

Hungarian Energy Market

Further tightening of grid connection rules – existing grid connection rights could also be at risk

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A new government decree on the application of Act No. LXXXVI of 2007 of Hungary on electricity during emergency situations was published in the National Gazette of Hungary (see Government Decree No. 526/2022. (XII. 16.) in Hungarian Gazette No. 208/2022.), the main purpose of which is to further tighten the rules for the connection of the affected, essentially weather-dependent power plants to the grid. The newly adopted rules also affect market players with existing, granted or expected grid connection rights, and may even lead to the loss of such rights in the case of non-compliance.

Key takeaways

- Pursuant to the new government decree, by 15 January 2023 at the latest, essentially all owners of power plants with a valid grid connection right (but at least a technical economic information sheet, in Hungarian: "műszaki gazdasági tájékoztató") but not yet connected to the grid are obliged to declare to the competent network operator (TSO, DSO) when (in which calendar year) they intend to connect their power plant to the grid.
- The grid connection contracts applied in Hungary usually do not specify an exact year for the connection of a given power plant but allow a relatively long period of time for the final connection of the generating units. The government's aim with this decree is therefore to obtain more information on when exactly these power plants intend to connect, so that the balance of the Hungarian grid can be better predicted and prepared for additional loads.
- Based on the declarations, the network operators will carry out quick load calculations for the coming years and assess whether the grid can accommodate these plants at the rate predicted in the declarations.
- If the load calculations show that the Hungarian grid cannot cope with the planned new connection schedule, the competent network operator will have the right to postpone the connection of certain power plants until 2027 (by connection, the decree means the start of production of the plant).
- Power plants that (i) do not submit their declarations by the deadline or (ii) do not accept the modification (extension) made by the network operator will be able to apply for connection during the next so-called individual capacity allocation procedure. Those who declare that they do not wish to be connected or who fail to make a declaration in the next individual capacity allocation procedure will automatically lose their right to be connected.
- Any power plant that wishes to maintain its right to connect to the grid by having the network operator accept the "original" connection date set out in the declaration or for which the extension by the grid operator has been accepted by the project owner, is required to pay or provide a financial security and a supplementary security to the network operator.
- The network operator shall not be entitled to postpone the connection date of power plants that, before 1 January 2023, (i) have signed an agreement with an approved financier for the financing of the construction or (ii) can prove that the construction e-log for the project has been opened, the construction site has been handed over to the construction company and the power plant has received an installation permit.
- If the network operator postpones the power plant's date of connection to the grid, certain project permits and authorisations are automatically extended until the new date.
- The approved grid connection date is in practice a one-year window: from 30 January of a given year to 30 January of the following year, during which the connection to the grid can be implemented. The plant cannot start operating earlier or later than this one-year period.

1 Affected market players

The government decree applies to market players (applicants, network users) who, on the date of entry into force of the decree, i.e., 1 January 2023:

- (a) have a valid and existing grid connection agreement;
- (b) have a valid and existing technical economic information sheet (in Hungarian: "*műszaki gazdasági tájékoztató*" or "*MGT*") issued before 2 May 2022;
- (c) have a grid connection plan pending approval or already approved by the network operator in accordance with the distribution or operation codes the market players referred to in points (a) to (c) are hereinafter collectively referred to as "**Old-Type Applicants**"; or
- (d) have submitted an application for grid connection in a new-type individual capacity allocation procedure first published on 2 May 2022 after the publication of the detailed information on the current available capacities and the technical and expected economic conditions for connection (the market players defined in point (d) are hereinafter referred to as "**New-Type Applicants**"),

but their power plant has not yet been connected to the grid (i.e., the power plant has not yet started production). In general terms, system users holding a licence in principle for a power plant which has a significant impact on the operation of the electricity system (i.e., in essence, license holders of power plants with a nominal capacity exceeding 500 MW) are excluded from the scope of the decree.

2 Declaration on maintaining the intention to connect to the grid, the expected date of connection and the payment of financial securities

Old-Type Applicants must, by 15 January 2023 at the latest, declare to the network operator providing the entry connection capacity, under specified conditions, (i) their intention to maintain their claim to use the connection capacity, (ii) the planned date of use of the connection, determined in the calendar year, and (iii) that they will pay the financial securities at the rate specified in the government decree in case of a positive assessment by the network operator. Old-Type Applicants are also obliged to make a declaration even if the document establishing or requiring the right to connect to the grid does not specify a deadline for the actual use of the connection. In addition, it is also possible to indicate at this point in the declaration if there are circumstances, as defined by a government decree, which prevent the network operator from changing the planned year of connection (see Section 3) or if the applicant wishes to use the connection at a lower level of entry capacity than previously specified (see Section 8).

Network operators must inform the Old-Type Applicants of their obligation to make the foregoing declaration no later than the second working day following the date of entry into force of the government decree, i.e., by 3 January 2023. The notification shall be sent by electronic mail to the last electronic contact address for electronic contact purposes provided by the market player or to the electronic contact address of the entity as indicated in the company register. It is important to note that the notification of the network operator is for information purposes only and that the receipt of the notification by the applicant is not a condition precedent for the obligation to make a declaration to take effect.

Old-Type Applicants must send the declaration by electronic means in a scanned, duly signed form or in a certified electronic document, in accordance with the template published by the network operator, indicating the reference number of the grid connection agreement or the technical economic information sheet, to the email address specified by the network operator.

If the Old-Type Applicant declares that it does not wish to use the connection, the possibility to use the connection and the right to dispose of the connection shall cease on the day following the expiry of the deadline for making the declaration. In such a case, the network operator shall refund the financial security previously provided under the distribution or operational code within 30 days and shall settle any connection fee already paid with the applicant.

If the Old-Type Applicant does not make a declaration within the prescribed deadline, i.e., by 15 January 2023, the applicant resubmit its request for connection in the next individual capacity allocation procedure no later than 13 June 2023, for which the provisions of the applicable electricity supply regulations shall apply, with the condition that the applicant shall have priority over new individual applications for connection submitted in the next capacity allocation procedure in determining the effective date of connection with unchanged technical content. On the basis of the necessary grid developments identified in the individual application procedure, the connection fee previously set for the applicant for connection shall not be increased due to changes in indirect grid investments. If the Old-Type Applicant concerned does not make an individual application, the applicant's right to connection shall expire on the day following the expiry of the deadline for making an individual application. Within 45 days after the deadline for making a declaration, the network operator shall return to the applicant the financial security previously paid by under the distribution or operational code and shall settle the connection fee paid with the applicant.

3 Limits for determining the year of connection

In making the declaration, **Old-Type Applicants may indicate a calendar year later than the 3 or 5 year deadline set in the Electricity Act as the calendar year for the use of the connection, but the indicated calendar year may not be later than 2027,** subject to the following limits:

- (a) if the grid connection contract or the technical economic information sheet requires the network operator's grid development in order to benefit from the connection, the calendar year indicated shall not be earlier than the calendar year including the last day of the deadline for the network operator's grid development set out in the grid connection agreement or the technical economic information sheet;
- (b) if a deadline for the applicant to use the connection can be determined by law, by the terms of the grid connection agreement or by the terms of the technical economic information sheet, the last day of which is not later than 1 January 2024, the calendar year to be designated shall be 2023 only;
- (c) if the earliest date for the use of the connection according to the technical economic information sheet is later than 2027, the applicant may not specify a calendar year earlier than the calendar year including the first day of the deadline for the use of the connection as set out in the technical economic information sheet as the effective date of connection.

4 Assessment and confirmation of the notified expected connection year by the network operator

On the basis of the declarations, **network operators shall determine from a technical point of view,** pursuant to the conditions of the operational code relevant for the assessment of individual applications, **which grid developments are necessary as indirect connection investments in order to use the connections under the declarations. On the basis of the expected completion of the identified grid developments,** network operators shall then determine the earliest calendar year for the use of the declared connections, **which may be later than the date indicated in the declaration, but not later than 2027** (with a view to the limitations set in Section 3), in accordance with the order of the dates of use indicated in the declaration.

It is important to note that if the Old-Type Applicant successfully justifies any of the following circumstances, the calendar year indicated in the declaration for the connection cannot be changed by the network operator:

- (a) before 1 January 2023, the construction site for the investment has been handed over to the construction company, which shall be evidenced by the construction e-log and, in the case of a power plant with a nominal capacity of at least 0.5 MW, a power plant establishment permit or a combined small power plant permit issued before 1 January 2023;
- (b) before 1 January 2023, a written contract has been concluded for the financing of the construction of the power plant which meets one of the following conditions:
 - (i) a financing contract with an undertaking providing financial services on a commercial basis, other than a group financing contract;
 - (ii) a group financing contract for which, on 1 January 2023, the group's international credit rating is equal to or better than Hungary's (BBB for S&P and Fitch and Baa2 for Moody's); or
 - (iii) a grant contract for support from state budget or EU funds,

which must be evidenced by a certified statement issued by the financial undertaking or the provider of group financing, by submitting a copy of the financing or grant agreement and, in the case of group financing, by submitting, in addition to the foregoing documents, a rating issued by a credit rating agency that has also rated Hungary and is approved by the National Bank of Hungary, valid on 1 January 2023.

It is important to note that if the market player does not prove the above circumstances in the ways listed, the network operator will not take them into account.

If the applicant is not obliged to pay a financial security in respect of the previously paid security or connection fee (see Section 8) and the network operator specifies a later calendar year than the calendar year indicated by the applicant in the declaration in its notice, the applicant shall declare its acceptance of the new connection date offered by 13 February 2023 at the latest.

It is also important to note that, on the basis of any newly defined necessary grid developments, the grid connection fee previously set for the market player concerned cannot be increased due to possible changes in technical content.

The network operator shall inform the applicant concerned electronically by 6 February 2023 at the latest of the acceptance or modification of the calendar year indicated in the applicant's declaration and of the detailed rules for the payment of the related financial securities. The network operator shall provide the information by electronic means to the electronic contact address of the applicant indicated in the declaration submitted or, in the absence thereof, to the electronic contact address specified in Section 2, in such a way that its delivery can be verified.

5 The specific period of time within the connection year for the use of the connection (commissioning)

If the Old-Type Applicant fulfils its declaration and financial security payment obligations in due time and the network operator confirms the expected year of connection, **the deadline for connection – for commissioning – is the 30th day following the last day of the calendar year indicated in the network operator's notice. In the event of failure to meet the deadline**, except for delays due to delays in grid developments to be made by the network operator, **the connection may be requested in the next individual capacity allocation procedure**, to which the

provisions of the applicable electricity supply code shall apply, with the condition that the applicant's request for connection with unchanged technical content shall have priority over new individual requests for connection submitted in the next capacity allocation procedure. On the basis of the necessary grid upgrades identified in the individual application procedure, the grid connection fee previously set for the applicant for connection shall not be increased due to changes in indirect grid development. In the event of failure to submit an individual application, the applicant's right to dispose of the connection shall expire on the day following the expiry of the deadline for submitting an individual application. Within 45 days of the deadline for making a declaration, the network operator shall return to the applicant the financial security previously paid by under the distribution or operational code or the government decree and shall settle the grid connection fee paid with the applicant.

The earliest date for the use of the connection – the commissioning date – is the 30th day of the first month of the calendar year indicated in the network operator's notice, before which the applicant is not entitled to use the connection.

The foregoing timeframe cannot be modified unilaterally or by mutual agreement of the parties, nor can any other extension options provided by law be applied.

6 Automatic renewal of certain related permits

For the affected power plants,

- (a) the validity of the construction permit, environmental and electricity generation permits; and
- (b) the deadline for the commencement of electricity production related to the mandatory offtake of electricity from renewable energy sources or waste electricity (FiT, in Hungarian: "KÁT") and the commencement of commercial operation related to the mandatory offtake of electricity, or eligibility for premium support (CfD, in Hungarian: "METÁR") from renewable energy sources

shall be extended until the new deadline for applying for connection, if those would expire earlier. However, it is important to note that the deadline for the start of commercial operations related to the premium-type support awarded under the tender procedure will only be extended if the performance security related to the support entitlement remains valid for 4 months after the extended deadline, and this is duly certified to the Hungarian Energy and Public Utility Regulatory Authority.

7 Right of the network operators to an extension of the deadline in individual capacity allocation procedures

The foregoing rules apply in cases where at least a grid connection agreement, grid connection plan or technical economic information sheet is already available to the Old-Type Applicants. However, the provisions of the government decree are not only relevant for them. According to the decree, for grid connection applications submitted in an individual capacity allocation procedure launched after the publication of a detailed information on current available capacities and the technical and expected economic conditions for connection for the first time on 2 May 2022 – i.e., **for the so-called New-Type Applicants – , the network operator may, when issuing the technical economic information sheet (or, where applicable, the call for a feasibility study), set a later deadline for connection than the 3 or 5-year deadline under the Electricity Act – right at the start of the procedure of applying for grid connection, i.e., it is not necessary to wait until the applicant concerned has at least the technical economic information sheet.**

8 Payment of financial securities

If the Old-Type Applicant makes a declaration to maintain the grid connection request, it shall explicitly commit to pay a financial security to the network operator in case of confirmation by the network operator of the calendar year indicated in the declaration for the connection request or acceptance by the applicant of the date modified by the network operator. 20% of the specified financial security shall be paid by 13 February 2023 at the latest and the remaining part by 23 April 2023. The amount of the security shall be credited to the bank account of the network operator by the last day of the period and no certificate of default can be accepted. In the event that the plant is commissioned before the deadline for payment, the market player shall not be required to pay a financial security.

The basis for the calculation of the financial security shall be the feed-in capacity specified in the Old-Type Applicant's grid connection contract, technical economic information sheet or grid connection plan, unless the applicant decides to use the connection with a lower feed-in capacity than previously specified, in which case the amount of the security shall be calculated on the basis of the lower capacity so specified.

The amount of the security is HUF 4.5 million/MVA. Below 1 MVA, it shall be rounded to tenths of MVA, but at least to 0.1 MVA, and above 1 MVA to whole MVA. The amount of the security shall be deemed to include the amount of the security already paid by the market player to the network operator in the grid connection application procedure under the distribution or operational code, as well as the amount of the grid connection fee already paid under the grid connection contract. If the amount of the remaining financial security to be paid is zero, the market player shall not be obliged to pay any financial security, but shall make a declaration within the time limit set.

In addition to the above, both Old-Type Applicants and New-Type Applicants are required to pay an additional security or provide a bank guarantee (based on the bank guarantee template published on the network operator's website) for the requested feed-in capacity. The amount of the additional security is 5% of the benchmark investment amount calculated by multiplying the requested grid connection capacity by the specific benchmark investment value. The specific investment value is defined in Annex 1 of the government decree as follows:

Technology	Specific benchmark investment value for setting the level of securities (million HUF/MWe ¹)
Biogas (with biogas operation)	1025
Gas from landfill	525
Solar panel (fixed)	325
Solar panel (solar tracking)	375
Solid biomass (without mixed fuel)	1025
Solid biomass (with mixed fuel)	1025
Geothermal power plant	1425
Hydropower	1025
Other technologies not listed	1025

¹ The MWe values are the nominal electrical capacity, which in the case of inverter power plants should be determined on the basis of the nominal active (watt) capacity of the inverters on the AC side.

The concerned Old-Type Applicants and New-Type Applicants shall pay the additional financial security progressively, in instalments where applicable, with **the payment due date being 23 April of each year**. If the year specified as the effective date of connection in the notice sent by the network operator to the Old-Type Applicant or in the technical economic information sheet issued to the New-Type Applicant is

- (a) 2023, 5% of the benchmark investment amount shall be paid in 2023;
- (b) 2024, then 4% of the benchmark investment amount is payable in 2023 and the remaining 1% in 2024;
- (c) 2025, then 3% of the benchmark investment amount is payable in 2023, 1% in 2024 and the remaining 1% in 2025;
- (d) 2026, then 2% of the benchmark investment amount is payable in 2023, 1% in 2024, 1% in 2025 and the remaining 1% in 2026;
- (e) 2027, then 1% of the benchmark investment amount is payable in 2023, 1% in 2024, 1% in 2025, 1% in 2026 and the remaining 1% in 2027; or
- (f) 2028 or later, then the applicant shall pay the additional financial security by paying 1% of the benchmark investment amount each year in the calendar year of the effective date of connection and each year for the four years preceding that date.

The network operator shall repay 50% of the additional financial security or release 50% of the bank guarantee already approved, if the Old-Type Applicant or New-Type Applicant concerned **certifies the existence of a construction permit for the power plant unit to the network operator before certifying the start of commercial operation**.

In the event of non-payment of any security within the deadline, the request for connection may be made in the next individual capacity allocation procedure until 13 June 2023 at the latest, which individual request shall be subject to the provisions of the applicable electricity supply regulations, with priority over new individual requests in the next capacity allocation procedure in determining the effective date of connection of the applicant with unchanged technical content. On the basis of the necessary grid upgrades identified in the individual application procedure, the grid connection fee previously set for the applicant for connection shall not be increased due to changes in indirect grid development. In the event of non-submission of an individual application, the applicant's right to dispose of the grid connection shall expire on the day following the expiry of the deadline for submitting an individual application. Within 45 days after the deadline for making a declaration, the network operator shall return to the applicant the financial security previously paid by the applicant under the distribution or operational code and shall settle the grid connection fee paid with the applicant.

The financial securities paid will be included in the grid connection fee and will be credited by the network operator in the earliest grid connection fee instalment due. If any security paid exceeds the grid connection fee chargeable under the grid connection agreement, the financial security shall be refunded or released by the network operator within 15 days of the grid connection being put into operation.

9 Expected impacts and related issues

Following the announcement by the TSO (MAVIR) in May 2022 of 0 MW of available free grid connection capacity for newly established weather-dependent producers and the subsequent requirement to obtain grid connection rights only through individual procedures, the application process was further complicated by the requirements of MAVIR to obtain accreditation for aFRR (automatic frequency restoration reserve) services and to commit to install of 30% of the solar capacity as aFRR capacity which does not depend on weather conditions. This was followed by a temporary ban on connecting residential solar plants to the grid. Now, the above rules continue to complicate the

access of weather-dependent projects to the public grid in Hungary. However, several open points remain concerning the new rules.

The main question is whether the regulation legally interferes with existing grid connection rights or future entitlements where the applicant has a valid right to expect the granting of its grid connection right on the basis of the provided technical economic information sheet and the grid connection plan. **This raises the issue of going against the prohibition of retroactive legislation and the infringement of rights stemming from civil law contracts already in force and legitimate interests (pending rights) granted by sectoral laws of a normative nature, which raises, among other things, fundamental constitutional concerns.** In the same way, the question arises as to the legality of applying the above rules applicable to individual capacity allocation procedures to pending procedures.

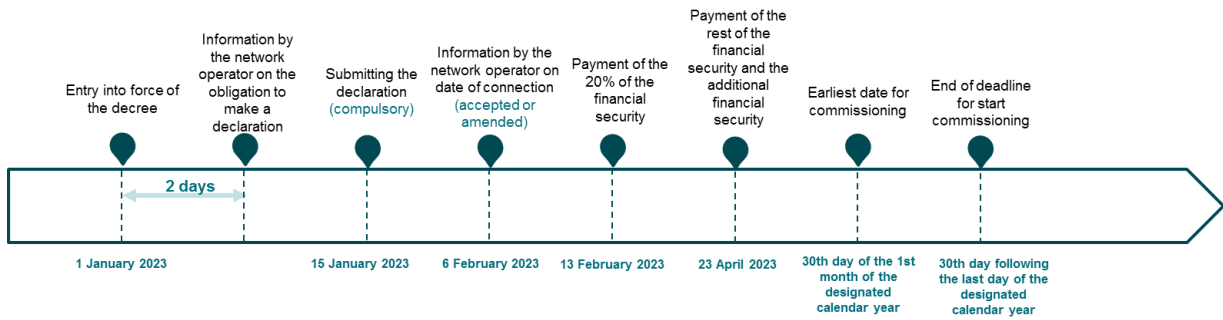
Furthermore, it is not clear what will happen to other permits and authorisations not listed in the decree (e.g., cable rights, reclassification permits). Will these also be extended, or will they remain valid only until their original deadline?

In the spirit of transparency, it has to be noted that **the government has provided some guidance on when the next capacity publications are expected and when the technical economic information sheet is expected to be received in the ongoing individual procedures.** In this context, the government decree stipulates that **network operators will publish detailed information on current free capacities and the technical and expected economic conditions for grid connection for the second time by 24 May 2023. The deadline in individual procedures** launched after the publication of the detailed information on current free capacities and the technical and expected economic conditions for grid connection, which was first published on 2 May 2022, **is 13 March 2023 for the publication of the technical and economic information sheets (or the call for feasibility studies, where applicable)** provided for in the distribution and operational codes.

In addition to the government decree on grid connection rules, another government decree has been published to ease the previously controversial aFRR capacity and accreditation requirements. Pursuant to this, **in the case of grid connection applications of weather-dependent generating units submitted after 2 May 2022 to the network operator, the technical economic information sheet issued shall not require the installation and accreditation of newly installed equipment which is not weather-dependent, which is capable of providing and offering capacity for the provision of aFRR balancing service, or the accreditation of any previously installed equipment which is not weather dependent,** as a technical condition for maintaining the power balance of the electricity system and providing balancing control capacity. Therefore, for those who have committed to some non-weather-dependent aFRR service capability after 2 May 2022 in an individual capacity allocation procedure, this obligation is now retroactively waived by the decree. However, those who wish to take advantage of grid connection fee discounts in the future will want to consider installing such capacity. It is also important to note that the foregoing government decree has stipulated that **in the case of generating units for own use established without the possibility to feed in to the grid, neither a publication-based nor an individual capacity allocation procedure is required for the power plant to obtain the right to connection.**

In summary, the implementation of the 20 GW of domestic projects currently planned could be significantly curtailed by the above-mentioned rules, and the number of projects actually implemented could be reduced by up to a quarter. **It is a massive change, perhaps more significant than ever before,** which will further exacerbate the difficulties of weather-dependent systems in the Hungarian market and predicts a future where, in the absence of the necessary grid developments, **it will be very hard to see solar power as a reasonably profitable investment.**

The key deadlines set out in the government decree on the rules for grid connection are the following:



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For more information about our services, please contact us:



Laszlo Kenyeres
Partner

E laszlo.kenyeres@wolftheiss.com
T +36 1 4848 800



Adam Lukonits
Associate

E adam.lukonits@wolftheiss.com
T +36 1 4848 800



Virag Locsei
Associate

E virag.locsei@wolftheiss.com
T +36 1 4848 865



Dori Budai

Associate

E dori.budai@wolftheiss.com
T + 36 1 4848847

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Wolf Theiss, Schuberting 6, AT – 1010 Vienna, www.wolftheiss.com



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