



Status report and short analysis on the project aiming to build two new units at Paks Nuclear Power Plant

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So far only limited and controversial information have appeared on the project, aiming to build two new units at Paks Nuclear Power Plant. In this paper we summarize this information, available as of 09th May 2014. Information is based on government communication and other public sources; we distinguished the sections with *italic typography* where our opinion or comment is added. In this paper under Paks 2 the two planned units of Paks NPP is meant; the existing, four operational units of the same NPP are referred to as Paks 1.

1. Content, legal status and consequences of the Putin-Orbán deal

On 14th January 2014 an intergovernmental agreement was signed in Moscow, by the Minister of National Development of Hungary, and by ROSATOM from Russia. The agreement, according to its title, is about to continue the cooperation on peaceful uses of nuclear energy (which was started by an agreement made in 1966), but practically it is about building two, at least 1000 MW new nuclear units at Paks. The original language of the agreement is Russian.

Beyond fixing some main obligations for both parties on the matter, Russia also undertakes the tasks of supplying nuclear fuel for 20 years (with a possibility of extension) for the units, and ensures the possibility of taking spent fuel (SNF) for storing or reprocessing. However, this possibility is given for 20 years only (or, if the time period of supplying fuel is extended, then for the same period), then the stored SNF or the reprocessed nuclear waste will be sent back to Hungary.

As the condition of implementing the content of the agreement, another, separate agreement has to be made on financing.

The draft agreement was communicated to the European Commission under Article 103 of the Euratom Treaty, on 10th of December 2013. The agreement was introduced to the Hungarian Parliament and was accepted on 6th of February.

On 14th of January three other framework agreements were signed by ROSATOM and MVM Paks II Ltd., allegedly on the construction, operation and fuel supply of the new units.

2. The financing (credit) agreement

Most of the information of this paragraph is on the content of the planned agreement that was published in Russian language by the Russian Government on the 13th of March 2014. The agreement was signed by both parties at 31st March 2014, in Moscow. Official translation of the agreement, either Hungarian, or English, has not been made public so far. Hence our analysis, which is based on articles appeared in Hungarian media and own translation, is only partial, and it covers only the most important details of the agreement.

- A state loan, with the maximal value of € 10 billion will be lent from Russia to Hungary;
- the loan is for building two units at Paks;
- the loan is available between 2014 and 2025;

- 80% of the costs can be covered by the loan; 20% of every invoice must be paid by the Hungarian partner since the beginning of the project;
- the loan must be repaid during 21 years; repayment starts after the two units has started to operate, but not later than 15 March 2026;
- repayment must be fulfilled by two installments annually, on the 15th March and 15th September every year;
- 25% of the loan should be repaid in the first, 35% in the second, 40% in the last seven years;
- the interest of the loan will be 3.95% until the units will be finished (or until 15 March of 2026); after repayment started, the interest rate will be 4.5% in the first, 4.8% in the second, and 4.95% in the final seven years;
- *interest rates are fixed, those are not bind to any other conditions;*
- accounting partners will be the Vnesheconombank from the Russian and the Government Debt Management Agency from the Hungarian side;
- there will be 15 days for the Hungarian partner to judge the submitted invoices;
- each year's costs and the required amount of loan have to be determined at least 6 months before the next budgetary year, and agreed by the Financial Ministry and the Ministry of Economic Development from the Russian, and the Ministry of National Development from the Hungarian side;
- 15 days of delay in repayment results in a penalty rate of 1.5 times of the original rate;
- after 180 days of delay of any repayment installment the Russian side could quit the agreement and demand the repayment of the whole debt in one amount;
- there is possibility of prepayment, about which the Russian side is to be notified 90 days beforehand;
- *there is practically nothing on managing risks, there is no mechanism elaborated, no international jury or any other forum is appointed for conflict resolution; as the repayment conditions are strict, the agreement could be disadvantageous for Hungary;*
- the financing agreement will be introduced to the new Hungarian Parliament, however, it is disputed whether the Parliament has any right to make a decision on the contract.

3. Financial matters

- The financial agreement has been published only in Russian;
- *there are no publicly available estimations on the overall costs;*
- *there is no reliable information on how the risks will be shared;*
- *no timeframes are publicly available for the construction;*
- the government refused to make all background studies, analysis, documents public for 10 years, which would substantiate the decision;
- while 20% of the project must be covered by the Hungarian side, *there is no information on how this share will be ensured;*
- *it is unknown, what parts of the overall investment belong to the project, and what parts of this project will the Russian loan cover;*
- *so far no official calculation has been made public on economic matters like finance, levelized cost of electricity, rate of return;*
- according to independent analyses the price of electricity produced by Paks 2 will be over 100 €/MWh;
- according to the government communication, costs of the state loan will not be put into the price of electricity generated by the new units, and state loan will be paid back from the state budget; *there has been no statement made about the cost of capital arising from the 20% share to be paid by the Hungarian side;*
- *there has been no statement made on the finance of the necessary additional investments (investments that are needed for installing the two 1200 MW nuclear units into the electricity system, e.g. reserve capacities, pumped storage capacity, development of the grid, or such investments at Paks the costs of which cannot be covered by the Russian loan), although the price tag of these investments could easily reach or exceed 3 billion euro.*

4. Impact of the extension for the Hungarian economy and energy market

- The government stated that the Paks 2 project will mean 1% increase per year of the GDP in the construction period (10 billion euro is more or less equal to 10% of the Hungarian GDP, and roughly 20%

of the yearly state budget). However, the 1% increase was disputed by economic papers, and concluded that this is valid only for the first year of the investment.

- The intergovernmental agreement promises that 40% of the project can be implemented by Hungarian companies, but according to earlier estimates, less than 30% is likely.
- Governmental sources said that some 10 thousand jobs (with not determined multiplication effect) will be created during construction time. Nevertheless, a previously prepared analysis (carried out by Paks NPP) calculated that only 7-800 new jobs will be created in the operation phase.
- According to our understanding, the plan of the government (costs of the state loan will be paid from the state budget) clearly raises the issue of giving illegal state aid for the Paks 2 project, so it must be investigated by the European Commission. With this financing construction Paks 2 would clearly distort the Hungarian energy market.
- With the two 1200 MW new nuclear units (if they start to operate in the 2020 years) there would be 4400 MW nuclear capacity in a country where currently the maximum load is around 6500 MW, and the minimum load is less than 4400 MW (see Fig.).

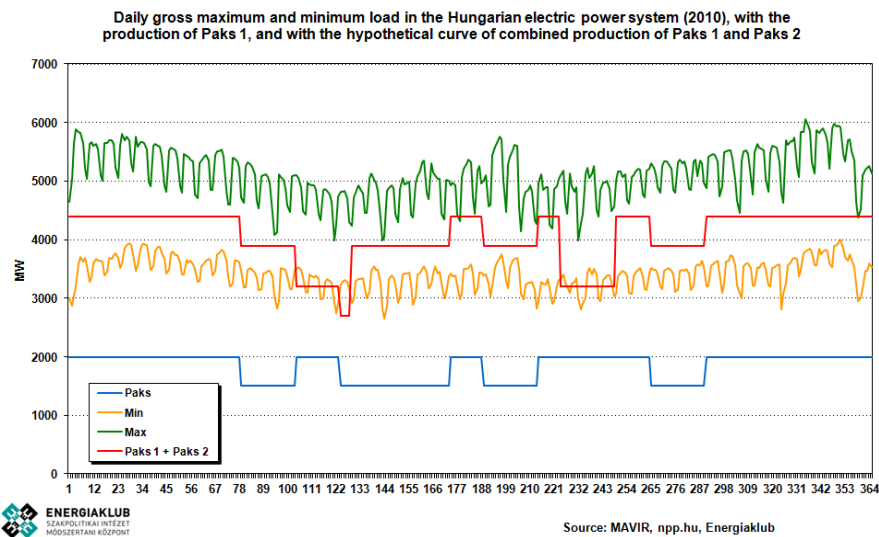
for Paks 1, and would further ruin the economy of Paks 2.

- Furthermore, the investment, especially if calculated together with the financing need of the additional investments, will drain off the financing opportunities in the energy sector.

5. Role of the MVM Ltd.

- A project company, named as MVM Paks II Ltd. was created in 2012, under the MVM Ltd., for implementing the Paks 2 project. This company would manage the construction project, after that the units would be taken over for operation by the Paksi Atomerőmű Zrt., the operator of the existing units of the NPP.
- According to the government, ROSATOM will be the project manager, although there is no clear picture about sharing tasks and responsibilities between ROSATOM and MVM.
- As the government acknowledged that MVM could not take the € 10 billion loan, it still remains a question whether MVM could afford to finance the still considerable 20% Hungarian share (2-2.5 billion euro).

6. Correspondence between Hungarian Government and the Commission



Hungary sent a communication to DG ENER on 10th of December 2013 under Article 103 of the Euratom Treaty. The communication included the draft of the Hungarian-Russian intergovernmental agreement. DG ENER on 14th January 2014 replied that they did not find any element that would as of itself impede the application of the Euratom Treaty in the meaning of Article 103.

In January-February there was an exchange of letters between Jose Manuel Barroso and Viktor

- This situation will not let renewable technologies into the electricity system neither on physical nor on market terms: the renewable technologies in the merit order would push nuclear capacities into the load following range, which is technically impossible

Orban, in which the Hungarian prime minister informed the president about the signing of the international agreement, which took place on the 14th of January. Mr. Barroso replied that the Commission raised no objections under Article 103, however, he emphasized that there are other aspects of EU law

to be observed, such as the rules on public procurement and state aid.

- As far as we know there has been no other communication between Hungary and the Commission.

7. Possible EU objections:

The EU can make investigations on at least two issues, possibly three:

DG Internal Market: There was no tender process before the contract was signed. The decision on the Russian reactors was purely political. This might be against EU regulations. The Hungarian government communicates that they notified the Commission about the planned financial structure (i.e. to finance the new reactors from the Russian credit, so from state budget) and the Commission approved of this kind of financing. However, there is no official green light for the whole project by the Commission. Communication has only happened with DG ENER, who does not investigate financial terms. As the main role of DG MARKT is to investigate issues relating to the European Single Market, they will have to investigate whether there are good reasons for the lack of tendering process and whether it does not violate EU regulations. There was a statement from DG MARKT that they have already started investigations, but we have no further knowledge about this investigation.

DG Competition: This will be the hottest issue. Since the plans are that the Russian credit will go into the state budget, from which the new reactors will be financed, it suggests the case of state aid. The investment most probably does not fulfill the Altmark criteria and based on the communications it seems that the government has not considered this aspect at all. The financial agreement will be the core of the investigations, but it is still not clear whether it has been signed or not, therefore, as far as we know, DG COMP has not started the investigation.

DG Finance: The Russian credit will increase national debt, and certainly will have a long term influence on the debt curve. A major question for us is when DG FIN can start to investigate: with the signing of the financial agreement, or only when the first part of the credit arrives to the Hungarian Treasury?

8. Remaining legal options to prevent the extension

The above mentioned EU investigations can mean effective tools to prevent the investment. Besides EU investigations there are options to prevent the investment within the Hungarian legislation. However, it has to be emphasized that these options mainly exist in theory. There are ways to put a stop to the contracts and thus to the project, but it is most likely these legal tools will not work (see explanation at each option).

The Hungarian Parliament: As the financial contract has not yet been submitted to the Parliament, this is one point where the project can stop. It is said by the government that the financial contract will only come into force when the Parliament accepts it and it becomes a law. They also say that the contract will only be discussed after the elections, so after the new government is formed. Therefore it is theoretically an option that MPs will vote against the financial contract, which will not be enforced then. This will mean the automatic abolition of the former framework contract, as one of its main conditionality is the financial agreement. However, we do not have high hopes this will happen, based on previous experiences.

Constitutional Court: If the contract, when it becomes public, proves that Paks 2 will be financed from the state budget through the Russian credit, it might be unconstitutional, because of the limit of the national debt. This limit is defined in the Constitution, and if there is a chance that the debt will exceed it because of the loan, it can be regarded as being against the Constitution – so the law on the financial contract will have to be abrogated.

When the contract becomes a law (so when the Parliament approves), there are two ways a complaint can be submitted to the Constitutional Court. One is through the President, Mr János Áder. However, he has already demonstrated that he has no problem with the Russian agreement, when he signed the law about the framework contract. So we cannot trust that he will do differently this time.

The other way is through the Ombudsman, who can either submit it himself by right of office, or based on a complaint that arrived to his office from someone else, who can be an NGO for instance. Energiaklub will submit a complaint to the ombudsman, so as to ensure the ombudsman does

not avoid the topic and to make him investigate. However, the outcome of this investigation cannot be predicted, it might as well be rejected. If it is not, then the Ombudsman passes the complaint to the Constitutional Court. They can still reject it, given the fact that the majority of the Constitutional Court consists of judges who were appointed by the ruling party, Fidesz.

The most positive scenario is that the Constitutional Court rules the agreement being against the constitution, which then has to be terminated.

g. Possibilities for future Hungarian governments to back down from the agreement

The intergovernmental framework agreement can be cancelled by both parties without any consequences. In this case, some parts of the agreement remain in force, but the obligation concerning planning, delivering and constructing the new units will be ceased.

To date there is no definite information on the content and conditions of the finance agreement and the contracts between ROSATOM and MVM Paks II are not public, so the options of the parties for quitting cannot be measured.