

Overall legal text of the *Ökostromgesetz* (Green Electricity Act) 2012 as amended on 08/01/2013

Full title

Bundesgesetz über die Förderung der Elektrizitätserzeugung aus erneuerbaren Energieträgern (Federal Act on Supporting Electricity Produced from Renewable Energy Sources) (*Ökostromgesetz* [Green Electricity Act] 2012)

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Amendments

FLG I no 11/2012 (promulgation of effective date)

Preamble/Promulgation Clause

The National Council has resolved:

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The following provision classifies as a

constitutional provision

Takes effect on the first day of the quarter following a period of four months having expired after approval or non-prohibition by the European Commission pursuant to Article 108(3) TFEU (cf. section 57 para. 1).

Text

Title 1

General Provisions

Constitutional Provision

Section 1. (constitutional provision) The issuing, repealing and executing of rules such as those contained in this Federal Act lies with the federal government even with regard to matters for which the *Bundesverfassungsgesetz* (Federal Constitutional Act) provides otherwise. Matters regulated in these provisions may be discharged directly by the bodies named in this Federal Act.

Scope of Application

Section 2. (1) This Federal Act regulates

1. guarantees of origin for certifying that electricity has been produced from renewable energy sources;
2. guarantees of origin for green electricity and the recognition of guarantees of origin issued in other EU member states, states party to the EEA Agreement or third countries;
3. the preconditions for and regime of support for electricity generation from renewable energy sources;
4. the financing mechanism for the expenses incurred in supporting electricity produced from renewable energy sources.

(2) In particular, the following types of support are foreseen:

1. green electricity, insofar as the green power settlement agent is obligated to purchase it (purchasing obligation), is supported by way of fixed rates;
2. the construction or rehabilitation of certain types of plants is supported by way of investment aid;
3. green power plants generating electricity from liquid biomass or biogas are supported by way of operation mark-ups.

Transposition of Union Law

Section 3. This Federal Act transposes:

1. Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140/16, 05.06.2009;
2. Directive 2009/72/EC concerning common rules for the internal market in electricity, OJ L 211/55, 14.08.2009;
3. Directive 2006/32/EC on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC, OJ L 114/64, 27.04.2006, as amended by Regulation (EC) No 1137/2008, OJ L 311/1, 21.11.2008.

Objectives

Section 4. (1) In the interest of climate and environmental protection as well as security of supply the objectives of this Federal Act are:

1. to promote the generation of green electricity in plants in Austria in line with the principles of European Union law;
2. to reach at least the shares of electricity produced from renewable energy sources stipulated in paras 2 through 4;
3. to ensure that green electricity production is energy efficient;
4. to make efficient use of the support funds for renewable energy;
5. to make the commercial maturity of green electricity generation technologies a technological policy objective, while bearing in mind European policies on renewables technologies in general and those contained in the Strategic Energy Technology (SET) plan in particular;
6. to ensure a secure investment climate for existing and future plants;
7. to eliminate Austria's dependence on nuclear energy imports from the energy balance by 2015.

(2) The construction and expansion of plants shall be supported to such an extent that stations which receive support (either because of a purchasing obligation by the green power settlement agent or because they are eligible for investment aid) account for 15% of the electricity supplied to consumers from public grids by 2015. The electricity produced from newly constructed small and medium-scale hydropower plants, as well as the additional production achieved through optimization and expansion of existing small-scale hydropower plants since the *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002, entered into force, shall be counted towards this target, with the exception of electricity produced in newly constructed or expanded hydropower plants with a maximum capacity of more than 20 MW, which shall not be included.

(3) To increase the amounts of electricity produced from renewable energy sources there shall be efforts for the quantitatively effective construction of the following capacity between 2010 and 2015: plus

700 MW in hydropower (with additional green electricity output of 3,500 GWh in a normal year, including the effects of rehabilitation measures and expansions of existing installations), of which 350 MW in small and medium-scale hydropower plants (with additional green electricity output of 1,750 GWh in a normal year); plus 700 MW in wind power (with additional green electricity output of 1,500 GWh in an average year); plus 500 MW in PV (with additional green electricity output of approximately 500 GWh in an average year); and, if there is demonstrable fuel and feedstock availability, plus 100 MW in biomass or biogas (with additional green electricity output of 600 GWh in an average year).

(4) The following expansion targets apply for the period from 2010 to 2020:

1. Hydro: 1000 MW (corresponding to additional green electricity output of approximately 4 TWh in an average year), subject to the availability of sites;
2. Wind: 2000 MW (corresponding to additional green electricity output of approximately 4 TWh in an average year), subject to the availability of sites;
3. Biomass and biogas: 200 MW (corresponding to additional green electricity output of approximately 1.3 TWh in an average year), subject to the demonstrable availability of fuel and feedstock;
4. PV: 1200 MW (corresponding to additional green electricity output of approximately 1.2 TWh).

(5) In accordance with section 51 para. 1, E-Control shall biennially monitor the degree to which the targets laid down in paras 1 through 4 above have been attained. Should the targets be achieved ahead of schedule, the Minister of Economy, Family and Youth shall initiate a government bill to raise them.

Definitions

Section 5. (1) For the purposes of this Federal Act, the term:

1. “wastes with high biogenic shares” means the types of waste listed in Annex 1, as defined by the corresponding 5-digit code in accordance with Annex 5 of the waste catalogue in the *Abfallverzeichnisverordnung* (Waste Catalogue Ordinance), FLG II no 570/2003, as amended by FLG II no 89/2005; the biodegradable fraction of wastes listed in Annex 1 shall be treated separately for the purpose of determining the tariff to be applied; the biodegradable fraction of wastes not listed in Annex 1 shall not be deemed biomass for the purpose of this Federal Act;
2. “black liquor” means the spent liquor from the digestion of wood into paper pulp;
3. “transfer price” means the price at which electricity traders must purchase the green electricity assigned to them by the green power settlement agent;
4. “old plant” means a green power plant accredited as such before this Federal Act comes into force;
5. “plant” means a power plant whose output is at least partly renewable electricity and that is accredited as green power plant, co-firing plant or hybrid plant; installations which serve the purpose of green electricity production and are technically and functionally linked shall be deemed to be one plant, even if they are operated by various persons;
6. “biogas” means the flammable gas that is the result of the fermentation of biomass in biogas plants and that is used to produce energy; gas withdrawn from a pipeline system shall be considered biogas if it is equal in volume (in terms of the equivalent of heat) to gas produced from biomass that was fed into the grid at another point within the scope of this Act;
7. “biomass” means the biodegradable fraction of agricultural products or residues of biological origin (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of wastes as defined in item 1 above; the biodegradable fraction of wastes not listed in Annex 1 shall not be deemed biomass for the purpose of this Federal Act;
8. “fuel efficiency” means the sum of electricity output and heat output used, divided by the energy content of the energy carrier used, calculated for a calendar year;
9. “own demand” means the amount of energy needed to operate a plant;
10. “own use” means the electricity generated at a plant which is not fed into the public grid;
11. “FIT budget” means the total forecast expenses incurred by the green power settlement agent in purchasing green electricity at the prices set by law or ordinance during the entire default and extended period covered by the purchasing obligation; this does not include the prorated

- operational costs of the green power settlement agent or the latter's expenses incurred in purchasing green electricity at market prices, subtracting balancing energy;
12. “maximum capacity” means the greatest possible continuous electricity output of a station, including all machine sets, as limited by the lowest-output component;
 13. “renewable energy sources” means renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, wastes with high biogenic shares, landfill gas, sewage treatment plant gas and biogases), including animal meal, black liquor and sewage sludge;
 14. “fine dust” means particles that can pass a size-selecting air intake opening with a separating efficiency of 50% for an aerodynamic diameter of 10 µm;
 15. “guarantee of origin” means a certificate that confirms the energy source which electrical energy fed into the public grid or supplied to third parties was produced from;
 16. “hybrid plant” means a plant that combines several technologies to generate electricity from one or several primary energy sources, at least one of which is renewable;
 17. “small-scale hydropower plant” means an accredited plant using hydropower as its renewable energy source and having a maximum capacity of 10 MW or less;
 18. “co-firing plant” means a thermal plant where not only renewable energy sources but also non-renewable ones are used as fuels, and where the latter exceeds the extent technically necessary to operate the plant;
 19. “medium-scale hydropower plant” means an accredited plant using hydropower as its renewable energy source and having a maximum capacity of more than 10 MW but not exceeding 20 MW;
 20. “new plant” means a green power plant accredited as such after this Federal Act comes into force;
 21. “public grid” means a licensed distribution or transmission system which serves to supply electricity to third parties and access to which must be granted;
 22. “green electricity”, aka “green power”, means electricity from renewable energy sources;
 23. “green power plant” means a plant that produces electricity solely from renewable energy sources and that is accredited as such;
 24. “renewables contribution” means the contribution payable by all consumers connected to the public grid pursuant to section 48, which serves to cover the additional expenses incurred by the green power settlement agent in accordance with section 42 less the flat-rate renewables charge;
 25. “flat-rate renewables charge” means the charge in euro per metering point payable by all consumers connected to the public grid with the exception of those comprised under section 46, which serves to cover the expenses pursuant to the *KWK-Gesetz* (CHP Act), the investment aid pursuant to the present Federal Act and the prorated additional expenses of the green power settlement agent pursuant to section 42;
 26. “mean energy capability” means the electricity output of hydropower plants during a normal year that results from the annual discharge and the technical conditions (actual average output during the last three operative years);
 - 26a. “rehabilitation” means investment in small-scale hydropower plants that increases their maximum capacity or energy capability by at least 15%. For an investment to qualify as rehabilitation, at least two of the major parts of a plant which already existed before starting rehabilitation works, such as the turbine, setting basin, penstock, channel, power house or dam/weir, must continue to be used;
 27. “state of the art” means the state of tried and tested advanced processes, facilities and operating methods based on the relevant academic findings. Determination of the state of the art shall primarily rely on comparable processes, facilities and operating methods which are best suited to achieve the objectives specified in section 4 paras 2 through 4;
 28. “electricity produced from renewable energy sources” means electricity generated in green power plants, as well as the share of electricity generated in hybrid or co-firing plants that corresponds to the share of renewable energy sources in their fuel mix; electricity that results from the pumping and generation process at pumped-storage plants does not qualify as electricity produced from renewable energy sources;

29. “annual support funds” means the total annual amount of money collected from allocating guarantees of origin pursuant to section 10 para. 8, the flat-rate renewables charge pursuant to item 25 and the renewables contribution pursuant to item 24;
30. “full-load hours” means a green power plant's expected annual green electricity output divided by its maximum capacity;
31. “animal manure” means any solid or liquid animal excrements. Animal manure may contain small amounts of other substances which cannot be separated from the excrements without considerable economic effort;
32. “additional annual support funds” means that part of the annual support funds available in a calendar year for the green power settlement agent to conclude new contracts for green power with operators of green power plants;
33. “metering point” means a point with a unique alphanumeric designation at which electrical quantities are registered and which serves for a system operator to assign any readings relevant for billing.

(2) In addition to the above, the definitions in the *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act) 2010, FLG I no 110/2010, and of the CHP Act, FLG I no 111/2008, apply.

(3) Insofar as reference is made in this Federal Act to provisions of other federal acts, such provisions apply as last amended.

(4) 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

Plants

Connection of Plants

Section 6. (6) All plants have the right to be connected to the grid of the system operator in whose concession area they are located.

(2) As part of its competition oversight activities, E-Control shall specifically ensure that system operators treat all applicants equally and transparently. For this purpose, it may request system operators to disclose their procedures for processing applicants' enquiries and applications, for instance how and within which period they respond to enquiries and applications, which criteria are applied in the case of competing system admission applications, and which measures are taken to ensure equal treatment of connection applicants. If the disclosed or actual procedures seem unsuitable to ensure fair competition, E-Control may resort to measures pursuant to section 24 para. 2 *Energie-Control-Gesetz* (E-Control Act), FLG I no 110/2010, as amended by FLG I no 75/2011.

(3) This is without prejudice to the competence of the provincial authorities in grid connection disputes.

Accreditation of Power Plants

Section 7. (1) Upon application by a power plant operator, the provincial governor of the federal province where the plant is located shall, subject to the provisions of sections 7 through 9, accredit the plant:

1. as green power plant if it generates electricity solely from renewable energy sources. It is admissible for green power plants to use non-renewable primary energy sources to such an extent as is necessary for the technical operation of the plant;
2. as co-firing plant if it generates electricity from both renewable and non-renewable energy sources, where the use of the latter exceeds the level that is necessary for the technical operation of the plant;
3. as hybrid plant if it combines several technologies to generate electricity from one or several primary energy sources, at least one of which is renewable.

Where plants pursuant to section 8 para. 3 are concerned, both the electricity generation facility and the biogas production facility need to be accredited.

(2) Plants where less than 3% of the primary energy sources employed during the observation period are renewable shall be refused accreditation under para. 1 items 2 or 3. The observation period shall be at least one calendar year.

(3) Upon application by a power plant operator following efficiency improvements of the plant, the provincial governor shall find whether such improvements have indeed taken place. The increased fuel efficiency that results from the improvement shall be recorded in the accreditation decision.

(4) The provincial governor shall revoke an accreditation decision if the preconditions for accreditation are no longer met, conditions are not complied with or any requested audited documentation is not submitted. The provincial governor shall inform E-Control, the system operator whose grid the plant is connected to and the green power settlement agent without delay about the accreditation decision having been revoked. At the time the green power settlement agent receives notice of such revocation, its purchasing obligation towards the plant ends.

Obligations of Applicants and Plant Operators

Section 8. (1) The following documentation shall be enclosed with applications pursuant to section 7:

1. a document confirming that the plant is operated legally and stating where it is located;
2. information about each primary energy source used and its share in the total amount of fuel used (calorific value);
3. in the case of plants that operate on biomass or biogas (even if only partially so), a fuel/feedstock procurement plan that covers at least the first five years of operation. Fuel/feedstock sourced from own agricultural or forestry production shall also be included in such plan;
4. the technical parameters of the plant, in particular the maximum capacity;
5. the characteristics of the plant, in particular a description of the technology used;
6. the precise designation of the metering point through which the electricity produced is physically fed into a public grid;
7. company name and address of the system operator whose system the plant is connected to;
8. type and amount of investment aid or other support granted.

Applications for the accreditation of plant expansions shall include all documents listed under items 1 through 8 relating to the pre-existing plant unless they were already submitted with the initial application.

(2) Operators of fuel-dependent plants shall continuously log fuel use and provide evidence of the plant's fuel mix once a year. The green power settlement agent may request that an expert opinion about a plant's fuel mix be provided. In addition, operators of co-firing and hybrid plants shall provide evidence once a year that the renewable energy sources used in a calendar year account for at least the percentage defined in section 7 para. 2. Such evidence shall take the form of an evaluation of the records and documentation, and shall be submitted to the provincial governor by 31 March of the following year. The list of expended fuels, which is the basic record needed to provide such evidence, shall be audited by a chartered accountant, an independent civil engineer or a court-certified technical professional or office of professionals from the field of electrical engineering, mechanical engineering, fuel engineering or chemistry. The provincial governor shall review the evidence and, if the legal requirements are met, send it to the green power settlement agent along with a validity confirmation; the latter shall then adjust its payments to the plant in question accordingly (section 18 para. 2).

(3) Operators of plants that produce green electricity from gas from the grid which has been fed into that grid as biogas at another point shall keep continuous records of the volumes taken off. Similarly, operators of biogas production plants that feed biogas into the natural gas grid shall consistently record their injections. The list of expended fuels, which is the basic record needed to provide evidence, shall be audited by a chartered accountant, an independent civil engineer or a court-certified technical professional or office of professionals from the field of electrical engineering, mechanical engineering, fuel engineering or chemistry. The amount of gas fed into the grid shall be evidenced by way of monthly confirmations. Operators of plants under this paragraph with a maximum capacity of more than 1 MW shall send advance daily schedules to the green power settlement agent. The costs for any deviations from such schedules shall be borne by the plant operator. The provincial governor shall review the evidence provided under this paragraph and, if the legal requirements are met, send it to the green power settlement

agent along with a confirmation; the latter shall then adjust its payments to the plant in question accordingly (section 18 para. 2).

(4) Upon request by the green power settlement agent, operators of existing and new plants shall provide any and all information and records necessary for the administration of the support payments.

Information Content of Accreditation Decisions

Section 9. (1) Official decisions pursuant to section 7 shall include at least the following information:

1. the energy sources used;
2. the maximum capacity; in the case of PV stations, also the peak capacity;
3. company name and address of the system operator whose grid the electricity is fed into;
4. the percentage of each individual energy source during one calendar year;
5. the precise designation of the metering point through which the electricity produced is actually and physically fed into a public grid;
6. reference to the documentation to be compiled pursuant to section 8 para. 2;
7. for plants operating on biomass or biogas, and for co-firing plants and hybrid installations, the fuel efficiency; for geothermal plants, the thermal efficiency and information about the heat meter;
8. for plants operating on biomass or biogas, a fuel/feedstock procurement plan that covers at least the first five years of operation;
9. for plants also operating on wastes with high biogenic shares (section 5 para. 1 item 1), the 5-digit code of the types of waste used, in accordance with Annex 5 of the waste catalogue in the *Abfallverzeichnisverordnung* (Waste Catalogue Ordinance), FLG II no 570/2003, as amended by FLG II no 89/2005;
10. for plants operating on solid biomass (even if only partially so), measures taken to reduce fine dust emission;
11. for plants operating on liquid biomass (even if only partially so), a confirmation of compliance with the sustainability criteria for liquid biofuels pursuant to the ordinance in FLG II no 250/2010;
12. for plants also operating on meat and bone meal, black liquor or sewage sludge, the itemised share of each of these primary energy sources in the total fuel used (calorific value);
13. type and amount of investment aid or other support granted.

(2) Any special requirements for evidencing the primary energy sources used shall be recorded in the accreditation decision.

(3) Accreditation decisions concerning plants also operating on wastes with high biogenic shares shall include Annex I to this Federal Act.

Guarantees of Origin for Green Electricity

Section 10. (1) E-Control is appointed as competent body for monitoring that guarantees of origin are correctly issued, transferred and cancelled. An automated database shall be used for this purpose.

(2) Upon a plant operator's request, the system operator to whose grid such accredited plant is connected shall issue guarantees of origin corresponding to the net amounts of electricity fed into the public grid by such plant by registering such amounts in the database. Automated data processing may be used to issue guarantees of origin.

(3) Where electricity production from biogas in the sense of the last part of the sentence in section 5 para. 1 item 6 is concerned, system operators shall also issue guarantees of origin pursuant to para. 1 for the amounts of green electricity produced from gas insofar as it equals the volume of biogas fed in at another point within the scope of this Act.

(4) 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 up to three decimal places.

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

(6) Guarantees of origin pursuant to para. 1 shall include the following information:

1. the amount of electrical energy they refer to;
2. the type and maximum capacity of the generating plant;
3. the period of time and place of generation;
4. the energy sources used;
5. the type and amount of investment aid received;
6. the type and amount of other support granted;
7. the date when the plant was commissioned;
8. the date of issue and a unique ID.

(7) When selling electricity as green electricity to other electricity traders or the green power settlement agent, operators of green power plants and electricity traders shall verifiably surrender the corresponding guarantees of origin (by means of automated data processing) to the buyer upon request.

(8) By derogation from para. 7, the green power settlement agent shall bill electricity traders pursuant to section 37 para. 1 item 3 for the guarantees of origin it has received under its purchasing obligation, applying the prices for guarantees of origin stated in E-Control's annual ordinance under para. 12.

(9) Guarantees of origin pursuant to paras 1 and 2 for accredited plants that are connected to the grid of Vorarlberger Illwerke AG shall be issued by VKW-Netz AG.

(10) Where issuing of guarantees of origin is automated, a certification based on the first clearing shall be produced each month and submitted to the plant operators.

(11) Liability for the accuracy of their statements as to the energy sources used lies with the plant operators.

(12) E-Control shall annually re-determine the price for the guarantees of origin assigned to the electricity traders by the green power settlement agent pursuant to section 37 para. 1 item 3 based on their value and shall issue a corresponding ordinance. A small portion of the guarantees of origin may be auctioned to aid the pricing process.

(13) Guarantees of origin may be issued for electricity from photovoltaic plants with a capacity of up to 5 kW_{peak} even if the plants have not been accredited.

Recognition of Guarantees of Origin from Other Countries

Section 11. (1) Guarantees of origin for green 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 Article 15 of Directive 2009/28/EC.

(2) 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.

(3) E-Control may issue ordinances listing countries where guarantees of origin for green electricity meet the preconditions pursuant to para. 1.

(4) 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.

Title 3

Subsidies to Operation

Chapter 1

General Purchasing Obligation

Obligation to Purchase at Fixed Feed-In Tariffs

Section 12. (1) If the green power settlement agent is offered green electricity from the below-listed types of power plants, it shall, within the limits of the available funds for renewable electricity support, enter into contracts for the procurement of such electricity for a period of time set in accordance with

section 16, at the general terms and conditions approved pursuant to section 39, and in exchange for the feed-in tariffs laid down in the ordinance issued under section 19.

1. Hybrid and co-firing plants, for the share of their energy sources that are renewable energy sources listed under item 2, with the exception of the renewable energy sources listed under para. 2 item 2;
 2. Green power plants operating on:
 - a) wind power;
 - b) solar power;
 - c) solid or liquid biomass, or biogas;
 - d) geothermal energy;
 - e) small hydropower, with maximum capacities up to 2 MW, in line with the stipulations in section 14 para. 7.
- (2) The purchasing obligation pursuant to para. 1 shall not apply:
1. for plants that are not accredited pursuant to section 7;
 2. for plants operating on meat and bone meal, black liquor or sewage sludge;
 3. for PV plants with a capacity of up to 5 kW_{peak};
 4. for plants operating on geothermal energy, biomass or biogas (even if only partially so), if their fuel efficiency or thermal efficiency is below 60% or if they are not equipped with a state-of-the-art heat meter that is used for recording the used heat;
 5. for plants operating on biomass or biogas, if they do not have a fuel/feedstock procurement plan that covers at least the first five years of operation;
 6. for plants operating on liquid biomass, if they do not comply with the sustainability criteria for liquid biofuels pursuant to the ordinance in FLG II no 250/2010;
 7. for plants operating on solid biomass, if no state-of-the-art measures to reduce fine dust emission are in place.

Obligation to Purchase at Market Prices

Section 13. (1) In addition to the purchasing obligation pursuant to section 12, the green power settlement agent shall enter into contracts for the procurement of any green electricity it is offered at the general terms and conditions approved pursuant to section 39 and in exchange for the prices laid down in para. 3. This obligation shall not apply to the following types of plant:

1. plants that are not accredited pursuant to section 7;
2. plants with a valid contract for the procurement and reimbursement of green electricity pursuant to section 12 or section 17, without prejudice to the stipulation in para. 2;
3. hydropower plants with a maximum capacity above 10 MW;
4. plants operating on meat and bone meal, black liquor or sewage sludge;
5. hybrid and co-firing plants, for the share of their energy sources used that are energy sources pursuant to items 3 or 4 or that are not renewable.

(2) Should operators of plants whose output the green power settlement agent is obliged to purchase under section 12 refrain from making use of their right to be reimbursed at feed-in tariffs for at least twelve months, the green power settlement agent shall instead be obliged to purchase the green electricity produced at the prices determined in para. 3.

(3) The price pursuant to para. 1 is the market price published in accordance with section 41 para. 1 minus the green power settlement agent's average balancing energy cost per kWh in the previous calendar year; the latter shall take into account, as far as possible, the cost generated by the different plant types, while at least distinguishing between balancing energy for wind power and balancing energy for all other types of green electricity.

(4) At least three months before a contract for purchasing green electricity for feed-in tariffs from plants under section 12 expires, the green power settlement agent shall offer the relevant operators to continue purchasing their green electricity, albeit at the price pursuant to para. 3. If a green power plant operator accepts such offer, the green power settlement agent shall conclude a corresponding purchase contract.

Special Provisions for the Obligation to Purchase

Section 14. (1) The green power settlement agent's purchasing obligation under sections 12 and 13 only applies if the green electricity output produced in a plant and fed onto the public grid is sold to the green power settlement agent for a period of time no shorter than 12 calendar months.

(2) To formalise the green power settlement agent's obligation, it shall conclude a contract about the procurement of green electricity and the applicable reimbursement with the relevant plant operator at the general terms and conditions approved in accordance with section 39. By virtue of such contract, the plant operator becomes a member of the green power balance group pursuant to section 38.

(3) The green power settlement agent's purchasing obligation pursuant to section 12 applies only to the extent that there are available funds for renewable electricity support. Regarding plants for which a contracting application has been filed, the green power settlement agent's purchasing obligation pursuant to section 12 applies only within the limits of the additional annual support funds available.

(4) Should the additional annual support funds available prove insufficient, the green power settlement agent's purchasing obligation only applies to green electricity from plants already under contract at the time the additional annual support funds are exhausted. Whenever this happens, the green power settlement agent shall immediately inform the Minister of Economy, Family and Youth.

(5) Should the green power settlement agent's funds for renewable electricity support be insufficient to cover existing contracts with plants for the purchase of green electricity, payments shall be prorated accordingly. As soon as the green power settlement agent again disposes of sufficient funds, it shall proceed to pay any outstanding sums resulting from such prorating. The green power settlement agent shall take all measures in its power to secure the necessary funds.

(6) By derogation from para. 3, PV plants with more than 5 kW_{peak} for which a contracting application is filed after this Federal Act comes into force may apply for receiving the grid parity tariff of 18 cent/kWh for 13 years instead of the feed-in tariffs set pursuant to section 18 para. 1. Plants that make use of this option cannot switch to the feed-in tariffs determined pursuant to section 18 para. 1 at a later point in time. In particular, section 18 para. 4 and section 20 para. 3 apply *mutatis mutandis*. Money bound in contracts under this paragraph shall be drawn from the available annual support funds under section 23 para. 3 item 5.

(7) As a matter of supporting the construction and rehabilitation of small hydropower plants with a maximum capacity of up to 2 MW, any such plant for which a contracting application is filed after this Federal Act comes into force but before construction starts may apply for receiving the feed-in tariffs set in the ordinance issued pursuant to section 19 instead of investment aid pursuant to section 26.

Contracting

Section 15. (1) The green power settlement agent shall conclude contracts for purchasing the green electricity generated at plants within the limits of its purchasing obligation.

(2) Applications and offers for contracts for the purchase of green electricity shall comply with the general terms and conditions approved pursuant to section 39. The general terms and conditions may specify that applications and offers need to be filed and processed by means of automated data processing systems.

(3) In addition to any evidence necessary in particular cases, the official decision pursuant to section 7 relating to the plant in question and proof of any permits or notifications necessary for the construction of such plant shall be enclosed with the application. Incomplete applications shall be rejected and shall lose their priority ranking, with the applicant being informed thereof in writing.

(4) Contracting applications under section 12 whose acceptance would result in the available annual support funds being exceeded shall not be accepted. If the available annual support funds would be exceeded by accepting several simultaneously filed applications, lots shall be drawn to decide which applications are accepted.

(5) Contracts for the purchase of green electricity with plant operators that cannot be concluded because the available annual support funds are exhausted as described in para. 4 shall be concluded as soon as this becomes possible, one after the other in accordance with the plants' ranking at the time of application; such contracts shall be based on the tariffs and other general terms and conditions of the green power settlement agent pursuant to section 18 para. 1. In such case, operators may withdraw their applications. In any case, open applications expire at the end of the third year after they are filed.

(6) Contracts for the purchase of green electricity generated at PV plants that are not commissioned within 12 months; at small hydropower plants, fuel- or feedstock-dependent plants or wind power plants not commissioned within 36 months; or at other plants not commissioned within 24 months of the relating application being accepted shall be considered void unless the operators plausibly prove that the grounds for such delay are outside their control. The annual support funds released by such contracts becoming void shall be credited to the annual support funds for the respective plant type in the current calendar year.

(7) For PV plants, applicants shall include a statement on any support received for the entire plant or parts thereof on the basis of the *Klima- und Energiefondsgesetz* (Climate Change and Energy Fund Act), FLG I no 40/2007. By derogation from paras 4 and 5, the green power settlement agent shall reject contract applications of PV plants filed after entry into force of this Federal Act if the annual support funds are exhausted at the time of receiving the application.

Contract Terms

Section 16. (1) The green power settlement agent's purchasing obligation pursuant to section 12 applies for a term of:

1. 15 years for green power plants operating on solid or liquid biomass or biogas;
2. 13 years for all other types of green power plants;

counting from the time of contracting (i.e. from the time the green power settlement agent starts purchasing the green electricity pursuant to section 12), and terminates at the end of the plant's 20th year of operation at the latest.

(2) The green power settlement agent's purchasing obligation pursuant to section 13 is open-ended.

Chapter 2

Extended Purchasing Obligation

Follow-up Tariffs for Fuel- or Feedstock-Dependent Green Power Plants

Section 17. (1) By derogation from section 13, green power plants that operate on solid or liquid biomass or biogas and feed electricity into the public grid enjoy an extended purchasing obligation by the green power settlement agent even after the latter's general purchasing obligation pursuant to section 12 or the support period under the stipulations of the *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002, as amended by FLG I no 104/2009, has expired. The green electricity settlement agent's obligation to conclude contracts for the continued purchase of green electricity only applies subject to the availability of additional annual support funds.

(2) There is no purchasing obligation according to para. 1 for fuel- or feedstock-dependent green power plants which

1. are not accredited pursuant to section 7;
2. operate on meat and bone meal, black liquor or sewage sludge;
3. have a fuel efficiency of less than 60%;
4. do not have a fuel/feedstock procurement plan that covers at least the first five years of operation;
5. operate on solid biomass and do not have state-of-the-art measures to reduce fine dust emission in place;
6. operate on liquid biomass and do not comply with the sustainability criteria for liquid biofuels pursuant to the ordinance in FLG II no 250/2010.

(3) Contracts pursuant to para. 1 can only be concluded once per plant. Sections 14 and 15 apply *mutatis mutandis* to these contracts. The green power settlement agent's purchasing obligation expires 20 years after a plant is commissioned.

(4) The Minister of Economy, Family and Youth may specify follow-up tariffs for green power plants under this section by ordinance, guided by their reasonable operating costs, while without taking into account depreciation or interest for the investment. In addition, the Minister of Economy, Family and Youth shall apply the criteria listed in sections 19 and 20 accordingly when setting follow-up tariffs.

Chapter 3

Feed-in Tariffs

Applicable Tariff

Section 18. (1) The feed-in tariffs for contracting green power produced in plants are those valid at the time of application. Contracted green power plants are paid in accordance with the green electricity volumes they produce and feed into the public grid.

(2) Green electricity from fuel- or feedstock dependent, hybrid or co-firing plants is contracted and paid for according to the percentages specified in their official accreditation decision. If the compiled documentation reveals that the percentages specified in an official accreditation decision were not complied with, the provincial governor shall inform the green electricity settlement agent, which shall then recalculate the actual payment due for the past year and pay the plant operator according to the documentation. Any deviations shall be offset against upcoming payments. Should this be impossible, the provincial governor shall issue an official decision obligating the operator to return any excess revenue. Excess revenue is calculated as the difference between the tariffs set and the market price stated in E-Control's most recent publication pursuant to section 41 para. 1 at the time the green electricity was produced. Any excess revenue shall be paid into the account pursuant to section 50.

(3) If electricity from several plants under differing tariffs is fed into the public grid via only one point of transfer (metering point), it is assumed that the feed-in composition corresponds to the share of each plant's maximum capacity in the total maximum capacity of the jointly connected plants, unless the operator of such plants furnishes explicit proof of the energy's origin, for example by means of down-time records or on-line status reports for individual plants.

(4) If support pursuant to the *Klima- und Energiefondsgesetz* (Climate Change and Energy Fund Act) was obtained for these plants or for the components necessary for the functioning of these plants, this shall be taken into account accordingly in calculating support under this Federal Act. Applicants shall submit relating declarations together with their applications. In addition, the green electricity settlement agent may request appropriate documentary evidence from applicants.

(5) If a green power plant is expanded, the provisions and tariffs for green power plants laid down in this Federal Act apply accordingly to the expanded parts. Operators of expanded plants shall submit applications pursuant to section 15 in particular for the expanded parts of their green power plants. The original provisions and tariffs continue to apply to the original installation, i.e. as prior to the expansion, while the tariffs applicable to a plant with the capacity of the entire expanded plant at the time of filing with the green power settlement agent the application for the expanded parts applies to the expansion.

(6) To find the facts decisive for tariffs and payments, the Minister of Economy, Family and Youth may also and in particular consult experts available to the Ministry of Economy, Family and Youth, and to E-Control.

Ordinances to be Issued under this Federal Act

Section 19. (1) Together with the Minister for Agriculture, Forestry, Environment and Water Management and the Minister for Labour, Social Affairs and Consumer Protection, the Minister of Economy, Family and Youth shall issue an ordinance setting the feed-in tariffs, in terms of EUR/kWh, for green power under the purchasing obligation pursuant to section 12.

(2) The feed-in tariffs contained in the ordinance pursuant to para. 1 above shall be recalculated for each calendar year. If practical, the ordinance pursuant to para. 1 may set tariffs for the next two or more calendar years; in this case, the costs shall be reduced each year in line with each technology's cost development as compared to the previous year. The feed-in tariffs may also be adjusted in the course of a year. Until a new ordinance is issued, the feed-in tariffs for each year are those for the previous year, reduced by 8% for PV plants, 1% for wind power plants and 1% for all other types of green power plants.

Principles for Setting the Feed-in Tariffs

Section 20. (1) In accordance with the goals of this Federal Act, and in particular with a view to efficient deployment of financial resources, the feed-in tariffs shall be so designed as to foster a continuous increase in green power generation, while the intention to increase the production of green power using fuel- or feedstock-dependent technologies is subject to proof of secure fuel and feedstock supplies.

(2) Within the limits stipulated in para. 1, the following principles shall be applied when setting the feed-in tariffs:

1. feed-in tariffs shall respect Union law;
2. feed-in tariffs shall be guided by the average production costs of cost-efficient plants that comply with the state of the art;
3. distinction shall be made between plants whenever they differ in terms of costs or have been granted public financial support;
4. feed-in tariffs shall depend on the various primary energy sources used, with due regard to technical and economic efficiency;
5. feed-in tariffs shall reflect the situation at the most efficient locations and ensure that splitting capacity into several plants does not lead to higher feed-in tariffs;
6. feed-in tariffs may further differentiate between plants according to their maximum capacity, annual output (bands) or other technical parameters. It is also possible to introduce time-based differentiation by day/night and summer/winter within the meaning of section 25 *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act);
7. the ordinance may also specify minimum requirements concerning the technologies used; these minimum requirements shall reflect the state of the art;
8. the ordinance may set a higher fuel efficiency than that in section 12 para. 4 item 4 as an eligibility criterion for feed-in tariffs if this is economically reasonable considering the type of plant, the state of the art and the most efficient use of the primary energy concerned.

(3) For PV plants, the following principles apply in addition those in para. 2 above:

1. feed-in tariffs for PV plants may differentiate between standalone devices and building integrated panels, while support may be restricted to the latter;
2. feed-in tariffs pursuant to para. 1 for PV plants with a maximum capacity of up to 20 kW_{peak} may be set to cover only part of the average production costs of cost efficient plants that comply with the state of the art;
3. the ordinance shall specify a uniform feed-in tariff for PV plants of all sizes, while investment aid and feed-in tariffs may be combined and while account shall be taken of whether the previous year's additional annual support volume was exhausted or not;
4. eligibility for support may be limited to plants up to a certain size, while PV plants with a minimum capacity of more than 500 kW_{peak} may not be supported in any case.

(4) For fuel- or feedstock-dependent plants, the following principles apply in addition those in para. 2 above:

1. feed-in tariffs may not cause biomass to be redirected away from non-energetic uses or cause food or animal feed to be redirected from their original intended purpose;
2. distinction shall be made between waste with high biogenic shares and other types of solid biomass;
3. distinction may be made between different types of biogas plants (depending on their energy sources and substrates), and also between different types of biomass plants (depending on their energy sources or on other special technical specifications);
4. feed-in tariffs for biogas or liquid biomass plants may include fuel or feedstock prices (i.e. expenses related to the energy source) only to the extent that they do not exceed the electricity market revenues, as indicated by the market prices most recently published pursuant to section 41 para. 1; for plants operating on solid biomass, this applies if the capacity for which a contract has been concluded pursuant to section 15 in conjunction with section 12 or in accordance with the *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002, as amended by FLG I no 104/2009, reaches or exceeds 100 MW;
5. to ensure that food and animal feed are not redirected from their original intended purpose, the ordinance may specify that the green power settlement agent's obligation to contract certain types of biogas plant at the set feed-in tariffs applies only if they employ a certain percentage of animal manure for generating green electricity.

(5) Determination of the average production costs shall make reference to the costs of an efficiently managed undertaking which finances a plant under financial market conditions and makes use of other

financing options. Useful life, investment cost, operating cost, adequate return on investment and the amount of electricity produced per year shall be taken into account. When determining these costs, national as well as international experience shall be taken into account.

Chapter 4

Mark-Ups on Feed-in Tariffs

Technology and CHP Mark-Ups

Section 21. (1) For plants under section 12, the feed-in tariffs set in the ordinance issued under section 19 are topped up by 2 cent/kWh (technology mark-up) for green electricity generated from gas pursuant to section 8 para. 3 if

1. the gas fed into the grid has been processed to meet natural gas quality standards;
2. biogas that has been processed to meet natural gas quality standards accounts for at least 50% of the power generation plant's energy sources;
3. the efficiency criteria laid down in section 8 para. 2 *KWK-Gesetz* (CHP Act) are met; and
4. identification of the biogas employed is provided.

The technology mark-up may be granted for a maximum of 15 years after the biogas injection plant is commissioned. The clearing and settlement agent pursuant to the *Gaswirtschaftsgesetz* (Natural Gas Act) shall issue monthly confirmations containing unique identification of the injected biogas for the attention and account of the green power settlement agent. Biogas plant operators shall provide the green power settlement agent with an expert opinion confirming the quality and amount of their biogas injections by 31 March of the following year. Upon request, this deadline may be extended once.

(2) A mark-up of 2 cent/kWh is foreseen for green electricity generated at CHP plants which operate exclusively on biogas or liquid biomass if the relating application for contracting at the tariffs set in the ordinance issued under section 19 was filed after the Federal Act in FLG I no 104/2009 came into force, and if the plants meet the efficiency criterion pursuant to section 8 para. 2 CHP Act, FLG I no 111/2008.

(3) By derogation from para. 2 above, if existing green power plants which operate exclusively on biogas or biomass are expanded, involving expansion costs of at least 12.5% of an entire new investment, they receive a mark-up of 1 cent/kWh on the feed-in tariffs set in the ordinance issued pursuant to section 19 for the entire volume of green electricity they feed in if they meet the efficiency criterion pursuant to section 8 para. 2 CHP Act, FLG I no 111/2008.

Operation Mark-Up

Section 22. (1) Green electricity plants operating on liquid biomass or biogas that were under contract for selling green power to the green power settlement agent for feed-in tariffs on 20 October 2009 receive an operation mark-up if they cannot cover their costs due to operating cost increases since 2006.

(2) Operation mark-ups are paid in cent/kWh for green electricity generated and fed into the public grid during the relevant year. The operation mark-up is 4 cent/kWh unless it is to be reduced in accordance with paras 5 or 6.

(3) Operation mark-ups shall be granted and paid out by the green power settlement agent in addition to the feed-in tariffs if applied for by a green power plant operator. Applications for the operation mark-up shall be submitted to the green electricity settlement agent within three months of this provision coming into force.

(4) Together with the application pursuant to para. 3 above as well as at the end of each calendar year, the operators of green power plants running on biogas or liquid biomass shall present an account of their fuel or feedstock costs and an account of their other operating expenses to the green power settlement agent. The fuel or feedstock accounts shall state:

1. types of raw materials used during the previous year (slurry, precise type of agricultural material such as, for example, raw maize and wheat, green waste or others equally precise) and amounts for each type, indicated in mega joules (MJ) of energy content;
2. supplier of each type of raw material: percentage rate of each type of raw material produced by the green power plant operators themselves, percentage rate of each type of raw material produced by suppliers that are invested in the green power plant, and percentage rate of each type of raw material produced by suppliers that are not invested in the green power plant;

3. the previous year's green electricity output of the green power plant, the green electricity output that received support (feed-in tariffs), and the green power plant's own operating electricity consumption (including any electricity supplied by a third party). Also the current extent and type of heat utilisation shall be indicated, as well as the fuel efficiency calculated from power production and heat utilisation. The possibilities and extent of future heat utilisation shall be stated.

A copy of these accounts shall be sent to E-Control. E-Control may issue more detailed criteria for operating expenses accounts for this purpose.

(5) The green power settlement agent shall make the best efforts to guarantee financing by earmarking the requisite funds. If the available annual support funds are less than what is needed for the operation mark-up, the green electricity settlement agent shall curtail the payments on a pro rata basis. The funds for the operation mark-up correspond to the amounts used for the top-up payment to cover for high fuel/feedstock costs pursuant to section 11a para. 7 *Ökostromgesetz* (Green Electricity Act), FLG I no 143/2002, as amended by the Federal Act in FLG I no 104/2009. This implies that money shall be drawn from the annual support funds only to the extent that the funds available for the fuel/feedstock cost top-up payments in 2009 are exceeded. The operation mark-up is capped at EUR 20 million annually.

(6) The green power settlement agent and E-Control shall continually track the development of operating expenses, and a relating annual statement shall be presented to the Minister of Economy, Family and Youth. If the operating expenses recede to an extent relevant for business activities, the Minister of Economy, Family and Youth shall immediately issue an ordinance to decrease or suspend the operation mark-up. When disbursing the operation mark-up, the green power settlement agent shall point out to green power plant operators that any such drop in operating expenses creates an overfunding situation, in which case a prorated share of the received mark-up must be paid back.

Chapter 5

Annual Support Funds

Section 23. (1) The green power settlement agent may conclude new contracts with plants pursuant to sections 12 ff within the limits of the additional annual support funds only.

(2) The additional annual support funds available for new contracts with green power plants is calculated to be EUR 50 million. This amount decreases by EUR 1 million annually during the first ten years following entry into force.

(3) The additional annual support funds pursuant to para. 2 are allocated as follows:

1. to PV plants: EUR 8 million;
2. to solid and liquid biomass and biogas plants: EUR 10 million, EUR 3 million of which to solid biomass plants with a maximum capacity of up to 500 kW;
3. to wind power: at least EUR 11.5 million;
4. to small hydro: at least EUR 1.5 million; and
5. to the residual items (wind, hydro, PV grid parity): EUR 19 million. This amount decreases by EUR 1 million annually during the first ten years following entry into force.

(4) By derogation from para. 3, the following applies for immediate contracting pursuant to section 56 para. 4 following applications filed pursuant to the *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002:

1. support funds of EUR 80 million are earmarked for immediate contracting of wind power plants pursuant to section 56 para. 4 item 1;
2. support funds of EUR 28 million are earmarked for immediate contracting of PV plants pursuant to section 56 para. 4 item 2.

(5) Contracts pursuant to para. 1 shall be concluded separately for each individual application. The additional annual support funds needed for each of these is calculated by multiplying the plant's green electricity output during a calendar year by the difference between the green power settlement agent's expenses (corresponding to the applicable feed-in tariff, any applicable mark-ups and the prorated expenses pursuant to section 42 para. 4) and the market price in accordance with section 41 para. 3. The annual output used to calculate the additional annual support funds needed is calculated by multiplying

the maximum capacity recorded in the official accreditation notice by the average annual full-load hours for this type of green power plant. These are as follows:

1. biogas plants7000 full-load hours
2. plants operating on solid or liquid biomass.....6000 full-load hours
3. wind power plants2150 full-load hours
4. PV plants.....950 full-load hours
5. small hydro4000 full-load hours
6. other plant types7250 full-load hours

(6) The green electricity settlement agent shall continuously (on a daily basis) log and publish the residual additional annual support funds for each type of plant pursuant to paras 2 and 3. In addition, the green power settlement agent shall publish without delay the deadlines pursuant to section 18 para. 1 that are relevant for determining feed-in tariffs.

(7) Technology and CHP mark-ups pursuant to section 21 and operation mark-ups pursuant to section 22 shall be counted towards the additional annual support funds for the relevant type of plant during the year in which they are first claimed.

(8) Should the additional annual support funds not be exhausted during a calendar year, the residual funds can be used for the relevant plant type during the next calendar year.

Title 4

Support to Plant Construction and Rehabilitation

Chapter 1

Investment Aid

General Provisions

Section 24. (1) Applicants may apply for support to plants pursuant to sections 25 through 27 to be paid out as investment aid. The investment aid settlement agency shall rank and process applications for investment aid according to the first come, first served principle.

(2) Applications for investment aid shall be filed in writing with the investment aid settlement agency before construction or rehabilitation works begin. Assurance that investment aid will be granted may only be given to the extent that a plant is eligible for aid and in line with Union state aid legislation.

(3) Any authorisations or licenses necessary for or relevant to the construction or rehabilitation of a plant shall be attached to the application, along with a summary of the investment costs and an efficiency calculation in accordance with the net present value method. The application shall also be accompanied by a chartered accountant's confirmation relating to the investment cost summary and the efficiency calculation. All further relevant data and documentation that are necessary for evaluating the subject matter shall be attached to the application for investment aid, including in particular documentation specifically evidencing the electricity volumes to be fed into the public grid, the envisaged date of construction or rehabilitation start and the planned date of commissioning.

(4) Feasibility calculations shall state the investment aid necessary to achieve a return on investment of 6%. The support needed shall be derived from the construction and operation expenses on the one hand and from the revenues that can be expected if a plant is managed in an economically prudent way on the other. Calculation of the expected revenues shall be based on the arithmetic average of the last available EEX forward prices (or the most similar reference possible if these figures are no longer available) for the three calendar years following the date of the expert opinion.

(5) Investment aid shall be granted and disbursed within the limits of the available support funds. Any investment aid granted shall respect the caps for support payments set under Union law.

(6) Where the prerequisites are fulfilled, the Minister of Economy, Family and Youth, while considering the recommendation of the Energy Advisory Council, shall confirm that investment aid will be granted. The relating contract is concluded with the settlement agency for investment aid, which signs on behalf of the Minister.

(7) After presentation of the final accounts of the investments made, the feasibility calculation indicating the amount of investment aid needed shall be updated and certified by a chartered account, to

be commissioned by the settlement agency for the account of the applicant, and submitted in writing to the investment aid settlement agency. Any misleading information disqualifies the applicant from receiving investment aid.

(8) Investment aid shall be disbursed by the investment aid settlement agency when the plant has taken up full operation and the submitted final accounts have been audited. The final accounts shall be audited by a chartered accountant to be commissioned by the settlement agency and paid by the applicant. Advance instalments may be paid out upon presentation of securities (e.g. bank guarantees, letters of intent) and the consent of the Energy Advisory Council.

Investment Aid for Plants Operating on Black Liquor

Section 25. (1) Construction of CHP plants that operate on black liquor (residual materials of biogenic origin, resulting from paper pulp or paper production) is eligible for investment aid if the plant:

1. serves to produce process heat;
2. consumes less primary energy and produces less carbon emissions than would be the case if electricity and heat were produced separately; and
3. meets the efficiency criteria laid down in section 8 para. 2 *KWK-Gesetz* (CHP Act).

(2) The support funds to be raised by the green power settlement agent for investment aid shall be limited to EUR 2.5 million annually, for the years from 2009 to 2012.

(3) Within the limits of the support funds available, the investment aid shall cover up to 30% of the investment (excluding the land price) directly needed to construct a plant pursuant to para. 1 and shall be capped at:

1. 300 EUR/kW for plants with a maximum capacity of up to 100 MW;
2. 180 EUR/kW for plants with a maximum capacity between 100 MW and 400 MW;
3. 120 EUR/kW for plants with a maximum capacity of more than 400 MW.

(4) An additional prerequisite for receiving investment aid is adherence to the harmonised efficiency reference values established by the European Commission pursuant to Article 4 of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC, OJ L 52/50, 21.2.2004, last amended by Regulation (EC) No 219/2009, OJ L 87/109, 31.3.2009.

(5) The feasibility calculations shall make reference to actual revenues from heat production and assume a 15-year useful life for the plant.

Investment Aid for Small-Scale Hydropower Plants

Section 26. (1) Newly constructed small hydropower plants are eligible for investment aid. Small hydropower plant rehabilitations are eligible if an investment increases a plant's mean energy capability by at least 15%.

(2) The support funds to be raised for investment aid are capped at EUR 16 million annually. In addition, EUR 20 million shall be made available as a one-off contribution in the year following that of this Federal Act's entry into force; this sum shall be sourced from the *Ökostrompauschale* (flat-rate renewables charge).

(3) For small hydropower plants with a maximum capacity of 500 kW, investment aid shall be capped at 30% of the investment directly required for constructing or rehabilitating the plant (exclusive of the land costs) and shall in no case exceed 1,500 EUR/kW. For small hydropower plants with a maximum capacity of 2 MW, investment aid shall be capped at 20% and shall in no case exceed 1,000 EUR/kW. For small hydropower plants with a maximum capacity of 10 MW, investment aid shall be capped at 10% and shall in no case exceed 400 EUR/kW. For small hydropower plants with a maximum capacity between 500 kW and 2 MW, and between 2 MW and 10 MW, linear interpolation shall be applied to calculate the maximum investment aid both in terms of percent and EUR/kW. Calculation of the maximum investment aid for rehabilitations shall make reference to either the actual increase in maximum capacity or the calculated increase in maximum capacity resulting from increased mean energy capability.

(4) An expert opinion drawn up by an independent expert to be appointed by the provincial governor shall accompany applications for investment aid as proof of the amount invested and the aid needed. Unless otherwise provided, the stipulations of section 24 apply, while assuming that a small hydropower

plant's electro-technical parts have a useful life of 25 years, and all other parts of such plant have a useful life of 50 years.

(5) If a plant does not start operations within three years of the Minister of Economy, Family and Youth having confirmed that investment aid would be granted, the application for investment aid shall be considered withdrawn and the confirmation of investment aid forfeit. The settlement agency for investment aid may extend this deadline once by an additional two years if there are particular extenuating circumstances. As a matter of evidence for the plant's start of operations, the applicant shall present the accreditation decision pursuant to section 7 and a confirmation by the system operator to the settlement agency.

(6) By derogation from section 24, under the below circumstances the burden of proof relating to small hydropower plants may be reduced as follows:

1. The investment aid for plants with a maximum capacity of up to 50 kW shall be EUR 1,500 per additional kW maximum capacity. The only evidence needed in this case is a technical expert's opinion relating to the increase in maximum capacity resulting from the construction or rehabilitation.
2. For plants with a maximum capacity between 50 kW and 100 kW, investment aid shall be capped at 30% of the investment directly required for constructing or rehabilitating the plant (exclusive of the land costs) and shall in no case exceed EUR 1,500 per additional kW maximum capacity. The evidence needed in this case is a technical expert's opinion relating to the increase in maximum capacity resulting from the construction or rehabilitation; as a matter of proof of the investment necessary for constructing or rehabilitating the plant, the applicant shall submit the pertaining invoices to the settlement agency for granting investment aid.
3. For plants with a maximum capacity between 100 kW and 500 kW, investment aid shall be capped at 30% of the investment directly required for constructing or rehabilitating the plant (exclusive of the land costs) and shall in no case exceed EUR 1,500 per additional kW maximum capacity. The evidence needed in this case is a technical expert's opinion relating to the increase in maximum capacity resulting from the construction or rehabilitation; as a matter of proof of the investment, applicants shall submit an opinion drawn up by an expert of their own choice.
4. For plants with a maximum capacity between 500 kW and 2 MW, a simplified process in the sense of item 3 in conjunction with para. 2 in the guidelines pursuant to section 30 may be arranged to ascertain the amount of financial support needed.

Investment Aid for Medium-Sized Hydropower Plants

Section 27. (1) Newly constructed or rehabilitated medium-sized hydropower plants are eligible for investment aid. The last sentence of section 26 para. 3 applies *mutatis mutandis*.

(2) The support funds to be raised for investment aid are capped at a total of EUR 50 million. For this purpose, the green power settlement agency shall transfer up to EUR 7.5 million annually until 2014.

(3) For medium-sized hydropower plants, investment aid shall be capped at 10% of the investment directly required for constructing the plant (exclusive of the land costs) and shall in no case exceed 400 EUR/kW or EUR 6 million per plant.

(4) An expert opinion drawn up by an independent expert to be appointed by the provincial governor shall accompany applications for investment aid as proof of the amount invested and the aid needed. Unless otherwise provided, the stipulations of section 24 apply, while assuming that a medium-sized hydropower plant's electro-technical parts have a useful life of 25 years, and all other parts of such plant have a useful life of 50 years.

(5) If a plant does not start operations within three years of the Minister of Economy, Family and Youth having confirmed that investment aid would be granted, the application for investment aid shall be considered withdrawn and the confirmation of investment aid forfeit. The settlement agency for investment aid may extend this deadline once by an additional two years if there are particular extenuating circumstances. As a matter of evidence for the plant's start of operations, the applicant shall present the accreditation decision pursuant to section 7 and a confirmation by the system operator to the settlement agency.

Chapter 2

Administration of Investment Aid

Advisory Council

Section 28. The energy advisory council (section 20 *Energie-Control-Gesetz* [E-Control Act]) shall counsel the Minister of Economy, Family and Youth in developing the guidelines according to section 30 and in deciding on granting investment aid pursuant to sections 25 through 27 and section 7 *KWK-Gesetz* (CHP Act).

Settlement Agency for Investment Aid

Section 29. (1) The process for granting investment aid pursuant to sections 25 through 27 shall be handled by the settlement agency for investment aid. In accordance with section 13c *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002, the Minister of Economy, Family and Youth has already concluded a contract for the activities of a settlement agency for granting investment aid with the green power settlement agency, OeMAG. After this contract ends, the Minister of Economy, Family and Youth shall again open a tender for discharging the function of a settlement agency entrusted with activities under this Federal Act and select the best offer in accordance with the stipulations of the *Bundesvergabegesetz* (Federal Public Procurement Act) 2006, FLG I no 17/2006, as last amended. The contract requires the consent of the Minister of Finance.

- (2) The contract with the settlement agency for investment aid shall in particular regulate:
1. processing and reviewing applications for investment aid pursuant to the provisions of this Act and the applicable guidance rules;
 2. communicating the processed applications for investment aid to the energy advisory council to enable the latter to advise the Minister of Economy, Family and Youth in investment aid decisions;
 3. concluding contracts with the applicants on behalf of the Minister of Economy, Family and Youth, calculating and disbursing aid, as well as checking compliance with aid requirements;
 4. reclaiming investment aid granted;
 5. preparing and compiling documents for the energy advisory council and executing the decisions of the Minister of Economy, Family and Youth;
 6. submitting an audited annual statement of accounts by 1 May of the following year to the Minister of Economy, Family and Youth;
 7. submitting a business plan for the following year by the end of each business year to the Minister of Economy, Family and Youth;
 8. submitting activity reports to the Minister of Economy, Family and Youth;
 9. the supervisory competences of the Minister of Economy, Family and Youth;
 10. the grounds for terminating the contract;
 11. the choice of jurisdiction.

(3) An adequate level of remuneration for the administration of investment aid shall be determined, with due regard to the costs that arise from the administration of comparable state aid instruments.

(4) The settlement agency shall conduct business with the due diligence expected of prudent business management. Separate accounts shall be kept for the administration of investment aid.

(5) The Minister of Economy, Family and Youth may inspect documents, in particular the applications for investment aid and the documents concerning the related process, at any time.

(6) The settlement agency shall give information about applications for investment aid and the related process to the Minister of Economy, Family and Youth and submit corresponding reports upon request.

(7) For the purpose of auditing the activities of the settlement agency under this Federal Act, the Minister of Economy, Family and Youth shall appoint a chartered accountant not identical with the auditor of annual accounts to be appointed under commercial law. The chartered accountant shall also audit the adequacy of the remuneration to be set every year and the costs. The chartered accountant shall submit the outcome of the audit to the Minister of Economy, Family and Youth without delay.

(8) In accordance with section 45, a portion of the costs associated with the administration of investment aid pursuant to sections 25 through 27 and the *KWK-Gesetz* (CHP Act) for CHP plants and small and medium-scale hydropower plants shall be covered from the funds pursuant to section 45 of this Federal Act.

(9) Should any claims pursuant to this Federal Act be filed with the courts, the settlement agency, acting on behalf of the Minister of Economy, Family and Youth, shall be represented by the Office of the Federal Attorney for Finance pursuant to the provisions of the *Prokuraturgesetz* (Federal Attorney Act), FLG no 172/1945.

Guidelines for Granting Investment Aid

Section 30. (1) The Minister of Economy, Family and Youth shall issue guidelines on granting investment aid.

(2) The guidelines shall specifically include provisions about:

1. the object of investment aid;
2. the investment cost eligible, while specifically excluding cost relating to investments which:
 - a) serve other purposes in addition to being used for generating energy (dual use); or
 - b) receive aid from other federal or provincial programmes;such cost shall be excluded if this is conducive to efficient aid administration or compliance with Union law;
3. personal and factual requirements for eligibility;
4. proof of expediency of the project in energy economic terms;
5. the contract award procedures adopted by the beneficiary of investment aid, if necessary;
6. extent and type of investment aid;
7. the procedure to be followed for:
 - a) applications (nature, contents and documents required);
 - b) the mode of disbursement;
 - c) reporting (right of control);
 - d) suspension and reclaiming of investment aid granted;
8. the choice of jurisdiction.

(3) In issuing such guidelines, the Minister of Economy, Family and Youth shall seek agreement with the Minister of Finance and the Minister of Agriculture, Forestry, Environment and Water Management. The guidelines shall be promulgated in the official journal supplementing the *Wiener Zeitung*. In lieu of this promulgation, an announcement may be placed in the official journal supplementing the *Wiener Zeitung* indicating that the guidelines have been issued, and specifying the place where they can be inspected.

Title 5

Green Power Settlement Agent

Chapter 1

Licence and Ownership

Prerequisites

Section 31. (1) The purchase and sale of green power under the purchasing obligation in sections 12 and 13 requires a licence. It is the task of the Minister of Economy, Family and Youth to grant such licence, valid for the entire federal territory.

(2) The licence shall be granted in writing and may specify the conditions and obligations necessary to ensure that the tasks of the green power settlement agent are discharged. The green power settlement agent shall establish a green power balance group for each control area.

(3) Whenever the licence is re-issued, the stipulations for tendering service licences apply.

Application

Section 32. The applicant shall enclose the following documents with its licence application:

1. information about the seat and legal form;
2. the statutes or shareholders' agreement;
3. the business plan showing the undertaking's structure and internal audit procedures; the business plan shall furthermore include a budget forecast for the first three business years;
4. a description of the technical and organisational infrastructure available;
5. proof of at least three years of practical experience in managing schedules and balance groups;
6. the level of initial capital available to board members in Austria without restriction or encumbrance;
7. the identity and amount of investment of the owners holding a qualified stake in the undertaking, and information on the group structure provided that such owners are part of a group;
8. the names of the appointed board members and their qualifications to run the undertaking.

Licence Granting

Section 33. (1) The licence for the green power settlement agent shall be granted in writing by the Minister of Economy, Family and Youth for all control areas, and may specify conditions and obligations necessary to ensure that functions are discharged and that this is done cost efficiently.

- (2) A licence for performing the functions of a green power settlement agent may only be issued if:
1. the applicant is able to comply with the tasks bestowed upon it by this Federal Act safely and at reasonable cost;
 2. the individuals holding a qualified share in the undertaking meet the requirements to be made in the interest of solid and careful management of the undertaking, and are not subject to any conflicting interests that are incompatible with the objectives and purposes of the *Ökostromgesetz* (Green Electricity Act);
 3. the supervisory authorities are not hindered in duly fulfilling their supervisory duties by any close connection of the undertaking with other natural or legal persons;
 4. the initial capital is at least EUR 5 million and is freely available for the board members' disposal, unencumbered and without restrictions, and the material and personal resources of the undertaking will ensure the best possible management and administration of the clearing and settlement agency;
 5. none of the board members is disqualified within the meaning of section 13 paras 1 through 6 *Gewerbeordnung* (Industrial Code) 1994;
 6. no judicial investigation has been initiated against any of the board members for any wilful action punishable by imprisonment of more than one year, until the ruling that ends the criminal proceedings becomes final;
 7. based on their education and training, the board members are technically qualified and have acquired the characteristics, skills and experience required for operating the undertaking. For a board member to be technically qualified means that he or she has sufficient knowledge of support mechanisms, EU state aid and funding schemes and green electricity settlement, as well as management experience; a board member of the clearing and settlement agency shall be assumed to be qualified if he or she can furnish proof of at least three years' experience in an executive position in the electricity sector or in accounting;
 8. at least one board member has his or her centre of vital interests in Austria;
 9. none of the board members also works full-time in another job outside the undertaking which could cause a conflict of interest;
 10. the seat and head office are located in Austria;
 11. the processing system available meets the requirements of a modern settlement system;
 12. neutrality, independence and data privacy vis-à-vis market participants and efficient regional settlement are ensured, and efficient regional settlement is secured by at least one regional settlement agency for the control areas where the undertaking is not domiciled.

(3) If several applications have been filed, the licence shall be awarded to the applicant that best meets the licencing conditions and the national interest in a functioning electricity market and the purposes of the Green Electricity Act.

Revocation

Section 34. (1) The Minister of Economy, Family and Youth may revoke the licence if the green power settlement agent fails to:

1. take up its function within six months after having been awarded the licence; or
 2. perform its function for more than a month.
- (2) The Minister of Economy, Family and Youth shall revoke the licence if:
1. it has been obtained through incorrect information or misleading action or by any other artifice;
 2. the green power settlement agent fails to perform its duties vis-à-vis its creditors;
 3. any of the licence conditions specified in section 33 para. 2 is no longer met; or
 4. the green power settlement agent consistently fails to perform its functions properly and in due form.

Expiry

Section 35. (1) The licence shall expire:

1. by lapse of time;
2. if a condition arises that warrants expiry;
3. if its holder surrenders the licence;
4. once the winding up of a licensee is completed;
5. upon initiation of bankruptcy proceedings against the assets of the green power settlement agent.

(2) Expiry of the licence shall be recorded in an official decision issued by the Minister of Economy, Family and Youth.

(3) A licence may only be surrendered (para. 1 item 3) in writing and only if management and administration of the green power settlement agent have been taken over by another green power settlement agent.

Change in Ownership

Section 36. (1) Whosoever intends to acquire a qualified share in a green power settlement agent, whether directly or indirectly, shall notify the Minister of Economy, Family and Youth in advance of such action, including details about the amount of such a share.

(2) Whosoever intends to increase their qualified share in a green power settlement agent to such an extent that the thresholds of 20%, 33% or 50% of the voting rights or the capital are reached or exceeded or that the green power settlement agent becomes their subsidiary shall notify the Minister of Economy, Family and Youth in writing in advance of such a move.

(3) The Minister of Economy, Family and Youth shall prohibit the intended shareholding within three months after having received a notification pursuant to para. 1 or 2 if the conditions listed in sections 31 and 32 are not met. If the shareholding is not prohibited, the Minister of Economy, Family and Youth may specify a date by which the actions referred to in paras. 4 and 5 have to be implemented.

(4) The duties of notification specified in paras 1 and 2 apply mutatis mutandis to any intention of relinquishing a qualified share or dropping below the thresholds for shareholding in a green power settlement agent mentioned in para. 2.

(5) The green power settlement agent shall notify the Minister of Economy, Family and Youth without delay and in writing of any acquisition or relinquishment of shares, as well as of any changes where the shareholding thresholds within the meaning of paras 2 and 4 are reached, exceeded or underrun, as soon as it obtains knowledge of such a change. Moreover the green power settlement agent shall report, at least once a year, to the Minister of Economy, Family and Youth the names and addresses of shareholders holding qualified shares.

Chapter 2

Settlement of Green Power

Tasks of the Green Power Settlement Agent

Section 37. (1) The tasks of the green power settlement agent are:

1. to purchase green electricity in line with sections 12 and 13;

2. to conclude contracts:
 - a) with the other balance responsible parties, control area managers, system operators and electricity undertakings (generators and traders);
 - b) with institutions that compile indices, for the purpose of data exchange;
 - c) with suppliers (producers and traders), system operators and balance responsible parties on the disclosure of data;
3. to assign the green electricity purchased under item 1 above, including the guarantees of origin connected thereto, in accordance with the applicable market rules to electricity traders that supply consumers in Austria on a daily basis, and to charge them for this electricity applying the transfer price and the price pursuant to section 10 paras 8 and 12. Assignment shall be made in the form of schedules sent to the electricity trader's balance group, and assigned quantities shall reflect the trader's share in electricity quantities supplied to end users in the control area during each calendar month. The settlement agency shall make available the necessary data by automated data processing. The quota for any current calendar month shall be derived from the data relating to the month three months ago. For new electricity traders, the quantity of the first complete month shall be used to calculate the quota;
4. to ensure that the share of green power in final consumption is the same across all green power balance groups, while not taking into account any volumes that are subsidised by the provincial governors pursuant to section 30 para. 4 *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002;
5. to forecast green electricity feed-in, derive schedules for the green electricity it is obliged to purchase (sections 12 and 13), and allocate this green electricity to traders, while keeping the balancing energy needs to a minimum;
6. to continuously monitor whether plant operators fulfil their tasks; in cases of non-compliance, the green power settlement agent may suspend disbursement of the feed-in tariffs;
7. to exchange data with the Climate Change and Energy Fund and other institutions with the aim of combating any misuse of the support mechanism;
8. to adhere to the market rules.

(2) Upon request, the green power settlement agent shall make available to the Minister of Economy, Family and Youth, as well as to E-Control Austria, any data they need to fulfil their supervisory functions and reporting duties. In all other cases, the provisions of section 47 *Elektrizitätswirtschafts- und -organisationsgesetz* (Electricity Act) applies mutatis mutandis. The green power settlement agent shall make available to E-Control Austria in an electronic format the data necessary for establishing a database for guarantees of origin.

(3) The green power settlement agent shall create the organisational framework necessary to be able to meet its duties. It shall establish a green power balance group for each control area and assume the role of balance responsible party for these groups.

(4) The green power settlement agent shall exhaust all possibilities to minimise expenditures for balancing energy. It is authorised to resort to any measure required to keep to the schedules, specifically by buying and selling electricity. It shall list the estimated balancing energy expenditures required for balancing wind generation as a separate item in the balance sheet.

Green Power Balance Groups

Section 38. (1) The green power balance group in each control area includes all green power plants that make use of the green power settlement agent's purchasing obligation pursuant to sections 12 or 13. Operators of green power plants that make use of the purchasing obligation pursuant to sections 12 or 13 shall be admitted as members of the green power balance group.

(2) The green power balance groups are exempted from payment of the clearing fee to the clearing and settlement agent and from the need to deposit collateral with it. The green power settlement agent is exempted from the system utilisation charge and the charge for grid losses, in particular when the concerned schedules span multiple control areas.

General Terms and Conditions

Section 39. (1) The green power settlement agent's contracts listed in sections 12 to 15 and 37 shall be based on general terms and conditions to the extent that they involve the purchase and allocation of

green electricity, including as specified under section 37 para. 1 item 4. These general terms and conditions are subject to approval by E-Control.

(2) The general terms and conditions shall include, but not be limited to, details on:

1. the administration, deadlines and methods of payment;
2. the transmission of data and the mandated data formats;
3. the type and scope of projections for feed-in schedules;
4. the modalities for the allocation of green electricity quantities and payments pursuant to section 37 para. 1 item 4.

(3) If the general terms and conditions appear suitable for fulfilling the tasks described in sections 12 through 15 and 37 to 38, they shall be approved; where appropriate, obligations, conditions and time limits may be imposed.

(4) Upon a request of E-Control, the green power settlement agent shall amend the existing general terms and conditions or prepare them anew.

Obligations of Electricity Traders, Green Power Plant Operators and System Operators

Section 40. (1) Each month, electricity traders shall buy the green power assigned to them pursuant to section 37 para. 1 item 3 along with the corresponding guarantees of origin from the green power settlement agent for the transfer price pursuant to section 41 para. 2 and the price set in accordance with section 10 para. 8 and para. 12.

(2) Green power plant operators and system operators shall provide the green power settlement agent with the data needed for compiling optimal schedules and minimising balancing energy requirements (such as electricity generating curves of previous periods and forecasts based on meteorological and hydrological data). The green power settlement agent shall draw up schedules for each balance group, with due regard to minimising the balancing energy costs; the balance responsible parties shall accept these schedules.

(3) Traders shall use the green power assigned to them under section 37 para. 1 item 3 and the pertaining guarantees of origin exclusively for supplying domestic customers.

Electricity Market Price

Section 41. (1) At the end of each quarter, E-Control shall calculate and publish the average electricity baseload market price. This price shall be calculated as the arithmetic average of the prices arrived at by the European Energy Exchange (EEX) for the next four quarterly baseload futures. Calculation shall be based on the corresponding quotations of the last five energy exchange trading days of the preceding quarter. Should EEX stop publishing these quotations, then comparable quotations of the EEX or any other relevant power exchange shall be used.

(2) The price for the assigned electricity shall be the hourly day-ahead price for the Germany/Austria market listed at a renowned and representative power exchange with seven-day trading that operates for delivery in Austrian control areas. Should it be impossible to calculate this price, the corresponding price of the previous day shall be applied. When the resulting price is negative, a rate of 1 cent/MWh applies instead.

(3) The market price used to calculate the additional annual support funds pursuant to section 23 para. 5 shall be the average of the four quarterly prices published for the preceding calendar year in accordance with para. 1.

Chapter 3

Green Power Settlement Cost

Reimbursing Additional Expenses of the Green Power Settlement Agent

Section 42. (1) The green power settlement agent shall be reimbursed for the following additional expenses, taking into account an adequate return on the invested capital in the meaning of section 33 para. 2 item 4:

1. any deficit that may result from the difference between the cost of purchasing green electricity and the revenue from selling green electricity and guarantees of origin, while discounting any expenses covered by the federal provinces pursuant to section 10a para. 9 *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002, as amended by FLG I no 105/2006;

2. the administrative and financial expenses associated with discharging the duties of a green power settlement agent;
3. any imbalance charges;
4. any expenses for granting:
 - a) mark-ups pursuant to section 21 or pursuant to section 11 para. 1 Green Electricity Act, FLG I no 149/2002, as amended by FLG I no 104/2009;
 - b) mark-ups pursuant to section 22 or pursuant to section 11a Green Electricity Act, FLG I no 149/2002, as amended by FLG I no 104/2009;
5. any expenses for the provincial technology support pursuant to section 43.

(2) Any deviation of the additional expenses for a calendar year under para. 1 above from the funds collected for that calendar year in accordance with sections 44 through 48 shall be recorded as a separate item that year's annual accounts and offset by adjusting the *Ökostromförderbeitrag* (renewables contribution) for the next year. The additional expenses expected for the following year should equal the forecast collected funds. If any portion of a fiscal year's additional expenses cannot be covered from the funds collected, it shall be reported as asset in the green power settlement agent's annual financial statement and be offset by additional income collected by way of the future renewables contribution. If the revenues exceed the additional expenses of a calendar year, then such surplus shall be recorded as liability in the green power settlement agent's accounts and reduce the additional expenses that are to be covered by the future renewables contribution.

(3) Verifying the green power settlement agent's additional expenses forms part of the Minister of Economy, Family and Youth's supervisory functions.

(4) The prorated expenses under para. 1 items 2, 3 and 5 above shall be determined each year by an expert opinion of E-Control, drawing on the preceding year's amounts, and published by the green power settlement agent; where necessary, the expenses shall be separated into categories for different technologies. For this purpose adequate account shall be taken of the costs caused by the relevant technologies in previous years.

The following provision classifies as a
constitutional provision

Financing Provincial Technology Support

Section 43. (constitutional provision) (1) For the purpose of supporting new green power generation technologies (with the exception of hydropower, sewage sludge, meat and bone meal and black liquor) and energy efficiency programmes, an annual amount of EUR 7 million shall be made available to the federal provinces. These funds shall be distributed according to each province's share in the total amount of electricity supplied to consumers from the public grid.

(2) Each federal province shall submit a written report on the use of these funds to the Ministry of Economy, Family and Youth and to E-Control by 30 June of the following year. As a minimum, such reports shall list the capacity, technology and annual output of the supported green electricity projects and the supported energy efficiency programmes, including information about the financial support granted.

Title 6

Collecting and Administering Support Funds

Chapter 1

Collecting Support Funds

Collecting Support Funds

Section 44. Support funds shall be collected from the following sources:

1. the *Ökostrompauschale* (flat-rate renewables charge per metering point) pursuant to section 45;
2. the sale of green power and the pertaining guarantees of origin for the transfer price to electricity traders, based on the amounts allocated to them under section 37 in conjunction with section 40;

3. the *Ökostromförderbeitrag* (renewables contribution) set in accordance with section 48;
4. the amounts collected under administrative fines imposed pursuant to section 55;
5. the interest accrued on deposited funds;
6. other allocations.

Flat-Rate Renewables Charge per Metering Point

Section 45. (1) All consumers connected to the public grid shall pay an *Ökostrompauschale* (flat-rate renewables charge per metering point) pursuant to section 5 para. 1 item 25, billed by their system operators along with the applicable system utilisation charge.

(2) For the years up to and including 2014, the amount of the flat-rate renewables charge per calendar year is as follows:

1. EUR 35,000 for system users connected to network levels 1 to 3;
2. EUR 35,000 for system users connected to network level 4;
3. EUR 5,200 for system users connected to network level 5;
4. EUR 320 for system users connected to network level 6;
5. EUR 11 for system users connected to network level 7.

(3) Where the system utilisation period is shorter than one calendar year, one-twelfth of the applicable flat-rate renewables charge per metering point as specified under para. 2 shall be charged for every calendar month begun.

(4) For the years from 2015, the Minister of Economy, Family and Youth shall issue ordinances at three-year intervals to redetermine the amount of the flat-rate renewables charge applicable for each network level. In doing so, he or she shall apply the following guidelines:

1. income from the flat-rate renewables charge shall amount to 38% of the funds projected to be needed for supporting green electricity, including investment aid for black liquor, small and medium-sized hydro and support under the *KWK-Gesetz* (CHP Act);
2. the redetermined flat-rate renewables charges shall result in the same ratio between the network levels as the rates stated in para. 2 above.

(5) Income from the flat-rate renewables charge shall be used to cover the following expenses:

1. reimbursement and investment aid pursuant to sections 7 and 8 CHP Act;
2. investment aid for black liquor pursuant to section 25;
3. investment aid for small and medium-sized hydropower plants pursuant to sections 26 and 27;
4. if items 1 through 3 above have been covered and there is still money available: the additional expenses of the green power settlement agent for green electricity (section 42).

Flat-Rate Renewables Charge Exemptions

Section 46. (1) Persons eligible according to section 3 *Fernsprechentgeltzuschussgesetz* (Telephone Charges Subsidies Act) are exempt from paying the *Ökostrompauschale* (flat-rate renewables charge) at their principal residence.

(2) Sections 4, 5, 7 and 8 and section 12 para. 1 Telephone Charges Subsidies Act apply mutatis mutandis to the exemption procedure, the term of the exemption, the information, documentation and notification obligations related thereto, and the termination of the exemption, while GIS Gebühren Info Service GmbH shall provide E-Control and the relevant system operator with information about the eligibility circumstances and the applicants at any time upon request.

(3) E-Control may issue ordinances with more detailed provisions, in particular but not limited to:

1. the process for verifying an applicant's eligibility and the realisation of an eligible party's claim;
2. the period of time within which the flat-rate renewables charge must be taken off eligible parties' invoices and within which the system operators must reimburse or credit any flat-rate renewables charge paid after the party has become eligible;
3. the eligible parties' obligation to immediately notify any change in their income, including an explicit reminder of such obligation;
4. information and data disclosure to the extent necessary;
5. an appropriate fee for the services provided by GIS Gebühren Info Service GmbH, payable by the green power settlement agent.

The ordinance shall ensure that GIS Gebühren Info Service GmbH discharges its tasks in an expeditious, straightforward and administratively efficient way.

(4) GIS Gebühren Info Service GmbH may submit data to E-Control and the system operators and the system operators may submit data to GIS Gebühren Info Service GmbH for the purposes of this stipulation.

(5) Eligibility for an exemption under para. 1 shall expire if at least one of the conditions is no longer fulfilled or if the information, documentation and notification obligations pursuant to section 7 Telephone Charges Subsidies Act are not complied with. GIS Gebühren Info Service GmbH shall notify the persons concerned and the system operator of the time of expiry. GIS Gebühren Info Service GmbH shall claim any charges not collected because of exemptions mistakenly granted and shall pass these incomes on to the green power settlement agent.

(6) Any disputes between GIS Gebühren Info Service GmbH and the persons concerned are subject to the jurisdiction of the courts of law.

Collection of the Flat-Rate Renewables Charge

Section 47. (1) The system operators shall pass the collected funds on to the green power settlement agent once a quarter. The green power settlement agent may consolidate the *Ökostrompauschale* (renewables charge) into a provisional lump sum and collect such lump sum in advance for every quarter against subsequent settlement. The system operators and clearing and settlement agents shall provide the green power settlement agent with any and all data and other information necessary for such consolidation.

(2) The flat-rate renewables charge shall be itemised on bills for system use or billed separately. The types of plant covered by the renewables charge (CHP plants, small-scale hydropower plants, medium-scale hydropower plants and other green electricity installations) shall be listed.

(3) Should consumers fail to pay the flat-rate renewables charge, their system operators shall pursue the necessary measures toward the extrajudicial and judicial recovery of the charge. Any disputes between system operators and consumers or between the green power settlement agent and system operators, in particular where payment of the flat-rate renewables charge is concerned, are subject to the jurisdiction of the courts of law.

Renewables Contribution

Section 48. (1) For the purpose of financing the green power settlement agent's additional expenses pursuant to section 42, to the extent that they are not covered by the *Ökostrompauschale* (flat-rate renewables charge per metering point), all consumers connected to the public grid shall pay an *Ökostromförderbeitrag* (renewables contribution) that is proportional to their system utilisation charge and charge for system losses.

(2) The Federal Minister of Economy, Family and Youth shall issue an annual ordinance to set the level of the renewables contribution *ex ante*. The renewables contribution shall be uniform for all consumers in Austria that are connected to the same network level. The contribution may be adjusted in the course of a year.

(3) Collection of the renewables contribution lies with the system operators; they shall include it on the system charges bills they send to the consumers connected to their systems. The system operators shall pass the collected funds on to the green power settlement agent once a month.

(4) The green power settlement agent may consolidate the renewables contribution into a provisional lump sum and collect such lump sum in advance for every month against subsequent settlement. The renewables contribution shall be itemised on bills for system use or billed separately. The system operators and clearing and settlement agents shall provide the green power settlement agent with any and all data and other information necessary for such consolidation.

(5) Should consumers fail to pay the renewables contribution, their system operators shall pursue the necessary measures toward the extrajudicial and judicial recovery of the contribution. Any disputes between system operators and consumers or between the green power settlement agent and system operators, in particular where payment of the renewables contribution is concerned, are subject to the jurisdiction of the courts of law.

Cost Cap for Low-Income Households

Section 49. (1) Persons eligible according to section 3 *Fernsprechentgeltzuschussgesetz* (Telephone Charges Subsidies Act) are exempt from paying the part of the *Ökostromförderbeitrag* (renewables contribution) in excess of EUR 20 at their principal residence.

(2) Sections 4, 5, 7 and 8 and section 12 para. 1 Telephone Charges Subsidies Act apply mutatis mutandis to the exemption procedure, the term of the exemption, the information, documentation and notification obligations related thereto, and the termination of the exemption, while GIS Gebühren Info Service GmbH shall provide E-Control and the relevant system operator with information about the eligibility circumstances and the applicants at any time upon request.

(3) E-Control may issue ordinances with more detailed provisions, in particular but not limited to:

1. the process for verifying an applicant's eligibility and the realisation of an eligible party's claim;
2. the period of time within which the portion of the renewables contribution in excess of EUR 20 must be taken off eligible parties' invoices and within which the system operators must reimburse or credit any excess renewables contribution paid after the party has become eligible;
3. the eligible parties' obligation to immediately notify any change in their income, including an explicit reminder of such obligation;
4. information and data disclosure to the extent necessary;
5. an appropriate fee for the services provided by GIS Gebühren Info Service GmbH, payable by the green power settlement agent.

The ordinance shall ensure that GIS Gebühren Info Service GmbH discharges its tasks in an expeditious, straightforward and administratively efficient way.

(4) GIS Gebühren Info Service GmbH may submit data to E-Control and the system operators and the system operators may submit data to GIS Gebühren Info Service GmbH for the purposes of this stipulation.

(5) Eligibility for an exemption under para. 1 shall expire if at least one of the conditions is no longer fulfilled or if the information, documentation and notification obligations pursuant to section 7 Telephone Charges Subsidies Act are not complied with. GIS Gebühren Info Service GmbH shall notify the persons concerned and the system operator of the time of expiry. GIS Gebühren Info Service GmbH shall claim any charges not collected because of exemptions mistakenly granted and shall pass these incomes on to the green power settlement agent.

(6) Any disputes between GIS Gebühren Info Service GmbH and the persons concerned are subject to the jurisdiction of the courts of law.

Chapter 2

Administering Support Funds

Support Account

Section 50. (1) The green power settlement agent shall set up an account for the purpose of administering support funds.

(2) Administration of the account is incumbent upon the green power settlement agent. It shall deposit the funds into an interest-bearing instrument. The Minister of Economy, Family and Youth, E-Control and any experts consulted shall be granted access to inspect all documents and records at any time.

(3) The green power settlement agent shall transfer the funds for supporting cogeneration installations pursuant to section 8 *KWK-Gesetz* (CHP Act) (support to existing cogeneration installations) to E-Control on a quarterly basis. The support funds pursuant to section 7 CHP Act (investment aid for new CHP plants) and pursuant to sections 25 through 27 (investment aid for black liquor, small and medium-scale hydropower plants) shall be transferred each quarter to the settlement agency for investment aid.

Title 7 Other Provisions Supervision

Section 51. (1) E-Control shall continuously monitor achievement of the objectives in section 4 and identify developments impeding the achievement of these objectives. The Minister of Economy, Family and Youth shall be informed of any such developments without delay.

(2) Oversight of the green power settlement agent lies with the Minister of Economy, Family and Youth.

(3) Irrespective of its ownership situation, the green power settlement agent is subject to scrutiny by the Austrian Court of Audit.

(4) As far as its activity under this Act is concerned, the settlement agency for investment aid is subject to scrutiny by the Court of Audit.

(5) To discharge the tasks entrusted to it pursuant to this Federal Act, the green power settlement agent may inspect the business documents and records of plant operators that have concluded contracts pursuant to sections 15 or 29.

Reporting

Section 52. (1) E-Control shall submit an annual report to the Minister of Economy, Family and Youth and to the National Council, analysing to what extent the objectives of this Act have been attained and which changes have taken place as compared to the previous years, including consequences for consumers. The report shall contain detailed analyses of the rate and causes of electricity consumption growth, as well as a discussion of policy options for reducing consumption. The report may include proposals for improving or adapting the support schemes and other provisions of this Act. Moreover, the report shall state the quantities of, as well as the expenses for, electricity from PV, geothermal, wind, wave and tidal energy, biomass, landfill gas, sewage treatment plant gas and biogas plants.

(2) The Minister of Economy, Family and Youth shall submit a report to the National Council once the objectives of this Federal Act pursuant to section 4 have been attained.

(3) The Minister of Agriculture, Forestry, Environment and Water Management shall publish the processing status of permit applications for constructing, expanding or modifying hydropower plants on an annual basis, by the end of March of the next year.

(4) Each year, the green power settlement agent shall report in detail about its activities to the Energy Advisory Council.

Pre-Ordinance Procedure

Section 53. (1) To determine whether the conditions for ordinances to be issued are fulfilled, the Minister of Economy, Family and Youth may particularly consult experts available to the Ministry of Economy, Family and Youth and to E-Control.

(2) Before any ordinances pursuant to this Federal Act are issued, the nominated representatives of the Energy Advisory Council (section 20 *Energie-Control-Gesetz* [E-Control Act]) shall be informed and given the opportunity to comment.

The following provision classifies as a
constitutional provision

Obligation to Furnish Information

Section 54. (constitutional provision) Electricity undertakings and undertakings entrusted with issuing guarantees of origin shall allow the competent authorities to inspect all documents and records at any time and furnish information about all facts relevant to the respective authority's area 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.

General Penal Provisions

Section 55. (1) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court or is subject to more severe punishment under different administrative penal provisions, whoever fails to comply with their obligation to furnish information and provide access to documents and records pursuant to section 54 shall be deemed to have committed an administrative offence and shall be fined up to EUR 20,000.

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

1. fails to comply with the obligation to issue guarantees of origin pursuant to section 10;
2. fails to comply with their obligations pursuant to section 37;
3. fails to comply with their obligations pursuant to section 40

shall be deemed to have committed an administrative offence and shall be fined up to EUR 13,000.

(3) Fines imposed under this Federal Act shall go to the support account opened by the green power settlement agent pursuant to section 50.

The following provision classifies as a

constitutional provision (para. 1)

Title 8

Transitional Provisions and Entry Into Force

General Transitional Provisions

Section 56. (1) **(constitutional provision)** Unless otherwise stated, existing plants which have a valid contract with the green power settlement agent at the time this Federal Act enters into force continue to be subject to the applicable federal or provincial provisions. In particular, section 7 para. 4, section 8 paras 2 to 4, section 10, section 11, section 13, section 14 paras 1 and 5, section 17, section 18 paras 2 to 5, section 21 paras 2 and 3, section 22, and section 51 para. 4 shall also apply to such plants.

(2) The existing green power settlement agent licence granted pursuant to the *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002, remains valid. Unless otherwise provided, the green power settlement agent shall comply with the changes to the legal situation resulting from any amendments to this Federal Act when discharging its duties under this Act.

(3) Unless otherwise provided, the official decisions and ordinances issued pursuant to the Green Electricity Act, FLG I no 149/2002, remain valid after this Federal Act enters into force.

(4) Applications submitted pursuant to the Green Electricity Act, FLG I no 149/2002, remain valid within the limits of the general provisions of this Act and with the following restrictions:

1. The green power settlement agent shall immediately contract wind power plants at a rate of 9.7 cent/kWh if at the time of entry into force of this stipulation these plants would be contracted by the green power settlement agent in the calendar years 2012 or 2013; for plants that would be contracted by the green power settlement agent in 2014 or later, the rate is 9.5 cent/kWh.
2. The green power settlement agent shall immediately contract PV plants within the limits of the available annual support funds pursuant to section 23 para. 4 as follows:

Waiting list indicates contract for	applied-for rate: 25 cent/kWh	applied-for rate: 33 cent/kWh	applied-for rate: 35 cent/kWh	applied-for rate: 38 cent/kWh
2012	offset: 2.5%	offset: 5%	offset: 6%	offset: 7.5%
2013	offset: 7.5%	offset: 10%	offset: 11%	offset: 12.5%
2014	offset: 12.5%	offset: 15%	offset: 16%	offset: 17.5%

2015 or later	offset: 17.5%	offset: 20%	offset: 21%	offset: 22.5%
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Applicants that have filed an application pursuant to the Green Electricity Act, FLG I no 149/2002, shall apply with the green power settlement agent for immediate contracting within two months of this provision coming into force or, if entry into force predates their application, at the time of application. Should they fail to do so, the green power settlement agent shall conclude contracts corresponding to the contracting time and feed-in tariff determined for the relevant plant type at the time this provision comes into force. Applications filed after this provision comes into force in 2011 shall be considered to be scheduled for contracting in 2015. The last sentence of section 15 para. 5 and para. 6 apply mutatis mutandis.

The following provision classifies as a
constitutional provision

Entry Into Force

Section 57. (constitutional provision) (1) Unless otherwise provided, the provisions of this Federal Act shall enter into force on the first day of the quarter following a four-month period that starts upon the approval or non-prohibition by the European Commission pursuant to Article 108(3) TFEU. The Federal Minister of Family and Youth shall announce this date in the Federal Law Gazette. Unless otherwise provided, the provisions of the *Ökostromgesetz* (Green Electricity Act), FLG I no 149/2002, as amended by FLG I no 104/2009, shall cease to be in force at the time of entry into force of this Federal Act.

(2) Section 1, section 23 para. 4 and section 56 para. 4 shall enter into force the day after this Federal Act is promulgated.

The following provision classifies as a
constitutional provision

Execution

Section 58. The responsibility for executing this Federal Act lies with:

1. **(constitutional provision)** the federal government regarding section 1, section 43, section 54, section 56 para. 1, section 57, and section 58 item 1;
2. the Minister of Economy, Family and Youth, in agreement with the Minister of Agriculture, Forestry, Environment and Water Management and the Minister of Labour, Social Affairs and Consumer Protection, regarding section 19;
3. the Minister of Economy, Family and Youth, in agreement with the Minister of Finance, regarding section 29 para. 1;
4. the Minister of Economy, Family and Youth, in agreement with the Minister of Finance and the Minister of Agriculture, Forestry, Environment and Water Management, regarding section 30 para. 3;
5. the Minister of Agriculture, Forestry, Environment and Water Management regarding section 52 para. 3;
6. the Minister of Economy, Family and Youth regarding the remaining parts of this Federal Act.

Annex 1

Wastes with high biogenic shares pursuant to section 5 para. 1 item 1.

The types of waste listed in Table 1 and (with the restrictions mentioned) Table 2, defined by the assigned five-digit code and, where applicable, by an additional two-digit specification pursuant to Annex 5 of the *Abfallverzeichnisverordnung* (Waste Catalogue Ordinance) shall be considered wastes with high biogenic

shares. Components of waste types not mentioned in Tables 1 or 2 shall not be deemed to be wastes with high biogenic shares, nor shall they be deemed to be biomass.

Table 1: Wastes with high biogenic shares

Code and specification	Waste designation and specification
12	waste from vegetable and animal fat products
123	waste from the production of vegetable and animal fats and waxes
12301	waxes
125	emulsions and mixtures with vegetable and animal fat products
12501	contents of grease traps
12503	oil, fat, wax emulsions
17	wood waste
171	waste from wood working and manufacturing
17104	wood sanding dust, grits and grinds
17104 01	wood sanding dust, grits and grinds - (from) treated wood
17104 02	wood sanding dust, grits and grinds – (from) wood that has verifiably been treated only mechanically
17104 03	wood sanding dust, grits and grinds - (from) treated wood, free from any harmful substances
17114	dust, grits and grinds from particle board production
17115	particle board waste
172	wood waste from use
17202	structural timber and timber from demolished buildings ¹⁾
17202 01	structural timber and timber from demolished buildings - (from) treated wood ¹⁾
17202 02	structural timber and timber from demolished buildings - (from) wood that has verifiably been treated only mechanically
17202 03	structural timber and timber from demolished buildings - (from) treated wood, free from any harmful substances
17207	railway sleepers
17209	tar oil-impregnated wood (e.g. poles and masts)
17209 88	tar oil-impregnated wood (e.g. poles and masts) - if proved to be non-hazardous
18	cellulose, paper, and cardboard waste
184	waste from cellulose processing
18401	papermaking residue (rejects) without recycling paper
187	paper and cardboard waste
18702	coated paper and cardboard
19	other wastes from processing and refining animal and plant products
199	other wastes from processing and refining animal and plant products
19909	boiling pan residue (soap production)
94	wastes from water and sewage treatment, or the utilisation of bodies of water
947	sewage system and sewage treatment residue (except sludge)
94705	grease trap contents
949	waste from the utilisation of bodies of water
94902	residues from rakes of power plants

¹⁾ no salt-impregnated wood (note: salt-impregnated wood may have a high degree of heavy metals [white lead, CFA salts, etc.] which are not destroyed in thermal treatment)

Notes on Table 1:

The solids content of wastes referred to above primarily (i.e. in excess of 90%) consists of organic carbon. We can differentiate three groups of waste:

Group 1

The following wastes are derived directly or indirectly (in the form of cellulose or lignin) from wood, the oldest biofuel:

17104 (with specification where applicable), 17114, 17115, 17202 (with specification where applicable), 17207, 17209 (with specification where applicable), 18401, 94902.

The solids content of these wastes primarily consists of organically bound carbon of biological origin (in the form of cellulose and lignin). The calorific value of the dry matter is about 20 MJ per kg.

Group 2

The wastes enumerated below are essentially derived from animal and vegetable fats. The carbon content is of biological origin and is mainly in the form of glycerides and fatty acids. The calorific value of the organic matter is thus very high (roughly 30 MJ per kg).

12301, 12501, 12503, 19909, 94705

Group 3

The wastes enumerated below are a mixture of Group 1 waste and synthetic polymers (PE etc.) or metals (A1), respectively. Although the specific calorific value of the non-biological substances is higher than that of the biological substances, the caloric value of the biological substances in the mixture far exceeds 50% (the calorific value of PE is roughly twice as high as that of paper, but its plastics content is usually below 25%).

18702

Table 2: Wastes with high biogenic shares, if biological utilisation is neither possible nor preferable

Code and specification	Waste designation and specification
11	food, beverages, stimulants and tobacco wastes
111	waste from food production
11102	food past the expiration date
11103	glumes, glume and grain dust
11104	spice residue
11110	molasses
11111	dough
11112	beet chips, beet tails
114	waste from the production of beverages, stimulants and tobacco
11401	beverages, stimulants and tobacco past the expiration date
11402	tobacco dust, tobacco soot, tobacco ribs
11404	spent malt, malt sprouts, malt dust
11405	spent hops
11406	barley floaters and skimmings
11415	marc
11416	coffee production residue (e.g. roasting and extraction residue)
11417	tea production residue
11418	cocoa production residue
11419	yeast and yeast-like residue
11423	residue and waste from fruit juice production
117	waste from fodder production
11701	fodder
11702	fodder past expiration date
12	waste from vegetable and animal fat products
121	waste from the production of vegetable and animal oils
12101	oil seed residue
12102	spent vegetable oils
123	waste from the production of vegetable and animal fats and waxes
12302	fats (e.g. deep frying oils)

Code and specification	Waste designation and specification
127	sludge from the production of vegetable and animal fats
12702	sludge from production of edible fat
12703	sludge from production of edible oil
12704	separator slime
129	refining residue from processing of vegetable and animal fats
12901	oily bleaching clay
17	wood waste
171	waste from wood working and manufacturing
17101	bark
17102	pieces, splinters of untreated, clean, uncoated wood
17103	sawdust and chips of untreated, clean, uncoated wood
172	wood waste from use
17201	wood packing and waste wood, uncontaminated
17201 01	wood packing and waste wood, uncontaminated - (from) treated wood
17201 02	wood packing and waste wood, uncontaminated - (from) wood that has verifiably been treated only mechanically
17201 03	wood packing and waste wood, uncontaminated - (from) treated wood, free from any harmful substances
17203	wood wool, uncontaminated
18	cellulose, paper, and cardboard waste
181	waste from wood pulp production
18101	residue from wood pulp production (rejects and trash)
19	other wastes from processing and refining animal and plant products
199	other wastes from processing and refining animal and plant products
19901	starch sludge
19903	waste gelatine
19904	residue in potato starch production
19905	residue in maize starch production
19906	residue in rice starch production
19911	waste intestines from processing
53	waste from botanical plant treatment substances and insecticides, as well as from pharmaceutical products and disinfectants
535	waste from pharmaceutical products
53504	marc of medicinal plants
91	solid residential waste including similar business and industrial waste
916	waste from markets
91601	waste from food markets
917	green waste
91701	garden and park waste, as well as other biogenous waste that does not meet the requirements of the <i>Kompostverordnung</i> (Compost Ordinance) as currently amended
94	waste from water treatment, waste water treatment and utilisation of bodies of water
949	waste from the utilisation of bodies of water
94901	residue from cleaning waters (such as residue generated when sweeping, mowing and fishing brooks)

Notes on Table 2:

The wastes mentioned in Table 2 are of biological origin (animal and plant products) and their solid substances primarily contain hydrocarbons; they, too, can be subdivided into three groups:

Group 1

“Native” biological matter, i.e. plants and their parts (including extraction residue) and animal tissues in their natural composition. The solids content consists primarily of biologically fixed carbon in the form of

cellulose/lignin (cell wall, storage body), protein and glycerides (cellular membrane, storage body). The “anthropogenic” content is insubstantial (only in the form of contamination from collection).

11103, 11104, 11112, 11402, 11404, 11405, 11406, 11415, 11416, 11417, 11418, 11419, 11423, 12101, 12102, 12302, 17101, 17102, 17103, 17201 (with specification where applicable), 17203, 18101, 19901, 19903, 19904, 19905, 19906, 19911, 53504, 91601, 91701, 94901

Group 2

Vegetable and animal matter processed into food: the solids content of these wastes is of primarily biological origin and includes insubstantial fractions of (inorganic) fillers and perhaps packaging residue.

11102, 11110, 11111, 11401, 11701, 11702, 12702, 12703, 12704

Group 3

Processing residues with a higher inorganic content but whose organic content is of entirely biogenous origin.

12901