

## Energy & Natural Resources - Hungary

Energy law overhaul and new unbundling rules

Contributed by Nagy és Trócsányi

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After a three-month debate, Parliament adopted the Act on the Amendment of Certain Acts Governing the Hungarian Energy Industry<sup>(1)</sup> on March 16 2011. The amending act essentially affects three legal instruments in the field of Hungarian energy law: the Mining Act,<sup>(2)</sup> the Electricity Act<sup>(3)</sup> and the Gas Act.<sup>(4)</sup>

### Mining Act

The legislative purpose of amending the Mining Act was to implement the EU Carbon Capture and Storage Directive (2009/31/EC) into Hungarian law. With the aim of facilitating the fight against climate change, the amending act creates a legal framework for the separation, delivery and storage of carbon dioxide from energy-sector and other industrial sources in underground geological storage units. The relevant provisions come into force on June 25 2011.

### Electricity Act and Gas Act

The purpose of amending the Electricity Act and the Gas Act was twofold.

First, the legislature sought to rectify shortcomings in the two acts on the basis of their practical application. Texts and definitions have been significantly refined and amended. In order to make the Energy Office's authorisation process more efficient, an electronic procedure has been introduced and is mandatory in certain cases.

Second, the amending act implements the so-called 'Third Energy Package' adopted by the European Parliament and Council on July 13 2009.<sup>(5)</sup> The most significant innovation in this respect is the introduction of detailed rules concerning the unbundling of operations. The EU directives in question provide that where (as of September 3 2009) an undertaking that owns a transmission system is part of a vertically integrated undertaking, EU member states should be given the choice of implementing ownership unbundling or creating a system operator or transmission operator that is independent of supply and production interests. On this basis, the amending act provides for three models of unbundling in both the electricity sector and the gas sector. The relevant rules came into force on April 15 2011.

### Unbundling models

According to the amending act, vertically integrated undertakings may choose from three unbundling models.

#### *First model*

In the first model, unbundling can be realised by ensuring the independence of transmission system operators within the electricity and gas market without unbundling of ownership. This model is based on two requirements. Transmission system operators must have the necessary financial and human resources - controlled independently of the parent undertaking - to perform their activities and ensure fully independent management. The other requirement intends to ensure full market integration by means of provisions that determine the framework of the financial and trading relationship between the transmission system operator and the parent undertaking (or other subsidiaries of the vertically integrated undertaking), as well as ensuring that investment decisions are made independently.

Transmission system operators must prepare compliance programmes that are subject to approval by the Energy Office. The application of such compliance

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programmes will be supervised on an ongoing basis by a compliance officer.

### **Second model**

The second model allows vertically integrated undertakings to opt for full ownership unbundling of their transmission system operators. The transmission system operator must own the transmission system and all assets that are necessary for the performance of its activities. Furthermore, the same person or persons may not:

- exercise control (directly or indirectly) over an undertaking that performs production or supply functions, or exercise control or rights (directly or indirectly) over a transmission system or transmission system operator;
- exercise control (directly or indirectly) over a transmission system or transmission system operator, or exercise control or rights (directly or indirectly) over an undertaking that performs production or supply functions;
- appoint a member to the supervisory board, administrative board or representative body of a transmission system operator, or exercise control or rights (directly or indirectly) over an undertaking that performs production or supply functions; or
- be a member of the supervisory board, administrative board or representative body of both a transmission system operator (or an undertaking with an interest therein) and an undertaking that performs production or supply functions.

An undertaking that performs production or supply functions may not exercise control or rights (directly or indirectly) over a transmission system operator.

### **Third model**

If a vertically integrated undertaking so requests, the Energy Office will appoint an independent system operator, which must comply with the second, third and fourth requirements under the second model and must possess the financial, human and technical resources necessary to perform its activities. Under this model, the ownership and operation of the transmission system remain separate. The vertically integrated undertaking may retain ownership of the transmission system, but the system must be operated and managed independently of the vertically integrated undertaking. The independent system operator is entitled to make all operational, strategic and investment decisions, and must be supported in doing so by the owner of the transmission system.

Pursuant to the amending act, the Energy Office will supervise compliance with the provisions on unbundling by means of a certification procedure. The act provides that transmission system operators which are active in the Hungarian electricity and gas market must give notice that they have initiated the certification procedure by no later than May 31 2011 and must present proposals for their intended compliance with the unbundling rules from March 3 2012.

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(1) Act 29/2011.

(2) Act 48/1993.

(3) Act 86/2007.

(4) Act 40/2008.

(5) The implementation relates to EU Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing EU Directive 2003/54/EC; EU Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC; EU Regulation 713/2009 establishing an Agency for the Cooperation of Energy Regulators; EU Regulation 714/2009 on conditions for access to the network for cross-border exchanges in electricity, repealing EU Regulation 1228/2003; and EU Regulation 715/2009 on conditions for access to the natural gas transmission networks, repealing EU Regulation 1775/2005.

(6) The term 'vertically integrated undertaking' is an undertaking or group of undertakings where the same persons are entitled - directly or indirectly - to exercise control, and where the undertaking or group of undertakings performs at least one of the functions of transmission, distribution or storage, and at least one of the functions of production, generation or supply of gas or electricity.

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