

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED
UNLAWFUL STATE AID OR MISUSE OF AID**

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

Address line 1: Szerb u. 17-19.

Address line 2:

Town/City: Budapest

County/State/Province:

Postcode: 1056

Country: Hungary

2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes No

If yes, please also provide the following information

Name of the person/firm you represent: Energiaklub Szakpolitikai Intézet és Módszertani Központ
(Energiaklub Climate Policy Institute and Applied Communications)

Registration nr. of the entity: 6637

Address line 1: Szerb u. 17-19.

Address line 2:

Town/City: Budapest

County/State/Province:

Postcode: 1056

Country: Hungary

Mobile Telephone:

E-mail address: energiaklub@energiaklub.hu

Please attach proof that the representative is authorized to act on behalf of this person/firm.

3. Please select one of the following options, describing your identity*

- a) Competitor of the beneficiary or beneficiaries
- b) Trade association representing the interests of competitors

c) Non-governmental organisation

d) Trade union

e) EU citizen

f) Other, please specify

Please explain why and to what extent the alleged State aid affects your competitive position / the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

Energiaklub Climate Policy Institute and Applied Communications Association was established in 1990 as an environmental NGO. By now it has become a leading “think and do” organization in the field of sustainable energy in Hungary. With its research activities, training courses, and wide-reaching communication, its aim is to make energy producers, consumers and political decision-makers regard energy in a different way. Its work concentrates on climate and energy policy by addressing energy efficiency, renewable energy sources, climate mitigation and adaptation, conventional energy sources, as well as good governance and transparency in these fields. The organisation works towards the establishment of a civilized energy-consuming, sustainable society.

Energiaklub in its work has been engaged with all matters surrounding the different aspects of the Paks Nuclear Power Plant (NPP) of Hungary, ranging from the 2003 Fuel Rod Accident via the permitting of the lifetime extension to the issue of the planned new reactors at the Paks site. Regarding this latter issue Energiaklub has been following the most recent international agreements concluded between Hungary and Russia on the planning, construction and putting into operation of these foregoing new blocks No. 5 and No. 6, and its financing by a loan (worth EUR 10 billion) from Russia to Hungary. The main websites displaying activities of EK in this regard are <http://energiakontrollprogram.hu/en> and <http://pakskontroll.hu/>.

In addition to this, the following links show activities of Energiaklub in other related projects regarding energy efficiency, renewable energy or nuclear energy:

<http://energiakontrollprogram.hu/en>

<http://energiakontrollprogram.hu/en/aarhus>

<http://negajoule.eu/en>

<http://energiaklub.hu/en/project/what-role-can-renewables-play-in-hungarys-heat-supply>

<http://energiaklub.hu/en/project/cost-optimal-levels-of-minimum-energy-performance-requirements-for-buildings>

<http://energiaklub.hu/en/project/towards-100-res-rural-communities-energy-planning-rural-development>

<http://energiaklub.hu/en/project/re-seeties>

<http://energiaklub.hu/en/project/low-energy-retrofit-for-multi-occupancy-urban-housing-ler-muh>

<http://energiaklub.hu/en/project/clim-cap-competences-for-sustainable-city-development>

[qualification-for-climate-adaptation-i](#)

While the above are mostly highlights, all project descriptions are available here:

<http://energiaklub.hu/en/projektek>

In sum, Energiaklub is a non-governmental organization interested in the promotion of sustainable energy sources, and as such, the favouring of the Paks NPP by the Hungarian Government and by the allegedly illegal state aid (as described below) are within the sphere of interest of Energiaklub. As the recent state aid case law of the Court demonstrates, NGOs promoting interests other than economic are also granted legal standing and are regarded as interested parties eligible to submit complaints or participate in court procedures. Examples of this case law are Case C 303/13 P in which Dansk Tog, an association was granted leave to intervene by the order of the Court, or Case C-78/03 P where one of the other parties to the proceedings (intervener at first instance) was Aktionsgemeinschaft Recht und Eigentum eV, an NGO for the protection of intellectual property rights. The case that is most relevant for the present complaint is Case C-262/12 where one of the parties to the proceedings was Association Vent De Colère! Fédération nationale, a non-governmental organization promoting environmental protection related to wind farms. In this context, Energiaklub also has a legitimate interest in promoting socially, environmentally and financially sustainable energy sources and critically approaching to the foregoing allegedly illegal state aid, therefore Energiaklub is regarded as an interested party eligible to submit this complaint.

4. Please select one of the following two options*

- Yes, you may reveal my identity
- No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5 and 6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Country: Hungary

b) If known, specify which institution or body granted the alleged unlawful State aid:

Central government: Government of Hungary

Region (please specify):

Other (please specify):

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

The alleged aid was granted in the form of two successive international agreements concluded between the Government of Hungary and the Government of the Russian Federation (the Agreements), on the cooperation of the peaceful utilization of nuclear energy (the Framework Agreement) and on providing a state loan for financing the construction of the nuclear power plant in Hungary (the Loan Agreement). According to Art. 1 of the Framework Agreement, the following form the content of the treaty:

1. Contracting Parties cooperate in maintaining and improving the performance of the Paks NPP to be found on the territory of Hungary, including the planning, construction, putting into operation and decommissioning of two new blocks No. 5 and No. 6, using VVER (Water Cooled and Water Moderated) type reactors, with built-in capacities for each block with a minimum of 1000 MW output, to replace the output of the current blocks No. 1 to No. 4 to be decommissioned in the future.

2. Contracting Parties cooperate in the following matters in the issue of operating, modernizing, upgrading and decommissioning of block No. 1 to No. 4 of the currently operating Paks NPP:

(1) delivery of new machinery

(2) maintenance, repair and modernization of systems and equipment

(3) works for the lifetime extension of the current blocks

(4) advisory service in technical issues

(5) works for decommissioning the blocks after the expiry of their lifetime

3. Contracting Parties will cooperate in maintaining and improving the performance of the Paks NPP in the planning, construction, putting into operation and decommissioning of possible necessary additional blocks.

Art. 9 of the Framework Agreement foresees the conclusion of a separate financial agreement on the intergovernmental loan from Russia to Hungary as one of the conditions for implementing the Framework Agreement. This loan is intended to fund the two new Paks nuclear reactors. The details of the Loan Agreement have just become known lately, after a Bill approving the terms of the Loan Agreement has been submitted by the Government to the Parliament. The Adoption of the Loan Agreement by the Parliament is expected to happen in June 2014. The Loan Agreement contains the

following major provisions:

Russia provides 10 billion euros as loan to Hungary in order that the latter should finance the works, services and purchases necessary for the planning, construction and putting into operation of blocks No. 5 and No. 6 of the Paks NPP (Art. 1.1).

According to Art. 6 of the Framework Agreement, the Hungarian Government undertakes – inter alia – to

(4) getting the special permits necessary for the realization of the project contained in the present Agreement, in line with the Hungarian and the EU law

(5) assistance to the Russian Competent Authority and/or the Russian Designated Agency and/or Subcontractors to receive the special permits (licenses) in Hungary necessary to perform their duties contained in the Implementation Agreements

(7) participation in the preparation of the Safety Report and the Environmental Impact Assessment of the Paks NPP with the assistance of the Russian Designated Agency

(16) getting the import permits for the equipment, materials and services necessary for the implementation of the projects contained in this Agreement, and organizing the customs clearance of products according to the adopted procedures

(22) continuous and appropriate level financing of all the works, shipping and services necessary for realizing the project contained in the present Agreement

Given, that all the necessary works, etc. will be financed by the Hungarian Government representing Hungary, the alleged aid is provided in the form of direct financing as well as guarantees to the nuclear industry in Hungary as well as Russian enterprises.

Both Agreements are submitted in Hungarian together with this Complaint.

b) For what purpose was the alleged aid given (if known)?

The allegedly illegal aid is agreed to be given by the Hungarian Government in order primarily that the Russian counterpart should plan, construct and put into operation, pursuant to Art. 5 of the Framework Agreement, two new and additional blocks of the Paks NPP. There are certain additional obligations that the Russian Party to the Framework Agreement is bound to perform, however, they are relatively minor compared with these major obligations and duties.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

There is no exact amount set in the Framework Agreement, however, there is a separate treaty made between Hungary and Russia (the Loan Agreement), implementing the 2014 January Framework

Agreement. In this later Loan Agreement, the Russian Party provides a loan of EUR 10 billion to Hungary in order that the latter would finance the works etc. for the construction etc. of the new blocks from this loan. This specific amount covers 80% of the expenses, the remaining 20% will also be financed from state resources.

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

There are three beneficiaries of the allegedly illegal state aid.

First and foremost, the primary beneficiary of the Agreements is Paks II Company, the project company that the Hungarian Electricity Works Co., MVM Zrt. has established. This company will be in charge of managing the building of the new reactors and will be assigned the tasks of coordinating the process. However, it will only be an indirect beneficiary. The economic benefits of the Loan Agreement are passed on to the MVM Hungarian Electricity Ltd. (hereafter referred as MVM) which will be able to finance the construction of an asset (the 2 new generation units) at more favourable conditions than those available to market operators, seeking capitals on the market.

Secondly, the direct beneficiary of the actions of the Hungarian Government is the current company operating the Paks NPP and owning the newly created Paks II Co, which is the aforementioned MVM. According to information released by Hungarian Government representatives, MVM will be given the ownership of the newly build NPP blocks once completed. After putting into operation, it will be MVM producing electricity via the new blocks and it will be MVM selling electricity on the Hungarian wholesale electricity market generated by the new Paks NPP blocks. However, the price of the electricity will not reflect either the costs of planning, construction and putting into operation of the new blocks or the costs of paying back the loan to the Russian Government. By this mechanism, the MVM Co. will be the owner of the new NPP blocks after having invested and risked none in this transaction, given that all risks were borne by the Government and the state budget ultimately. The Government will pick up the foregoing loan, and will guarantee its pay-back. By this, MVM Co. will realize such a market advantage compared to other electricity producers that amounts to illegal state aid.

Thirdly, beneficiaries of the Government measures will be the nuclear industry and the generation of electricity from nuclear energy as opposed to all other producers of energy, especially those using renewable energy sources. Never in the contemporary history of electricity generation have ever received companies producing electricity from other sources such a support from the Government, therefore the favoring of the nuclear industry with such a huge state investment (the loan and the financing of the new blocks and all adjacent activities) will put the entire energy sector, including renewables in Hungary into an economically marginalized position.

e) To your knowledge, when was the alleged aid granted?

The alleged illegal aid was granted and is being granted in steps, such as

- the signing of the Framework Agreement between Hungary and Russia was made on 14 January 2014 in Moscow during the visit of the Hungarian Prime Minister at the Kremlin;

- the Framework Agreement was proclaimed in Hungary as Act No. 2 of 2014 on 11 February 2014 in the Official Journal, and was made part of domestic law;
- the Loan Agreement between Hungary and Russia was made in March 2014 but is has not yet been proclaimed;
- however, it was lately submitted to the Hungarian Parliament for adoption so that the legislature can make it part of the domestic legal order;
- further steps are yet unknown, however, there are certainly preparatory steps in the background given that the Framework Agreement foresees the concluding of a number of adjacent, implementing agreements.

f) Please select one of the following options:

According to my knowledge, the State aid was not notified to the Commission.

According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

First of all, before turning to the point whether the contested measure is attributable to the state, we have to establish that Art. 1. of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty contains a definition of state aid, such

as

“For the purpose of this Regulation:

(a) ‘aid’ shall mean any measure fulfilling all the criteria laid down in Article 92(1) of the Treaty;”

This means that the detailed Council Regulation refers back to the Treaty (the previous numbering of the Treaty articles is used here). We may conclude with certainty that at least the very first criteria are met, i.e. the international treaties, the Agreements can be considered as “any measure”.

Secondly, for a measure to be State aid within the meaning of the TFEU, it has to be imputable to the State and be financed through State resources. Undoubtedly, the measure constituting an allegedly illegal state aid is attributable to the Hungarian State, given that the Agreements were concluded by members of the Government of Hungary and signed by the Minister of National Development Hungary in the name of the Republic of Hungary. According to the Vienna Convention on the Law of Treaties, Art. 7.2, the Prime Minister of a country is a full representative of the state in international negotiations, and since the Agreements were signed during the visit of the Hungarian Prime Minister to Moscow in January 2014, therefore it is beyond any doubt that the Agreements were made on behalf of the state.

As regards subsequent actions of the Government since the concluding of the treaties, i.e. the possible reception of a loan from Russia by Hungary and then the intention of the Government to finance the aforementioned works (planning, construction, putting into operation of the Paks NPP new blocks) from state budget thus enhanced from the loan, are coherent with the primary actions and are in line with the finding that the measures are attributable to the State. It is reaffirmed by Art. 3.2 of the Framework Agreement stating that

2. The Hungarian Competent Authority will create or appoint a Hungarian state entity or an organization under state direction (Hungarian Appointed Organization) that will be suitable both from financial and technical point of view to perform the duties connected to the activities arising from the cooperation set in this Agreement. The Russian Competent Authority will be informed in writing thereof.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

According to information released by the Hungarian Government, the ownership as well as the management of the new block of the Paks NPP after completion will migrate to MVM Co. In terms of this beneficiary, it will be one single company managing together the currently operating Paks NPP and the newly built blocks No. 5 and No. 6. The identity of this economic entity is undoubted, thus any advantage guaranteed thereto is by definition selective. The same is true for the new project company, to Paks II Co. that again selectively enjoys advantages. Last but not least, the nuclear industry (or the nuclear energy-based electricity production) is selectively provided an advantage because the measures and the loan are not spent on merely electricity production but on a specific way of electricity generation, i.e. nuclear-based.

The question of selectivity can be approached also from the negative angle, i.e. making sure that

MVM and Paks II companies and the nuclear sector are the only economic stakeholders who would benefit from the measure. As a matter of fact, no other Hungarian power plant operator will benefit from this measure, and this is also true to all other but nuclear ways of electricity production.

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

The question can be answered by analyzing the position of other means of electricity production and by comparison with regular market-based instruments.

In terms of other means of electricity production, be it fossil fuel based or renewable based, it is a matter of fact that no state resources of this magnitude are addressed to their financing. Although certain energy production segments receive certain supports (e.g. Feed In Tariff guaranteed for renewables), they are far less in magnitude that this amount to be dedicated to nuclear energy production.

By this measure, nuclear energy production and connected power generators will be exposed to fewer risks by offering them security of financing. This way the power generators benefiting from this financing scheme and the Agreements will not bear the risks associated with uncertainty regarding the financing of their investment. Therefore we can come to the conclusion that, structurally, the Agreements provide MVM and the nuclear power generators together with the entire nuclear industry with a better guarantee than that provided under standard market conditions (Judgment of the General Court in joined cases T-80/06 and T-182/09).

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

The opening of the electricity market in the EU has its implications for both in-country and inter-country trade. As regards impacts on trade between Member States, we are providing our arguments below. However, as regards the position of enterprises within a Member State, the company to be granted the privilege of being financed from state budget in order to plan, construct and put into operation new blocks of the Paks NPP will be in a comparatively advantageous situation taking into account that all other energy producers and electricity generators have to work within market conditions. The Agreements thus have the potential to distort competition within the Member State. According to the established case law of the Court of Justice of the EU, it is not necessary to establish that competition is actually being distorted by the aid, but only to examine whether that aid is liable to distort competition. The fact that an economic sector has been liberalized at Community level may serve to indicate that the aid has a real or potential effect on competition. In addition, the Agreements in this particular case will enable the development of a large level of capacity based on nuclear energy which might otherwise have been the object of private investment by other market operators using alternative technologies. Therefore, in our judgment, the notified scheme threatens to distort competition.

As a result of the transaction between Hungary and Russia and later the Hungarian Government and MVM, the latter will be able to operate in the Hungarian market for electricity generation, bearing lower costs than its competitors and gaining a substantial market share of the said market. There are,

therefore, a distortion of competition and obstacles to the free movement of electricity within the EU.

e) Please explain why, in your view, the alleged aid affects trade between Member States.

First of all, as a matter of fact, electricity markets have been opened to competition and electricity has been traded between Member States since the entry into force of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity. We can also conclude that the Hungarian energy market is likewise open to trade between Member States. The company to be contracted for performing the obligations set in the Framework Agreement is a large international energy company now put into a preferred market position. The Framework Agreement thus has the potential to distort competition and affect trade between Member States. According to the established case law of the Court of Justice of the EU, it is not necessary to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade. Furthermore, the fact that an economic sector has been liberalized at Community level may serve to indicate that the aid has a real or potential effect on competition and affects trade between Member States. As was found by the Commission (Commission Decision of 25 September 2007 on State aid awarded by Poland as part of Power Purchase Agreements and the State aid which Poland is planning to award concerning compensation for the voluntary termination of Power Purchase Agreements), measures that favor companies in the energy sector in one Member State are regarded as potentially impeding the scope for companies from other Member States to export electricity to that Member State or favoring exports of electricity to the second group of Member States. Such an investment from state resources into the nuclear energy sector with guaranteed financing restricts actual or potential imports as it prevents imports which might prove more favorable with regard to replacing some of the quantities produced from nuclear energy. This is all the more the case because one of the outspoken purposes of the construction of the new Paks blocks is to prevent import of electricity from other countries including EU Member States, therefore the explicit purpose of the development – assisted by a state aid measure of Hungary – is to affect trade between Member States. In addition, the state measure, the alleged aid in this particular case will enable the development of a large level of capacity based on nuclear energy which might otherwise have been the object of private investment by other market operators using alternative technologies. Therefore, in our judgment, the scheme set in the Framework Agreement threatens to affect trade between Member States.

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

There is a possibility to declare an allegedly illegal state aid lawful in case it is compatible with the internal market. The complainant believes that there are no exceptions to allow for declaring the Agreements compatible with the internal market, for the following reasons:

- It is not found in the list of Art. 107.2 TFEU such as
 2. *The following shall be compatible with the internal market:*
 - (a) *aid having a social character, granted to individual consumers, provided that such aid is*

granted without discrimination related to the origin of the products concerned;
(b) aid to make good the damage caused by natural disasters or exceptional occurrences;
(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

- It is not found in the list of Art. 107.3 TFEU such as
3. The following may be considered to be compatible with the internal market:
(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

While it is obvious that the Agreements cannot fall under the categories under points (a) to (d), they can fulfill the individual criteria of point (e) in case there is a Council Decision. First, there is no individual Council Decision that would exempt specifically the Paks NPP from the obligations set by the TFEU. Furthermore, there is not even a Commission proposal for a Council Decision in this matter.

- The second set of criteria is defined by the so-called Environmental State Aid Guidelines (the old one). The cited Guidelines specifies in which circumstances for which projects a state aid can be found compatible with the Common Market. The two possible environmental reasons for exemptions that are, let us say, closest to the present case are energy saving and production of renewable energy. Given that the Paks NPP does not fall under any of the categories, we may again conclude with certainty that according to these Guidelines the Agreements are not compatible with the TFEU.
- The third set of criteria contains those by the presence of which the Commission can apply a so-called simplified procedure to judge the compatibility of aid with the TFEU. There is a Notice from the Commission, the purpose of which is to set out the conditions under which the Commission usually adopts a short-form decision declaring certain types of state support measures compatible with the common market under the simplified procedure. When all the conditions set out in the Notice are met, the Commission adopts a short-form decision that the notified measure does not constitute aid. Without going into too much detail, having read the Notice we may conclude that the Agreements cannot fall under any category applied by the Notice.
- The fourth set of criteria whose application can result in the exemption of the foregoing Agreements from the prohibition of state aid is included in the Commission Regulation on Block Exemptions. In the field of energy, it contains reasons for exemption only for aid for energy saving measures, for high-efficiency cogeneration and for the promotion of energy from renewable energy sources. Neither is this EU legal instrument applicable to Paks NPP.
- A fifth possibility is that Council Regulation (EC) No 994/98 empowers the Commission to declare by means of regulations that certain specified categories of aid are compatible with the internal market and are exempted from the notification requirement of Article 108(3) of the TFEU. This Regulation was recently amended in terms of the Group Exemptions by Council Regulation (EU)

No 733/2013 of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid. However, none of the categories listed therein can be applied to Paks NPP.

- There are two other possible means for further exemption. The first one is contained in Art. 108.2 TFEU stating:
On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. So the Council can consider a state aid as compatible with the internal market if that is justified by exceptional circumstances but that requires a unanimous decision by the Council. We believe that this scenario is not very probable in the present case therefore we can rightfully discard this chance.
However, the TFEU contains another chance for exemption, regulated by Art. 106.2 TFEU stating that
Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.
- The question is under what conditions Paks NPP and the newly established blocks can be regarded as an SGEI and whether those conditions will be met in this case. The Court has worked out the criteria for compensation to be regarded as lawful provided to an SGEI. In its 2003 Altmark judgment, the European Court of Justice held that public service compensation does not constitute State aid when four cumulative conditions are met:
 1. the recipient undertaking must have public service obligations and the obligations must be clearly defined;
 2. the parameters for calculating the compensation must be objective, transparent and established in advance;
 3. the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;
 4. where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs of a typical well-run company.
- Where at least one of the Altmark conditions is not fulfilled, the public service compensation will be examined under State aid rules. The Commission has published a Communication (SGEI Communication) that in addition to the Altmark judgment of the Court contains some further elements which make a state aid acceptable once it is related to an SGEI. We will also examine the following criteria that must be met not to unduly affect competition and trade in the following paragraphs. The Commission has also created an easily understandable tree diagram for applying the Altmark criteria.
 1. Existence of a public service obligation
The SGEI entails that there is a so-called Public Service Obligation (PSO) that the undertaking has to meet. These obligations must exhibit special characteristics as compared with the normal business environment of companies in a given sector. E.g. a requirement to meet environmental standards does not exhibit any special requirement compared to other companies active in the energy generation sector. The security of electricity supply in Hungary can be theoretically a PSO and thus form an SGEI but only if the generators use indigenous primary energy fuel sources, and

the total volume of energy does not exceed in any year 15% of the total primary energy needed for electricity production in Hungary. These conditions are clearly not met in this case. It is a common rule that if there are no special characteristics, just a normal power plant connected to the network, then it is not an SGEI. Not even its contribution to the security of electricity supply makes it an SGEI because in fact, any generator in the system contributes to the security of supply to some extent. Approaching from a different angle, it is true that a PSO in the general economic interest is often used in the electricity sector and it is allowed for security of supply reasons under the Electricity Directive (Art. 3.1 and Art. 3.2). It is however doubtful that MVM Co. or Paks II Co. will be entrusted with any particular PSO, but even if so, we have to distinguish what the subject of the obligation will be. If this obligation is the construction of a power plant at a given date earlier than the market would deliver that, it can be doubted that this is a real PSO. But if that is the case, then it is Rosatom's entrustment and it will end with the timely construction of the plant. In such circumstances if the payment scheme will last longer (which is what the Framework Agreement suggests), then this scheme becomes challengeable after the completion of construction. Nevertheless, if the entrustment is the supply of electricity, then it has to meet additional criteria (see above) which we already concluded that most probably will not be met.

- According to the SGEI Communication, the PSO has to be a genuine service of general economic interest as referred to in Article 106 TFEU. It is not a specific PSO if that service is already provided or can be provided satisfactorily by undertakings operating under normal market conditions. We believe that electricity production is already provided by a number of generators in Hungary, also by renewables, therefore this obligation would not be a genuine one for Paks NPP. Thus the service to be provided by Paks NPP is difficult to distinguish from other generators of baseload electricity. Baseload electricity is normally provided by the market. So the obligation according to the rules of Hungarian law to guarantee security of supply would be merely a general obligation and not a specific thing so it would most probably not be a PSO.
- According to the SGEI Communication, there is also a need for an entrustment act specifying the public service obligation and the methods of calculating compensation. This is not yet decided (the entrustment act) whereas about the method of calculation, see below.

2. Calculation of the compensation

How the amount of loan will be repaid by the Government and how this will be reflected in the price of electricity produced by MVM Co. generated by the new Paks NPP blocks is key. The mere existence of parameters is not enough, since it is not equivalent with the precise parameters for calculating compensation for an SGEI. We are not in the position yet to verify that the parameters will be established in an objective and transparent manner so as to avoid conferring an economic advantage which may favor the recipient undertakings over competing undertakings but at least there is information that a) the price of electricity will not reflect the loan and the payment burden of the Government to Russia, therefore the MVM will not operate in market conditions, and b) even if the entire investment fails, the loan will have to be repaid to Russia from taxpayer money, therefore MVM will bear no economic risk whatsoever when taking over the ownership of the new NPP blocks. In addition, it is obvious by now that there is not any background calculation on the necessity of the expansion of the current Paks NPP or on the impact of the operation of the new NPP blocks on the price of electricity in Hungary.

3. Necessary level for the compensation

It is impossible to determine at this stage whether MVM will be overcompensated or not, but in order to be so, there is a need for a correction mechanism in the contract that would take account of the effect of developments. If that mechanism is missing from the Agreements, then there is a high chance for overcompensation. Also when checking the compatibility of the Agreements with the EU law, the question will arise if the Agreements are subject to a reasonable time framework. According to the SGEI Communication, the duration of the period of entrustment has to be justified. If it is not, because the compensation is not decreasing over time or the contract is concluded for a very long period, and maybe there are no provisions on the gradual reduction of the

aid, then it is almost certainly exceeding the necessary level.

4. Omission of tendering

Also according to the SGEI Communication, compliance with EU public procurement rules should be ensured. It is important that the simple application of a tender process itself does not rule out state aid. Just because there is a tender, it still can be state aid but the total omission of tendering in this case makes sure that the selection process was arbitrary, the conditions of the Framework Agreement are distorting both domestic competition and trade between Member States and that the beneficiaries of the Agreements will enjoy an undue selective advantage. Therefore even by this standard the Agreements are illegal state aid.

9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

By omitting the public procurement procedure for the selection of the beneficiary of the investment targeted at planning, constructing and putting into operation of the Paks NPP new blocks No. 5 and No. 6, Hungary has failed to comply with the following directives:

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes **No**

If yes, please attach copies of correspondence.

c) Have you already approached national authorities or national courts concerning the same issue? *

Yes **No**

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgment, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

d) Please provide any other information that may be relevant for the assessment of this case.

The Agreements between Hungary and Russia have been made in the form of international treaties. Once they are proclaimed as Hungarian Acts of Parliament, they have to be signed by the President of the Republic in order to enter into force. Civil society organizations and political parties petitioned the President not to sign the aforementioned Act, however, to no avail. Also, the illegality or unconstitutionality of the Acts proclaiming the Agreements can be challenged at the Constitutional Court, however, legal standing is solely reserved for the Parliament, the Government, the Chairman of the Parliament and the initiator of the Bill, in addition to the President of the Republic, before the Act is proclaimed. The investigation of unconstitutionality after proclamation can be triggered only by the Government, one-fourth of all the MPs in the Parliament, the President of the Curia (Supreme Court), the attorney general or the ombudsman. None of these persons/institutions initiated the appropriate procedure yet therefore the available national remedies were not applied accordingly.

10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary

Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.

Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).

If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.

Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.

If the issue has already been dealt with by a national court/authority, please attach a copy of the judgment/decision, if available.

- Act No. 2 of 2014 on 11 February 2014 an international agreement concluded between the Government of Hungary and the Government of the Russian Federation (the Framework Agreement), on the cooperation of the peaceful utilization of nuclear energy
- Bill No. T/140. of 2014 May an international agreement concluded between Hungary and the Government of the Russian Federation (the Loan Agreement) on providing a state loan for financing the construction of the nuclear power plant in Hungary
- Statutes of Energiaklub
- Court registration of Energiaklub
- Media news links on the Agreements, such as:

<http://nol.hu/belfold/meg-rosszabb-a-paksi-szerzodes-1450049>

<http://www.origo.hu/gazdasag/energia/20140313-az-orosz-kormany-jovahagyta-a-paksi-atomeromu-bovitesere-szant-hitelt.html>

http://index.hu/gazdasag/ado_es_koltsegvetes/2014/01/14/nem_veletlenul_ment_orban_moszkvaba/

<http://www.168ora.hu/globusz/az-energia-aranak-csokkentese-valasztasi-gesztus-orban-reszerol-123490.html>

http://voiceofrussia.com/news/2014_01_14/Russia-Hungary-sign-agreement-on-construction-of-two-units-at-Paks-Nuclear-Power-Plant-3623/

<http://www.reuters.com/article/2014/01/14/russia-hungary-idUSL6N0KO28L20140114>

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant

Budapest, 12 June 2014

Aдриенн АМОН

Director

Energiaklub Climate Policy Institute
and Applied Communications