



Hungarian Helsinki Committee

CREATING A PARALLEL STATE STRUCTURE II.: MANAGEMENT OF NEW SUPERVISORY AUTHORITIES CEMENTED FOR 9 YEARS

**Information Note by the Hungarian Helsinki Committee (HHC)
26 May 2021**

A recently adopted Act and a Bill being debated in the Parliament aim at transforming existing supervisory bodies and mechanisms over which currently the government has control in order to cement their new management, appointed by the current Prime Minister, for nine years. This means that future governments, unless having a supermajority in the Parliament required to amend cardinal acts and provisions, would be left without any influence over a wide range of areas from tobacco retail concessions to atomic energy.

Act XXXII of 2021 on the Supervisory Authority for Regulated Activities enters into force on 1 July 2021. The government-sponsored legislation establishes a new entity in charge of supervising tobacco retail, judicial enforcement, gambling, and liquidation. In order to operate in each of these four areas, a concession agreement or tendering is required. Concessions and tenders are currently managed, and their oversight is carried out by different bodies and procedures at the moment:

- Tobacco retail requires concession agreements managed by a state-owned company;¹
- The apparatus responsible for judicial enforcement is supervised by the Minister of Justice;²
- The organisation of certain gambling activities is the sole right of the State, exercised through a state-owned company or by awarding concessions, overseen by the Minister for the Management of National Assets.³ Operations are overseen by the Minister through the Gambling Authority;⁴
- Liquidators are included in an official listing following a tender announced by the Government. A committee consisting of members delegated by the Minister of Justice, the Minister of Finance, the Minister of the Interior, the Minister of National Assets and the National Office of the Judiciary.⁵

The Supervisory Authority for Regulated Activities is to replace these as of 1 October 2021. Provisions of the Act related to the structure of the new authority, including the appointment of the president, are defined as cardinal: any future amendment of these would require a two-thirds majority in Parliament.⁶

The management of the new authority

The president of the authority is appointed by the Prime Minister for nine years without a call for applications.⁷ The president's appointment can only be terminated in case one of the listed, narrowly defined causes are in place.⁸ The president appoints their deputies, also for nine years.⁹ The president has wide-ranging managerial and regulatory powers in the areas that belong to the authority, including the appointment of the president, the vice president, and members of the presidium of the court of

¹ Section 4 of Act CXXXIV of 2012 on the Reduction of Smoking by Minors and the Retail of Tobacco Products

² Section 230 (1) of Act LIII of 1994 on Judicial Enforcement

³ Section 3 (2) of Act XXXIV of 1991 on the Organisation of Gambling

⁴ Government Decree 183/2017 (VII. 5.) on the Gambling Authority

⁵ Section 3 (4) of Government Decree 114/2006 (VII. 5.) on the List of Liquidators

⁶ Section 35 of Act XXXII of 2021

⁷ Section 7 (1)

⁸ Section 9 (4)

⁹ Section 7 (2)

arbitration¹⁰ in charge of disputes related to concessions issued in Hungary.¹¹ The president of the authority has membership in the Concession Council, and through his right to appointment, can control up to additional 2 members of the 6-member Council (the Council's members are: the president of the new authority, their deputy, one member appointed by the president of the new authority, by the prime minister, by the president of the Economic Competition Office, and by the president of the Public Procurement Authority).¹²

Tasks and finances of the new authority

Apart from issuing regulations and supervising activities in the four above described areas, the authority will have significant influence on existing and future concessions in other areas as well. All future tender invitations by the State regarding concessions are subject to the prior approval of the new authority.¹³ Similarly, the modification or the termination of a concession agreement also requires approval of the new authority.¹⁴

The new authority may also impose fines (which may in turn result in the ineligibility of the fined individual to participate in tobacco retail¹⁵), which constitute one of the financial bases for the authority's operations.¹⁶ Further revenues of the authority include e.g. supervision fees, administrative service fees, as well as a 15% flat-rate fee after funds recovered through judicial enforcement.¹⁷ In addition to these revenues, the state must provide an annual supervision contribution to the new authority.¹⁸ The law also specifies that only 9% of the revenues generated from supervision fees, fines, and administrative service fees are to be transferred to the central budget.¹⁹

Bill on the transformation of the Atomic Energy Authority (AEA)

The Russian Federation and Hungary signed in 2014 an inter-governmental agreement to expand Hungary's nuclear power plant with two Russian reactors. The agreement also includes an EUR 10 Billion Russian loan to Hungary. The Hungarian Atomic Energy Authority has not yet issued a construction licence.

The president of the Atomic Energy Authority resigned as of 29 April 2021 without providing any reasons²⁰ and no successor has been appointed since then. However, on 11 May 2021 the Government submitted Bill T/16224 that would transform the Atomic Energy Authority from a government controlled entity into an authority with structure similar to that of the Supervisory Authority for Regulated Activities.²¹ According to the proposal, the president of the AEA would be appointed by the Prime Minister for 9 years, without a call for applications,²² while their deputies would be appointed by the president themselves.²³ Anyone having "leadership experience in public administration" could be appointed as the president of the AEA, expertise on matters related to atomic energy thus would not be a requirement.²⁴ Certain provisions of the Bill, including those on the appointment of the president of the AEA, are defined as cardinal: any future amendment would require a two-thirds majority in Parliament.²⁵

¹⁰ Section 13 (h)

¹¹ Section 26 (1)

¹² Sections 13 (h) and 21 (2) of

¹³ Section 37 (1)

¹⁴ Section 37 (3)

¹⁵ Section 48 (d)

¹⁶ Section 20 (1)

¹⁷ Section 20 (2)

¹⁸ Section 20 (3)

¹⁹ Section 20 (8)

²⁰ Regulation of the Prime Minister 23/2021. (IV. 28.)

²¹ The text of the Bill is available on the Parliament's website: <https://www.parlament.hu/irom41/16224/16224.pdf>

²² Section 3 (3) of Bill T/16224

²³ Section 3 (3) of Bill T/16224

²⁴ Section 3 (3) of Bill T/16224

²⁵ Section 9 of Bill T/16224

Similarly to the president of the Supervisory Authority for Regulated Activities, the Bill envisions the practical irremovability of the president of the AEA after their appointment by the prime minister for 9 years. Provisions related to the structural transformation would enter into force on 1 January 2022.²⁶

Lack of public consultation

Public consultation is obligatory for government-sponsored bills and it shall include the publishing of the draft text online for the public to comment.²⁷ Fitting into the trend of ignoring this requirement,²⁸ neither of these proposals were available on the government's website prior to their submission to the Parliament. In fact, only two draft legislation was published on the official website for consultation: a government resolution on a Council of Europe convention related to football matches and other sports events, and the National Strategy of the Fashion Industry 2030.²⁹

The government must submit its legislative plan (brief content of the bills, the planned date of their submission to the Parliament, etc) ahead of parliamentary sessions to the Speaker of the Parliament.³⁰ The plan pertaining to the 2021 spring session does not include these proposals either.³¹

²⁶ Section 16 (2) of Bill T/16224

²⁷ Section 1 and 8 (1)-(2) of Act CXXXI of 2010 on Public Participation in Preparing Laws

²⁸ See more on this in Section V of the submission of Amnesty International Hungary, the Eötvös Károly Institute, and the Hungarian Helsinki Committee for the 3rd cycle of the Universal Periodic Review of Hungary, 25 March 2021:

https://helsinki.hu/wp-content/uploads/2021/03/AIHU_EKINT_HHC_UPR2021_Hungary_RoL_web.pdf

²⁹ https://kormany.hu/dokumentumtar?categories=2&limit_rows_on_page=8&limit_page=0

³⁰ Section 38 of Act XXXVI of 2012 on the National Assembly

³¹ Submitted by the deputy prime minister on 15 December 2020, available here:

https://www.parlament.hu/documents/10181/721095/Tvalk_program_2021_tavas.pdf/7ec4047e-2a6d-2d18-ea35-ea79fbebfc9e?t=1608102446818