

SUMMARY

Disfunctioning in the field of state energetics and energy laws¹

About the research

It can be stated that up until now no similar, publicly accessible and extensive summary has been drawn on this topic (even if such a document had been compiled it was not made available for the public). Thus, this research is unique in Hungary, and its novelty is due not only to its extensive content but also to its immanent view emphasizing the primary importance of publicity, namely of providing detailed and overall information to the public.

Our study's value and novelty is in its thematic, summarizing and systematic approach, and in defining and describing disfunctioning based on the routine of the Energia Klub. Moreover, we have made proposals to improve the existing system.

Legal regulatory map

In order to have a clear view we considered it important to tidy up first, therefore a need to draw up a possibly full inventory aroused. To achieve that, a map was compiled to try and give a precise overview of the existing situation. Based on it, it was possible to examine critical issues that caused the basic problems of the system.

In any case, it is in itself a heavy fact that even though the sources are publicly accessible, getting the picture is difficult even for experts representing the state. A kind of labyrinth came into being, and it's almost impossible to find a guiding line in it that would show a way out for the one lost in it.

Exploring the complex system of state energetics we have defined the most important state institutions that according to legal regulations have significant tasks and authority in energy supply. Institutions were chosen mainly according to a list of authority of the laws regulating them taking into attention that energetics is a very complex field. Based on all that, five main types and 26 institutions belonging to them were analyzed.

Besides the complexity of the institutional network, the Hungarian energy law has an extensive and complicated system, too: there are 134 specific energy laws that are complemented with 44 more in adjacent areas, so there are all together 178 laws in this legal package. This in itself is not a problem and does not mean any over-regulation, but the shifts in the hierarchical emphasis of these laws do. The dominance of the level of decrees is evident: all together 58 ministerial decrees (49 on energetics and 9 in related fields) and 40 (in proportion of 31-9) cabinet decrees were found in this field that is more than the half of all pertinent laws. The level of decrees (let it be cabinet or ministerial decrees) by all means loosens the regulatory and procedural obligations, that is first of all useful in the case of technical regulations needing prompt modification. In turn, the level of laws that is more difficult to modify serves as a guarantee and, most importantly contains regulations that are exempt of rapid modifications.

It is obvious that monopolizing the level of laws cannot be set as a goal, and legal under-regulation is not desirable either. It can be stated that out of the 134 regulations in effect in the field of energetics about 60

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Surveying the analysis also showed that of the 134 primarily energetically related regulations only 14 percent deals with renewable energy, the environment and the climate, while the traditional energy sources, atomic energy and electric energy get all together 42.5 percent.

Dominance of decrees

This disparity in numbers would not be of a serious problem in itself, but the majority of regulations dealing with renewables and the environment have not earned any “prestigious” positions in the legal system: most of them are decrees and there are almost no laws.

Naturally, it can not be stated what the ideal legal structure should be, but this large proportion, or dominance of low level regulations is disadvantageous. Typical of the decrees is that making and passing them meets little opposition that makes the system easily alterable, and any idea becomes feasible with relatively little investment. All this is beneficial for carrying out a central will without any opposition because in this way a small group (or one person) can easily grab the decision making process and their specific interests will be fully met without any need for institutional coordination, and differing opinions can be totally excluded. Concerning renewable energy resources it is particularly problematic that regulations are made only through decrees.

Permanent modification, piecing of old laws on the other hand, that is also characteristic of this sector, changing them on parliamentarians’, not governmental legislative motions gives the illusion of the principle of representation of citizens in action since it is about proposals of parliamentary members, not of state administration.

Concerning lawmaking as a whole it can be said that usually there is “no time” for drafting separate regulations. This statement is often heard from experts of the state administration and lawmakers. This is the reason the different schemes are not passed several times through the system, and by referring to the “lack of time” opinions are not gathered.

Disfunctioning

After sketching the structure of present regulations our study surveyed the disfunctioning of the system. In its interpretation it is good to emphasize three levels of meaning:

1. Disfunctioning as a word means on one hand summarizing our critiques toward existing and operative regulations of state energetics: these deal mainly with separate aspects of energy laws in effect and the routine in energetics (normative disfunctioning).
2. On the other hand it contains critiques of the condition of energetics that transcend existing procedures and regulations and look for an ideal regulation and practice (theoretic disfunctioning).
3. And last but not least, it is worth to distinguish disfunctioning in the implementation of laws when a regulation in force is not or is wrongly executed (practical disfunctioning).

The outlined disfunctions often mingle in the analysis intensifying each other, and are applied side by side. It is clear for us that all disfunctioning phenomena of the state energetics cannot be outlined in this framework; it was not our aim. Rather, we considered it our task to show fields and disfunctioning approaches (outlined above) that – in accordance with our knowledge and experience – draw the best and most characteristic picture of the condition of the state energetics.

Involving concerned parties

It can be stated that Hungarian state administration looks blind and incompetent in receiving and channeling in professional knowledge from the outside of the governmental sphere. To examine the attitude of the concerned parties of future regulations stakeholder analysis is applied.

Involving stakeholders in preparatory stages of lawmaking is only one (though very important) slice of this approach. It is similarly essential to listen to other professional stakeholders. The latter is particularly crucial for our topic, the energetics since it overlaps a very broad and complex professional sector, and, on the other hand professional differentiation is needed within all the specific sectors, too. A new law in this field can create new, several hundred billion worth sectors or may influence already existing industrial branches of the same scale. Of course, it would be very important to see what interests exist and of whom in order for decision-makers and outside observers to handle and weigh appropriately the different opinions. We can say that in the cycle of formulating domestic industrial policies in energy-policy making there are problems already at the basic level (that, of course, has its influence on the legislature).

In planning processes of industrial policies it is not only important to have transparency and professional and socio-economical validity; the coherence of different (though integral) documents is also of great significance.

The principal hierarchy of documents is important: the most decisive would be a seriously prepared and duly mature strategy of sustainability that the country's climate strategy can be deduced from. The energy strategy should be in harmony with the latter because this sector is responsible for more than half of the domestic greenhouse gas emission. Renewable energy resources and energy-efficiency strategies can be positioned to numbers set as goals in energy-policy strategy that could be brought into practice through action plans and packages pertinent to separate fields. Unfortunately such a hierarchy or logical order cannot be traced neither on theoretical nor on practical level.

Green energy

In our treatise we introduce as sings phenomena that show well that the application of law is rather haphazard or relative. In the first case the law troubled the solution of a rapid and politically inconvenient problem since issuing energy certificates would hinder the allocation of grant monies. The other circle of problems would need a serious and mature regulation but no time was left for it. In both cases the lack of a responsible authority comes up, because no ministry is assigned as accountable neither for energy efficiency nor for renewable energy. The case mentioned first, the introduction of energy certificates for buildings illustrates well the lack of dialogue and cooperation between governmental organs and ministries, and what is more, the frequent rivalry between these organizations.

Bureaucratic barriers

The present domestic licensing procedure is rather complicated; in international comparison Hungary is leading in the number of licenses necessary to obtain for starting a renewable energy project. The differences in technology do not justify in themselves this complexity. Taking into attention the nature of each technology, a simplified, even a one-window processing can be established as in most of the European countries the lawmakers have facilitated. Of course this might need some previous studies that help rapid decision-making (e.g. sensibility maps). In case we deem it important and consider it seriously that renewable energy should gain a decisive role in the next decade, an overall regulation is needed that would set frames for and make easily traceable the licensing procedures.

Monitoring of Funds

In this part several examples are shown of state institutions making decisions about sums in billions in rather questionable ways. For instance, in 2009 due to a hasty and modified decision made by the then

president of the Hungarian Energy Office 3 billion Forints were allocated to the Crisis Fund. The Hungarian Atomic Energy Authority that manages the Central Nuclear Financial Fund in the 10 years of its existence handled the billions entrusted to it rather inaudibly. The Green Investment Scheme as an important source of support for climate-protection investments has not been able to serve up until now any such aims as its spending was seemingly blocked by the Hungarian government itself.

Changes

It was also necessary to raise the question about how this can be changed. Examining the legal package makes it possible to have more knowledge than before about the state and its functioning.

As a summary of this survey it can be stated that the present routine of the state administration does not allow for elements out of the system to enter, and that this sub-system operates in an airtight way. Examining existing strategic documents showed that they are not harmonized, they are not built on each other, and in this sense the legal package investigated was overwhelmed by chaos, and could be characterized as non-transparent and confused.

Being non-prepared has been not an exemption rather a rule. Proposals are not based on profound knowledge, there are no examples from other countries and basic data are missing as if lawmakers were not interested in the reality. The ad-hoc style, meaning the lack of deliberation, the attitude of “let’s do something quickly doesn’t matter the consequences” enhances this.

On one hand, it is about running the existing institutions wrongly, and the complicatedness is either intentional or due to lack of professionalism. The laws can be perverted according to the passing interests. But even if there is nothing intentional, the system cannot be run effectively and transparently in this way.

Summarizing our investigations we can give the following general proposals:

- The shift in emphasis of lawmaking in this field should be eliminated; it would be expedient to strengthen the level of laws.
- In preparing laws the real responsiveness of the state administration should be established and then strengthened to the preparatory professional materials coming from the outside.
- In lawmaking the factual observance of stakeholder’s point of view should be instituted.
- In order to achieve the above (further, to secure jurisdiction as a whole and in accordance with the ruling of the Constitutional Court) a new law on lawmaking should be adopted a.s.a.p.
- The coherence of the most important strategic and planning political documents should be established, and these aspects should be implemented in future planning.
- The sole right of disposal of the prime minister in delegating supervising authority should be eliminated.
- In order for technologies socially useful to be spread it is necessary to lift barriers.
- The illegitimate, what is more, unconstitutional routine of the government to use immediately (hastily) the means of lawmaking to achieve particular aims regardless of their consequences, should be stopped.
- In the most important financial funds transparency should be exercised.
- The impossible situation that the money received for the quotas sold within the confines of the Green Investment Scheme is not used according to its function should be abolished. In this case it is not only that we have not done anything for the environment but it is also that the business and economical reputation of the country is eroded.

Specific conclusions

Based on all the above some *specific conclusions* can be drawn that may help in setting the possible future direction of regulations.

Making public policy shaping and lawmaking project-centered and transparent would be expedient by all means, namely according to following aspects:

More than anything, shaping public policy should be handled as a *process*, because there might be situations when it is worth to take into attention the stakeholders' point of view already when the need for regulation emerges. The process of lawmaking could be a procedure characterized by transparency and professional sensitivity.

Creating *quality time and space* for participation in lawmaking. In this sense it is desirable on one hand to give real content for regulations presently in effect, or rather, on the other hand to transform them, creating a framework for civic and economic partners to be substantive partners in lawmaking.

It is also related to time-factor that while implementing the EU legal package there should be *enough time* to gather opinions since the EU ensures a sufficient time-span, and it is not beneficial if this time "melts away" at the national government.

It would have a huge importance if the *culture of real investigation of the effects of legal regulations* was established in Hungary, and particularly extending the investigation of effects on factors of corruption would be of great use.

We have mentioned that the shift in emphasis of the lawmaking in this field should be corrected, and that it would be expedient to strengthen the level of laws. The latter requirement is especially and urgently necessary in the case of renewable energy since it is in this field that the lack of the level of laws is most apparent and problematic.

The unreasonable bureaucratic barriers of licensing procedures should be gradually axed (and a "one-window" system introduced wherever possible).

Concerning all financial funds it can be said that a supervising body including NGO elements could be attached to them providing the possibility of establishing public control.

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We have mentioned that the shift in emphasis of the lawmaking in this field should be corrected, and that it would be expedient to strengthen the level of laws. The latter requirement is especially and urgently necessary in the case of renewable energy since it is in this field that the lack of the level of laws is most apparent and problematic.

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It can be stated that up until now no similar, publicly accessible and extensive summary has been drawn on this topic (even if such a document had been compiled it was not made available for the public). Thus, this research is unique in Hungary, and its novelty is due not only to its extensive content but also to its immanent view emphasizing the primary importance of publicity, namely of providing detailed and overall information to the public.

Our study's value and novelty is in its thematic, summarizing and systematic approach, and in defining and describing disfunctioning based on the routine of the Energia Klub. Moreover, we have made proposals to improve the existing system.

Legal regulatory map

In order to have a clear view we considered it important to tidy up first, therefore a need to draw up a possibly full inventory aroused. To achieve that, a map was compiled to try and give a precise overview of the existing situation. Based on it, it was possible to examine critical issues that caused the basic problems of the system.

In any case, it is in itself a heavy fact that even though the sources are publicly accessible, getting the picture is difficult even for experts representing the state. A kind of labyrinth came into being, and it's almost impossible to find a guiding line in it that would show a way out for the one lost in it.

Exploring the complex system of state energetics we have defined the most important state institutions that according to legal regulations have significant tasks and authority in energy supply. Institutions were chosen mainly according to a list of authority of the laws regulating them taking into attention that energetics is a very complex field. Based on all that, five main types and 26 institutions belonging to them were analyzed.

Besides the complexity of the institutional network, the Hungarian energy law has an extensive and complicated system, too: there are 134 specific energy laws that are complemented with 44 more in adjacent areas, so there are all together 178 laws in this legal package. This in itself is not a problem and does not mean any over-regulation, but the shifts in the hierarchical emphasis of these laws do. The dominance of the level of decrees is evident: all together 58 ministerial decrees (49 on energetics and 9 in related fields) and 40 (in proportion of 31-9) cabinet decrees were found in this field that is more than the half of all pertinent laws. The level of decrees (let it be cabinet or ministerial decrees) by all means loosens the regulatory and procedural obligations, that is first of all useful in the case of technical regulations needing prompt modification. In turn, the level of laws that is more difficult to modify serves as a guarantee and, most importantly contains regulations that are exempt of rapid modifications.

It is obvious that monopolizing the level of laws cannot be set as a goal, and legal under-regulation is not desirable either. It can be stated that out of the 134 regulations in effect in the field of energetics about 60

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Surveying the analysis also showed that of the 134 primarily energetically related regulations only 14 percent deals with renewable energy, the environment and the climate, while the traditional energy sources, atomic energy and electric energy get all together 42.5 percent.

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This disparity in numbers would not be of a serious problem in itself, but the majority of regulations dealing with renewables and the environment have not earned any “prestigious” positions in the legal system: most of them are decrees and there are almost no laws.

Naturally, it can not be stated what the ideal legal structure should be, but this large proportion, or dominance of low level regulations is disadvantageous. Typical of the decrees is that making and passing them meets little opposition that makes the system easily alterable, and any idea becomes feasible with relatively little investment. All this is beneficial for carrying out a central will without any opposition because in this way a small group (or one person) can easily grab the decision making process and their specific interests will be fully met without any need for institutional coordination, and differing opinions can be totally excluded. Concerning renewable energy resources it is particularly problematic that regulations are made only through decrees.

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After sketching the structure of present regulations our study surveyed the disfunctioning of the system. In its interpretation it is good to emphasize three levels of meaning:

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The outlined disfunctions often mingle in the analysis intensifying each other, and are applied side by side. It is clear for us that all disfunctioning phenomena of the state energetics cannot be outlined in this framework; it was not our aim. Rather, we considered it our task to show fields and disfunctioning approaches (outlined above) that – in accordance with our knowledge and experience – draw the best and most characteristic picture of the condition of the state energetics.

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The outlined disfunctions often mingle in the analysis intensifying each other, and are applied side by side. It is clear for us that all disfunctioning phenomena of the state energetics cannot be outlined in this framework; it was not our aim. Rather, we considered it our task to show fields and disfunctioning approaches (outlined above) that – in accordance with our knowledge and experience – draw the best and most characteristic picture of the condition of the state energetics.

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Involving stakeholders in preparatory stages of lawmaking is only one (though very important) slice of this approach. It is similarly essential to listen to other professional stakeholders. The latter is particularly crucial for our topic, the energetics since it overlaps a very broad and complex professional sector, and, on the other hand professional differentiation is needed within all the specific sectors, too. A new law in this field can create new, several hundred billion worth sectors or may influence already existing industrial branches of the same scale. Of course, it would be very important to see what interests exist and of whom in order for decision-makers and outside observers to handle and weigh appropriately the different opinions. We can say that in the cycle of formulating domestic industrial policies in energy-policy making there are problems already at the basic level (that, of course, has its influence on the legislature).

In planning processes of industrial policies it is not only important to have transparency and professional and socio-economical validity; the coherence of different (though integral) documents is also of great significance.

The principal hierarchy of documents is important: the most decisive would be a seriously prepared and duly mature strategy of sustainability that the country's climate strategy can be deduced from. The energy strategy should be in harmony with the latter because this sector is responsible for more than half of the domestic greenhouse gas emission. Renewable energy resources and energy-efficiency strategies can be positioned to numbers set as goals in energy-policy strategy that could be brought into practice through action plans and packages pertinent to separate fields. Unfortunately such a hierarchy or logical order cannot be traced neither on theoretical nor on practical level.

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The present domestic licensing procedure is rather complicated; in international comparison Hungary is leading in the number of licenses necessary to obtain for starting a renewable energy project. The differences in technology do not justify in themselves this complexity. Taking into attention the nature of each technology, a simplified, even a one-window processing can be established as in most of the European countries the lawmakers have facilitated. Of course this might need some previous studies that help rapid decision-making (e.g. sensibility maps). In case we deem it important and consider it seriously that renewable energy should gain a decisive role in the next decade, an overall regulation is needed that would set frames for and make easily traceable the licensing procedures.

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It was also necessary to raise the question about how this can be changed. Examining the legal package makes it possible to have more knowledge than before about the state and its functioning.

As a summary of this survey it can be stated that the present routine of the state administration does not allow for elements out of the system to enter, and that this sub-system operates in an airtight way. Examining existing strategic documents showed that they are not harmonized, they are not built on each other, and in this sense the legal package investigated was overwhelmed by chaos, and could be characterized as non-transparent and confused.

Being non-prepared has been not an exemption rather a rule. Proposals are not based on profound knowledge, there are no examples from other countries and basic data are missing as if lawmakers were not interested in the reality. The ad-hoc style, meaning the lack of deliberation, the attitude of “let’s do something quickly doesn’t matter the consequences” enhances this.

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We have mentioned that the shift in emphasis of the lawmaking in this field should be corrected, and that it would be expedient to strengthen the level of laws. The latter requirement is especially and urgently necessary in the case of renewable energy since it is in this field that the lack of the level of laws is most apparent and problematic.

The unreasonable bureaucratic barriers of licensing procedures should be gradually axed (and a "one-window" system introduced wherever possible).

Concerning all financial funds it can be said that a supervising body including NGO elements could be attached to them providing the possibility of establishing public control.

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It can be stated that up until now no similar, publicly accessible and extensive summary has been drawn on this topic (even if such a document had been compiled it was not made available for the public). Thus, this research is unique in Hungary, and its novelty is due not only to its extensive content but also to its immanent view emphasizing the primary importance of publicity, namely of providing detailed and overall information to the public.

Our study's value and novelty is in its thematic, summarizing and systematic approach, and in defining and describing disfunctioning based on the routine of the Energia Klub. Moreover, we have made proposals to improve the existing system.

Legal regulatory map

In order to have a clear view we considered it important to tidy up first, therefore a need to draw up a possibly full inventory aroused. To achieve that, a map was compiled to try and give a precise overview of the existing situation. Based on it, it was possible to examine critical issues that caused the basic problems of the system.

In any case, it is in itself a heavy fact that even though the sources are publicly accessible, getting the picture is difficult even for experts representing the state. A kind of labyrinth came into being, and it's almost impossible to find a guiding line in it that would show a way out for the one lost in it.

Exploring the complex system of state energetics we have defined the most important state institutions that according to legal regulations have significant tasks and authority in energy supply. Institutions were chosen mainly according to a list of authority of the laws regulating them taking into attention that energetics is a very complex field. Based on all that, five main types and 26 institutions belonging to them were analyzed.

Besides the complexity of the institutional network, the Hungarian energy law has an extensive and complicated system, too: there are 134 specific energy laws that are complemented with 44 more in adjacent areas, so there are all together 178 laws in this legal package. This in itself is not a problem and does not mean any over-regulation, but the shifts in the hierarchical emphasis of these laws do. The dominance of the level of decrees is evident: all together 58 ministerial decrees (49 on energetics and 9 in related fields) and 40 (in proportion of 31-9) cabinet decrees were found in this field that is more than the half of all pertinent laws. The level of decrees (let it be cabinet or ministerial decrees) by all means loosens the regulatory and procedural obligations, that is first of all useful in the case of technical regulations needing prompt modification. In turn, the level of laws that is more difficult to modify serves as a guarantee and, most importantly contains regulations that are exempt of rapid modifications.

It is obvious that monopolizing the level of laws cannot be set as a goal, and legal under-regulation is not desirable either. It can be stated that out of the 134 regulations in effect in the field of energetics about 60

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Surveying the analysis also showed that of the 134 primarily energetically related regulations only 14 percent deals with renewable energy, the environment and the climate, while the traditional energy sources, atomic energy and electric energy get all together 42.5 percent.

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This disparity in numbers would not be of a serious problem in itself, but the majority of regulations dealing with renewables and the environment have not earned any “prestigious” positions in the legal system: most of them are decrees and there are almost no laws.

Naturally, it can not be stated what the ideal legal structure should be, but this large proportion, or dominance of low level regulations is disadvantageous. Typical of the decrees is that making and passing them meets little opposition that makes the system easily alterable, and any idea becomes feasible with relatively little investment. All this is beneficial for carrying out a central will without any opposition because in this way a small group (or one person) can easily grab the decision making process and their specific interests will be fully met without any need for institutional coordination, and differing opinions can be totally excluded. Concerning renewable energy resources it is particularly problematic that regulations are made only through decrees.

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Specific conclusions

Based on all the above some *specific conclusions* can be drawn that may help in setting the possible future direction of regulations.

Making public policy shaping and lawmaking project-centered and transparent would be expedient by all means, namely according to following aspects:

More than anything, shaping public policy should be handled as a *process*, because there might be situations when it is worth to take into attention the stakeholders' point of view already when the need for regulation emerges. The process of lawmaking could be a procedure characterized by transparency and professional sensitivity.

Creating *quality time and space* for participation in lawmaking. In this sense it is desirable on one hand to give real content for regulations presently in effect, or rather, on the other hand to transform them, creating a framework for civic and economic partners to be substantive partners in lawmaking.

It is also related to time-factor that while implementing the EU legal package there should be *enough time* to gather opinions since the EU ensures a sufficient time-span, and it is not beneficial if this time "melts away" at the national government.

It would have a huge importance if the *culture of real investigation of the effects of legal regulations* was established in Hungary, and particularly extending the investigation of effects on factors of corruption would be of great use.

We have mentioned that the shift in emphasis of the lawmaking in this field should be corrected, and that it would be expedient to strengthen the level of laws. The latter requirement is especially and urgently necessary in the case of renewable energy since it is in this field that the lack of the level of laws is most apparent and problematic.

The unreasonable bureaucratic barriers of licensing procedures should be gradually axed (and a "one-window" system introduced wherever possible).

Concerning all financial funds it can be said that a supervising body including NGO elements could be attached to them providing the possibility of establishing public control.