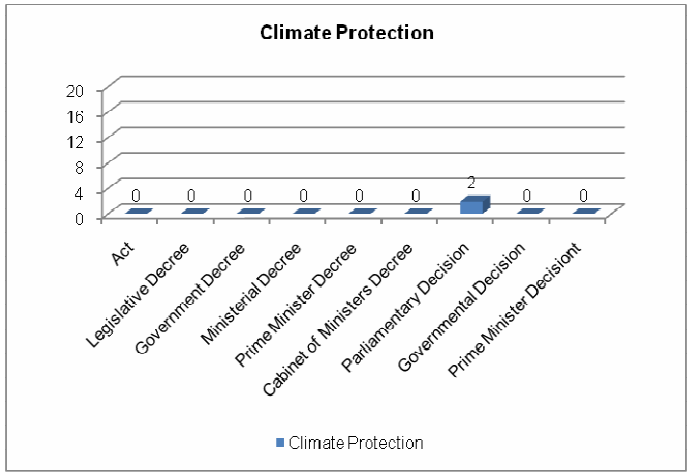


Diagram 13. Breakdown of legislation on climate protection

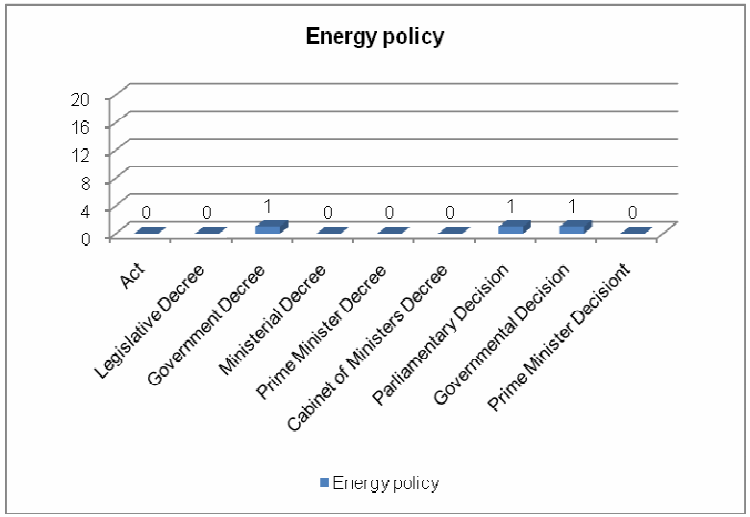


Diagram 14.Breakdown of legislation on energy policy

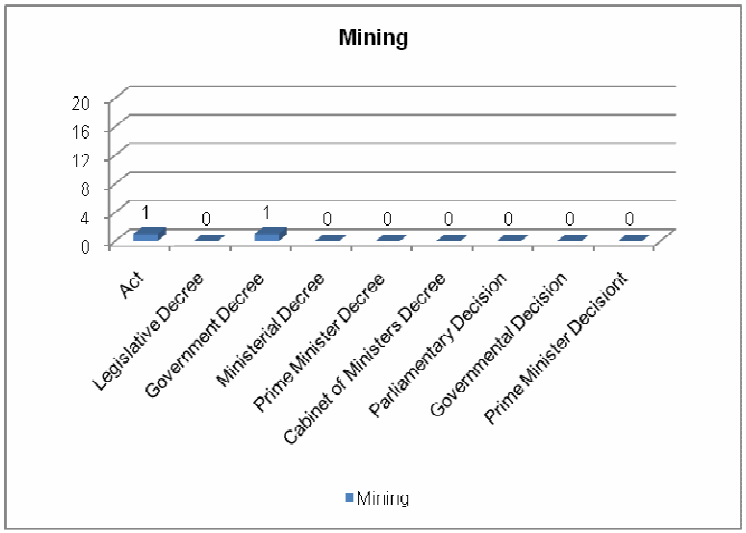


Diagram 15. Breakdown of legislation on mining

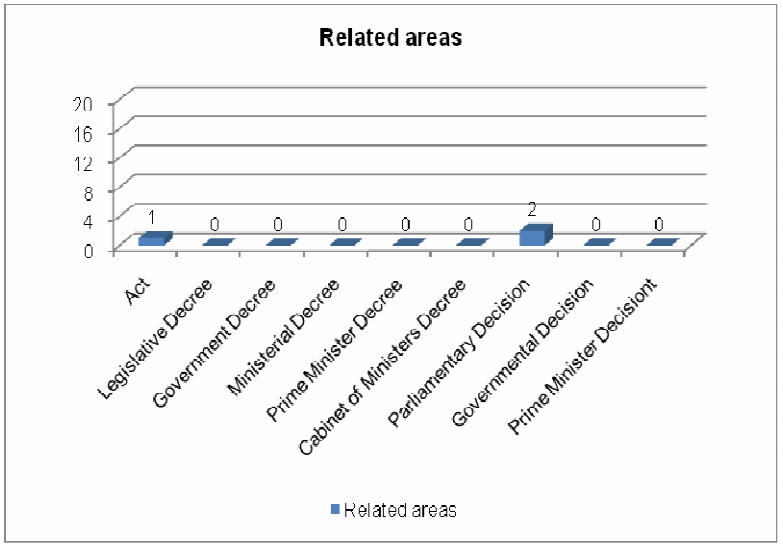
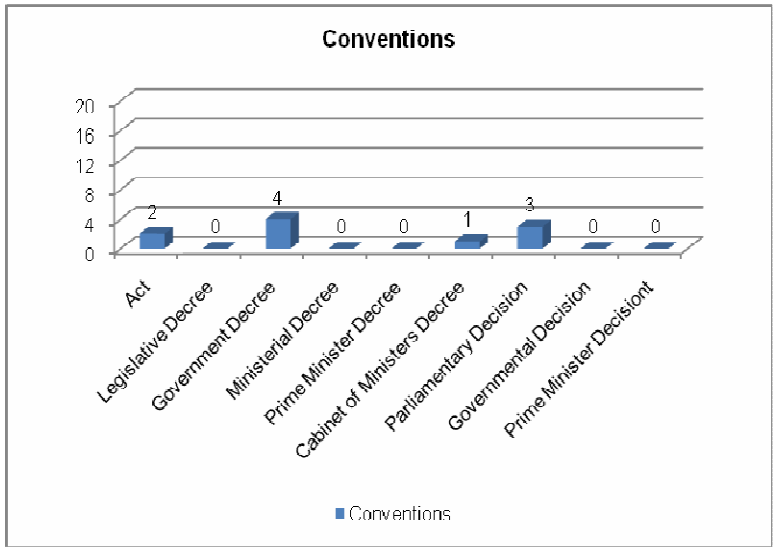


Diagram 16. Breakdown of legislation on related areas



11. Diagram. Breakdown of energy conventions

From the above we concluded that technical regulation is over-emphasised in national energy policy. Similarly, nuclear energy, conventional sources, as well as electricity and district heating all play a significant role, while legal material dealing with renewables and environmental protection are seriously under-represented.

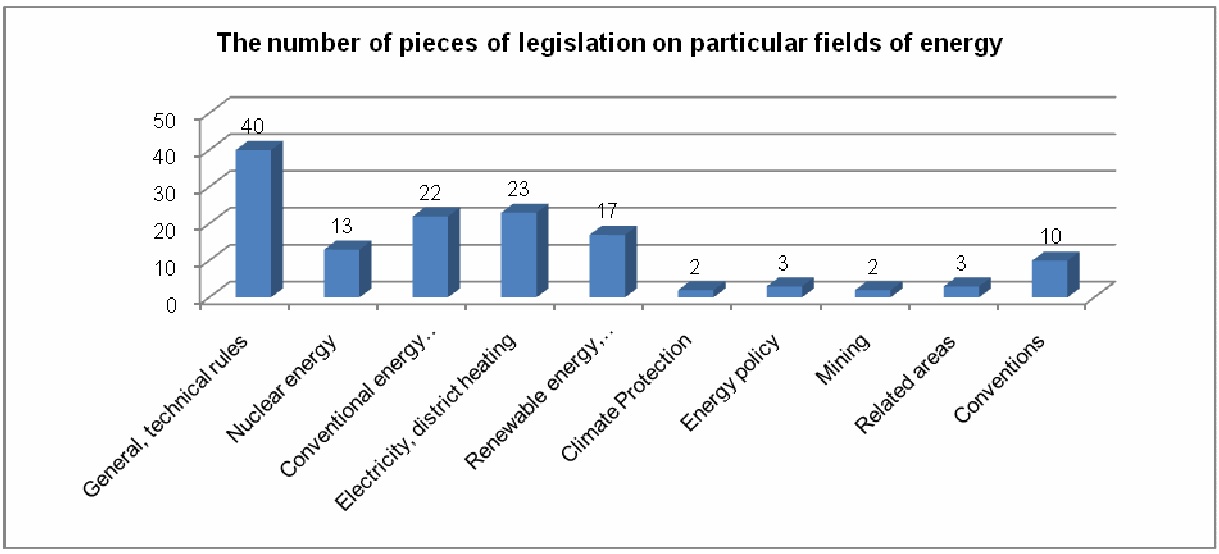


Diagram 18. Number of pieces of legislation related to particular areas of energy

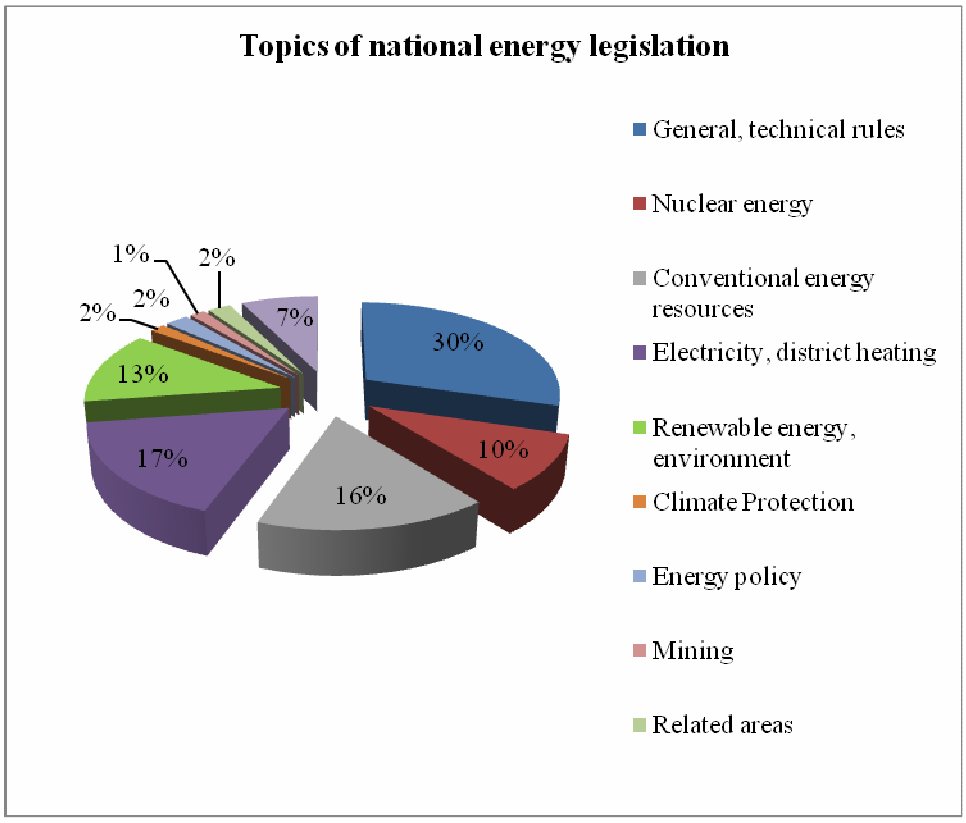


Diagram 19.Topics of national energy legislation

Giving a numerical value to our above conclusions means that among all primary energy legislation, almost 16% deals with conventional sources, 17,2% with electricity and district heating, then 10% with nuclear energy; this altogether makes up 43,2% of energy legislation. For renewables, this proportion is only 12.7%. It can be clearly seen that there is a bias in legislation towards[39] conventional sources.

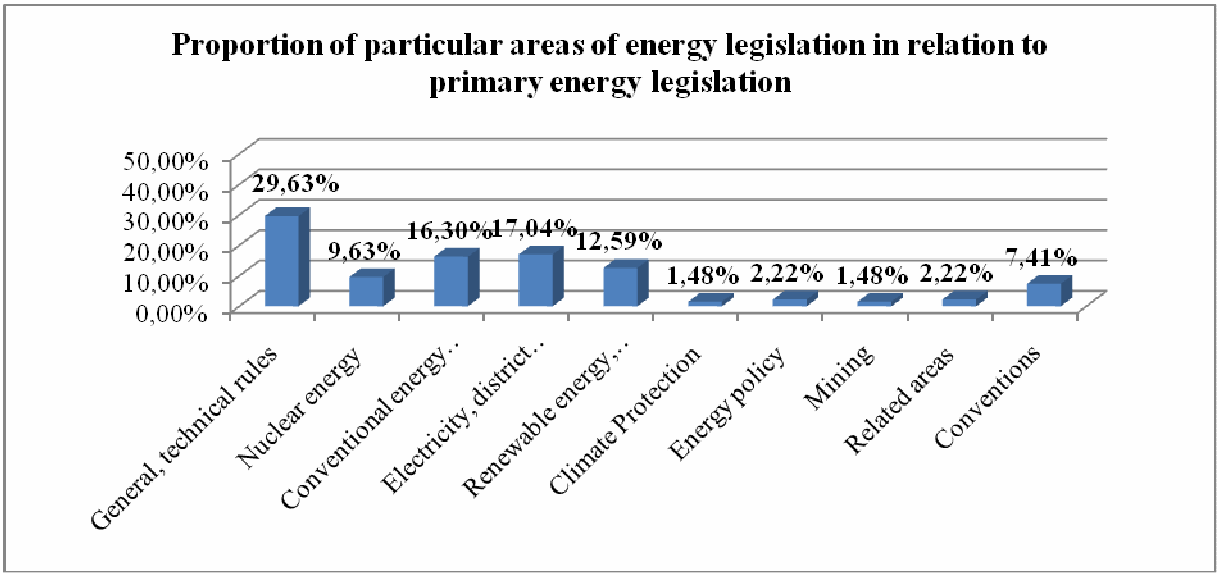


Diagram 20. Proportion of particular areas of energy legislation

[39] For further and wider aspects see section 3.2.2.1 on imbalanced emphasis in legislation.

3. DYSFUNCTIONING IN THE FIELDS OF STATE ENERGY SECTOR AND ENERGY LEGISLATION

3.1 The Denotation and Framework for Interpretation of Dysfunctions

Three levels of meaning are worth highlighting when interpreting dysfunctioning.

- Firstly, dysfunction is the summarising term for our criticism of the existing and operative legislation of the state energy sector: these criticisms mostly deal with a particular aspect of the operative energy legislation and the practice of the energy sector (normative dysfunction).
- Secondly, it refers to criticism concerning the state of energy sector which point beyond existing processes and rules, examining what would be the ideal regulation and practice (theoretical dysfunction).
- Last but not least, when defining the meaning of dysfunction it is worth distinguishing the dysfunctions that occur during the course of implementation, in which case an existing piece of regulation is not executed or executed badly (practical dysfunction).

Within our analysis, the approaches to dysfunction that are sketched out will often merge. They are applied in parallel, mutually supporting each other.
We are aware that all the dysfunctional phenomena of the state energy sector cannot be revealed in the present framework, neither was this our original aim. However, it was indeed our aim to introduce topics and (the above mentioned) approaches to dysfunctioning which, relative to our knowledge and experience, will give the best and most characteristic picture of the condition of the national energy sector.

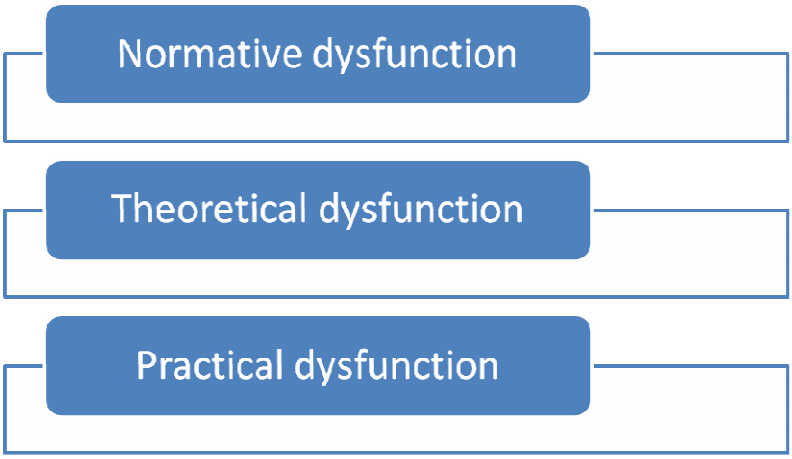


Diagram 21. The types of dysfunctions explored

3.2 Dysfunctioning in the fields of state energy sector and energy legislation

3.2.1 Incoherence between strategic planning (policy making) and planning documents

A basic strategic element of policy making is the appropriate specification of planning and decision making levels and the right allocation of resources of the organisation responsible. Policy decisions are mainly manifested in legislation, so participation, transparency and the creation of background studies are first interpreted in the field of policies and finally in relevant legislative action: the lack of the former is the most painful here. The process of policy making is a decisive factor in the end result; it can represent a serious legitimising force later, when the created legislation is put into practice.

3.2.1.1 The lack of participation, transparency and background analyses

We can say that Hungarian state administration has shown itself to be both blind and incompetent regarding gathering and channelling the professional knowledge present outside its sphere. Stakeholder-analysis[40] is meant to study the attitudes of those affected by future regulation, or to put it more simply, to take into consideration the impulses of stakeholders. Only one (although very important) segment of this is the inclusion of civil stakeholders in the preparation of legislation. Listening to other professional stakeholders is at least equally important. The latter is especially crucial concerning our particular topic, energy, since this itself covers a very broad and complicated professional field, and professional differentiation is also needed within a particular field. New legislation in this area may create a sector worth many (even hundreds of) billions, or may affect an already existing sector worth a similar sum. Thorough analysis is not only missing on a theoretical level, in the form of background studies or impact studies, but existing and future opinions could also form the concept. It would be very important to see what interests there are, so that decision makers and outsiders could attribute the appropriate importance to opinions. We can say that there are basic problems in the decision-making cycle for energy policy making (which, of course, affects legislation as well).

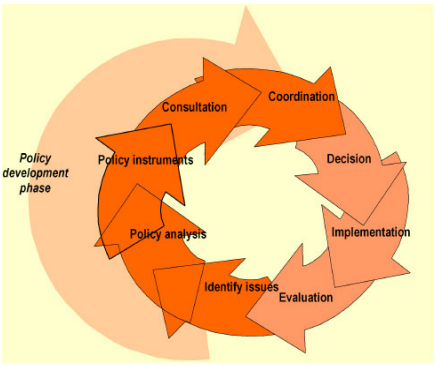


Diagram 22. The structure of policy making[41]

[40] In English, „stake" is used to mean all interests, claims and rights which an individual or a group holds in relation to a certain undertakings (in this case a piece of legislation carrying policy content). The expression stakeholder first appeared in 1963 in a report of the Stanford Research Institute, meaning those actors whose support is vital to keep a company going. So, stakeholder theory grew out of corporate management but it could be easily applied in a legislative mechanism, regarding its basic characteristics. One of the notable theses of the theory is that the basic principle of stakeholder management (i.e. the legislation on legislation) obliges the management (the legislator) to strive for a performance (legislation) which provides optimal results for all stakeholders instead of providing the maximum result for one particular stakeholder group.

[41] Source: http://archive.audit.vic.gov.au/reports_mp_psa/psa0903.html

All in all, energy is typically a field of policy making where the inclusion of stakeholders is not only expedient but necessary. This implies the opportunity of participation and the existence of transparency from the first moment of the legislative procedure, in the process of which it is also worth including the necessary expertise.

Our relevant operative legislation (Act XI. of 1987. on Legislation) has its „weaknesses" in this respect as well. Later we will see the particular incoherencies of our legal system, while here we face serious under-regulation. Our law on legislation[42], which has many faults, comments modestly: „before the creation of legislation – relying on the results of science – the social and economic relations, the realisation of citizens' rights and duties, the possibility of resolving conflicts of interest all have to be analysed, and the possible effects of regulation and the conditions of execution have to be studied too. The legislator has to be informed about these."[43] There is nothing to object to in all this. The law considers a minimal perspective of stakeholders in two instances: in the draft bills to be proposed to the government and in ministerial decrees. Ministers, leaders of bodies with national reach, civil society organisations and groups representing special interests all comment on the draft bills to be proposed to the government. The drafts of ministerial decrees have to be sent to other ministers who have an interest in the regulation, to leaders of organisations with a national reach, to civil society organisations and to groups representing special interests. However, nothing else specific is revealed by the law: who can propose what and when; what deadlines there are; and most important of all, what is the fate of the so-called „comments". According to the act on legislation, if a civil society organisation or a group representing special interests suggests that the government propose a law, the chair of Parliament and the relevant parliamentary committee have to be notified of this. This provision can be seen as a positive one, but no other detailed rules deal with the proposals by the stakeholder.

We can state that a wide scope of interests has not and could not prevail in particular policy making decision processes in Hungary, and up-to-date professional expertise, policy knowledge and procedures have not been applied. This can be traced back to two decisive (and related) causes. Firstly, to the insufficient legal environment; secondly, to the fact that the state administration has not developed the sensitivity that would allow it to absorb external (professional) impulses. The Hungarian policy apparatus, the preparers of legislation, have not reached the point (which would also rationalise the operation of the organisation) where they realise that they do not have to and should not realise everything based on their own human resources, and that outsourcing is sometimes advantageous (moreover, rational and necessary). State administration is presently totally puzzled by this set of arguments (apart from some positive tendencies, which also exist).

3.2.1.2 The lack of strategic documents and the incoherence of existing ones

It is not only the transparency of policy making procedures and their solid professional, social and economic foundations that are important, but the coherence of different (but organically related) documents is also of huge importance[44]. With regard to energy and the environment, the following strategic-planning documents have outstanding importance:

- National Sustainable Development Strategy[45]
- National Climate Change Strategy (NÉS)[46] and National Climate Change Programme

[42] Which the Constitutional Court repealed with its resolution 606/B/2006. AB because of unconstitutional parts of its content (http://www.mkab.hu/index.php?id=606_b_2006__ab_hatarozat)

[43] The Act on Legislation,1987. XI., 18. § (1).

[44] As can be seen, coherence must be present not only on the highest level (concerning national documents), but on the basic level, in the case of municipal documents too. However, we can also note that the topic of energy management is totally missing from or just marginally present in most municipalities' strategic documents.

[45] So far only the 100/2007. (XI. 14.) Parliamentary resolution on the planning and consultancy tasks regarding Hungary's long term sustainable development is in effect. The Government accepted the National Sustainable Development strategy and proposed it to Parliament, but no resolution has yet been made.

- Energy Policy Strategy[47]
- Renewable Energy Strategy[48]
- Hungarian National Energy Efficiency Action Plan[49]

The theoretical hierarchy of the documents is important: a properly founded and well thought through sustainability strategy would be the most dominant, from which the climate strategy of the country could be derived, amongst others. The energy strategy must be in harmony with the latter, as this sector is responsible for more than half of the national greenhouse gas emissions. Energy efficiency strategies could be associated with the target numbers in the energy policy strategy, which could be further broken down into action plans and packages referring to certain areas. However, such hierarchy and logical order is nowhere to be found either on a theoretical or on a practical level. We would hereby like to point out the problem that the National Climate Change Programme, which would in effect be the action plan of the strategy, has yet to be created, in spite of the fact that the deadline for its first review has already passed. A similarly interesting logical hurdle is that the Energy Efficiency Action Plan came about without being derived from any strategy. Its mere existence is due to the fact that the European Commission set a deadline for sending the national document, but it did not require an overall strategy at the same time. They assumed that an action plan would not be made anywhere without a strategy.

Let us have a look at this document! The creation of the National Energy Efficiency Action Plan is prescribed by an EU directive, and all member states had to hand it in in 2007.[50] Unfortunately, the national ministry responsible for its preparation – then the Ministry of the Economy and Transport (GKM) – did not pay enough attention to this task. The main deficiency of the final plan (which was finished with six months of delay) is that it lacks the basic points and economic analyses which could determine what measures are needed in which target areas, and which ones can be carried out cost effectively so that Hungary can reach the 9% energy saving target set out in the plan by 2016. In other words, the calculation of energy efficiency potential is missing from the plan. Without this, however, how the choice of listed measures was made, and what results will be achieved if they are taken, is surrounded by doubt.

Since the plan has to be reviewed in 2011, and the reviewed, modified, refined version has to be sent to the European Commission, it is about time that the state started the research, studies, and the social consultation that are needed for the review and that were missing while making the first version.

A further question is that apart from the 9% target of the action plan – referring to the end user sector – what tools the state is considering in order to achieve its undertaking of a 20% target for reduction in energy use by 2020. No document is available with respect to this, apart from some vague references in the action plan, for example.[51]

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46 http://klima.kvvm.hu/documents/14/nes_080219.pdf, 29/2008. (III. 20.) parliamentary resolution on the National Climate Change Strategy

47 40/2008. (IV. 17.) Parliamentary resolution on the energy policy regarding the period 2008–2020.

48 http://www.khem.gov.hu/data/cms1358659/megujulo__strategia_tars_egyeztetes.pdf

49 2019/2008. (II. 23.) Govt.resolution on Hungary's National Energy Efficiency Action Plan.

50 http://www.energiaklub.hu/hu/hirek/?news=546

51 See the detailed proposals of the Energy Club to the National Energy Efficiency Action Plan: Fülöp–Király, 2007.

3.2.2 Problematic areas in policy making and implementation

In this section we examine from many aspects the part of Hungarian legislation that concerns the energy sector. On the one hand, we examine whether particular pieces of legislation regulate particular questions on an appropriate level, such as whether regulating certain areas on the level of government or ministerial decrees provides enough stability. On the other hand, we look at whether the executive power itself obeys existing legislation. We briefly make a note of the problematic cases where the law enforcer temporarily overrides its own legislation, and where the insufficient or over-complicated nature of regulation presents an obstacle.

3.2.2.1 The shifts of emphasis in the energy legislation[52]

Hungarian energy legislation has quite a spread out system: 134 pieces of legislation can be found that are specific to energy, and this is complemented by the 44 pieces of related areas of legislation, hence altogether 178 cover the area. This, in itself, would not amount to a problem, would not be over-regulation. However the shifts in emphasis of the hierarchy of these pieces of legislation do pose a threat. The dominance of the decree level is obvious: altogether 58 ministerial decrees (49 on energy and 9 on related areas) and 40 Governmental Decrees appear (with a 31-9 share), more than half of all the relevant pieces of legislation. The decree level (be it governmental or ministerial) undoubtedly loosens regulatory and procedural constraints and is useful primarily in the case of technical rules that require a swift modification. The level of acts, which is more difficult to modify, appears as a warrantee: we find the most important pieces of legislation here, ones that are lifted out from the circle of rapid modifications. Obviously, the monopolisation of the level of acts cannot be an aim but under-regulation by law is not desirable either. We can state that almost 60% of the 134 pieces of legislation in effect in the area of energy is on the level of decrees; the proportion of laws/acts reaches a mere 10%. This tendency can bring about a practice of creating legislation that is too quick, not well thought through and is governed by daily political interests.

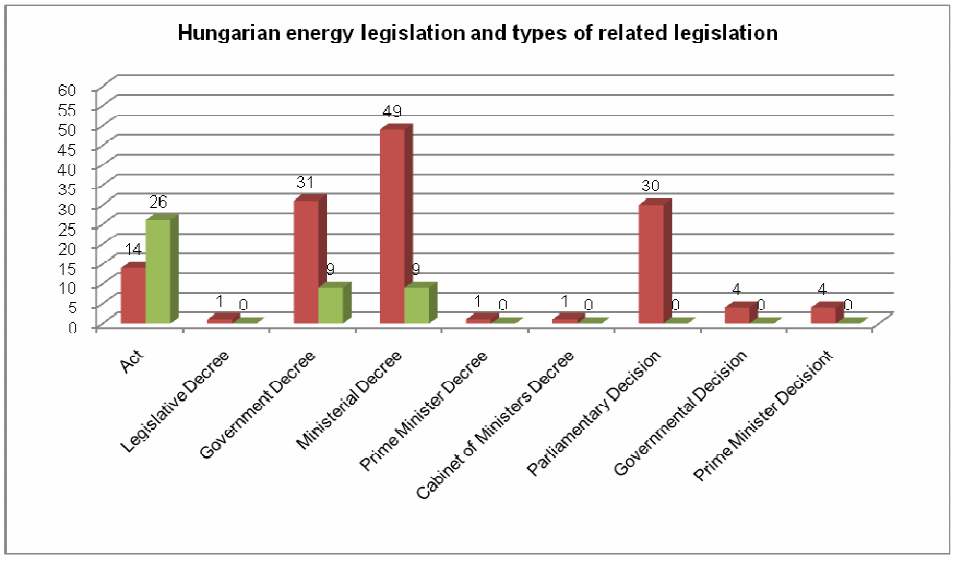


Diagram 23. Hungarian energy legislation and the types of acts related to energy

[52] The present subsection describes the dysfunctions related to Hungarian Energy Law shown in the *Second part*, so we only show the most important diagrams again here.

3.2.2.2 The dysfunctions of legislative areas[53]

The shift of emphasis outlined above is also an important question because it not only happened in the hierarchy of acts but in their regulated areas as well. Most of the primer acts on energy (40) are of a technical nature (appointing, administrative rules), and the legislation on conventional energy carriers(21) - electricity, district heating (23), and nuclear energy (13) - is also huge. The number of pieces of legislation on renewable energy, the environment (17), and climate protection (2) is embarrassingly low. We can state that out of the 134 pieces of legislation primarily on energy, only 14% deals with renewable energy, the environment and climate, while 42.5% deals with conventional energy carriers, nuclear energy and electricity.

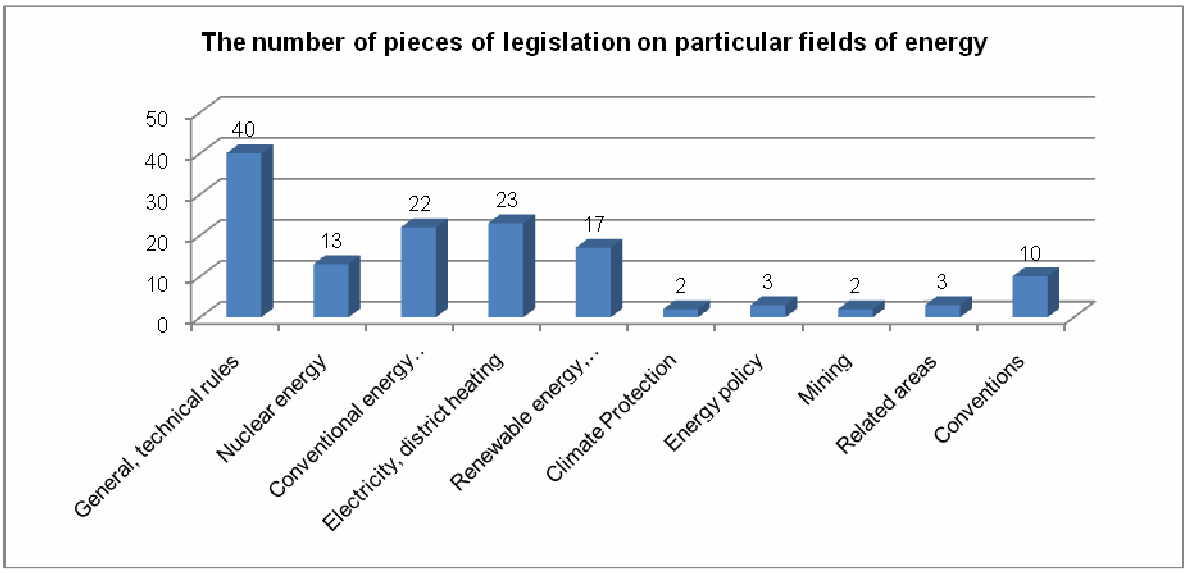


Diagram 24. The number of pieces of legislation related to particular areas.

This quantitative discrepancy would not be that much of a problem in itself either, but the pieces of legislation on renewables and the environment do not have a „foremost" place in the legal system: most of them are decrees, and none of them are acts.

[53] The present subsection describes the dysfunctions related to Hungarian Energy Law shown in the *Second part*, so we only show the most important diagrams again here.

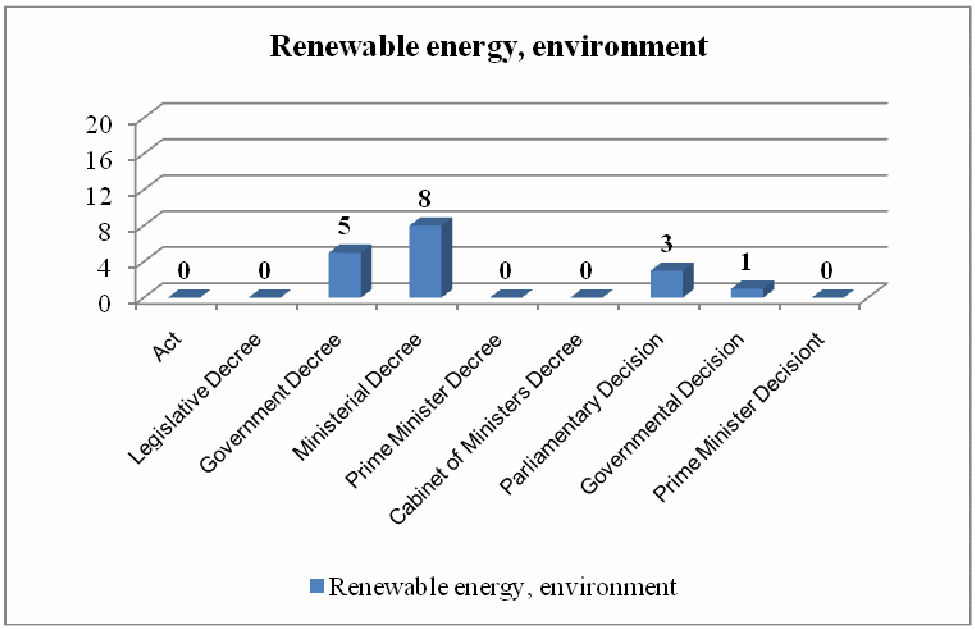


Diagram 25. Pieces of legislation dealing with renewable energy and the environment.

All in all we can state that in Hungarian energy sector the level of decree is the dominate source of law, (we have shown the drawbacks of this in the previous point), and the problem is further aggravated by the fact that we not only find few pieces of legislation in the area of renewable energy sources, but none of those are acts.

3.2.2.3 Absurdities

The above criticism of the incoherencies of the legislation – i.e. too many decrees on energy resulting in hasty, often not well enough thought through legislation – can be supported by examples. We introduce two below which are related to the supervision of important government authorities and concern incoherencies of legislation. The Hungarian Energy Office is the regulator of the energy sector, and the National Atomic Energy Authority is responsible for nuclear safety, amongst other things.

The supervisor of the Hungarian Energy Office – according to its website[54] – is the Minister of Economics and Transport. However, since the 15th of May, 2008, there has not been a Minister of Economics and Transport. There are two new ministries: Ministry of National Development and Economics (NFGM), and Ministry of Transport, Telecommunications and Energy (KHEM). The statutes of the NFGM do not contain any regulations on supervision. After the resignation of the chair of the Hungarian Energy Office, the Prime Minister asked the Minister of Transport, Telecommunications and Energy to issue the application for the new chair as soon as possible, although the statutes of the KHEM do not contain any regulation concerning the supervision of the Hungarian Energy Office. Paragraph (3) of the Act of 2006. LVII., 76. § on the Organisations of Central State Administration and on the Status of Ministers and State Secretaries authorized the Prime Minister to appoint the minister responsible for the supervision of governmental authority in a ministerial decree. The Prime Minister did that in the 8/2006. (XII. 23.) Prime Ministerial Decree on the Appointing of Ministers Supervising Governmental Offices. He appointed the Minister of Transport, Telecommunications and Energy to supervise both the Hungarian Energy Office, and the National Atomic Energy Authority in this decree. Having the website of the Hungarian Energy Office refer to a non-existent ministry is problematic in itself. Even more worrying is the fact that the Prime Minister can

[54] At the closure of the present report (20 November, 2009.)

essentially decide on his own (and very quickly) about delegating roles of supervision, bearing in mind that these are not decisions of personnel but those of a professional and governmental nature. These supervisory authorities have to be present in the statutes defining the activities of the particular minister.

Another legal absurdity is the question of the supervision of the National Atomic Energy Authority. According to the Atomic Act the National Atomic Energy Authority (OAH) was supervised by the chair of the National Atomic Energy Committee (OAB) until 1st. August, 2003. The Prime Minister, as the chair of the Committee, had always appointed the minister responsible for energy supply. In 2003 they reformed the supervision of the authority because of the imminent accession to the EU. According to the argument back then, in order that „the authority responsible for nuclear safety be independent from the interests of producers, owners, service providers and the state administration bodies with an interest in the use of nuclear energy", they abolished the OAB and took the supervision of the OAH away from the Minister of Economics and Transport – due to their responsibility for energy supply. The question of supervision caused a tangible problem in state administration, since ministries had little experience in the field of nuclear energy. The supervision of the authority changed three times in the next five years. In 2003, the then Prime Minister (Péter Medgyessy), on the basis of the content of the modified Atomic Act, made a resolution entrusting the Minister for Home Affairs (Mónika Lamperth) with supervision of the nuclear safety authority (81/2003. (VII. 29.) ME resolution). After the change of Prime Minister in 2004, the supervision of the OAH was assigned by Prime Minister Ferenc Gyurcsány to the Minister of Justice, József Petrétei [76/2004.(XI.10.) ME resolution]. The forming of government after the 2006 elections (policing tasks were delegated to the Minister of Justice) did not affect the supervision of the authority, and nor did the changes of ministers later (On 1 July, 2007. Albert Takács took the place of József Petrétei, whose place was taken by Tibor Draskovics on 18 February, 2008.)

Supervision and the security of supply

For the reform the Atomic Act (Act CXVI. Of 1996.) had to be amended, which was done in the Act XLII of 2003 on Natural Gas Supply; according to the rationale of the proposed bill: „The basic amendment of the Atomic act aims at eliminating the National Atomic Energy Commission (OAB) and also eliminates its competences or transfers them to the National Atomic Energy Office (OAH). Commissions similar to the OAB have been disappearing worldwide lately. Dissolving the duality of the OAB and the OAH in Hungary is also reasonable, thus strengthening the independence of the OAH from producer, owner and service provider interests. This organisational restructuring complies with the requirements of the European Union and Euratom expressed during the accession talks." That is, the restructuring that would resolve the conflict of roles in the supervision system was justified by EU accession. The restructuring and the consequent frequent changes, the „unwanted child" fate of nuclear energy point to unpreparedness and an un-thought-through planning. This is also confirmed by the fact that the reasoning behind the amendment only touches upon the elimination of conflict, the intention to answer the question „How to continue?" cannot be found. In a lack of concept, they delegated the question of monitoring to the Prime Minister, due to the current power relations. As the restructuring took place shortly after the serious incident in the Paks nuclear power station in April 2003 (the amendment was made public on 25 June, 2003.), one may reasonably suspect that there is a connection between the restructuring and the accident. However, the amendment to the Atomic Act was proposed to the Parliament on 20 February, 2003, so an indirect cause and effect relationship does not exist. It is even less understandable why the question could not have been settled properly for good. However, the dysfunction of the nuclear power plant pointed out that a conflict of roles in the supervision/monitoring is not only a theoretical question. One of the reasons of the dysfunction clearly was the shift of emphasis that took place in the power station: security got relegated and production prioritised. It was proved that the Minister responsible for energy supply cannot have authority over the organisations responsible for the security of nuclear facilities, be it either as a chair of a committee or personally. It is difficult to understand that the supervision/monitoring was put back in its original place, knowing that the original intentions of the government proved to be right in practice.

In January 2007 they modified the procedure in that the Prime Minister did not appoint the Minister responsible for the supervision of the Authority based on the Atomic Act but did so according to Paragraph (3) of the Act of 2006. LVII., 76. § on the Organisations of Central State Administration and on the Status of Ministers and State Secretaries in a Prime Ministerial Decree. Accordingly, the Prime

Minister dealt with the question of supervising the OAH in 8/2006. (XII. 23.) Prime Ministerial Decree. However, they failed to repeal the previously effective 76/2004. (XI.10.) Prime Ministerial Decree, so there were two pieces of legislation ruling that the supervision of the OAH is done by the Minister of Justice. This was not a problem until May, 2008. However, after the breakup of the SZDSZ-MSZP coalition government, during the reforming of the government the Prime Minister ordered that the supervision of the OAH from then on is the responsibility of the Minister of Transport, Telecommunications and Energy [technically speaking the 6/2008. (V. 14.) Prime Ministerial Decree modified the 8/2006. (XII. 23.) Prime Ministerial Decree]. After that two, contradictory pieces of legislation ruled about the supervision of the Authority. [The 76/2004.(XI.10.) Prime Ministerial resolution was still in effect at the time of finalising this report[55].] Supervision did not change neither with the changes of Ministers (Pál Szabó until 1 December, 2008., then Csaba Molnár), nor with the setting up of Gordon Bajnai's government (Péter Hónig from 20 April, 2009.). So, the situation since 14th of May, 2008. is practically the same as before August, 2003: the same minister supervises the authority responsible for nuclear safety who is responsible for the energy supply of the country. The Ministry of Transport, Telecommunications and Energy's explanation of the conflict: „In order to prioritise nuclear safety, the OAH operates under the rule of legislation, independently, its operation is supervised by the minister appointed by the Prime Minister, independent of their ministerial responsibility."[56] [114/2003. (VII. 29.) Govt. decree] It still owes us the interpretation of supervision carried out „independent of ministerial responsibility", while the present situation is clearly in conflict with the argument supporting the changes made in 2003.

3.2.2.4 „Orphaned" renewables

Here we show examples of cases which illustrate well that the use of legislation is quite incidental and relative. In the first case the legislation was an „obstacle" before the quick solution of a politically embarrassing problem. The other set of problems would require well thought through and serious regulation, for which there is no time. In both cases there is the lack of somebody responsible for the area: no ministries are explicitly responsible for either energy efficiency or renewable energies.

Energy efficiency certification of buildings

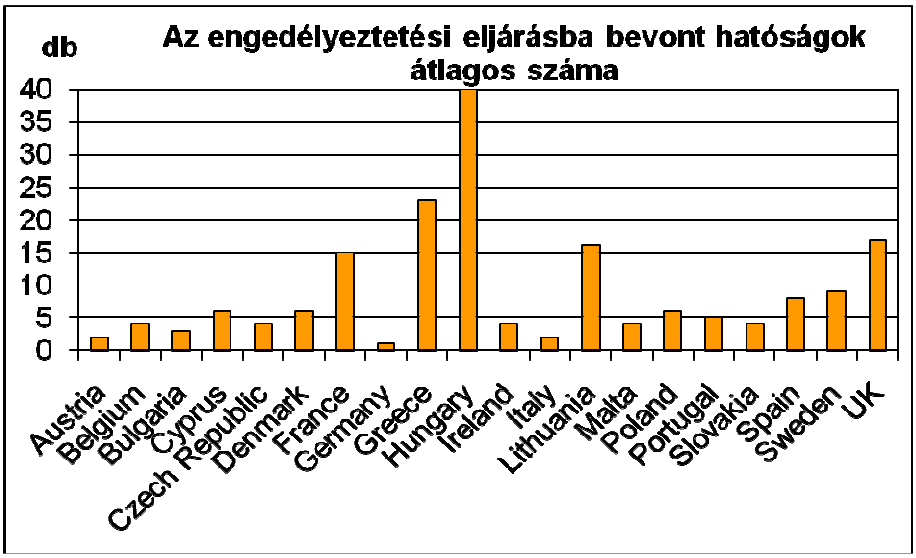
The introduction of energy efficiency certification for buildings illustrates very well the lack of dialogue and cooperation between different government organisations and ministries, and quite often even competition between these bodies. The legislation prepared by the NFGM would have really helped the introduction of the energy efficiency certification for buildings according to the [176/2008. (VI. 30.)] Governmental Decree in 2009 if, according to the original plans, households would have had to submit energy efficiency certificates along with their applications for energy modernisation. They ruled about this in a government resolution at the same time as the Parliamentary Decree was made on government measures aiming at the energy efficiency improvement of buildings [2078/2008. (VI. 30.)]. However, in the call for applications in 2009 aiming at households' savings, the KHEM's National Energy Efficiency Programme did not require the energy efficiency certificate. The lack of harmonisation between ministries, the lack of a unified government strategy and hurried and unconsidered action can be illustrated by this situation where the certificate could be ignored due to the modification of the previous government resolution, this happening only days before the issuing of the applications. This was at the request of the KHEM [the 1114/2009. (VII. 23.) Governmental Decree on the amendment to the Governmental Decree 2078/2008. (VI. 30.) on the Government Measures aiming at the Improvement of the Energy Performance of Buildings. This modification was repealed on 31 December, 2009, a fine example of ''patchworking" legislation.

[55] 30 November, 2009.
[56] A quote from the letter to the Energy Club from the head of department at the Ministry of Transport, Telecommunications and Energy on 29 March, 2009. (The full letter is in appendix *V/2*).

The icing on the cake is that KvVM developed its own calculation model (in an Excel-based software form) to help the energy efficiency ranking for its Climate Friendly Home Apartment Block Subprogramme[57] grant application (which of course was in harmony with existing legislation), which is in no respect identical with the certificate itself (!), although many types of software for issuing energy certificates have been tested and proved useful. This step by the KvVM managed to confuse residents totally as to what an energy efficiency certificate is and the professional side of the sector became totally puzzled as to what the Hungarian state's intention regarding the energy certificate.

Bureaucratic barriers

A wide variety of technologies is available for utilising renewable energies. These differ a lot from each other – much more than the technologies used for utilising particular conventional energy resources. Hence, their regulation and certification requires different procedures too. In the case of windfarm projects it is reasonable to study the effects on birds, while in the case of biogas investments it is the permit to dispose of the produced biohumus that is one of the first environmental problem to be considered and solved. Hungarian law does not seem to deal with this. The present national licensing procedure is quite complicated. Hungary takes first place in an international comparison of the number of permits needing purchased in order to start a renewable energy investment. However, the variety of technologies does not in itself justify this complexity. Considering the characteristics of the particular technologies, simple – even one stop – administrative procedures could be created, in the same way as legislators helped to develop in most European countries. This might of course require some preliminary reports, which make quick decision making easier (like sensitivity maps). If we are serious about thinking that renewables have to acquire a significant role in the coming decade, we need comprehensive regulation which frames licensing procedures, makes them simple to follow and transparent.



Source: Coenraads, 2008

Diagram 26. The average number of authorities involved in the licensing procedure

[57] The support of modernisation and renovation of apartment blocks built with industrial technology, resulting in a reduction of CO2 emissions and energy savings.

3.2.3 Funds, special financing systems

In this section we show a few examples where state organisations decide about the sum of billions – in quite a questionable way. In 2009, for example, 3 billion HUF was put in the crisis fund due to an abruptly modified resolution, which was made by the then leader of the Hungarian Energy Office. The organisation responsible for the CNFF dealt with the billions it was trusted with in a very untransparent way, which is of course advantageous for the municipalities around nuclear facilities. Green Investment Scheme funds (ZBR), as an important source of support for climate protection investments, has not been able to serve such aims so far because its spending was blocked by the Hungarian government itself.

3.2.3.1. The crisis fund

To give a little background to the present situation; during 2008 four electricity providers (E.ON, Émász, Elmű, Démász), applying a profit margin larger than the authorised one, cashed in about 5 billion HUF of extra profits from over-pricing. The Hungarian Energy Office ordered the incriminated service providers in resolutions[58] on 31 March, 2008 to pay back the extra margin plus interest, at least 60% of which had to go to the bank or electricity account of the consumers, and at most 40% of which had to be donated to one of the foundations supporting consumers in need. The basis of this measure was 145. § of the VET Law, according to which the service provider has to repay to the injured party extra income acquired by violation of the regulation.

In the meantime, on 1 July, 2008, the 136/2009 (VI. 24) Governmental Decree on supporting people in crisis came into effect, so the Hungarian Energy Office modified[59] its earlier resolutions on 6 July. According to this, the service provider must transfer 60% of the total sum to be paid back to the funds reserved to support people in a crisis situation (crisis fund from now on) instead of transferring it to the consumers, and 40%to the previously mentioned foundations that support those in need. To carry out this, the act proposed by the Government on 1 July had to be modified[60], according to which the office can oblige the provider to pay a prescribed proportion of the extra income to the crisis fund.[61] The new paragraph operates parallel with the previous one and will be repealed by 31 December.

In the Energy Club's opinion[62], this measure seriously violates consumers' interests, because somebody else disposes over money that belongs to them, and the opportunity to carry out this government action was created by a rushed amendment. The modifications of Paragraph 145 of the VET Law is questionable in many ways because of the latter (concerning both the content and the form). Firstly (the aspect of content), the government assigns too much responsibility to the Hungarian Energy Office – without any previously agreed set of criteria -, when it leaves it up to the Office to decide on the proportion be paid into the crisis fund. The Office is a government office with its own authority, and not a social institution. Its role is to protect the interests of consumers, amongst other things[63]. The government should not practice any of its social measures through the Hungarian Energy Office when there are relevant ministries, charities and civil organisations to do this. Confusion over the role of the Hungarian Republic's government bodies brings even more insecurity in times of crisis. The economy and society's existing trust in the institutions is damaged, while civil servants are

[58] 115/2009, 106/2009, 117/2009, 118/2009 resolutions:
http://www.eh.gov.hu/home/html/index.asp?msid=1&sid=0&lng=1&hkl=582
[59] 426/2009, 427/2009, 428/2009, 429/2009 resolutions:
http://www.eh.gov.hu/home/html/index.asp?msid=1&sid=0&lng=1&hkl=582
[60] A közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény módosításáról szóló 2008. évi CXI. törvény hatálybalépésével és a belső piaci szolgáltatásokról szóló 2006/123/EK irányelv átültetésével összefüggő törvénymódosításokról.
[61] 145/A. §:
[62] As it made it clear in its statement on 27 July, 2009. (http://www.energiaklub.hu/hu/hirek/?news=720).
[63] 158.§ (2) The aim of the operation of the office is … g) to protect the interests of the users and the licensees.

also put under double pressure. The situation is made even more complicated because, from a formal (legislatory) point of view, the amendment of the VET Law was not carried out by a specific law, not even by the Act passed in order to protect citizens in crisis[64], but by an amendment „mixed into" a salad act. All in all we can say is that it is exactly the desired (and acceptable) aim, the support of those in crisis, that suffers from the above procedure, since the thesis „the ends justify the means" does not hold in the field of legislation (by which we mean the forming and influencing of social processes).

3.2.3.2 Central Nuclear Financial Fund

We have to pay special attention to the operation of the Central Nuclear Financial Fund (CNFF) – since we are talking about dealing with and using public money. Various reports of the State Audit Office (ÁSZ) [two thematic ones: (2001[65], 2005[66]), and a general one: 2009[67]] dealt with the fund, looking at the operation and its regulation. The 2005 ÁSZ-report objected to the operation of the CNFF in various points, and made recommendations both for the Government and for the minister supervising the CNFF (the then Minister of Justice).

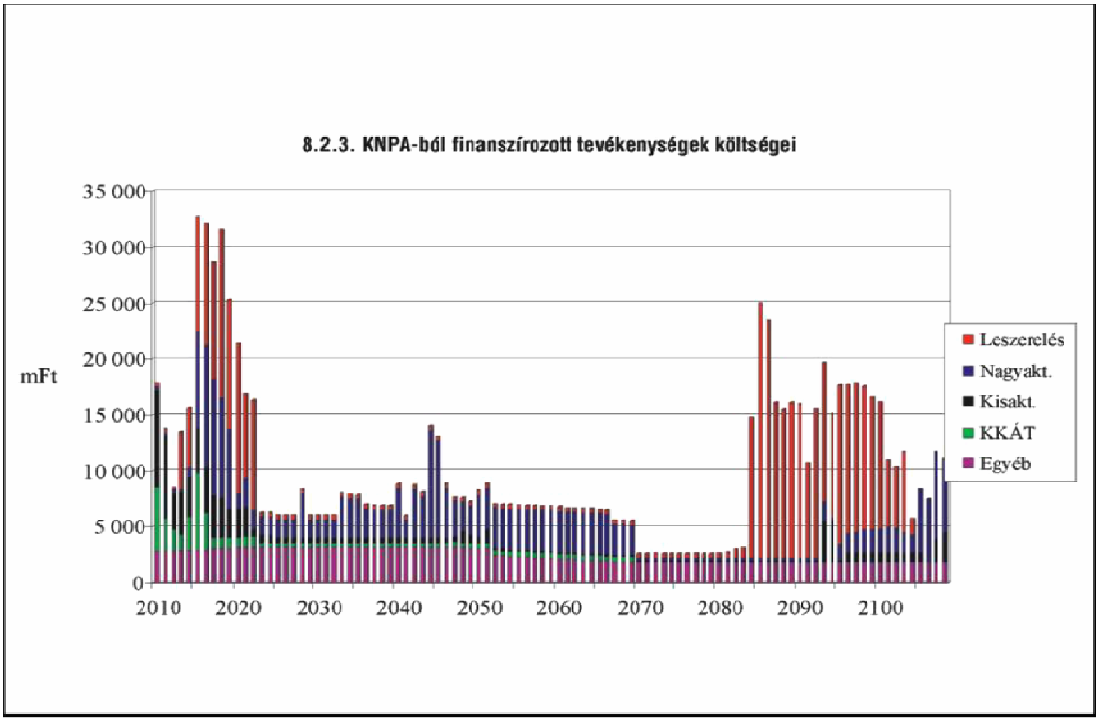
A question with priority is the operation of information associations. These still operate more or less unregulated. The ÁSZ objected to the fact that there is no set criteria for municipalities to join the associations (geological, environmental conditions, distance from repository etc.). There have been consultations between the authority, the nuclear industry and the municipalities regarding this, as a result of which the KHEM has an amendment to put forward regarding the Atomic Act. However, some associations were formed more than ten years ago and a new set of criteria would probably not affect their „acquired rights" neither retrospectively, nor with respect to the future. Another notable question is the way the support for the associations can be used. The Atomic Act originally secured money for public information purposes from the fund to the associations. However, the 2005 report of the ÁSZ discovered that „in using the financial tools of the Fund, such spendings were made to develop other infrastructure for particular settlements (sanitation, pathway in front of funeral home, renovation of kindergartens, pond, flower statue park), which were aimed at acquiring the trust of the affected residents, and such targets were not mentioned by neither the Atv. nor the decrees regulating the use of the Fund." Furthermore, although the minister now gets a report on the use of the support of the information associations, and they have regulated the accounting of the support given to the associations, there is still no body that could determine in advance whether a spending is justified. Unfortunately, unauthorised spendings were not sanctioned in any way, moreover, in 2005 the Parliament reacted – only six months after the publishing of the ÁSZ-report – by passing legislation that allowed the associations to spend on operational costs and local development targets as well as public information activities. So, this hurried step was not taken in harmony with the proposal of the ÁSZ, which went like this: „[The government] should initiate a wide consultation process on the justification of supporting infrastructural developments from the Fund that are aimed at winning the support of residents". This consultation has not happened. The amendment to the Atomic Act (Act CXVI. of 1996.) was proposed by three Mps (Ferenc Wekler, SZDSZ, György Podolák, MSZP, Péter Harrach, FIDESZ). According to the rationale of the proposal the amendment was needed because the residents of these settlements „bear extra burdens in solving social problems, so it is fair that they get extra at the distribution of available resources".

The government did not only fail to answer the ÁSZ's complaints, but it also failed to comply with what was prescribed in the second part of the amendment passed by Parliament, which authorised it to

[64] Act XLVIII. of 2009 on some amendments of acts in order to protect citizens with mortgages in a difficult situation.
[65] http://www.asz.hu/ASZ/jeltar.nsf/0/6B072806E791A98FC1256CB10043AB2D/$File/0102j000.pdf
[66] http://www.asz.hu/ASZ/jeltar.nsf/0/A069854A94B02687C1256FD40043B052/$File/0509J000.pdf
[67] http://www.asz.hu/ASZ/jeltar.nsf/0/C6F0AA40 1B0636B3C12575FC0040A661/$File/0917J000.pdf

regulate the support of the associations in decrees: the detailed regulation of the support has still not been made.

One of the aims of founding the CNFF is to create reserves. However, it is a serious problem that although the reserves created were collected on the account, there are no real savings behind it. This is not a problem of fund management, but a state budget problem, and will cause serious problems when the really big costs appear in the future. What is more, these will mostly turn up when the nuclear power station no longer produces electricity (the decommissioning, for example, 70 years after the final closure of the reactor), so its contributions to the fund also cease, and spending can only be made based on the reserves made previously. So (also according to the ÁSZ report, 2009), „The future use of the reserves to serve the aims of the Fund will increase the financing requirements towards state budget in the particular year, and the negative balance of the Fund will decrease the balance of state budget."



Source: RKK plan, 2009 p.45

Diagram 27. The costs of activities financed form the CNFF

The efficient use of the Fund as public money is hindered by, amongst other things, the constantly overdue activities concerning waste repository, compared to the original schedule. This obviously induces higher costs, and also costs that had not been foreseen. Although research into the Bátaapáti radioactive waste disposal facility were still under way, the 85/2005. (XI. 23.) Parliamentary Resolution, upon the Government's initiative, gave a theoretical green light to start the development of the disposal site planned in Bátaapáti. Or, according to the official text, as prescribed in the Atomic Act, the Parliament only gave its consent to the start of the „preparatory activities". However, there is an element of uncertainty as the Atomic Act does not define the notion of preparatory activities. (In a

similar case,[68] in connection with expansion of the Paks power plant with a new reactor block, the same expression is used. The Energy Club turned to the Constitutional Court in 2009 because of this uncertainty.[69])

3.2.3.3 The Green Investment Scheme[70]

The basis of the Green Investment Scheme is constituted by the international trade in emissions according to article 17 of the Kyoto Protocol of the UN Framework Convention on Climate Change, which allows countries that have committed to a reduction of emissions and have extra quotas to emit greenhouse gases, to sell those extra quotas to countries having similar commitments but being short of quotas.

The Energy Club has raised public awareness on many forums to the anomalies around the incomes from emissions trading: on 2 March, 2009 the Energy Club sent an open letter to then Prime Minister Ferenc Gyurcsány about the blocking of quota incomes.[71] The seriousness of the situation is indicated by the fact that in the end the Energy Club submitted a petition on 27 March, 2009[72] to the Ombudsman of Future Generations (from now on in this section: Ombudsman), in which it complained that some of the Kyoto quota riches went on sale in the second half of 2008, but the incomes were not used according to the UN Framework Convention on Climate Change and the provisions of Act LX of 2007. (later: Éhvt) 10. § on the framework of the execution of the Kyoto Protocol. In its petition the Energy Club asked the Ombudsman to investigate the situation around the setting up of the Green Investment Scheme, and to call on the government to spend the emissions quota incomes according to law and to involve stakeholders in the process. The Ombudsman launched an investigation based upon the complaint concerning the use of the incomes from the selling of Kyoto quotas according to the Éhvt 10. § (3), and the operation of the Green Investment Scheme (from now on: ZBR). During the investigation the Ombudsman approached the Minister supervising the Prime Minister's Office, the Minister of Local Governments, the director of the authority governing the Environment and Energy Operational Programme (KEOP), the Environment Minister, the Minister of Finances and the chair of the Hungarian Treasury to collect data and documents related to the issue. He also consulted the colleagues of the ÁSZ and carbon market experts as well. The Ombudsman's investigation was closed by a statement[73].

With regard to the ZBR we have to note that according to international criteria, the value of the emission reducing activities is enhanced if they produce extra reduction compared to the business as usual scenarios; they have to be additional to whatever else would have happened without the quota financing. If the reduction is achieved anyway – because of other reasons, then it does not contribute to the targeted emission-reduction activities which are needed to prevent runaway climate change. Hence, the spending of incomes from the quota business can be seen as an activity promoting the reduction of greenhouse gases if it does not induce particular, pre-planned or foreseen budget spending; or if it is not used to comply with present or planned EU regulations, or other planned international or national engagements; and the reduction would not have happened otherwise.

Hungary signed a sales contract first with Belgium (8 August, 2008.), then with Spain (26 September, 2008.) in the framework of international emissions trading. In the Belgian and Spanish contracts the

[68] According to Atomic Act of year 1996. CXVI. paragraph 7. §- (2), in order to initiate a new block on the Paks Nuclear Power Station site, the start of preparatory activities needs prior principled consent according to Parliamentary resolution 25/2009 (IV. 4.).
[69] http://www.energiaklub.hu/hu/hirek/?news=704; See the petitions text in ANNEX V./3.
[70] With reference to the Ombudsman for Future Generations' statement on use of income from the sales of the Kyoto quota ref. JNO-3072- /2009. (published November 23rd., 2009)www.obh.hu/
[71] http://www.energiaklub.hu/hu/hirek/?news=668
[72] For the petition to the commissioner see ANNEX V./4.
[73] http://jno.hu/hu/?&menu=allasfog&doc=20091124

seller undertook to spend its income from this trade in emissions on the targets set out in the contract. The applications – not tied to obligations - to the Panel Programme 2008, which was designed to comply with the above contracts, had to be handed in between 1st. February, 2008 and 30th September, 2008. This period started before the signing of the quota trading agreements that provided the foundations of the Green Investment Scheme, and ended shortly after the agreements were made. The Panel Programme 2008 was planned from a totally different budget source, as can be seen from the financing intentions of the government, made public in June 2008, as well as due to the prior timing of the application and the unforeseeable nature of selling the quotas. According to the Ombudsman, the reallocation of resources financing the ZBR cannot be seen as additional in this case, because the financing of the application would have been covered without the ZBR. As a result of cross-financing, the quantity of emissions reduction will be equal to what would have been if the Panel Programme of 2008 had been financed according to the original plans, and the government had spent the incomes from the ZBR on areas totally irrelevant to emissions reduction.

The Ombudsman found that in the phase of preparation of the ZBR, until the intervention of the MEH and the PM, the system prepared by the KvVM complied with internationally required additionality criteria. The intervention of the MEH and the PM in the preparation of the ZBR diverted the system from the originally planned direction of additionality so that most of the income was spent on substituting budget resources not planned with additionality. The government planned substituting many budget resources. Out of these the Panel Programme of 2008 financing was carried out to the sum of 14.5 billion HUF. This government resolution, passed as a decree, contradicts the requirement of additionality as well as its legal form, put in legislation as a decree.

So the ZBR Panel Subprogramme, set up by the KvVM, does not comply with the criteria of additionality, as a system that was meant to complement the Panel Programme was used instead to substitute it. Merging the Panel Programme, incompatible with the logic and aims of the ZBR, with the ZBR's originally planned system, lead unavoidably to the lack of additionality in most of the applications – reaching a reduction in emissions much lower than would have been possible from these incomes. Using the ZBR income from 2008 to support the applications of the Panel Programme of 2008 and to support the aims of the KvVM ZBR Panel Subprogramme resulted in an anomaly concerning §18 of the constitution[74]. Supporting a level of reconstruction of energy performances of buildings which is not higher than that prescribed by legislation also means that the buildings renovated in the next 15-20 years will be forced on an emissions reduction trajectory lower than the achievable, as their further renovation will not be economic in the next 15-20 years. This environmental damage is more substantial than what would have been if the renovations had happened one or two years later but with buildings having a higher energy performance efficiency. From this aspect, the execution of the ZBR can be seen as damaging, contradicting the basic aims of the system.

The government has to develop National Climate Change Programmes (NÉP) to fulfil the National Climate Change Strategy (NÉS) according to Éhvt. 3.§ (3)–(5) paragraphs, and has to report on its execution every year to the Parliament. According to the Éhvt. 10. § (4) paragraph it is the Minister of the Environment who takes care that the emissions trading incomes are being spent in harmony with NÉS and the NÉP. According to the data available the NÉP has yet to be created. This omission is controversial, as the incomes from the sales of quotas would have to be spent in accordance with the NÉP. So it would have had to precede the time of signing the contracts and the call for applications too, and a report would have to be made every year to the Parliament, since Éhvt 10. § (4) paragraph rules that the sum from quota incomes be spent in harmony with the NÉS and the NÉP.

[74] 18. § The Hungarian Republic acknowledges and advocate for everybody's right to a healthy environment.

Lastly, the Ombudsman for Future Generations concluded in his investigation, that since the calls for applications to the Green Investment Scheme started late, there might have been a loss of income amounting to 110 Billion HUF from the sales of quotas. The Ombudsman also pointed out that although the Ministry of the Environment (KvVM) meant to use the incomes from the sales in 2008, according to the emissions trading contracts, the Ministry of Finance did not make it possible. The quota incomes of 2008 could only be used after 2009, as the Ministry of Finance obliged the KvVM to do so. The Ministry of Finance was trying to improve the balance of the budget by holding a reserve, although the proper use of these according to the original aims would have resulted in further substantial state incomes in the form of taxes and fees.

All in all, the Ombudsman initiated the amendment of the problematic elements of the legislation. He also initiated (amongst other things), that the government replace the 14.5 billion HUF for the ZBR, which it spent illegally on disengaging the finances of the Panel Programme 2008 . He suggested that the KvVM recall its ZBR Panel Subprogramme call for applications, and issue a new one in harmony with legislation.

4. SUMMARY AND RECOMMENDATIONS

The analysis of the three main topical areas giving the backbone of the report (the map of Hungarian state energy policy, Hungarian energy legislation, and the dysfunctions related to these) has provided a complex picture of the status quo of Hungarian state energy policy. As a summary, we can draw the following conclusions:[75]

- The distorted emphasis in legislation on this field has to be eliminated; it would be expedient to raise the level of legislation.
- The state administration has to develop or strengthen a real sensitivity to professional preparatory documents coming from beyond the state sphere.
- Stakeholder viewpoints have to be genuinely considered during the legislatory process.
- To this end (and also for the sake of the security of the legal system, and according to the resolution of the Constitutional Court) a new Act on legislation has to be passed.[76]
- Coherence between the most important strategic and planning policy documents has to be created and these criteria have to be met in future planning.
- The exclusive power of the Prime Minister to delegate the right of supervisory authority has to be eliminated.
- Barriers have to be removed in order to help the spread of socially advantageous technologies.
- The illegal and unconstitutional practice of how the government uses legislation immediately (and thoughtlessly) in order to reach its aims, regardless of the consequences, has to be eliminated.
- Transparency has to be guaranteed in the case of the most important financial funds.
- The situation that the money received for the quotas sold in the framework of the ZBR not being spent according to the original goals has to be eliminated. It is not only that we are not doing anything for the environment, but we also erode the economic and business reputation of the country.

Based on all these we can draw some quite concrete conclusions, which can help create the directions of future regulation.

- In forming public policies and legislation, project-orientation and more transparency would most certainly be expedient, with regard to the following:
  - Policy making should first of all be seen as a process, since there could be cases when considering stakeholder aspects would be desirable as early as the demand for regulation appears. The legislation process could be a procedure which is characterised by transparency and professional sensitivity.
  - Creating quality time and space for participation in the legislation process. To this end, the enhancement of present regulation with real content would be needed, as would its reform too, creating a framework in which civil and economic partners can cooperate substantially in legislation.

[75] The present statements can naturally only be understood in the terms of the report, and far from cover (and can't cover) all the dysfunctions of the Hungarian state energy sector. However, it can provide an impetus for further energy research and to uncover dysfunctions ,

[76] For affirmation of this see 606/B/2006. Constitutional Court resolution on the nullification of the Act on Legislation

  - Also, concerning the time factor, it would be desirable that there be enough time for comments on implementing EU legislation, as is provided by the EU, and this should not „disappear" at the level of national government.
  - It would be hugely important that the culture of real impact studies on legislation develop in Hungary; it would be especially useful to extend it to corruption factors.
- We have mentioned that the distortion of emphasis in legislation in this field should be eliminated by strengthening the level of Acts. The latter requirement would be especially crucial in the field of renewable energy, as the lack of the level of acts is the most obvious and most problematic here.
- Unreasonable bureaucratic barriers in the licensing processes have to be eliminated (introducing the „one stop system" where possible).
- It could be said with regard to all financial funds that a supervising authority should be associated with them, which involves civil (non-party political) elements. Thus the possibility is created in this way for public scrutiny to act as a monitor.

POSSIBLE DIRECTIONS FOR FURTHER RESEARCH

The present basic research could be followed up along the following lines.

- A comprehensive overview of European renewable licensing procedures and best practices
- A comprehensive study of the operation of the National Atomic Energy Authority
- An investigation into conflicts of roles, state officers in energy companies
- Legislatory barriers, bureaucratic barriers, responsibilities: on what level is the issue of energy efficiency represented, international examples, promoting structural changes
- How could the participation of stakeholders be institutionalised? Developing tools and practices
- A comparative study of the energy (and the related environmental) concepts of the capital and municipalities, of county and county towns, the harmonising of municipal planning and theoretical policy documents; local planning and strategy making in Hungary
- Collecting and analysing experiences in data request cases of the Energy Club and other potential partners
- Mapping Hungarian court rulings in the field of energy: the story of legal practice relevant to energy in Hungary after the change of system; topical areas, precedents; energy jurisdiction
- Mapping and documenting Hungarian energy soft law: uncovering the statements and resolutions of organisations around state energy politics; looking for things relevant to energy ; drawing a comprehensive map (e.g. ÁSZ, GVH, the general and the green ombudsman)