

Wind Energy – Legal Framework in Hungary & Bird & Bird

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Introduction

Summary on the existing Wind Power Plants ("**WPPs**")

Legal Framework

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1. Summary on the existing WPPs

Currently there are 155 installed and operating WPPs in Hungary with the total capacity of approximately 295MW, which are covered by 48 wind energy licenses (“**WELs**”). All these WELs were issued in 2006.

Right now a WPP with 34MW capacity is being constructed (by Mistral Kft. in Ikervár - western part of Hungary). Once it is completed in early 2011, the entire 330MW awarded by the WELs issued in 2006 will be installed and put into commercial use.

Term of the WELs – defined, usually 25 years.

2. Summary on the existing WPPs

Allocation of the awarded WPPs geographically (based on MW):

| Region | MW | % |
|--------------------|-------|------|
| North Hungary | 177,1 | 53,7 |
| North-West Hungary | 73,4 | 22,2 |
| West Hungary | 51,6 | 15,6 |
| Central Hungary | 25,6 | 7,8 |
| East Hungary | 2,3 | 0,7 |
| | 330MW | 100% |

1. Legal Framework

Main Laws:

Act No. LXXXVI of 2007 on Electricity (the “**Electricity Act**”);

Government Decree No. 273/2007 (X.19.) on the implementation of the Electricity Act (the “**Implementation Decree**”);

KHEM Decree No. 33/2009 (VI.30.) on the tenders in connection with the establishment of wind power plants (the “**Wind Tender Decree**”);

Government Decree No. 382/2007 (XII.23.) on the construction permission procedures in the electricity industry (“**Electricity Constructions Licensing Decree**”);

Government Decree No. 314/2005 (XII. 25.) on the environmental impact studies and integrated environmental use permits (“**Environmental Licensing Decree**”);

Government Decree No. 389/2007 on the mandatory take-over and the mandatory take-over price (feed-in tariff) of the electricity produced from renewable resources (the “**Feed-in Decree**”);

GKM Decree No. 117/2007 (XII. 29.) on the financial and technological conditions of connecting to the electrical grid (“**Interconnection Decree**”);

Government Resolution No. 1250/2010 (XI. 19.) on the approval of a preliminary national action plan and preparation of the final national action plan relating to the Europe 2020 Strategy (“**Preliminary National Action Plan**”)

2. Legal Framework

Complying with Europe 2020 Strategy

The EU Directive (2009/28/EU- 23 April 2009) setting up mandatory targets for renewable energy for all EU member states, provides that Hungary should increase the amount of renewable in its energy mix to **13% by 2020**.

The Hungarian Government in the Preliminary National Action Plan, adopted on 19 November 2010, increased this undertaking to **14,6% by 2020**.

Currently 0.1% (1,3 PJ) of the Hungarian energy comes from wind, and the amount of the entire renewable in Hungary's energy mix was **7.4% on the of 2009**.

3. Legal Framework

WEL entitles its holder to establish a WPP, to produce electric energy and to sell electricity produced at the WPP at the feed-in tariff ("**Feed-in Tariff**") during the mandatory take-over period ("**MTOP**").

Since 1 January 2008, any new WPP development, except for certain limited cases, is subject to public tender ("**Wind Energy Tender**" or "**WET**") to be issued by the Hungarian Energy Office ("**HEO**").

Currently no Wind Energy Tender is available. No WEL has been issued since 2006.

4. Legal Framework

Last Wind Energy Tender was launched in August 2009 for construction of 410MW WPPs. Until 1 March 2010 (which was the deadline for submission of the bids) 68 bids were submitted for the total capacity of 1118MW.

Subsequent to the Hungarian parliamentary elections in spring of 2010, the new government expressed its intention to reexamine the criteria and conditions of the Wind Energy Tender.

Subsequent to this the HEO suspended the 2009 Wind Energy Tender, on 15 July 2010.

5. Legal Framework

Expected Changes in 2011

We expect that a new Wind Energy Tender will be published in 2011, but it is uncertain when exactly and for how much MW capacity.

Right now a proposal for **modification** of the Electricity Act is with the Hungarian Government. It is very likely that it will be adopted in the first half of 2011.

This modification would introduce to the Hungarian electricity law the 'green certificate', mandatory online (electronic) filing with the HEO of the application for issuance of a WEL, and would include a new step into the Wind Energy Tender, that it may be issued only based on a respective Ministerial decree.

1. Development and Operation of a WPP Permits & Licenses

Wind Energy Permit / WEL— to be obtained in the course of a Wind Energy Tender, except in certain limited cases which are:

(a) household WPPs (power plants the interconnection capacity not exceeding 50kVA) - the establishment and operation of which require only a license from the local municipality, and

(b) WPPs with capacity below 50MW (the so-called “**Micro Power Plant**”) which are NOT CONNECTED to the distribution or transmission network - require a so called combined Micro Power Plant license which needs to be obtained from the HEO.

2. Development and Operation of a WPP Permits & Licenses

WEL - Limitations:

- only domestic (Hungarian) companies can obtain a WEL or submit an application to a WET ("**Company**"), except for household WPPs.
- maximum capacity below 50MW.

Other Permits:

Environmental Permit – prerequisite to application to a WET.

WPP Construction Permit - prerequisite to application to a WET.

Cable Permit - to be obtained in connection with the WPP's cables.

Occupancy Permit – to be obtained for certain parts of the WPP, such as wind turbines.

Operation Permit - to be obtained for certain parts of the WPP, such as production cables, transformers.

3. Development and Operation of a WPP Mandatory Agreements

Agreement with the TSO (Balance Circle Agreement) - needs to be entered into with the Hungarian transmission system operator ("**TSO**"), that is MAVIR Zrt. ("**MAVIR**"), regarding the mandatory take-over by MAVIR of electricity produced in the WPP during the MTOP.

Grid Connection Agreement - needs to be entered into with the local distribution system operator ("**DSO**", e.g. E.On Dédász, Démász, Elmű, E.On Édász, Émász, E.On Titász), under which the Company may feed into the distribution system certain agreed volume of electricity.

4. Development and Operation of a WPP Real Estate Issues

Land on which the WPP will be developed may be either owned or not by the Company.

If not, a **Land Usage and Building Ownership Agreement** providing for the ownership of the structures/buildings (wind turbines and other related equipment, e.g. transformers, cables) and land usage rights needs to be entered into with the owners of the properties/land.

In return for these rights the Company pays certain agreed consideration to the land owners.

5. Development and Operation of a WPP Real Estate Issues

Land Usage Rights - if such right is granted, the Company is entitled to construct the WPP on the properties.

Ownership Rights - legal entities are not entitled to acquire any **agricultural land** under Hungarian law. No restriction with respect to structures (e.g., WPP) constructed on agricultural land, provided that **rezoning** of the land is validly approved.

If the properties are classified as agricultural land, the issuance of the Construction Permit is subject to **approval of rezoning** by the Land Registry Office, which allows agricultural land to be used for non-agricultural purposes.

The land owners and the Company each have rights of first refusal in the case of the sale of the land or the structures on such land, as the case may be, to a third party ("**Right of First Refusal**"). The Right of First Refusal does not apply in the case of transfer of a quota in the Company.

6. Development and Operation of a WPP Real Estate Issues

Easements - Right of Way & Cable Easement

The Company needs to secure easements in respect of all properties affected by the cables connecting the wind turbines, the transformer and other equipment. For this purpose the Company needs to enter into agreements on the establishment of cable rights and rights of way easements.

1. Feed-in Tariff

Obligation by MAVIR to take over the electricity produced by the WPPs at the Feed-in Tariff defined in the **Feed-in Decree**, during the MTOP.

MTOP – is certain defined term which ends (a) either on certain defined date (e.g., 10 years from the start of the operation of the WPP) in the future, or (b) until the maximum guaranteed volume is produced and sold by the WPP, whichever occurs earlier.

After the expiry of the MTOP the Company needs to secure new purchasers for the electricity produced by the WPP, and sell to them the electricity at market prices within the regulatory framework effective at that time.

2. Feed-in Tariff

Feed-in Tariff is a statutory take-over price which is adjusted annually with the CPI published by the Hungarian Statistical Office. The adjusted Feed-in Tariff is published annually in December by the HEO. Depending in which category of the WPP the respective WPP falls the Feed-in Tariff may defer for 'peak', 'off-peak' and 'deep off-peak' periods (high-demand hours / low-demand hours).

The HEO informed us early this week that it will publish soon the 'new' Feed-in Tariff adjusted only with the CPI.

3. Feed-in Tariff

| Electricity produced from Hungarian Wind Power Plants Feed-in Tariff effective as of 1st January 2010 (not including VAT) HUF/kWh | | | | |
|--|--|-------|----------|---------------|
| | | Peak | Off-peak | Deep off-peak |
| Applicable in case of energy produced based on HEO's resolution adopted (i) before 1 January 2008 , or (ii) in connection with a request filed by 1 January 2008 | Wind | 29,28 | 29,28 | 29,28 |
| Applicable in case of energy produced based on HEO's resolution adopted after 1 January 2008 | Produced by a WPP with a maximum capacity of 20 MW | 32,10 | 28,72 | 11,72 |
| | Produced by a WPP with a capacity exceeding 20 MW but below 50 MW | 32,10 | 28,72 | 11,72 |

| On Working Days | | |
|---------------------|-------------------|-------------------|
| Time zones | Winter time | Summer time |
| Peak | 06:00 – 22:00 | 07:00 – 23:00 |
| Off-peak | 22:00 – 01:30 and | 23:00 – 02:30 and |
| | 05:00 – 06:00 | 06:00 – 07:00 |
| Deep off-peak | 01:30 – 05:00 | 02:30 – 06:00 |
| On Non-Working Days | | |
| Time zones | Winter time | Summer time |
| Off-peak | 06:00 – 01:30 | 07:00 – 02:30 |
| Deep off-peak | 01:30 – 06:00 | 02:30 – 07:00 |

Main Problems

- APPLICABLE LAWS: too many, unification required.
- PERMITS: numerous permits needs to be obtained.
- UNCERTAIN TIMEFRAME: the time of the procedures for obtaining various permits are on many points uncertain, even if there is a mandatory deadline for the authorities they are likely to be late, may request supplementary filing (may take from 1 to 4 years).
- HIGH ADMINISTRATIVE FEES: administrative service fees are payable in connection with various required permits, e.g.:

WEL - EUR 1,820.00-9,090.00 depending on the capacity applied for,

Environmental Permit - EUR 910.00-3,270.00 depending on the capacity applied for,

Various WPP Construction/Cable/Occupancy/Operation Permits EUR 27.00/per permit.

Modifications expected in 2011

Modification of the Electricity Act – among others may:

- include new steps into the WEL procedure (instead of simplifying it)
- affect the mandatory take over of renewable energy
- include into the electricity law 'green certificates'

Modification of the Feed-in Decree – term of the MTOP will be either fixed by the law or become a competitive element within the WET (in the past it was defined on case by case basis by the HEO).

Final National Action Plan relating to the Europe 2020

Strategy -the draft of which has been presented to the National Council on Environment on 3 December 2010, includes state subsidies and other financial incentives, the purpose of which will be to support investments into the renewable sector.

Thank you & Bird & Bird

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