

**Overall legal text of the *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act) 2010 as amended on 22/10/2013**

**Full title**

*Bundesgesetz, mit dem die Organisation auf dem Gebiet der Elektrizitätswirtschaft neu geregelt wird* (Federal Act Providing New Rules for the Organisation of the Electricity Sector) (*Elektrizitätswirtschafts- und -organisationsgesetz* [Electricity Act] 2010)

Original text: *BGBL.* (Federal Law Gazette, FLG) I no 110/2010 (National Council: GP XXIV RV 994 AB 997 p. 86. Federal Council: 8420 AB 8421 p. 791.)

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**Amendments**

FLG I no 6/2013 (National Council: GP XXIV AB 2067 p. 184. Federal Council: AB 8878 p. 816.)

FLG I no 83/2013 (National Council: GP XXIV RV 2168 AB 2268 p. 200. Federal Council: AB 8968 p. 820.)

[CELEX no: 31995L0046]

FLG I no 174/2013 (National Council: GP XXIV IA 2323/A AB 2389 p. 213. Federal Council: 9043 AB 9077 p. 823.)

**Other text components**

The National Council has resolved:

**Preamble / Promulgation Clause**

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**The following provision classifies as a**  
constitutional provision

#### **Text**

### **Title 1**

#### **Principles**

##### **Constitutional Provision**

**Section 1. (constitutional provision)** The responsibility for issuing, repealing and executing rules such as those contained in sections 2, 3, 8, 9, 10a, 11, section 16 para. 2, section 19, section 22 para. 1, sections 24 to 36, section 37 para. 7, sections 38 and 39, sections 48 to 65, section 69, section 72, section 73 paras 2 and 3, section 76, sections 77a to 79a, sections 81 to 84a, section 88 paras 3 to 8, section 89, sections 92 to 94, sections 99 to 103, section 109 para. 2, sections 110 to 112, section 113 para. 1 and section 114 paras 1 and 3 lies with the federal government even with regard to matters for which the *Bundesverfassungsgesetz* (Federal Constitutional Law) provides otherwise. Matters regulated in these rules may be discharged directly by federal bodies.

##### **Reference to Union Law**

**Section 2.** In consideration of Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L 211, 14.08.2009, p. 1, this Federal Act transposes

1. Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.08.2009, p. 55 (Electricity Directive);
2. Directive 2004/8/EC concerning the promotion of cogeneration based on the demand for useful heat in the internal energy market and amending Directive 92/42/EEC, OJ L 52, 21.02.2004, p. 50 (CHP Directive);
3. Directive 2006/32/EC concerning energy end-use efficiency and energy services, OJ L 114, 27.04.2006, p. 64; and

4. Directive 2008/27/EC concerning the promotion of energy from renewable sources, OJ L 140, 05.06.2009, p. 16; and implements
5. the provisions reserved for implementation by the member states in Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211, 14.08.2009, p. 15; and in
6. Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, OJ L 326, 08.12.2011, p. 1.

### Scope of Application

**Section 3.** The purpose of this Federal Act is:

1. to enact provisions on the generation, transmission, distribution and supply of electricity, as well as on the organisation of the electricity sector;
2. to regulate the system charges and provide rules on billing, internal organisation, unbundling and transparency of the accounts of electricity undertakings;
3. to lay down other rights and obligations of electricity undertakings.

**The following provision classifies as a**

framework provision

### Objectives

**Section 4. (framework provision)** The objective of this Federal Act is:

1. to provide electricity of high quality at reasonable prices to the Austrian population and industry;
2. to organise the electricity market in accordance with EU primary law and with the principles of the internal electricity market as provided for in Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.08.2009, p. 55 (Electricity Directive);
3. to realise the potential for a sustainable use of combined heat and power (CHP) and CHP technologies pursuant to Annex II as a means of saving energy and ensuring security of supply;
4. to increase and sustainably ensure system security and security of supply by creating a suitable framework;
5. to support the evolution of electricity generation from renewable energy sources and to ensure access to the electricity system for such electricity;
6. to offset public service obligations imposed upon electricity undertakings in the general economic interest and relating to the security - including the security of supply -, the continuity, the quality and the price of supplies, as well as to environmental protection;
7. to take into account the public interest in the supply of electricity, particularly from domestic, renewable resources, when assessing infrastructure projects.

**The following provision classifies as a**

framework provision

### Public Service Obligations

**Section 5. (framework provision)** (1) The implementing legislation shall provide that the following public service obligations be imposed upon system operators in the general economic interest:

1. to ensure non-discriminatory treatment of all customers of a system;
2. to conclude private-law contracts with system users, providing for the latter's connection to their system (general obligation to connect);
3. to set up and maintain a suitable system infrastructure to ensure domestic electricity supply or the performance of obligations under public international law.

(2) The implementing legislation shall provide that the following public service obligations be imposed upon electricity undertakings in the general economic interest:

1. to perform the obligations imposed upon them by law in the public interest;

2. to participate in measures designed to eliminate congestions and in measures designed to ensure security of supply.
- (3) The implementing legislation shall oblige electricity undertakings to perform the obligations imposed upon them in the general economic interest to the best of their ability.

**The following provision classifies as a**  
framework provision

#### **Principles Regarding the Operation of Electricity Undertakings**

**Section 6. (framework provision)** The implementing legislation shall provide that electricity undertakings act as customer- and competition-oriented providers of energy services according to the principles of secure, environmentally sound and efficient provision of the services demanded at reasonable cost, and of a competitive electricity market. They shall adopt these principles as company objectives.

**The following provision classifies as a**  
framework provision

#### **Definitions**

**Section 7. (framework provision)** (1) For the purposes of this Federal Act, the term:

1. “Agency” means the Agency for the Cooperation of Energy Regulators according to Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L 211, 14.08.2009, p. 1;
2. “connected capacity” means the capacity contracted for system use at the handover point;
- 2a. “outage reserve” means that part of secondary control which mainly serves as backup capacity in case of an outage of the largest generating unit in the control area; it can be activated automatically or manually;
3. “balancing energy” means the difference between the amount of energy scheduled and the amount actually fed in or out by a balance group during each defined measurement period, where the energy per measurement period may be either metered or calculated;
4. “balance group” means the combination of suppliers and customers in a virtual group within which injection (procurement schedule, generation) and withdrawal (delivery schedule, demand) are balanced;
5. “clearing and settlement agent”, aka “balance group coordinator”, means a natural or legal person or a registered partnership operating a clearing and settlement agency;
6. “balance responsible party”, aka “balance group representative”, means an entity that represents a balance group and is responsible vis-à-vis other market participants and the clearing and settlement agent;
7. “distributed generation plant” means a power plant whose handover points connects it to a public medium-voltage or low-voltage distribution system and is thus close to consumers, or a plant that generates electricity for own use;
8. “direct line” means either an electricity line that connects a single production site with a single customer or an electricity line that connects an electricity producer and electricity supplier with their own premises, subsidiaries and eligible customers for the purpose of direct supply; electricity lines within housing estates are not deemed direct lines;
9. “third-party states” means states which have not acceded to the Agreement on the European Economic Area or which are not members of the European Union;
10. “injecting party” means a producer or an electricity undertaking which feeds electrical energy into a system;
11. “electricity undertaking” means any natural or legal person or registered partnership which carries out, with a view to profit, at least one of the functions of generation, transmission, distribution, supply or purchase of electricity, and which is responsible for commercial, technical or maintenance tasks related to such functions, excluding consumers;

12. “consumer” means a natural or legal person or a registered partnership purchasing electricity for own use;
13. “energy efficiency/demand-side management” means a global or integrated approach aimed at controlling the amount and timing of electricity consumption in order to reduce primary energy consumption and peak loads by giving precedence to investments in energy efficiency measures, or other measures such as interruptible supply contracts, over investments to increase generation capacity if the former are the most effective and economical option, taking into account the positive environmental impact of reduced energy consumption and the related aspects of increased security of supply and reduced distribution costs;
14. “withdrawing party” means a consumer or a system operator taking off electricity from a transmission or distribution system;
15. “ENTSO for Electricity”, aka “ENTSO-E”, means the European Network of Transmission System Operators for Electricity pursuant to Article 5 of Regulation (EC) No 714/2009;
16. “renewable energy source” means a renewable non-fossil energy source (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogas);
17. “producer”, aka “generator”, means a legal or natural person or a registered partnership which generates electricity;
18. “generation” means the production of electricity;
19. “cogeneration production” means the sum of electricity and mechanical energy and useful heat from cogeneration;
20. “generation facility” means a power plant or fleet of power plants;
21. “schedule” means the document specifying the electricity that is injected and withdrawn at certain points within a system or exchanged between balance groups, as a projected mean value, presented in a constant time pattern (measurement periods);
22. “functionally connected system” means a system that is connected to an ultra-high voltage system directly or indirectly via another system or several systems on grid levels 3 to 7 either via a transformer or galvanically. If a system is indirectly connected to the ultra-high voltage system via several systems, it is deemed functionally connected with that one to which either a direct connection via a transformer or a galvanical connection exists. If several systems have these characteristics, the system is deemed functionally connected with the one that supplies a larger annual amount of energy to consumers;
23. “directly connected grid areas” means grid areas that are connected so that they are electrically conducting;
24. “overall efficiency” in cogeneration means the annual sum of electricity, mechanical energy and useful heat output divided by the fuel input used for heat produced in a cogeneration process and for gross electricity and mechanical energy production;
25. “household customers” means customers that purchase electricity for consumption in their own household, excluding business activities;
26. “ancillary services” means all services that are necessary for operating a transmission or distribution system;
27. “high-efficiency cogeneration” means cogeneration meeting the criteria of Annex IV;
28. “horizontally integrated electricity undertaking” means an undertaking performing at least one of the functions of generation for sale, transmission, distribution or supply of electricity, as well as another non-electricity activity;
29. “electricity from cogeneration” means electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex III;
30. “integrated electricity undertaking” means a vertically or horizontally integrated electricity undertaking;
31. “smart meter” means a piece of technical equipment that records actual energy consumption and period of use without delay and allows for bidirectional data transmission and remote meter reading;
32. “promotional material subject to labelling obligations” means any promotional material addressed to consumers and designed to sell electricity. This includes



- a) promotional materials for selling products for individual customers, such as product brochures;
  - b) other standardised printed product materials for sales purposes;
  - c) online product promotion;
33. “small business” means an entrepreneur according to section 1 para. 1 item 1 *Konsumentenschutzgesetz* (Consumer Protection Act) that has fewer than 50 employees, that consumes less than 100,000 kWh of electricity per year and whose annual turnover or balance sheet does not exceed 10 million EUR;
34. “control” means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exerting decisive influence on an undertaking, in particular by
- a) ownership or usufructuary rights in all or part of the undertaking's assets;
  - b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;
35. “cost cascading” means a calculation method used to apportion, on a pro-rata basis, to a group of consumers the costs of the grid level at which it is connected as well as the costs of all upstream grid levels;
- a) “gross cost cascading” means cost cascading where the costs of a grid level reflect system utilisation by all directly and indirectly connected withdrawing and injecting parties, i.e. including those connected at all downstream grid levels. Capacity and energy flows between the grid levels are not taken into account;
  - b) “net cost cascading” means cost cascading where the apportionment key for the costs to be cascaded does not result from the total system utilisation on the relevant and all downstream levels but exclusively from utilisation by directly connected withdrawing and injecting parties and the interface to the next downstream system level;
36. “cogeneration”, aka “CHP”, means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
37. “power to heat ratio”, aka “CHP coefficient”, means the ratio between electricity from cogeneration and useful heat when operating in full cogeneration mode using operational data of the specific unit;
38. “power plant” means a plant that is designed for generating electricity by energy conversion. It can consist of several generation units and also includes all associated auxiliary systems and secondary equipment;
39. “fleet of power plants” means a group of power plants that share the same system connection;
40. “customers” means consumers, electricity traders and electricity undertakings which purchase electricity;
41. “cogeneration unit” means a unit that can operate in cogeneration mode;
42. “micro-cogeneration unit” means a cogeneration unit with a maximum capacity of no more than 50 kW;
43. “small-scale cogeneration unit” means a cogeneration unit with an installed capacity below 1 MW;
44. “load profile” means the quantity drawn by a withdrawing party or delivered by an injecting party, shown in time intervals;
45. “provider” means a natural or legal person or a registered partnership that provides electricity to other natural or legal persons;
46. “market rules” means the sum total of all legal or contractual rules, regulations and provisions which participants in the electricity market must comply with in order to facilitate and guarantee the proper functioning of this market;
47. “market participants” means balance responsible parties, providers, electricity traders, producers, system users, customers, consumers, clearing and settlement agents, power exchanges, transmission system operators, distribution system operators and control area managers;
- 47a. “guarantee of origin” means a certificate confirming which type of primary energy source a particular unit of electric energy was generated from. This particularly includes guarantees of origin for electricity generated from fossil fuels, guarantees of origin for electricity from high-

efficiency cogeneration, and guarantees of origin pursuant to section 10 *Ökostromgesetz* (Green Electricity Act) 2012;

48. “system connection” means the physical connection of a customer facility or a generation plant to a system;
49. “system user” means any natural or legal person or registered partnership feeding electricity into a system or taking electricity from a system;
50. “grid area”, aka “network area”, means that part of the network for the use of which the same rates apply;
51. “network operator” means any operator of a transmission or distribution system with a rated frequency of 50 Hz;
52. “grid level”, aka “network level”, means a section of the network which is mainly defined by its voltage level;
53. “system access” means use of a system;
54. “party entitled to system access” means a natural or legal person or registered partnership that wishes to gain access to a system, including but not limited to electricity undertakings, to the extent required to fulfil their responsibilities;
55. “system access contract” means the individual agreement made between a party entitled to system access and a system operator regulating connection to and utilisation of the system;
56. “system admission” means the initial establishment of a connection to a system or an increase in the connected capacity of an existing system connection;
57. “useful heat” means heat produced in a cogeneration process to satisfy an economically justifiable demand for heat or cooling;
58. “primary control” means the automated reestablishment of the balance between generation and consumption by means of turbine speed governors according to the machines’ static default characteristic within no more than 30 seconds following the occurrence of an imbalance;
59. “control area” means the smallest unit within the interconnected system in which load frequency control is available and used;
60. “control area manager” means the entity which is responsible for load frequency control within a control area, where this function may also be carried out by a third-party company having its domicile in another member state of the European Union;
61. “back-up electricity” means the electricity supplied through the electricity grid whenever the cogeneration process is disrupted, including maintenance periods, or out of order;
62. “secondary control” means the function to restore the frequency and the interchange power flow with other control areas to their set values following an imbalance between the active load generated and consumed; secondary control is activated automatically or, if necessary, manually, and may make use of centralised or decentralised facilities. Outage reserve is also part of secondary control. The reestablishment of the target frequency can take several minutes;
63. “security” means security of supply and provision of electricity as well as operational and technical safety;
64. “standardised load profile” means a load profile characteristic of a certain group of injecting or withdrawing parties which has been drawn up by a suitable procedure;
65. “electricity trader” means a natural or legal person or a registered partnership selling electricity with a view to profit;
66. “system operator” means a network operator that has at its disposal the technical and organisational means to take any measures required to maintain the operation of the system;
67. “tertiary control”, aka “minute reserve”, means the manually or automatically triggered activation of electric capacity for a longer period that is intended to support or complement the secondary control or to replace, for a longer period, secondary control capacity that is already activated;
68. “transmission” means the transport of electricity through an ultra-high voltage and high-voltage interconnected grid with a view to its delivery to consumers or distributors, but not including supply;
69. “transmission system” means a high-voltage interconnected system with a voltage of 110 kV or above, serving the purpose of supraregional transport of electricity;

70. “transmission system operator” means a natural or legal person or a registered partnership that is responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system and, where applicable, the interconnectors to other systems, and for ensuring the long-term ability of the system to meet a reasonable demand for the transmission of electricity; transmission system operators in Austria are Verbund-Austrian Power Grid AG, TIWAG-Netz AG and VKW-Übertragungsnetz AG;
  71. “interconnector” means a line used to link electricity systems;
  72. “affiliated electricity undertaking” means
    - a) an affiliated undertaking pursuant to section 228 para. 3 *Unternehmensgesetzbuch* (Business Enterprise Code);
    - b) an associated undertaking pursuant to section 263 para. 1 Business Enterprise Code; or
    - c) two or more undertakings with identical shareholders;
  73. “interconnected system” means a number of transmission and distribution systems which are connected with each other by means of one or more interconnectors;
  74. “supplier”, aka “retailer”, means a natural or legal person or a registered partnership executing the function of supply;
  75. “supply” means the sale, including resale, of electricity to customers;
  76. “distribution system operator” means a natural or legal person or a registered partnership that is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system of a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;
  77. “distribution” means the transport of electricity through high, medium or low-voltage distribution systems with a view to its delivery to customers, but not including supply;
  78. “vertically integrated electricity undertaking” means an undertaking or a group of undertakings in which the same person is entitled, directly or indirectly, to exercise control, and where the undertaking or group performs at least one of the functions of transmission or distribution and at least one of the functions of generation or supply of electricity;
  79. “efficiency” means the efficiency calculated on the basis of net calorific values of fuels (also referred to as “lower calorific values”);
  80. “efficiency reference value for separate production” means the efficiency of the alternative separate productions of heat and electricity that the cogeneration process is intended to substitute;
  81. “economically justifiable demand” means the demand that does not exceed the needs for heat or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;
  82. “economic precedence” means the ranking of sources of electricity supply in accordance with economic criteria;
  83. “metering point” means any injection or withdrawal point where electricity volumes are metered and registered. Combining several metering points shall not be admissible;
  84. “top-up electricity” means the electricity supplied through the electricity grid in cases where the electricity demand is greater than the electrical output of the cogeneration process.
- (2) Insofar as reference is made in this Federal Act to provisions of other federal acts or to directly applicable Union law, such provisions apply as amended.
- (3) Where reference is made to particular persons, the applicable grammatical gender has been used; general references to natural persons are intended to refer to all sexes and neutral wording has been chosen.

## Title 2

### Accounting, Confidentiality, Right to Information and Inspection, Non-Discrimination and Prohibition of Cross-Subsidies

#### Accounting, Prohibition of Cross-Subsidies

**Section 8.** (1) Regardless of ownership and type of company, electricity undertakings shall prepare annual accounts and have them audited, and publish them inasmuch as they are required to do so under the provisions of the *Rechnungslegungsgesetz* (Accounting Act). The audit of the annual accounts shall include an investigation whether the obligation to avoid abusive cross-subsidies pursuant to para. 2 is observed. Annual accounts shall be prepared, audited and published in accordance with the provisions of the Accounting Act. Electricity undertakings which are not obliged by law to publish their annual accounts shall keep a copy of these at the disposal of the public at their head office.

(2) System operators shall refrain from cross-subsidisation. In the interest of non-discrimination as well as avoidance of cross-subsidies and distortion of competition, electricity undertakings shall therefore be obliged, within the scope of their internal bookkeeping, to:

1. keep separate accounts within separate accounting systems for their:
  - a) generation, electricity trading and supply activities;
  - b) transmission activities;
  - c) distribution activities;
  - d) other activities;
2. publish the balance sheets and profit and loss accounts of the individual electricity-related accounting systems, as well as their respective rules of allocation in accordance with para. 3;
3. keep consolidated accounts for their other, non-electricity activities and publish a balance sheet and a profit and loss account in accordance with para. 1.

The internal accounts shall include a balance sheet and a profit and loss account for each activity. Without prejudice to the provisions of commercial and tax law, undertakings shall furthermore specify in their internal accounting the rules for the allocation of assets, liabilities, expenditure and income, as well as for depreciation, which they follow in drawing up the separate accounts referred to in item 1. These rules may be amended only in exceptional cases. Any such amendments shall be mentioned and duly substantiated. Any income from the ownership in the transmission and/or distribution system shall be posted separately in the accounts.

(3) The annual accounts shall indicate in their annex any transaction with a service, remuneration or other economic advantage exceeding the value of one million Euro carried out with affiliated electricity undertakings (section 7 para. 1 item 72). If the subject of a transaction consists of several parts for each of which a separate transaction is concluded, the value of each partial transaction shall be considered in calculating the threshold.

#### Non-Discrimination

**Section 9.** It is not admissible for system operators to discriminate against persons who use or intend to use their systems or against certain classes of such persons, in particular if this would be to the benefit of vertically integrated electricity undertakings.

#### Right to Information and Inspection

**Section 10.** Electricity undertakings shall permit the authorities, including the regulatory authority, to inspect any documents and records relevant for their business activities at any time, and shall furnish information on any facts relevant to the respective authority's sphere of competence. This duty to accept inspections of records and disclose information also applies without any specific case being present if such records or information are required for the clarification or run-up to the clarification of facts which may be relevant in future procedures. In particular, electricity undertakings shall make available any and all information that enables proper assessment by the authority. If an electricity undertaking fails to meet this obligation, the authority may base its assessment on estimates.

#### Disclosing Inside Information

**Section 10a.** Any market participant obliged to publish inside information pursuant to Article 4 of Regulation (EU) No 1227/2011 shall submit such information to E-Control at the same time as publishing it.

### Confidentiality

**Section 11.** Without prejudice to their statutory obligations and obligations resulting from Regulation (EC) No 714/2009 and the legal instruments adopted in its implementation relating to the disclosure of information, system operators shall preserve the confidentiality of any economically sensitive information and of any business or trade secrets of which they obtain knowledge in the course of carrying out their business. They shall prevent information about their own activities which might produce economic advantages from being disclosed in a discriminatory manner, in particular if this would be to the benefit of a vertically integrated electricity undertaking.

**The following provision classifies as a**

framework provision (paras 1 and 2)

### Title 3

#### Power Plants and Electricity Supply Contracts

##### Construction and Operating Licences

**Section 12.** (1) **(framework provision)** The implementing legislation shall in any case define the prerequisites applicable to the construction and commissioning of power plants, as well as to any preliminary work to be carried out, according to objective, transparent and non-discriminatory criteria within the meaning of Articles 7 and 8 of Directive 2009/72/EC.

(2) **(framework provision)** The implementing legislation may provide that distributed generation plants, stations that generate electricity from renewable energy sources or waste, and cogeneration plants be submitted to a simplified procedure or notification requirement, provided that their capacity does not exceed a certain threshold. Plants which are subject to a licence or notification pursuant to the provisions of the *Gewerbeordnung* (Industrial Code) 1994 shall in any case be exempt from the obligation to obtain an additional licence.

##### Contracts for Electricity Supply from Third Countries

**Section 13.** Electricity supply contracts involving the purchase of electricity, with a view to covering domestic demand, from third countries:

1. that generate part of their electricity in plants which do not comply with the state of the art or in plants the operation of which directly or indirectly jeopardises the life or health of persons, animals or plants in the national territory; or
2. that fail to furnish proof of the proper disposal of waste resulting from the generation of electricity and to draw up a plan for the disposal of waste resulting from future generation

are not permissible.

##### Obligation to Report Electricity Supply Contracts

**Section 14.** Electricity supply contracts with terms longer than one year and involving the purchase of electricity in excess of 500 million kWh per year from the territory of the European Union with a view to covering domestic demand shall be notified to the regulatory authority. The regulatory authority shall keep a record of such electricity supply contracts.

**The following provision classifies as a**

framework provision

## Title 4

### System Operation

#### Part 1

### General Rights and Obligations of System Operators

#### Granting System Access

**Section 15. (framework provision)** The implementing legislation shall oblige system operators to grant system access to parties entitled to system access under approved general terms and conditions and at fixed system charges.

**The following provision classifies as a**

framework provision (para. 1)

#### Organisation of System Access

**Section 16. (1) (framework provision)** The implementing legislation shall provide that entitled parties are legally entitled to demand system access, pursuant to section 15, under the approved general terms and conditions and at the system charges set by the regulatory authority (regulated system access).

(2) The system operators shall group all metering points into system user categories. The regulatory authority shall issue an ordinance defining the injecting and withdrawing categories and the timeline for categorisation.

**The following provision classifies as a**

framework provision

#### Conditions of System Access

**Section 17. (framework provision) (1)** The conditions of system access shall be non-discriminatory. They shall contain no abusive practices or unjustified restrictions, nor jeopardise the security of supply or the quality of service.

(2) The implementing legislation shall provide for system operators within the same control area to coordinate their general terms and conditions with each other. Standardised load profiles shall in any case be drawn up for consumers connected at the grid levels defined by section 63 items 6 and 7 whose annual consumption is below 100,000 kWh or whose connected capacity is below 50 kW. Furthermore, the implementing legislation shall provide for the manner (synthetic, analytical) in which these standardised load profiles are to be drawn up and adjusted. Provision shall be made for the appropriate publication of the standardised load profiles. Provision shall also be made for standardised load profiles to be drawn up for injecting parties feeding less than 100,000 kWh per year into the network or having a connected capacity below 50 kW.

(3) The general terms and conditions shall contain, without limitation:

1. the rights and obligations of the contracting parties, in particular regarding compliance with the electricity market code;
2. the standardised load profiles allocated to individual system users;
3. the technical minimum requirements for system access;
4. the various services to be provided by the distribution undertaking relating to system access;
5. the period within which customer inquiries have to be answered;
6. the announcement of any planned supply interruptions;
7. the minimum requirements concerning dates to be agreed with system users;
8. the standard to be met in data communication to market participants;
9. the procedure and modalities for system access applications;
10. the data to be supplied by system users;
11. reference to dispute settlement procedures provided by law;

12. a period of not more than 14 days upon receipt within which the distribution undertaking must reply to applications for system access;
13. the basic principles of calculating the charges, as well as type and form of billing;
14. the obligation of parties entitled to system access to pay in advance or provide collateral (cash deposit, bank guarantee, deposit of savings books with unrestricted transferability) in an appropriate amount if the circumstances of the individual case so warrant, i.e. if there is reason to assume that the system user will fail to meet financial obligations or will fail to do so in due time;
15. the modalities for partial payments by system users; system users shall have the possibility of spreading their dues across at least ten payments a year;
16. provisions governing compensation and damages in the event of non-observance of the contractually agreed service levels.

In the general terms and conditions for the distribution system, technical standards and regulations (technical rules) in their latest versions may be made binding.

(4) The implementing legislation shall provide that system operators must inform customers about the essential contents of the general terms and conditions before contracts are concluded. To this end customers shall receive an information leaflet. The implementing legislation shall also ensure that the measures on consumer protection set out in Annex I of Directive 2009/72/EC are complied with. The general terms and conditions for the distribution system shall be issued to customers upon request.

(5) The implementing legislation shall provide that system users receive transparent information about applicable prices and rates, as well as about the general terms and conditions.

**The following provision classifies as a**  
framework provision

#### **Changes in the General Terms and Conditions Governing Network Access**

**Section 18. (framework provision)** If new general terms and conditions are approved, the system operator shall inform the system users thereof within four weeks following approval by way of a personally addressed communication and send them the new terms upon their request. Such communication or the customer invoice shall contain understandable information about the changes introduced to the general terms and conditions and the criteria to be complied with when making such changes in accordance with this Federal Act. The changed general terms and conditions shall be considered agreed upon from the first day of the month following a three-month period after the communication.

#### **System Service Quality**

**Section 19.** (1) In addition to the tasks and obligations bestowed upon system operators by virtue of this Act, the regulatory authority shall by ordinance set standards regarding the safety, reliability and quality of the services rendered to system users and other market participants, and define indicators for monitoring compliance with these standards. If compliance with such standards cannot be fully ensured without provisions regarding compensation and refunding in the event of non-compliance by system operators, the ordinance shall contain such provisions. The ordinance shall only enter into force after a consultation procedure, giving particularly the concerned system operators the opportunity to comment.

(2) The standards may include, without limitation:

1. operational security and reliability, including the duration and frequency of supply interruptions;
2. deadlines for the establishment of system connections, for repairs and for the announcement of supply interruptions;
3. deadlines for reacting to queries relating to the provision of system services;
4. complaint handling;
5. the voltage quality indicators to be complied with.

(3) Insofar as they govern the rights and obligations of system operators towards parties entitled to system access, the standards for system operators set in the ordinance shall be included in the system operators' general terms and conditions.

(4) The system operators shall submit the indicators defined in the ordinance to the regulatory authority each year and publish them.

**The following provision classifies as a**  
framework provision

#### **System Access in the Event of Insufficient Capacity**

**Section 20. (framework provision)** In the event that the existing line capacity is insufficient to accept all applications for utilisation of a system, the implementing legislation shall provide – notwithstanding the obligation to comply with the provisions of Regulation (EC) No 714/2009, as well as with the guidelines issued under this Regulation – that transports to supply customers with electricity from renewable energy sources and CHP plants be given priority.

**The following provision classifies as a**  
framework provision (paras 1 and 3)  
constitutional provision (para. 2)

#### **Refusal of System Access**

**Section 21. (1) (framework provision)** The implementing legislation shall provide that parties entitled to system access may be refused system access for the following reasons:

1. extraordinary system conditions (incidents);
2. insufficient system capacity;
3. for electricity supplies to a customer that is not deemed to be an eligible customer in the system from which these supplies are effected or intended to be effected;
4. if electricity from district-heating-oriented, environment and resource conservationist as well as economically and technically efficient CHP plants or from plants using renewable energy would otherwise be crowded out despite compliance with current market prices; however, any opportunities of selling such electricity to third parties shall be used.

The reasons for such refusal shall be communicated to the party entitled to system access.

(2) **(constitutional provision)** Upon application by a party claiming to be injured in its legally granted right to system access by being refused access, the regulatory authority shall find within one month whether the prerequisites for refusal of access pursuant to para. 1 above are met. The system operator shall furnish proof of the existence of grounds for refusal (para. 1). The regulatory authority shall endeavour at all stages of the proceedings to effect an amicable settlement between the party entitled to system access and the system operator.

(3) **(framework provision)** The implementing legislation shall provide that in determining a party's entitlement to system access, the legal provisions in force in the country where the party making an application pursuant to para. 2 has its domicile (principal residence) be applied. With regard to evaluating the reasons given for refusal of system access, the implementing legislation shall provide that the legal provisions in force in the country where the system operator that has refused system access is domiciled be applied.

#### **Dispute Settlement**

**Section 22. (1)** Except in cases coming under the jurisdiction of the Cartel Court pursuant to the *Kartellgesetz* (Cartel Act) 2005, the regulatory authority shall arbitrate disputes between parties entitled to system access and system operators with regard to the legality of refusing access to the system.

(2) In all other disputes between:

1. parties entitled to system access and system operators regarding the obligations arising from this relationship;
2. the independent system operator pursuant to section 25 and the owner of the transmission system according to section 27;
3. the vertically integrated electricity undertaking and the transmission system operator pursuant to section 28;
4. and in matters relating to the settlement of imbalance charges;

the courts shall have jurisdiction. An action by a party entitled to system access pursuant to item 1 above or an action under items 2 to 4 above cannot be brought until the official decision of the regulatory authority in the dispute settlement procedure has been served within the time period set in section 12



para. 4 *Energie-Control-Gesetz* (E-Control Act). For as long as a procedure in accordance with item 1 is pending conclusion at the regulatory authority, no judicial proceedings may be opened in this same case.

(3) Without prejudice to the provisions of para. 2, an action for claims based on refusal of system access cannot be brought until the regulatory authority's decision on the legality of such refusal has become final; where such a decision constitutes a preliminary question to judicial proceedings, such proceedings shall be suspended until the decision of the regulatory authority has become final.

**The following provision classifies as a**  
framework provision (paras 1 to 4 and 5 to 8)  
constitutional provision (para. 9)

## Part 2

### Control Areas, Control Area Managers and Clearing and Settlement Agents

#### Designation of Control Areas

**Section 23.** (1) **(framework provision)** The implementing legislation shall provide that one control area each be formed for the areas covered by the transmission systems operated by Verbund-Austrian Power Grid AG, TIWAG-Netz AG and VKW-Übertragungsnetz AG. Verbund-Austrian Power Grid AG, TIWAG-Netz AG and VKW-Übertragungsnetz AG or their legal successors shall be the control area managers. Combining control areas by way of combined operation by one control area manager is permissible.

(2) **(framework provision)** The implementing legislation shall impose the following obligations upon control area managers:

1. providing system services (load frequency control) in accordance with the relevant technical rules, such as those of the ENTSO for Electricity, while these services may also be provided by a third company;
2. managing schedules with other control areas;
3. organising and deploying control energy according to the merit order list;
4. metering at the interfaces of their electricity systems and transmitting the data to the clearing and settlement agent and to other network operators;
5. identifying any congestions in transmission systems, as well as taking measures with a view to preventing, removing and overcoming congestions in transmission systems, and also maintaining security of supply. If the removal of system congestions so requires, the control area managers shall, in agreement with the affected distribution system operators, conclude contracts with producers under which the latter are obliged to provide services (increase or reduce their output, change availability of their power plants) in return for compensation for the economic drawbacks and for expenses caused by these services; in this context power plants that use renewable energy sources shall be given priority and any instructions given to operators of CHP plants may not jeopardise the security of district heat supply. The system charges shall cover the expenses incurred by control area managers in the performance of these obligations;
6. dispatching power plants to produce control energy;
7. delimiting control energy from balancing energy according to transparent and objective criteria;
8. ensuring a physical balance between input and takeoff in the network under their responsibility;
9. clearing and settling any balancing energy through a clearing and settlement agent licensed to carry out this task, and making available to this agent as well as to the balance responsible parties the data necessary for clearing and settlement, in particular the costs of control energy and capacity, as well as any meter readings required to calculate deviations from the schedule and load profile of each balance group;
10. preparing a load projection with a view to diagnosing congestions;
11. entering into contracts on the exchange of data with other network operators, balance responsible parties, the clearing and settlement agents, and other market participants in accordance with the market rules;
12. designating a clearing and settlement agent and informing the authority of this designation;

13. publishing the primary and secondary control used in terms of duration and load, as well as the results of the tendering procedure pursuant to section 67 and section 69;
14. designing and operating the data communication and processing systems for simultaneously transmitted data of power plants pursuant to section 66 para. 3 so as to exclude any disclosure of such data to third parties;
15. drawing up a compliance programme which ensures that the obligations pursuant to item 14 are met;
16. cooperating with the Agency and the regulatory authority to ensure the consistency of regional regulatory frameworks with the aim of creating a competitive internal market in electricity;
17. having at their disposal one or more integrated system(s) covering one or more member state(s) for capacity allocation and for verifying system security at regional level;
18. coordinating at regional and supraregional level the calculation of cross-border capacity and its allocation in keeping with the stipulations of Regulation (EC) No 714/2009;
19. coordinating market transparency measures across borders;
20. harmonising to exchange control energy products;
21. collaborating with other control area managers to establish a regional security of supply assessment and outlook;
22. collaborating with other control area managers, exchanging the required data, to implement regional operational planning and use coordinated operational security systems;
23. submitting their congestion management rules, including the rules for capacity allocation on cross-border lines, and any change thereto to the regulatory authority for approval;
24. soliciting and collecting offers for control energy, and drawing up a merit order to be observed by control area managers;
25. taking special measures if no offers for control energy are submitted.

(3) **(framework provision)** The implementing legislation shall provide that undertakings that are under the decisive influence of other undertakings or a group of undertakings that are/is performing at least one of the functions of generation for sale, transmission, distribution, or supply of electricity be excluded from performing the function of a clearing and settlement agent. Moreover, the implementing legislation shall ensure that:

1. the clearing and settlement agent is able to perform the duties assigned to it pursuant to sections 4 and 5 safely and economically; duties are deemed to be performed economically if the clearing and settlement agent's allowed costs are established on the basis of the same procedures and principles that are to be used in setting the system charges;
2. the persons holding a qualified stake in the clearing and settlement agency meet the conditions to be made in the interest of ensuring sound and careful management of the undertaking;
3. none of the executive directors of the clearing and settlement agency is disqualified within the meaning of section 13 paras 1 through 6 *Gewerbeordnung* (Industrial Code) 1994;
4. based on their education and training, the executive directors of the clearing and settlement agency are technically qualified and have acquired the characteristics, skills and experience required for operating the undertaking. For an executive director to be technically qualified means that he or she has sufficient theoretical and practical knowledge of settling imbalances and management experience; a manager of the clearing and settlement agency is assumed to be qualified if he or she can furnish proof of at least three years' experience in an executive position in the field of tariffication or auditing;
5. at least one executive director has his or her centre of vital interests in Austria;
6. none of the executive directors also works full-time in another job outside the clearing and settlement agency which could cause a conflict of interest;
7. the seat and head office of the clearing and settlement agent are located in Austria, and that the clearing and settlement agent has the kind of equipment that is required to exercise its duties;
8. the processing system available meets the requirements of a modern settlement system;
9. neutrality, independence and confidentiality of data towards market participants are guaranteed.

(4) **(framework provision)** The implementing legislation shall provide that the duties of the clearing and settlement agent include the following activities:

1. assigning identification numbers to balance groups;
2. providing IT interfaces;
3. administering the schedules between balance groups;
4. receiving meter readings from the system operators in a predefined format, analysing them and submitting them to the market participants and other balance responsible parties concerned in line with the provisions in the contracts;
5. receiving schedules from the balance responsible parties and submitting them to the market participants concerned (other balance responsible parties) in line with the provisions in the contracts;
6. exercising the credit check of the balance responsible parties;
7. cooperating in the preparation and adjustment of rules for switching, clearing and financial settlement;
8. handling the financial settlement and organisational measures when balance groups are dissolved;
9. distributing and allocating, based on transparent criteria and once meter readings become available, any differences resulting from the use of standardised load profiles to the market participants connected to the system of a system operator;
10. charging the clearing fee to the balance responsible parties;
11. calculating and allocating balancing energy;
12. entering into contracts:
  - a) with balance responsible parties, other control area managers, system operators and electricity suppliers (producers and traders);
  - b) with bodies for data exchange with a view to preparing an index;
  - c) with electricity exchanges on the disclosure of data;
  - d) with electricity providers (producers and traders) on the disclosure of data.

(4a) When receiving and processing meter readings pursuant to para. 4 item 4, the clearing and settlement agent shall handle the generation data relating to each system user category separately; the categories shall be defined in an ordinance by the regulatory authority. For this purpose, when exercising their duties according to section 45 item 1 distribution system operators shall provide the data necessary for categorising and clearing the electricity injected. The Minister of Economy, Family and Youth and the regulatory authority shall have access to the data processed in accordance with the first sentence above.

(5) **(framework provision)** Within the framework of calculating and allocating balancing energy – unless there are special rules under contracts concluded pursuant to section 113 para. 2 – the clearing and settlement agent shall in any case:

1. calculate, allocate and settle balancing energy based on the difference between schedules and meter readings;
2. determine prices for balancing energy employing the procedure described in section 10 *Verrechnungsstellengesetz* (Settlement Agencies Act) and publish it regularly in a suitable format;
3. compute the balancing energy charges and communicate them to the balance responsible parties and control area managers;
4. record, archive and publish in a suitable manner the standardised load profiles used;
5. provide information to market participants on the measures required to ensure a transparent and non-discriminatory control energy market that is as liquid as possible. This shall include publishing the primary and secondary control used in terms of duration and load, as well as the results of the tendering procedure pursuant to section 67 and section 69.

(6) **(framework provision)** The implementing legislation shall provide for control area managers to notify the designation of a clearing and settlement agent to the authority. If the activity of a control area manager comprises several federal provinces, the designation shall be notified to all provincial governments affected. If the prerequisites to be met pursuant to para. 3 are not met, the authority shall declare so in an official decision. Prior to issuing such official decision, the authority shall seek agreement with the provincial governments in whose remit the control area is situated.

(7) **(framework provision)** If within six months after notification pursuant to para. 6 no official declaratory decision is issued, and if within this period no provincial government files an application pursuant to Article 15 para. 7 *Bundesverfassungsgesetz* (Federal Constitutional Act), the implementing legislation shall provide that the designated party be entitled to perform the function of a clearing and settlement agent. The implementing legislation shall provide that a clearing and settlement agent be deprived of its entitlement to perform this function if the prerequisites pursuant to para. 3 are no longer met. The procedure set out in the last sentence of para. 6 applies.

(8) **(framework provision)** In cases where:

1. no clearing and settlement agent has been notified pursuant to para. 6; or
2. the authority has issued an official declaratory decision pursuant to para. 6; or
3. the clearing and settlement agent has been deprived of its entitlement to perform this function;

the authority shall, ex officio, select and engage a suitable person based on the prerequisites defined in para. 3 to provisionally perform the duties of a clearing and settlement agent. The authority shall seek agreement with those provincial governments in whose remit the control area is situated. The authority shall revoke this official decision as soon as a suitable clearing and settlement agent is designated by the control area manager. Prior to revoking such official decision, the authority shall seek agreement with the provincial governments in whose remit the control area is situated.

(9) **(constitutional provision)** If system congestions occur in the control area's transmission network, producer services are needed for their removal and no contractual arrangement has been made pursuant to para. 2 item 5, the producers, by direction of the control area manager in agreement with the affected distribution system operators, shall provide services (increase or reduce their output, change the availability of their power plants). The procedure for determining fair remuneration for such services shall be defined in an ordinance issued by the regulatory authority, such remuneration being based on the economic drawbacks and expenses of producers caused by these services. In this context, it shall also be ensured that priority is given to the injection of renewable electricity and that any instructions given to operators of CHP plants will not jeopardise the security of district heat supply. The last sentence of para. 2 item 5 applies mutatis mutandis.

### Part 3

## Unbundling of Transmission System Operators

### Chapter 1

## Ownership Unbundling of Transmission System Operators

### Prerequisites

**Section 24.** (1) The transmission system operator is the owner of the transmission system.

(2) One person is not entitled to:

1. directly or indirectly exercise control over an undertaking performing any of the functions of generation or supply, and directly or indirectly exercise control or exercise any right over a transmission system operator; nor
2. directly or indirectly exercise control over a transmission system operator, and directly or indirectly exercise control or exercise any right over an undertaking performing any of the functions of generation or supply; nor
3. appoint members of the supervisory board or bodies legally representing the undertaking of the transmission system operator, and directly or indirectly exercise control or exercise any right over an undertaking performing any of the functions of generation or supply; nor
4. be a member of the supervisory board or bodies legally representing the undertaking of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.

(3) The rights referred to in para. 2 above include, without limitation:

1. the power to exercise voting rights;
2. the power to appoint members of the supervisory board or bodies legally representing the undertaking;
3. the holding of a majority share.

(4) The obligation set out in para. 1 above is deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more member states for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved as an independent system operator under section 25 or as an independent transmission system operator under section 28.

(5) Where the person referred to in para. 2 above is the member state or another public body, two separate public bodies exercising control over a transmission system operator on the one hand and over an undertaking performing any of the functions of generation or supply on the other hand are deemed not to be the same person.

(6) Para. 2 items 1 and 2 also apply to natural gas undertakings in the meaning of section 6 item 13 *Gaswirtschaftsgesetz* (Natural Gas Act) 2010.

(7) Neither commercially sensitive information held by a transmission system operator which was part of a vertically integrated electricity undertaking nor the staff of such transmission system operator may be transferred to undertakings performing any of the functions of generation or supply. Section 11 remains unaffected thereby.

## Chapter 2

### Independent System Operators (ISO)

#### Prerequisites

**Section 25.** (1) Where the transmission system was owned by a vertically integrated electricity undertaking on 3 September 2009, there is the option of not applying ownership unbundling pursuant to section 24 and instead designating an independent system operator upon a proposal from the transmission system owner.

(2) The independent system operator shall furnish documentation to prove that:

1. it complies with the prerequisites in section 24 para. 2;
2. it has at its disposal the required financial, technical, human and physical resources;
3. it undertakes to implement the network development plan monitored by the regulatory authority;
4. it is able to comply with its obligations under Regulation (EC) No 714/2009 including the cooperation of transmission system operators at European and regional level;
5. the owner of the transmission system is able to fulfil its obligations pursuant to section 26 para. 2. For this purpose, all agreements, including, without limitation, with the independent system operator, shall be provided to the regulatory authority.

#### Obligations

**Section 26.** (1) Each independent system operator is responsible for granting and managing third-party access, including the collection of access charges and congestion management charges and payments under the inter-transmission system operator compensation mechanism in compliance with Article 13 of Regulation (EC) No 714/2009, for operating, maintaining and expanding the transmission system, as well as for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system, the independent system operator is responsible for planning (including authorisation procedures), construction and commissioning of the new infrastructure. For this purpose, the independent system operator acts as a transmission system operator in accordance with the applicable stipulations. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

(2) The transmission system owner shall:

1. provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;
2. finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any other interested party including the independent system operator. The relevant financing agreements are subject to approval by the regulatory authority. Prior to such approval, the regulatory authority shall consult the transmission system owner together with the other interested parties;
3. provide for the coverage of liability relating to the system assets, excluding the liability relating to the tasks of the independent system operator;

4. provide guarantees to facilitate financing of any system expansions with the exception of those investments where, pursuant to item 2, it has given its agreement to financing by any interested party including the independent system operator.

#### **Independence of the Transmission System Owner**

**Section 27.** (1) Where the transmission system owner is part of a vertically integrated electricity undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.

(2) The independence of the transmission system owner shall be ensured by way of compliance with the following criteria:

1. The persons responsible for the management of the transmission system owner must not be part of business structures of the vertically integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution or supply of electricity.
2. Appropriate measures are taken to ensure that the professional interests of the persons responsible for the management of the transmission system owner are taken into account so that their independence of action is ensured.
3. The transmission system owner establishes a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded, and ensures that observance of it is adequately monitored. The compliance programme sets out the specific obligations incumbent upon the employees to meet those objectives. The compliance officer submits annual reports to the regulatory authority on the measures taken and such reports are published. If the compliance officer is an employee of the transmission system operator, for the duration of his or her appointment as compliance officer he or she is treated as a safety officer (section 73 para. 1 *ArbeitnehmerInnenschutzgesetz* [Employees Protection Act]) in terms of protection against dismissal or removal.

### **Chapter 3**

#### **Independent Transmission System Operator (ITO)**

##### **Assets, Independence, Services, Branding**

**Section 28.** (1) Where the transmission system was owned by a vertically integrated electricity undertaking on 3 September 2009, there is the option of not applying ownership unbundling pursuant to section 24 and instead designating an independent transmission system operator.

(2) The independent transmission system operator shall have at its disposal all human, technical, physical and financial resources necessary for fulfilling its obligations and carrying out the activity of transmission. Without prejudice to the decisions of the supervisory body, appropriate financial resources for future investment projects and for the replacement of existing assets shall be made available to the independent transmission system operator in due time by the vertically integrated electricity undertaking following a related request from the independent transmission system operator. In particular, operation of the transmission system shall comply with the following criteria:

1. The independent transmission system operator must be the owner of the transmission system and the assets. Operating third-party power plant lines is admissible.
2. The staff must be employed at the independent transmission system operator. In particular, the independent transmission system operator must have its own legal, accountancy and IT services.
3. Rendering of services, including leasing of personnel, by the vertically integrated electricity undertaking to the independent transmission system operator is prohibited. The independent transmission system operator may render services, including leasing of personnel, to the vertically integrated electricity undertaking if the provision of those services does not discriminate between users, is available to all users on the same terms and conditions and does not restrict, distort or prevent competition in generation or supply.

(3) Subsidiaries of the vertically integrated electricity undertaking performing any of the functions of generation or supply shall not have any direct or indirect shareholding in the independent transmission system operator. The independent transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated electricity undertaking performing any of the functions of generation or supply, nor receive dividends or any other financial benefits from such subsidiary. The overall management structure and the corporate statutes of the independent transmission

system operator shall ensure effective independence of the independent transmission system operator. The vertically integrated electricity undertaking shall not influence, directly or indirectly, the competitive behaviour of the independent transmission system operator in relation to the day-to-day activities of the independent transmission system operator and management of the system, or in relation to activities necessary for the preparation of the network development plan pursuant to section 37.

(4) The independent transmission system operator shall not, in its entire public activities, communication and branding, create confusion in respect of the separate identity of the vertically integrated electricity undertaking or any part thereof. The independent transmission system operator may therefore only use such signs, logos, images, names, characters, numbers, shapes, representations and presentations as are suitable to distinguish the activities and services of the transmission system operator from those of the vertically integrated electricity undertaking.

(5) The independent transmission system operator shall not share IT systems or equipment, physical premises or security access systems with any part of the vertically integrated electricity undertaking.

(6) The independent transmission system operator shall not use the same consultants or external contractors for IT systems or equipment, and for security access systems, as the vertically integrated electricity undertaking.

(7) The accounts of the independent transmission system operator shall be audited by an auditor other than the one auditing the vertically integrated electricity undertaking or any part thereof. Inasmuch as this is necessary to obtain the audit certificate for the consolidated accounts of the vertically integrated electricity undertaking or for other good reasons, the auditor of the vertically integrated electricity undertaking has the right to inspect parts of the accounts of the independent transmission system operator, unless the regulatory authority raises objections by official decision in the interest of safeguarding independence. Advance written notice of any good reasons shall be given to the regulatory authority. The auditor shall be obliged to maintain confidential any economically sensitive information and to particularly refrain from disclosing such information to the vertically integrated electricity undertaking.

(8) The activity of the independent transmission system operator shall include at least the following tasks in addition to those listed in section 40:

1. the representation of the independent transmission system operator and the function of acting as a contact for third parties and the regulatory authorities;
2. the representation of the independent transmission system operator within the ENTSO for Electricity;
3. the granting and managing of third-party access without discriminating between system users or classes of system users;
4. the collection of all transmission system related charges including access charges, charges for ancillary services such as purchasing of services (imbalance charges, energy to compensate for losses);
5. the operation, maintenance and development of a secure, efficient and economic transmission system;
6. investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;
7. setting up appropriate joint ventures, including with one or more transmission system operators, electricity exchanges, and other relevant actors, pursuing the objectives to promote the creation of regional markets or to facilitate the liberalisation process.

(9) The independent transmission system operator shall take one of the legal forms listed in Article 1 of Directive 68/151/EEC as amended by Directive 2006/99/EC.

### **Independence of the Transmission System Operator**

**Section 29.** (1) Without prejudice to the decisions of the supervisory body, the independent transmission system operator shall have effective decision-making rights, independent of the vertically integrated electricity undertaking, with respect to the assets and resources necessary to operate, maintain or expand the transmission system, and have the power to raise money on the capital market in particular through borrowing and capital increase.

(2) The independent transmission system operator shall act so as to ensure at all times that it has the resources it needs in order to carry out the activity of transmission system operation properly and efficiently and develop and maintain an efficient, secure and economical transmission system.

(3) Any commercial and financial relations between the vertically integrated electricity undertaking and the independent transmission system operator, including loans from the independent transmission system operator to the vertically integrated electricity undertaking, shall comply with market conditions. The independent transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority upon request. The transmission system operator shall also submit for approval by the regulatory authority all commercial and financial agreements with the vertically integrated electricity undertaking. If the agreements comply with market conditions and are non-discriminatory, the regulatory authority shall grant such approval by official decision within four weeks. After expiry of that period, approval shall be deemed granted.

(4) The independent transmission system operator shall inform the regulatory authority of the financial resources, referred to in section 28 para. 2, available for future investment projects and for the replacement of existing assets.

(5) The vertically integrated electricity undertaking shall refrain from any action impeding or prejudicing the independent transmission system operator from complying with its obligations and shall not require the independent transmission system operator to seek permission from the vertically integrated electricity undertaking in fulfilling those obligations.

#### **Independence of Management and Staff**

**Section 30.** (1) The persons responsible for the management shall be professionally independent. In particular, they shall:

1. have no professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of the vertically integrated electricity undertaking or with its controlling shareholders;
2. have had no professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated electricity undertaking, any part of the vertically integrated electricity undertaking or any of its controlling shareholders other than the independent transmission system operator for three years prior to their appointment. This time period applies to appointments made after 3 March 2012;
3. after termination of their term of office at the independent transmission system operator, have no professional position or responsibility, interest or business relationship with any part of the vertically integrated electricity undertaking other than the independent transmission system operator or with its controlling shareholders for a period of not less than four years;
4. hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated electricity undertaking. Their remuneration shall not depend on activities or results of the vertically integrated electricity undertaking other than those of the independent transmission system operator.

(2) The independent transmission system operator shall inform the regulatory authority without delay of the identity of and the conditions governing the function as well as term and termination of office of the persons responsible for the management, and the reasons for their appointment or termination of their contract.

(3) The regulatory authority may raise objections by way of official decision against persons responsible for the management ex officio or upon the application of a person responsible for the management or the compliance officer within three weeks if:

1. there are doubts as to the professional independence in the meaning of para. 1 above in the appointment or employment conditions including the remuneration; or
2. in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination. Premature termination of a term of office is unjustified if it was based on circumstances which do not comply with the provisions governing the independence from the vertically integrated electricity undertaking. An action by a person responsible for the management cannot be brought until the official decision of the regulatory authority in the dispute settlement procedure pursuant to section 12 para. 4 *Energie-Control-Gesetz* (E-Control Act) has been served or until the time limit for the regulatory authority to arrive at a decision has elapsed.

(4) Para. 1 item 2 applies to the majority of the persons responsible for the management of the independent transmission system operator. The persons responsible for the management of the independent transmission system operator who are not subject to para. 1 item 2 shall have exercised no



management or other relevant activity in the vertically integrated electricity undertaking for a period of at least six months before their appointment.

(5) Para. 1 item 1 above equally applies to all employees of the independent transmission system operator.

(6) Para. 1 items 1, 3 and 4 as well as para. 3 item 2 equally apply to the persons directly subordinate to the management in the areas of operation, maintenance and development of the system.

### **Independence of Supervisory Bodies**

**Section 31.** (1) The supervisory body of the independent transmission system operator is in charge of taking decisions which have a significant impact on the value of the assets of the shareholders within the independent transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the independent transmission system operator and the amount of dividends distributed to shareholders. Decisions regarding the appointment, renewal, employment conditions including remuneration and the termination of the term of office of the persons responsible for the management of the independent transmission system operator shall be taken by the supervisory body of the transmission system operator unless other statutory stipulations rule differently. The decisions falling under the remit of the supervisory body shall exclude those that are related to the day-to-day activities of the independent transmission system operator and management of the system, and those related to activities necessary for the preparation of the network development plan pursuant to section 37.

(2) Section 30 paras 1 to 3 also apply to half of the members of the supervisory body minus one. Employee representatives in the meaning of the *Arbeitsverfassungsgesetz* (Labour Constitution Act) in the supervisory body of the parent undertaking of the transmission system operator shall count among those members of the supervisory body of the transmission system operator who must fulfil the prerequisites of section 30 paras 1 to 3 for half of the members of the supervisory body minus one.

### **Compliance Programme and Compliance Officer**

**Section 32.** (1) The independent transmission system operator shall develop a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded. The compliance programme shall set out the specific obligations incumbent upon the employees to meet those objectives. It is subject to approval by the regulatory authority. Observance of the programme shall be monitored by a compliance officer.

(2) The compliance officer shall be appointed by the supervisory body, subject to approval by the regulatory authority by official decision. The regulatory authority may refuse approval of the compliance officer only for reasons of lack of independence or professional capacity, by official decision. The compliance officer may be a natural or legal person or a registered partnership. Section 30 paras 1 to 3 equally apply to the compliance officer.

(3) The compliance officer shall be in charge of:

1. continuously monitoring the implementation of the compliance programme;
2. elaborating an annual report setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;
3. reporting to the supervisory body and issuing recommendations on the compliance programme and its implementation;
4. notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme;
5. reporting to the regulatory authority on any commercial and financial relations between the vertically integrated electricity undertaking and the transmission system operator.

(4) The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the system to the regulatory authority. This shall occur at the latest when the management of the independent transmission system operator submits them to the supervisory body.

(5) Where the vertically integrated electricity undertaking, in the general assembly or through the vote of the members of the supervisory body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying system investments which under the network development plan were to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with section 39.

(6) The conditions governing the mandate and the employment conditions of the compliance officer, including the duration of his or her mandate, shall be subject to approval by the regulatory authority by official decision. Those conditions shall ensure the independence of the compliance officer, including by providing all the resources necessary for fulfilling his or her duties. During his or her mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated electricity undertaking or its controlling shareholders.

(7) The compliance officer shall report regularly, either orally or in writing, to the regulatory authority and shall have the right to report regularly, either orally or in writing, to the supervisory body of the transmission system operator.

(8) The compliance officer may attend all meetings of the management of the independent transmission system operator, and those of the supervisory body and the general assembly. The compliance officer shall attend all meetings that address the following matters:

1. conditions for access to the system as defined in Regulation (EC) No 714/2009, in particular regarding rates and tariffs, third-party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;
2. projects undertaken in order to operate, maintain or develop the transmission system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;
3. energy purchases or sales necessary for transmission system operation.

(9) The compliance officer shall monitor the compliance of the independent transmission system operator with section 8.

(10) The compliance officer shall have access to all relevant data and to the offices of the independent transmission system operator and to all the information necessary for the fulfilment of his or her tasks. The compliance officer shall have access to the offices of the independent transmission system operator without prior announcement.

(11) After prior approval by official decision of the regulatory authority, the supervisory body may dismiss the compliance officer. It shall also dismiss the compliance officer for reasons of lack of independence or professional capacity upon request by the regulatory authority by official decision.

(12) If the compliance officer is an employee of the transmission system operator, for the duration of his or her appointment as compliance officer he or she shall be treated as a safety officer (section 73 para. 1 *ArbeitnehmerInnenschutzgesetz* [Employees Protection Act]) in terms of protection against dismissal or removal.

## Chapter 4

### More Effective Independence of Transmission System Operators

#### Prerequisites

**Section 33.** Where, on 3 September 2009, the transmission system was owned by a vertically integrated electricity undertaking and there are arrangements in place which without a doubt guarantee more effective independence of the transmission system operator than the provisions on the independent transmission system operator (sections 28 through 32), it is possible not to apply the unbundling provisions of section 24.

## Chapter 5

### Procedures for Transmission System Operators

#### Certification and Designation of Transmission System Operators

**Section 34.** (1) The regulatory authority shall continuously monitor compliance with the unbundling provisions (sections 24 through 33). It shall certify a transmission system operator by official declaratory decision as:

1. transmission system operator with ownership unbundling in the meaning of section 24; or
2. independent system operator in the meaning of sections 25 to 29; or
3. independent transmission system operator in the meaning of sections 28 to 32; or
4. transmission system operator in the meaning of section 33.

- (2) A certification procedure shall be opened:
1. upon the application of a transmission system operator pursuant to para. 3 item 1;
  2. ex officio if:
    - a) a transmission system operator does not file an application for certification pursuant to para. 3 item 1; or
    - b) the regulatory authority obtains knowledge of a planned change which causes the need for reassessing the certification decision and potentially or effectively causes an infringement of the unbundling provisions;
  3. upon indication of the European Commission.

Article 3 of Regulation (EC) No 714/2009 applies to the certification procedure.

- (3) The transmission system operator shall be obliged to:
1. promptly apply for certification unless it is already certified; and
  2. notify the regulatory authority without delay of any changes which cause the need for reassessing the certification decision.

With its application to and notification of the regulatory authority, as well as upon request of the regulatory authority, the transmission system operator shall enclose all documentation necessary to assess the actual situation.

(4) The regulatory authority shall submit a substantiated draft decision to the European Commission within four months from the opening of the certification procedure and the receipt of all necessary documentation of the transmission system operator. If the European Commission issues an opinion, the regulatory authority shall take utmost account of such opinion in the certification procedure pursuant to para. 1 items 1 and 3, and reasons shall be given for any deviation from the opinion of the European Commission. Within two months of receiving the opinion of the European Commission, the regulatory authority shall adopt its final official decision regarding the certification. A positive decision may be granted subject to obligations and conditions to the extent that such is necessary to meet the objectives of this Act.

- (5) Notwithstanding para. 4 above, the following shall apply:
1. In certification procedures under para. 1 item 2 above, the regulatory authority shall comply with the decision of the European Commission.
  2. In certification procedures under para. 1 item 4 above, the regulatory authority and the European Commission shall verify whether the arrangements in place actually guarantee more effective independence of the transmission system operator than the provisions on the independent transmission system operator (sections 28 through 32); the regulatory authority shall comply with the decision of the European Commission.

(6) The regulatory authority shall keep detailed records of all correspondence with the European Commission that is part of a procedure under Article 3 of Regulation (EC) No 714/2009. These records shall be made available to the undertaking applying for certification and the Minister of Economy, Family and Youth. The regulatory authority shall publish its official declaratory decision including a statement of the grounds for the decision while blacking out any commercially sensitive information. The opinion of the European Commission shall be published as well unless it is reproduced in the statement of grounds.

(7) Transmission system operators and undertakings performing any of the functions of generation or supply shall furnish to the regulatory authority and the European Commission all information relevant for fulfilling their tasks without delay.

(8) Following certification pursuant to para. 1 above, the transmission system operator shall be designated by the Minister of Economy, Family and Youth and such designation shall be promulgated in the Federal Law Gazette. The Minister of Economy, Family and Youth shall notify the European Commission of the designation of a transmission system operator immediately following certification of the transmission system operator by official decision of the regulatory authority. The designation of an independent system operator pursuant to para. 1 items 2 and 4 is subject to prior approval of the European Commission. Where the regulatory authority finds by official decision that the prerequisites for certification are no longer complied with due to infringement of the unbundling provisions, the designation shall be revoked by promulgation of the Minister of Economy, Family and Youth.

### **Certification of Third-Country Transmission System Operators**

**Section 35.** (1) Where certification is requested by a transmission system operator which is controlled by a person or persons from a third country or third countries, section 34 applies with the following derogations.

(2) The regulatory authority shall immediately notify the European Commission and the Minister of Economy, Family and Youth of:

1. the request for certification by a transmission system operator which is controlled by a person or persons from a third country or third countries;
2. any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system operator.

(3) The Minister of Economy, Family and Youth shall ensure that granting certification by the regulatory authority will not put at risk the security of energy supply of Austria and the Union. In considering whether the security of energy supply of Austria and the Union is put at risk, the Minister of Economy, Family and Youth shall take into account

1. the rights and obligations of the Union with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Union is a party and which addresses the issues of security of energy supply;
2. the rights and obligations of the Republic of Austria with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with Union law; and
3. other specific facts and circumstances of the case and the third country concerned.

(4) Following consideration of the question whether the security of energy supply of Austria and the Union is put at risk, the Minister of Economy, Family and Youth shall draw a conclusion and inform the regulatory authority of such conclusion. The regulatory authority shall take account of the conclusion of the Minister of Economy, Family and Youth in its draft and final decisions.

### **Part 4**

#### **Combined Operators**

##### **Combined Operators**

**Section 36.** The regulatory authority shall approve the simultaneous operation of a transmission system and a distribution system provided that the criteria in paras 24 through 33 are met.

**The following provision classifies as a**

framework provision (paras 1 to 6)

### **Part 5**

#### **Operation of Transmission Systems**

##### **Network Development Plan**

**Section 37.** (1) **(framework provision)** Taking into account paras 2 to 6, the provincial legislation shall provide that each year, transmission system operators submit to the regulatory authority for approval a ten-year network development plan for the transmission network based on current and forecast supply and demand.

(2) **(framework provision)** The network development plan shall in particular:

1. indicate to market participants the main transmission infrastructure that needs to be built or extended over the next ten years;
2. list all the investments already decided and identify new investments which have to be executed in the next three years; and
3. provide for a time frame for all investment projects.

(3) **(framework provision)** The network development plan shall in particular have the aim of:

1. meeting the demand for line capacity to supply consumers while considering emergency scenarios;
2. ensuring a high degree of availability of line capacity (security of supply of the infrastructure);

3. meeting the demand for line capacity to achieve a European internal market.

(4) **(framework provision)** When elaborating the network development plan, transmission system operators shall make reasonable assumptions about the evolution of generation, supply, consumption and exchanges with other countries, taking into account investment plans for regional networks pursuant to Article 12(1) of Regulation (EC) No 714/2009 and Community-wide networks pursuant to Article 8(3)(b) of Regulation (EC) No 714/2009. The network development plan shall contain efficient measures to guarantee the adequacy of the system and ensure a high degree of availability of capacity (security of supply of the infrastructure).

(5) **(framework provision)** In drawing up the network development plan, transmission system operators shall take into consideration technical and economic expediency, the interests of all market participants and consistency with the Community-wide network development plan. Prior to submitting the network development plan for approval, the transmission system operator shall consult all relevant market participants.

(6) **(framework provision)** In substantiating the application for approval of the network development plan, especially in the case of competing projects for the construction, expansion, alteration or operation of systems, transmission system operators shall explain the technical and economic reasons for approving or rejecting individual projects and aim at eliminating system congestions.

(7) All market participants shall make available within an appropriate period of time to the transmission system operator, upon its written request, any data necessary for drawing up the network development plan, including but not limited to fundamental data, consumption forecasts, changes in the system configuration, meter readings and technical and other project documents on systems planned to be constructed, expanded, altered or operated. In addition to such data, the transmission system operator may draw on other data such as are useful for the network development plan.

#### **Approval of the Network Development Plan**

**Section 38.** (1) The regulatory authority shall approve the network development plan by official decision. As a condition for approval, the transmission system operator must prove that the investments in the plan are necessary for technical reasons, adequate and economically efficient. Approval may be granted subject to additional stipulations and conditions to the extent that such is necessary to meet the objectives of this Act.

(2) Prior to issuing the relating official decision, the regulatory authority shall consult the network development plan with the organisations representative of system users. It shall publish the results of the consultation, indicating in particular any needs for investments.

(3) In particular, the regulatory authority shall verify whether the network development plan covers the investment needs identified in the consultation to their full extent and whether it is consistent with the Community-wide network development plan pursuant to Article 8(3)(b) of Regulation (EC) No 714/2009. If any doubt arises as to the consistency with the Community-wide network development plan, the regulatory authority shall consult the Agency.

(4) Any appropriate expenses associated with the realisation of measures included in the network development plan, including cost of capital for preliminary financing, shall be allowed when setting the system charges pursuant to sections 51 et sqq.

(5) The regulatory authority may request the transmission system operator to adjust its network development plan at any time if such plan has already been submitted but not yet approved. Requests for adjustments to the latest approved network development plan shall be admissible if significant changes in the underlying situation cause the need for a reassessment.

#### **Monitoring of the Network Development Plan**

**Section 39.** (1) The regulatory authority shall monitor and evaluate the implementation of the network development plan and may request the transmission system operator to adjust such plan.

(2) In circumstances where a transmission system operator, other than for overriding reasons beyond its control, does not execute an investment which, under the network development plan, was to be executed during the next three years, the regulatory authority shall be obliged to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent network development plan:

1. require the transmission system operator to execute the investment in question;

2. initiate a tender procedure open to any investors for the investment in question; the regulatory authority may entrust a third party with carrying out the tender procedure;
3. oblige the transmission system operator to accept a capital increase to finance the necessary investment and allow independent investors to participate in the capital.

(3) In cases where the regulatory authority initiates a tender procedure pursuant to para. 2 item 2 above, it may oblige the transmission system operator to agree to one or more of the following:

1. financing by any third party;
2. construction by any third party;
3. building the new infrastructure concerned itself;
4. operating the new infrastructure concerned itself.

(4) The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect the new infrastructure to the transmission system and shall generally make its best efforts to facilitate the implementation of the investment project. The relevant financing agreements are subject to approval by the regulatory authority.

(5) Where the regulatory authority makes use of its powers under para. 2 items 1 to 3, the costs of the investments in question shall be covered by the relevant charges.

**The following provision classifies as a**  
framework provision

#### **Obligations of Transmission System Operators**

**Section 40. (framework provision)** (1) The implementing legislation shall provide that operators of transmission systems be obliged:

1. to operate and maintain the system operated by them safely, reliably, efficiently and with due regard to environmental protection;
2. to provide the technical prerequisites necessary for operating the system;
3. to provide for any contractual arrangements required for clearing and settlement and for data communication pursuant to section 23 para. 2 item 9;
4. to supply adequate information to the operator of a different system with which their own system is connected so as to ensure safe and efficient operation, coordinated expansion and interoperability of the interconnected system;
5. to publish their approved general terms and conditions and the system charges set in accordance with sections 51 et sqq.;
6. to enter into contracts on the exchange of data with other network operators, balance responsible parties, the clearing and settlement agents, and other market participants in accordance with the market rules;
7. to ensure the long-term ability of the system to meet reasonable demands for the transmission of electricity, and to operate, maintain and develop under economic conditions safe, reliable and efficient transmission systems with due regard to the environment;
8. to contribute to security of supply through adequate transmission capacity and system reliability;
9. to refrain from discriminating in any way whatsoever against system users or categories of system users, in particular if this would be to the benefit of undertakings affiliated with them;
10. to provide system users with the information they need for efficient access to the system;
11. to identify any congestions in the system and take measures to avoid or remove congestions, and to maintain security of supply. If, for the removal of system congestions or for maintaining security of supply, any services of producers (increase or reduce generation, change availability of power plants) are required, this and any necessary data shall be reported by the transmission system operator without delay to the control area manager, who shall give further instructions if necessary (section 23 para. 2 item 5);
12. to ensure that adequate means to meet the service obligations are made available;
13. to collect congestion rents and payments under the inter-transmission system operator compensation mechanism, in compliance with Article 13 of Regulation (EC) No 714/2009, grant and manage third-party access and give reasoned explanations when they deny such access,

which shall be monitored by the national regulatory authority; in carrying out their tasks under this provision transmission system operators shall primarily facilitate market integration. Congestion revenues shall be used for the purposes specified in Article 16(6) of Regulation (EC) No 714/2009;

14. to manage the transmission of electricity through the system, taking into account exchanges with other interconnected systems;
15. to maintain a secure, reliable and efficient electricity system, i.e. to ensure the availability of all necessary ancillary services, including those provided by demand response, insofar as such availability is independent from any other transmission system with which their system is interconnected, and to plan and coordinate measures for recovery after major disturbances of the transmission system by entering into contractual agreements to the technically necessary extent with both directly and indirectly connected power plant operators to ensure the necessary ability for black starts and isolated operation solely through the transmission system operators;
16. to establish a network development plan pursuant to section 37 and submit this plan to the regulatory authority for its approval;
17. to report to the regulatory authority in writing each year on the measures they have taken to fulfil the transparency obligations imposed on them under Regulation (EC) No 714/2009 and any other directly applicable legislation of the European Union. Such report shall in particular contain details of the published information and the manner of publication (e.g. Internet addresses, dates and frequency of publication and a qualitative or quantitative assessment of the data reliability of the publication);
18. to report to the regulatory authority in writing each year on the measures they have taken to fulfil the obligations of technical cooperation with transmission system operators of the European Union and third countries imposed on them under Directive 2009/72/EC and any other directly applicable legislation of the European Union. Such report shall in particular address the processes and measures agreed upon with the transmission system operators regarding cross-border network planning and system operation and the data agreed upon for monitoring these processes and measures;
19. to support the ENTSO for Electricity in preparing the Community-wide network development plan;
20. to establish a special balance group for determining system losses, which group shall need to comply only with the criteria of a balance group required for such purpose;
21. to procure the energy that is needed to cover losses and reserve capacity in the transmission system according to transparent, non-discriminatory and market-based procedures.

(2) Where a transmission system operator which is part of a vertically integrated electricity undertaking participates in a joint undertaking established for implementing regional cooperation, the implementing legislation shall provide that the joint undertaking be obliged to establish and implement a compliance programme. Such compliance programme shall set out measures to be taken to ensure that discriminatory and anticompetitive conduct is excluded. It shall also set out the specific obligations of employees to meet the objective of excluding discriminatory and anticompetitive conduct. The programme is subject to approval by the Agency. Observance of the programme shall be monitored by the compliance officers of the transmission system operators.

### **The following provision classifies as a**

constitutional provision

#### **Approval of General Terms and Conditions**

**Section 41. (constitutional provision)** The general terms and conditions for the operators of transmission systems and any amendments thereto are subject to approval by the regulatory authority. Approval may be granted subject to obligations and conditions if these are necessary to comply with the provisions of this Act. Operators of transmission systems shall amend their general terms and conditions at the request of the regulatory authority.

**The following provision classifies as a**  
framework provision

## **Part 6**

### **Operation of Distribution Systems**

#### **Prerequisites for the Operation of Distribution Systems**

**Section 42. (framework provision)** (1) The operation of a distribution system within one federal province is subject to a licence.

(2) The implementing legislation shall in particular lay down the licensing prerequisites and the locus standi in the licensing process, as well as the specific procedural provisions of the process for granting licences for the operation of distribution systems.

(3) For distribution system operators which have at least 100,000 customers connected to their system, the implementing legislation shall stipulate as a prerequisite that applicants which are part of a vertically integrated undertaking need to be independent at least in terms of their legal form, organisation and decision making from other activities not relating to distribution. Furthermore, the implementing legislation shall provide that if a licence is issued it is ensured, specifically by appropriate stipulations or conditions, that the distribution system operator is independent in terms of its organisation and decision making from other activities of a vertically integrated undertaking not relating to distribution. In order to safeguard such independence within an integrated electricity undertaking, the following shall, without limitation, be ensured:

1. the persons responsible for the management of the distribution system operator are not part of business structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation or supply of electricity;
2. the professional interests of the individuals (executive bodies) responsible for managing the distribution system operator are taken into account so that their independence of action is ensured, and specifically the reasons for removing an executive body of the distribution system operator are clearly specified in the statutes of such distribution system operator;
3. the distribution system operator has at its disposal the human, technical, physical and financial resources required for fulfilling its function, including for the operation, maintenance or expansion of the system, and it can freely decide about the use of such resources independently from the other parts of the integrated undertaking;
4. the distribution system operator establishes a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded; furthermore, there are measures that ensure that compliance with this programme is adequately monitored. This programme specifies, without limitation, the obligations incumbent upon the employees to meet this objective. The compliance officer appointed vis-à-vis the provincial government to develop and monitor the compliance programme furnishes to such provincial government and the regulatory authority an annual report on measures taken and publishes such report. The provincial government responsible for monitoring the compliance programme furnishes to the regulatory authority an annual summary report on measures taken and publishes such report.

(4) Para. 3 item 1 shall not be contrary to the establishment of coordination mechanisms that ensure that the economic competences of the parent undertaking and its supervisory rights over the management with regard to profitability of a subsidiary are protected. In particular, it shall be ensured that a parent undertaking approves the annual financial plan, or any equivalent instrument, of the distribution system operator and sets global limits on the levels of indebtedness of its subsidiary. Any instructions regarding ongoing operation or specific decisions regarding the construction or modernisation of distribution lines that do not exceed the frame of the approved budget or similar instrument are not permissible.

(5) The implementing legislation shall provide that the supervisory board of distribution system operators that are part of an integrated undertaking include at least two members who are independent of the parent undertaking.

(6) The implementing legislation shall ensure that a distribution system operator that is part of a vertically integrated undertaking is monitored by the provincial government so that it cannot take advantage of its vertical integration to distort competition. In particular, the implementing legislation shall provide for measures that ensure that vertically integrated distribution system operators do not, in their



communication and branding, create confusion in respect of the separate identity of the retail business of the vertically integrated undertaking.

(7) The implementing legislation shall ensure that the compliance officer of the distribution system operator is fully independent and has access to all the necessary information of the distribution system operator and any affiliated undertakings to fulfil his or her task.

(8) The implementing legislation shall oblige the provincial government to promptly notify the regulatory authority of any violations by distribution undertakings of the federal province legislation enacted for implementing the above paragraphs.

**The following provision classifies as a**

framework provision

**Transfer and Expiry of System Operation Licences**

**Section 43. (framework provision)** (1) The implementing legislation shall provide the following grounds for termination of a distribution system operation licence:

1. withdrawal;
2. surrender;
3. failure of the undertaking; as well as
4. bankruptcy of the legal entity.

(2) Provision for withdrawal shall in any event be made in case the licensee fails to comply with its obligations and complete performance of the obligations imposed upon it is not to be expected or the system operator fails to comply with the authority's order to remove the obstacles in question.

(3) The implementing legislation shall provide that, in the event of the transfer of companies or of parts of companies due to reorganisation (including, without limitation, due to merger, change of corporate form, capital contribution, combination, splitting or partition), the licences necessary to continue operations pass to the legal successor, and that mere reorganisation does not constitute grounds for termination and, in particular, does not justify withdrawal of the licence. Furthermore, it shall be provided that the legal successor notify the provincial government of the transfer, attaching an extract from the *Firmenbuch* (Commercial Register), as well as copies of the documents submitted to effect entry in the Commercial Register, within an appropriate period of time.

**The following provision classifies as a**

framework provision

**Right to Connect**

**Section 44. (framework provision)** (1) The implementing legislation shall provide – without prejudice to the provisions on direct lines or to any existing system connections – for the right of distribution system operators to connect to their distribution system any consumers and any producers within the area covered by their distribution system (right to connect).

(2) Customers receiving electricity at a rated voltage of above 110 kV shall in any case be excluded from the right pursuant to para. 1.

**The following provision classifies as a**

framework provision

**Responsibilities of Distribution System Operators**

**Section 45. (framework provision)** The implementing legislation shall provide that distribution systems operators be obliged:

1. to make available the data required for calculating and allocating imbalances, including, without limitation, the meter readings required to calculate deviations from schedules and from the load profile for each balance group;

2. to publish general terms and conditions and to enter into private-law connection contracts with consumers and producers under these terms and conditions (general obligation to connect);
3. to grant access to their system to parties entitled to system access under the approved general terms and conditions and at the set system charges;
4. to publish the approved general terms and conditions for system access and the system charges;
5. to provide for any contractual arrangements required for clearing and settlement and for data communication pursuant to item 1;
6. to operate and maintain the system;
7. to assess load flows and to monitor maintenance of the system's technical safety;
8. to keep a record of all balance groups and balance responsible parties operating in their system;
9. to keep a record of all suppliers operating in their system;
10. to meter amounts taken off by system users, as well as their loads and load profiles, to check these data for plausibility, and to transmit any required data to the clearing and settlement agents as well as the system operators and balance responsible parties concerned;
11. to meter loads, volumes and load profiles at the interfaces between their system and other systems, and to pass on these data to the system operators concerned, as well as to the clearing and settlement agents;
12. to identify any congestions in the system and to take measures with a view to averting such congestions;
13. to receive and pass on notifications relating to supplier and balance group switching;
14. to establish a special balance group for determining system losses, which group shall need to comply only with the criteria of a balance group required for such purpose;
15. to procure the energy that is used to cover losses and reserve capacity in the distribution system according to transparent, non-discriminatory and market-based procedures;
16. to collect the system charges;
17. to cooperate with the clearing and settlement agent, the balance responsible parties and other market participants in assigning any discrepancies resulting from the use of standardised load profiles once the meter readings are available;
18. to report to the regulatory authority the amount of green power fed in;
19. to enter into contracts on the exchange of data with other system operators, the balance responsible parties, the clearing and settlement agents, and other market participants in accordance with the market rules;
20. to refrain from discriminating in any way whatsoever against system users or categories of system users, in particular if this would be to the benefit of undertakings affiliated with them;
21. to provide system users with the information they need for efficient access to the system;
22. when planning development of the distribution system, to consider energy efficiency and demand-side management measures and distributed generation that might supplant the need to upgrade or replace capacity;
23. to inform the transmission system operator, upon identification of the technically suitable connection point, about the planned construction of power plants with capacities of more than 50 MW.

**The following provision classifies as a**

framework provision

**Exemptions from the General Obligation to Connect**

**Section 46. (framework provision)** The implementing legislation may provide for exemptions from the general obligation to connect.

**The following provision classifies as a**

constitutional provision

## General Terms and Conditions

**Section 47. (constitutional provision)** The general terms and conditions for the operators of distribution systems and any amendments thereto are subject to approval by the regulatory authority. Upon request of the regulatory authority, the distribution system operators shall amend the general terms and conditions to the extent that such is required to ensure a competitive market. The regulatory authority may also request that the general terms and conditions include the period within which, at a customer's request, the meter point administration number is to be made available to the customer or to an authorised representative in a standard electronic data format, or within which a supplier switch is to be carried out. Approval shall be granted subject to obligations and conditions to the extent that such is required to comply with the provisions of this Act.

### Title 5

#### System Charges

##### Part 1

#### Review of System Charges

##### Allowed Cost

**Section 48.** (1) The regulatory authority shall regularly ex officio establish the allowed cost, targets and volume situation of system operators with an annual quantity supplied to withdrawing parties of more than 50 GWh in the calendar year 2008 by official decision. The allowed cost and the volume situation of other system operators may be established ex officio by official decision.

(2) Prior to taking a final decision on the allowed cost, the *Wirtschaftskammer Österreich* (Federal Economic Chamber), the *Landwirtschaftskammer Österreich* (Federal Chamber of Agriculture), the *Bundesarbeitskammer* (Federal Chamber of Labour) and the *Österreichischer Gewerkschaftsbund* (Austrian Trade Union Federation) shall have the opportunity to comment. The regulatory authority shall provide information to these bodies' representatives and allow them to inspect the relating documents. Any economically sensitive information of which the representatives obtain knowledge in exercising their right to inspection shall be treated confidentially. The Federal Economic Chamber and the Federal Chamber of Labour may appeal against the decisions of the regulatory authority pursuant to para. 1 to the *Bundesverwaltungsgericht* (Federal Administrative Court) if the stipulations of sections 59 to 61 have been violated, and in a next step to the *Verwaltungsgerichtshof* (Administrative Court) pursuant to section 131 *Bundesverfassungsgesetz* (Federal Constitutional Act).

##### System Charges and Equalisation Payments

**Section 49.** (1) The regulatory authority shall set the system charges by ordinance, employing a cost cascading mechanism as described in section 62 and based on the allowed cost and the volume situation.

(2) Where necessary, the ordinance shall set equalisation payments among system operators in the same grid area.

(3) Prior to issuing the ordinance, a consultation shall take place to enable particularly the concerned system operators, system users and the representative bodies listed in section 48 para. 2 to comment within an appropriate period of time.

(4) After conclusion of the consultation, all related documentation shall be presented to the Regulatory Advisory Council upon request. The chairperson may include experts in the deliberations of the Regulatory Advisory Council. In case of imminent danger, the hearing of the Regulatory Advisory Council may be omitted. However, the matter shall subsequently be submitted to this Council without delay.

(5) The regulatory authority and the system operators shall provide all documents and information necessary to assess the draft ordinance to the Regulatory Advisory Council.

##### Regulatory Account

**Section 50.** (1) Any differences between the actual revenues earned and the revenue assumptions from the *Systemnutzungsentgelte-Verordnung* (System Charges Ordinance) shall be offset when establishing the allowed cost for the next System Charges Ordinances.

(2) Large extraordinary revenue or expenses may be spread over an appropriate period of time using the regulatory account.

(3) If an official decision establishing allowed costs has been revoked, the allowed costs for the next price control periods set in accordance with para. 1 shall make reference to the corrected costs for the current price control period as recorded in the replacing official decision.

(4) If an official decision establishing allowed costs has been amended by the *Bundesverwaltungsgericht* (Federal Administrative Court), the allowed costs for the next price control periods shall make reference to the corrected costs for the current price control period as recorded in the finding of the Federal Administrative Court.

(5) Should the *Verfassungsgerichtshof* (Constitutional Court) revoke a System Charges Ordinance or an ordinance issued pursuant to section 25 *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act), FLG I no 143/1998, or should the Constitutional Court find that a System Charges Ordinance was in conflict with the law and should this entail decreased or increased revenues, these shall be taken into account in establishing the future allowed costs over an appropriate period of time.

(6) System operators the allowed cost of which has not been established may, within three months after the effective date of the System Charges Ordinance, file an application for cost establishment for the cost period taken as a basis for setting the system charges. If a system operator files an application for cost establishment, the allowed cost of all system operators of that same grid area for the relevant cost period shall be established ex officio. The established allowed cost shall be taken into account when setting the system charges and equalisation payments for the next price control period in the relevant grid area.

(7) The amounts from the regulatory account and any amounts from the procurement of energy to cover grid losses and secondary control shall be recorded as assets/liabilities in the annual accounts. The items shall be valued in line with the accounting rules in place.

## Part 2

### Components of the System Charges

#### Setting of System Charges

**Section 51.** (1) For the services provided by the system operators and control area managers in exercising the duties imposed upon them, the system users shall pay system charges. The system charges are made up of the components listed in para. 2 items 1 to 7. Any charges over and above the ones listed in para. 2 items 1 to 8 are not admissible in direct relation to system operation, save as otherwise provided in other provisions of this Federal Act. The system charges shall respect the principles of equal treatment of all system users, cost reflectiveness and, to the greatest possible extent, cost causality and shall ensure that electricity is efficiently used and that the amount of electricity distributed or transmitted is not unnecessarily increased.

(2) The system charges shall be made up of the following components:

1. a system utilisation charge;
2. a charge for system losses;
3. a system admission charge;
4. a system provision charge;
5. a system services charge;
6. a metering charge;
7. a charge for supplementary services; and
8. if applicable, a charge for international transactions and for contracts for the transport of energy pursuant to section 113 para. 1.

The regulatory authority shall set the charges listed above under items 1, 2, 4, 5, 6 and 7, with the charges under items 1, 2, 4, 5 and 7 being fixed rates, by ordinance. For the charge under item 6, a ceiling shall be set. The rates shall be stated in euro and cents per unit.

(3) In its ordinance, the regulatory authority shall in any case determine rates for withdrawing and injecting parties of electricity which make reference to the grid area and the network level to which a facility is connected. It shall also contain rules on the allocation of facilities to network levels, on billing modalities and on special provisions for temporary connections.

### System Utilisation Charge

**Section 52.** (1) The system utilisation charge is designed to compensate the system operator for the cost of constructing, expanding, maintaining and operating the system. The system utilisation charge is payable by withdrawing parties per metering point. It shall have either an energy part only or an energy and a capacity part and be billed for at regular intervals. The capacity part of the system utilisation charge shall generally be based on a period of one year. The regulatory authority may design the system utilisation charge to reflect time of use and/or load, as long as rate structures are kept uniform. The basis for the capacity part of the system utilisation charge shall be derived from the arithmetic mean of the highest load metered over a quarter of an hour in each month of the billing period. In the network levels pursuant to section 63 items 1 and 2, the 3-peak mean may be used. The system utilisation charge may differ from the above if the system is used for less than one year or on an intermittent basis during part or all of the time.

(2) Flat-rated capacity-related system utilisation charges shall be calculated with reference to a one-year period. If the billing period is shorter or longer than one year, then the flat rate shall be prorated on a daily basis.

(3) The system utilisation charge does not include the availability of reactive capacity that requires separate measures, can be allocated individually and is made within a defined period of time for withdrawing parties with a power factor ( $\cos \varphi$ ) the absolute value of which is lower than 0.9. The related expenses shall be charged to the system users separately.

(4) Where consumption must be calculated for billing purposes, the system operator shall make such calculations for metering points without load profile meters in a transparent and understandable manner and exclusively based on the standardised load profiles in force. System operators with an annual supply volume of no more than 10 GWh can apply simplified procedures to facilitate administration. If calculation results differ from actual consumption, the relating bills shall be corrected free of charge.

### Charge for System Losses

**Section 53.** (1) The charge for system losses is designed to cover those costs that are incurred by the system operator in relation to the transparent and non-discriminatory procurement of adequate energy volumes to offset physical grid losses; average values may be used when defining adequate energy volumes. The charge for system losses is payable by withdrawing and injecting parties. Injecting parties, including fleets of power plants, with a connected capacity of up to and including 5 MW shall be exempt from payment of the charge for system losses.

(2) The charge for system losses shall have an energy part only and be billed for at regular intervals. If the ownership boundary of a facility is located at a different network level than the metering equipment, the latter shall be taken as a basis for calculating the charge for system losses.

(3) Where consumption must be calculated for billing purposes, the system operator shall make such calculations for metering points without load profile meters in a transparent and understandable manner and exclusively based on the standardised load profiles in force. System operators with an annual supply volume of no more than 10 GWh can apply simplified procedures to facilitate administration. If calculation results differ from actual consumption, the relating bills shall be corrected free of charge.

### System Admission Charge

**Section 54.** (1) The system admission charge compensates the system operator for all reasonable cost, considering normal market prices, directly arising from connecting a facility to a system for the first time or altering a connection to account for a system user's increased connection capacity. The system admission charge shall be a one-off payment; the system user shall be informed of how it is made up in a transparent and understandable manner. In cases where connection costs are borne by system users themselves, the system admission charge shall be reduced accordingly.

(2) The system admission charge shall be cost-reflective; the system operator may set a uniform rate for similar system users at the same network level.

### System Provision Charge

**Section 55.** (1) The system provision charge, payable by withdrawing parties at the time of first connection or upon exceedance of the agreed extent of system utilisation as a one-off payment reflective of capacity, covers the past and future system development measures necessary to enable such connection. It shall reflect the agreed extent of system utilisation. If no extent of system utilisation has

been agreed upon or the agreed extent of system utilisation has been exceeded, the system provision charge shall reflect the actual extent of system utilisation. The system provision charge shall in any event be billed in the amount of the minimum capacity pursuant to para. 7.

(2) If actual system utilisation has fallen short of the agreed extent of system utilisation for a continuous period of at least three years or if the withdrawing party's connection has been disabled for three years, the system provision charge defrayed shall upon the withdrawing party's request within fifteen years after payment be reimbursed in proportion to the utilisation reduction. Minimum capacity contractually agreed upon up to and including 31 December 2008 and the minimum capacity as defined in para. 7 as well as any extent of system utilisation purchased prior to 19 February 1999 cannot be reimbursed.

(3) The system provision charge shall reflect the average costs incurred in constructing new and enhancing existing transmission and distribution systems.

(4) If system utilisation is transmitted locally within the system of a system operator, the system provision charge already defrayed shall be considered paid to the extent to which the agreed future system utilisation does actually not change compared to the previous one. Minimum capacity contractually agreed upon up to and including 31 December 2008, the minimum capacity as defined in para. 7 or any extent of system utilisation purchased prior to 19 February 1999 cannot be transmitted locally.

(5) If a withdrawing party transfers to a different grid level, the difference between the system provision charge already defrayed after 19 February 1999 and the system provision charge to be defrayed on the new grid level at the time of the transfer shall be reimbursed to or paid additionally by the withdrawing party. The extent of system utilisation in kW purchased up to and including 19 February 1999 shall be transferred unchanged in case of a grid level change without any financial compensation.

(6) The system provision charges actually collected shall be reversed over a period of 20 years, and such reversal disaggregated by system levels, such that the system utilisation charge is reduced.

(7) The minimum capacity amounts to:

1. a maximum of 15 kW on grid level 7;
2. 100 kW on grid level 6;
3. 400 kW on grid level 5;
4. 5000 kW on grid levels 3 and 4;
5. 200 MW on grid levels 1 and 2.

(8) Operators of installations at network levels 1 and 2 for which all official first-instance licences required for construction were available on 31 December 2008 are exempt from payment of the system provision charge normally payable on the occasion of first conclusion of the system access contract. Unless otherwise agreed upon in the contract, the higher one of the following values shall be deemed the extent of system utilisation already purchased before 1 January 2009: the extent of system utilisation in kW purchased prior to 19 February 1999 or the arithmetic mean of the highest quarter-hourly average loads metered during each month from October 2007 until September 2008 in kW.

(9) The following applies to withdrawing parties in the Styria and Graz grid areas: Unless otherwise agreed upon in the contract, the higher of the following values shall be deemed the extent of system utilisation already purchased up to and including 30 June 2009 for load-metered customers: the extent of system utilisation in kW purchased prior to 19 February 1999 or the arithmetic mean of the highest quarter-hourly average loads metered during each month from October 2007 until September 2008 in kW. For non-load-metered customers, a capacity of 4 kW shall be deemed purchased unless otherwise agreed upon in the contract up to and including 31 December 2008. For temporary connections and building site connections where the entire connection installation or a major part of it was already established permanently in the course of the temporary connection with a view to later connection by 30 June 2009, a capacity of 4 kW shall be deemed purchased unless otherwise agreed upon in the contract up to and including 30 June 2009.

### **Charge for System Services**

**Section 56.** (1) The charge for system services is designed to cover the costs incurred by the control area manager in relation to the requirement to offset load variations by means of secondary control. The charge for system services includes the costs of making available the capacity and that share of the costs of the energy needed that is not covered by the imbalance charges.

(2) The charge for system services shall have an energy part only and shall be payable regularly by injecting parties, including fleets of power plants, with a connected capacity of more than 5 MW.

(3) It shall be calculated on the basis of the gross output (at the generator terminals) of the relevant plant or fleet of power plants. If the connection(s) of the plant(s) to the public system has (have) a lower capacity than the rated capacity of the power plants, the charge shall be calculated on the basis of the number of operating hours of the plant(s) multiplied by the rated capacity (fuse rating of the supply line) of the connection to the public grid.

(4) The producers that must pay the charge for system services shall notify the data required for calculating such charge annually to the control area manager.

### **Metering Charge**

**Section 57.** (1) The metering charge payable by system users compensates the system operator for the costs directly related to the installation and operation of metering equipment, including necessary converters, calibration and meter reading.

(2) The metering charges set are ceilings for each meter type. They shall be generally cost-reflective and billed for on a regular basis. If metering equipment is provided by system users themselves, the metering charge shall be reduced accordingly.

(3) The metering charge is a monthly charge; in cases of billing for time periods other than a month, it shall be prorated on a daily basis.

(4) Meters shall be read at least annually, except in the case of load profile meters, which the system operator shall in any case read at least monthly, and in the case of smart meters, which shall be read in accordance with section 84 para. 1. The system operator shall carry out meter reading itself at least once every three years. If the reading and transmission of the metering data are performed by the system user, the system operator shall check the plausibility of the data. Calculation of the metering data is only permissible if the system user has not made use of the option of self-reading and transmitting the data to the system operator, and the system operator has not been able to perform meter reading for a reason within the system user's responsibility.

### **Supplementary Service Charges**

**Section 58.** System operators may bill system users for services provided in addition to those covered by the charges listed in section 51 para. 2 items 1 to 6 and 8 if such services are directly caused by the system users themselves. The regulatory authority shall set appropriate amounts for supplementary service charges by ordinance, taking due account of the principles in para. 1 and social acceptability. The charges so set shall include, without limitation, charges for payment reminders and for alterations of the metering equipment caused by the system user. The charge for disconnection in accordance with section 82 para. 3 and re-establishment of system access shall not exceed 30 EUR in total.

## **Part 3**

### **Principles for Establishing Allowed Costs and Volume Situation**

#### **Establishing the Allowed Costs**

**Section 59.** (1) The allowed costs from which the system charges are derived shall reflect actual costs and shall be determined for each grid level separately. Costs which are reasonable in their origin and amount shall be allowed. Due consideration shall be given to system security, security of supply that integrates quality criteria, market integration and energy efficiency. The allowed costs may be determined on the basis of the average costs of a comparable, rationally operated enterprise. Appropriate allowances for investments shall be made, based on the historical cost and cost of capital involved. Extraordinary expenditure or revenues may be spread over several years. The costs arising from the efficient implementation of new technologies shall be included in the system charges appropriately, while respecting the principles described and exploiting synergies. International transactions and contracts for the transport of energy pursuant to section 113 para. 1 shall be taken into account when establishing the allowed cost.

(2) To establish the allowed cost, targets relative to the companies' efficiency potential shall be set. The costs identified shall be adjusted for general targets that reflect the overall productivity trend and for the system operator inflation rate. Individual targets may be set based on the efficiency of each system operator. State-of-the-art methods shall be applied to calculate the targets. When setting the individual targets, both an overall company assessment and, where factual comparability is given, an assessment of

individual processes is admissible. The targets shall incentivise transmission and distribution system operators to increase efficiency and execute the necessary investments in an appropriate manner.

(3) In its official decision establishing the allowed cost, the regulatory authority may divide the time given to attain the targets set (target attainment period) into several regulatory periods of one or more years. Towards the end of a regulatory period, an assessment of a company's individual efficiency improvements may take place. After the end of a regulatory period, a new efficiency benchmarking exercise may be undertaken or another state-of-the-art regulatory method may be used to set the future system utilisation charge.

(4) If a vertically integrated electricity undertaking influences the system operator's costs by way of invoicing, the latter shall furnish sufficient proof of such costs. Upon request of the regulatory authority, the vertically integrated electricity undertaking shall provide documentation showing how the invoiced sums have been calculated.

(5) The system operator inflation rate shall be derived from a system operator price index. The latter shall combine public indices that reflect the system operators' average cost structure.

(6) The targets set in accordance with para. 2 above and the system operator inflation rate pursuant to para. 5 above only apply to those costs as are within the company's control. Costs beyond the company's control are, in particular:

1. the costs arising in implementing measures that have been approved by the regulatory authority on the basis of network development plans;
2. the costs for the use of directly or indirectly connected systems in Austria;
3. the costs for covering system losses by way of transparent and non-discriminatory procurement;
4. the costs for the provision of primary and secondary control by way of transparent and non-discriminatory procurement;
5. community levies for the use of public land;
6. the costs arising from statutory rules to be followed in cases of *Ausgliederung* (a type of demerger under Austrian law) which existed on the merits of the situation at the time of full opening of the electricity market on 1 October 2001. The Regulation Commission shall issue an ordinance defining these cost types more precisely no later than three months after entry into force of this Act.

(7) The costs from which the charge for system losses and the system utilisation charge for each grid level are derived shall be determined based on the total cost identified less the metering charges and supplementary service charges collected and less the prorated reversal of the system provision and system admission charges recorded as liabilities, reasonably taking into account any revenue from cross-border transports. The total cost identified shall also be reduced by any support payments and subsidies received.

(8) Inasmuch as the regulatory formula applied for regulatory periods of one or more years pursuant to paras 1 to 6 entails a time lag in the compensation through system charges, any discrepancies may be recorded as assets or liabilities (provisions) in the annual accounts. The items shall be valued in line with the accounting rules in place.

### Cost of Capital

**Section 60.** (1) The cost of capital shall comprise the reasonable cost of interest on debt and equity, taking capital market conditions and income tax expense into account. Any subsidised financing schemes shall be reflected appropriately.

(2) The cost of capital shall be determined by multiplying the reasonable rate of return by the regulatory asset base. The regulatory asset base shall be reduced by the existing interest bearing reserves, taking account of the cost of capital already recorded as part of the personnel costs.

(3) The rate of return shall be derived from the weighted average cost of capital for a normal capital structure and the income tax burden. The normal capital structure shall reflect overall industry aspects as well as significant factors for individual companies which undercut the equity capital share by more than 10%. A market risk premium for equity and debt, the capital market conditions and a risk-free interest rate shall be taken into account. The latter may be derived from a multi-year average.

(4) The regulatory asset base shall be established drawing on the balance sheet for transmission and distribution operations required by section 8 upon which basis the allowed cost is determined. It is calculated by deducting the system admission and provision charges collected (consumer prepayments for



installation costs) that are recorded as liabilities and any goodwill from the intangible assets and the tangible assets necessary for system operation. In cases of system operator mergers, the regulatory asset base may be increased if such merger produces synergies that directly reduce overall cost.

### **Establishing the Volume Situation**

**Section 61.** The volume data reflected in the system charges shall be derived from the volumes injected and withdrawn in kWh, the arithmetic mean of the highest calculated or metered quarter-hourly loads during each month of the period under review in kW and the metering points at each grid level during the most recent available business year. The energy and capacity rates as well as the number of metering points may be adjusted for any considerable current or expected volume trends.

## **Part 4**

### **Tarification Principles**

#### **Tarification and Cost Cascading**

**Section 62.** (1) The system charges shall make reference to the grid area and grid level at which an installation is connected and be payable per metering point. They shall build on the cascaded allowed cost and the identified volume situation.

(2) Where several system operators are active within one network area, the costs and volume situation identified for each of these system operators shall be summed up at each grid level for the purpose of setting the system charges. There shall be compensation within the network area for any differences between the allowed costs and the revenue resulting from the volume situation identified for each system operator. Equalisation payments among the system operators active in one network area for which the allowed cost has been determined shall be set in the ordinance issued pursuant to section 51 para. 3.

(3) The cost cascading method to be applied in setting the system charges at ultra-high voltage level shall be defined by the regulatory authority by ordinance pursuant to section 51 para. 3 with due regard to the gross and net aspects of this procedure. Any costs for the availability of secondary control capacity and system losses shall be left aside when considering gross and net aspects. In setting the gross and net aspects, referring to total withdrawal and injection of electricity, the share of the system costs to be cascaded according to gross consideration may not exceed 70%. The gross component for the ultra-high voltage level shall be considered separately in the energy rates for system utilisation and shall be passed on to the system operators of the network area based on a procedure to be defined in the ordinance pursuant to section 51 para. 3.

(4) Cost cascading shall also be applied when calculating the system charges of the network levels and areas pursuant to section 63 items 3 to 7; in relation thereto, the costs of each grid level increased by the cost share cascaded from the next upstream level shall be distributed between the withdrawing and injecting parties directly connected to that grid level in the network area and all withdrawing and injecting parties connected to the downstream grid levels. Cascading shall also take account of the energy injected by power plants at the individual grid levels. An adequate ratio between capacity (kW) and energy (kWh) shall be applied.

(5) The amount of capacity to be used for cost cascading shall be derived from an acknowledged calculation method, such as the 3-peak mean or the maximum load method; in relation to the ultra-high voltage grid, the arithmetic mean of the highest half-hourly average load in the ultra-high voltage grid in the periods from January to March, April to September and October to December shall be applied in any event. The amount of energy to be used for cost cascading shall be derived from the sum of the individual amounts offtaken by all consumers connected to a network level and the grid areas supplied with them and from the energy passed on to the next network level. Energy for own use of the grid shall be excluded from cost cascading for the purpose of calculating the system utilisation charge.

#### **Network Levels**

**Section 63.** The system charges shall refer to the following network levels:

1. Network level 1: ultra-high voltage (380 kV and 220 kV, including transformation from 380 kV to 220 kV);
2. Network level 2: transformation from ultra-high to high voltage;
3. Network level 3: high voltage (110 kV, including installations with an operating voltage ranging from more than 36 kV to 220 kV);

4. Network level 4: transformation from high to medium voltage;
5. Network level 5: medium voltage (with an operating voltage ranging from more than 1 kV up to and including 36 kV, as well as transformation to other voltage levels between these levels);
6. Network level 6: transformation from medium to low voltage;
7. Network level 7: low voltage (1 kV and below).

### **Grid Areas**

**Section 64.** The following grid areas are designated:

1. for network levels 1 (ultra-high voltage) and 2 (transformation from ultra-high to high voltage):
  - a) Eastern area: the ultra-high voltage system and the transformation from ultra-high to high voltage of Verbund-Austrian Power Grid AG;
  - b) Tyrol area: the ultra-high voltage systems and the transformation from ultra-high to high voltage of TIWAG-Netz AG;
  - c) Vorarlberg area: the ultra-high voltage systems and the transformation from ultra-high to high voltage of VKW-Netz AG;
2. for the other network levels, unless otherwise provided in items 3 and 4, the areas covered by the systems at system levels 3 to 7 of the undertakings listed in Annex I, as well as the areas covered by all functionally connected systems of other undertakings that are indirectly connected to the ultra-high voltage grid via the former systems, except for the grid areas described in items 3 and 4; the costs associated with the ultra-high voltage installations of WIEN ENERGIE Stromnetz GmbH and EVN Netz GmbH and the transformation from ultra-high to high voltage of network level 3 (high voltage level) shall be assigned to these network areas (the network area of WIEN ENERGIE Stromnetz GmbH and/or EVN Netz GmbH);
3. for the federal province of Upper Austria, at network level 3, the area jointly covered by the systems of Energie AG Oberösterreich Netz GmbH, LINZ STROM Netz GmbH and Verbund-Austrian Power Grid AG; at network levels 4 to 7, the areas covered by the systems of Energie AG Oberösterreich Netz GmbH and LINZ STROM Netz GmbH and all other functionally connected systems of other undertakings that are indirectly connected to the ultra-high voltage network via the former systems;
4. at network level 4, the areas covered by the systems of Innsbrucker Kommunalbetriebe AG and Energie Klagenfurt GmbH; at network levels 5 to 7, the areas covered by the systems of Stromnetz Graz GmbH, Innsbrucker Kommunalbetriebe Aktiengesellschaft, Energie Klagenfurt GmbH and Energieversorgung Kleinwalsertal GesmbH, insofar as this is necessary for geographical, economic or system reasons.

Systems for which the reimbursement of cost is regulated under agreements pursuant to section 70 para. 2 are not part of any of the grid areas. The system charges for systems under agreements pursuant to section 70 para. 2 shall comply with the reimbursement provisions in such agreements. If such systems are also used outside of agreements pursuant to section 70 para. 2, the system charges of the eastern area (grid levels 1 and 2) or the Vorarlberg area (grid levels 3 and downstream) apply. Assignment to a grid area shall not signify any interference with other system operators' service areas, property rights, investment decisions, operations, system planning or control.

## **Title 6**

### **Obligations of Suppliers and Electricity Traders**

#### **Information Exchange**

**Section 65.** (1) Electricity traders and other retailers supplying consumers shall enter into information exchange contracts with the balance responsible parties of the balance groups whose members they supply, with the system operators to whose systems the customers are connected, as well as with the competent clearing and settlement agents.

(2) Electricity traders and other retailers supplying consumers shall transmit all price relevant data relating to consumers supplied with standard products immediately upon their becoming available to the regulatory authority in an electronic format defined by the regulatory authority, for the purpose of entering such data in the Tariff Calculator. The Tariff Calculator of the regulatory authority shall treat all competitors equally and publish all terms made available to the regulatory authority in a transparent and non-discriminatory manner.

**The following provision classifies as a**  
framework provision

## **Title 7**

### **Producers**

#### **Producers**

**Section 66. (framework provision)** (1) The implementing legislation shall oblige producers:

1. either to join a balance group or to form a balance group of their own;
2. to make any required data available to the system operators concerned, to the clearing and settlement agent, to the balance responsible party and to any other market participants concerned;
3. to send generation schedules in advance to the system operators concerned, to the control area manager and to the balance responsible party, to the extent to which this is necessary for technical reasons;
4. to comply with the technical specifications of system operators inasmuch as they use their own metering and data transmission equipment;
5. in the event of partial deliveries, to transmit their generation schedules to the balance responsible parties concerned;
6. according to contractual agreements and by direction of the control area manager, to provide services (increase or reduce output, change availability of power plants) to remove congestions or maintain security of supply. Whenever control area managers issue such directions to operators of cogeneration installations, they shall ensure that district heat supply be maintained;
7. by direction of control area managers pursuant to section 23 para. 9, to increase and/or reduce output, thus changing the availability of power plants, to remove congestions or maintain security of supply unless this could be ensured by contracts pursuant to item 6;
8. if they have technically suitable power plants, to make available and provide secondary control by direction of the control area manager in return for reimbursement of the expenses actually incurred if a tendering procedure has been unsuccessful.

(2) The implementing legislation shall oblige operators of power plants with a maximum capacity of more than 5 MW:

1. to bear the costs of primary control;
2. inasmuch as they are capable of providing primary control, to provide such service by direction of the control area manager if the tender procedure pursuant to section 67 has been unsuccessful;
3. to furnish proof of the provision of primary control to the control area manager in a suitable and transparent manner;
4. to comply with the directions of the control area manager related to the provision of primary control, in particular concerning the type and scope of data to be submitted.

(3) The implementing legislation shall oblige operators of power plants which are connected to the network levels defined in section 63 items 1 to 3 or which have a maximum capacity of more than 50 MW to electronically transmit to the control area manager concerned, for the purpose of monitoring system stability, any data on the current injection rate of these plants in real time.

(4) The implementing legislation shall oblige operators of power plants with a maximum capacity of more than 20 MW to regularly communicate to the provincial government, for the purpose of monitoring security of supply, information about the availability of these plants.

**The following provision classifies as a**  
framework provision

### **Tendering for Primary Control Capacity**

**Section 67. (framework provision)** (1) The implementing legislation shall provide that the control area manager concerned or a party commissioned by the control area manager issue a tender for the provision of primary control capacity on a regular basis, but at least every six months.

(2) The implementing legislation shall oblige control area managers to organise on a regular basis a transparent pre-qualification procedure to determine the suitability of the providers of primary control capacity that are interested in participating in the tender. The providers of primary control capacity that have been found suitable in the pre-qualification procedure may participate in the tender.

(3) The implementing legislation shall provide that the amount of capacity to be made available be in compliance with the requirements of European interconnected system operation.

(4) The implementing legislation shall foresee that the tender specify that the capacity to be made available per plant as part of the primary control system be at least 2 MW.

(5) The implementing legislation shall provide that, in case the tender has been unsuccessful, the control area manager concerned oblige the providers of primary control capacity that have been found suitable pursuant to para. 2 to provide primary control capacity in return for reimbursement of the expenses actually incurred.

**The following provision classifies as a**  
framework provision

#### **Financing Primary Control**

**Section 68. (framework provision)** (1) The implementing legislation shall oblige operators of power plants with a maximum capacity of more than 5 MW to cover the costs involved in the provision of primary control capacity in proportion to their annual output. For plants whose maximum capacity is greater than the capacity connected to the system concerned, the latter shall be used as a calculation basis and multiplied by the plant's hours of operation.

(2) Calculation and invoicing of the sums pursuant to para. 1 shall be carried out by the control area managers on a quarterly basis.

#### **Tendering for Secondary Control Capacity**

**Section 69.** (1) The control area manager concerned shall regularly issue competition-oriented tenders for secondary control. The terms and conditions for procuring secondary control shall be approved by the regulatory authority by way of official decision. The subject matter of the invitation to tender shall be the price for making available generation capacity and actually providing energy. The offers shall be ranked according to the capacity and energy prices stated. 78% of the costs for secondary control shall be raised through the charge for system services, while the rest of the costs shall be raised through imbalance charges.

(2) The control area managers shall regularly organise a transparent pre-qualification procedure to determine suitability of providers of secondary control that are interested in participating in the tender. This procedure shall aim to maximise the number of suitable suppliers that participate in the tendering procedure. The providers of secondary control that have been found suitable in the pre-qualification procedure may participate in the tender.

(3) The amount of capacity to be tendered and made available shall comply with the requirements of European interconnected system operation and be set by the control area manager.

(4) If the tendering procedure has been unsuccessful, the control area manager shall oblige those producers that have technically suitable generation plants to make available and provide secondary control in return for reimbursement of the expenses actually incurred. The amount of expenses actually incurred shall be determined by the regulatory authority in each case.

(5) The costs for secondary control shall be covered in the charge for system services and the imbalance charges pursuant to section 56.

**The following provision classifies as a**  
framework provision

#### **Supply by Direct Lines**

**Section 70. (framework provision)** The implementing legislation shall provide for an option to install and operate direct lines.

The following provision classifies as a  
framework provision

## Title 8

### Guarantees of Origin for Electricity Generated from Fossil Fuels

#### Guarantees of Origin for Electricity Generated in High-Efficiency Cogeneration

**Section 71. (framework provision)** (1) For the purpose of determining the efficiency of cogeneration in accordance with Annex IV, the implementing legislation may authorise the authority to establish efficiency reference values for separate generation of electricity and heat. These efficiency reference values shall consist of a matrix of values differentiated by relevant factors, including year of construction and types of fuel, and must be based on a well-documented analysis taking, inter alia, into account data from operational use under realistic conditions, cross-border exchange of electricity, fuel mix and climate conditions as well as applied cogeneration technologies in accordance with the principles in Annex IV.

(2) Efficiency reference values pursuant to para. 1 shall be determined with due regard to the harmonised efficiency reference values established by the European Commission in Decision 2007/74/EC in accordance with the procedure referred to in Article 4 of the CHP Directive.

(3) On the basis of the harmonised efficiency reference values referred to in para. 2, the provincial government shall designate by official decision and upon application those CHP plants for which the system operator to whose system such plant is connected may issue guarantees of origin for electricity from high-efficiency cogeneration pursuant to section 7 para. 1 item 27, corresponding to the amount of energy generated in high-efficiency cogeneration in accordance with Annex III and Decision 2008/952/EC of the European Commission and based on the requirements of section 72 para. 2. Any such designations of plants shall be reported immediately to the regulatory authority.

#### Guarantees of Origin for Electricity Generated from Fossil Fuels

**Section 72.** (1) System operators whose systems have connections to plants which generate electricity from fossil fuels and have a maximum capacity of more than 100 kW shall issue guarantees of origin corresponding the amounts of electricity fed into their grids from such plants by entering the net amounts injected into the public grid in the automated database for guarantees of origin in line with section 71. To this end, all injecting parties whose plant is not subject of an official decision pursuant to section 71 para. 3 shall have their plant certified. Such certification shall be undertaken by a control, auditing or certification body accredited pursuant to the *Akkreditierungsgesetz* (Accreditation Act). Section 3 of the Accreditation Act shall apply mutatis mutandis.

(2) A guarantee of origin issued by the system operator pursuant to para. 1 shall specify:

1. the amount of energy generated;
2. the designation, type and maximum capacity of the power plant;
3. the period of time and place of generation;
4. the primary energy sources used;
5. the date of commissioning of the plant;
6. the designation of the issuing authority and state;
7. the date of issue and a unique identification number.

(3) In addition to the information under para. 2, guarantees of origin pursuant to section 71 para. 3 shall include:

1. the lower calorific value of the primary energy source;
2. the use of the heat generated together with the electricity;
3. the primary energy savings calculated in accordance with Annex IV based on the harmonised efficiency reference values established by the European Commission as referred to in section 71 para. 2;
4. exact information about any support payments received and the nature of the support scheme.

(4) The responsibility for monitoring that guarantees of origin are correctly issued, transferred and cancelled shall lie with E-Control. An automated database shall be used for this purpose.

(5) Guarantees of origin are only valid until the end of the calendar year following production of the corresponding energy unit. Once used, guarantees of origin shall be cancelled.

(6) Only one guarantee of origin may be issued per unit of energy generated. A guarantee of origin is normally valid for 1 MWh but its amount may be broken down into amounts with three decimal places. The issue of guarantees of origin does not imply a right to benefit from support mechanisms.

(7) Where issuing of guarantees of origin is automated, a confirmation based on the first clearing shall be produced each month and submitted to the injecting parties.

(8) Liability for the accuracy of their statements as to the energy sources used lies with the injecting parties.

**The following provision classifies as a**

framework provision (para. 1)

**Recognition of Guarantees of Origin from Other Countries**

**Section 73. (1) (framework provision)** Guarantees of origin for electricity from high-efficiency cogeneration located in other EU member states or in states party to the EEA Agreement shall be deemed guarantees of origin within the meaning of this Act if they meet the minimum requirements set out in Article 5(5) of Directive 2004/8/EC. In case of doubt, the provincial governments shall declare by official decision, in response to a request or ex officio, whether the conditions for recognition are met.

(2) Guarantees of origin for electricity from plants located in other EU member states, states party to the EEA Agreement or third countries shall be deemed guarantees of origin within the meaning of this Federal Act if they comply with the provisions of section 72 paras 2 and 3. In case of doubt, E-Control shall declare by official decision, in response to a request or ex officio, whether the conditions for recognition are met. E-Control may issue ordinances listing countries where guarantees of origin for electricity from fossil fuels meet the preconditions pursuant to para. 1.

(3) The preconditions for the recognition of guarantees of origin for the purpose of electricity labelling shall be laid down in the ordinance to be issued under section 79 para. 11 *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act) 2010.

**The following provision classifies as a**

framework provision

**Reporting**

**Section 74. (framework provision)** (1) Every year, the provincial governments shall submit to the Federal Minister of Economy, Family and Youth

1. statistics on national electricity and heat generation from cogeneration in accordance with the methodology shown in Annex III and Decision 2008/952/EC of the European Commission; and
2. statistics on cogeneration capacities and fuels used for cogeneration.

(2) The provincial governments shall submit an annual report on their activities pursuant to section 71 to the Federal Minister of Economy, Family and Youth. Such report shall include in particular the measures taken to ensure the reliability of the guarantee system.

**The following provision classifies as a**

framework provision

**Title 9**

**Obligations Towards Customers**

**Right of System Access**

**Section 75. (framework provision)** (1) The implementing legislation shall provide that all customers have the right to enter into contracts with producers, electricity traders and electricity

undertakings on the supply of electricity to cover their need and to request system access with a view to these quantities of electricity.

(2) Electricity undertakings may demand system access on behalf of their customers.

### **Switching, Enabling and Disabling Metering Points, Objections**

**Section 76.** (1) Consumers as defined in section 1 para. 1 item 2 *Konsumentenschutzgesetz* (Consumer Protection Act) and small businesses may terminate their supply contracts by giving two weeks' notice, without the need to adhere to any particular deadlines for giving notice. Suppliers may terminate their contracts with consumers as defined in section 1 para. 1 item 2 Consumer Protection Act or small businesses by giving at least eight weeks' notice. Where minimum contract terms have been agreed, the first possibility for termination with notice shall be no later than at the end of the first contract year and then after a two-week notice period if the contract is terminated upon the wish of the consumer as defined in section 1 para. 1 item 2 Consumer Protection Act or a small business, or after an eight-week notice period if the contract is terminated upon the wish of the supplier.

(2) Without prejudice to existing civil-law obligations, the supplier switching process shall take no longer than three weeks from the system operator's being informed of the switch. In defining such process, particular attention shall be given, without limitation, to the technical and organisational measures to be taken by the system operator in connection with the switch, to the compatibility of terms and deadlines with settlement procedures under the balancing regime, to ensuring the security of supply, and to implementing the customers' wishes. Switching suppliers shall not give rise to any additional cost for consumers.

(3) Consumers without load profile meters may at any time, electronically and without adhering to any particular format, submit declarations of intent to suppliers, through websites to be provided by the latter, to authorise such suppliers to instate and execute a switch. Suppliers that have been authorised in this way shall submit suitable evidence to the system operators and other suppliers to establish the existence of such declaration of intent. The system operator shall inform the consumer immediately once the switch has been instated. Suppliers shall provide for user-friendly mechanisms to verify and authenticate the consumer's identity. The regulatory authority shall assist users in finding supplier websites by including hyperlinks in its tariff calculator (section 22 *E-Control-Gesetz* [E-Control Act]). The suppliers shall provide the pertaining up-to-date information to the regulatory authority without the authority having to request it.

(4) Any and all procedural steps that form part of the switching, enabling, disabling and objection processes shall be executed electronically through the platform to be operated by the clearing and settlement agent. This particularly applies to verifying the consumer identity, checking for minimum terms and notice periods, updating data, and submitting consumption data. If information is requested, the system operators and suppliers shall provide only the data necessary for the abovementioned processes, i.e. name, address, metering point reference number, load profile type, type of metering device, and current supplier for consumer identity verification, and notice periods, termination dates and minimum terms for minimum term and notice period checks, to all authorised suppliers through the online platform to be operated by the clearing and settlement agent, in a decentralised and non-discriminatory manner and in a standardised electronic format. The system operators and suppliers shall connect to the platform. Suppliers may not initiate any of the processes mentioned in this paragraph without the consumer's declaration of intent.

(5) The data transmission procedure (communication protocol) used for the platform (para. 4) shall be developed methodically in line with the state of the art and tested independently. In particular, the clearing and settlement agent shall introduce means to identify and authenticate new system operators and suppliers that request access to the platform.

(6) The clearing and settlement agent, the system operators and the suppliers shall keep revision-secure records of all requests and responses regarding consumer information handled by way of the platform pursuant to para. 4. On the part of the clearing and settlement agent, these records shall extend to all procedural steps that must be handled on the switching platform, in particular the duration of the steps, the degree to which the deadlines foreseen for verifying the existence of authorisations for each procedural step were used, access by authenticated persons, and the availability of the interfaces of the suppliers' and system operators' IT systems with the platform. The system operators and suppliers shall record date and time of any requests made and responses given, the requesting and responding entities, and the purpose of all requests and responses. In addition, suppliers shall record information relating to

identifying the consumer concerned along with a unique code that enables identifying the person that has made or initiated a request pursuant to para. 4. Records shall be kept for three years and may only be used to verify whether a request was legitimate, to provide information, for the purposes of administrative penal law, and for the purposes of sections 24 and 26 E-Control Act. The clearing and settlement agent shall verify the legitimacy of requests in cases of suspected abuse and in addition as a matter of regular spot checks. It shall submit a report about the results of these verifications and checks to the regulatory authority every other year; the latter shall publish such report in an anonymised format.

(7) The regulatory authority may issue ordinances detailing any and all procedures relevant for supplier switching or enabling and disabling metering points. It may also issue an ordinance regulating the type and extent of the data listed in para. 4 and the additional data necessary to address the abovementioned purposes. The regulatory authority may also issue an ordinance detailing the minimum security standards for the type of data transmission (pursuant to paras 4 and 5) by system operators and suppliers through the platform operated by the clearing and settlement agent and the necessary data security measures, in particular with regard to the records to be kept. The regulatory authority may exempt individual processes from the obligation to be handled electronically through the platform to be operated by the clearing and settlement agent in accordance with the first and second sentences of para. 4 if it considers that this is necessary in the interest of straightforward and cost efficient processing.

**The following provision classifies as a**  
framework provision

#### **Universal Service**

**Section 77. (framework provision)** (1) Electricity traders and other suppliers whose function includes supply to household consumers shall publish, in an appropriate manner (e.g. on the Internet), their rates for universal service to household consumers. They shall be obliged, at their general terms and conditions in force and at these rates, to deliver electricity to consumers as defined in section 1 para. 1 item 2 *Konsumentenschutzgesetz* (Consumer Protection Act) and small businesses that claim their right to be supplied with electricity (obligation to provide universal service). The implementing legislation shall include more detailed provisions on universal service for consumers in the meaning of section 1 para. 1 item 2 Consumer Protection Act.

(2) The rates for universal service to consumers as defined in section 1 para. 1 item 2 Consumer Protection Act may not exceed the rates at which most of their customers that are consumers in the meaning of section 1 para. 1 item 2 Consumer Protection Act are supplied. The rates for universal service to businesses as defined in section 1 para. 1 item 1 Consumer Protection Act may not exceed the rates that apply to comparable groups of customers. Commencement of universal service to consumers as defined in section 1 para. 1 item 2 Consumer Protection Act who claim universal service shall not be made conditional on their payment of collateral or prepayment exceeding the amount due for one month.

(3) Any collateral paid shall be reimbursed if a consumer pays his or her debts in due time for six months, and no prepayments shall be requested unless he or she again fails to pay in due time.

(4) System operators shall provide system services to consumers as defined in section 1 para. 1 item 2 Consumer Protection Act and small businesses that claim universal service, regardless of whether they are in arrears with their payments or not. Provision of such system services shall not be made conditional on the consumers' payment of collateral or prepayment exceeding the amount due for one month. Para. 3 shall apply *mutatis mutandis*. Should a customer that has claimed universal service again fail to pay in due time, the system operator may physically disconnect such customer until the amount due has been paid, unless the customer commits to paying for future system use and supply in advance (prepayment). For cases of repeated payment arrears, section 82 para. 3 shall apply *mutatis mutandis*. The prepayment obligation shall not apply to small businesses with load profile meters.

(5) A prepayment system installed in connection with universal service shall be deactivated if requested so by consumers that have paid all amounts due for universal service to their suppliers and system operators, or if their debt has been cleared through other circumstances.

#### **Replacing Suppliers**

**Section 77a.** (1) If a clearing and settlement agent terminates its contract with a balance responsible party, either with notice or with immediate effect, the clearing and settlement agent shall notify the



regulatory authority and the system operators in whose systems the concerned metering points are located of such termination and time of effect. This applies mutatis mutandis if the contract between a supplier and a balance responsible party is terminated, in which case the notification obligation rests with the balance responsible party.

(2) In each network area in which such supplier's customers are located, the regulatory authority shall assign the metering points which remain in the balance group to another supplier by lot. The relevant system operators shall cooperate in this process; in particular, they shall inform the regulatory authority without delay about which other suppliers are active in their network area. The lots shall include all suppliers that continue to service customers in the relevant network area. Should the chosen supplier inform that it is not willing to service the relevant customers, the process shall be repeated. Rejecting to take on part of the relevant customers shall not be possible.

(3) The replacing supplier shall inform the customers concerned. The system operators shall submit the data to be sent for supplier switching to the replacing supplier in an electronic format.

(4) Until such time as service by the replacing supplier commences, any imbalance charges arising from a lack of injections by the previous supplier shall be paid from the individual collateral resting with the clearing and settlement agent. Should such collateral be insufficient, then the charges shall be included in the settlement of imbalance charges and spread over a one-year period.

(5) Replacing suppliers shall service their assigned customers at appropriate prices, which also means that they may not charge assigned household customers rates above those charged to their own household customers.

(6) In cases where electricity is fed in through an assigned metering point, the replacing supplier shall buy the injected energy at market prices minus a prorated share of the imbalance charges for the energy injected.

(7) The assigned customers shall be serviced at the general terms and conditions approved by the authority insofar as such general terms and conditions are applicable to each particular customer category. Any minimum terms, deadlines and notice periods contained in the general terms and conditions shall not apply.

(8) Assigned customers may in any case terminate their contracts by giving two weeks' notice. Replacing suppliers may terminate such contracts by giving eight weeks' notice.

(9) All relevant market participants shall support each other to the best of their abilities to ensure continuous supply to the customers concerned.

#### **Disclosure (Labelling)**

**Section 78.** (1) Electricity traders or other retailers supplying consumers in Austria shall show once a year on, or on annexes to, consumers' electricity bills, as well as on relevant information materials their supplier mix, taking into account the total amount of electricity supplied to consumers by them. This obligation shall also apply to promotional materials subject to labelling obligations as defined in section 7 para. 1 item 32 that are addressed to consumers. This information shall be based on the total electricity sold by a supplier to consumers (supplier mix).

(2) Electricity traders and retailers supplying consumers in Austria shall be obliged to show once a year on, or on annexes to, consumers' electricity bills the environmental impact, at least in terms of CO<sub>2</sub> emissions and radioactive waste, of the electricity generated in this supplier mix. This obligation shall also apply to promotional materials addressed to consumers.

(3) The regulatory authority shall monitor the correctness of statements made by undertakings. In case of incorrect statements, an official decision shall be communicated to the electricity trader concerned requesting correction of such statements.

#### **Special Labelling Provisions**

**Section 79.** (1) Based on the electricity supplied to consumers (kWh), labelling pursuant to section 78 shall be broken down by percentages of primary energy sources into solid and liquid biomass, biogas, landfill and sewage gas, geothermal energy, wind and solar power, hydropower, natural gas, oil and its products, coal, nuclear energy and others.

(2) Labelling of primary energy sources on electricity bills shall be based on the total quantities supplied to consumers in the previous calendar or business year.

(3) The proportions of the various primary energy sources pursuant to para. 1 shall be shown as a uniform supplier mix which takes into account the total amount of electricity supplied by the electricity trader to consumers. If the primary energy sources cannot be clearly determined, such as in the case of electricity purchased through electricity exchanges, quantities shall be allocated on the basis of the current pan-European total amounts procured according to the ENTSO for Electricity reduced for renewable energy.

(4) Labelling shall be clearly readable. Any other notes and indications on the electricity bill shall be such that they cannot easily be mistaken for labelling.

(5) Electricity traders shall document the information their labelling is based on. Such documentation shall contain conclusive information on the origin of the quantities they have supplied to consumers, broken down by primary energy sources.

(6) Unless an electricity trader delivers less than 100 GWh to consumers, the documentation shall be audited by a chartered accountant or a sworn and certified expert in electrical engineering. The outcome shall be published, in an easily readable format and with the auditing body's confirmation attached, in an annex to the annual report of the electricity trader.

(7) Starting on 1 January 2015, electricity supplied to consumers during a calendar year shall be supported by guarantees of origin for electricity generated during that year. Only guarantees of origin issued pursuant to section 10 *Ökostromgesetz* (Green Electricity Act) 2012 or sections 71 or 72, or recognised pursuant to section 11 Green Electricity Act 2012 or section 73, can serve as documentation in the sense of para. 6 above.

(8) The documentation, to be completed within four months of the end of the calendar or business year or the actual period of delivery, shall be kept available for inspection by consumers at the supplier's premises (principal residence) or - if it is located abroad - at the premises of the domestic representative for three years.

(9) At the request of the regulatory authority, suppliers shall submit within a reasonable period of time the evidence pursuant to paras 5 to 7 above and any documents necessary to verify the correctness of the information provided.

(10) Insofar as they are obliged to publish annual accounts pursuant to section 8 para. 1, electricity traders and other suppliers shall indicate in these annual accounts the supplier mix pursuant to para. 3 including information on the respective quantities of electricity sold or supplied.

(11) The regulatory authority shall specify further details on electricity labelling by ordinance. These details shall, in particular, include the scope of obligations under section 78 paras 1 and 2, as well as the requirements for proof of the various primary energy sources and for electricity labelling pursuant to this Act.

### **Mandatory Labelling**

**Section 79a.** (1) Retailers supplying consumers in Austria shall provide guarantees of origin relating to the entire amount of electricity they supply to consumers; in the case of non-household customers, this provision applies as from 1 January 2015.

(2) Notwithstanding para. 1, section 78 and section 79, when traders or other retailers supply electricity to pumped-storage power plants, they shall transfer the relating guarantees of origin to the operators of these power plants in the database for guarantees of origin. In the course of such transfer 25% of these guarantees of origin shall be cancelled, while keeping the original shares stable. Pumped-storage power plants shall attach the transferred guarantees of origin to the electricity they generate, thereby evidencing the electricity purchased from traders or other retailers.

### **The following provision classifies as a**

framework provision (paras 1, 3 and 4)

### **General Terms and Conditions for Electricity Supply**

**Section 80.** (1) **(framework provision)** Suppliers shall draw up general terms and conditions for electricity supply to customers whose consumption is not metered with load profile meters. Prior to their entry into force, the general terms and conditions and any amendments thereto shall be electronically notified to the regulatory authority and published in a suitable format.

(2) Any amendments to the terms and conditions and the contractually agreed charges are permissible only subject to the provisions of the *Allgemeines Bürgerliches Gesetzbuch* (Civil Code) and the *Konsumentenschutzgesetz* (Consumer Protection Act). Customers shall be informed of such amendments by way of a personally addressed written communication or, if so requested by the customer, electronically. Such communication shall logically reproduce the amendments introduced to the general terms and conditions. If the customer objects to the amendment of the general terms and conditions or the charges and this terminates the contractual relationship, such termination shall take effect on the last day of the month following a period of 3 months.

(3) **(framework provision)** The general terms and conditions or the contract forms between suppliers and customers shall at least specify:

1. name and address of the supplier;
2. the services rendered and quality offered, as well as the prospective date of the start of delivery;
3. the energy rate in cent per kWh including any additional fees, levies and taxes;
4. the term of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;
5. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
6. information on the available dispute settlement mechanisms;
7. the conditions for supply pursuant to section 77;
8. the modalities for partial payments by the customer; the customer shall have the possibility of spreading his or her dues across at least ten payments a year;

(4) **(framework provision)** The suppliers must be able to provide evidence that they have informed their customers of the essential contract contents prior to the conclusion of the contract. To this end customers shall receive an information leaflet. This also applies to situations where the contract is concluded through an intermediary.

(5) The provisions of paras 1 through 4 above are without prejudice to the provisions of the Consumer Protection Act and the Civil Code.

#### **Minimum Requirements for Bills and Information and Advertising Materials**

**Section 81.** (1) Information and advertising materials as well as bills directed at consumers shall be transparent and consumer-friendly. Where such documents are intended to inform both on the system charges and the price for electricity, to advertise for both of them, to offer the conclusion of a joint contract or to invoice such a contract, the components of the system charges, the surcharges for taxes, fees and levies, and the energy rate shall be itemised in a transparent manner. The energy rate shall, in any case, be stated in cent per kWh, and any standing charges shall be listed. Electronic delivery of bills shall be permissible upon the customer's wish, but the contract may not curtail the customer's right to receive paper bills. Receiving paper bills shall not give rise to any additional cost for the consumer.

(2) If the consumer requests so, he or she shall be billed several times during a year.

(3) Bills for system charges shall itemise all applicable taxes, fees and levies arising from federal and provincial legislation. The components of the system charges shall be itemised once a year. In addition, the information provided shall include, without limitation:

1. the allocation of the customer facilities to the system levels pursuant to section 63;
2. the contracted and/or purchased extent of system utilisation in kW;
3. the meter point administration numbers;
4. the meter readings used for billing;
5. information about how meters have been read. Such information shall specify whether meters have been read by the system operator, by the customer, remotely, or whether the meter data have been calculated;
6. the energy consumption per time of use during the billing period, and a year-on-year comparison;
7. information on the option of meter reading by the customer;
8. telephone numbers for incidents and failures;
9. the process for instating a dispute settlement procedure pursuant to section 26 *Energie-Control-Gesetz* (E-Control Act).

(4) For the purpose of confirming correctness and legality, and to be able to provide authorised consumers and, upon explicit request by such consumers, expressly named third parties, with data free of charge, system operators and suppliers shall keep records of consumption and billing data for a period of three years after their becoming available. Provided that such data are aggregated with other consumers' data and anonymised immediately after being retrieved and are only used in such anonymised format, this shall be without prejudice to the competence of the provincial governments or the regulatory authority pursuant to section 88.

(5) Instalments for the partial payment of system charges and energy supply shall be based on factual and appropriate calculations that refer to the amount of energy consumed during the preceding year. If the previous year's consumption information is not available, then the instalments shall be calculated based on the consumption estimated for comparable consumers. Consumers shall be informed about the amount of energy (in kWh) from which their partial payments are calculated in writing or, upon consumer request, electronically.

(6) Consumers with smart meters shall at least have the option to choose between monthly and annual bills.

(7) If the regulatory authority reasonably suspects non-transparent market conduct in relation to time-of-use tariffs combined with smart meters, it may issue an ordinance prescribing transparency requirements for such tariffs for suppliers. In addition, the regulatory authority may rule that each supplier must offer at least one constant tariff choice.

(8) Suppliers shall include information about the possibility to instate dispute settlement procedures in accordance with section 26 E-Control Act on their bills.

#### **Consumption and Cost Information for Consumers with Smart Meters**

**Section 81a.** (1) Consumers whose consumption is registered via smart meters shall receive clear and understandable information about their electricity consumption and overall electricity costs from their supplier each month within one week after the smart meter readings pursuant to section 84 para. 1 have been retrieved; such information shall be calculated based on the daily or, where they are relevant to billing, quarter-hourly readings and shall be submitted electronically and free of charge. Information submission shall not take place if consumers expressly waive this right. Consumers shall have the possibility to opt for receiving such information in paper format, free of charge.

(2) Where system charges are billed for separately, para. 1 applies mutatis mutandis to the system operator.

(3) Consumers shall receive transparent, understandable and free-of-charge information about their right to access their consumption data pursuant to para. 1.

(4) The regulatory authority may issue an ordinance detailing the minimum requirements for the granularity and format of information to be submitted pursuant to paras 1 and 2. In doing so, the regulatory authority shall strive to achieve understandable information that is suitable to increase efficiency.

#### **Consumption and Cost Information for Consumers without Smart Meters**

**Section 81b.** Consumers without load profile meters or smart meters shall find detailed, clear and understandable information about their consumption and electricity costs enclosed with their bills. System operators shall offer all such consumers the possibility to notify their meter readings once every three months. Whenever a consumer does so, the system operator shall pass the meter reading on to the supplier without delay, and in no case later than ten days after receiving the reading from the consumer. The consumer shall receive detailed, clear and understandable consumption and electricity cost information in an electronic format within two weeks, free of charge. Section 81a shall apply mutatis mutandis. Information submission shall not take place if consumers expressly waive this right.

#### **Disabling of Connections and Customer Information**

**Section 82.** (1) System operators shall provide consumers with the following information, free of charge and in an easily and directly accessible way through the Internet and by way of an information sheet enclosed with bills once a year:

1. name and address of the undertaking;
2. the services provided, the service quality levels offered, as well as the time for the initial connection;

3. the types of maintenance services offered;
4. the means by which up-to-date information on all applicable rates may be obtained;
5. the term of the contract, the conditions for extending or terminating the services and the contract, and any right of withdrawal;
6. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
7. the right to be supplied with electricity pursuant to section 77;
8. any statements of the European Commission on energy consumer rights;
9. information about consumer rights pursuant to section 81b;
10. information about consumer rights pursuant to section 84.

(2) Suppliers shall provide consumers with the following information, free of charge and in an easily and directly accessible way through the Internet and by way of an information sheet enclosed with bills once a year:

1. name and address of the undertaking;
2. the means by which up-to-date information on all applicable rates may be obtained;
3. the term of the contract, the conditions for extending or terminating the services and the contract, and any right of withdrawal;
4. information about consumer rights pursuant to section 81b;
5. the right to be supplied with electricity pursuant to section 77;
6. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
7. any statements of the European Commission on energy consumer rights.

(3) In cases of contract breach, in particular where payment delays or failure to provide prepayment or collateral are concerned, the system operator shall issue at least two reminders, each allowing for a grace period of at least two weeks. The second such reminder shall include information that the lapse of the two-week grace period would be followed by disconnection, and the expected costs related to disconnection. The last reminder shall take the form of a registered letter. In each of the reminders in accordance with the first sentence, the system operator shall point out the option to make use of information services pursuant to para. 7. Where a breach of contract concerns the electricity supply contract, the obligation to send reminders lies with the supplier.

(4) If an energy supply contract is terminated with notice, expires or terminates because of an objection pursuant to section 80 para. 2, neither the system operator nor the supplier shall issue reminders pursuant to para. 3. The same shall apply in cases of abusive consumer behaviour, e.g. if metering devices have been manipulated.

(5) Where system operators or suppliers request collateral or prepayment, consumers without load profile meters shall have the right, without prejudice to their rights under section 77, to use prepayment meters instead.

(6) The system operator and the previous supplier shall bill the customer no later than six weeks after the supplier switch or the contract termination have become effective. Where the previous supplier also bills the customer for the system charges, the system operator shall submit the invoice for the system charges to the previous supplier within three weeks.

(7) Suppliers with more than 49 employees and a turnover or total assets of more than 10 million Euro shall make available information and service points for their customers to address with questions relating to labelling, supplier switching, energy efficiency, electricity costs and energy poverty from 1 January 2015.

(8) If household consumers or small businesses are to be disconnected due to late payment, this may not take place on the last working day before a weekend or before a statutory holiday.

### Smart Meters

**Section 83.** (1) Following a cost-benefit analysis, the Minister of Economy, Family and Youth may decide smart meter roll-out. Such decision shall take the form of an ordinance issued following hearings with the regulatory authority and the representatives of consumer protection organisations. If such ordinance is issued, the system operators shall install smart meters at customer facilities without load

profile meters, report on the roll-out – in particular with regard to costs, the system situation, data protection and data security, and these consumers' consumption trends – and inform these consumers about the smart meter installation at their facility and the overall situation without delay. If the provisions on smart meter roll-out in the ordinance allow so, the system operators shall respect the consumer's wish not to have a smart meter. The regulatory authority shall inform consumers about the general aspects of smart meter roll-out and draw up an annual report about the status of roll-out, in particular with regard to costs, the network situation, data protection and data security, the current developments at EU level (as far as known), and about consumption trends at consumer installations with smart meters.

(2) The regulatory authority shall detail the minimum requirements for such smart meters by ordinance and include the related costs when establishing the allowed cost for the system charges pursuant to section 59. Such ordinance shall prescribe at least the minimum features which smart meters must have to enable execution of the tasks specified in paras 3 to 5 below, and in sections 84 and 84a. Smart meters must at least be able to record quarter-hourly meter readings, save data for 60 calendar days inside the device, enable remote retrieval of the data stored in the device through a bidirectional communications interface, allow for remote disabling and enabling of the metering point, and enable the consumer to retrieve the data through a unidirectional communications interface. The regulatory authority shall integrate consumer representatives, the *Datenschutzbehörde* (Data Protection Authority) and the *Datenschutzrat* (Data Protection Council) in the development of such ordinance as far as possible. The operation of smart meters and their communication, including with external devices, shall be secured in accordance with the recognised state of the art to ensure that unauthorised parties do not gain access to data beyond the current meter reading. The operation of smart meters shall comply with the provisions of metrology and calibration law and data protection law as well as the recognised state of the art.

(3) The default setting for the smart meter display shall only show the current meter reading. If a consumer wishes to verify additional data that are stored in the device and relevant for billing, such consumer's smart meter shall be configured so as to enable verification of such data at the smart meter display. Such configuration operation shall be free of charge and shall not cause disproportionate efforts for the consumer. If a consumer explicitly requests so, the smart meter shall be returned to its default configuration without delay and free of charge.

(4) In particular where a supplier switch has taken place or a contract with a system operator is terminated, access to historical metering data that refer to the previous contracts, if available, shall be disabled so that they are not shown on the smart meter display or provided to non-authorised parties via the unidirectional interface. The display shall be returned to its full functionality free of charge once the smart meter does not hold any readings relating to the previous contract anymore. The system operator's obligation to provide data pursuant to section 84 paras 1 and 2 and to transmit data to the supplier pursuant to section 84a para. 2 that arises from statutory obligations or the current contract shall remain unaffected thereof.

(5) The system operators' obligation to protect the meter readings saved in smart meters from unauthorised access as described in para. 2 above shall apply *mutatis mutandis* for all other interfaces of the devices.

(6) If necessary to ensure data protection and data safety in connection with the operation of smart metering systems, the Minister of Economy, Family and Youth, in agreement with the Federal Chancellor, may issue an ordinance that lays down further stipulations relating to the state of the art system operators must comply with, while bearing in mind the relevant international rules and technical and economic feasibility. In particular, due regard shall be given to the regulatory authority's annual reports pursuant to para. 1 and to international security standards.

### Smart Metering Data

**Section 84.** (1) No later than six months following the installation of a smart meter at a customer facility, the system operators shall start recording this consumer's daily consumption and all quarter-hourly data and keep them for 60 calendar days in the device at the disposal of the customer for the purposes of billing, customer information (section 81a), energy efficiency, energy statistics, and maintaining secure and efficient system operation. All smart meters shall be assigned to a user category pursuant to section 16 para. 2.

(2) System operators shall make available to consumers with smart meters at least the daily readings and, upon a consumer's explicit wish and depending on the contractual agreements made or the consensus given, also quarter-hourly values, no later than twelve hours after they have been retrieved from the smart

meter, through a customer-friendly web portal free of charge. Data shall be retrieved from smart meters at least once a day. For this purpose, the system operators shall provide a secure mechanism for the identification and authentication of consumers at the web portal and ensure that data transmission is encrypted in accordance with the state of the art. If possible, consumers without reasonable access to the internet shall be provided with the same information.

(3) An explicit transparent note shall inform consumers who make use of the information services on the web portal pursuant to para. 2 that using such services requires remote reading of their meter, and that the data will cease to be available on the web portal 36 months after they have become available or if the contract with the system operator ends. Such explicit notice shall as a minimum be contained in the system operators' general terms and conditions and the same wording shall be displayed when users register for the web portal.

(4) Consumers shall have the option of completely deleting their account on the web portal pursuant to para. 2 free of charge at any time, either themselves or through the system operator, and without involving excessive efforts on part of the consumer. Where this is the case, retrieving consumption data from the consumer's device and processing such data to make them available through the web portal shall cease. Consumers shall also have at least the option to delete monthly blocks of their consumption data from the web portal after having reviewed them, while having the possibility to save such data locally for the purpose of verifying bills.

(5) System operators shall allow consumers, upon their explicit wish, to retrieve all readings stored in their smart meter through the device's unidirectional communications interface. All data recorded in the device shall then be transmitted through such interface intervals that enable the customer's equipment which is reliant on these data to be operated sensibly and efficiently. If so requested, access to and specifications of the communications interface shall be given free of charge to all authorised parties in a non-discriminatory way.

(6) The system operators shall inform consumers transparently and in an understandable way about their rights to access their consumption data pursuant to paras 1 through 5.

(7) The regulatory authority may issue an ordinance detailing the requirements for the granularity and format of consumption data in the web portal pursuant to para. 2. If necessary, the regulatory authority may issue detailed provisions on the granularity of the data to be provided by the interface pursuant to para. 5. In doing so, the regulatory authority shall strive to achieve understandable information that is suitable to increase efficiency. In addition, the regulatory authority may specify requirements for standardised data transmission from system operators to consumers or to third parties authorised by consumers and the applicable formats, while access to the web portal for third parties shall not be possible.

**Section 84a.** (1) System operators shall only retrieve and use quarter-hourly consumption data if the concerned consumer explicitly agrees or if the data are necessary to fulfil duties that arise from the customer's having chosen a time-of-use supply contract. In addition, system operators may retrieve such data from smart meters without consumer agreement in justified local cases where this is necessary to maintain secure and efficient system operation. The relating data shall be deleted immediately once they are no longer needed to fulfil this task. The system operators shall submit annual reports about the reasons for such data retrievals to the regulatory authority. Also, the Minister of Economy, Family and Youth may instruct that quarter-hourly values be extracted from smart meters for the purpose of electricity statistics pursuant to section 92, in particular so as to analyse the development of intraday variations in generation from renewable energy sources and in withdrawals from the public grid (daily load variations), and the regulatory authority may instruct that this be done for the purposes of crisis prevention measures in accordance with the *Energielenkungsgesetz* (Energy Intervention Powers Act) 2012 and for the purpose of monitoring in accordance with section 88, if such data are aggregated with other consumers' data as much as possible and anonymised immediately after being retrieved and are only used in such anonymised format. Data retrieval from smart meters for statistical purposes shall only be allowed if the necessary statistical data are not available at the system operators'. Where consumers have not consented to quarter-hourly values being retrieved, they shall be informed of such retrieval without delay.

(2) The system operators shall submit all daily consumption data of consumers equipped with smart meters to the respective suppliers for the purposes listed in section 81a and for the purpose of billing at the beginning of the next calendar month and no later than on the fifth day of such month; quarter-hourly values may only be submitted upon the consumer's express consent or if required for the supplier to fulfil its contractual duties. The regulatory authority may issue an ordinance detailing the requirements for

standardised transmission of these data from system operators to suppliers or to third parties authorised by the consumer and their format.

(3) When contracts that require retrieval and use of quarter-hourly data are concluded or when consumers agree that their quarter-hourly data may be retrieved and used for particular purposes, such consumers shall be transparently informed in an explicit note that they are allowing data use. Such note shall include a statement as to the purpose of data use and be part of the system operators' general terms and conditions and the suppliers' the general terms and conditions and contract templates.

(4) If smart meters pursuant to section 83 para. 1 are installed at consumers' with a valid contract whose continuation would require retrieving data beyond daily granularity to allow for time-of-use billing, such consumers shall be verifiably informed about this situation in a transparent and understandable manner. Consumers shall also verifiably receive transparent and understandable information about the possibility to switch to a billing method that requires daily consumption data only. Continuing an existing contract at the original conditions shall require the explicit consent of the consumer.

(5) Using consumption data from smart meters for purposes that are not listed in paras 1 to 4, section 76, section 81, section 81a or section 84, for procedures of administrative, administrative penal or civil nature that do not make immediate reference to the purposes of this Act shall not be permissible.

**The following provision classifies as a**  
framework provision

## **Title 10**

### **Balance Groups**

#### **Balance Group Members**

**Section 85. (framework provision)** (1) The implementing legislation shall provide that system users be obliged either to join a balance group or to form a balance group of their own.

(2) In accordance with their legal and contractual obligations, system users shall be obliged

1. to make available and transmit to system operators, balance responsible parties and the clearing and settlement agent, in accordance with their obligations under contractual agreements, any data, meter readings and other information required to determine their electricity consumption insofar as this is required with a view to maintaining a competitive electricity market and affording consumer protection;
2. to comply with the technical specifications of system operators inasmuch as they use their own metering and data transmission equipment;
3. to submit information in connection with supplier or balance group switches, and adhere to the time limits provided therefor;
4. to report contract data to bodies charged with drawing up indices;
5. to submit generation and consumption schedules to the system operator and to the control area managers in the event that this should be required for technical reasons;
6. to enter into contracts on the exchange of data with other system operators, the balance responsible parties, the clearing and settlement agents, and other market participants in accordance with the market rules.

**The following provision classifies as a**  
framework provision (paras 1 to 4)  
constitutional provision (para. 5)

#### **Balance Responsible Parties**

**Section 86. (1) (framework provision)** Balance groups may be formed within any control area. The establishment and alteration of balance groups shall be carried out by the balance responsible party.

(2) **(framework provision)** The balance responsible party shall meet all requirements, in particular in legal, administrative and commercial terms, for performing its tasks and obligations.



(3) **(framework provision)** The implementing legislation shall provide that balance responsible parties must furnish proof of their professional qualification. With a view to ensuring that the balance responsible parties are in a position to perform their obligations, the implementing legislation shall furthermore provide regulations regarding the required capital base.

(4) **(framework provision)** Balance responsible parties shall also be obliged to perform their responsibilities and obligations and to comply with the market rules. In case a balance responsible party fails to meet its obligations, the implementing legislation shall provide for prohibiting the balance responsible party from performing its activity.

(5) **(constitutional provision)** Balance responsible parties shall be subject to supervision by the regulatory authority. Compliance with the provisions contained in the implementing legislation shall be monitored by the regulatory authority. Assessment of the professional qualifications of balance responsible parties, as well as any prohibition of performing the activity, is subject to the legal provisions in force at their respective domiciles. Any suppliers or customers not being part of a balance group or failing to form a balance group of their own shall be assigned to a balance group by the regulatory authority.

### **The following provision classifies as a**

framework provision (paras 1 to 3)

constitutional provision (para. 4)

### **Tasks and Obligations of Balance Responsible Parties**

**Section 87. (1) (framework provision)** The implementing legislation shall assign the following responsibilities to balance responsible parties:

1. to draw up schedules and submit them to the clearing and settlement agent and the control area managers concerned;
2. to enter into contracts on reserves and to supply balance group members assigned to the balance group by the regulatory authority;
3. to report certain generation and consumption data for technical purposes;
4. to submit generation and purchase schedules of large withdrawing and injecting parties for technical purposes, following predefined rules;
5. to pay charges (fees) to the clearing and settlement agents;
6. to pay the imbalance charges to the clearing and settlement agent and pass on these charges to the balance group members.

(2) **(framework provision)** Balance responsible parties shall be obliged:

1. to conclude agreements on the exchange of data with the clearing and settlement agent, the system operators and the balance group members;
2. to keep a record of balance group members;
3. to submit data to the clearing and settlement agents, the system operators and the balance group members in accordance with the market rules;
4. to draw up schedules for transfers between balance groups and to send these schedules to the clearing and settlement agent by a deadline to be set by the latter;
5. to procure balancing energy for balance group members, with a view to supplying them with this balancing energy;
6. to take any precautions necessary for minimising the expenses of the green power settlement agent for balancing energy.

(3) **(framework provision)** If a balance group member switches to another balance group or supplier, the data of such member shall be furnished to the new balance group or new supplier.

(4) **(constitutional provision)** Balance responsible parties shall submit their general terms and conditions to the regulatory authority for approval and, if so requested, shall amend them if this is necessary to achieve a competitive market or to ensure that the green electricity allocated to electricity traders is taken. To this end, the regulatory authority may also and in particular request modifications of the scheduling deadlines if this is necessary for minimising the balancing energy expenses of the green power settlement agent.

**The following provision classifies as a**  
framework provision (paras 1 and 2)

## **Title 11**

### **Monitoring**

#### **Monitoring**

**Section 88.** (1) **(framework provision)** The implementing legislation shall provide that the provincial governments carry out a number of monitoring tasks as part of their general electricity market supervisory function. In particular, they shall continuously monitor

1. the security of supply with regard to the reliability and quality of the system as well as the commercial quality of the system services provided;
2. the level of transparency in the electricity market, with special reference to wholesale prices;
3. the level and effectiveness of market opening and competition at wholesale and retail levels, including any distortion or restriction of competition;
4. any restrictive contractual practices, including exclusivity clauses, which may prevent large business customers from contracting simultaneously with more than one supplier or restrict their choice to do so;
5. the duration and quality of new connection, maintenance and repair services provided by transmission and distribution system operators;
6. the investments in generation capacities with a view to security of supply.

(2) **(framework provision)** With regard to the tasks specified in para. 1 above, the implementing legislation shall specify the survey samples, survey units, variables and attributes, data format, frequency, intervals and procedures of continuous data collection as well as the group of persons required to provide information. The implementing legislation shall require collection of the following data as a minimum:

1. from system operators: the number of new connections including the time required for their set-up; the maintenance and repair services provided including the fees collected in this regard and the time required; the number of planned and unplanned supply interruptions including the number of consumers affected, the capacity, duration of the supply interruptions, cause and voltage level affected; the characteristics of the voltage in public electricity supply systems; the number of system admission and system access applications including their average processing time;
2. from distribution system operators: the number of supplier switches and switched amounts (kWh) at each network level and for each supplier; the number of disconnections including separate information on disconnections in cases of contract suspension or termination due to breach of contract; the number of requests for enabling new connections and disabling existing ones; the number of prepayment meters in use; the number of implemented switches notified to the system operator including unsuccessful switches; the number of cases of resumed supply after suspension due to failure of payment; the number of final bills and the share of such bills sent later than six weeks after contract termination; the number of customer complaints and requests including their topic (e.g. bills and amounts billed, meters, meter reading or consumption calculation) and their average processing time;
3. from suppliers: the energy rates billed to each defined consumer category in cent/kWh; the number and volumes (in kWh) of supplier switches in each consumer category; the number of complaints received including their topics; the number of consumers supplied including the quantities supplied, for each consumer category.

(3) As part of its task to supervise the electricity market, the regulatory authority shall continuously monitor

1. compliance with the rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers, customers and other market participants pursuant to Regulation (EC) No 714/2009;
2. the implementation of crisis prevention measures in the meaning of section 10 of the *Energielenkungsgesetz* (Energy Intervention Powers Act);
3. the investment plans of the transmission system operators;

4. the congestion management in the meaning of section 23 para. 2 item 5 and the purposes the congestion revenues are used for;
5. the technical cooperation between transmission system operators domiciled in Austria and transmission system operators domiciled in the European Union or in third countries;  
and
6. collect from control area managers aggregated information about all procurements of control (i.e. primary, secondary and tertiary control, unintended exchange), such as periodical costs, volumes procured, number of bidders, as well as information about the balancing situation in the control area, such as imbalance charges paid by balance groups, load deviation of the entire control area, deployment of control energy and deviations of the balance groups.

(4) Electricity traders shall keep a record of transaction data to be specified by the regulatory authority by ordinance relating to transactions with other electricity traders and transmission system operators for five years and make such records available to the regulatory authority, the federal competition authority and the European Commission where needed to fulfil their tasks, in a format defined by the regulatory authority. Such ordinance shall require recording and submission of the following data as a minimum: characteristics and product specifications relating to each financial and physical transaction, including, without limitation, the time of contract conclusion, the contract term, the electricity exchange or other trading point at which the transaction took place, the time of first delivery, the identities of the buyer and seller, the transaction volume and price or price escalation clauses.

(5) Where an obliged party refuses to provide data in accordance with paras 2, 3 and 4 above, the regulatory authority may issue an official decision requesting data transmission.

(6) The regulatory authority may conduct or institute independent surveys on consumer satisfaction to evaluate the information provided by system operators regarding their service and supply quality. System operators shall cooperate in and support such surveys.

(7) The regulatory authority may conclude data exchange agreements with the regulatory authorities of other member states and use the data obtained through such agreements for the purposes of fulfilling its tasks pursuant to para. 1 above. In respect of the information exchanged, the regulatory authority shall ensure the same level of confidentiality as is required of the originating authority.

(8) The obliged parties specified in para. 2 shall transmit the data pursuant to para. 2 to the regulatory authority and the relevant provincial government electronically in a format defined by the regulatory authority by 31 March of the following year. Furthermore, applying the preceding sentence *mutatis mutandis*, the following data shall be transmitted to the regulatory authority:

1. from control area managers: data regarding the allocation of cross-border capacities, in particular annual, monthly and daily capacity offered, allocated and scheduled by market participants, actual physical flows, safety margins of capacity calculations, and information about reductions of capacities already allocated;
2. from the persons in charge of tendering for balancing energy (i.e. primary, secondary and tertiary control, unintended exchange): capacity price (Euro/MW), unit rate (Euro/MWh), capacity offered (MW), award and relevant control area for each bid.

## Title 12

### Authorities

#### Competent Authorities in Other Matters Regulated by Directly Applicable Federal Law

**Section 89.** (1) Save as otherwise provided in particular cases, the authority within the meaning of the provisions of directly applicable federal law contained in this Federal Act is the regulatory authority.

(2) Administrative penalties pursuant to sections 99 through 102 shall be imposed by the competent district administration authorities pursuant to section 26 *Verwaltungsstrafgesetz* (Administrative Penal Act). The regulatory authority is deemed a party to such proceedings. It may assert a right to compliance with the statutory regulations that protect the public interests to be safeguarded by the regulatory authority in the proceedings and appeal to the *Verwaltungsgericht des Landes* (the competent provincial Administrative Court).

(3) The regulatory authority may remind obligated parties that are in breach of their obligations pursuant to this Federal Act and request them to establish compliance with the law within an appropriate period of time to be specified by the regulatory authority, provided that there are reasons to believe that

compliance with the law will be achieved without punishment. In doing so, the regulatory authority shall inform the obligated party about the consequences of failure to comply with such request.

(4) Obligated parties shall not be punished if they establish compliance with the law within the period of time specified by the regulatory authority.

(5) Fines pursuant to section 104 through 107 shall be imposed by the *Kartellgericht* (Cartel Court).

**The following provision classifies as a**  
framework provision

#### **Competent Authorities in Electricity Matters**

**Section 90. (framework provision)** Save as otherwise provided in particular cases, the authority within the meaning of the framework provisions of this Federal Act is the competent provincial government.

**The following provision classifies as a**  
framework provision

### **Title 13**

#### **Special Organisational Provisions**

##### **Provincial Advisory Council for Electricity**

**Section 91. (framework provision)** (1) The implementing legislation may provide for an Advisory Council for Electricity to advise the provincial government in general questions relating to the electricity sector.

(2) The implementing legislation shall bind to secrecy whosoever participates in proceedings carried out under any implementing legislation.

##### **Commissioning and Conducting Statistical Surveys**

**Section 92.** (1) The Federal Minister of Economy, Family and Youth is authorised to order statistical surveys including, without limitation, price surveys and the collection of other information about the market, including but not limited to the number of switches and new customers in each customer group, and other statistical work in connection with electricity. Such statistical surveys and any other statistical work shall be conducted by the regulatory authority.

(2) The Federal Minister of Economy, Family and Youth shall order statistical surveys by ordinance. In addition to the actual commission to conduct statistical surveys, such ordinance shall include specifications regarding:

1. the survey samples;
2. statistical units;
3. the type of statistical survey to be conducted;
4. variables;
5. attributes;
6. frequency and intervals of data collection;
7. the group of persons required to provide information;
8. whether and to what extent the results of such statistical surveys must be published, with due regard to the provisions of section 19 para. 2 *Bundesstatistikgesetz* (Federal Statistics Act) 2000.

(3) Where an obliged party refuses to provide data, the regulatory authority may find that the party is obliged and request data submission by official decision.

(4) Individual data may be passed on to the federal institution Statistics Austria for purposes of federal statistics.

(5) In carrying out statistical surveys and in processing the data collected during such surveys, the provisions of the Federal Statistics Act 2000 apply *mutatis mutandis*.

(6) The regulatory authority shall publish the statistical data it has collected.

#### **Automated Data Communication**

**Section 93.** (1) Any personal data which are required to conduct proceedings in matters that are governed by directly applicable federal law stipulated in this Federal Act, which the authority requires to perform its supervisory duties or of which the authority has obtained knowledge pursuant to section 10 may be collected and processed by automatic means pursuant to the provisions of the *Datenschutzgesetz* (Data Protection Act).

(2) Within the framework of proceedings governed by directly applicable federal law stipulated in this Federal Act, the Federal Minister of Economy, Family and Youth and the regulatory authority may transmit processed data

1. to the participants in these proceedings;
2. to any experts consulted in these proceedings;
3. to the members of the Regulatory or Energy Advisory Council;
4. to requested or instructed authorities (section 55 *Allgemeines Verwaltungsverfahrensgesetz* [General Administrative Procedures Act]);
5. to the authority competent to conduct the licensing or permitting procedure under electricity law, inasmuch as such data are required for such procedure.

#### **Obligation to Pass on Tax Reductions**

**Section 94.** If levies, taxes or customs duties included in the prices of goods or services are either partially or fully abolished, these prices shall be reduced by the respective amounts.

**The following provision classifies as a**  
framework provision

#### **Right to Information**

**Section 95. (framework provision)** The implementing legislation shall ensure that the provincial governments may at any stage of the proceedings demand any information which they require to carry out these proceedings, as well as inspect financial and business records for this purpose.

**The following provision classifies as a**  
framework provision

#### **Automated Data Communication in Implementing Legislation**

**Section 96. (framework provision)** The implementing legislation shall ensure that any personal data which are required to conduct electricity-related proceedings, which the authorities require to perform their supervisory duties or which must be notified to the provincial government may be collected and processed by automatic means; furthermore, the implementing legislation shall establish rules for the disclosure of processed data to third parties in accordance with the principles pursuant to section 93.

**The following provision classifies as a**  
framework provision

## Title 14

### Penalties and Fines

#### Part 1

#### General Obligation of the Federal Provinces

##### General Obligation of the Federal Provinces

**Section 98. (framework provision)** The implementing legislation shall provide for effective, proportionate and dissuasive penalties to be imposed on electricity undertakings in breach of the obligations resulting from the implementing legislation, while:

1. a minimum penalty of 10,000 EUR shall be imposed on undertakings with at least 100,000 connected customers for breaches of the provisions in section 66 para. 2, section 67 para. 2 or section 88 para. 2;
2. a minimum penalty of 50,000 EUR shall be imposed on undertakings with at least 100,000 connected customers for breaches of the provisions in section 21 para. 1, section 23 para. 2 or 5, section 37 para. 1, section 40, section 42 para. 1, 3, 5, 6 or 7, section 45, section 77, section 80 para. 1, 3 or 4 or section 87 para. 1, 2 or 3;
3. an effective, proportionate and dissuasive penalty shall be imposed on all other undertakings for breaches of the provisions in section 21 para. 1, section 23 para. 2 or 5, section 37 para. 1, section 40, section 42 para. 1, 3, 5, 6 or 7, section 45, section 66 para. 2, section 67 para. 2, section 77, section 80 para. 1, 3 or 4, section 87 para. 1, 2 or 3 or section 88 para. 2.

#### Part 2

#### Administrative Offences

##### General Penal Provisions

**Section 99.** (1) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court, constitutes a finable offence or is subject to more severe punishment under different administrative penal provisions, whosoever

1. fails to comply with the obligations pursuant to section 17 paras 4, 5 or 6 or section 18;
2. fails to comply with the obligations pursuant to section 27 para. 2 item 3;
3. fails to comply with the obligations pursuant to section 32 para. 1;
4. causes non-compliance with the time limit for switching set in section 76 para. 2;
5. in contravention of the last sentence of section 76 para. 4 initiates a process without a consumer's declaration of intent;
6. fails to comply with its obligations pursuant to section 76 paras 5 to 7;
7. in contravention of Article 4(1) of Regulation (EU) No 1227/2011 fails to publish inside information, to publish it correctly, to publish it in full, to publish it effectively or to publish it in a timely manner;
8. in contravention of Article 4(2) of Regulation (EU) No 1227/2011 fails to submit inside information, to submit it correctly, to submit it in full or to submit it without delay;
9. in contravention of Article 4(3) of Regulation (EU) No 1227/2011 fails to ensure simultaneous, complete and effective public disclosure of inside information;
10. in contravention of Article 8(1) of Regulation (EU) No 1227/2011 in conjunction with implementing legislation in accordance with Article 8(2) of Regulation (EU) No 1227/2011 fails to submit a record mentioned therein, to submit it correctly, to submit it in due time or to submit it in full;
11. in contravention of Article 8(5) of Regulation (EU) No 1227/2011 in conjunction with implementing legislation in accordance with Article 8(6) of Regulation (EU) No 1227/2011 fails to submit information mentioned therein, to submit it correctly, to submit it in due time or to submit it in full;
12. in contravention of Article 9(1) in conjunction with para. 4 of Regulation (EU) No 1227/2011 fails to register with the regulatory authority or fails to do so in due time;
13. in contravention of Article 9(1)(2) of Regulation (EU) No 1227/2011 registers with more than one national regulatory authority;

14. in contravention of Article 9(5) of Regulation (EU) No 1227/2011 fails to notify a change in the information necessary for registration without delay;
15. in contravention of Article 15 of Regulation (EU) No 1227/2011 fails to inform the regulatory authority, to inform it correctly or to inform it in due time;
16. uses inside information in the manner described in Article 3(1) of Regulation (EU) No 1227/2011, while without intending to generate a pecuniary advantage for itself or a third party, thereby counteracting the insider trading prohibition if it knows or should know pursuant to Article 3(2)(e) of Regulation (EU) No 1227/2011 that it is inside information as defined in Article 2(1) of Regulation (EU) No 1227/2011;

shall be deemed to have committed an administrative offence and shall be fined up to 50,000 EUR.

(2) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court, constitutes a finable offence or is subject to more severe punishment under different administrative penal provisions, whosoever

1. fails to comply with the obligations pursuant to section 8 paras 1, 2 or 3 or section 9;
2. fails to comply with its obligation to furnish information and provide access to documents and records pursuant to section 10;
3. fails to comply with its notification obligations pursuant to section 14 or section 80 para. 2;
4. fails to comply with any obligations set by an ordinance of the regulatory authority issued pursuant to section 19;
5. fails to comply with its data exchange obligations pursuant to section 19 para. 4 or section 76 para. 4;
6. fails to comply with its obligation as a producer pursuant to section 23 para. 9;
7. fails to comply with its obligations pursuant to section 37 para. 7, section 38 para. 1 or section 39 paras 1, 2, 3 or 4;
8. fails to comply with its obligations pursuant to section 69;
9. fails to comply with its obligations as a supplier or electricity trader pursuant to section 65 or section 78 paras 1 or 2;
10. fails to comply with its obligation pursuant to section 79;
11. fails to comply with its obligations pursuant to sections 81 to 81b;
12. fails to comply with obligations arising from an ordinance issued pursuant to sections 81a, 81b, 83, 84 or 84a;
13. fails to comply with its obligations pursuant to sections 82 or 83;
14. fails to comply with its obligations pursuant to section 84;
15. fails to comply with its obligations pursuant to section 84a;
16. fails to comply with its obligation pursuant to section 87 para. 4;
17. fails to comply with its obligation pursuant to section 88 paras 4, 5, 6 or 8;
18. fails to cooperate in the statistical surveys ordered by an ordinance pursuant to section 92 para. 2;
19. fails to comply with official decisions issued pursuant to section 24 para. 2 *Energie-Control-Gesetz* (E-Control Act) for the scope of this Federal Act or any conditions, time limits and stipulations included therein;
20. fails to comply with official decisions issued pursuant to this Federal Act or with any conditions, time limits and stipulations they impose;
21. fails to comply with provisions of Regulation (EC) No 714/2009 or Regulation (EC) No 713/2009, or with the guidelines issued pursuant to these regulations;
22. fails to comply with decisions based on the provisions of Regulation (EC) No 714/2009 or Regulation (EC) No 713/2009 or of the guidelines issued pursuant to these regulations;
23. fails to comply with the provisions of the guidelines issued in accordance with Directive 2009/72/EC or Directive 2009/73/EC;
24. fails to comply with decisions based on guidelines issued in accordance with Directive 2009/72/EC or Directive 2009/73/EC

shall be deemed to have committed an administrative offence and shall be fined up to 75,000 EUR.

(3) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court, constitutes a finable offence or is subject to more severe punishment under different administrative penal provisions, whosoever

1. unlawfully discloses data, contrary to the provisions of section 11, section 48 para. 2, section 76 or section 84;
2. fails to comply with the obligations of transmission system operators with ownership unbundling pursuant to section 24;
3. fails to comply with the obligations of independent system operators and transmission system owners pursuant to section 25, section 26 or section 27, with the exception of section 27 para. 2 item 3;
4. fails to comply with the obligations of independent transmission system operators pursuant to section 28, section 29, section 30, section 31 or section 32, with the exception of section 30 para. 1 item 3 and section 32 para. 1;
5. fails to comply with the obligations pursuant to section 30 para. 1 item 3 and section 33;
6. fails to comply with the conditions set in the official declaratory decision pursuant to section 34 para. 1 or section 35 para. 1;
7. fails to comply with the notification requirements pursuant to section 34 para. 3 item 2 or section 34 para. 7

shall be deemed to have committed an administrative offence and shall be fined up to 100,000 EUR.

(4) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court of law, constitutes a finable offence or is subject to more severe punishment under different administrative penal provisions, whosoever

1. in contravention of Article 5 in conjunction with Article 2(2) and (3) of Regulation (EU) No 1227/2011 manipulates the market or attempts to manipulate the market;
2. uses inside information in the manner described in Article 3(1) of Regulation (EU) No 1227/2011, while intending to generate a pecuniary advantage for itself or a third party, thereby counteracting the insider trading prohibition if it knows or should know pursuant to Article 3(2)(e) of Regulation (EU) No 1227/2011 that it is inside information as defined in Article 2(1) of Regulation (EU) No 1227/2011;

shall be deemed to have committed an administrative offence and shall be fined up to 150,000 EUR.

(5) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court of law, constitutes a finable offence or is subject to more severe punishment under different administrative penal provisions, whosoever

1. fails to comply with its obligation to notify inside information pursuant to section 10a;
2. fails to submit data as ordered by an ordinance pursuant to section 25a para. 2 *Energie-Control-Gesetz* (E-Control Act);
3. fails to comply with its information and cooperation obligation pursuant to section 25a para. 3 E-Control Act;

shall be deemed to have committed an administrative offence and shall be fined up to 10,000 EUR.

#### **Failure to Pass on Tax Reductions**

**Section 100.** Whosoever contravenes section 94 or, whilst reducing prices in accordance with section 94, evades the effect of a reduction in levies, taxes or customs duties by raising prices without this being caused by a corresponding increase in costs, thus rendering completely or partially ineffective the aforementioned reduction, shall be deemed to have committed an administrative offence and shall be fined up to 50,000 EUR.

#### **Operation Without Certification**

**Section 101.** Whosoever does not apply for certification as transmission system operator pursuant to section 34 para. 3 item 1 or section 35 or operates a transmission system without being certified after such certification application has been finally rejected shall be deemed to have committed an administrative offence and shall be fined up to 150,000 EUR.

#### **Profiteering**

**Section 102.** (1) Unless an act constitutes a criminal offence subject to the jurisdiction of a court or is subject to more severe punishment under different administrative penal provisions, whosoever names,



demands, accepts, or accepts a promise of an amount higher than the maximum or fixed rate or charge determined by the regulatory authority pursuant to this Federal Act or an amount lower than the minimum or fixed rate or charge determined by the regulatory authority pursuant to this Federal Act for a system service shall be deemed to have committed an administrative offence and shall be fined up to 100,000 EUR.

(2) The illicitly charged excess amount shall be declared forfeited.

### **Special Provisions for Administrative Penal Proceedings**

**Section 103.** (1) The limitation period (section 31 para. 2 *Verwaltungsstrafgesetz* [Administrative Penal Act]) for administrative offences pursuant to sections 99 through 102 shall be one year.

(2) Attempts are punishable by law. Any pecuniary advantage generated shall be declared forfeited.

## **Part 3**

### **Fines**

#### **Discrimination and Other Finable Offences**

**Section 104.** (1) Upon application of the regulatory authority, the *Kartellgericht* (Cartel Court) shall issue rulings in proceedings, with the exception of non-contentious proceedings, imposing fines of up to 10% of the annual turnover in the previous business year on a system operator which discriminates, intentionally or negligently, according to section 9.

(2) Upon application of the regulatory authority, the Cartel Court shall issue rulings in proceedings, with the exception of non-contentious proceedings, imposing fines of up to 5% of the annual turnover in the previous business year on a system operator which

1. interferes with the compliance officer performing his or her duties;
2. refuses access for reasons of potential future restrictions of the available system capacity, where this does not reflect the actual situation;
3. fails to comply with the information and reporting obligations imposed upon it by Regulation (EC) No 714/2009;
4. fails to comply with the decisions of the regulatory authority taken pursuant to Regulation (EC) No 714/2009;
5. fails to comply with its obligations arising from the guidelines in the Annex to Regulation (EC) No 714/2009.

(3) The regulatory authority shall be deemed a party to proceedings pursuant to paras 1 and 2 above.

#### **Related Undertakings and Legal Successors**

**Section 105.** (1) Concerning the finable offences of section 104 paras 1 and 2, not only the system operator but also any undertakings that entrust the system operator with implementation or otherwise contribute to implementation shall be deemed to have committed these offences.

(2) Regarding legal succession, section 10 *Verbandsverantwortlichkeitsgesetz* (Corporate Liability Act) applies *mutatis mutandis*.

#### **Assessment**

**Section 106.** (1) Where the offending system operator is part of a vertically integrated electricity undertaking, the fine shall be calculated based on the annual turnover of the vertically integrated electricity undertaking.

(2) In determining the fine, particular account shall be taken of the severity and duration of the violation of the law, the enrichment resulting from it, the degree of fault, the economic capability and the contribution to clarifying the violation.

#### **Limitation of Actions**

**Section 107.** Fines may only be imposed upon applications submitted no later than five years after the violation of the law has stopped.

## Part 4

### Offences Punishable by Court

#### Unlawful Disclosure or Utilisation of Data

**Section 108.** (1) Whosoever unlawfully discloses or utilises data, contrary to the provisions of section 11, section 48 para. 2, section 76 para. 4 or section 84, the disclosure or utilisation of which may interfere with the legitimate interests of the party concerned shall be punished by court with imprisonment of up to one year.

(2) The trial shall be held behind closed doors ex officio or upon application if this is deemed necessary in the interest of the parties to the proceedings or any persons who are not parties to the proceedings.

#### Abuse of Inside Information

**Section 108a.** (1) Persons as defined in Article 3(2)(a) to (d) of Regulation (EU) No 1227/2011, i.e.

1. members of the administrative, management or supervisory bodies of an undertaking;
2. persons with holdings in the capital of an undertaking;
3. persons with access to information through the exercise of their employment, profession or duties;
4. persons who have acquired such information through criminal activity;

who use inside information as defined in Article 2(1) of Regulation (EU) No 1227/2011 in relation to wholesale electricity products as defined in Article 2(4) of Regulation (EU) No 1227/2011 with the intent of generating a pecuniary advantage for themselves or a third party by

- a. using that information by acquiring or disposing of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;
- b. disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties; or
- c. recommending to or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which such information relates;

shall be punished by court with imprisonment of up to three years.

(2) Insiders pursuant to para. 1 items 1 to 4 who possess inside information as defined in Article 2(1) of Regulation (EU) No 1227/2011 in relation to wholesale electricity products as defined in Article 2(4) of Regulation (EU) No 1227/2011 and use such information as indicated in para. 1 above, while without intending to generate a pecuniary advantage for themselves or a third party, shall be punished by court with imprisonment of up to six months or to payment of a fine of up to 360 daily rates.

(3) Actions as described in paras 1 and 2 shall not be punishable by law if

1. they concern transmission system operators as defined by Article 3(3) of Regulation (EU) No 1227/2011 when procuring electricity in order to ensure the safe and secure operation of the system; or
2. they concern the market participants listed in Article 3(4)(a) to (c) of Regulation (EU) No 1227/2011 when exercising activities described therein.

(4) Jurisdiction for carrying out the main proceedings on abuse of inside information shall lie with the *Landesgericht für Strafsachen Wien* (Vienna district court for criminal proceedings). This shall also apply to proceedings that concern actions which at the same time constitute abuse of inside information and another criminal offence.

#### The following provision classifies as a

constitutional provision (para. 1)

## Title 15

### Transitional and Final Provisions

#### Entry into Force and Repeal of Federal Legislation

**Section 109.** (1) (constitutional provision) Section 1, section 21 para. 2, section 23 para. 9, section 41, section 47, section 86 para. 5, section 87 para. 4, section 88 para. 8, section 97, section 109 para. 1, section 113 para. 2 and section 114 para. 2 shall enter into force on 3 March 2011; section 12 para. 3, section 20 para. 2, section 22 para. 2 item 5a, section 22a para. 5, section 24, section 31, section 46 para. 5, section 47 para. 4, section 61, section 66b, section 70 para. 2 and section 71 paras 3 and 9 to 11 of the *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act), Federal Law Gazette (FLG) I no 143/1999 (*note: correctly: FLG I no 143/1998*), as amended by FLG I no 112/2008, shall be repealed as of the same day.

(2) Unless otherwise provided in para. 3 below, the provisions of directly applicable federal law of this Federal Act shall enter into force on 3 March 2011; the provisions of directly applicable federal law of the Electricity Act, FLG I no 143/1999 (*note: correctly: FLG I no 143/1998*), as amended by FLG I no 112/2008, with the exception of section 68a para. 6 and section 69, shall be repealed as of the same day.

(3) Section 112 para. 1 shall enter into force on the day following promulgation. Section 35 shall come into force on 3 March 2013. Section 59 para. 6 item 6 shall come into force on 1 January 2013.

(4) Section 2 items 5 and 6, section 10a, section 99 para. 1 items 7 to 16, section 99 paras 4 and 5, and section 108a as amended by the Federal Act in Federal Law Gazette I no 174/2013 shall enter into force on the first day of the month following promulgation. Section 48 para. 2, section 50 para. 4 and section 89 para. 2 as amended by the Federal Act in Federal Law Gazette I no 174/2013 shall come into force on 1 January 2014.

#### Entry into Force of Framework Provisions and Implementing Legislation

**Section 110.** (1) The provisions of this Federal Act designated as framework provisions shall enter into force on 3 March 2011; the provisions of the *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act), Federal Law Gazette (FLG) I no 143/1999 (*note: correctly: FLG I no 143/1998*), as amended by FLG I no 112/2008, with the exception of section 68a paras 1 to 3, shall be repealed as of the same day.

(2) The implementing legislation of the federal provinces shall be issued within six months from the day following promulgation.

(3) Section 23 para. 7 and section 90 as amended by the Federal Act in Federal Law Gazette I no 174/2013 shall come into force on 1 January 2014.

#### Transitional Provisions

**Section 111.** (1) The ordinances issued pursuant to the *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act), Federal Law Gazette (FLG) I no 143/1998, prior to the entry into force of this Federal Act shall remain in force until the respective matters have been newly regulated by ordinances pursuant to this Federal Act. Should this Federal Act be amended, ordinances issued pursuant to stipulations in this Federal Act shall remain in force.

(2) Proceedings concerning administrative offences committed prior to the entry into force of this Federal Act shall continue to be subject to the provisions of the Electricity Act, FLG I no 143/1998, as amended at the time of the offence.

(3) Pumped-storage power plants and facilities for transforming electricity into hydrogen or synthetic gas which are commissioned between this provision coming into force and the end of the year 2020 are exempt from paying system utilisation charges and charges for system losses for their electricity consumption until the end of the year 2020.

#### Transitional Provisions for Unbundling and Network Development Plans

**Section 112.** (1) Restructuring to be performed in connection with unbundling through any type of conversion to another legal form shall be done by way of universal succession; this applies, without limitation, to capital contribution. Such conversion processes are exempt from any and all taxes, charges and fees which are regulated under federal law and which are linked to formation or property transfer. Such exemption also applies to legal relationships founded for the occasion of restructuring, including,

without limitation, tenancy agreements, servitudes or loan agreements. Conversion processes shall be deemed to be non-taxable turnover within the meaning of the *Umsatzsteuergesetz* (Turnover Tax Act) 1994, Federal Law Gazette (FLG) no 663/1994, as amended; with regard to turnover tax matters, the transferee shall directly assume the legal status of the transferor. In other respects, the provisions of the *Umgründungssteuergesetz* (Conversion Taxation Act), FLG no 699/1991, as amended, apply, subject to the proviso that the Conversion Taxation Act be applicable also if there is no partial operation within the meaning of the Conversion Taxation Act. Implementing legislation pursuant to section 22 or section 42 shall not exclude the continuation or formation of an integrated inter-company relationship as defined in section 2 of the Turnover Tax Act and section 9 of the *Körperschaftsteuergesetz* (Corporation Income Tax Act).

(2) Transmission system operators shall achieve compliance with the provisions of sections 24 through 34 by 3 March 2012.

(3) The network development plan pursuant to section 37 shall be submitted for approval for the first time six months after entry into force of this Federal Act.

**The following provision classifies as a**

constitutional provision (para. 2)

**Final Provisions**

**Section 113.** (1) The provisions of this Federal Act shall be without prejudice to any agreements under private law involving the purchase, the supply and the exchange or the transport of electricity provided that they are compatible with Union law.

(2) (**constitutional provision**) The provisions of this Federal Act shall be without prejudice to the *Landesvertrag* (Provinces Agreement) of 1926 as amended in 1940 and to the *Tiroler Landesvertrag* (Province of Tyrol Agreement) of 1949, including its supplement of 1962, to the *Illwerkevertragswerk* (Illwerke Agreement) of 1952 and to the *Illwerkevertragswerk* (Illwerke Agreement) of 1988.

(3) If capacity on a high-voltage line that crosses the national border with a third country is allocated via a market-based mechanism, electricity supplies that have the sole purpose of fulfilling obligations under international law towards the relevant third country that existed prior to the entry into force of this Act shall be exempt from the capacity allocation procedure provided that they do not exceed 10% of the technically available capacity of the line.

**The following provision classifies as a**

constitutional provision (para. 2)

**Execution**

**Section 114.** (1) The Federal Minister of Economy, Family and Youth shall be responsible for exercising the rights of the federal government pursuant to article 15 para. 8 *Bundesverfassungsgesetz* (Federal Constitutional Act) with regard to the framework provisions contained in this Federal Act.

(2) (**constitutional provision**) The responsibility for executing section 1, section 21 para. 2, section 23 para. 9, section 41, section 47, section 86 para. 5, section 87 para. 4, section 109 para. 1, section 113 para. 2 and section 114 para. 2 shall lie with the federal government.

(3) The responsibility for executing the provisions of directly applicable federal law shall lie with:

1. the Federal Minister of Justice regarding section 22 paras 2 and 3, as well as sections 104 through 108;
2. the Federal Minister of Finance regarding section 112 para. 1;
3. the Federal Minister of Economy, Family and Youth regarding the remaining parts of this Federal Act.

**Annex I**

**(regarding section 64 para. 1 item 2)**

The companies referred to in section 64 para. 1 item 2 are:

1. BEWAG Netz GmbH for the federal province of Burgenland;
2. KELAG Netz GmbH for the federal province of Carinthia;
3. EVN Netz GmbH for the federal province of Lower Austria;
4. Salzburg Netz GmbH for the federal province of Salzburg;
5. Stromnetz Steiermark GmbH for the federal province of Styria;
6. TIWAG-Netz AG for the federal province of Tyrol;
7. VKW-Netz AG for the federal province of Vorarlberg; and
8. WIEN ENERGIE Stromnetz GmbH for the federal province of Vienna.

## Annex II

(regarding section 4 item 3 and section 71 para. 1)

### **Cogeneration technologies within the meaning of section 4 item 3 *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act)**

- a) Combined cycle gas turbine with heat recovery;
- b) steam backpressure turbine;
- c) steam condensing extraction turbine;
- d) gas turbine with heat recovery;
- e) internal combustion engine;
- f) microturbines;
- g) Stirling engines;
- h) fuel cells;
- i) steam engines;
- j) organic Rankine cycles;
- k) any other type of technology or combination thereof falling under the definition laid down in section 7 para. 1 item 36.

## Annex III

(regarding section 71)

### **Calculation of electricity from cogeneration**

Values used for calculation of electricity from cogeneration shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use. For micro-cogeneration units the calculation may be based on certified values.

- a) Electricity production from cogeneration shall be considered equal to total annual electricity production of the unit measured at the outlet of the main generators:
  - i) in cogeneration units of the types listed in Annex II points b and d to h with an annual overall efficiency set by the regulatory authority at a level of at least 75%; and
  - ii) in cogeneration units of the types listed in Annex II points a and c with an annual overall efficiency set by the regulatory authority at a level of at least 80%.
- b) In cogeneration units with an annual overall efficiency below the value referred to in (a)(i) (cogeneration units of type b and d to h referred to in Annex II) or with an annual overall efficiency below the value referred to in (a)(ii) (cogeneration units of type a and c referred to in Annex II) cogeneration is calculated according to the following formula:

$$E_{\text{CHP}} = H_{\text{CHP}} * C$$

where:

- $E_{\text{CHP}}$  is the amount of electricity from cogeneration
- $C$  is the power to heat ratio
- $H_{\text{CHP}}$  is the amount of useful heat from cogeneration (calculated for this purpose as total heat production minus any heat produced in separate boilers or by live steam extraction from the steam generator before the turbine)

The calculation of electricity from cogeneration must be based on the actual power to heat ratio. If the actual power to heat ratio of a cogeneration unit is not known, the following default values may be used, notably for statistical purposes, for units of type a through e referred to in Annex II provided that the calculated cogeneration electricity is less or equal to total electricity production of the unit:

Type of unit	Default power to heat ratio, C
Combined cycle gas turbine with heat recovery	0.95
Steam backpressure turbine	0.45
Steam condensing extraction turbine	0.45
Gas turbine with heat recovery	0.55
Internal combustion engine	0.75

If default values are introduced for power to heat ratios for units of the types f to k referred to in Annex II, such default values shall be published and shall be notified to the European Commission.

- c) If a share of the energy content of the fuel input to the cogeneration process is recovered in chemicals and recycled this share can be subtracted from the fuel input before calculating the overall efficiency used in points a and b.
- d) The power to heat ratio may be determined as the ratio between electricity and useful heat when operating in cogeneration mode at a lower capacity using operational data of the specific unit.
- e) Reporting periods other than one year may be used for the purpose of the calculations according to points a and b.

#### **Annex IV**

#### **(regarding section 71)**

#### **Methodology for determining the efficiency of the cogeneration process**

Values used for calculation of efficiency of cogeneration and primary energy savings shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use.

- a) High-efficiency cogeneration
  - For the purpose of this Act high-efficiency cogeneration shall fulfil the following criteria:
  - cogeneration production from cogeneration units shall provide primary energy savings calculated according to point b of at least 10% compared with the references for separate production of heat and electricity,
  - production from small scale and micro cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.
- b) Calculation of primary energy savings
  - The amount of primary energy savings provided by cogeneration production defined in accordance with Annex III shall be calculated on the basis of the following formula:

$$PES = \left( 1 - \frac{1}{\frac{CHP H\eta}{Ref H\eta} + \frac{CHP E\eta}{Ref E\eta}} \right) \times 100\%$$

- PES is primary energy savings.
- CHP H $\eta$  is the heat efficiency of the cogeneration production defined as annual useful heat output divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration.
- Ref H $\eta$  is the efficiency reference value for separate heat production.

- CHP  $E_{\eta}$  is the electrical efficiency of the cogeneration production defined as annual electricity from cogeneration divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration. Where a cogeneration unit generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with section 72.
  - Ref  $E_{\eta}$  is the efficiency reference value for separate electricity production.
- c) Calculations of energy savings using alternative calculation according to Article 12(2) of Directive 2004/8/EC
- If primary energy savings for a process are calculated in accordance with Article 12(2) of Directive 2004/8/EC the primary energy savings shall be calculated using the formula in point b of this Annex replacing “CHP  $H_{\eta}$ ” with “ $H_{\eta}$ ” and “CHP  $E_{\eta}$ ” with “ $E_{\eta}$ ”.
  - $H_{\eta}$  shall mean the heat efficiency of the process, defined as the annual heat output divided by the fuel input used to produce the sum of heat output and electricity output.
  - $E_{\eta}$  shall mean the electricity efficiency of the process, defined as the annual electricity output divided by the fuel input used to produce the sum of heat output and electricity output. Where a cogeneration unit generates mechanical energy the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with section 72.
- d) Reporting periods other than one year may be used for the purpose of the calculations according to points b and c.
- e) For micro-cogeneration units the calculation of primary energy savings may be based on certified data.
- f) Efficiency reference values for separate production of heat and electricity
- The principles for defining the efficiency reference values for separate production of heat and electricity referred to in section 71 and in the formula set out in point b of this Annex shall establish the operating efficiency of the separate heat and electricity production that cogeneration is intended to substitute.
- The efficiency reference values shall be calculated according to the following principles:
1. For cogeneration units as defined in Article 3, the comparison with separate electricity production shall be based on the principle that the same fuel categories are compared.
  2. Each cogeneration unit shall be compared with the best available and economically justifiable technology for separate production of heat and electricity on the market in the year of construction of the cogeneration unit.
  3. The efficiency reference values for cogeneration units older than 10 years shall be fixed on the basis of the reference values of units of 10 years of age.
  4. The efficiency reference values for separate electricity production and heat production shall reflect the climatic differences between member states.