

Additions to the report on

‘Existing legislation on combined heat and power in Hungary’ (report under Article 10(1) of Directive 2004/8/EC of the European Parliament and of the Council and containing the elements listed under Article 9(1) and (2) thereof)

Article 9(1)(a) ‘encouraging the design of cogeneration units to match economically justifiable demands for useful heat output and avoiding production of more heat than useful heat’

In accordance with Section 8(1) of Government Decree 389/2007 of 23 December 2007, producers selling electricity must certify after the reference year by means of the certificate of origin that the amount of electricity produced and sold by them during the reference year is in line with the requirements of the Decree and, in the case of cogeneration, Decree 110/2007 of the Ministry of Economic Affairs and Transport of 23 December 2007. The amount of electricity sold in the mandatory off-take system may not exceed the amount of electricity certified for the year in question by the certificate of origin.

Under the mandatory off-take system, the operator accepts cogenerated electricity at an officially calculated, favourable rate. This helps to promote the planning and establishment of cogeneration and to ensure that the projects are economical. However, the legislation does not give preference to the production of more heat than meets the economically justifiable demand for useful heat, since if more heat is produced than meets the useful demand, a certificate of origin cannot be issued for the electricity produced, or it does not fulfil the monthly or yearly average efficiency, and therefore no longer qualifies for mandatory off-take.

The mandatory off-take system benefits producers. Firstly, because the operator (MAVIR Zrt.) is required to accept the cogenerated electricity, which creates a guaranteed, regular market for the contractor. Secondly, the operator accepts the electricity sold under the mandatory off-take system at an official price, which is higher than the price that could be achieved on the competitive market, and in practice includes a price subsidy.

Moreover, cogeneration producers can enjoy preferential interest rates for their projects under various energy efficiency tenders, or claim non-refundable aid, if the tender conditions are met.

Article 9(2)(a) ‘coordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations’

The Hungarian Energy Office issues operating licences for the production of electricity and heat energy. Electricity producers must apply for a construction licence only where nominal capacity exceeds 50 MW.

District heating producers must apply for a construction permit if thermal capacity is 5MW or more. In the course of the construction licensing procedure, the Hungarian Energy Office works with the environmental authority's regional organisations. Where changes are made to the operating licence, the Hungarian Energy Office works with the Hungarian Competition Authority to assess the approval of acquisitions. The Hungarian Energy Office has harmonised procedures with its partner offices to ensure they are completed quickly and smoothly.

Article 9(2)(b) 'the drawing up of possible guidelines for the activities referred to in paragraph 1, and the feasibility of a fast-track planning procedure for cogeneration producers'

The Hungarian Energy Office has drawn up a number of guidelines to promote the licensing, applications for certificates of origin and participation in the mandatory off-take system of cogeneration plants. These guidelines have been published on its website.

The procedure for small cogeneration plants (i.e. power plants with a nominal electrical capacity greater than 0.5 MW and lower than 50 MW) is much simpler, with the Hungarian Energy Office issuing licences for the construction of small power plants and electricity generation in a single procedure (simplified licensing procedure), in combined form.

The government intends to make further major simplifications to small cogeneration plants as of 2011 by having the Hungarian Energy Office issue a simplified, single licence for small power plants and an operating licence for district heat producers in a single procedure and a single licence. The single licence for small power plants referred to above is not required for power plants with a capacity of less than 50 KVA (so-called micro power plants), which can therefore be built simply and quickly.

Article 9(2)(c) 'the designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations'

There are no legal restrictions on increases in cogeneration, since the authority entitled by law to issue licences and certificates of origin (the Hungarian Energy Office) is wholly independent of market players.

The Office cannot refuse to issue licences for the construction or operation of new power plants if the application for authorisation meets the statutory requirements and includes the annexes predefined in the legislation and the requirements on content set out therein.

The fact that the Office refuses to issue licences only in the cases provided for in the legislation guarantees the non-discriminatory and objective operation of the licensing procedure.

The decisions of the Hungarian Energy Office are subject to judicial review. Appeals must be lodged to the Office, addressing the Municipal Court of Budapest, within 30 days of service. Appeals do not have suspensory effect. With the exception of breaches of procedural rules having no effect on the substance of the case, if a breach of law is established, the court ruling

in administrative cases can annul the administrative decision and, where necessary, order the authority to issue a new decision or to rectify its decision.