

## Electricity Act 2010

### Full title

Federal Act Providing New Rules for the Organisation of the Electricity Sector (Electricity Act 2010)  
Original text: *BGBL*. (Federal Law Gazette, FLG) I no 110/2010 (National Council: GP XXIV RV 994 AB 997 p. 86. Federal Council: 8420 AB 8421 p. 791.)  
[CELEX no: 32004L0008, 32006L0032, 32008L0027, 32009L0072, 32009L0714]

### Amendments

FLG I no 6/2013 (National Council: GP XXIV AB 2067 p. 184. Federal Council: AB 8878 p. 816.)  
FLG I no 83/2013 (National Council: GP XXIV RV 2168 AB 2268 p. 200. Federal Council: AB 8968 p. 820.)  
[CELEX no: 31995L0046]  
FLG I no 174/2013 (National Council: GP XXIV IA 2323/A AB 2389 p. 213. Federal Council: AB 9077 p. 823.)  
FLG I no 108/2017 (National Council: GP XXV RV 1519 AB 1527 p. 190. Federal Council: 9831 AB 9873 p. 870.)  
[CELEX no: 32009L0072, 32009L0073, 32012L0027, 32014L0094]  
FLG I no 17/2021 (National Council: GP XXVII RV 471 AB 595 p. 69. Federal Council: 10462 AB 10510 p. 916.)  
FLG I no 150/2021 (National Council: GP XXVII RV 733 AB 982 p. 115. Federal Council: 10690 AB 10724 p. 929.)  
[CELEX no: 32018L2001, 32019L0944, 32019L0692]  
FLG I no 7/2022 (National Council: GP XXVII IA 2184/A AB 1304 p. 139. Federal Council: 10865 AB 10870 p. 937.)

### Contents

#### Title 1 Principles

- Section 1. Basis for legislative and enforcement powers
- Section 2. Transposition of European Union law
- Section 3. Scope
- Section 4. Objectives
- Section 5. Public service obligations
- Section 6. Principles for the operation of electricity companies
- Section 7. Definitions

#### Title 2

#### Accounting, confidentiality, right to information and inspection, non-discrimination and prohibition of cross-subsidies

- Section 8. Accounting and prohibition of cross-subsidies
- Section 9. Non-discrimination
- Section 10. Right to information and inspection  
(Section 10a. Disclosing inside information)
- Section 11. Confidentiality

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### **Title 3**

#### **Generation facilities and electricity supply contracts**

- Section 12. Construction and operating licences
- Section 13. Contracts for electricity supplied from third countries
- Section 14. Obligation to notify electricity supply contracts

### **Title 4**

#### **System operation**

##### **Part 1**

#### **General rights and obligations of system operators**

- Section 15. Granting system access
- Section 16. Organisation of system access
- Section 16a. Community generation installations
- Section 16b. Citizen energy communities
- Section 16c. Renewable energy communities
- Section 16d. Common provisions for all types of energy communities
- Section 16e. Metering and billing
- Section 17. System access conditions
- Section 17a. Small renewable plants
- Section 18. Changes in the general terms and conditions for distribution network access
- Section 18a. General technical requirements
- Section 19. System service quality
- Section 19a. Data exchange
- Section 20. Available capacity
- Section 21. Refusal of system access
- Section 22. Dispute settlement
- Section 22a. Power-to-gas plants

##### **Part 2**

#### **Control areas, control area operators, and imbalance settlement responsables**

- Section 23. Designation of control areas
- Section 23a. Decommissioning notifications and system analysis
- Section 23b. Network reserves
- Section 23c. Decommissioning ban
- Section 23d. Changes

##### **Part 3**

#### **Unbundling of transmission system operators**

##### **Chapter 1**

#### **Ownership unbundling**

- Section 24. Prerequisites

##### **Chapter 2**

#### **Independent System Operator (ISO)**

- Section 25. Prerequisites
- Section 26. Obligations
- Section 27. Independence of the transmission system owner

##### **Chapter 3**

#### **Independent transmission system operator (ITO)**

- Section 28. Assets, independence, services, branding
- Section 29. Independence of the transmission system operator
- Section 30. Independence of management and staff
- Section 31. Independence of supervisory bodies
- Section 32. Compliance programme and compliance officer

##### **Chapter 4**

#### **More effective independence of transmission system operators**

- Section 33. Prerequisites

## **Chapter 5**

### **Procedures for transmission system operators**

- Section 34. Certification and designation of transmission system operators
- Section 35. Certification of third-country transmission system operators

#### **Part 4**

#### **Combined operators**

- Section 36. Combined operators

#### **Part 5**

#### **Operation of transmission systems**

- Section 37. Network development plan
- Section 38. Approval of the network development plan
- Section 39. Monitoring of the network development plan
- Section 40. Obligations of transmission system operators
- Section 40a. Pilot projects for underground cables
- Section 41. Approval of general terms and conditions

#### **Part 6**

#### **Operation of distribution systems**

- Section 42. Prerequisites for operating distribution systems
- Section 43. Transfer and expiry of system operation licences
- Section 44. Right to connect
- Section 45. Responsibilities of distribution system operators
- Section 46. General obligation to connect
- Section 47. General terms and conditions

### **Title 5**

### **System charges**

#### **Part 1**

#### **Review of system charges**

- Section 48. Allowed cost
- Section 49. System charges and compensation payments
- Section 50. Regulatory account

#### **Part 2**

#### **Components of the system charges**

- Section 51. Setting the system charges
- Section 52. System utilisation charge
- Section 53. Charge for system losses
- Section 54. System admission charge
- Section 55. System provision charge
- Section 56. Charge for system services
- Section 57. Metering charge
- Section 58. Supplementary service charges
- Section 58a. Exemptions for research and demonstration projects

#### **Part 3**

#### **Principles for establishing allowed costs and transported quantity**

- Section 59. Establishing the allowed cost
- Section 60. Cost of capital
- Section 61. Establishing the transported quantity

#### **Part 4**

#### **System charges review**

- Section 62. Tariff setting and cost cascading
- Section 63. Grid levels
- Section 64. Grid areas

**Title 6**  
**Obligations of suppliers and electricity traders**

Section 65. Information exchange

**Title 7**  
**Producers**

Section 66. Producers  
Section 66a. Micro-generation plants  
Section 67. Tendering for FCR  
Section 68. Financing FCR  
Section 69. Tendering for aFRR  
Section 70. Supply through direct lines

**Title 8**  
**Guarantees of origin for electricity generated from fossil fuels**

Section 71. Guarantees of origin for electricity generated in high-efficiency cogeneration  
Section 72. Guarantees of origin for electricity generated from fossil fuels  
Section 73. Guarantees of origin from other countries  
Section 74. Reporting

**Title 9**  
**Customer rights**

Section 75. Right of system access  
Section 76. Switching, enabling and disabling metering points, objections  
Section 77. Universal service  
Section 77a. Replacing suppliers  
Section 78. Labelling  
Section 79. Special labelling provisions  
*(section 79a deleted by virtue of FLG I no 150/2021)*  
Section 80. General terms and conditions for electricity supply  
Section 81. Minimum requirements for bills and information and advertising materials  
Section 81a. Consumption and cost information for customers with smart meters  
Section 81b. Consumption and cost information for customers without smart meters  
Section 82. Disabling of connections and customer information  
Section 83. Smart meters  
Section 84. Smart metering data  
*(Section 84a)*

**Title 10**  
**Balance groups**

Section 85. Balance group members  
Section 86. Balance responsible parties  
Section 87. Tasks and obligations of balance responsible parties

**Title 11**  
**Monitoring**

Section 88. Monitoring

**Title 11a**  
**Security of supply strategy**

Section 88a. Security of supply strategy

**Title 12**  
**Authorities**

Section 89. Competent authorities in other matters regulated by directly applicable federal law  
Section 90. Competent authorities in electricity matters

**Title 13**  
**Special organisational provisions**

Section 91. Provincial advisory council for electricity

- Section 92. Commissioning and conducting statistical surveys
- Section 93. Automated data communication
- Section 94. Obligation to pass on tax reductions
- Section 95. Right to information
- Section 96. Automated data communication in implementing legislation  
(*section 97 deleted by virtue of FLG I no 174/2013*)

#### **Title 14**

#### **Penalties and fines**

##### **Part 1**

##### **General obligation of the federal provinces**

- Section 98. General obligation of the federal provinces

##### **Part 2**

##### **Administrative offences**

- Section 99. General penal provisions
- Section 100. Failure to pass on tax reductions
- Section 101. Operation without certification
- Section 102. Profiteering
- Section 103. Special provisions for administrative penal proceedings

##### **Part 3**

##### **Fines**

- Section 104. Discrimination and other finable offences
- Section 105. Related companies and legal successors
- Section 106. Assessment and calculation of fines
- Section 107. Limitation of actions

##### **Part 4**

##### **Offences punishable by court**

- (*Section 108 deleted by virtue of Article 2 item 5 FLG I no 108/2017*)
- (*Section 108a. Abuse of inside information*)

#### **Title 15**

#### **Transitional and final provisions**

- Section 109. Entry into force and repeal of federal legislation
- Section 110. Entry into force of framework provisions and implementing legislation
- Section 111. Transitional provisions
- Section 112. Transitional provisions for unbundling and network development plans
- Section 113. Final provisions
- Section 114. Execution

#### **Title 1**

#### **Principles**

##### **Basis for legislative and enforcement powers**

**Section 1. (constitutional provision)** The rules provided for in sections 2, 3, 8, 9, 10a, 11, section 16 para. 2, sections 16a through 16e, sections 17a, 18a, 19, 19a, 20, section 22 para. 1, section 22a, sections 23a through 23d, sections 24 to 36, section 37 para. 7, sections 38 and 39, sections 48 to 65, sections 69, 72, section 73 paras 2 and 3, section 76, sections 77a to 79, sections 81 to 84a, section 88 paras 2 to 8, section 89, sections 92 to 94, sections 99 to 103, section 109 paras 2 to 7, sections 110 to 112, section 113 para. 1, and section 114 paras 1 and 3 are issued, repealed and executed by the federal government, even with regard to matters for which the Federal Constitutional Act provides otherwise. Matters regulated in these rules may be discharged directly by federal bodies.

##### **Transposition of European Union law**

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

1. Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55, 14.08.2009;
2. Directive 2004/8/EC concerning the promotion of cogeneration based on the demand for useful heat in the internal energy market and amending Directive 92/42/EEC, OJ L 52/50, 21.02.2004;
3. Directive 2006/32/EC concerning energy end-use efficiency and energy services, OJ L 114/64, 27.04.2006; and
4. Directive 2008/27/EC concerning the promotion of energy from renewable sources, OJ L 140/16, 05.06.2009;

and implements the provisions reserved for implementation by the member states in

5. Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211/15, 14.08.2009; and
6. Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, OJ L 326/1, 08.12.2011.

### Scope

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

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

### Objectives

**Section 4. (framework provision)** The objectives of this Federal Act are

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

### Public service obligations

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

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

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

1. to perform the statutory obligations imposed upon them in the public interest;
2. to participate in measures designed to eliminate congestions and in measures designed to ensure security of supply.

(3) The implementing legislation shall oblige electricity companies to perform the obligations imposed upon them in the general economic interest to the best of their ability.

### **Principles for the operation of electricity companies**

**Section 6. (framework provision)** The implementing legislation shall provide that electricity companies act as customer- and competition-oriented providers of energy services, and that they work in line with the principles of both providing secure, environmentally sound and efficient services at reasonable cost, and of a competitive electricity market. They shall adopt these principles as company objectives.

### **Definitions**

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

1. ‘ACER’ means the Agency for the Cooperation of Energy Regulators according to Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L 211/1, 14.08.2009;
2. ‘connected capacity’ means the capacity contracted for system use at the connection point;
- 2a. ‘outage replacement reserves’ means that part of aFRR which mainly serves as backup in case of a failure of the largest generating unit in the control area; it can be activated automatically or manually;
3. ‘imbalance’ means the difference between the energy quantity scheduled and the energy quantity actually injected or withdrawn by a balance group during each defined imbalance settlement period, where the energy per period may be either metered or calculated;
4. ‘balance group’ means the combination of suppliers and customers in a virtual group within which entry (procurement schedule, injection) and exit (supply schedule, withdrawal) are balanced;
5. ‘imbalance settlement responsible (ISR)’ means a natural or legal person or a registered partnership operating an clearing and settlement agency;
6. ‘balance responsible party (BRP)’ means an entity that represents a balance group and is responsible vis-à-vis other market participants and the imbalance settlement responsible;
- 6a. ‘citizen energy community’ means a legal person that carries out the activities of electricity generation, consumption, storage, sale, aggregation or energy services for its participants and that is controlled by its participants or general partners in line with section 16b para. 3;
7. ‘distributed generation facility’ means a generation facility that is either connected to a public medium-voltage or low-voltage distribution system and is thus close to final customers, or a generation facility that generates electricity for own use;
- 7a. ‘demonstration project’ means a project which demonstrates a technology as a first of its kind in the Union and represents a significant innovation that goes well beyond the state of the art;
8. ‘direct line’ means either an electricity line that connects a single production site with a single customer or an electricity line that connects an electricity producer and electricity supplier with their own premises, subsidiaries and eligible customers for the purpose of direct supply; electricity lines within residential complexes are not deemed direct lines;
9. ‘third countries’ means countries which have not acceded to the Agreement on the European Economic Area and are not members of the European Union;
10. ‘injecting party’ means a producer or an electricity company that feeds electrical energy into a system;
11. ‘electricity company’ means any natural or legal person or registered partnership which carries out, with a view to profit, at least one of the functions of generation, transmission, distribution, supply or purchase of electricity, and which is responsible for commercial, technical or maintenance tasks related to such functions; final customers are not deemed electricity companies;
- 11a. ‘permanent decommissioning’ means measures that permanently make it impossible for a generation facility to operate or to adjust its injection;
12. ‘final customer’ means a natural or legal person or a registered partnership purchasing electricity for own use;
13. ‘energy efficiency/demand-side management’ means a global or integrated approach aimed at controlling the amount and timing of electricity consumption in order to reduce primary energy consumption and peak loads by giving precedence to investments in energy efficiency measures, or other measures such as interruptible supply contracts, over investments to increase generation capacity if the former are the most effective and economical option, taking into account the positive



- environmental impact of reduced energy consumption and the related aspects of increased security of supply and reduced distribution costs;
- 13a. ‘congestion management’ means the combination of short-, medium- and long-term measures that can be employed in keeping with the system’s operational requirements to avoid or relieve congestion in the transmission network, while maintaining operational and supply security;
  14. ‘withdrawing party’ means a final customer or a system operator that takes electricity off a transmission or distribution system;
  15. ‘ENTSO-E’ means the European Network of Transmission System Operators for Electricity pursuant to Article 5 of Regulation (EC) No 714/2009;
  - 15a. ‘renewable energy community’ means a legal person that enables joint consumption of the energy generated within the community; the participants or general partners of a renewable energy community must live in proximity to each other, as defined in section 16c para. 2;
  16. ‘renewable energy source’ means a renewable non-fossil energy source (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant, gas and biogas);
  17. ‘producer’ means a legal or natural person or a registered partnership which generates electricity;
  18. ‘generation’ means the production of electricity;
  19. ‘cogeneration production’ means the sum of electricity and mechanical energy and useful heat from cogeneration;
  20. ‘generation facility’ means a power plant or fleet of power plants;
  21. ‘schedule’ means the document specifying injection and withdrawal at certain points within a system or exchanged between balance groups, as a projected mean value, presented in a constant time pattern (imbalance settlement periods);
  22. ‘functionally connected system’ means a system that is connected to an ultra-high voltage system directly or indirectly via another system or several systems at grid levels 3 to 7 either via a transformer or galvanically. If a system is indirectly connected to the ultra-high voltage system via several systems, it is deemed functionally connected with that one to which it is connected either directly via a transformer or galvanically. If several systems have these characteristics, the system is deemed functionally connected with the one that delivers a larger annual energy quantity to final customers;
  23. ‘galvanically connected grid areas’ means grid areas that are connected via electrical conductors;
  - 23a. ‘community generation installations’ means generation facilities that generate electricity to satisfy the consumption needs of their participants;
  24. ‘overall efficiency’ in cogeneration means the annual sum of electricity, mechanical energy and useful heat output divided by the fuel input used to generate heat, electricity (gross) and mechanical energy through cogeneration;
  - 24a. ‘main feeding cable’ means the cable connecting the electrical service box and the input terminal of the fuses located before the meter;
  25. ‘household customers’ means customers that purchase electricity for consumption in their own household, excluding business activities;
  26. ‘ancillary services’ means all services that are necessary for operating a transmission or distribution system;
  27. ‘high-efficiency cogeneration’ means cogeneration meeting the criteria of Annex IV;
  28. ‘horizontally integrated electricity company’ means a company performing at least one of the functions of commercial generation, transmission, distribution or supply of electricity, as well as another, non-electricity activity;
  29. ‘electricity from cogeneration’ means electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex III;
  30. ‘integrated electricity company’ means a vertically or horizontally integrated electricity company;
  31. ‘smart meter’ means a piece of technical equipment that records actual energy consumption and period of use in real time and allows for bidirectional data transmission and remote meter reading;
  32. ‘promotional material subject to labelling obligations’ means any promotional material addressed to final customers and designed to sell electricity. This includes
    - a) promotional materials for selling products for individual customers, such as product brochures;
    - b) other standardised printed product materials for sales purposes;



- c) online product promotion;
- 32a. ‘micro-generation plants’ means one or more generation facilities with a maximum capacity of less than 0.8 kW in total per system user plant;
33. ‘small enterprise’ means a business according to section 1 para. 1 item 1 Consumer Protection Act that has fewer than 50 employees, that consumes less than 100,000 kWh electricity per year and whose annual turnover or balance sheet does not exceed 10 million EUR;
34. ‘control’ means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact and law involved, confer the possibility of exerting decisive influence on a company, in particular by
- a) ownership or usufructuary rights in all or part of the company's assets;
  - b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of a company;
35. ‘cost cascading’ means a calculation method used to allocate to final customers the network costs they must bear as a group, i.e. the costs of the grid level at which they are connected and a portion of the costs of all upstream grid levels;
- a) ‘gross cost cascading’ means that the costs for a grid level reflect system use by all injecting and withdrawing parties that are directly or indirectly connected, i.e. including those connected at all downstream grid levels. Capacity and commodity flows between the grid levels are not taken into account;
  - b) ‘net cost cascading’ means that the costs to be cascaded are not allocated in accordance with total system utilisation at the relevant and all downstream levels but exclusively from utilisation by withdrawing and injecting parties at that level and the interface to the next downstream level;
36. ‘cogeneration’, aka ‘CHP’, means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
37. ‘power to heat ratio’, aka ‘CHP coefficient’, means the ratio between electricity from cogeneration and useful heat when operating in full cogeneration mode using operational data of the specific unit;
38. ‘power plant’ means a plant that is designed for generating electricity by energy conversion. It can consist of several generation units and also includes all associated auxiliary systems and secondary equipment;
39. ‘fleet of power plants’ means a group of power plants that share the same system connection;
40. ‘customers’ means final customers, electricity traders, and electricity companies which purchase electricity;
41. ‘cogeneration unit’ means a unit that can operate in cogeneration mode;
42. ‘micro-cogeneration unit’ means a cogeneration unit with a capacity of no more than 50 kW;
43. ‘small-scale cogeneration’ means a cogeneration unit with an installed capacity below 1 MW;
44. ‘load profile’ means an injecting or withdrawing party’s injection or withdrawal shown in time intervals;
45. ‘supplier’ means a natural or legal person or a registered partnership that provides electricity to other natural or legal persons. Where community generation installations, citizen energy communities or renewable energy communities provide energy to their participants, this does not make them suppliers;
46. ‘market rules’ means the sum total of all legal or contractual rules, regulations and provisions which participants in the electricity market must comply with in order to facilitate and guarantee the proper functioning of this market;
47. ‘market participants’ means balance responsible parties, suppliers, electricity traders, producers, system users, customers, final customers, renewable energy communities, citizen energy communities, imbalance settlement responsables, power exchanges, transmission system operators, distribution system operators, and control area operators;
- 47a. ‘guarantee of origin’ means a certificate confirming which type of primary energy source a particular unit of electric energy was generated from. This particularly includes guarantees of origin for electricity generated from fossil fuels, guarantees of origin for electricity from high-efficiency cogeneration, and guarantees of origin pursuant to section 10 Green Electricity Act 2012 and section 83 Renewable Energy Expansion Act;

48. 'grid connection' means the physical connection of a customer or a producer to a system;
49. 'system user' means any natural or legal person or registered partnership injecting electricity into a system or withdrawing electricity from a system;
50. 'grid area' means that part of the network for the use of which the same rates apply;
51. 'network operator' means any operator of a transmission or distribution system with a rated frequency of 50 Hz;
52. 'grid level' means a section of the network which is mainly defined by its voltage level;
- 52a. 'network reserves' means the capacity to increase generation or to reduce consumption to relieve congestion in the transmission network, as part of congestion management, which is guaranteed to be available with a lead time of no more than 10 hours;
- 52b. 'network reserve contract' means a contract on the provision of network reserves in the meaning of item 52a concluded between the control area operator and a provider;
53. 'system access' means use of a system;
54. 'prospective system user' means a natural or legal person or registered partnership that wishes to gain access to a system, including but not limited to electricity companies, to the extent required to fulfil their responsibilities;
55. 'system access contract' means the individual agreement made between a prospective system user and a system operator regulating connection to and utilisation of the system;
56. 'system admission' means the initial establishment of a connection to a system or an increase in the connected capacity of an existing system connection;
57. 'useful heat' means heat produced in a cogeneration process to satisfy an economically justifiable demand for heat or cooling;
58. 'frequency containment reserves (FCR)' means the automated re-establishment of the balance between generation and consumption by means of a predefined frequency-dependent reaction from generation and/or consumption units, which must be fully activated within no more than 30 seconds following the occurrence of an imbalance;
59. 'control area' means the smallest unit within the interconnected system in which load-frequency control is available and used;
60. 'control area operator (CAO)' means the entity which is responsible for load-frequency control within a control area; this function may also be carried out by a third company having its domicile in another member state of the European Union;
61. 'back-up electricity' means the electricity supplied through the electricity grid whenever the cogeneration process is disrupted, including maintenance periods, or out of order;
- 61a. 'seasonal network reserve contract' means a network reserve contract in the meaning of item 52b that is concluded for a single winter or summer season. In this context, the summer season is the period of time defined in item 66b and the winter season is the period of time from 1 October of a calendar year until 30 April of the following calendar year. In both cases, the start and end dates of seasonal network reserve contracts may deviate from these dates by up to one month in either direction;
62. 'automatic FRR (aFRR)' means the function to restore the frequency and the interchange of power flows with other control areas to their set values following an imbalance between the active load generated and consumed; aFRR is usually activated automatically but additional manual activation may occur; it may make use of centralised or decentralised facilities. Outage replacement reserves are also part of aFRR. Re-establishing the target frequency can take several minutes;
63. 'security' means security of supply and provision of electricity as well as operational and technical safety;
64. 'standard load profile (SLP)' means a load profile characteristic of a certain group of injecting or withdrawing parties which has been drawn up by a suitable procedure;
65. 'electricity trader' means a natural or legal person or a registered partnership selling electricity with a view to profit;
66. 'system operator' means a network operator that has at its disposal the technical and organisational means to take any measures required to maintain the operation of the system;
- 66a. 'participant' means a legal or natural person or a registered partnership whose demand facility is assigned to a community generation installation;

- 66b. ‘temporary seasonal decommissioning’ means temporary decommissioning in the meaning of item 66c as indicated in a binding notification by a generation facility’s operator for the period of time from 1 May until 30 September of a calendar year. The beginning and end of temporary seasonal decommissioning as notified may deviate from these dates by one month in either direction;
- 66c. ‘temporary decommissioning’ means temporary measures, with the exception of maintenance works and technical faults, that make it impossible for a generation facility to start operating within 72 hours, while maintaining the ability to make the facility operational again. Temporary decommissioning does not mean a cessation of activities;
67. ‘manual FRR (mFRR)’ means the manually or automatically triggered activation of electric capacity for a longer period that is intended to support or complement aFRR or to replace, for a longer period, aFRR that is already activated;
68. ‘transmission’ means the transport of electricity through an ultra-high voltage and high-voltage interconnected grid with a view to its delivery to final customers or distributors, but not including supply;
69. ‘transmission system’ means a high-voltage interconnected system with a voltage of 110 kV or above, serving the purpose of supraregional transport of electricity;
70. ‘transmission system operator’ means a natural or legal person or a registered partnership that is responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system and, where applicable, the interconnectors to other systems, and for ensuring the long-term ability of the system to meet a reasonable demand for the transmission of electricity; transmission system operators in Austria are Verbund-Austrian Power Grid AG, TIWAG-Netz AG and VKW-Übertragungsnetz AG;
71. ‘interconnector’ means a line used to link electricity systems;
72. ‘affiliated electricity company’ means
- a) an affiliated company pursuant to section 228 para. 3 Business Enterprise Code;
  - b) an associated company pursuant to section 263 para. 1 Business Enterprise Code; or
  - c) two or more companies with identical shareholders;
73. ‘interconnected system’ means a number of transmission and distribution systems which are connected with each other by means of one or more interconnectors;
74. ‘supplier’ means a natural or legal person or a registered partnership executing the function of supply;
75. ‘supply’ means the sale, including resale, of electricity to customers;
76. ‘distribution system operator’ means a natural or legal person or a registered partnership that is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system of a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;
77. ‘distribution’ means the transport of electricity through high, medium or low-voltage distribution systems with a view to its delivery to customers, but not including supply;
78. ‘vertically integrated electricity company’ means a company or a group of companies in which the same person is entitled, directly or indirectly, to exercise control, and where the company or group performs at least one of the functions of transmission or distribution and at least one of the functions of generation or supply of electricity;
79. ‘efficiency’ means the efficiency calculated on the basis of net calorific values of fuels;
80. ‘efficiency reference value for separate production’ means the efficiency of the alternative separate production of heat and electricity that the cogeneration process is intended to substitute;
81. ‘economically justifiable demand’ means the demand that does not exceed the needs for heat or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;
82. ‘economic precedence’ means the ranking of sources of electricity supply in accordance with economic criteria;
83. ‘metering point’ means any entry or exit point where electricity quantities are metered and registered. A system user’s metering points within the same grid area shall be merged if they serve directly connected facilities that are subject to the Tram Ordinance 1999, FLG II no 76/2000, as amended by FLG II no 127/2018; otherwise, merging several metering points is not admissible;

83a. ‘times series’ means a series of values that represents injection and withdrawal quantities during several consecutive 15-minute intervals;

84. ‘top-up electricity’ means the electricity supplied through the electricity network in cases where the electricity demand is greater than the electrical output of the cogeneration process.

(2) Insofar as reference is made in this Federal Act to provisions of other federal acts or to directly applicable Union law, such provisions apply as amended.

(3) *<paragraph not applicable to English translation>*

## **Title 2**

### **Accounting, confidentiality, right to information and inspection, non-discrimination and prohibition of cross-subsidies**

#### **Accounting and prohibition of cross-subsidies**

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

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

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

The internal accounts shall include a balance sheet and a profit and loss account for each activity. Without prejudice to the provisions of commercial and tax law, companies shall specify in their internal accounting the rules they apply for allocating assets, liabilities, expenditure and income to the separate accounts referred to in item 1, along with their rules for depreciation. These rules may be amended only in exceptional cases. Any such amendments shall be recorded and duly substantiated. Any income from the ownership in the transmission and/or distribution system shall be posted separately in the accounts.

(3) The annex to the annual accounts shall list all transactions with affiliated electricity companies (section 7 para. 1 item 72) that involve a service, remuneration or other economic advantage worth more than one million Euro. If a transaction consists of several parts for each of which a separate transaction is concluded, the value of each partial transaction shall be considered in calculating the threshold.

#### **Non-discrimination**

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

#### **Right to information and inspection**

**Section 10.** Electricity companies shall permit the authorities, including the regulatory authority, to inspect any documents and records relevant for their business activities at any time, and shall provide all information relevant to the respective authority’s competence. This duty to grant access and to provide information applies even if there is no specific incident as long as such documents, records or information are required for the discovery or in the run-up to the discovery of facts which are relevant to future proceedings. In particular, electricity companies shall make available any and all information that enables

proper assessment by the authority. If an electricity company fails to meet this obligation, the authority may base its assessment on estimates.

#### **Disclosing inside information**

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

#### **Confidentiality**

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

### **Title 3**

#### **Generation facilities and electricity supply contracts**

##### **Construction and operating licences**

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

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

##### **Contracts for electricity supplied from third countries**

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

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

are not permissible.

##### **Obligation to notify electricity supply contracts**

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

## Title 4 System operation

### Part 1

#### General rights and obligations of system operators

##### Granting system access

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

##### Organisation of system access

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

(2) The system operators shall group all metering points into system user categories. The regulatory authority shall decree the categories of injecting and withdrawing parties and the timeline for categorisation by ordinance.

##### Community generation installations

**Section 16a. (1)** Prospective system users have a legal right towards operators to operate community generation installations under the conditions in paras 2 to 7. This must not interfere with the right of final customers to choose their supplier.

(2) Whether it is for private or commercial purposes, the community installation may only be connected to collective systems that are located in the proximity of participants' facilities (demand facilities) and via which the participants themselves are also connected (main feeding cables). Directly connecting a community plant to the system owned by the system operator or transporting self-generated energy via the system operator's system to participants is not admissible.

(3) The participants may appoint an operator for the community installation; such operator shall be contractually obliged to operate the plant for the participants and shall be notified to the system operator.

(4) The participants and, if they do not operate their plant themselves, the plant operator shall conclude a construction and operating agreement that includes at least the following provisions:

1. an easy-to-understand description of the functioning of the plant;
2. a list of participants' facilities and their metering point reference numbers;
3. the notional share of the participants' demand facilities in the community generation installation;
4. the person responsible for the community installation;
5. the operation and maintenance of the installation as well as the distribution of costs;
6. liability;
7. the management and processing of energy data of the community installation and of participants' facilities by the system operator;
8. the allocation of the generated energy;
9. the admission and exit of participants, including the settlement of costs when a participant exits the community (including, in particular, the reimbursement of investment costs that have been paid and the re-assignment of operating costs and revenues to the remaining participants);
10. termination of the contract and removal of the community generation installation;
11. any insurance.

(5) The system operator shall

1. measure the energy injected into the main feeding cable and the consumption by the community generation installation by means of a load meter or, if it is below the thresholds in section 17 para. 2, by means of a smart meter pursuant to section 7 para. 1 item 31. If the demand facilities are not equipped with smart meters, the system operator shall install them within six months or, if the system operator is unable to equip all of the demand facilities with smart meters, by way of derogation from the remaining provisions of this paragraph and of paras 6 and 7, the system



operator shall at least annually calculate the quantities of the community generation installation according to a distribution key agreed upon between the participants by using the respective consumption data;

2. measure the consumption of the participants' demand facilities by means of a load meter or, if below the thresholds in section 17 para. 2, by means of a smart meter pursuant to section 7 para. 1 item 31;
3. use the quarter-hourly readings of the community installation and of participants' facilities for billing the participants, and follow the market rules in making them available to the suppliers and the plant operator if such an operator has been appointed pursuant to para. 3.

The amount of electricity injected during each 15-minute interval and not allocated to any of the participants is considered to be fed into the public grid and shall be allocated to the balance group of the electricity trader with whom a purchase agreement has been concluded.

(6) Where smart meters are used, quantities must be read and readings used for every 15-minute interval.

(7) The system operator shall allocate the electricity generated to the participants' facilities in accordance with the static or dynamic shares agreed in their contracts. In the latter case, the shares may change dynamically for every 15-minute interval. The following rules apply:

1. allocation takes place on a quarter-hourly basis; a participant may not be allocated more energy than their demand facility has consumed during that 15-minute interval;
2. the consumption registered at the participant's metering point shall be netted with the generation allocated to that participant during each 15-minute interval;
3. the injection into the main feeding cable as registered at the plant's metering point shall be netted with the total quantities allocated during each 15-minute interval.

#### **Citizen energy communities**

**Section 16b.** (1) Citizen energy communities may generate electricity and consume, store or sell this electricity. They may also act as aggregators and provide energy services to their participants, e.g. energy efficiency services or charging services for electric vehicles. In doing so, they must comply with the rules and regulations applicable for each type of activity. The rights and obligations of the participants, in particular their right to choose their supplier, remain unaffected.

(2) The participants or general partners of a citizen energy community may be natural or legal persons or regional or local authorities. Citizen energy communities must have two or more participants or general partners and must be organised as bodies with legal personality, such as (but not limited to) an association, a cooperative, a partnership or a corporation. Their primary purpose may not be to generate financial profits; this shall be explicitly laid down in their statutes, unless it is inherent in the legal format chosen. Instead, citizen energy communities aim to provide environmental, economic or social community benefits for their participants or the local areas where they operate. Participation in a citizen energy community is voluntary and open.

(3) A citizen energy community's control may only be executed by participants or general partners that are

1. natural persons;
2. regional or local authorities; or
3. small enterprises that are not electricity companies in the meaning of section 7 para. 1 item 11.

Control in the sense of this paragraph means that the participants or general partners listed in items 1 to 3 have the majority that is needed to change the statutes of the chosen legal format.

(4) The plants of citizen energy communities are eligible for support under title 2 part 2 Renewable Energy Expansion Act if they fulfil all applicable conditions. A citizen energy community must apply for support under section 55 in conjunction with section 56, 56a, 57 or 57a Renewable Energy Expansion Act for each of its plants (including any electricity storage) separately.

(5) Renewable electricity generated but not consumed by a citizen energy community is eligible for a feed-in premium in line with title 2 part 1 Renewable Energy Expansion Act if all applicable conditions are fulfilled, up to a maximum of 50% of the total electricity generated by that community. The feed-in premium applies to the quantity of electricity sold by the citizen energy community and fed into the public electricity grid. No feed-in premium applies for electricity consumed by or allocated to the community's participants.



(6) The stipulations from the Industrial Code 1994, FLG no 194, do not apply to citizen energy communities.

### **Renewable energy communities**

**Section 16c.** (1) Renewable energy communities are subject to the provisions of section 79 paras 1 and 2 Renewable Energy Expansion Act. Section 79 para. 2 Renewable Energy Expansion Act last sentence applies, while producers that feed electricity into a local or regional network pursuant to para. 2 may only participate in a renewable energy community if they are not controlled by a supplier or trader in the meaning of this Federal Act.

(2) The demand facilities of renewable energy community participants or general partners must be connected to their plants through a low-voltage distribution system and the low-voltage part of a transformer substation (local) or through a medium-voltage system and the medium-voltage busbar of a transformer substation (regional) within a system operator's concession area. Transporting electricity from generation or storage facilities to consumption facilities through network levels 1 to 4 (with the exception of the medium-voltage busbar at the transformer substation) or through other system operators' systems is not admissible.

(3) Within 14 days, system users under para. 1 last sentence and section 79 para. 2 Renewable Energy Expansion Act shall be informed about which part of the distribution system their consumption or generation facilities are connected.

### **Common provisions for all types of energy communities**

**Section 16d.** (1) System users under section 16b para. 2, section 16c para. 1 last sentence, and section 79 para. 2 Renewable Energy Expansion Act have a legal right towards system operators to participation in an energy community under section 16b or section 16c.

(2) The affected system operators shall be informed if an energy community is established and shall be provided with the following information and any changes thereto:

1. description of the generation (and storage) facilities' functioning, including their metering point reference numbers;
2. the participants' demand facilities, including their metering point reference numbers;
3. the participants' notional share in the plant and the distribution of the energy produced;
4. the allocation of the energy that is not consumed by the participants but instead injected into the grid, in 15-minute intervals;
5. the admission and exit of participants;
6. the termination or dissolution of the renewable energy community and the removal of the generation facilities.

The system operators shall provide the information listed in items 1 through 6 to the regulatory authority immediately for the purposes in para. 4.

(3) In addition, the energy community shall conclude agreements at least on the following issues:

1. data management and processing of the energy data of the participants' generation and consumption facilities by the system operator;
2. operation and maintenance of the generation facilities and distribution of the relating costs;
3. liability;
4. any insurance.

(4) Upon request, the energy community shall provide to the regulatory authority any data beyond those listed in para. 2 for the purpose of checking, in the framework of spot checks or concrete incidents, whether all statutory provisions are fulfilled. Should this not be the case, the regulatory authority may request that all statutory provisions be fulfilled through an official decision under section 24 E-Control Act. The regulatory authority shall publish an annual report about the energy communities that have been formed in Austria, addressing in particular their regional distribution.

(5) Operational decision-making and control of the generation facilities lie with the energy community. Operation and maintenance may be outsourced to a third party.

(6) The energy community shall use the services of a licensed system operator.

### **Metering and billing**

**Section 16e.** (1) The system operator shall

1. use a load meter or, if below the thresholds in section 17 para. 2, a smart meter as defined in section 7 para. 1 item 31 to meter the consumption of the participants' demand facilities and the injection and withdrawal of the generation facilities. If the demand facilities are not equipped with smart meters, the system operator shall instal such meters within two months. Where smart meters are used, energy quantities shall be registered for each 15-minute interval, read, reduced by the allocated quantities, and then used for clearing under section 23 para. 5;
2. provide the meter readings of the generation facilities and of the participants' demand facilities for each 15-minute interval to the suppliers and to the energy community as soon as possible, but no later than on the following day, in line with the market rules. In the case of citizen energy communities, this data provision shall respect the data exchange rules laid down in para. 2. In addition, the energy community and its participants shall have free-of-charge access to these readings in a machine readable format via a customer-friendly web portal. For this purpose, the system operators shall provide a secure mechanism for identifying and authenticating energy communities at the web portal and ensure that data transmission is encrypted in accordance with the state of the art. The electricity market code may lay down implementation deadlines for this stipulation.

(2) In the case of citizen energy communities, the data and meter readings of the participants' demand and generation facilities shall be provided to all other system operators in whose service areas lie other generation facilities of the same citizen energy community or demand facilities of that citizen energy community's participants. If technically possible, the system operators shall use existing automated data processing platforms for this purpose. The meter readings, either as registered or as calculated in line with this paragraph, shall be submitted to the supplier in line with the market rules as soon as possible, but no later than on the following day. The electricity market code may lay down implementation deadlines for this stipulation.

(3) The system operator shall assign the participants their fixed or dynamic share in the generated energy, as per their agreement. In the case of citizen energy communities, this data provision shall respect the data exchange rules laid down in para. 2. If dynamic shares are used, they may change for every 15-minute interval. The following rules apply:

1. allocation takes place on a quarter-hourly basis; a participant may not be allocated more energy than their demand facility has consumed during that 15-minute interval;
2. the fixed or dynamic portion in the generated energy that is allocated to a participant's metering point is registered separately and itemised on bills.

#### **System access conditions**

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

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

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

1. the rights and obligations of the contracting parties, in particular regarding compliance with the electricity market code;
2. the SLPs allocated to individual system users;
3. the technical minimum requirements for system access;
4. the various services to be provided by the distribution company relating to system access;
5. the period within which customer inquiries have to be answered;
6. the announcement of any planned supply interruptions;
7. the minimum requirements concerning dates to be agreed with system users;
8. the standard to be met in data communication to market participants;

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

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

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

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

#### **Small renewable plants**

**Section 17a.** (1) Renewable generation facilities and units and renewable demonstration projects with a maximum capacity up to 20 kW shall be notified to the distribution system operator, who shall then connect them to the distribution network.

(2) A valid notification under para. 1 must state at least:

1. the name and address of the network user, and the address of the facility to be connected;
2. for facilities that will be newly developed: a location map;
3. the planned start of injection;
4. the facility's capacity in kW that corresponds to the network user's actual capacity needs;
5. the number and location of meters;
6. the type of facility (e.g. PV plant, small hydropower plant) and mode of operation (injection of all generated quantities or of excess generation only);
7. forecast annual output in kWh;
8. in the case of community generation installations, the details listed in section 16a.

(3) A facility in the meaning of para. 1 shall be connected if the distribution system operator confirms connection in the sense of para. 5 towards the system user in writing or if the distribution system operator has not expressly decided 4 weeks after valid notification. If the information provided by the applicant is insufficient for the distribution system operator to issue a confirmation, the latter shall write to the former without delay to request further details.

(4) If there are well-founded security concerns or if components of the facility are technically incompatible with the system, the distribution system operator has a period of four weeks following submission of a valid application during which it can reject the system admission application and propose a different connection point. The grounds for refusing system admission applications shall be further specified in the market rules. If a system user's application is rejected, such rejection shall be accompanied by a logical explanation.

(5) If there are no grounds on which a system admission application could be rejected (para. 4), the distribution system operator shall issue a confirmation within four weeks of the system user's valid application. Such confirmation shall give the system user an overview of the general terms and conditions for system access and shall transparently display the applicable tariffs and prices.

(6) PV plants with a maximum capacity of up to 20 kW that are connected to the distribution system via an existing exit point do not have to pay additional system admission charges for this new connection. Without prejudice to the applicable market rules, such plants benefit from priority access, i.e. have a right to inject the quantities they generate into the system to the extent covered by their agreed connection capacity.

#### **Changes in the general terms and conditions for distribution network access**

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

#### **General technical requirements**

**Section 18a.** (1) The system operators shall submit to the regulatory authority a common proposal for a set of general technical requirements or for a method for calculating and determining the general technical requirements that are not specified directly in but shall instead be developed pursuant to the guidelines and network codes adopted in accordance with Regulation (EC) No 714/2009.

(2) The proposal shall be jointly prepared by the system operators, after listening to and taking into consideration the opinions of the market participants concerned.

(3) The regulatory authority shall determine the general technical requirements or the method for calculating and determining the general technical requirements by ordinance and on the basis of the proposal drafted pursuant to paras 1 and 2. The ordinance shall be issued for a period of maximum five years. A recast or amendment of the ordinance is subject to paras 1 and 2.

#### **System service quality**

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

(2) The standards may include, without limitation:

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

(3) Insofar as they govern the rights and obligations of system operators towards prospective system users, the standards for system operators set in the ordinance shall be referenced in the system operators' general terms and conditions.

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

#### **Data exchange**

**Section 19a.** The system operators shall ensure that the obligations listed in sections 40 and 45 that are based on shared data exchange mechanisms are carried out in such a way that efficient and secure data access, data protection and data security are safeguarded. The data shall be made available to final customers and other eligible parties in a non-discriminatory manner. To ensure that the shared data exchange mechanisms are interoperable and properly coordinated, the system operators may jointly outsource data management, in particular concerning the creation, development, process coordination, continuous support of and easy access to data exchange infrastructure. The technical instructions for business processes, data formats and message transactions referred to in the electricity market code that is

published by the regulatory authority shall be complied with. The electricity market code may lay down implementation deadlines for this stipulation.

#### Available capacity

**Section 20.** (1) The system operators shall publish how much capacity is available and how much capacity is booked at each substation (grid level 4), and shall update this information at least every quarter. There is no legal claim to the actual availability of the published capacity.

(2) Once the system operator has responded to a system admission application, there is a one-month period within which an advance payment towards the (expected) system admission charge can be made to reserve the desired capacity. Further rules regarding such advance payments may be laid down in the general terms and conditions under section 17. The reservation and the advance payment are voided if the desired capacity remains unused after 12 months following the reservation date, unless the prospective system user can demonstrate that the causes for the delay are not within their sphere of influence and that system access will start within an adequate period. (4) Advance payments that are voided under these stipulations shall be deposited into the support account opened by the RSME pursuant to section 77 Renewable Energy Expansion Act.

(3) The available capacity shall be calculated using the same methodology all across Austria. The system operators shall develop a proposal and submit it to the regulatory authority. The regulatory authority may decree the methodology for calculating the available capacity by ordinance without being bound by the system operators' proposal.

#### Refusal of system access

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

1. extraordinary system conditions (incidents); or
2. insufficient system capacity.

*(items 3 and 4 deleted by virtue of Federal Law Gazette I no 150/2021)*

The reasons for such refusal shall be communicated to the prospective system user.

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

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

#### Dispute settlement

**Section 22.** (1) Except in cases under the jurisdiction of the cartel court pursuant to the Cartel Act 2005, the regulatory authority shall arbitrate disputes between prospective system users and system operators with regard to the legality of refusing access to the system.

(2) In all other disputes between:

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

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



Act. For as long as a procedure in accordance with item 1 is pending conclusion at the regulatory authority, no judicial proceedings may be opened in this same case.

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

### **Power-to-gas plants**

**Section 22a.** (1) Distribution or transmission system operators may own or build, manage or operate power-to-gas plants if the following conditions are fulfilled:

1. the plant has a maximum capacity of no more than 50 MW;
2. the plant has been planned in such a way that its location reflects sector coupling and sector integration aspects, and so that the pure hydrogen or synthetic gas produced can be directly dispatched; and
3. the plant is a fully integrated network component with regulatory approval as per para. 2 or the conditions of para. 3 are fulfilled.

(2) The regulatory authority shall grant regulatory approval as per para. 1 item 3 first case if the power-to-gas plant

1. is integrated in the transmission or distribution system;
2. does not serve balancing or congestion management purposes; and
3. contributes to maintaining efficient, reliable and secure system operation, i.e. if it is technically necessary.

(3) Building, managing and operating power-to-gas plants is admissible under para. 1 item 3 second case if the following conditions are met:

1. The system operator has held an auction but no auction participant was chosen to act as owner or to build, manage or operate the plant in question. This condition is also fulfilled if no auction participant could deliver the auctioned capacity at appropriate cost and quickly enough. The auction shall be open, transparent and non-discriminatory.
2. The plants are necessary for the distribution system operators to fulfil their obligations for the efficient, reliable and secure operation of the system and the plants are not used to buy or sell electricity in the electricity markets.
3. The regulatory authority has critically evaluated the auction procedure and has granted approval. The regulatory authority may develop guidelines or award criteria for such auctions.

In the case of plants under para. 1 item 3 second case, the regulatory authority shall conduct public consultations at least every five years to find whether there is potential for and interest in investing in the existing power-to-gas plants. Where the public consultation, as assessed by the regulatory authority, indicates that third parties are able to own, build, operate or manage such facilities in a cost-effective manner, the regulatory authority shall ensure that the distribution system operators' activities in this regard are phased out within 18 months. The regulatory authority may design this phase-out in such a way that the distribution and transmission system operators can recover the residual value of their investments.

(4) Adequate costs for operating power-to-gas plants shall be allowed when setting the system charges under title 3. Any revenues generated by the system operators in operating such plants shall be taken into consideration in setting the system charges.

## **Part 2**

### **Control areas, control area operators, and imbalance settlement responsables**

#### **Designation of control areas**

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

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

1. providing system services (load-frequency control) in accordance with the relevant technical rules, such as those of ENTSO-E, while these services may also be provided by a third company;
2. managing schedules with other control areas;
3. organising and deploying balancing energy according to the merit order list;
4. metering at the interfaces of their electricity systems and transmitting the data to the imbalance settlement responsible and to other system operators;
5. identifying any congestions in transmission systems, as well as taking measures with a view to preventing, removing and overcoming congestions in transmission systems, and also maintaining security of supply. If necessary to avoid or remove congestions, the control area operators, in coordination with the affected distribution system operators, shall conclude contracts for guaranteed generation or demand response (positive or negative) to the extent necessary and for the relevant period of time, in exchange for compensation of economic disadvantages and costs that arise from these services; in doing so, the provisions of Article 13 Regulation (EU) 2019/943 on the internal market for electricity, OJ L 158/54, 14.06.2019, shall be complied with. If a system analysis reveals that further balancing services (network reserves) are needed, these shall be procured in line with section 23b. Such contracts may also oblige injecting or withdrawing parties to assist with avoiding or removing congestion in other transmission systems. Control area operators may conclude contracts with other transmission system operators on the use of generation or demand response from the European internal electricity market or from the Swiss internal electricity market to avoid or remove congestion in Austrian transmission systems. The system charges shall cover the expenses incurred by control area operators in the performance of these obligations;
6. dispatching power plants to produce balancing energy;
7. delimiting balancing energy from imbalances according to transparent and objective criteria;
8. ensuring a physical balance between generation and demand in the system under their responsibility;
9. clearing and settling any imbalances through an imbalance settlement responsible licensed to carry out this task, and making available to this body as well as to the balance responsible parties the data necessary for clearing and settlement, in particular the costs of balancing services, as well as any meter readings required to calculate deviations from the schedule and load profile of each balance group;
10. preparing a load projection with a view to diagnosing congestions;
11. entering into contracts on the exchange of data with other system operators, the balance responsible parties, the imbalance settlement responsible, and other market participants in accordance with the market rules;
12. designating an imbalance settlement responsible and informing the authority of this designation;
13. publishing the FCR and aFRR activated in terms of duration and load, as well as the results of the tendering procedure pursuant to section 67 and section 69;
14. designing and operating the data communication and processing systems for simultaneously transmitted data of generation facilities pursuant to section 66 para. 3 so as to exclude any disclosure of such data to third parties;
15. drawing up a compliance programme which ensures that the obligations pursuant to item 14 are met;
16. cooperating with ACER and the regulatory authority to ensure the consistency of regional regulatory frameworks with the aim of creating a competitive internal market in electricity;
17. having at their disposal one or more integrated system(s) for capacity allocation and for verifying system security at regional level, covering one or more member state(s);
18. coordinating at regional and supraregional level the calculation of cross-border capacity and its allocation in keeping with the stipulations of Regulation (EC) No 714/2009;
19. coordinating market transparency measures across borders;
20. harmonising to exchange balancing services;
21. collaborating with other control area operators to establish a regional security of supply assessment and outlook;



22. collaborating with other control area operators, exchanging the required data, to implement regional operational planning and use coordinated operational security systems;
23. submitting their congestion management rules, including the rules for capacity allocation on cross-border lines, and any change thereto to the regulatory authority for approval;
24. soliciting and collecting offers for balancing energy, and drawing up a merit order to be observed by control area operators;
25. taking special measures if no offers for balancing energy are submitted.

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

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

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

1. assigning identification numbers to balance groups;
2. providing IT interfaces;
3. administering the schedules between balance groups;
4. receiving meter readings from the system operators in a predefined format, analysing them and submitting them to the market participants and other balance responsible parties concerned in line with the provisions in the contracts;
5. receiving schedules from the balance responsible parties and submitting them to the market participants concerned (other balance responsible parties) in line with the provisions in the contracts;
6. exercising the credit check of the balance responsible parties;
7. cooperating in the preparation and adjustment of rules for switching, clearing and financial settlement;
8. handling the financial settlement and organisational measures when balance groups are dissolved;
9. distributing and allocating, based on transparent criteria and once meter readings become available, any differences resulting from the use of SLPs to the market participants connected to the system of a system operator;
10. charging the clearing fee to the balance responsible parties;

11. calculating and allocating imbalances;
12. entering into contracts:
  - a) with balance responsible parties, other control area operators, system operators, and electricity suppliers (producers and traders);
  - b) with bodies for data exchange with a view to preparing an index;
  - c) with electricity exchanges on the disclosure of data;
  - d) with electricity suppliers (producers and traders) on the disclosure of data.

(4a) When receiving and processing meter readings pursuant to para. 4 item 4, the imbalance settlement responsible shall handle the generation data relating to each system user category separately; the categories shall be defined in an ordinance by the regulatory authority. For this purpose, when exercising their duties according to section 45 item 1 distribution system operators shall provide the data necessary for categorising and clearing injection quantities. The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and the regulatory authority shall have access to the data processed in accordance with the first sentence above.

(5) **(framework provision)** Within the framework of calculating and allocating imbalances – unless there are special rules under contracts concluded pursuant to section 113 para. 2 – the imbalance settlement responsible shall

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

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

(7) **(framework provision)** If within six months after notification pursuant to para. 6 no official declaratory decision is issued, the implementing legislation shall provide that the designated party be entitled to perform the function of an imbalance settlement responsible. The implementing legislation shall provide that an imbalance settlement responsible be deprived of its entitlement to perform this function if the prerequisites pursuant to para. 3 are no longer met. The procedure set out in the last sentence of para. 6 applies.

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

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

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

(9) **(constitutional provision)** If system congestions occur in the control area's transmission network, producer services are needed for their removal and no contractual arrangement has been made pursuant to para. 2 item 5, the control area operator, together with the affected distribution system operators, may instruct the producers to provide services (i.e. increase or reduce generation, change the availability of their

generation facilities). The procedure for determining fair remuneration for such services shall be defined in an ordinance issued by the regulatory authority, such remuneration being based on the economic drawbacks and expenses of producers caused by these services. In this context, it shall also be ensured that priority is given to the injection of renewable electricity and that any instructions given to operators of CHP plants do not jeopardise the security of district heat supply. The last sentence of para. 2 item 5 applies *mutatis mutandis*.

### **Decommissioning notifications and system analysis**

**Section 23a.** (1) Operators of generation facilities with a maximum capacity above 20 MW must submit binding notifications of any temporary, temporary seasonal, or permanent decommissioning of (parts of) their plants from 1 October of a year onwards to the control area operator by 30 September of the previous year. Such notification shall state the decommissioning date and envisaged duration, as well as the lead time for any re-commissioning. It shall also state whether the plant is decommissioned for legal, engineering or business reasons.

(2) By 31 December of each year, the control area operator shall conduct a system analysis to determine the extent of network reserves needed from 1 October onwards. Such determination shall cover a period of two years. In particular,

1. it shall differentiate between the effectiveness of congestion management measures at different locations;
2. it shall take into account any temporary, temporary seasonal, and permanent decommissioning of plants notified under para. 1;
3. it shall consider dispatching power plants from abroad and the resulting trade between bidding zones;
4. it shall take into consideration infrastructure development from the current network development plan;
5. it shall allow for weather or climate particularities, demand fluctuations, generation availability (e.g. due to maintenance works), as well as planned and unplanned unavailability of network elements in the control area operator's network area and in neighbouring countries;
6. it shall capitalise on the potential of demand response where this can reduce the need for network reserves.

(3) The methodology and the data used for the annual system analysis shall be agreed with the regulatory authority. The finalised system analysis shall be submitted to the regulatory authority and the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. Once the contracts under section 23b para. 6 have been concluded, the results of the system analysis as well as its assumptions, parameters, scenarios, and methods shall be published.

### **Network reserves**

**Section 23b.** (1) The control area operator shall procure network reserves to the extent found necessary in section 23a para. 2 by way of transparent, non-discriminatory and market based tendering in line with the below provisions. The following types of service providers may participate in the procedure:

1. operators of domestic generation facilities with a maximum capacity of at least 1 MW that were notified to be decommissioned during the period of time specified in the tender in line with section 23a para. 1;
2. withdrawing parties with a maximum capacity of at least 1 MW that can adjust or shift their demand temporarily, but at least for six hours;
3. aggregators with a generation or demand pool of at least 1 MW that can be activated en bloc; and
4. operators of generation facilities with a maximum capacity of at least 1 MW in the European internal electricity market or in Switzerland, if the other transmission system is electrically linked to the Austrian control area and the Austrian control area operator can oblige the other transmission system operator to provide congestion management services through a congestion management contract. Operators of generation facilities with a maximum capacity of more than 20 MW may participate if they have notified their transmission system operator that their plant will be decommissioned during the relevant period of time, in a similar fashion as described in section 23a para. 1.

(2) The control area operator shall conduct a two-stage tender. For the first stage, the control area operator shall agree the technical requirements for the provision of network reserves with the regulatory

authority by the end of February each year and shall publish them in a format adequate to attract expressions of interest. The control area operator shall include the following information in the call for expressions of interest:

1. the maximum reserve capacity (MW) needed for the first year of the period in accordance with section 23a para. 2 second sentence;
2. the period of time for which network reserves are required, in line with section 23a para. 2;
3. the reserve service products that will be procured in line with the procedure described in the following paragraphs, determined on the basis of decommissioning notifications under section 23a para. 1 and the system analysis under section 23a para. 2.

The products under item 3 are contracts with periods of two or one years, or seasonal contracts. The choice of product shall consider existing contracts for network reserves and shall comply with the principles in para. 7 items 1 to 4.

(3) For all parties that have expressed interest within four weeks, the control area operator shall verify whether they comply with the criteria for providing congestion management services and with the criteria in para. 1, para. 2 second sentence, and para. 4. For the second stage, the operators of the eligible plants shall be asked to submit offers within four weeks. The operators of plants that have turned out not to be eligible shall be informed thereof. The operators of plants under section 23a para. 1 that wish to make an offer for a two-year contract shall also make an offer for a one-year contract.

(4) Generation facilities are only eligible if they do not emit more than 550 g CO<sub>2</sub> per kWh of electricity and do not produce radioactive waste. In addition, compensation for the provision of network reserves may not be granted to companies in difficulty in the meaning of the Guidelines on State aid for rescuing and restructuring non-financial companies in difficulty, OJ C 249/1, 31.07.2014.

(5) The offers received shall be checked against a reference value, which is calculated as the weighted average price of all offers. The most expensive 10% of the capacity offered are disregarded when calculating the average. If any offer is significantly more expensive than the reference value, the control area operator shall inform the regulatory authority thereof. The control area operator shall assess what constitutes a ‘significantly more expensive’ offer based on the prices offered per MW and per month, considering the report under para. 10; it shall disclose its findings as part of the second stage of the procurement procedure in line with para. 3. If the offers that are not significantly more expensive than the reference value are not sufficient to satisfy the need for network reserves identified for the first year of the time period from section 23a para. 2 second sentence, the control area operator shall ask all participants to submit new offers within ten days. The prices in these new offers must be lower than the ones previously offered. Any offers that are significantly more expensive than the reference value in this round shall be excluded from the procedure.

(6) From the offers that have been checked and not excluded, the control area operator shall select those that enable satisfying the need for network reserves during the first year of the period from section 23a para. 2 second sentence at the lowest cost. The selection is subject to approval by the regulatory authority. The regulatory authority shall verify whether the principles in para. 1 first sentence are complied with and shall approve the selection of offers by issuing an official decision to the control area operator within eight weeks; such official decision may contain conditions and time limits. If the regulatory authority does not act within the deadline, the selection is deemed to be approved. Appeals against the official decision do not have suspensory effect.

(7) Once the selection of offers has been approved, the control area operator shall conclude contracts for network reserves with the providers in line with the following principles:

1. The period of contracts with generation facilities under para. 1 items 1 and 4 may not be longer than the decommissioning period notified under section 23a para. 1.
2. Two-year contracts may only be concluded if a continuous need for network reserves has been identified for the entire period of time under section 23 para. 2.
3. For periods of time covered by two-year contracts, no further two-year contracts may be concluded.
4. Seasonal contracts may only be concluded for a single winter or summer season.

There is no legal claim to concluding contracts for network reserves. Contracts for network reserves shall contain a clawback clause for the benefit of the control area operator. Once a contract has been concluded, the operators of generation facilities under para. 1 items 1 and 4 may not make them available for any purpose other than congestion management, with the exception of maintenance works; such plants may not participate in the market during the contract period. Operators of demand facilities may participate in the

market to the extent necessary to satisfy their consumption; however, the contracted demand response capacity may not be made available for any purpose other than congestion management during the contract period.

(8) If the offers that have been submitted and not excluded are insufficient to satisfy the need for network reserves during the first year of the period from section 23a para. 2 second sentence or if fewer than three companies have submitted offers, the regulatory authority shall ask the operators of suitable generation facilities to disclose their expenses and costs in line with section 23c para. 3 within an adequate deadline of no more than three weeks. The regulatory authority shall apply the criteria in section 23c paras 3 and 4 and shall rank the facilities according to their costs. Applying section 8 mutatis mutandis, the operators shall keep these costs in separate accounts. The regulatory authority may view these accounts and all their contents. The control area operator shall then conclude contracts to satisfy the residual need for network reserves at the lowest possible cost. Para. 7 applies, while two-year contracts are not admissible.

(9) Operators whose generation facilities under para. 1 item 1 are not selected shall decommission these plants for the period of time notified under section 23a para. 1, unless section 23c para. 1 or section 23d para. 3 apply.

(10) The regulatory authority shall publish a report about the situation on the Austrian electricity market with respect to the provision of network reserves at least every two years. Such report shall assess the competitiveness on the relevant segment of the electricity market as it appears in price comparisons, in the products on offer and the products contracted, and the market concentration (supply and demand), including the availability of alternative sources and the availability of generation facilities as compared to demand, shall analyse the meaning of 'significantly more expensive' in line with para. 5, and may make recommendations. The report shall also take into account the system operators' reports under Article 13(4) Regulation (EU) 2019/943. The results of the report shall be taken into consideration when designing the technical requirements and the tender under paras. 2 to 5 and the contracts under paras 6 to 8.

#### **Decommissioning ban**

**Section 23c.** (1) If the need for network reserves for the first year of the period from section 23a para. 2 second sentence cannot be satisfied by contracting all expressions of interest or first-time offers under section 23b para. 3, or if the need for network reserves cannot be satisfied in spite of contracting under section 23b paras 7 and 8, the regulatory authority may follow the control area operator's proposal to oblige the operators of plants notified for decommissioning under section 23a para. 1 by official decision to keep operating for a period of one year, but no longer than the decommissioning period notified under section 23a para. 1, for the exclusive purpose of congestion management. Such plants may not participate in the market during this period of time. The plants shall be selected depending on their economic and technical features, applying section 23b para. 8. Appeals against a decommissioning ban issued by the regulatory authority do not have suspensory effect.

(2) The control area operator shall conclude contracts in line with section 23b paras 4 and 8 with the operators affected by decommissioning bans under para. 1.

(3) The operators shall receive annual compensation for the economic and financial disadvantages of providing network reserves as compared to the costs of decommissioning. The following types of costs shall be included:

1. operational expenses and costs for keeping operational plants available, reduced by expenses and costs that would be caused by decommissioning. This shall in any case include the following fixed cost items:
  - (a) material costs;
  - (b) personnel costs; and
  - (c) maintenance costs directly caused by providing the services;
2. any operational expenses and costs for re-commissioning or re-enabling operation after preservation measures have been taken;
3. new construction or maintenance investment verifiably needed to keep the plant in standby mode and operational during the time period covered by the decommissioning ban. Only the portion of these costs corresponding to the time of the decommissioning ban shall be included, and it shall accrue adequate interest;
4. any depreciation caused by the wear and tear of the plant during the decommissioning ban as evidenced by the book values on 31 December of the previous year.



(4) The following cost items shall not be included:

1. the expenses and costs compensated for under a contract under section 23 para. 2 item 5 second sentence;
2. cost of capital;
3. any income from interest that the operator of a power plant marked for permanent decommissioning would not have generated as equipment and other elements would have been sold;
4. any type of opportunity costs;
5. expenses not directly related to the operation of the plant or to the relevant time period, as well as exceptional expenses;
6. expenses and costs caused by the operator;
7. any changes in book values due to previous compensation for maintaining standby capacity.

(5) Applying section 8 mutatis mutandis, the operators shall keep separate accounts for the time of the decommissioning ban. The regulatory authority and the control area operator may view these accounts and all their contents. The producer must agree any investments that are compensated, in particular those under para. 3 item 3, with the control area operator.

(6) The costs shall be recovered through the charge to be decreed by ordinance under sections 49 and 51.

### Changes

**Section 23d.** (1) Upon the application by an operator selected under section 23b paras 7 or 8, the control area operator may shorten the contractual period once if the operator ensures that the plant is available for congestion management under the same conditions until the end of the original contracting period. The shortened contracting period shall be notified to the regulatory authority. The control area operator shall then be reimbursed for all payments made in exchange for the network reserves, with the exception of the costs allowed by the regulatory authority.

(2) Upon the application by an operator selected under section 23c para. 1, the period of the decommissioning ban may be shortened once if the operator ensures that the plant is available for congestion management under the same conditions until the end of the original contracting period. The regulatory authority shall grant such applications by official decision, including any conditions or time limits deemed necessary. The control area operator is a party to these proceedings. If approved, the contract under section 23c para. 2 shall be adjusted accordingly. The control area operator shall then be reimbursed for all payments made in exchange for the network reserves, with the exception of the costs allowed by the regulatory authority.

(3) Upon application by an operator obliged to decommission their facility under section 23b para. 9, the regulatory authority may lift the obligation or shorten the temporary decommissioning period by official decision. The regulatory authority shall grant such applications by official decision, including any conditions or time limits deemed necessary, only if the circumstances that led to decommissioning in the first place have substantially changed. It is for the operator to document the change and the extent of the change, presenting all pertinent documentation to the regulatory authority. The control area operator is a party to these proceedings.

## Part 3

### Unbundling of transmission system operators

#### Chapter 1

#### Ownership unbundling

##### Prerequisites

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

(2) One person is not entitled to:

1. directly or indirectly exercise control over a company performing any of the functions of generation or supply, and at the same time directly or indirectly exercise control or exercise any right over a transmission system operator; nor

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

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

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

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

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

(6) Para. 2 items 1 and 2 also apply to gas companies in the meaning of section 6 item 13 Gas Act 2010.

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

## Chapter 2

### Independent system operator (ISO)

#### Prerequisites

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

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

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

#### Obligations

**Section 26.** (1) Each independent system operator is responsible for granting and managing third-party access, including the collection of access charges and congestion management charges and payments under the inter-transmission system operator compensation mechanism in compliance with Article 13 Regulation (EC) No 714/2009, for operating, maintaining and expanding the transmission system, as well as for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system, the independent system operator is responsible for planning



(including permit procedures), construction and commissioning of the new infrastructure. For this purpose, the independent system operator acts as a transmission system operator in accordance with the applicable stipulations. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

(2) The transmission system owner shall:

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

#### **Independence of the transmission system owner**

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

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

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

### **Chapter 3**

#### **Independent transmission system operator (ITO)**

##### **Assets, independence, services, branding**

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

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

1. The independent transmission system operator is the owner of the transmission system and the assets. Operating third-party power plant lines is admissible.

2. The staff is employed by the independent transmission system operator. In particular, the independent transmission system operator has its own legal, accountancy and IT services.
3. Rendering of services, including leasing of personnel, by the vertically integrated electricity company to the independent transmission system operator is prohibited. The independent transmission system operator may render services, including leasing of personnel, to the vertically integrated electricity company if the provision of those services does not discriminate between users, is available to all users on the same terms and conditions and does not restrict, distort or prevent competition in generation or supply.

(3) Subsidiaries of the vertically integrated electricity company performing any of the functions of generation or supply shall not have any direct or indirect shareholding in the independent transmission system operator. The independent transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated electricity company performing any of the functions of generation or supply, nor receive dividends or any other financial benefits from such subsidiary. The overall management structure and the corporate statutes of the independent transmission system operator shall ensure effective independence of the independent transmission system operator. The vertically integrated electricity company shall not influence, directly or indirectly, the competitive behaviour of the independent transmission system operator in relation to the day-to-day activities of the independent transmission system operator and management of the system, or in relation to activities necessary for the preparation of the network development plan pursuant to section 37.

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

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

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

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

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

1. the representation of the independent transmission system operator and the function of acting as a contact for third parties and the regulatory authorities;
2. the representation of the independent transmission system operator within ENTSO-E;
3. the granting and managing of third-party access without discriminating between system users or classes of system users;
4. the collection of all transmission system related charges including access charges, charges for ancillary services such as purchasing of services (imbalance charges, energy to compensate for losses);
5. the operation, maintenance and development of a secure, efficient and economically feasible transmission system;
6. investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;

7. setting up appropriate joint ventures, including with one or more transmission system operators, electricity exchanges, and other relevant actors, pursuing the objective of promoting the creation of regional markets or of facilitating the liberalisation process.

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

#### **Independence of the transmission system operator**

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

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

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

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

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

#### **Independence of management and staff**

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

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

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

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

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

(4) Para. 1 item 2 applies to the majority of the persons responsible for the management of the independent transmission system operator. The persons responsible for the management of the independent transmission system operator who are not subject to para. 1 item 2 shall have exercised no management or other relevant activity in the vertically integrated electricity company for a period of at least six months before their appointment.

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

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

#### **Independence of supervisory bodies**

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

(2) Section 30 paras 1 to 3 also apply to half of the members of the supervisory body minus one.

#### **Compliance programme and compliance officer**

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

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

(3) The compliance officer shall be in charge of

1. continuously monitoring the implementation of the compliance programme;
2. elaborating an annual report setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;
3. reporting to the supervisory body and issuing recommendations on the compliance programme and its implementation;
4. notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme;

5. reporting to the regulatory authority on any commercial and financial relations between the vertically integrated electricity company and the transmission system operator.

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

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

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

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

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

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

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

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

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

(12) If the compliance officer is an employee of the transmission system operator, for the duration of their appointment as compliance officer they shall be treated as a safety officer (section 73 para. 1 Employees Protection Act) in terms of protection against dismissal or removal.

## Chapter 4

### More effective independence of transmission system operators

#### Prerequisites

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



## Chapter 5 Procedures for transmission system operators

### Certification and designation of transmission system operators

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

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

(2) A certification procedure shall be opened

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

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

(3) The transmission system operator shall be obliged to

1. promptly apply for certification unless it is already certified; and
2. notify the regulatory authority without delay of any changes which cause the need for reassessing the certification decision.

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

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

(5) Notwithstanding para. 4 above, the following shall apply:

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

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



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

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

#### **Certification of third-country transmission system operators**

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

(2) The regulatory authority shall immediately notify the European Commission of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology of

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

(3) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall ensure that granting certification by the regulatory authority will not put at risk the security of energy supply of Austria and the Union. In considering whether the security of energy supply of Austria and the Union is put at risk, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall take into account

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

(4) Following consideration of the question whether the security of energy supply of Austria and the Union is put at risk, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall draw a conclusion and inform the regulatory authority of such conclusion. The regulatory authority shall take account of the conclusion of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology in its draft and final decisions.

### **Part 4**

#### **Combined operators**

##### **Combined operators**

**Section 36.** The regulatory authority shall approve for the same system operator to operate both a transmission and a distribution system provided that the criteria in paras 24 through 33 are met.

### **Part 5**

#### **Operation of transmission systems**

##### **Network development plan**

**Section 37.** (1) **(framework provision)** Taking into account paras 2 to 6, the provincial legislation shall provide that every two years, transmission system operators submit to the regulatory authority for

approval a ten-year network development plan for the transmission network based on current and forecast supply and demand.

- (2) **(framework provision)** The network development plan shall in particular
1. indicate to market participants the main transmission infrastructure that needs to be built or extended over the next ten years;
  2. list all the investments already decided and identify new investments which have to be executed in the next three years; and
  3. provide for a time frame for all investment projects.
- (3) **(framework provision)** The network development plan shall in particular have the aim of
1. meeting the demand for line capacity to supply final customers while considering emergency scenarios;
  2. ensuring a high degree of availability of line capacity (security of supply of the infrastructure);
  3. meeting the demand for line capacity to achieve a European internal market.

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

(5) **(framework provision)** In drawing up the network development plan, transmission system operators shall take into consideration technical and economic expediency, the interests of all market participants, and consistency with the Community-wide network development plan and the integrated network plan under section 94 Renewable Energy Expansion Act. It shall also take into consideration the coordinated network development plan under section 63 Gas Act 2011 and the long-term integrated plan under section 22 Gas Act 2011. Prior to submitting the network development plan for approval, the transmission system operator shall consult all relevant market participants.

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

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

#### **Approval of the network development plan**

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

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

(3) In particular, the regulatory authority shall verify whether the network development plan covers the investment needs identified in the consultation to their full extent, and whether the network development plan is consistent with the integrated network plan under section 94 Renewable Energy Expansion Act, the Union-wide network development plan pursuant to Article 8(3)(b) Regulation 2009/714/EC, the network development plan under section 63 Gas Act 2011, and the long-term and integrated plan under section 22 Gas Act 2011. If any doubt arises as to the consistency with the Community-wide network development plan, the regulatory authority shall consult the Agency.

(4) Appropriate expenses associated with the realisation of measures included in the network development plan, including cost of capital for preliminary financing, shall be allowed when setting the system charges pursuant to title 5.

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

#### **Monitoring of the network development plan**

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

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

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

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

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

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

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

#### **Obligations of transmission system operators**

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

1. to operate and maintain the system operated by them safely, reliably, efficiently, and with due regard to environmental protection;
2. to provide the technical prerequisites necessary for operating the system;
3. to provide for any contractual arrangements required for clearing and settlement and for data communication pursuant to section 23 para. 2 item 9;
4. to supply adequate information to the operators of other systems with which their own system is connected so as to ensure safe and efficient operation, coordinated expansion, and interoperability of the interconnected system;
5. to publish their approved general terms and conditions and the system charges set in accordance with sections 51 et sqq.;
6. to enter into contracts on the exchange of data with other system operators, balance responsible parties, the imbalance settlement responsible, and other market participants in accordance with the market rules;
7. to ensure the long-term ability of the system to meet reasonable demands for the transmission of electricity, and to operate, maintain and develop under economic conditions safe, reliable and efficient transmission systems with due regard to the environment;
8. to contribute to security of supply through adequate transmission capacity and system reliability;

9. to refrain from discriminating in any way whatsoever against system users or categories of system users, in particular if this would be to the benefit of companies affiliated with them;
10. to provide system users with the information they need for efficient access to the system;
11. to identify any congestions in the system and take measures to avoid or remove congestions, and to maintain security of supply. If, for the removal of system congestions or for maintaining security of supply, any services by producers (increase or reduce generation, change availability of power plants) are required, this and any necessary data shall be reported by the transmission system operator without delay to the control area operator, which shall give further instructions if necessary (section 23 para. 2 item 5);
12. to ensure that adequate means to meet the service obligations are made available;
13. to collect congestion rents and payments under the inter-transmission system operator compensation mechanism, in compliance with Article 13 Regulation (EC) No 714/2009, grant and manage third-party access and give reasoned explanations when they deny such access, which shall be monitored by the national regulatory authority; in carrying out their tasks under this provision, transmission system operators shall primarily facilitate market integration. Congestion revenues shall be used for the purposes specified in Article 16(6) Regulation (EC) No 714/2009;
14. to manage the transmission of electricity through the system, taking into account exchanges with other interconnected systems;
15. to maintain a secure, reliable and efficient electricity system, i.e. to ensure the availability of all necessary ancillary services, including those provided by demand response, insofar as such availability is independent from any other transmission system with which their system is interconnected, and to plan and coordinate measures for recovery after major disturbances of the transmission system by entering into contractual agreements to the technically necessary extent with both directly and indirectly connected power plant operators to ensure the necessary black start and island operation capability solely through the transmission system operators;
16. to establish a network development plan pursuant to section 37 and submit this plan to the regulatory authority for its approval;
17. to report to the regulatory authority in writing each year on the measures taken to fulfil the transparency obligations imposed on them under Regulation (EC) No 714/2009 and any other directly applicable legislation of the European Union. Such report shall in particular contain details of the published information and the manner of publication (e.g. internet addresses, dates and frequency of publication and a qualitative or quantitative assessment of the data reliability of the publication);
18. to report to the regulatory authority in writing each year on the measures they have taken to fulfil the obligations of technical cooperation with transmission system operators of the European Union and third countries imposed on them under Directive 2009/72/EC and any other directly applicable legislation of the European Union. Such report shall in particular address the processes and measures agreed upon with the transmission system operators regarding cross-border network planning and system operation and the data agreed upon for monitoring these processes and measures;
19. to support ENTSO-E in preparing the Community-wide network development plan;
20. to establish a special balance group for determining system losses, which group shall need to comply only with the criteria of a balance group required for such purpose;
21. to procure the energy that is needed to cover losses and reserve capacity in the transmission system according to transparent, non-discriminatory and market-based procedures.

(1a) Operators of transmission systems with rated voltages of 380 kV or more shall undertake research and development in the area of alternatives to overhead lines (e.g. 380 kV AC underground cables) in large applications. The results of such research activities shall feed into the alternatives considered when new lines and their economic feasibility are assessed. Practical applicability of such research results shall be tested as part of pilot projects under section 40a, which shall be marked as such in the network development plan.

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

the objective of excluding discriminatory and anticompetitive conduct. The programme is subject to approval by ACER. Observance of the programme shall be monitored by the compliance officers of the transmission system operators.

#### **Pilot projects for underground cables**

**Section 40a.** (1) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall ask the transmission system operators for regular reports about the results of their research and development activities and the related pilot projects in line with section 40 para. 1a. In any case, they shall report within five years.

(2) Should an expert opinion find that the results of the research and development activities as reported under para. 1 are not satisfactory, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may ask an external expert to develop a pilot project, while announcing this step beforehand and granting an adequate deadline for corrections and improvements. Such project shall be inserted into the network development plan.

#### **Approval of general terms and conditions**

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

### **Part 6**

#### **Operation of distribution systems**

##### **Prerequisites for operating distribution systems**

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

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

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

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



on measures taken and publishes such report. The provincial government responsible for monitoring the compliance programme furnishes to the regulatory authority an annual summary report on measures taken and publishes such report.

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

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

(6) The implementing legislation shall ensure that a distribution system operator that is part of a vertically integrated company is monitored by the provincial government so that it cannot take advantage of its vertical integration to distort competition. In particular, the implementing legislation shall provide for measures that ensure that vertically integrated distribution system operators do not, in their communication and branding, create confusion in respect of the separate identity of the retail business of the vertically integrated company.

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

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

#### **Transfer and expiry of system operation licences**

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

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

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

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

#### **Right to connect**

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

(2) Customers receiving electricity at a rated voltage of above 110 kV are excluded from the right pursuant to para. 1.

#### **Responsibilities of distribution system operators**

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



1. to develop their distribution systems to be future-proof and in line with the national and European climate and energy goals;
2. to make available the data required for calculating and allocating imbalances, including, without limitation, the meter readings required to calculate deviations from schedules and from the load profile for each balance group;
3. to grant access to their system to prospective system users under the approved general terms and conditions and at the set system charges;
4. to publish the approved general terms and conditions for system access and the system charges;
5. to provide for any contractual arrangements required for clearing and settlement and for data communication pursuant to item 1;
6. to operate and maintain the system;
7. to assess load flows and to monitor maintenance of the system's technical safety;
8. to keep a record of all balance groups and balance responsible parties operating in their system;
9. to keep a record of all suppliers operating in their system;
10. to meter system users' withdrawal, load and load profiles, to check these data for plausibility, and to transmit any required data to the imbalance settlement responsible as well as the system operators and balance responsible parties concerned;
11. to meter loads, quantities and load profiles at the interfaces between their system and other systems, and to pass on these data to the system operators concerned, as well as to the imbalance settlement responsible;
12. to identify any congestions in the system and to take measures with a view to averting such congestions;
13. to receive and pass on notifications relating to supplier and balance group switching;
14. to establish a special balance group for determining system losses, which group shall need to comply only with the criteria of a balance group required for such purpose;
15. to procure the energy that is used to cover losses and reserve capacity in the distribution system according to transparent, non-discriminatory and market-based procedures;
16. to collect the system charges;
17. to cooperate with the imbalance settlement responsible, the balance responsible parties and other market participants in assigning any discrepancies resulting from the use of standard load profiles once the meter readings are available;
18. to report to the regulatory authority the quantity of green power injected;
19. to enter into contracts on the exchange of data with other system operators, balance responsible parties, the imbalance settlement responsible, and other market participants in accordance with the market rules;
20. to refrain from discriminating in any way whatsoever against system users or categories of system users, in particular if this would be to the benefit of companies affiliated with them;
21. to provide system users with the information they need for efficient access to the system;
22. when planning development of the distribution system, to consider energy efficiency and demand-side management measures and distributed generation that might supplant the need to upgrade or replace capacity;
23. to inform the transmission system operator, upon identification of the technically suitable connection point, about the planned construction of generation facilities with capacities of more than 50 MW;
24. to evaluate the possibilities for demand-side management to contribute to system operation in their network area and to notify any need to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology as part of the integrated network plan under section 94 Renewable Energy Expansion Act and to the regulatory authority;
25. to disclose applications and notifications of system admission to the regulatory authority. This also extends to the connected capacity, and system access and system admission contracts that have been concluded, including any deadlines for upcoming connections.

### General obligation to connect

**Section 46. (framework provision)** (1) The provincial implementing legislation shall oblige distribution system operators to publish general terms and conditions and to enter into private-law connection contracts with final customers and producers under these terms and conditions (general obligation to connect).

(2) The provincial implementing legislation shall specify that the general obligation to connect also applies if a connection requires that the distribution system be optimised, expanded or otherwise further developed.

(3) The provincial implementing legislation may provide for exemptions from the general obligation to connect where there are legitimate security concerns or technical incompatibilities. The grounds for such non-applicability of the general obligation to connect shall be further detailed in the market rules.

(4) The provincial implementing legislation shall oblige distribution system operators to lay down a time when a prospective system user's connection will become active, while such time shall reflect to the time needed for the construction or other development of the system, including expansion on part of the upstream system operator. This may not be longer than one year after a system access contract has been concluded for network levels 7 and 5, and no longer than three years after a system access contract has been concluded for network levels 4 and 3. Should the necessary works require extra permits or procedures, the duration of the relating proceedings does not count towards this time period.

### General terms and conditions

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

## Title 5

### System charges

#### Part 1

#### Review of system charges

##### Allowed cost

**Section 48.** (1) The regulatory authority shall regularly ex officio decree the allowed cost, targets and transported quantity of system operators that deliver quantities of more than 50 GWh to withdrawing parties in the calendar year 2008 by official decision. The allowed cost and the transported quantity of other system operators may be established ex officio by official decision.

(2) Prior to taking a final decision on the allowed cost, the Federal Economic Chamber, the Federal Chamber of Agriculture, the Federal Chamber of Labour and the Austrian Trade Union Federation shall have the opportunity to comment. The regulatory authority shall provide information to these bodies' representatives and allow them to inspect the relating documents. Any commercially sensitive information which the representatives obtain knowledge of in exercising their right to inspection shall be treated confidentially. The Federal Economic Chamber and the Federal Chamber of Labour may appeal against the decisions of the regulatory authority pursuant to para. 1 with the *Bundesverwaltungsgericht* (federal administrative court) if the stipulations of sections 59 to 61 have been violated, and in a next step to the *Verwaltungsgerichtshof* (administrative court of appeal) pursuant to section 133 Federal Constitutional Law.

#### System charges and compensation payments

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

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

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

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

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

### **Regulatory account**

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

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

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

(4) If an official decision establishing allowed costs has been amended by the *Bundesverwaltungsgericht* (Federal Administrative Court), the allowed costs for the next tariff periods shall make reference to the corrected costs for the current tariff period as recorded in the official decision issued by the federal administrative court.

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

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

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

## **Part 2**

### **Components of the system charges**

#### **Setting the system charges**

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

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

1. a system utilisation charge;

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

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

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

### **System utilisation charge**

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

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

(2a) There shall be a separate system utilisation charge for participants of renewable energy communities under section 16c, payable for the quantities consumed that correspond to allocated generation of a facility under section 16c. Such charge shall integrate the costs of grid level 7 (local) pursuant to section 52 para. 1 first sentence or, if the renewable energy community also uses network level 5, the costs of grid levels 5, 6 and 7 (regional) pursuant to section 52 para. 1 first sentence, but the costs cascaded from upstream grid levels under section 62 shall be disregarded. The charge shall take the form of discount percentages to be applied to the commodity part of the decreed system utilisation charge. Based on the average cascaded costs, the regulatory authority shall decree a single discount percentage for local network use and a single discount percentage for regional network use, which then apply across Austria. Once the discount percentages have been decreed, they shall only be adjusted if the underlying data change significantly. The load per 15-minute interval under section 52 para. 1 that is the basis for the capacity part of the system utilisation charge corresponds to the load registered at the metering point that connects to the public grid minus the load during that same interval that the system user receives from the renewable energy community.

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

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

### Charge for system losses

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

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

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

### System admission charge

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

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

(3) Connecting renewable generation at grid levels 3 to 7 is subject to a lump-sum system admission charge depending on the generating facility's maximum capacity, as defined in para. 4.

(4) The lump-sum system admission charge for generating plants under para. 3 is as follows:

plant capacity	rate
0 to 20 kW	10 Euro per kW
21 to 250 kW	15 Euro per kW
251 to 1,000 kW	35 Euro per kW
1,001 to 20,000 kW	50 Euro per kW
more than 20,000 kW	70 Euro per kW

Should establishing the connection actually cost more than 175 Euro per kW, the costs in excess of this value may be billed to the system user. The system operator shall present a detailed list of costs to the system user along with the bill, explaining why the connection cannot be established at lower costs. The regulatory authority shall review the system admission charge under this paragraph by 31 December 2025 and every five years thereafter. The result of such review shall be presented as part of the activity report under section 28 para. 1 E-Control Act.

(5) The system access contracts for generation facilities with a maximum capacity of up to 250 kW may provide that their injection capacity at the metering point be capped at an agreed capacity value, either temporarily or permanently, if this is necessary to ensure the secure operation of the network. Such cap may not cause a reduction in excess of 1% of the maximum capacity at the connection point.

(6) Power-to-gas plants with a minimum capacity of 1 MW and with a connection ratio of 200 m/MW<sub>el</sub> agreed capacity are exempt from the system admission charge if they use exclusively renewable electricity and do not inject gas into the gas grid. If the connection ratio is above 200 m/MW<sub>el</sub> agreed capacity, plant operators must bear 50% of the cost for the distance above this threshold themselves. The costs for system operators arising from this provision shall be allowed when setting the system charges under part 5.

### System provision charge

**Section 55.** (1) The system provision charge, payable by withdrawing parties at the time of first connection or when the agreed connection capacity is exceeded, is a one-off payment reflective of capacity



that covers the past and future system development measures necessary to make such connection possible. It shall reflect the agreed connection capacity. If the connection capacity has not been explicitly agreed upon or if the agreed connection capacity has been exceeded, the system provision charge shall reflect the actual capacity use. The system provision charge shall at least correspond to the minimum capacity pursuant to para. 7.

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

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

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

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

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

(7) The minimum capacity amounts to

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

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

(9) The following applies for withdrawing parties in the Styria and Graz grid areas: Unless otherwise agreed upon in the contract, the higher of the following values counts as the connection capacity already purchased up to and including 30 June 2009 for load-metered customers: the connection capacity in kW purchased prior to 19 February 1999 or the arithmetic mean of the highest quarter-hourly average loads metered during each month from October 2007 until September 2008 in kW. For customers without load metering, a capacity of 4 kW is deemed purchased unless otherwise agreed upon in the contract up to and including 31 December 2008. For temporary connections and building site connections where the entire connection installation or a major part of it was already established permanently in the course of the temporary connection with a view to later connection by 30 June 2009, a capacity of 4 kW is deemed purchased unless otherwise agreed upon in the contract up to and including 30 June 2009.

(10) Power-to-gas plants that use exclusively renewable electricity and do not inject into the gas grid are exempt from the system provision charge.

#### **Charge for system services**

**Section 56.** (1) The charge for system services is designed to cover the costs incurred by the control area operator in relation to the requirement to offset load swings by means of aFRR. The charge for system



services includes the costs of making available the capacity and that share of the energy costs that is not covered by the imbalance charges.

(2) The charge for system services is a commodity charge only and is payable at regular intervals by injecting parties, including fleets of power plants, with a connected capacity of more than 5 MW.

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

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

#### **Metering charge**

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

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

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

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

#### **Supplementary service charges**

**Section 58.** System operators may bill system users for services provided in addition to those covered by the charges listed in section 51 para. 2 items 1 to 6 and 8 if such services are directly caused by the system users themselves. This does not apply to services in connection with section 16a paras 5 and 7, section 16c para. 3, or section 16e. The regulatory authority shall set appropriate amounts for supplementary service charges by ordinance, taking due account of the principles in para. 1 and social acceptability. The charges so set shall include, without limitation, charges for payment reminders and for alterations of the metering equipment caused by the system user. The charge for disconnection in accordance with section 82 para. 3 and re-establishment of system access shall not exceed 30 EUR in total.

#### **Exemptions for research and demonstration projects**

**Section 58a.** (1) The regulatory authority may issue official exemption decisions with system charges for research and demonstration projects that differ from the provisions under title 5 or from ordinances issued under sections 49 and 51, if such projects fulfil the conditions hereunder.

(2) Research and demonstration projects in the meaning of this provision are projects that are geared towards at least two of the following objectives:

1. system integration of renewable energy technologies, storage technologies or energy efficiency technologies, for instance by way of new and innovative business models;
2. expansion and more intensive use of renewable energies, in particular for decentralised and regional supply;
3. digitalisation of the energy system and smart energy use;
4. strengthening the acceptance of the energy transition and the relating transformation processes among the public;
5. improvement of electricity transformation or storage, and implementation of sector coupling and sector integration by realising the necessary conversion processes in the requisite facilities;
6. increasing flexibility potential in the market or in the network;

7. increasing efficiency or security of system operation or electricity supply, in particular by providing balancing services;
8. simplifying or speeding up network expansion and reducing the need for network expansion at distribution level.

(3) Only research and demonstration projects that have been awarded support under section 16 Research and Technology Support Act, FLG no 434/1982, or under an equivalent support programme may apply for an exemption under para. 1.

(4) A programme is considered equivalent if it pursues at least two of the objectives listed under para. 2 and complies with the standards and requirements that apply under the Research and Technology Support Act and the support guidelines for national programmes issued thereunder. This particularly applies to requirements relating to the following aspects:

1. degree of innovation, suitability of project partners, and quality of the project;
2. transparency (including information submission) and monitoring; and
3. evaluation procedures.

(5) Applications for exemptions under para. 1 must at least contain the following information and documentation:

1. name, address, phone number, and e-mail address of the person or consortium that applies for the exemption; additionally, for registered partnerships or legal persons: company address, commercial register number, and name of a natural person authorised to represent the company;
2. description of how the project contributes to the objectives listed under para. 2;
3. description of the generation and demand facilities that are part of the project, including their metering point reference numbers;
4. type and extent of the para. 1 exemption sought;
5. proof of the award decision under section 16 Research and Technology Support Act or under an equivalent support programme, including the requisite documentation.

Once the regulatory authority has received a complete application that fulfils all formal requirements, it shall issue an exemption decision under para. 1 within no more than three months.

(6) The regulatory authority may attach additional conditions or time limits to an exemption decision pursuant to para. 1 above to the extent that such is necessary to fulfil the objectives of this provision. The system operators in whose areas the research or demonstration project is located shall be informed of the exemption. If a research or demonstration project must pay system charges, the control area operator shall be informed also.

(7) The regulatory authority may deviate from the provision referred to in para. 1 in terms of the composition of the system charges, the reference amounts from which the charges are calculated, the period of time for which charges must be paid or the amount of the charges themselves, up to and including a complete exemption from the charges. In doing so, the regulatory authority shall consider the support decision under para. 3 and the application under para. 5. Exemptions under para. 1 apply to system users only insofar as they participate in the project, and are valid only for the period of time during which the requirements under paras 2 and 3 are met and for a maximum of three years.

(8) Para. 1 exemptions are granted as de minimis aid under the conditions of Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352/1, 24.12.2013.

### **Part 3**

## **Principles for establishing allowed costs and transported quantity**

### **Establishing the allowed cost**

**Section 59.** (1) The allowed costs from which the system charges are derived shall reflect actual costs and shall be determined for each grid level separately. Costs which are reasonable in their origin and amount shall be allowed. Due consideration shall be given to system security, security of supply (including quality criteria), market integration, and energy efficiency. The allowed costs may be determined on the basis of the average costs of a comparable, rationally operated company. Appropriate allowances for investments shall be made, based on the historical cost and cost of capital involved. Extraordinary expenditure or revenues may be spread over several years. The costs arising from the efficient implementation of new

technologies shall be appropriately reflected in the system charges, while respecting the principles described and exploiting synergies. International transactions and contracts for the transport of energy pursuant to section 113 para. 1 shall be taken into account when establishing the allowed cost.

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

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

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

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

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

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

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

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

### Cost of capital

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

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

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

(4) The regulatory asset base shall be established drawing on the balance sheet for transmission and distribution operations required by section 8 upon which basis the allowed cost is determined. It is calculated by deducting the system admission and provision charges collected (customer prepayments for construction costs) that are recorded as liabilities and any goodwill from the intangible assets and the tangible assets necessary for system operation. In cases of system operator mergers, the regulatory asset base may be increased if such merger produces synergies that directly reduce overall cost.

#### **Establishing the transported quantity**

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

### **Part 4**

#### **System charges review**

##### **Tariff setting and cost cascading**

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

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

(3) The cost cascading method to be applied in setting the system charges at ultra-high voltage level shall be defined by the regulatory authority by ordinance pursuant to section 51 para. 3 with due regard to the gross and net aspects of this procedure. Any costs for the availability of aFRR and system losses shall be left aside when considering gross and net aspects. The share of the system costs to be cascaded according to the gross method may not exceed 70% of the total withdrawal and injection of electricity. All costs for providing system services under sections 23b to 23d shall be cascaded according to the net method. The gross component for the ultra-high voltage level shall be considered separately in the commodity rates for system utilisation and shall be passed on to the system operators of the network area based on a procedure to be defined in the ordinance pursuant to section 51 para. 3.

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

(5) The amount of capacity to be used for cost cascading shall be derived from an acknowledged calculation method, such as the 3-peak mean or the highest-load method; in relation to the ultra-high voltage grid, the arithmetic mean of the highest half-hourly average load in the ultra-high voltage grid in the periods from January to March, April to September, and October to December shall be applied. The energy quantity to be used for cost cascading shall be derived from the sum of the individual withdrawal by all final customers connected at a network level and the grid areas supplied through it and from the electricity passed on to the next network level. Energy for own use of the grid shall be excluded from cost cascading for the purpose of calculating the system charges.

### Grid levels

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

1. Grid level 1: ultra-high voltage (380 kV and 220 kV, including transformation from 380 kV to 220 kV);
2. Grid level 2: transformation from ultra-high to high voltage;
3. Grid level 3: high voltage (110 kV, including installations with an operating voltage ranging from more than 36 kV to 220 kV);
4. Grid level 4: transformation from high to medium voltage;
5. Grid level 5: medium voltage (with an operating voltage ranging from more than 1 kV up to and including 36 kV, as well as transformation to other voltage levels between these levels);
6. Grid level 6: transformation from medium to low voltage;
7. Grid level 7: low voltage (1 kV and below).

### Grid areas

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

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

Systems for which the recovery of cost is regulated under agreements pursuant to section 113 para. 2 are not part of any of the grid areas. The system charges for systems under agreements pursuant to section 113 para. 2 shall comply with the cost recovery provisions in such agreements. If such systems are also used outside of agreements pursuant to section 113 para. 2, the system charges of the eastern area (grid levels 1 and 2) or the Vorarlberg area (grid levels 3 and downstream) apply. Assignment to a grid area does not signify any interference with other system operators' service areas, property rights, investment decisions, operations, system planning or control.

## Title 6

### Obligations of suppliers and electricity traders

#### Information exchange

**Section 65.** (1) Electricity traders and other suppliers that service final customers shall enter into information exchange contracts with the balance responsible parties of the balance groups whose members



they supply, with the system operators to whose systems their customers are connected, as well as with the competent imbalance settlement responsables.

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

## **Title 7 Producers**

### **Producers**

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

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

(2) The implementing legislation shall oblige operators of generation facilities with a maximum capacity of more than 5 MW

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

*(Para. 2a deleted by virtue of FLG I no 17/2021)*

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

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



### **Micro-generation plants**

**Section 66a. (framework provision)** (1) The implementing legislation shall prescribe that no separate metering point be established for micro-generation plants.

(2) The implementing legislation shall provide that system users that operate a micro-generation plant in their premises which does not have a metering point pursuant to para. 1 be exempt from the requirements in section 66 para. 1 and section 85 with regard to their micro-generation plant.

### **Tendering for FCR**

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

(2) The implementing legislation shall oblige control area operators to regularly organise transparent pre-qualification procedures to determine the suitability of the providers of FCR that are interested in participating in the tender. The providers that have been found suitable to provide FCR in the pre-qualification procedure may participate in the tender.

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

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

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

### **Financing FCR**

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

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

### **Tendering for aFRR**

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

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

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

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

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

### **Supply through direct lines**

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

## Title 8

### Guarantees of origin for electricity generated from fossil fuels

#### Guarantees of origin for electricity generated in high-efficiency cogeneration

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

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

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

#### Guarantees of origin for electricity generated from fossil fuels

**Section 72.** (1) The regulatory authority is appointed as competent body for issuing guarantees of origin and for monitoring that they are correctly transferred and cancelled. The regulatory authority shall establish an automated database for this purpose (GO database).

(2) All injecting parties that inject electricity from fossil fuels to the public grid must be registered in the GO database pursuant to para. 1 by their operator, by an authorised party or an appointed third party before they start operating. The registration deadline for existing facilities is three months after this Federal Act enters into force. As a minimum, registration shall require the following data:

1. plant operator and designation;
2. plant location;
3. plant type and maximum capacity;
4. metering point reference number;
5. designation of the system operator whose system the plant is connected to;
6. quantity of energy produced;
7. energy sources used;
8. type and amount of investment aid received;
9. type and amount of other support granted (if any);
10. operational date of the plant;
11. decommissioning date of the plant.

The signed system access contract and other adequate documentation must be supplied to evidence the above information. The regulatory authority may request further documentation for this purpose; in particular, it may ask for plant audit documentation and permits to be submitted.

(3) Operators of fossil energy plants that are geared towards self-consumption or that inject no or only some of their output into the public grid shall register their plants in the regulatory authority's GO database in line with para. 1. The provisions in para. 2 apply *mutatis mutandis*. Generation facilities with a maximum capacity of more than 100 kW shall register their own consumption via a smart meter. Existing generation facilities without smart meters shall be equipped with smart meters within six months of this provision coming into force. Plant operators or their designated service providers shall report their readings to the regulatory authority once a year.

(4) When admitting plants to their system, the system operators shall remind plant operators that they must register with the GO database. If a plant operator does not register or a registration is faulty, the system operator shall inform the regulatory authority.

(5) Upon the request by an injecting party, either control, auditing or certification bodies accredited under the Accreditation Act 2012, FLG I no 28/2012 or the system operator to whose system the plant is connected shall enter the net amount of electricity entered into the public grid and thus trigger issuing of guarantees of origin or guarantees of origin under section 71 by the regulatory authority. To this end, all plants that are not subject of an official decision pursuant to section 71 para. 3 shall obtain certification. Such certification shall be undertaken by a control, auditing or certification body accredited pursuant to the Accreditation Act 2012.

(6) Guarantees of origin pursuant to para. 5 shall include the following information:

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

(7) In addition to the information under para. 6, guarantees of origin pursuant to section 71 para. 3 shall include:

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

(8) Guarantees of origin are valid for 12 months after generation. Once used, guarantees of origin shall be cancelled. Any guarantees of origin that are not cancelled shall be marked as expired in the GO database 18 months after generation at the latest.

(9) 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 quantities with up to three decimal places. The issue of guarantees of origin does not imply that any kind of support will be awarded.

(10) When re-converting renewable gas into electricity, the relating guarantees of origin shall be presented so that new guarantees of origin for the relevant technology, indicating the correct environmental impacts, can be issued for the resulting electricity. This shall be executed in line with section 78 para. 7 in the regulatory authority's GO database.

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

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

(13) The regulatory authority shall publish a list of all plant operators registered in the GO database. Such list shall include the following data:

1. fuels used;
2. installed capacity;
3. annual output;
4. technical specifications; and
5. postcode of plant location, unless this allows for identifying a plant operator; in such case, the federal province shall be mentioned instead.

#### **Guarantees of origin from other countries**

**Section 73. (1) (framework provision)** Guarantees of origin for electricity from high-efficiency cogeneration located in other EU member states or in states party to the EEA Agreement shall be deemed guarantees of origin within the meaning of this Act if they meet the minimum requirements set out in Annex X of Directive 2012/27/EU. In case of doubt, the regulatory authority shall declare by official decision, in response to a request or ex officio, whether the conditions for recognition are met.

(2) Guarantees of origin for electricity from plants located in other EU member states or states party to the EEA Agreement shall be deemed guarantees of origin within the meaning of this Federal Act if they comply with the provisions of section 72 paras 6 and 7. Guarantees of origin located in third countries are deemed guarantees of origin within the meaning of this Federal Act if the European Union has concluded an agreement with that third country on the mutual recognition of guarantees of origin issued in the Union and compatible guarantees of origin systems established in that third country, and only where there is direct import or export of energy. In case of doubt, the regulatory authority shall declare by official decision, in response to a request or ex officio, whether the conditions for recognition are met. It may issue ordinances listing countries where guarantees of origin for electricity from fossil fuels meet the preconditions pursuant to para. 1.

(3) The conditions for recognising guarantees of origin for the purpose of electricity labelling shall be laid down in the ordinance under section 79 para. 11 Electricity Act 2010.

### **Reporting**

**Section 74. (framework provision)** (1) Each year, the provincial governments shall present to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology

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

(2) The provincial governments shall submit an annual report on their activities under section 71 to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. Such report shall include in particular the measures taken to ensure the reliability of the GO system.

## **Title 9**

### **Customer rights**

#### **Right of system access**

**Section 75. (framework provision)** (1) The implementing legislation shall provide that all customers have the right to enter into contracts with producers, electricity traders and electricity companies on the supply of electricity to cover their need and to request system access with a view to these quantities of electricity.

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

#### **Switching, enabling and disabling metering points, objections**

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

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

(3) Final customers without load meters may at any time, electronically and without adhering to any particular format, submit declarations of intent to suppliers, through websites to be provided by the latter, to authorise such suppliers to instate and execute a switch. Suppliers that have been authorised in this way shall submit suitable evidence to the system operators and other suppliers to establish the existence of such declaration of intent. The system operator shall inform the final customer immediately once the switch has been instated. Suppliers shall provide for user-friendly mechanisms to verify and authenticate the final customer's identity. The regulatory authority shall make it easier to find supplier websites by including

hyperlinks in its Tariff Calculator (section 22 E-Control Act). The suppliers shall provide the pertaining up-to-date information to the regulatory authority without the authority having to request it.

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

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

(6) The imbalance settlement responsible, the system operators and the suppliers shall keep revision-secure records of all requests and responses regarding final customer information handled by way of the platform pursuant to para. 4. On the part of the imbalance settlement responsible, these records shall extend to all procedural steps that must be handled on the switching platform, in particular the duration of the steps, the degree to which the deadlines foreseen for verifying the existence of authorisations for each procedural step were used, access by authenticated persons, and the availability of the interfaces of the suppliers' and system operators' IT systems with the platform. The system operators and suppliers shall record date and time of any requests made and responses given, the requesting and responding entities, and the purpose of all requests and responses. In addition, suppliers shall record information relating to identifying the final customer concerned along with a unique code that enables identifying the person that has made or initiated a request pursuant to para. 4. Records shall be kept for three years and may only be used to verify whether a request was legitimate, to provide information, for the purposes of administrative penal law, and for the purposes of sections 24 and 26 E-Control Act. The imbalance settlement responsible shall verify the legitimacy of requests in cases of suspected abuse and in addition as a matter of regular spot checks. It shall submit a report about the results of these verifications and checks to the regulatory authority every other year; the latter shall publish such report in an anonymised format.

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

### Universal service

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

(2) The rates for universal service for consumers as defined in section 1 para. 1 item 2 Consumer Protection Act may not exceed the rates at which most of their customers that are consumers in the meaning of section 1 para. 1 item 2 Consumer Protection Act are supplied. The rates for universal service for businesses as defined in section 1 para. 1 item 1 Consumer Protection Act may not exceed the rates that



apply to comparable groups of customers. Universal service for consumers as defined in section 1 para. 1 item 2 Consumer Protection Act who claim universal service shall not be made conditional on their payment of collateral or prepayment exceeding the amount due for one month.

(3) Any collateral paid shall be reimbursed if a consumer pays their debts in due time for six months, and no prepayments shall be requested unless they again fail to pay in due time.

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

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

### **Replacing suppliers**

**Section 77a.** (1) If an imbalance settlement responsible terminates its contract with a balance responsible party, either with notice or with immediate effect, the imbalance settlement responsible shall notify the regulatory authority and the system operators in whose systems the concerned metering points are located of such termination and time of effect. This applies mutatis mutandis if the contract between a supplier and a balance responsible party is terminated, in which case the notification obligation rests with the balance responsible party.

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

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

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

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

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

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

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

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



## Labelling

**Section 78.** (1) Electricity traders and other suppliers serving final customers in Austria shall show once a year on electricity bills, as well as on relevant information materials and on their website, their supplier mix, taking into account the total quantity of electricity they have supplied to final customers. This obligation also applies to promotional materials subject to labelling obligations that are addressed to final customers. This information shall be based on the total electricity sold by a supplier to final customers during the previous calendar year (supplier mix).

(2) Disclosure of the supplier mix under para. 1 shall indicate

1. the generation technology;
2. the country where the guarantees of origin have been issued;
3. to which extent the electricity and the guarantees of origin have been traded jointly.

Such disclosure is generated in the regulatory authority's GO database in the same format for all suppliers and is at their disposal in an adequate electronic format.

(3) Electricity traders and other suppliers of final customers in Austria shall display full disclosure on their website or, upon request in hard copy once a year. Based on the electricity supplied to final customers (kWh), labelling shall be broken down by percentages of primary energy sources into solid and liquid biomass, renewable gas, geothermal energy, wind and solar power, hydropower, natural gas, and oil and its products. Full disclosure shall also include disclosure of the environmental impacts caused by the supplier mix, at least its CO<sub>2</sub> emissions and radioactive waste.

(4) Suppliers that offer products with different energy mixes to final customers shall disclose the product mix to customers that buy such products. Paras 1 to 3 apply.

(5) The regulatory authority shall monitor the correctness of statements made by companies. In case of incorrect statements, an official decision shall be directed at the electricity trader concerned, requesting correction of such statements.

(6) Suppliers that serve fewer than 500 metering points and only supply electricity from their own plants do not have to use guarantees of origin for labelling.

(7) By way of derogation from paras 1 through 6 and section 79, the guarantees of origin for electricity supplied to pumped-storage power plants, electricity storage facilities, and power-to-gas plants that do not inject into the gas grid shall be transferred to the operators of such plants or facilities in the GO database. As part of this transaction, guarantees of origin shall be cancelled to reflect the plants' efficiency. Corresponding expert opinions on the efficiency shall be presented to the regulatory authority if so requested. The operators of pumped-storage power plants, electricity storage facilities and power-to-gas plants shall label the generated electricity with the guarantees of origin received from the electricity trader or other supplier for the purchased electricity.

(8) Electricity storage facilities with a capacity of less than 250 kWh are exempt from the provisions of paras 1 through 7 and section 79.

## Special labelling provisions

**Section 79.** (1) Labelling under section 78 shall be clearly readable. Any other notes and indications shall be such that they cannot easily be mistaken for labelling.

(2) Electricity traders shall keep records of the information their labelling is based on. Such records shall contain conclusive information on the origin of the quantities they have supplied to final customers, broken down by primary energy sources.

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

(4) Starting on 1 January 2015, electricity supplied to final customers during a calendar year shall be supported by guarantees of origin for electricity generated during that year. Only guarantees of origin issued pursuant to section 83 Renewable Energy Expansion Act, section 10 Green Electricity Act 2012 or sections 71 or 72, or recognised pursuant to section 84 Renewable Energy Expansion Act or section 11 Green Electricity Act 2012 or section 73, can serve as record in the sense of para. 3 above.

(5) The records, to be completed within three months of the end of the calendar year or the actual period of delivery, shall be kept available for inspection by final customers at the supplier's premises

(principal residence) or - if it is located abroad - at the premises of the domestic representative for three years.

(6) At the request of the regulatory authority, suppliers shall submit within a reasonable period of time the evidence pursuant to paras 2 to 4 above and any documents necessary to verify the correctness of the information provided.

(7) Insofar as they are obliged to publish annual accounts pursuant to section 8 para. 1, electricity traders and other suppliers shall indicate in these annual accounts the supplier mix pursuant to section 78 para. 1 including information on the respective quantities of electricity sold or supplied.

(8) The regulatory authority shall specify further details on electricity labelling by ordinance. In particular, these rules shall specify the scope of the existing obligations under section 78 paras 1 to 3 and establish the standards for guarantees of origin for the primary energy mix and for labelling in detail.

(9) The regulatory authority shall publish an annual report on the results of its electricity labelling documentation checks.

### **General terms and conditions for electricity supply**

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

(2) Customers shall be informed of amendments to the general terms and conditions or to the contractually agreed rates by way of a personally addressed written communication or, if so requested by the customer, electronically. Such communication shall logically reproduce the amendments introduced to the general terms and conditions. It shall also point out that customers may terminate their contracts within four weeks after receiving the communication, free of charge and regardless of any contract periods.

(2a) Contractually agreed rates for consumers in the meaning of section 1 para. 1 item 2 Consumer Protection Act and small enterprises with open-end contracts may only be changed to an extent that adequately reflects the root cause of the change. If such root cause ceases to be present, the rate shall be lowered correspondingly. At least one month before a change becomes effective, consumers and small enterprises shall receive a personal written communication that explains the cause, conditions, extent, and effective date of the change in a transparent and easily understandable manner; by default, such communication shall be sent in hard copy, but the recipients may opt to receive it electronically. The communication shall also point out that the recipients may terminate their contracts within four weeks after receipt, free of charge and regardless of any contract periods. Suppliers shall use the standardised wording issued by the regulatory authority for this purpose.

(2b) If a contract is terminated under paras 2 or 2a, the current general terms and conditions and rates continue to apply until the termination becomes effective; the termination date is the last day of the month three months after the changes would have become effective, unless the consumer or small enterprise nominates a different supplier and service by that supplier commences before such termination date. Suppliers shall inform consumers in a separate transparent and easily understandable communication about their right to universal service under section 77; such communication shall also state the contact details of services under section 82 para. 7 and the dispute settlement service of the regulatory authority. Suppliers shall use the standardised wording issued by the regulatory authority for this purpose.

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

1. name and address of the supplier;
2. the services rendered and quality offered, as well as the prospective date of the start of supply;
3. the commodity rate in cent per kWh including any additional fees, levies and taxes;
4. the term of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;
5. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
6. information on the available dispute settlement mechanisms;
7. the conditions for supply pursuant to section 77;

8. the modalities for partial payments by the customer; the customer shall have the possibility of spreading their dues across at least ten payments a year;
9. the conditions to be granted to consumers in the meaning of section 1 para. 1 item 2 Consumer Protection Act and to small enterprises for payment in instalments under section 82 para. 2a after receiving their annual bill.

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

(5) The provisions of paras 1 through 4 above are without prejudice to the provisions of the General Civil Code. Subject to para. 2a, the provisions are also without prejudice to the Consumer Protection Act.

#### **Minimum requirements for bills and information and advertising materials**

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

(2) If the final customer requests so, they shall be billed several times during a year.

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

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

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

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

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

(7) If the regulatory authority reasonably suspects non-transparent market conduct in relation to time-of-use tariffs combined with smart meters, it may issue an ordinance prescribing transparency requirements

for such tariffs for suppliers. In addition, the regulatory authority may rule that each supplier must offer at least one non-time of use tariff.

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

#### **Consumption and cost information for customers with smart meters**

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

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

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

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

#### **Consumption and cost information for customers without smart meters**

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

#### **Disabling of connections and customer information**

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

1. name and address of the company;
2. the services provided, the service quality levels offered, as well as the time for the initial connection;
3. the types of maintenance services offered;
4. the means by which up-to-date information on all applicable rates may be obtained;
5. the term of the contract, the conditions for extending or terminating the services and the contract, and any right of withdrawal;
6. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
7. the right to be supplied under section 77, using standardised wording provided by the regulatory authority;
8. any statements of the European Commission on energy consumer rights;
9. information about the rights of final customers pursuant to section 81b;
10. information about the rights of final customers pursuant to section 84.

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

1. name and address of the company;
2. the means by which up-to-date information on all applicable rates may be obtained;

3. the term of the contract, the conditions for extending or terminating the services and the contract, and any right of withdrawal;
4. information about the rights of final customers pursuant to section 81b;
5. the right to be supplied under section 77, using standardised wording provided by the regulatory authority;
6. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
7. any statements of the European Commission on energy consumer rights.

(2a) System operators and suppliers shall grant consumers in the meaning of section 1 para. 1 item 2 Consumer Protection Act and small enterprises the option to pay in instalments for up to 18 months after receiving their annual bill. The regulatory authority may decree further details for such payment in instalments in an ordinance to be issued within three months following this provision's entry into force. Two years after entry into force, the regulatory authority shall evaluate whether this stipulation has the intended social effects.

(3) In cases of contract breach, in particular where payment delays or failure to provide prepayment or collateral are concerned, the system operator shall issue at least two reminders, each allowing for a grace period of at least two weeks. The second such reminder shall include information that the lapse of the two-week grace period would be followed by disabling of the connection, and the expected costs related to disabling. The last reminder shall take the form of a registered letter. With each reminder issued under the first sentence, system operators shall underline the possibility to use services under para. 7 and to universal supply under section 77, using standardised wording provided by the regulatory authority. Where a breach of contract concerns the electricity supply contract, the obligation to send reminders lies with the supplier.

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

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

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

(7) From 1 January 2015, suppliers with more than 49 employees and a turnover/balance sheet total of more than 10 million Euro shall have service points that provide information and advice for their customers on electricity labelling, supplier switching, energy efficiency, electricity costs, and energy poverty.

(8) Where the connections of household customers or small businesses are to be disabled due to late payment, this may not take place on the last working day before a weekend or before a statutory holiday.

### Smart meters

**Section 83.** (1) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may decide smart meter roll-out following a cost-benefit analysis. Such decision shall take the form of an ordinance issued following hearings with the regulatory authority and the representatives of consumer protection organisations. If such ordinance is issued, the system operators shall install smart meters at customer facilities without load meters, report on the roll-out – in particular with regard to costs, the system situation, data protection and data security, and these final customers' consumption trends – and inform these final customers about the smart meter installation at their facility and the overall situation without delay. If the provisions on smart meter roll-out in the ordinance allow so, the system operators shall respect the final customer's wish not to have a smart meter. The regulatory authority shall inform final customers about the general aspects of smart meter roll-out and draw up an annual report about the status of roll-out, in particular with regard to costs, the network situation, data protection and data security, the current developments at EU level (as far as known), and about consumption trends at final customer installations with smart meters.

(2) The regulatory authority shall detail the minimum requirements for such smart meters by ordinance and include the related costs when establishing the allowed cost for the system charges pursuant to section 59. Such ordinance shall prescribe at least the minimum features which smart meters must have to



enable execution of the tasks specified in paras 3 to 5 below, and in sections 84 and 84a. Smart meters must at least be able to record quarter-hourly meter readings, save data for 60 calendar days inside the device, enable remote retrieval of the data stored in the device through a bidirectional communications interface, allow for remote interruption and resumption of service, and enable the final customer to retrieve the data through a unidirectional communications interface. The regulatory authority shall include consumer representatives, the Data Protection Authority and the Data Protection Council in the development of such ordinance as far as possible. The operation of smart meters and their communication, including with external devices, shall be secured in accordance with the recognised state of the art to ensure that unauthorised parties do not gain access to data beyond the current meter reading. The operation of smart meters shall comply with the provisions of metrology and calibration law and data protection law as well as the recognised state of the art.

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

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

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

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

#### **Smart metering data**

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

(2) System operators shall make available to final customers with smart meters at least the daily readings and, upon a customer's explicit wish and depending on the contractual agreements made or the consensus given, also quarter-hourly values, no later than twelve hours after they have been retrieved from the smart meter, through a customer-friendly web portal free of charge. Data shall be retrieved from smart meters at least once a day. For this purpose, the system operators shall provide a secure mechanism for the identification and authentication of final customers at the web portal and ensure that data transmission is encrypted in accordance with the state of the art. If possible, final customers without reasonable access to the internet shall be provided with the same information.

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

(4) Final customers shall have the option of completely deleting their account on the web portal pursuant to para. 2 free of charge at any time, either themselves or through the system operator, and without

involving excessive efforts on part of the customer. Where this is the case, retrieving consumption data from the customer's device and processing such data to make them available through the web portal shall cease. Final customers shall also have at least the option to delete monthly blocks of their consumption data from the web portal after having reviewed them, while having the possibility to save such data locally for the purpose of verifying bills.

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

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

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

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

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

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

(4) If smart meters pursuant to section 83 para. 1 are installed at final customer facilities with a valid contract whose continuation would require retrieving data beyond daily granularity to allow for time-of-use billing, such customers shall be verifiably informed about this situation in a transparent and understandable manner. Final customers shall also verifiably receive transparent and understandable information about the possibility to switch to a billing method that requires daily consumption data only.

Continuing an existing contract at the original conditions shall require the explicit consent of the final customer.

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

## **Title 10**

### **Balance groups**

#### **Balance group members**

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

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

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

#### **Balance responsible parties**

**Section 86. (1) (framework provision)** Balance groups may be formed within any control area. Balance groups are established and changed by balance responsible parties.

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

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

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

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

#### **Tasks and obligations of balance responsible parties**

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

1. to draw up schedules and submit them to the imbalance settlement responsible and the control area operators concerned;

2. to enter into contracts on reserves and to supply balance group members assigned to the balance group by the regulatory authority;
3. to report certain generation and consumption data for technical purposes;
4. to submit generation and supply schedules of large withdrawing and injecting parties for technical purposes, following predefined rules;
5. to pay charges (fees) to the imbalance settlement responsables;
6. to pay the imbalance charges to the imbalance settlement responsible and pass on these charges to the balance group members.

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

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

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

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

## Title 11 Monitoring Monitoring

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

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

(2) To fulfil its tasks and for the provincial governments to carry out the tasks pursuant to para. 1 above, the regulatory authority may specify by ordinance the survey samples, units, variables and attributes, data format, frequency, intervals and procedures of continuous data collection as well as the group of persons required to provide information. Such ordinance shall require collection of the following data as a minimum:

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

*(Note: Article 2 item 24 of the amendment in FLG I no 108/2017 instructs that items 1 to 3 of the existing second sentence be deleted. However, please consult page 38 of the [comparison](#) in the [parliamentary materials](#).)*

- (3) As part of its task to supervise the electricity market, the regulatory authority shall continuously
1. monitor compliance with the rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers, customers and other market participants pursuant to Regulation (EC) No 714/2009;
  2. monitor the implementation of crisis prevention measures in the meaning of section 10 Energy Intervention Powers Act;
  3. monitor the investment plans of the transmission system operators;
  4. monitor congestion management in the meaning of section 23 para. 2 item 5 and the purposes the congestion rent is used for;
  5. monitor the technical cooperation between transmission system operators domiciled in Austria and transmission system operators domiciled in the European Union or in third countries; and
  6. collect from control area operators aggregated information about all procurements of balancing energy (FCR, aFRR, mFRR, and unintended exchange), such as periodical costs, quantities procured, number of bidders, as well as information about the balancing situation in the control area, such as imbalance charges paid by balance groups, load deviation of the entire control area, deployment of balancing energy and deviations of the balance groups.

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

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

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

(7) The regulatory authority may conclude data exchange agreements with the regulatory authorities of other member states and use the data obtained through such agreements for the purposes of fulfilling its



tasks pursuant to para. 1 above. In respect of the information exchanged, the regulatory authority shall ensure the same level of confidentiality as is required of the originating authority.

(8) The obliged parties specified in para. 2 in the ordinance issued by the regulatory authority shall transmit the data to the regulatory authority in accordance with the ordinance by 31 March of the following year. The regulatory authority shall transmit an annual summary report for each province based on the data above to the respective provincial government. If necessary, the provincial governments shall be given access to the data of the respective province pursuant to para. 2. Furthermore, applying the first sentence *mutatis mutandis*, the following data shall be transmitted to the regulatory authority:

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

*(Note: Article 2 item 25 of the amendment in FLG I no 108/2017 instructs that items 1 and 2 of the existing second sentence be deleted. However, please consult page 38 of the [comparison](#) in the [parliamentary materials](#).)*

## Title 11a

### Security of supply strategy

#### Security of supply strategy

**Section 88a.** (1) In the interest of effective security of supply and the prevention of electricity supply crises, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, together with the regulatory authority and the control area operator, shall develop a security of electricity supply strategy.

- (2) The security of supply strategy under para. 1 shall particularly take into consideration
  1. the relation between demand and supply in the ENTSO-E area, including Austria, projected by applying adequate and well-established scenarios;
  2. the projected development of demand and the available supply;
  3. the additional generation facilities, storage facilities, and network infrastructures that are being planned or built, or that are foreseen to be planned or built during the next five years;
  4. the quality and extent of network maintenance, along with the network infrastructure that is being planned or built;
  5. action to meet demand peaks and respond to outages of one or more assets, generation facilities or suppliers;
  6. the availability and non-availability of generation facilities, storage facilities, and network infrastructure;
  7. the lessons learnt from the electricity security of supply monitoring activities conducted by the regulatory authority under section 15 para. 2 Energy Intervention Powers Act 2012;
  8. the risk-preparedness plan to be established in line with Article 10 Regulation (EU) 2019/941;
  9. the integrated network plan under section 94 Renewable Energy Expansion Act;
  10. the network development plan under section 37; and
  11. the lessons learnt from the regulatory authority's report on the situation on the Austrian electricity market in view of the need for network reserves under section 23b para. 10.
- (3) The security of supply strategy shall work with assumptions on
  1. indicators that are suitable to assess the security of supply on the European electricity markets and its repercussions for the Republic of Austria as part of the internal market in electricity;
  2. thresholds that trigger an evaluation and, if needed, the development of adequate measures to safeguard security of supply when exceeded.
- (4) Market participants, in particular control area operators, distribution system operators, imbalance settlement responsible, balance responsible parties, operators of generation facilities, storage facilities,

renewable energy communities, and electricity traders, shall submit the data necessary to monitor and assess the security of supply situation upon the request of the regulatory authority or the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. If so requested, the regulatory authority shall submit to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology the data necessary to monitor and assess the security of supply situation.

(5) The security of supply strategy shall be established by 30 June 2023 and shall be published on the website of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology in an appropriate format. It shall be updated every five years.

## **Title 12**

### **Authorities**

#### **Competent authorities in other matters regulated by directly applicable federal law**

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

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

(3) The regulatory authority may remind obligated parties that are in breach of their obligations pursuant to this Federal Act and request them to establish compliance with the law within an appropriate period of time to be specified by the regulatory authority, provided that there are reasons to believe that compliance with the law will be achieved without punishment. In doing so, the regulatory authority shall inform the obligated party about the consequences of failure to comply with such request.

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

(5) Fines pursuant to section 104 through 107 are imposed by the cartel court.

#### **Competent authorities in electricity matters**

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

## **Title 13**

### **Special organisational provisions**

#### **Provincial advisory council for electricity**

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

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

#### **Commissioning and conducting statistical surveys**

**Section 92.** (1) Upon a proposal by the regulatory authority, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may order statistical surveys including, without limitation, price surveys and the collection of other information about the market, including but not limited to the number of switches and new customers in each customer group, and other statistical work in connection with electricity. Such statistical surveys and any other statistical work shall be conducted by the regulatory authority.

The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall decree statistical surveys by ordinance. In addition to the actual commission to conduct statistical surveys, such ordinance shall include specifications regarding:

1. the survey samples;

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

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

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

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

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

#### **Automated data communication**

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

(2) Within the framework of proceedings governed by directly applicable federal law stipulated in this Federal Act, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and the regulatory authority may transmit processed data

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

#### **Obligation to pass on tax reductions**

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

#### **Right to information**

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

#### **Automated data communication in implementing legislation**

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

## **Title 14**

### **Penalties and fines**

#### **Part 1**

#### **General obligation of the federal provinces**

##### **General obligation of the federal provinces**

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

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

#### **Part 2**

#### **Administrative offences**

##### **General penal provisions**

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

1. fails to comply with their obligations as a system operator pursuant to section 16a paras 5 or 7, section 16e paras 1, 2 or 3;
- 1a. fails to comply with the obligations pursuant to section 17a paras 4, 5 or 6 or section 18;
2. fails to comply with the obligations pursuant to section 27 para. 2 item 3;
3. fails to comply with the obligations pursuant to section 32 para. 1;
4. causes non-compliance with the time limit for switching set in section 76 para. 2;
5. in contravention of the last sentence of section 76 para. 4, initiates a process without a final customer's declaration of intent;
6. fails to comply with their obligations pursuant to section 76 paras 5 to 7;
7. in contravention of Article 4(1) Regulation (EU) No 1227/2011, fails to publish inside information, to publish it correctly, to publish it in full, to publish it effectively or to publish it in a timely manner;
8. in contravention of Article 4(2) Regulation (EU) No 1227/2011, fails to submit inside information, to submit it correctly, to submit it in full or to submit it without delay;
9. in contravention of Article 4(3) Regulation (EU) No 1227/2011, fails to ensure simultaneous, complete and effective public disclosure of inside information;
10. in contravention of Article 8(1) Regulation (EU) No 1227/2011, in conjunction with implementing legislation in accordance with Article 8(2) Regulation (EU) No. 1227/2011, fails to submit a record mentioned therein, to submit it correctly, to submit it in due time or to submit it in full;
11. in contravention of Article 8(5) Regulation (EU) No 1227/2011, in conjunction with implementing legislation in accordance with Article 8(6) Regulation (EU) No. 1227/2011, fails to submit information mentioned therein, to submit it correctly, to submit it in due time or to submit it in full;
12. in contravention of Article 9(1), in conjunction with para. 4 Regulation (EU) No 1227/2011, fails to register with the regulatory authority or fails to do so in due time;

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

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

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

1. fails to comply with the obligations pursuant to section 8 paras 1, 2 or 3 or section 9;
2. fails to comply with their obligation to furnish information and provide access to documents and records pursuant to section 10;
3. unlawfully discloses data, contrary to the provisions of section 11, section 48 para. 2, section 76 or section 84;
4. fails to comply with their notification obligations pursuant to section 14 or section 80 para. 2;
5. fails to comply with any obligations set by an ordinance of the regulatory authority issued pursuant to section 19;
6. fails to comply with their data exchange obligations pursuant to section 19 para. 4 or section 76 para. 4;
- 6a. fails to comply with statutory or contractual obligations as a producer or withdrawing party under section 23 para. 2 item 5;
- 6b. fails to comply with the producer obligation to notify decommissioning under section 23a para. 1;
- 6c. fails to comply with the statutory producer obligations under section 23b paras 7 and 9 or 23c para. 1, or with the contracts concluded on this basis or the official decisions issued on this basis;
- 6d. fails to make correct statements about and correctly charge expenses as defined in section 23c paras 3 or 4;
- 6e. fails to comply with the producer obligation to have a separate account under section 23b para. 8 or section 23c para. 5 or fails to fully disclose these accounts and their contents to the control area operator or the regulatory authority;
- 6f. as a control area operator, conducts a system analysis that is not in line with section 23a paras 2 and 3;
7. fails to comply with their obligation as a producer pursuant to section 23 para. 9;
8. fails to comply with their obligation pursuant to section 37 para. 7;
9. fails to comply with their obligations pursuant to section 69;
10. fails to comply with their obligations as a supplier or electricity trader pursuant to section 65 or section 78 paras 1 or 2;
11. fails to comply with their obligation pursuant to section 79;
12. fails to comply with their obligations pursuant to sections 81 to 81b;
13. fails to comply with obligations arising from an ordinance issued pursuant to sections 81a, 81b, 83, 84 or 84a;
14. fails to comply with their obligations pursuant to sections 82 or 83;
15. fails to comply with their obligations pursuant to section 84;
16. fails to comply with their obligations pursuant to section 84a;
17. fails to comply with their obligation pursuant to section 87 para. 4;
18. fails to comply with their obligation pursuant to section 88 paras 4, 5, 6 or 8;
19. fails to cooperate in the statistical surveys ordered by an ordinance pursuant to section 92 para. 2;



20. fails to comply with official decisions issued pursuant to section 24 para. 2 E-Control Act for the scope of this Federal Act or any conditions, time limits and stipulations included therein; shall be deemed to have committed an administrative offence and shall be fined up to 75,000 EUR.

*(Para. 3 deleted by virtue of FLG II no 108/2017)*

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

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

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

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

1. fails to comply with their obligation to notify inside information pursuant to section 10a;
2. fails to submit data as ordered by an ordinance pursuant to section 25a para. 2 E-Control Act;
3. fails to comply with the information and cooperation obligation pursuant to section 25a para. 3 E-Control Act;
4. fails to register in the GO database pursuant to section 72 in spite of having been reminded by the regulatory authority;
5. fails to request guarantees of origin pursuant to section 72;
6. fails to report readings under section 72 para. 3;

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

#### **Failure to pass on tax reductions**

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

#### **Operation without certification**

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

#### **Profiteering**

**Section 102.** (1) Unless an act constitutes a criminal offence subject to the jurisdiction of a court or is subject to more severe punishment under different administrative penal provisions, whosoever names, demands, accepts, or accepts a promise of an amount higher than the maximum or fixed rate or charge determined by the regulatory authority pursuant to this Federal Act or an amount lower than the minimum or fixed rate or charge determined by the regulatory authority pursuant to this Federal Act for a system service shall be deemed to have committed an administrative offence and shall be fined up to 100,000 EUR.

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

#### **Special provisions for administrative penal proceedings**

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

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

## **Part 3**

### **Fines**

#### **Discrimination and other finable offences**

**Section 104.** (1) Upon application of the regulatory authority, the cartel court shall issue rulings in proceedings, with the exception of non-contentious proceedings, imposing fines of up to 10% of the annual turnover in the previous business year on a transmission system operator or on a company that is part of a vertically integrated electricity company which, intentionally or negligently,

1. fails to comply with the obligations pursuant to section 8 paras 1, 2 or 3 or section 9;
2. unlawfully discloses data, contrary to the provisions of section 11, section 48 para. 2, section 76 or section 84;
3. fails to comply with its obligations pursuant to section 39 paras 1, 2, 3 or 4;
4. fails to comply with provisions of Regulation (EC) No. 714/2009 or Regulation (EC) No. 713/2009, or with the guidelines issued pursuant to these regulations;
5. fails to comply with decisions based on the provisions of Regulation (EC) No. 714/2009 or Regulation (EC) No. 713/2009 or of the guidelines issued pursuant to these regulations;
6. fails to comply with the provisions of the guidelines or network codes issued in accordance with Directive 2009/72/EC or Directive 2009/73/EC;
7. fails to comply with decisions based on guidelines or network codes issued in accordance with Directive 2009/72/EC or Directive 2009/73/EC;
8. fails to comply with the obligations of transmission system operators with ownership unbundling pursuant to sections 24, 25, 26 or section 27, with the exception of section 27 para. 2 item 3;
9. fails to comply with the obligations of independent transmission system operators pursuant to section 28, section 29, section 30, section 31 or section 32, with the exception of section 30 para. 1 item 3 and section 32 para. 1;
10. fails to comply with the obligations pursuant to section 30 para. 1 item 3 and section 33;
11. fails to comply with the conditions set in the official declaratory decision pursuant to section 34 para. 1 or section 35 para. 1;
12. fails to comply with the notification requirements pursuant to section 34 para. 3 item 2 or section 34 para. 7;
13. fails to comply with the obligations pursuant to section 26 para. 2;
14. fails to comply with the obligations pursuant to section 28 para. 3.

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

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

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

#### **Related companies and legal successors**

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

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

### **Assessment and calculation of fines**

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

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

### **Limitation of actions**

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

## **Part 4**

### **Offences punishable by court**

#### **Abuse of inside information**

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

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

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

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

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

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

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

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

(4) Jurisdiction for carrying out the main proceedings on abuse of inside information lies with the Vienna district court for criminal proceedings. This also applies to proceedings that concern actions which at the same time constitute abuse of inside information and another criminal offence.

## **Title 15**

### **Transitional and final provisions**

#### **Entry into force and repeal of federal legislation**

**Section 109.** (1) (constitutional provision) Section 1, section 21 para. 2, section 23 para. 9, section 41, section 47, section 86 para. 5, section 87 para. 4, section 88 para. 8, section 97, section 109

para. 1, section 113 para. 2 and section 114 para. 2 enter into force on 3 March 2011; section 12 para. 3, section 20 para. 2, section 22 para. 2 item 5a, section 22a para. 5, section 24, section 31, section 46 para. 5, section 47 para. 4, section 61, section 66b, section 70 para. 2 and section 71 paras 3 and 9 to 11 of the Electricity Act, Federal Law Gazette (FLG) I no 143/1998, as amended by FLG I no 112/2008, are repealed as of the same day. Section 1 and its heading, as amended by FLG I no 108/2017, enters into force on the day following promulgation.

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

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

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

(5) The table of contents, section 16a, section 18a paras 1 and 2, including its heading, section 19 para. 3, section 28 para. 4, section 64, section 88 paras 2 and 8, section 99 para. 2, and section 104 para. 1 come into force on the day following the promulgation; the last sentence of section 30 para 1 item 2, the second sentence of section 31 para. 2, section 99 para. 3, section 108, including its title, and section 109 para. 3 cease to be in force as of the same day.

(6) Section 92 para. 6 item 6 comes into force on 1 January 2013.

(7) Section 16b para. 6, section 80 paras 2 to 2b, para. 3 item 9, and para 5, section 82 para. 1 item 7, para. 2 item 5, and paras 2a and 3, as amended by the federal act in FLG I no 7/2022, enter into force at the end of the day of promulgation.

#### **Entry into force of framework provisions and implementing legislation**

**Section 110.** (1) The framework provisions of this Federal Act enter into force on 3 March 2011; the framework provisions of the Electricity Act, FLG I no 143/1998, as amended by FLG I no 112/2008, with the exception of section 68a paras 1 to 3, are repealed as of the same day.

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

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

(4) The provisions of the Federal Act in FLG I no 108/2017 designated as framework provisions enter into force on the day following promulgation.

#### **Transitional provisions**

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

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

(3) For a period of 15 years from their start of operations, pumped-storage power plants and power-to-gas plants with a minimum capacity of 1 MW are exempt from all system utilisation charges and charges for system losses that are normally payable for renewable electricity consumption.

(4) Binding notifications of full or partial decommissioning of generation facilities for periods from 1 October 2021 shall be submitted to the control area operator under section 23a para. 1 by 31 January 2021. The first system analysis under section 23a para. 2 shall be completed by 28 February 2021.

(5) The first procurement procedure for network reserves under section 23b shall be conducted in 2021. The following conditions apply:

1. by way of derogation from section 23b para. 2, the technical requirements for the provision of network reserves shall be stated in the tender documentation, by 31 March 2021;
2. for the first tender, exceeding the reference value by 100% is significant in the sense of section 23b para. 5.

(6) The regulatory authority shall draw up the first report on the situation on the Austrian electricity market in view of the need for network reserves pursuant to section 23b para. 10 by 31 December 2021.

(7) 2022 is the first year for which the obligation to label based on the calendar year under section 78 para. 1 applies. The obligation to label in line with section 78 para. 1 in conjunction with para. 2 item 3 first applies from 1 July 2024. The regulatory authority shall publish on its website the modalities for transitioning from the business year to the calendar year in line with section 79 para. 5.

(8) Generation or consumption facilities may be part of more than one community generation installation, citizen energy community or renewable energy community from 1 January 2024.

#### **Transitional provisions for unbundling and network development plans**

**Section 112.** (1) Restructuring to be performed in connection with unbundling through any type of conversion to another legal form shall be done by way of universal succession; this applies, without limitation, to capital contribution. Such conversion processes are exempt from any and all taxes, charges and fees which are regulated under federal law and which are linked to formation or property transfer. Such exemption also applies to legal relationships founded for the occasion of restructuring, including, without limitation, tenancy agreements, servitudes or loan agreements. Conversion processes are non-taxable turnover within the meaning of the Turnover Tax Act 1994, FLG no 663/1994, as amended; with regard to turnover tax matters, the transferee shall directly assume the legal status of the transferor. In other respects, the provisions of the Conversion Taxation Act, FLG no 699/1991, as amended, apply, subject to the proviso that the Conversion Taxation Act be applicable also if there is no partial operation within the meaning of the Conversion Taxation Act. Implementing legislation pursuant to section 22 or section 42 shall not exclude the continuation or formation of an integrated inter-company relationship as defined in section 2 of the Turnover Tax Act and section 9 of the Corporate Income Tax Act.

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

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

#### **Final provisions**

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

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

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

#### **Execution**

**Section 114.** (1) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology is responsible for exercising the rights of the federal government pursuant to article 15 para. 8 Federal Constitutional Act with regard to the framework provisions contained in this Federal Act.

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

(3) The responsibility for executing the provisions of directly applicable federal law lies with

1. the Federal Minister of Justice regarding section 22 paras 2 and 3, as well as sections 104 through 108;



2. the Federal Minister of Finance regarding section 112 para. 1;
3. the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology for all other provisions.

## **Annex I**

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

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

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

## **Annex II**

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

#### **Cogeneration technologies within the meaning of section 4 item 3 Electricity Act**

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

## **Annex III**

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

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

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

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

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

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

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

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

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

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

## Annex IV

(regarding section 71)

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

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

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

$$PEE = \left( 1 - \frac{\frac{KWK W_{\eta}}{Ref W_{\eta}} + \frac{KWK E_{\eta}}{Ref E_{\eta}}}{2} \right) \times 100\%$$

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

4. The efficiency reference values for separate electricity production and heat production reflect the climatic differences between member states.