Hungarian Legislation on Climate Protection

Erika Farkas Csamangó
Senior lecturer University of Szeged

I. International obligations

The concentration of greenhouse gases (GHG) in the atmosphere is on the increase, which contributes to the global warming of climate. Due to this climate change, extreme weather phenomena and disasters are becoming more frequent. Droughts, floods following heavy rains and hails cause a great deal of damage, jeopardizing the livelihood of hundreds of thousands of people. Therefore, the fight against climate change is among the priority objectives, reduction in greenhouse gas emissions being a primary objective.

The first demonstration of the global alliance tackling climate change was the *United Nations Framework Convention on Climate Change* (UNFCCC[1]), signed at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992. The Framework includes the definition of climate change: "(climate change) means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods".

The European Community ratified the Framework Convention by Decision 94/69/EC of 15 December 1993. Its ultimate objective is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system[2]. In Hungary it was proclaimed in the Act LXXXII of 1995.

[1] The United Nations Framework Convention on Climate Change (UNFCCC or FCCC) was signed in Rio de Janeiro on the 13th of June in 1992.

[2] GERZSENYI, Gabriella: Riótól Kiotóig, és azon túl – Az éghajlatváltozással kapcsolatos nemzetközi, uniós és magyar jogalkotás, (From Rio to Kyoto and beyond – International, European and Hungarian climate change legislation) in: Európai Jog, 2004/2, pp. 17-18.

The second step of the international alliance was the Protocol[3] adopted in Kyoto in 1997, which obliged the parties to reduce emissions of the six most important greenhouse gases listed in Annex A of the Protocol (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride) by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012. The European Community and its member states reached an agreement to fulfil their commitments jointly (the EU-15 had a collective commitment to reduce emissions by 8%), and agreed that the 8% target will be redistributed among themselves (Internal Burden Sharing Agreement, principle of solidarity)[4]. Only the Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments. Hungary promulgated the Protocol by the Act IV of 2007. The current emissions reduction benchmarks for Hungary are determined by the Union.[5]

The Kyoto Protocol expired in 2012; the new agreement had not been made despite the annual climate conferences held in order to work out a new climate protection agreement. These climate conferences (Conferences of the Parties, COP) take place within the UNFCCC. In 2009, the Copenhagen Climate Change Conference[6] resulted in a mere three-page document. The text lacks commitments and the common target figures of greenhouse gas emissions reduction, as the participants failed to reach an agreement.[7] At the Cancun conference[8], in 2010 Mexico, the ministers of the participating countries agreed on certain draft resolutions, which included a sequel to the Kyoto Protocol, and also a new climate agreement. They agreed on the objective of keeping the average global temperature rise below two degrees Celsius and also on the objective of reducing Greenhouse gas emissions significantly by 2050. A formal decision was also made to establish a new 'Global Climate Fund', which will play a central role in mobilising and deploying US$100 billion a year by 2020 to support developing countries to reduce pollution. In 2012 in Doha[9], several countries

3 The Kyoto Protocol entered into force on the 16th of February in 2005.

4 KRÄMER, Ludwig: EU Environmental Law. Sweet & Maxwell, 2011. pp. 313-317.

5 FODOR, László: A kibocsátási egység – új típusú vagyoni értékű jog a klímavédelem szolgálatában. (Assigned Amount Unit – a Novel Intangible Asset Serving the Purposes of Climate Protection) in Collectio Juridica Universitatis Debreceniensis, Tomus VII., Debrecen, 2008.

6 Copenhagen Climate Change Conference 2009 (UNFCCC COP 15)

7 PÁNOVICS, Attila: Éghajlatvédelmi tárgyalások fagyos légkörben – a koppenhágai klímakonferencia kudarcának háttere (Climate Protection Negotiations in a Frosty Atmosphere – the Backgrounds of the Copenhagen Climate Change Conference's Failure), in: Közjogi Szemle, 1/2010, pp. 70-73.

8 Cancun Climate Change Conference, Mexico 2010 (UNFCCC COP 16)

9 Doha Climate Change Conference, Qatar 2012 (UNFCCC COP 18)

committed to reducing emissions. The USA and China – the two largest emitters – did not participate and did not commit to reductions. At this conference the parties extended the Kyoto Protocol until 2020. In December 2015 (UNFCCC-COP 21[10]), at the Paris conference, the objective is to achieve a legally binding and universal agreement on climate.

II. EU legislation

The *Treaty of Lisbon*[11] amended the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEEC). Climate change as a decisive issue of environmental policy was cited in the Treaties, the international efforts to combat climate change became a specific objective of the EU environmental policy. Concerning environmental issues, the novelty of this treaty is that besides preserving and protecting the quality of the environment it emphasises its improving as well. Consequently, a reduction in the extent of environmental damage, in the emission of greenhouse gases and in other forms of polluting the atmosphere can reasonably be expected. The *concept of climate change* was also implemented into the Treaty on European Union, noting its importance at both member state and Community level.

The development of instruments to aid the efforts to reduce emissions is assisted by *The* European Climate Change Programme (ECCP) of 2000, the main objective of which is the development of a strategy that helps to meet the Kyoto Protocol objectives. The introduction of the EU emissions trading system (ETS) in 2005 was also due to this programme. The ETS has become the most important climate protection measure; the subjects of the system are not the member states, but the undertakings of the member states. This system was created to meet the objectives of the Kyoto Protocol, that is, to reduce the emissions of greenhouse gases.[12]

The Heads of State and Government adopted the Directive 2009/28/EC on the promotion of the use of energy from renewable sources. It obliges the member states to draw up national action plans which include

[10] UNFCCC COP 21: The 21st session of the Conference of the Parties to the UNFCCC is expected to take place in December 2015, in Paris, France. Read more: http://climate-l.iisd.org/events/unfccc-cop-21/

[11] The „Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community", signed at Lisbon, 13th December 2007 was aimed at enhancing the efficiency and democratic legitimacy of the EU.

[12] See: HORVÁTH, Szilvia: Quo vadis közösségi emisszókereskedelem? (Quo vadis Community Emissions trading?), in: Európai Tükör 4/2011, pp. 97-104.

the ways they wish to follow to achieve the target proportion of renewable energy to be used. This directive also includes the EU commitments until 2020. The main objectives of European energy policy in the given period are the so-called '20-20-20' targets:

- a 20% reduction in EU greenhouse gas emissions from 1990 levels (30% in the event of an international agreement)
- raising the share of EU energy consumption produced from renewable resources to 20%
- a 20% improvement in energy efficiency

The 2020 objectives also include the objective of reaching a 10% share of biofuels in the total fuel consumption of vehicles by 2020.

This 10% commitment applies to all member states. In addition, the commitments concerning greenhouse gas emissions reduction, the share of energy from renewable resources and energy efficiency are joint commitments, which are redistributed among the member states.

Directive 2010/31/EU on the energy performance of buildings is aimed at improving energy efficiency. The directive concerns new buildings, and provides that by 2020 all new buildings, by 2018 new buildings owned and occupied by public authorities be nearly zero-energy buildings, that is, they must be highly energy efficient.[13] The system of certification of the energy performance of buildings is to be established by the member states.

The European Parliament has also set climate protection objectives by 2030. Instead of the 20-20-20 targets, 40-27-40 targets are recommended:

- an at least 40% reduction in EU greenhouse gas emissions from 1990 levels (30% in the event of an international agreement)
- increasing the share of renewable energy to at least 27% of the EU's total energy consumption. This commitment is legally binding
- a 20% improvement in energy efficiency[14]

[13] KRÄMER, Ludwig: EU Environmental Law. Sweet & Maxwell, 2011, pp. 321-325.

[14] The 2030 policy framework for climate and energy „Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Telecommunications Single Market. A policy framework for climate and energy in the period from 2020 to 2030"

The EU aims at achieving 80-95% GHG emissions reductions from 1990s levels in the framework of emissions reductions reached by the developed countries by 2050.

III. Hungarian legislation

The ecological footprint of Hungary is rather big, compared to other countries of similar size. This is the reason why tackling the question of greenhouse gas emissions reduction is of major importance. In Hungary, the level of greenhouse gas emissions is lower than before the 1990s, mainly due to the disappearance of the main emitter, the Communist heavy industry and the transformation of the economic structure. In the Kyoto Protocol, Hungary committed to the reduction of greenhouse gases emissions to 94% of average emissions between 1985 and 1987 (this objective has been reached).

Hungary, as a signing party of the UNFCCC and the Kyoto Protocol, also implemented the EU emission trading scheme as a market-based instrument. Act LX of 2007 provides for the implementation framework of the UNFCCC and the Kyoto Protocol.

Air is cited as protected asset in the Fundamental Law of Hungary.[15] The high-level source of law is the Act LIII of 1995 on the General Rules of Environmental Protection, which provides for the protection of the air.[16] The act also provides for the protection of the climate: "The protection of the air shall cover the whole of the atmosphere and the processes and composition thereof, as well as the climate."[17] The subjects of the regulation are the protected "environmental components: land, air, water, the biosphere as well as the built (artificial) environment created by humans"[18]

Hungary does not have a comprehensive climate protection act; the most important source of law is Act CCXVII of 2012 on the participation in the scheme for greenhouse gas emission allowance trading within the Community and in the implementation of the Effort Sharing Decision (GHG Act). Domestic legislation complies with the EU systems. The Act applies to:

15 The Fundamental Law Of Hungary. (25 April 2011)

16 MIKLÓS, László (ed.): A környezetjog alapjai. (Introduction to Environmental Law/Legislation) JATEPress Egyetemi Kiadó, Szeged, 2011, p. 81.

17 Act LIII of 1995, Article 22.

18 BÁNDI, Gyula: Környezetjog. (Environmental Law) Osiris Kiadó, Budapest, 2004, p. 17.

a) greenhouse gas emission allowance and aviation emissions trading
b) activities defined in Annex 1. and the emissions of GHGs resulting from these activities, also listed in Annex 1

The GHG Act regulates two areas: the greenhouse gas emission allowance trading scheme, and also effort-sharing.[19] The act considers the emission of greenhouse gases both from buildings and aerial vehicles as emission. The legislation applies to the following greenhouse gases: carbon-dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF_6) and nitrogen trifluoride (NF_3), and also the gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

The Act applies to activities that are cited in the related EU Directive as well. Certain defined installations that are associated with greenhouse gas emission (manufacture of glass, ceramic products, production of paper, chemical industry, mineral industry, district heating, electricity generation, after 2010 aviation etc.) can only be operated if its operator holds an emissions permit. The greenhouse gas from these activities is mainly carbon dioxide; but in the case of the production of primary aluminium, regulations also include perfluorocarbons; and – in the case of chemical industry (for example, the production of nitric acid) nitrous oxide.

Sectors that are not part of the EU ETS, for example, agriculture and households, the burdens of emissions reduction are distributed among the member states. The per capita GDP figures of the Member States were taken into account, Hungary has the target of +10%, which means the country has no reduction commitment, but a 10% increase is allowed. If a member state fails to comply with the commitment, they face a deduction of the allowance allocation in the following year, as a sanction.

In Hungary, industry is responsible for the emission of 34% of all greenhouse gases. The transport sector is the only sector where energy consumption is on the increase. Emissions from agriculture make up 11.2%, from waste management and waste water treatment 6-7% of total greenhouse gas emissions.

[19] FODOR, László: A kibocsátási egységek kereskedelmi rendszerének bevezetése Magyarországon. (The Introduction of the Greenhouse Gas Emission Allowance Trading Scheme in Hungary) Publicationes Universitatis Miskolciensis, Sectio Juridica et Politica, Tomus XXV/1., Miskolc University Press, Miskolc, 2007, pp. 289-316.

Besides the act, major commitments for the period of 2008-2025 are included in the National Climate Strategy[20] (NCS) (Resolution of the Parliament No. 29 of 2008 [20 of March]). The NCS determines the necessary measures to tackle climate change and gives guidelines to the harmonisation of climate protection and development policy. The resolution includes that the revenues generated from the auctioning of allowances shall be used to tackle climate change and to adapt to the inevitable impacts.

The NCS sets three main pillars for the medium-term Hungarian climate policy:

- provides for measures that comply with EU and international requirements
- includes the most important elements of improving adaptability to the impacts of climate change
- propagates public climate change awareness

Developing the appropriate legal and economic regulatory systems, monitoring support schemes, raising public awareness and setting examples are the tasks of state authorities.

Directive 2009/28/EC – in addition to the aforementioned 20-20-20 targets – obliges the member states to draw up national action plans which include the ways they wish to follow to achieve the 2020 target share of renewable energy to be used, imposed by the EU. Hungary has a set target of 13% renewable energy use to be reached by 2020.[21] In the *National Renewable Energy Action Plan (2010-2020)* the projected value by 2020 is 14.65%. The most important objective of the action plan is to set the principles, courses and measures that are necessary to reach the aforementioned value, which would go beyond the 13% target set by the EU.
In 2011, the share of energy from renewable sources (in % of gross final energy consumption) was 8.1%, in 2012 it increased to 9.6%.[22] (In 2004 this share was 4.4%)

[20] Act LX of 2007 on the implementation framework of the UN Framework Convention on Climate Change and the Kyoto Protocol Art. 3 provides for the adoption of the National Climate Strategy

[21] See also OLAJOS, István - SZILÁGYI, Szabolcs: A megújuló energiaforrások európai uniós jogi szabályozása, különös tekintettel a megújuló energiaforrásokra vonatkozó irányelvekre. (EU Legislation of Renewable Energy Sources, in Particular the Directives on Renewable Energy) Publicationes Universitatis Miskolciensis, Sectio Juridica et Politika, Tomus XXXI., Miskolc, 2013, pp. 448-449.

[22] Source: Eurostat (www.mti.hu) (2014.08.27.)

The sources of *renewable energy*[23] legislation are international law (global, regional multilateral, bilateral), European law, environmental sciences (biology, chemistry, physics) and jurisprudence (civil law, administrative law, economic law).[24] Within the Hungarian renewable energy-supply systems four main sources must be taken into consideration: biomass, geothermal, solar and wind energy. *Biomass*, that is, waste from forestry and biodegradable organic fractions of industrial and municipal wastes account for the biggest share, but Hungary has significant potential for *geothermal energy* as well, which puts the country amongst the world leaders considering these two energy sources. At the moment, geothermal energy is used for heat production only. Due to the favourable conditions, geothermal energy – alongside with biomass use – might be a major opener to reach the goals of expanding the use of renewable energy sources. Solar technologies are also tools of great potential, as the energy of the solar radiation reaching the surface of the territory of Hungary is 1200 to 1500 kWh/year. The country is rather poor in actually making use of the utilisation of water energy. The promotion of the use of renewable energy for transport is also of great importance. *Act CXVII of 2010* provides for this and also on the greenhouse effect reduction of energy used for transport purposes. According to Article 2, Hungary shall ensure that the share of energy from renewable sources in all forms of transport is at least 10% of the final consumption of energy in transport, a target which must be reached by 2020. Fuel suppliers are obliged to record the greenhouse gas emission calculated over full life-cycle and per energy unit for the fuels and other transport-related energy products which they have placed on the market.

In Hungary, electricity from renewable energy sources is subsidized within the frameworks of the so-called feed-in tariff scheme[25] In 2013 in Hungary, the feed-in tariff is 32.18 HUF/kWh (Subsidy: 19.54 HUF/kWh).

[23] We can differentiate two types of energy sources: fossil (non-renewable), and non-fossil (renewable) ones. Fossil energy sources are lignite, coal, oil, oil shale and natural gas. Renewable energy sources are the energy of wind, solar, geothermal, wave, tidal, hydropower, biomass and biogases. (Definitions of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market Art. 2/a, and also of Act LXXXVI of 2007.)

[24] FARKAS CSAMANGÓ, Erika: A megújuló energiaforrások környezetjogi szabályozásának alapjai (Introduction to the Environmental Legislation of Renewable Energy Sources), in: XVII. Nemzetközi Környezetvédelmi és vidékfejlesztési diákkonferencia kiadványa, Szolnok, 2011, p.10.

[25] See also: OLAJOS István: Támogatási rendszereink és a megújuló energiák. (Support schemes and renewable energies) Miskolci Egyetem, Miskolc, 2013, pp. 21-25.

Of the aforementioned 2030 objectives, Hungary does not promote at least 27% share of renewable energy, as with it the EU could interfere with the National Energy Strategy.

The National Energy Strategy was adopted by the Resolution of the Parliament No. 77 of 2011 (14 of October)[26]. Government Decree No. 176 of 2008. (30 April) regulates the energy performance certification of buildings. The energy performance of a building means the calculated or measured amount of energy needed to meet the energy demand associated with a typical use of the building, which includes energy used for heating, cooling, ventilation and hot water.

Government Decree No. 323 of 2007 (11 November) regulates the Green Investment Scheme (GIS). The GIS makes it possible that in the first commitment period (2008-2012) determined by the Kyoto Protocol Hungary can sell its unused AAUs for a price higher than otherwise possible. Revenues from the GIS are to be spent on increasing the energy efficiency of existing buildings in the households and public sector.

The German legislation on renewable energy is often cited as an example in Hungary. Hungary does not have such comprehensive legislation, as the different areas are being tackled by fragmented laws and regulations.[27] Provisions concerning energy sources can be found mainly in government decrees and parliament resolutions.

The German legislation applies not only to solar, hydro and wind energy, but to all other sources, namely biomass and geothermal energy, of which Hungary - on account of its environmental characteristics - is amongst the world leaders. The German law stipulates that renewable energy always has priority in the transmission grid, even over energy produced by network operators, and each producing unit must be connected to the network, therefore, end-users become producers. The tariff rate for energy must be precisely determined by law, which provides stability and predictability. Of course, the feed-in tariffs guaranteed by law can be ensured only if required conditions are complied with. Several member states have separate renewable energy legislation, which regulates energy production from renewable sources.

The Hungarian legal environment related to green energy is complicated. The authorities involved in the authorisation procedures are numerous, which leads to the uncertain length of procedures and duplica-

[26] See also FODOR László: Környezetjog (Environmental Law). Debreceni Egyetemi kiadó, Debrecen, 2014, pp. 253-254.

[27] http://energiaklub.hu/sites/default/files/ek_sajto_hatter__megujulok.pdf (downloaded 26.08.2014.)

tions in the functions of administrations. Permit procedures are especially complicated and lengthy, simplified procedures for lower capacity energy producing units are rare. Furthermore, under the present arrangements in Hungary, investors are facing a complicated and quickly changing legal environment, which makes the revision of the current legal environment inevitable.

In the absence of appropriate legislative framework, reaching the target of 13% renewable energy use by 2020 will be extremely difficult. The National Renewable Energy Action Plan includes the incentives and the administrative instruments that can promote the use of alternative energy sources, the legal revision of the system, the reconsideration of support schemes and the simplification of approval procedures.

The Hungarian institutional setting of climate policy is fragmented; there is no autonomous ministry of environment. Since June 2014, the Ministry of State for Environmental Affairs, Agricultural Development and Hungaricums is in charge of environmental issues, within the Ministry of Agriculture. Within the Ministry of State, one of the deputy ministers of state is responsible for environmental affairs. Government Decree No. 152 of 2014 (6 June) on the duties and responsibilities of the members of the government confers energy policy issues on the Minister of National Development. The Minister is responsible for drafting laws and regulations related to climate policy, the promotion of biofuels and other renewable energies for transport, the use of renewable sources for generating electricity and heat and increasing energy efficiency and energy saving. The Minister is also in charge of providing for the strategic conditions for sustainable development and energy management, especially of the elaboration and implementation of energy policy, building energy management and building energy saving programs.

The medium-term objective of the Hungarian climate policy is to reach the emissions reduction target, for which aim the use of nuclear energy is also considered important, beyond increasing renewable energy production capacity and energy efficiency.

Fighting climate change is a task which the state cannot solve with the available instruments by itself. The climate-awareness of the society, climate-friendly production and consumption patterns, and, in some cases, investment and operating aids are also necessary.