**Sektion IV**

**Energie & Bergbau**

### FULL LIBERALISATION OF THE AUSTRIAN ENERGY MARKET & GREEN ELECTRICITY


| 5. | Federal Act regulating the preconditions for operation, the tasks and powers of clearing and settlement agencies for transactions and price formation with regard to balancing energy, Federal Law Gazette I no. 121/2000 [Article 9 of the Energy Market Liberalisation Act] as amended by Federal Law Gazette I no. 25/2004 [repeal of sections 3, 4 and 9 by the Constitutional Court] | Page: 165 |

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1 Name was changed by the amendment to the Federal Act, Federal Law Gazette I no. 148/2002, in force as of August 2002
ELECTRICITY ACT


(NR: GP XX RV 1108 AB 1305 p. 133 BR: AB 5732 p. 643) [CELEX-no.: 396L0092, 390L0547]

as amended by

   (NR: GP XIX RV Zu 66 AB 210 p. 32. BR: 6176 AB 6195 p.667.) [CELEX-no.: 398L0030, 391L0296, 395L0049];
   (NR: GP XXII RV 415 AB 507 p. 61, BR: AB 7057 p. 710) [CELEX no.: 32003L0054]
   (NR: GP XXII RV 852 AB 920 p. 110. BR: AB 7284 p. 722) [CELEX no.: 32003L0054]
   (NR: GP XXII RV 655 AB 1225 p. 150. BR: 7537 AB 7574 p. 735) [CELEX no.: 32001L0077]
   [in italics in the main body of the law]
   (NR: GP XXII RV 1411 AB 1452 p. 150. BR: 7538 AB 7575 p. 735) [CELEX no.: 32003L0054, 32003L0055, 32004L0008, 32004L0067]
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2 Unless a different date has been specified, those provisions of the amendment which are designated as directly applicable federal law enter into force on 1 October 2001. Cf.: section 71 para. 5 in conjunction with para. 8. Any special dates are noted in the footnotes to the respective provisions. Framework provisions enter into force on the day following the day of promulgation – the day following the day promulgation being 2 December 2000. The day of promulgation was 1 December 2000, the implementing legislation, pursuant to section 71 para. 6, shall therefore be adopted and brought into force by 1 June 2001.

3 in force after 21 June 2004
4 in force after 9 June 2005
5 in force after 27 June 2006
6 for entry into force see section 66d. Promulgated on 27 June 2006.

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Title 1
Principles

Constitutional Provision

"Section 1. (constitutional provision) The responsibility for issuing, repealing and executing rules such as those contained in section 2 para. 1 item 2, in sections 16 para. 2, 25, 36, 38, 45, 45a, 45c, 48, 54 to 57, 62 to 65, section 66 paras. 2 to 6, section 66a paras. 2 to 7, section 66c para. 2, section 69, section 70 para. 1 and section 71 paras. 1, 2, 4 and 6 to 8 shall lie with the Bund even in regard to matters for which the Federal Constitutional Act provides otherwise. Matters regulated in these rules may be discharged directly by federal authorities."  

"Transposition of EU Law

Section 1a. (directly applicable federal law) This Federal Act transposes

Scope of Application

Section 2. (directly applicable federal law) (1) The purpose of this Federal Act is
1. to enact basic legal provisions on the production, transmission, distribution and supply of electricity, as well as on the organisation of the electricity sector;
2. to regulate price determination and accounting by directly applicable federal law.
(2) Insofar as reference is made in this Federal Act to provisions of other Federal Acts or to instruments of Community law, such provisions shall apply as amended.

Objectives

"Section 3. (framework provision) The objectives of this Federal Act are

7 as amended by Article 7 item 1 of the Federal Act, Federal Law Gazette I no. 106/2006
1. to provide electricity of high quality at reasonable prices to the Austrian population and to Austrian business and industry;
2. to create a market organisation for the electricity sector in accordance with EU primary law and with the principles of the internal electricity market in accordance with Directive 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, OJ no. L 176 of 15 July 2003, p. 37 (Second 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 the security of supply;
4. to offset public service obligations in the general interest imposed upon electricity undertakings and relating to the security, including the security of supply, the regularity, the quality and the price of supplies, as well as to environmental protection.

Public Service Obligations

“Section 4. (framework provision) (1) The implementing legislation shall provide that the following public service obligations be imposed upon grid operators in the general interest:
1. to ensure non-discriminatory treatment for all customers of a grid;
2. to conclude private-law agreements with grid users, providing for their connection to the grid (general obligation to connect);
3. to set up and maintain a grid infrastructure adequate for domestic electricity supply or for the performance of obligations under public international law;
(2) The implementing legislation shall provide that the following public service obligations be imposed upon electricity undertakings in the general interest:
1. to perform any obligations imposed by law in the public interest;
2. to participate in measures designed to eliminate grid bottlenecks and in measures designed to ensure the security of supply.
(3) Electricity undertakings shall endeavour to perform to the best of their ability the obligations imposed upon them in the general interest pursuant to paras. 1 and 2.”

“Performance of Public Service Obligations

Section 5. (framework provision) The implementing legislation shall provide that electricity undertakings endeavour to perform to the best of their ability the obligations imposed upon them in the general interest.”

Principles Regarding the Operation of Electricity Undertakings

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

Definitions

“Section 7. (framework provision) For the purposes of this Federal Act, the term
1. “balancing energy” shall mean the difference between the amount of energy agreed in the schedule and the amount actually purchased or actually supplied by a balance group in a defined settlement period; the amount of electrical energy per settlement period may be metered or calculated;
2. “balance group” shall mean a virtual group of suppliers and customers within which the amounts of electricity procured (scheduled purchase volume, injections) and supplied (scheduled supply volume, withdrawals) are balanced;
3. “clearing and settlement agent” (balance group coordinator) shall mean a natural or legal person licensed to operate a clearing and settlement agency;
4. “balance group representative” shall mean an entity representing a balance group vis-à-vis other market participants and vis-à-vis the clearing and settlement agent;

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13 as amended by Article 7 items 3a and 3b of the Federal Act, Federal Law Gazette I no. 121/2000. (The former section 5 para. 1 shall be designated "section 5" and shall read, including its heading; the former section 5 para. 2 shall be repealed.)
4a. “distributed generation” shall mean a generation plant which is connected to a public medium-voltage or low-voltage distribution grid (transfer point for purchase) and is thus close to consumers, or a generation plant which serves personal use;
5. “direct line” shall mean either an electricity line linking an isolated production site with an isolated customer or an electricity line linking an electricity producer and electricity supply undertaking to supply directly their own premises, subsidiaries and eligible customer; electricity lines within housing estates shall not be deemed direct lines;
6. “third countries” shall mean countries not having acceded to the European Economic Area Agreement or not being members of the European Union;
7. “injecting party” shall mean a producer or an electricity undertaking supplying electrical energy to the grid;
8. “electricity undertaking” shall mean a natural or legal person or a commercial undertaking performing one or more of the functions of generation, transmission, distribution, supply and purchase of electrical energy with a view to profit, as well as performing commercial, technical or maintenance duties in connection with these functions, excluding end users;
9. “end user” shall mean a customer buying electricity for own use;
9a. “energy efficiency/demand-side management” shall mean a global or integrated approach aimed at influencing 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 security of supply and distribution cost aspects related to it;
10. “withdrawing party” shall mean an end user or a grid operator taking electrical energy from the grid;
11. “producer” shall mean a legal or natural person or a commercial undertaking generating electricity;
12. “generation” shall mean the production of electricity;
13. “cogeneration production” shall mean the sum of electricity and mechanical energy and useful heat from cogeneration;
14. “schedule” shall mean the document showing the volume of electrical energy fed in and withdrawn at certain locations within a grid, as a projected mean value within a constant time pattern (settlement periods);
15. “directly connected grid areas” shall mean grid areas linked by electric connections;
16. “overall efficiency” shall mean the annual sum of electricity and mechanical energy production and useful heat output divided by the fuel input used for heat produced in a cogeneration process and gross electricity and mechanical energy production;
16a. “household customers” shall mean customers purchasing electricity for their own household consumption, excluding commercial or professional activities;
17. “ancillary services” shall mean all services necessary for the operation of a transmission or distribution grid;
17a. “high-efficiency cogeneration” shall mean cogeneration meeting the criteria of Annex IV;
17b. “horizontally integrated electricity undertaking” shall mean an undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity, and another non-electricity activity;
17c. “electricity from cogeneration” shall mean electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex III;
18. “integrated electricity undertaking” shall mean a vertically or horizontally integrated electricity undertaking;
18a. “promotional material subject to labelling obligations” shall mean any promotional material addressed to end users and designed to sell electrical energy. This includes a) promotional material for the sale of products to single customers, such as product brochures; b) other standardised written product media designed for sale; c) online product advertisements;
19. “group undertaking” shall mean a legally independent undertaking affiliated with another legally independent undertaking as defined by section 228 para. 3 of the Commercial Code ;
20. “cost reallocation” shall mean a calculation procedure which is applied in order to apportion, on a pro rata basis, the costs associated with the grid level to which a group of consumers is directly connected, as well as the costs associated with all grid levels above this level;

20a. “cogeneration” shall mean the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;

20b. “power to heat ratio” shall mean the ratio between electricity from cogeneration and useful heat when operating in full cogeneration mode using operational data of the specific unit;

21. “customers” shall mean end users, electricity traders and electricity undertakings buying electrical energy;

21a. “cogeneration unit” shall mean a unit that can operate in cogeneration mode;

21b. “micro-cogeneration unit” shall mean a cogeneration unit with a bottleneck capacity below 500 kW;

21c. “small-scale cogeneration” shall mean cogeneration units with an installed capacity below 1 MW;

22. “load profile” shall mean the amount of electricity, shown at certain time intervals, drawn or supplied by an injecting party or a withdrawing party;

23. “supplier” shall mean a natural or legal person or commercial undertaking providing electrical energy to other natural or legal persons;

24. “market rules” shall mean 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;

25. “connection to the grid” shall mean the physical connection of the plant of a customer or producer of electrical energy to the grid system;

26. “grid user” shall mean any natural or legal person or commercial undertaking supplying to, or being supplied by, a grid;

27. “grid area” shall mean a part of a grid in which the same rates apply;

28. “grid operator” shall mean an operator of a transmission or distribution grid with a nominal frequency of 50 Hz;

29. “grid level” shall mean a certain part of a grid which is mainly defined by its voltage level;

30. “grid access” shall mean the utilisation of a grid by a customer or producer;

31. “party entitled to grid access” shall mean a customer or a producer;

32. “agreement on grid access” shall mean the individual agreement concluded between a party entitled to grid access and a grid operator, regulating connection to and utilisation of the grid;

33. “admission to the grid” shall mean the original establishment of a connection to the grid, or an increase in the connected load of an existing connection to the grid;

33a. “useful heat” shall mean heat produced in a cogeneration process to satisfy an economically justifiable demand for heat or cooling;

33b. “primary control” shall mean an automated reestablishment of the balance between generation and consumption by means of turbine speed governors according to the machines’ static default characteristic within no less than 30 seconds following such imbalance;

34. “control area” shall mean the smallest unit within the interconnected system in which frequency-load control is available and used;

35. “control area manager” shall mean an entity which is responsible for frequency-load control within a control area, and this function may also be carried out by a third company having its domicile in another Member State of the European Union;

35a. “back-up electricity” shall mean the electricity supplied through the electricity grid whenever the cogeneration process is disrupted, including maintenance periods, or out of order;

35b. “security” shall mean both security of supply and provision of electricity, and technical safety;

36. “standardised load profile” shall mean a characteristic load profile of a certain group of injecting or withdrawing parties which has been drawn up by a suitable procedure;

37. “electricity trader” shall mean a natural or legal person or a commercial undertaking selling electricity with a view to profit;

38. “system operator” shall mean a grid operator having at its disposal the technical and organisational means to take any measures required to maintain the operation of the grid;

39. “transmission” shall mean the transport of electricity on the extra high-voltage and high-voltage interconnected system;
40. “transmission grid” shall mean a high-voltage interconnected system with a voltage of 110 kV or above, serving the purpose of supraregional transport of electrical energy;

40a. “transmission grid operator” shall mean a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in 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 transmission of electricity; transmission grid operators shall be Verbund Austrian Power Grid AG, Tiroler Regelzonen AG and VKW-Übertragungsnetz AG;

41. “interconnectors” shall mean equipment used to link electricity grids;

42. “interconnected system” shall mean a number of transmission and distribution grids linked together by means of one or more interconnectors;

42a. “supplier” shall mean a natural or legal person or a commercial undertaking ensuring supply;

43. “supply” shall mean the sale, including resale, of electricity to customers;

43a. “distribution grid operator” shall mean a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in 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;

44. “distribution” shall mean the transport of electricity on high-voltage, medium-voltage and low-voltage distribution grids with a view to its delivery to customers, but not including supply;

45. “vertically integrated electricity undertaking” shall mean an undertaking or a group of undertakings whose mutual relationships are constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on the activity of an undertaking, in particular by:
   a) ownership or the right to use all or part of the assets of an undertaking;
   b) rights or contracts which confer decisive influence on the composition, voting or decisions of the bodies of an undertaking;
   where the undertaking or group concerned is performing at least one of the functions of transmission or distribution and at least one of the functions of generation or supply of electricity;

46. “efficiency” shall mean efficiency calculated on the basis of net calorific values of fuels (also referred to as “lower calorific values”);

47. “economic precedence” shall mean the ranking of sources of electricity supply according to economic criteria;

48. “efficiency reference value for separate production” shall mean efficiency of the alternative separate production of heat and electricity that the cogeneration process is intended to substitute;

49. “economically justifiable demand” shall mean 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;

50. “top-up electricity” shall mean the electricity supplied through the electricity grid in cases where the electricity demand is greater than the electrical output of the cogeneration process.

Title 2

Accounting, Internal Organisation, Unbundling and Transparency of the Accounts of Electricity Undertakings

Accounting

Section 8. (directly applicable federal law) “(1) All electricity undertakings performing the function of grid operator shall publish annual accounts if the volume of electrical energy directly and indirectly supplied exceeds 9 GWh per year in total. All other electricity undertakings, to which this does not apply, shall keep a copy of their annual accounts at the disposal of the public at their head office.”

(2) Transactions with a performance, consideration or other economic advantage exceeding the value of ten million schillings and carried out
   1. with group undertakings as defined by section 228 para. 3 of the Commercial Code;
   2. with associated undertakings as defined by section 263 para. 1 of the Commercial Code, or

15 as amended by Article 7 item 5 of the Federal Act, Federal Law Gazette I no. 121/2000
3. with undertakings which belong to shareholders holding in excess of 20% of the respective undertaking's share capital shall be listed separately in notes to the annual accounts.

“(3) Integrated electricity undertakings shall furthermore

1. keep separate accounts, within separate accounting systems, for their
   a) generation, electricity trading and supply activities;
   b) transmission activities;
   c) distribution activities.

2. publish the balance sheets and profit and loss accounts of the individual accounting systems, as well as their respective rules of allocation;

3. keep consolidated accounts for other, non-electricity activities and publish a balance sheet and a profit and loss account. Any revenue obtained from the ownership of transmission or distribution grids shall be listed separately in the accounts.

(4) In order to ensure comparability, the Federal Minister of Economics and Labour\(^{11}\) may issue ordinances\(^{12}\) providing common criteria to be observed in performing the obligations laid down in paras. 1 and 3.

(5) Any audit of annual accounts (section 8 para. 1) shall also involve an examination of whether the obligation to avoid any abusive practice of cross-subsidisation is met.”

Special Provisions for Integrated Electricity Undertakings

Section 9. (directly applicable federal law) Integrated electricity undertakings shall take at least the administrative measures to ensure that their activities as operators of transmission grids are separate from the generation and distribution activities.

Right to Information and Inspection

“Section 10. (constitutional provision) Electricity undertakings shall be obliged to permit the authorities, including Energie-Control GmbH, to inspect any documents and records at any time, as well as to furnish information on any facts relevant to the respective authority’s sphere of competence.”\(^{13}\) This obligation to permit inspection and furnish information shall apply, without specific cause, even if such records or such information are required in order to clarify, or to prepare the clarification of, facts relevant to decisions in proceedings to be conducted in future.”\(^{14}\) “Electricity undertakings shall furnish, in particular, all and any information enabling authorities to make an appropriate assessment based on the facts involved. If the electricity undertaking fails to meet this obligation, the authorities may base their assessment on estimates.”\(^{15}\)

Business and Trade Secrets

Section 11. (directly applicable federal law) Operators of transmission and distribution grids shall treat as confidential any business or trade secrets of which they obtain knowledge in the course of carrying out their business.

Title 3

Electricity Generating Installations and Electricity Supply Contracts

Construction and Operation Licence

“Section 12. (1) (framework provision) The implementing legislation shall in any case define the conditions applicable to the construction and initial operation of generating installations, as well as to any preliminary work to be carried out, according to objective, transparent and non-discriminatory criteria within the meaning of Articles 6 and 7 of Directive 2003/54/EC.”\(^{16}\)

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16 as amended by Article 1 item 8 of the Federal Act, Federal Law Gazette I no. 106/2006
18 as amended by Article 2 item 2 of the Federal Act, Federal Law Gazette I no. 149/2002
19 as amended by Article 7 item 7 of the Federal Act, Federal Law Gazette I no. 121/2000 (in force as of 1 October 2001 pursuant to section 66a para. 1)
(2) **(framework provision)** The implementing legislation may provide that generating installations producing electrical energy from renewable energy sources or waste, or producing combined heat and power, be subject to a simplified procedure or notification requirement, provided that their capacity does not exceed a certain level. Installations which are subject to licence or notification pursuant to the provisions of the 1994 Industrial Code, Federal Law Gazette no. 194, shall in any case be exempt from the obligation to obtain a licence.

(3) **(constitutional provision)** Any decisions refusing a licence to construct or operate an electricity generating installation shall be transmitted to the Federal Ministry of Economics and Labour, which shall notify the Commission of such refusal, giving duly substantiated reasons.

**Electricity Supply Contracts Involving the Purchase of Electricity from Third Countries**

“**Section 13. (directly applicable federal law)** (1) Electricity supply contracts involving the purchase of electrical energy, with a view to covering domestic demand, from third countries

1. producing part of their electricity requirement 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 federal territory, or

2. failing to furnish proof of the proper disposal of waste resulting from the generation of electrical energy and to draw up a plan for the disposal of waste resulting from future generation

shall not be permissible.

(2) **[Section 13 para. 2 repealed by ruling of the Constitutional Court of 2 October 2003, G 121-123/03-11. Promulgation of the Federal Chancellor, Federal Law Gazette I no. 104/2003]**

**Obligation to Notify Electricity Supply Contracts**

“**Section 14. (directly applicable federal law)** Electricity supply contracts having a duration in excess of one year and involving the purchase of a quantity of electrical energy in excess of 500 million kWh per year from the territory of the European Union with a view to covering domestic demand shall be notified to Elektrizitäts-Control GmbH. Elektrizitäts-Control GmbH shall keep a record of such electricity supply contracts.”

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22 “Elektrizitäts-Control GmbH shall issue an ordinance determining the third countries to which the conditions specified in para. 1 apply.”

23 see the decree issued by the Federal Minister of Economics and Labour of 3 November 2003, Zl. 551.605/1-IV/1/03.

The announcement of the Federal Minister of Economics and Labour on the repeal by the Constitutional Court of the ordinance of Energie-Control GmbH concerning electricity supply contracts for electricity purchased from third countries (electricity supply contract ordinance – Stromlieferungsvertragsverordnung) was promulgated in the Federal Law Gazette II no 601/2003:

**Pursuant to Article 139 para. 5 of the Federal Constitutional Act the following shall be promulgated:**

The Constitutional Court, by its ruling of 2 October 2003, V 67/02-15, V12/03-15 and V 15/03-15, which was served on the Federal Minister of Economics and Labour on 4 November 2003, has repealed as unlawful the ordinance of Energie-Control GmbH concerning electricity supply contracts for electricity purchased from third countries (electricity supply contract ordinance), promulgated in the Official Journal supplementing the Wiener Zeitung no. 243 of 17 December 2001, as amended by the ordinance issued to change the ordinance of Energie-Control GmbH concerning electricity supply contracts for electricity purchased from third countries (electricity supply contract ordinance), promulgated in the Official Journal supplementing the Wiener Zeitung no. 123 of 28 June 2002.

24 now called Energie-Control GmbH

25 now called Energie-Control GmbH

26 as amended by Article 7 item 10 of the Federal Act, Federal Law Gazette I no. 121/2000
Title 4  
Operation of Grids  

Part 1  
Rights and Obligations of Grid Operators  

Chapter 1  
General Obligations  
Granting Grid Access  

“Section 15. (framework provision) The implementing legislation shall oblige grid operators to grant entitled parties access to their grids under approved general terms and conditions and at fixed tariffs for system use.”

“Cross-Border Exchanges in Electricity  

Section 16. (1) (framework provision) The implementing legislation shall define sanctions for any infringements of the rules of Regulation 1228/2003/EC on conditions for access to the network for cross-border exchanges in electricity which are suited to enforce the rules of this Regulation. 

(2) (directly applicable federal law) Energie-Control GmbH shall ensure compliance with Regulation 1228/2003/EC and with the guidelines set out in Article 8 of the Regulation.”

Organisation of Grid Access  

Section 17. (framework provision) The implementing legislation shall, pursuant to section 15, provide for entitled parties a legal claim to demand access to the grid under approved general terms and conditions and at tariffs for system use set by “Energie-Control Commission” (regulated system of grid access).

Conditions of Grid Access  

“Section 18. (framework provision) (1) The conditions of access to the system shall be non-discriminatory. They shall contain no abusive practices or unjustified restrictions, nor jeopardise the security of supply or the quality of service. 

(2) The implementing legislation shall provide for grid operators within one control area to harmonise their general terms and conditions. Standardised load profiles shall in any case be drawn up for those end users connected at grid levels as defined by section 25 para. 5 items 6 and 7 whose annual consumption is below 100,000 kWh or whose installed capacity is below 50 kW. Furthermore, the implementing legislation shall provide for the manner (synthetic, analytical) in which these standardised load profiles are to be drawn up and adjusted. Provision shall be made for the appropriate publication of these standardised load profiles. Provision shall also be made for standardised load profiles to be drawn up for parties feeding less than 100,000 kWh per year into the grid or having an installed capacity below 50 kW.”

(3) The general terms and conditions shall specifically contain
1. the rights and obligations of the contracting parties, in particular regarding compliance with Other Market Rules;
2. the default load profiles allocated to individual grid users;
3. minimum technical requirements for grid access;
4. the various services to be provided by distribution undertakings within the framework of grid access, and the quality of the services so provided;
5. the period within which customer inquiries have to be answered;
6. the announcement of any planned disruption of supply;
7. minimum requirements concerning dates agreed with grid users;
8. the standard to be met in data communication to market participants;

27 as amended by Article 7 item 11 of the Federal Act, Federal Law Gazette I no. 121/2000  
28 as amended by Article 2 items 11 and 12 of the Federal Act, Federal Law Gazette I no. 106/2006 [previously: Obligation to Permit Electricity Transit]  
30 as amended by Article 7 item 13 of the Federal Act, Federal Law Gazette I no. 121/2000
9. the procedure and terms for applications for grid access;
10. the data to be supplied by grid users;
11. any compensation and refund arrangements which apply if contracted service quality levels are not met, as well as reference to any dispute settlement mechanisms provided by law;
12. a deadline of no more than 14 days upon receipt within which the distribution undertaking has to respond to the application for grid access;
13. the basic principles of clearing and settlement, as well as type and form of billing;
14. the obligation of parties entitled to grid access to pay in advance or provide collateral (cash deposit, bank guarantee, deposit of savings books with unrestricted transferability) in an appropriate amount, if the circumstances of the individual case so warrant, i.e. if there is reason to assume that grid users will fail to meet their financial obligations or will fail to do so in due time.

The implementing legislation shall provide for grid operators to inform customers prior to the conclusion of a contract about the essential contents of the general terms and conditions. For this purpose, customers shall be given an information leaflet. The implementing legislation shall also ensure that the measures on consumer protection set out in Annex A of Directive 2003/54/EC be complied with.”

“(4) The implementing legislation shall provide for grid operators to inform end users in writing of any changes in the general terms and conditions, and to send them upon their request the changed general terms and conditions. Any such changes shall be admissible only subject to the Austrian Civil Codevi and the Consumer Protection Actviii, Federal Law Gazette no. 140/1979.

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

“Grid Access in the Event of Insufficient Capacity

Section 19. (framework provision) In the event that existing line capacity for supplies across different control areas is insufficient to accept all applications for utilisation of a system, the implementing legislation shall provide – notwithstanding the obligation to comply with the rules of Regulation 1228/2003/EC on conditions for access to the network for cross-border exchanges in electricity, as well as with the guidelines issued under this Regulation – that transports to supply customers with electrical energy from renewable energy sources and cogeneration be given priority.

Refusal of Grid Access

Section 20. (1) (framework provision) The implementing legislation shall provide that entitled parties may be refused access to the grid for the following reasons:
1. extraordinary grid conditions (incidents);
2. insufficient grid capacity;
3. if grid access is refused for electricity supplies to a customer who is not deemed to be an eligible customer in the grid from which these supplies are effected, or are to be effected;
4. if electricity from district-heating-oriented, environment and resource conservationist as well as economically and technically efficient cogeneration installations, or from plants using renewable energy, would otherwise be crowded out despite compliance with current market prices; however, any opportunities of selling such electrical energy to third parties shall be used.

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

“(2) (constitutional provision) At the request of the party claiming that its legal right to being granted grid access has been injured by refusal of grid access, Energie-Control Kommission shall determine within one month whether the conditions for refusal of grid access pursuant to para. 1 have been met. The grid operator shall furnish proof of the existence of grounds for refusal (para. 1). Energie-Control Kommission shall endeavour at any stage of the proceedings to effect an amicable settlement between the party entitled to grid access and the grid operator.”

“(3) (framework provision) The implementing legislation shall provide that in determining a party's right to grid access, the legal provisions in force in the country where the party making an application pursuant to para. 2 has its domicile (principal residence) be applied. With regard to evaluating the reasons

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34 to enter into force on 24 August 2002 pursuant to section 66c para. 1 of the Federal Act, Federal Law Gazette I no. 149/2002
35 as amended by Article 2 item 4 of the Federal Act, Federal Law Gazette I no. 149/2002
given for refusal of grid access, the implementing legislation shall provide that the legal provisions in force in the country where the grid operator who has refused to grant grid access is domiciled be applied.”

“Dispute Settlement Procedure

Section 21. (directly applicable federal law) (1) Energie-Control Kommission shall decided – inasmuch as the matter in question does not fall within the competence of the Restrictive Practices Court\textsuperscript{36} (section 38 of the 2005 Restrictive Practices Act\textsuperscript{35}, Federal Law Gazette I no. 61/2005) – on disputes between parties entitled to grid access and grid operators regarding the legality of refusal of grid access.

(2) The courts shall have jurisdiction over all other disputes between parties entitled to grid access and grid operators about obligations arising from this relationship, in particular about the terms and conditions and the tariffs for system use to be applied. An action cannot be brought until the decision of Energie-Control Kommission in the dispute settlement procedure pursuant to section 16 para. 1 item 5 of the Energy Regulatory Authorities Act\textsuperscript{35} has been served or until the time period provided in section 16 para. 3a of the Energy Regulatory Authorities Act has elapsed.

(3) Without prejudice to the provisions of para. 2, an action for claims based on refusal of grid 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."\textsuperscript{37}

Chapter 2

“Control Areas”\textsuperscript{38}

“Designation of Control Areas

Section 22. (framework provision) “(1) Transmission grid operators belonging to a vertically integrated undertaking shall, at least in terms of their legal form, organisation and decision-making powers, be independent of other areas of activities not connected to transmission. The implementing legislation shall provide that one control area each be formed for the areas covered by the transmission grids operated by Verbund-Austrian Power Grid AG, Tiroler Regelzonen AG and VKW-Übertragungsnetz AG. Verbund-Austrian Power Grid AG, Tiroler Regelzonen AG and VKW-Übertragungsnetz AG shall be designated as control area managers. In order to ensure that the transmission grid operators are independent, the implementing legislation shall provide for the application mutatis mutandis of the principles set forth in section 26 para. 3 items 1–4. The combined operation of a transmission grid and distribution grid by one control area manager shall be permissible on the condition that separate accounting groups are established for the transmission and distribution grids and that the balance sheets and profit and loss statements are drawn up separately for each. Furthermore, the assignment rules for each accounting group shall be published.”

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

1. providing system services (frequency-load control) in accordance with the relevant technical rules, such as UCTE, and these services may also be provided by a third company;
2. managing schedules with other control areas;
3. organising and dispatching balancing energy according to the bidders’ supply curve, in cooperation with the clearing and settlement agent;
4. metering electric quantities at the interfaces of its electricity grid and transmitting the data to the clearing and settlement agent and to other grid operators;
5. identifying any bottlenecks in transmission grids, as well as taking measures with a view to preventing, removing and overcoming bottlenecks in transmission grids, and also maintaining security of supply. If the removal of system bottlenecks so requires, the control area managers shall, in agreement with the affected operators of distribution grids, conclude contracts with the producers under which the latter are obliged to provide services (increase or reduce production, change availability of power stations) against compensation for economic drawbacks and for expenses caused by these services; in this context it is also necessary to ensure that any instructions given to operators of cogeneration installations will not jeopardise the security of district heat

\textsuperscript{36} as amended by Article 7 item 16 of the Federal Act, Federal Law Gazette I no. 121/2000
\textsuperscript{37} as amended by Article 1 item 17 of the Federal Act, Federal Law Gazette I no. 106/2006
\textsuperscript{38} as amended by Article 7 item 18 of the Federal Act, Federal Law Gazette I no. 121/2000
\textsuperscript{39} as amended by item 8 of the Federal Act, Federal Law Gazette I no. 63/2004
supply. The tariffs for system use shall be determined with due regard to the expenses incurred by control area managers in the performance of these obligations."

"5a. (constitutional provision) If system bottlenecks occur within the transmission grid of the control area, and if any services of producers are needed for their removal, and if no contractual arrangement has been made pursuant to item 5, the producers, by direction of the control area manager in agreement with the affected operators of distribution grids, shall provide services (increase or reduce production, change availability of power stations). The procedure for determining a fair remuneration for these services shall be defined in an ordinance issued by Energie-Control Kommission, such remuneration being based on the economic drawbacks and expenses of producers caused by these services. In this context it is also necessary to ensure that any instructions given to operators of cogeneration installations will not jeopardise the security of district heat supply. The last sentence of item 5 shall apply mutatis mutandis."

6. dispatching power stations with a view to procuring balancing energy in accordance with the specifications of the clearing and settlement agent;

7. delimiting electricity used for frequency control from balancing energy according to transparent and objective criteria;

8. ensuring a physical balance between supply and demand within the system to be covered by them;

9. clearing and settling any balancing energy through an agency licensed to carry out this task, and making available to this agency as well as to balance group representatives the data necessary for clearing and settlement, in particular any meter data required to calculate deviations from the schedule and load profile of each balance group;

10. preparing a load projection with a view to diagnosing potential bottlenecks;

11. concluding agreements on the exchange of data with other grid operators, with balance group representatives, as well as with clearing and settlement agents and other market participants, in accordance with market rules;"

"12. designating a settlement agent (balance group coordinator) and informing the authority of this designation"

"13. long-term planning for grid levels pursuant to section 25 para. 5 items 1 to 3;

14. publishing the primary control output used in terms of its duration and level, as well as the results of the tendering procedure pursuant to section 40;

15. ensuring an appropriate design and operation of data transfer and evaluation systems for simultaneously communicated data of generating installations pursuant to section 39 para 3 so as to exclude any disclosure of such information to third parties;

16. preparing an equality programme which ensures that the obligations pursuant to item 15 be met."

“(3) The implementing legislation shall provide that undertakings be excluded from pursuing the activity of a settlement agent whenever they are under the decisive influence of other undertakings or a group of undertakings where the undertakings/group concerned are/is performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity. Moreover, the implementing legislation shall ensure that

1. the settlement agent is able to perform its duties assigned pursuant to paras. 4 and 5 effectively and economically; duties are deemed to be performed economically if costs are determined by the settlement agency on the basis of the procedures and principles used for determining the tariffs for system use;

2. individuals holding a qualified share in the settlement agent meet the requirements to be made in the interest of a solid and careful management of the undertaking;

3. no reason of expulsion pursuant to section 13 paras. 1 to 6 of the Industrial Code applies to any of the board members of the settlement agent;

4. the board members of the settlement agent are suited for this job owing to their training background and have the skills and expertise necessary for running the company. A board member’s suitability for the job means that he/she has sufficient theoretical and practical skills for balancing energy accounts and adequate managerial experience; he/she shall be deemed suitable for

42 as amended by Article 7 item 19 of the Federal Act, Federal Law Gazette I no 121/2000
43 as amended by item 3 of the Federal Act, Federal Law Gazette I no. 44/2005
44 as amended by Article 1 item 20 of the Federal Act, Federal Law Gazette I no. 106/2006
managing a settlement agency if he/she provides proof of having held for at least three years a
managing job in such fields as tariff rating or accounting;
5. at least one member of the board has the centre of his/her vital interests in Austria;
6. no board member has another main-line job outside the settlement agency which is bound to
cause a collision of interests;
7. the seat and head office of the settlement agent are located in Austria, and that the settlement
agent has the kind of equipment that complies with its duties;
8. the available settlement system meets the requirements of a state-of-the-art accounting system;
9. neutrality, independence and confidentiality of data are guaranteed.

(4) The implementing legislation shall provide that the duties of the settlement agent include the fol-
lowing tasks:
1. assigning identification numbers to balance groups;
2. providing interfaced within the IT system;
3. administering the schedules between balance groups;
4. accepting the meter data communicated by grid operators in the defined format, evaluating and
disseminating them to the market participants concerned and to other balance group representati-
ves in accordance with the requirements set out in the contracts;
5. accepting the schedules of balance group representatives, and disseminating them to the market
participants concerned (other balance group representatives) in accordance with the requirements
set out in the contracts;
6. conducting credit reviews of balance group representatives;
7. co-operating in the preparation and adjustment of rules concerning bills receivable, settlement
and accounting;
8. ensuring settlement and organisation of any dissolution of balance groups;
9. distributing and allocating, based on transparent criteria and on available metering data, any
differences resulting from the use of standardised load profiles to the market participants connec-
ted to the grid of a grid operator;
10. charging the clearing fees to the balance group representatives;
11. computing and allocating any balancing energy;
12. concluding contracts
   a) with balance group representatives, other control area managers, grid operators and electricity
      suppliers (producers and traders);
   b) with institutions for the purpose of data exchange to prepare an index;
   c) with electricity exchanges on the dissemination of data;
   d) with suppliers (producers and electricity traders) on the dissemination of data.

(5) Within the framework of computing and allocating any balancing energy – unless there are speci-
ral rules under contracts concluded pursuant to section 70 para. 2 of this Electricity Act – it shall in any
case be necessary
1. to solicit and accept offers for balancing energy, and to draw up a call order to be observed by
control area managers;
2. to identify the difference between schedules and meter data, and to use this to compute, assign
and settle any balancing energy;
3. to determine the prices for balancing energy pursuant to the procedure described in section 10 of
the Settlement Agency Actxxiii and to publish them regularly in a suitable format;
4. to compute the fees for balancing energy and communicate such fees to the balance group repre-
sentatives and control area managers;
5. to take special measures if no offers for balancing energy are submitted;
6. to record, archive and publish in a suitable format the standardised load profiles used;
7. to provide information to market participants on the measures required to ensure a transparent
and non-discriminatory and possibly liquid balancing energy market. This shall in any case incl-
ude an up-to-date presentation of compensatory energy offers received (unintended exchange,
secondary control, minute-based dispatch cycle for reserve power), market makers or similar
market instruments, as well as an up-to-date presentation of dispatched offers.

(6) The implementing legislation shall provide for control area managers to inform the authority of
the designation of a settlement agent. If the activity of a control area manager comprises several Federal
States, the designation shall be notified to all state governments affected by its sphere of activity. If the
conditions to be met pursuant to para. 3 are not met, the authority shall declare so in an official decision. Prior to issuing such a decision, the authority shall seek agreement with the state governments in whose remit the control area is situated.

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

(8) In those cases where
1. a settlement agent is not notified to the competent authority pursuant to para. 6, or
2. the authority has issued a declaratory decision pursuant to para. 6, or
3. a settlement agent has been deprived of its entitlement to perform the job of a settlement agent;
the competent authority shall, ex officio, select and engage a suitable person based on the job criteria defined in para. 3 to provisionally assume the tasks of a settlement agent. The authority shall seek agreement with those state governments in whose remit the control area is situated. The authority shall revoke this decision as soon as a suitable settlement agent is designated by the control area manager. Prior to revoking such a decision, the authority shall seek agreement with the state governments in whose remit the control area is situated.”

“Long-Term Planning

Section 22a. (framework provision) (1) The objective of long-term planning shall be to plan the transmission grid (grid levels 1 to 3) with a view to
1. meeting the demand for line capacities to secure supplies to end users with due regard to emergency situations,
2. ensuring a high degree of availability of line capacity (security of supply of the infrastructure), as well as
3. meeting the transport needs of other customers.

(2) State legislation shall provide that control area managers draw up, at least once a year, long-term plans for their control area to achieve the objectives of this Act and the objectives pursuant to para. 1. The planning period shall be defined by the control area manager. This shall be done in a transparent and non-discriminatory manner based on the data available to the control area manager. The minimum planning period shall be five years. The results of long-term planning shall be communicated to the state governments. The latter shall report to the Federal Minister of Economics and Labour on the planning results.

(3) In drawing up the long-term plans, control area managers shall consider the technical and economic expediency, as well as the interests of all market participants.

(4) All market participants shall make available within an appropriate period of time to the control area manager upon the latter’s written request any data necessary for drawing up long-term plans, especially fundamental data, meter values and technical, economic and other project documents on planned grid systems to be erected, developed, changed or operated, if these have any effects on the line capacities of the transmission grid. The control area manager may, irrespective of the above, use other additional data appropriate for long-term planning.”

“(5) (constitutional provision) The control area managers may submit their long-term plans to the Federal Minister of Economics and Labour for approval. In substantiating their application for approval, the control area managers shall, especially in the case of competing projects for the erection, development, change or operation of grid systems, explain the technical and economic reasons for approving or rejecting individual projects and seek the removal of any grid bottlenecks. Approval may be granted subject to obligations and conditions if these are necessary for meeting the objectives of this Act. Any expenses associated with the implementation of measures included in approved long-term plans shall be recognised when determining tariffs for system use pursuant to sections 25 ff.”

45 as amended by item 4 of the Federal Act, Federal Law Gazette I no. 44/2005
Transmission Grids

Obligations of Operators of Transmission Grids

“Section 23. (framework provision) The implementing legislation shall require operators of transmission grids

1. to operate and maintain the system operated by them securely, reliably, efficiently and with due regard to environmental protection;
2. to ensure the technical conditions necessary for operating the system;
3. to provide for any contractual arrangements required for clearing and settlement and for data transmission pursuant to section 22 para. 2 item 9;
4. to supply the operator of another grid to which their own grid is linked with sufficient information to ensure secure and efficient operation, co-ordinated development and interoperability of the interconnected system;
5. to publish their approved general terms and conditions and the tariffs for system use set in accordance with section 25;
6. to conclude agreements on the exchange of data with other grid operators, with balance group representatives, as well as with clearing and settlement agents and other market participants, in accordance with market rules.

7. to ensure the long-term ability of the system to meet reasonable demands for the transmission of electricity;
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 classes of system users, particularly to refrain from discriminating in favour of their related undertakings;
10. to provide system users with the information they need for efficient access to the system;
11. to identify any bottlenecks in the system and take measures to avoid or remove bottlenecks, and to maintain security of supply. If, for the removal of grid bottlenecks or for maintaining the security of supply, any services of producers (increase or reduce production, change availability of power stations) are required, this and any necessary data shall be reported by the transmission grid operator to the control area manager who shall give further instructions if necessary (section 22 para. 2 item 5).

Approval of General Terms and Conditions

“Section 24. (constitutional provision) (1) The authority competent for the approval of, as well as for any changes to, the general terms and conditions of operators of transmission grids shall be Energie-Control Kommission. Approval may be granted subject to obligations and conditions if these are necessary for meeting the provisions of this Act.

Insofar as this is required with a view to creating a competition-oriented market, operators of transmission grids shall change their general terms and conditions at the request of Energie-Control Kommission.

(2) The implementing legislation shall provide penal provisions in case the operator of a transmission grid fails to comply with its obligations pursuant to para. 1.

Determination of Tariffs for System Use

“Section 25. (directly applicable federal law) (1) The charge payable for the utilisation of a grid shall be composed of:

1. a grid utilisation charge;
2. a grid provision charge;
3. a charge for grid losses;
4. a charge for system services;
5. a metering charge;
6. a charge for admission to the grid, as well as
7. a charge for international transactions, where applicable.

The charges set out in items 1 to 4 and in item 7 shall be calculated on the basis of a tariff to be determined by Elektrizitäts-Control Kommission by ordinance or by decision. The charge referred to in item 6 shall be calculated so as to reflect the costs involved, and grid operators may choose to charge grid users connected to a grid level as referred to in para. 5 item 6 a flat rate. The charge referred to in item 5 shall generally be calculated in a cost-reflective manner, and Elektrizitäts-Control Kommission may determine maximum prices by ordinance or by decision.

(2) Tariffs for system use shall be determined in relation to costs and reflect the actual costs involved. Prices may be determined on the basis of the average costs to be assumed for a comparable, rationally operated enterprise. Furthermore, prices may be calculated on the basis of targets derived from the companies' saving potential (productivity discount). The tariff structure underlying pricing shall be uniformly designed and allow comparability with the prices of corresponding services charged by all grid operators.

(3) The tariffs for system use shall conform to the principle of equal treatment of all system users. The tariffs for system use that are applied to grid access shall be set as fixed prices.

(4) Elektrizitäts-Control Kommission shall in any case determine, by ordinance or decision, tariffs for system use for parties withdrawing and injecting electrical energy. For this purpose, grid operators shall be deemed to be withdrawing parties.

(5) The grid levels underlying the formation of tariffs for system use shall be:
1. ultra-high voltage (380 kV and 220 kV, including transformation from 380 kV to 220 kV);
2. transformation from ultra-high to high voltage;
3. high voltage (110 kV, including plants with an operating voltage ranging from more than 36 kV to 110 kV);
4. transformation from high to medium voltage;
5. medium voltage (with an operating voltage ranging from more than 1 kV to 36 kV, as well as transformation to other voltage levels between these levels);
6. transformation from medium to low voltage;
7. low voltage (1 kV and below).

(6) The following grid areas shall be designated:
1. for grid level 1 (ultra-high voltage):
   a) Austrian area: the ultra-high voltage grid, excluding the ultra-high voltage grid of Tiroler Wasserkraftwerke AG as well as the ultra-high voltage grids of Vorarlberger Kraftwerke AG and of Vorarlberger Illwerke AG, as well as the ultra-high voltage grid of WIEN-STROM GmbH;
   b) Tyrol area: the ultra-high voltage grids of Tiroler Wasserkraftwerke AG;
   c) Vorarlberg area: the ultra-high voltage grids of Vorarlberger Kraftwerke AG and of Vorarlberger Illwerke AG, excluding any existing rights with regard to these grids of Österreichische Elektrizitätswirtschafts AG, insofar as they are not based on agreements pursuant to section 70 para. 2, which shall be assigned to the area as defined in item a;
2. for the remaining grid levels, the areas covered by the grids at the grid levels pursuant to para. 5 items 1 to 7 of the companies referred to in the annex, as well as the areas covered by the respective underlying grids of other companies, the costs associated with the ultra-high voltage installations of WIENSTROM GmbH at the grid levels pursuant to para. 5 item 3 (high voltage level) being assigned to this grid area (the grid area of WIENSTROM GmbH);
3. the areas covered by the grids of Grazer Stadtwerke AG, of Innsbrucker Kommunalbetriebe AG, of Klagenfurter Stadtwerke, of Linzer Elektrizitäts-, Fernwärme und Verkehrsbetriebe Aktiengesellschaft, of Salzburger Stadtwerke AG, as well as of Steiermärkischen Elektrizitäts-Aktien-
gesellschaft at the grid levels referred to in para. 5 items 4 and 5, insofar as this is necessary for geographical, economic or grid-technology reasons;

4. the supply areas of distribution undertakings at the grid levels referred to in para. 5 items 6 and 7, insofar as this is necessary for geographical, economic or grid-technology reasons.

Line systems for which the reimbursement of cost is regulated under agreements pursuant to section 70 para. 2 shall not be admitted to any of the grid areas. The grid utilisation charge for utilising line systems under agreements pursuant to section 70 para. 2 shall be set in accordance with the reimbursement provisions as regulated in these agreements. Assignment to a grid shall not signify any interference with other grid operators’ supply area, property rights, investment decisions, plant management, grid planning or control.

(7) In the case of directly connected grids of different operators within grid areas, tariff prices shall be set by aggregating the costs per grid level of such grids, and the proceeds from the utilisation of these grids within the grid areas and grid levels shall be shared by the respective grid operators according to their respective share in the costs. Compensation payments among grid operators shall be made where required. In the case of grids which are exclusively supplied at the same voltage level from grids of different operators within grid areas, but which are not directly linked to higher grid levels via a transformer, tariff prices shall be set by aggregating the costs per grid level for these grids, and the proceeds from the utilisation of these grids shall be shared on a pro-rata basis according to the volumes supplied through these grids as well as according to the respective costs. Compensation payments among grid operators shall be made where required.

(8) The handling of the organisational and technical aspects of compensation payments pursuant to para. 7 shall be assigned to Elektrizitäts-Control GmbH.

(9) The system utilisation charge for consumers shall be based on the grid area and on the grid level to which the installation is connected.

(10) Electricity undertakings shall separately show on the bills for grid utilisation or on electricity bills the individual components of the charge pursuant to para. 1 imposed on end users or grid operators or contained in billed tariff prices. Producers must be billed separately for system services, or charges for these services must be shown separately from any other charges included in the same bill.

(11) Calculation of the grid provision charge shall be capacity-related. Elektrizitäts-Control Kommission shall specify, by ordinance or by decision, the criteria to be applied in determining the basis for calculating the grid provision charge.

(12) Calculation of the grid utilisation charge shall be either commodity-related or commodity- and capacity-related. The capacity-related component of the grid utilisation charge shall generally be based on a period of one year. Tariffs shall be designed in such a way as to ensure that proceeds from the capacity-related component of grid utilisation prices per grid level do not exceed proceeds from the commodity-related component of grid utilisation prices. If prices for grid utilisation vary for different time periods, no more than two different prices shall apply within one day, one week and one year. The calculation of the capacity-related component of the grid utilisation charge shall be based on the arithmetic mean of the highest fifteen-minute average loads metered for each month within the accounting period. Higher prices shall be charged if the period of system utilisation is less than one year or if the grid is utilised intermittently during part or all of the accounting period. Elektrizitäts-Control Kommission shall lay down, by ordinance or decision, the criteria to be applied in calculating the basis for determining the capacity-related component of the grid utilisation charge thus to be derived.

(13) The cost reallocation procedure to be applied in setting tariffs shall be determined by ordinance issued by Elektrizitäts-Control Kommission with due regard to the gross and net aspects of this procedure.

“(14) For providing system services (section 22 para. 2 item 1), the control area manager shall be entitled to charge producers the costs incurred for such services.”

58 now called Energie-Control GmbH
59 now called Energie-Control Kommission
60 now called Energie-Control Kommission
61 now called Energie-Control Kommission
62 as amended by Article 7 item 23 of the Federal Act, Federal Law Gazette I no. 121/2000 (to enter into force pursuant to section 66a para. 2 on the day following the day of promulgation – the day of promulgation being 1 December 2000.).
63 to enter into force on 24 August 2002 pursuant to section 66c para. 2 of the Federal Act, Federal Law Gazette I no. 149/2002
64 as amended by Article 2 item 6 of the Federal Act, Federal Law Gazette I no. 149/2002
Chapter 3

Operation of Distribution Grids

Preconditions for the Operation of Distribution Grids

Section 26. (framework provision) (1) The operation of a distribution grid within one Federal State shall require a licence.

(2) The implementing legislation shall in particular regulate the licensing conditions and locus standi in licensing proceedings.

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

1. that the individuals responsible for managing the distribution grid operator are not members of such operating facilities of the integrated electricity undertaking as are directly or indirectly responsible for the day-to-day operation in the fields of electricity generation and supply;
2. that the professional interests of the individuals (executive bodies) responsible for managing the distribution grid operator are taken into account so that their independence of action is ensured, where specifically the reasons for removing an executive body of the distribution grid operator be clearly specified in the charter of such distribution grid operator;
3. that with regard to assets required for operating, maintaining or extending the grid the actual decision-making authority of the distribution grid operator is ensured, where specifically it shall be ensured that such decision-making authority is exercised regardless of the other spheres of the integrated electricity undertaking;
4. that the distribution grid operator sets up a non-discrimination programme which clearly states the measures taken to exclude discriminatory action; furthermore, measures shall be provided to ensure that observance of this programme is adequately monitored. This programme shall, without limitation, specify the duties of staff members with a view to achieving this goal. The non-discrimination officer appointed vis-à-vis the state government to develop and monitor the non-discrimination programme shall furnish to such state government and Energie-Control GmbH an annual report on measures taken and shall publish such report. The state government responsible for monitoring the non-discrimination programme shall annually furnish to Energie-Control GmbH a summarising report on the measures taken and shall publish such report.

(4) Para. 3 item 1 shall not conflict with the establishment of co-ordination mechanisms which ensure that the economic powers of the parent undertaking and its right to supervise the management with regard to the profitability of a subsidiary are protected. Specifically it shall be ensured that a parent undertaking approves of the annual financial plan or similar tool of the distribution grid operator and determines general limits of the debt of its subsidiary. No instructions with regard to the day-to-day operation or individual decisions on the construction or modernisation of distribution pipelines which exceed the framework of the approved financial plan or equivalent tool shall be acceptable.

(5) The implementing legislation shall provide for the supervisory board of distribution grid operators belonging to an integrated undertaking to include at least two members who are independent of the parent undertaking.”  

Rights

“Section 27. (framework provision) The implementing legislation shall provide – without prejudice to the provisions on direct lines or to any existing grid connections – for the right of the operator of a distribution grid to connect to its grid any end users and any producers within the area covered by its distribution grid (right to be connected to the grid).”

66 as amended by Article 7 item 24 of the Federal Act, Federal Law Gazette I no. 121/2000
“Exceptions to the Right to be Connected to the Grid

Section 28. (framework provision) Customers receiving electrical energy at a rated voltage of above 110 kV shall in any case be excluded from the right pursuant to section 27."

Obligations

“Section 29. (framework provision) The implementing legislation shall require operators of distribution grids

1. to make available the data required to calculate and assign the balancing energy used, in particular those readings which are required to calculate deviations from the schedule and from the load profile of each balance group;
2. to publish general terms and conditions and to conclude, under these terms and conditions, private-law agreements with end users and producers, providing for their connection to the grid (general obligation to connect);
3. to grant customers as well as producers access to their system under the approved general terms and conditions and at specified tariffs for system use;
4. to publish the approved general terms and conditions and the specified tariffs for system use, applying the provisions of Chapter 2 correspondingly;
5. to provide for any contractual measures required for calculation and data communication pursuant to item 1;
6. to operate and maintain the grid;
7. to assess load flows and to monitor compliance with the technical safety requirements of the grid;
8. to keep a record of all balance groups and balance group representatives operating in their grids;
9. to keep a record of all suppliers operating in their grids;
10. to meter amounts purchased by grid users, capacities, load profiles of grid users, to check their plausibility, and to transmit any required data to clearing and settlement agents, to the grid operators concerned, as well as to balance group representatives;
11. to meter capacities, amounts of electricity, load profiles at the interfaces between their grids and other grids, and to pass on these data to the grid operators concerned and to clearing and settlement agents;
12. to identify any bottlenecks in the grid and to take measures with a view to preventing such constraints;
13. to receive and to pass on reports on changes of supplier and balance group;
14. to set up a special balance group for identifying grid losses, as well as a special balance group for eco-energy; the latter need only meet those criteria of a balance group which are necessary for this purpose;
15. to collect grid utilisation charges;
16. to co-operate with the clearing and settlement agent, the balance group representative and other market participants in assigning any differences resulting from the use of standardised load profiles once the actual readings are available;
17. to report to Elektrizitäts-Control Kommission the amount of eco-energy fed in;
18. to conclude agreements on the exchange of data with other grid operators, with balance group representatives, as well as with clearing and settlement agents and other market participants, in accordance with market rules."

“19. to refrain from discriminating in any way whatsoever against system users or classes of system users, particularly to refrain from discriminating in favour of their related undertakings;
20. to provide system users with the information they need for efficient access to the system;
21. when planning to develop the distribution grid, to consider energy efficiency, demand-side management measures or distributed generation which may help to obviate the necessity of upgrading, or seeking new capacity for, the system.”

“Exceptions to the General Obligation to Connect

Section 30. (framework provision) (1) The implementing legislation may provide for exceptions to the general obligation to connect.”

67 as amended by Article 7 item 25 of the Federal Act, Federal Law Gazette I no. 121/2000
68 now called Energie-Control Kommission
69 as amended by Article 7 item 26 of the Federal Act, Federal Law Gazette I no. 121/2000
“General Terms and Conditions

Section 31. (constitutional provision) (1) The authority competent for the approval of, as well as for any changes to, the general terms and conditions of operators of distribution grids shall be Energie-Control Kommission. Insofar as this is required with a view to ensuring a competition-oriented market, operators of distribution grids shall be obliged to change their general terms and conditions at the request of Energie-Control Kommission. Energie-Control Kommission may also request that in the general terms and conditions be included the period within which, at a customer’s request, the metering point designation is to be made available to him or to his authorised representative in a standard electronic data format, or within which a supplier switch is to be carried out. Approval may be granted subject to obligations and conditions if these are necessary for meeting the provisions of this Act.

(2) The implementing legislation shall provide penal provisions in case the operator of a distribution grid fails to comply with its obligations pursuant to para. 1.

Obligation to Purchase Eco-Energy and CHP Energy

Section 32. (framework provision) deleted.
Section 33. (constitutional provision) deleted.
Section 34. (directly applicable federal law) deleted.
Section 35. deleted.

Stipulation of Special Reporting Requirements

Section 36. (directly applicable federal law) In connection with pricing, electricity undertakings may be required to report, at regular intervals, any operational data necessary for an evaluation of the general economic justification of the prices they charge.

Part 2

Transfer and Expiry of Grid Operating Licences

Grounds for Termination; Reorganisation

Section 37. (framework provision) (1) The implementing legislation shall provide the following grounds for termination of a distribution grid licence:
1. withdrawal;
2. surrender;
3. failure of the undertaking, as well as
4. bankruptcy of the legal entity.

(2) Provision for withdrawal shall in any event be made in case the licensee fails to comply with its obligations and complete performance of the obligations imposed upon the system operator is not to be expected, or in case 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 (in particular due to merger, change of corporate form, capital...
for the respective legal successor, and that mere reorganisation does not constitute any ground for termination, in particular it does not justify withdrawal of the licence. Provision shall furthermore be made for the legal successor to notify within a reasonable period of time the State Government of the transfer of the licence, attaching an extract from the Commercial Register xxiv and copies of the documents submitted to effect entry into the Commercial Register.

Instruction

Section 38. (directly applicable federal law) (1) In the event that the operator of a transmission grid extending across more than two States should fail to perform its obligations, the Federal Minister of Economics and Labour shall order this operator to remove the obstacles in question within a reasonable period of time.

(2) Insofar as this is necessary to remove any danger to the life or health of persons, or to avert severe damage to the national economy, the Federal Minister of Economics and Labour may call upon another electricity undertaking to perform the tasks of the system operator, entirely or partially, on a temporary basis (instruction). In the event that
1. the nature of the obstacles is such that full performance of the legal obligations imposed upon the system operator is not to be expected, or that
2. the grid operator fails to comply with the authority's order to remove these obstacles, the respective grid operator shall be entirely or partially prohibited from continuing operations, and another electricity undertaking shall be instructed to take over its system on a permanent basis, with due regard to the provisions of section 23.

(3) The electricity undertaking instructed pursuant to para. 2 shall assume the rights and obligations arising from the contracts of the undertaking affected by the prohibition.

(4) At the request of the electricity undertaking instructed pursuant to para. 2, the authority shall permit this undertaking to use against just compensation the transmission grid of the undertaking affected by the prohibition insofar as this is necessary for the instructed undertaking to perform its tasks.

(5) After the decision pursuant to para. 2 has become final and on the application of the instructed undertaking, the authority shall expropriate against just compensation the transmission grid put into use for the latter’s benefit.

(6) The provisions of the Railway Expropriation Act xxv shall apply correspondingly to the expropriation procedure and to the official assessment of compensation payments.

(7) The Federal Minister of Economics and Labour may issue an ordinance or, in a particular case, a decision, instructing all or several State Governors to exercise on his behalf the powers vested in him pursuant to paras. 1 and 2. Section 47 para. 2 shall apply correspondingly.

Title 5

Producers

Section 39. (framework provision) (1) The implementing legislation shall oblige producers
1. to join a balance group or to form a balance group of their own;
2. to make any required data available to the grid operators concerned, to the clearing and settlement agent, to the balance group representative and to any other market participants concerned;
3. to give advance notice of generating schedules to the grid operators concerned, to the control area manager and to the balance group representative, to the extent to which this is necessary for technical reasons;
4. inasmuch as they use their own metering and data transmission equipment, to comply with the technical specifications of the grid operators;
5. in the event of partial deliveries, to notify their generating schedules to the balance group representatives concerned.

6. to provide services (increase or reduce production, change availability of power stations), subject to contractual arrangements, by direction of the control area manager in order to remove system bottlenecks or maintain security of supply. Whenever the control area managers issue such directions to operators of cogeneration installations, they shall ensure that district heat supply be maintained;

6a. to increase and/or reduce production and thus change an operator’s power station availability by direction of the control area managers pursuant to section 22 para 2 item 5a in order to remove system bottlenecks or maintain security of supply, if this could not be ensured by contractual arrangements pursuant to item 6.

“(2) The implementing legislation shall provide for operators of electricity generation plants (power parks) with a bottleneck capacity of more than five MW to be obliged:
1. to bear the costs of primary control;
2. inasmuch as they are capable of providing primary control services, to provide such services by direction of the control area manager if the tender pursuant to section 40 has been to no avail;
3. to furnish proof of the provision of primary control services to the control area manager in a suitable and transparent manner;
4. to comply with the directions of the control area manager related to the provision of primary control services, in particular concerning the type and amount of data to be communicated.

(3) The implementing legislation shall provide for operators of electricity generation plants (power parks) which are connected to grid levels pursuant to section 25 para 5 items 1 to 3 or have a bottleneck capacity of more than 50 MW to be obliged to simultaneously communicate to the control area manager concerned, for the purpose of monitoring system security, any data on the current feed-in capacity of these generation plants in electronic form.

(4) The implementing legislation shall provide for operators of electricity generation plants with a bottleneck capacity of more than 20 MW to be obliged to regularly communicate to the state government, for the purpose of monitoring security of supply, any data of the availability periods of generation plants.

(5) The implementing legislation shall provide suitable penal provisions to enforce the obligations pursuant to paras. 2 to 4, the minimum penalty for infringements of the provision under para. 2 being € 10,000.

“Tendering for Primary Control Capacity

Section 40 (framework provision) (1) The implementing legislation shall provide that the provision of primary control capacity be handled by a call for tender issued on a regular basis, but at least twice a year, by the control area manager concerned or by a party commissioned by the control area manager to do so.

(2) The implementing legislation shall provide for the control area managers to organise on a regular basis a transparent pre-qualification procedure to determine the providers of primary control capacity that ought to participate in the tender. The providers of primary control capacity that have been rated as suitable in the pre-qualification procedure shall be entitled to participate in the tender.

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

(4) The implementing legislation shall provide for the tender to specify that the capacity to be provided per installation within the primary control system be at least 2 MW.

(5) The implementing legislation shall provide that, in case the tender has been to no avail, the control area manager concerned has to oblige the providers of primary control capacity that are suited pursuant to para. 2 to provide primary control capacity against refund of expenses actually incurred.

Raising Funds for the Provision of Primary Control Capacity

Section 41 (framework provision) (1) The implementing legislation shall provide that the operators of generation plants (power parks) with a bottleneck capacity of more than 5 MW be obliged to raise the funds for providing primary control capacity in relation to the amounts of energy they generate every year. For generation plants whose bottleneck capacity is greater than the load connected to the grid concerned, this connected load shall be used as a computation basis and multiplied by the installation’s hours of operation.

(2) Accounting and collection of the funds computed pursuant to para. 1 shall be carried out by the control area managers on a quarterly basis.

Supply by Direct Lines

“Section 42. (framework provision) The implementing legislation shall provide for producers to have a legal claim to erect and operate direct lines.”
“Title 5a.
Cogeneration Installations

Efficiency Criteria for Cogeneration

Section 42a. (framework provision) (1) For the purpose of determining the efficiency of cogeneration in accordance with Annex IV, the implementing legislation may authorise the competent authority to establish efficiency reference values for separate production of electricity and heat. These efficiency reference values shall consist of a matrix of values differentiated by relevant factors, including year of construction and types of fuel, and must be based on a well-documented analysis taking, inter alia, into account data from operational use under realistic conditions, cross-border exchange of electricity, fuel mix and climate conditions as well as applied cogeneration technologies in accordance with the principles in Annex IV.


Guarantee of Origin of Electricity from High-Efficiency Cogeneration

Section 42b. (framework provision) (1) On the basis of the harmonised efficiency reference values referred to in section 42a para. 2, state governments shall designate by official decision and in response to an application those cogeneration installations for which the grid operator to whose grid such an installation is connected may issue guarantees of origin of electricity from high-efficiency cogeneration pursuant to section 7 item 17a. Any such designations of installations shall be reported immediately to Energie-Control GmbH.

(2) A guarantee of origin issued by the grid operator pursuant to para. 1 shall specify:
1. the quantity of electricity from high efficiency cogeneration in accordance with Annex III;
2. type and bottleneck capacity of the generation unit;
3. date and place of production;
4. the primary fuel sources used;
5. the lower calorific value of the primary fuel source;
6. the use of the heat generated together with the electricity;
7. the primary energy savings calculated in accordance with Annex IV based on harmonised efficiency reference values established by the Commission as referred to in section 42a para. 2.

(3) State governments shall supervise the issue of guarantees of origin at regular intervals.

(4) The issue of guarantees of origin shall not imply a right to benefit from support mechanisms.

Recognition of Guarantees of Origin from Other States

Section 42c. (framework provision) (1) Guarantees of origin of electricity from high-efficiency cogeneration installations located in another EU Member State or in a state party to the EEA Agreement shall be deemed guarantees of origin within the meaning of this Act if they meet the minimum requirements set out in Article 5 para. 5 of Directive 2004/8/EC.

(2) In case of doubt, the state governments shall declare by official decision, in response to a request or ex officio, whether the conditions for recognition are met.

Reporting

Section 42d. (framework provision) (1) Every year, the state governments shall submit to the Federal Minister of Economics and Labour
1. statistics on national electricity and heat production from cogeneration in accordance with the methodology shown in Annex III, and
2. statistics on cogeneration capacities and fuels used for cogeneration.

(2) The state governments shall submit, on an annual basis, to the Federal Minister of Economics and Labour a report on their supervisory activity pursuant to section 42b para. 3. This report shall include in particular the measures taken to ensure the reliability of the guarantee system."

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83 as amended by Article 1 item 34 of the Federal Act, Federal Law Gazette I no. 106/2006. Sections 42a – 42d in force as of 21 February 2006. [see also Annexes I – V]
Title 6
Right of Grid Access and Grid Use

Right of Grid Access

Section 43. (framework provision) The implementing legislation shall provide for all customers to be entitled, as of 1 October 2001, to conclude contracts with producers, electricity traders and electricity undertakings on the supply of electrical energy with a view to covering their own needs and to demand access to the grid with regard to these amounts of electricity.

(2) Electricity undertakings may demand access to the grid on behalf of their customers.

(3) deleted.

Grid Users

Section 44. (framework provision) (1) The implementing legislation shall oblige grid users to join a balance group or to form a balance group of their own.

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

1. make available and transmit to grid operators, to balance group representatives, as well as to the clearing and settlement agent, in accordance with their obligations under contractual agreements, any data, meter readings and other information required to determine their electricity consumption insofar as this is required with a view to maintaining a competitive electricity market and affording consumer protection;

2. comply with the technical specifications of grid operators inasmuch as they use their own metering and data transmission equipment;

3. report any changes of supplier or balance group, and keep to the time limits provided therefore;

4. report contract data to agencies charged with drawing up indices;

5. report generation and consumption schedules to the grid operator and to the control area managers in the event that this should be required for technical reasons;

6. conclude agreements on the exchange of data with other grid operators, with balance group representatives, as well as with clearing and settlement agents and other market participants, in accordance with market rules.

Suppliers of Last Resort

Section 44a (framework provision) Electricity traders and other suppliers whose function includes the supply of electricity to household customers shall publish, in an appropriate manner (e.g. internet), their general tariffs for supply of last resort to household customers. They shall be obliged, based on their general terms and conditions and based on this tariff, to supply electricity to those parties which are supplied under the standardised household load profile and which claim that they enjoy universal service (obligation to provide universal service). The implementing legislation shall provide, for the supply of last resort, further details on the reasonableness of universal supply and on the setting of tariffs for customers who come under the Consumer Protection Act.

Obligations of Suppliers and Electricity Traders

Section 45. (directly applicable federal law) (1) Electricity traders and other parties supplying electricity to end users shall be obliged to conclude agreements on the exchange of data with the representative of the balance group whose members they supply, with the grid operator to whose grid the respective customer is connected, as well as with the competent clearing and settlement agent.

‘(2) Electricity traders and other parties supplying electricity to end users in Austria shall be obliged to show on, or on annexes to, end users’ electricity bills (annual statements) their supply mix which takes into account the total amount of electricity procured by an electricity trader for end users. This obligation shall also apply to promotional material addressed to end users and subject to labelling obligations (section 7 item 18a). This information shall be based on the total electrical energy sold by a supplier to end users (supply mix).

(3) Electricity traders and other parties supplying electricity to end users in Austria shall be obliged to show on, or on annexes to, end users’ electricity bills (annual statements) the environmental impact, at
least CO₂ emissions and radioactive waste, from the electricity generated by this supply mix. This obligation shall also apply to promotional material addressed to end users."

(4) Energie-Control GmbH shall be responsible for monitoring the correctness of statements made by undertakings. In case of incorrect statements, a decision shall be communicated to the respective electricity trader requesting correction of such statements."

"Certification of Origin (Labelling)

Section 45a  (directly applicable federal law) (1) Based on the electrical energy supplied to end users (kWh), labelling pursuant to section 45 para. 2 shall be broken down by percentages of primary energy sources into solid and liquid biomass, biogas, landfill and sewage treatment plant gas, geothermal energy, wind and solar power, hydropower, natural gas, oil and its products, coal, nuclear energy and others.

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

(3) The proportions of the various primary energy sources pursuant to para. 1 shall be shown as a uniform trader mix which takes into account the total amount of electricity procured by an electricity trader for end users. If the primary energy sources cannot be clearly determined, such as in the case of electricity being purchased through electricity exchanges, these quantities shall be allocated on the basis of the current total amounts procured according to UCTE (Union for the Coordination of Electricity Transmission).

(4) Labelling shall be clearly readable. Other notes and indications on the electricity bill shall be such that they do not result in them being mistaken for labelling.

(5) Electricity traders shall document the particulars such labelling is based on. Documentation shall provide conclusive information, broken down by primary energy sources, as to how the quantities supplied to end users are procured.

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

(7) Certifications pursuant to para. 6 shall include information on the primary energy sources used to produce electrical energy, on the place and period of production, as well as on the name and address of the producer. They shall be confirmed by an auditing, control or certification agency accredited pursuant to the Accreditation Act, Federal Law Gazette no. 468/1992 as amended by Federal Law Gazette no. 430/1996. Section 3 of the Accreditation Act shall apply correspondingly. Certifications may be dispensed with for that portion of electricity consumption documented in the guarantee of origin system as defined by section 8 of the Green Electricity Act, Federal Law Gazette I no. 149/2002.

(8) The result of documentation, to be completed within four months of the end of the calendar or business year or the actual period of delivery, shall be kept for three years for inspection by the end user at the electricity trader’s domicile (principal residence) or – if it is located abroad – at the domicile of the domestic representative.

(9) At the request of Energie-Control GmbH, electricity traders shall submit within a reasonable period of time the certifications pursuant to paras. 5 to 7 and any documents necessary to check the correctness of the information provided.

(10) Insofar as there is an obligation to publish annual accounts pursuant to section 8 para. 1, electricity traders or other suppliers shall indicate in these annual accounts the trader mix pursuant to para. 3 including information on the respective quantities of electrical energy sold or supplied."

"(11) The Federal Minister of Economics and Labour shall, in agreement with the Federal Minister for Agriculture and Forestry, the Environment and Water Management, issue an ordinance to specify further details of electricity labelling. These details shall, in particular, specify the scope of obligations

88 to enter into force on 1 July 2004 pursuant to section 66c para. 2 of the Federal Act, Federal Law Gazette I no. 149/2002 [previously: para. 3]
89 as amended by Article 2 item 9 of the Federal Act, Federal Law Gazette I no. 149/2002
90 to enter into force on 1 July 2004 pursuant to section 66c para. 2 of this Federal Act, Federal Law Gazette I no. 149/2002
91 as amended by Article 2 item 10 of the Federal Act, Federal Law Gazette I no. 149/2002
under section 45 paras. 2 and 3, as well as the requirements for labelling the various primary energy sources and electricity pursuant to section 45a."  

“General Terms and Conditions for the Supply of Electricity  

Section 45b. (1) (framework provision) Suppliers shall draw up general terms and conditions for the supply of electricity to customers whose consumption is not metered by load profile meters. The general terms and conditions, as well as their modifications, shall be reported in electronic form to Energie-Control Kommission prior to their entry into force and published in a suitable format.  

(2) (directly applicable federal law) Any changes to the general terms and conditions, and to the contracted charges, shall only be permitted subject to the Austrian Civil Code and the Consumer Protection Act, Federal Law Gazette no. 140/1979. The customer shall be informed of any such changes in writing. If the contractual relationship is terminated in case the customer objects to the changes of the general terms and conditions or of the charges, the contractual relationship shall be terminated on the last day of the month following on a period of 3 months.  

(3) (framework provision) The general terms and conditions or the contract forms between suppliers and customers shall at least specify:  
1. name and address of the supplier;  
2. the services provided, the service quality offered, as well as the expected time for the initial supply;  
3. the energy price in Cent per kWh including any additional charges and taxes;  
4. the duration 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 the refund arrangements which apply if contract service quality levels are not met;  
6. reference to any available dispute settlement mechanisms;  
7. the conditions for supply within the meaning of section 44a.  

(4) (framework provision) Suppliers shall inform their customers verifiably of the essential contract contents prior to the conclusion of the contract. To this end customers shall receive an information leaflet. This shall also apply to situations where contracts are concluded through intermediaries.  

(5) (directly applicable federal law) The regulations of paras. 1 to 4 shall not affect any provisions of the Consumer Protection Act and the Civil Code.  

“Minimum Requirements for Bills and for Information and Promotional Material  

Section 45c. (directly applicable federal law) (1) Any information and promotional material addressed to end users, as well as electricity bills, shall be transparent and consumer-friendly. Inasmuch as there is joint information on system utilisation charges and electricity prices, joint promotion of such charges and prices, or inasmuch as the conclusion of a joint contract is offered or billing is made for such a contract, the various components of the system utilisation charge, the additional charges for taxes and duties, as well as the electricity price, shall be shown separately and transparently on electricity bills. The energy price shall, in any case, be shown in Cent per kWh and include any basic charge.  

(2) Grid operators, providers, electricity traders and suppliers shall provide on bills for system use, notwithstanding the provisions of section 25 para. 10 and section 45 para. 2 and section 45a, the following information in particular:  
1. allocation of the customer installations to grid levels pursuant to section 25 para. 5;  
2. the agreed and/or acquired extent of grid utilisation in kW;  
3. designation of metering points;  
4. the meter readings used for billing;  
5. information on how meters have been read. Such information shall specify whether meters have been read by the grid operator, by customers themselves, or whether the meter readings have been determined by computation, and  
6. energy consumption during the accounting period per tariff period.  

(3) Grid operators shall provide the information referred to under para. 2, as well as the grid users’ metered load profiles, to grid users free of charge in response to the latter’s request.  

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92 as amended by Article 2 item 10 of the Federal Act, Federal Law Gazette I no. 149/2002  
93 section 45b paras. 2 and 5 and section 45c will enter into force on 1 January 2007 pursuant to section 66d para. 3  
94 section 45b paras. 2 and 5 and section 45c will enter into force on 1 January 2007 pursuant to section 66d para. 3  
95
Title 7

Balance Groups

Formation of Balance Groups

Section 46. (1) (framework provision) Balance groups may be formed within any control area. The formation and alteration of balance groups shall be carried out by the balance group representative.

(2) (framework provision) The balance group representative 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 require balance group representatives to furnish proof of their professional qualification. With a view to ensuring that balance group representatives are in a position to perform their obligations, the implementing legislation shall furthermore provide regulations regarding the required capital base.

(4) (framework provision) The balance group representative shall furthermore be required to perform its tasks and obligations and to comply with market rules. In case the balance group representative fails to meet its obligations, the implementing legislation shall provide for prohibiting such representative from pursuing this activity.  

“(5) (constitutional provision) Balance group representatives shall be subject to supervision by Energie-Control GmbH. Compliance with the provisions contained in the implementing legislation shall be monitored by the regulatory authority. Assessment of the professional qualifications, as well as any prohibition of pursuing the activity, of balance group representatives shall be subject to the legal provisions in force at their respective domiciles. Any suppliers or customers not belonging to a balance group or failing to form a balance group of their own shall be assigned to a balance group by Energie-Control GmbH.”

“Tasks and Obligations of Balance Group Representatives

Section 47. (1) (framework provision) The implementing legislation shall assign the following tasks to balance group representatives:

1. drawing up schedules and transmitting them to the clearing and settlement agency and to the control area managers concerned;
2. concluding agreements regarding reserve energy, as well as supplying the balance group members which have been assigned to them by Elektrizitäts-Control GmbH;
3. reporting certain generation and consumption data for technical purposes;
4. reporting, for technical purposes, the generation and consumption schedules of bulk buyers and injecting parties, according to defined rules;
5. paying charges (fees) to clearing and settlement agents;
6. paying charges for balancing energy to control area managers, as well as passing these charges on to balance group members.

(2) (framework provision) Balance group representatives shall be obliged

1. to conclude agreements on the exchange of data with the clearing and settlement agent, with grid operators and with balance group members;
2. to keep a record of balance group members;
3. to pass on data to clearing and settlement agents, grid operators and balance group members in accordance with market rules;
4. to draw up schedules between different balance groups and to report these schedules to the clearing and settlement agent by a deadline to be set by the agent;
5. to procure balancing energy for balance group members – with a view to supplying them with this balancing energy;
6. to take any precautions necessary for minimising the expenses of the green elec-
tricity settlement centre for balancing energy." 101

(3) (framework provision) In the event that a balance group member should change its balance group or its supplier, this balance group member’s data shall be passed on to the new balance group or to the new supplier.” 102

“(4) (constitutional provision) Balance group representatives shall submit their general terms and conditions to Energie-Control GmbH for approval and alter these general terms and conditions at the request of the latter, inasmuch as this is required with a view to ensuring a competitive market or to accepting the green electricity allocated to electricity traders. To this end, Energie-Control GmbH may also and in particular initiate a modification of the timeframe for schedule allocation which is necessary for minimising the expenses of the green electricity settlement centre for balancing energy.” 103

“Title 8
Authorities” 104

“Competent Authorities in Other Matters Regulated by Directly Applicable Federal Law
Section 48. (directly applicable federal law) (1) Save as otherwise provided in a particular case, the authority within the meaning of the provisions of directly applicable federal law contained in this Federal Act shall be Elektrizitäts-Control GmbH 105.

(2) Administrative fines pursuant to Title 10 shall be imposed by the District Administration Authorities xxvii or, within the jurisdiction of a Federal Police Directorate xxviii, by the latter.” 106

“Competent Authorities in Electricity Matters
Section 49. (framework provision) Save as otherwise provided in a particular case, the authorities within the meaning of the framework provisions contained in this Federal Act shall be
1. the State Governments;
2. the Federal Minister of Economics and Labour in the cases referred to in article 12 para. 3 of the Federal Constitutional Act.” 107

“Title 9
Special Organisational Provisions” 108

Section 50. deleted 109

State Advisory Council for Electricity xxix
Section 51. (framework provision) (1) The implementing legislation shall provide for an Advisory Council for Electricity to advise the State Government in fundamental 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 52. (directly applicable federal law) (1) The Federal Minister of Economics and Labour shall be authorised to commission statistical surveys and other statistical work in connection with electricity matters. Such statistical surveys and any other statistical work shall be conducted by Energie-Control GmbH.” 110

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102 as amended by Article 7 item 38 of the Federal Act, Federal Law Gazette I no. 121/2000
104 as amended by Article 7 item 39 of the Federal Act, Federal Law Gazette I no. 121/2000
105 now called Energie-Control GmbH
106 as amended by Article 7 item 40 of the Federal Act, Federal Law Gazette I no. 121/2000
107 as amended by Article 7 item 42 of the Federal Act, Federal Law Gazette I no. 121/2000
108 as amended by Article 7 item 41 of the Federal Act, Federal Law Gazette I no. 121/2000 (The heading “Title 9” shall be inserted after section 49, the subdivisions contained in Title 9, including their headings, shall be deleted.)
109 as amended by Article 7 item 43 of the Federal Act, Federal Law Gazette I no. 121/2000
"Commissions to conduct statistical surveys shall be given by an ordinance of the Federal Minister of Economics and Labour." In addition to the actual commission to conduct statistical surveys, this ordinance shall include specifications regarding:

1. the basic population;
2. statistical units;
3. the type of statistical survey to be conducted;
4. characteristics;
5. classes;
6. intervals and frequency 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 of the 2000 Federal Statistics Act, Federal Law Gazette I no. 163/1999.

(3) Individual data may be passed on to Statistik Österreich for purposes of federal statistics.

(4) In conducting statistical surveys and in processing the data collected during such surveys, the provisions of the 2000 Federal Statistics Act shall be applied correspondingly.”

Section 53. deleted

Automated Data Communication

Section 54. (directly applicable federal law) (1) Any personal data required to conduct proceedings in matters regulated by directly applicable federal law pursuant to this Federal Act, which the authority needs to carry out its supervisory function or which the authority has obtained pursuant to section 10 may be collected and processed by automatic means.

(2) The Federal Minister of Economics and Labour, Energie-Control GmbH and Energie-Control Kommission shall be authorised, in the course of proceedings in matters regulated by directly applicable federal law pursuant to this Federal Act, to transmit processed data

1. to the parties to these proceedings;
2. to any experts consulted in these proceedings;
3. to the members of the Advisory Council for Electricity; however, only to the members appointed pursuant to section 26 para. 3 items 1, 2 and 4 of the Energy Regulatory Authorities Act, Federal Law Gazette I no. 121/2000, as amended by Federal Law Gazette I no. 148/2002 in matters relating to price determination;
4. to requested or instructed authorities (section 55, General Administrative Procedures Act)
5. to the authority competent for the authorisation procedure under the provisions of electricity law, inasmuch as such data are necessary for this procedure.”

Price Determination

“Section 55. (directly applicable federal law) “(1) Fixed prices for grid use (tariffs for system use) (section 25) and other tariffs may be determined ex officio or upon application. Applications shall be submitted to Energie-Control GmbH. Save as otherwise provided in para. 3, Energie-Control GmbH shall, prior to each price determination, conduct an enquiry preceding the delivery of an opinion of the Advisory Council for Electricity, in which the party shall be heard and the representatives of the Federal Ministries and entities referred to in section 26 para. 3 items 1, 2 and 4 of the Federal Act concerning the tasks of regulatory authorities in the electricity and natural gas sector and the establishment of Energie-Control GmbH and Energie-Control Kommission (Energy Regulatory Authorities Act – E-RBG), as amended by Federal Law Gazette I no. 148/2002, shall have the opportunity to comment. The undertakings concerned, as well as the Austrian Economic Chamber, the Federal Chamber of Labour and the Austrian Trade Union Federation shall be entitled to submit applications.”

112 as amended by Article 7 item 44 of the Federal Act, Federal Law Gazette I no. 121/2000
113 as amended by Article 7 item 45 of the Federal Act, Federal Law Gazette I no. 121/2000
114 as amended by Article 1 item 43 of the Federal Act, Federal Law Gazette I no. 121/2000
115 to enter into force on 24 August 2002 pursuant to section 66c para. 2.
116 as amended by Article 2 item 13 of the Federal Act, Federal Law Gazette I no. 149/2002
(2) Upon conclusion of an enquiry preceding the delivery of an opinion of the Advisory Council for Electricity, all relevant documents shall be submitted to this Advisory Council for an opinion. The chairman may also and in particular consult experts to assist in the deliberations of the Advisory Council for Electricity.

(3) In case of imminent danger, the hearing of the Federal Ministries and entities referred to in section 26 para. 3 items 1, 2 and 4 of the Energy Regulatory Authorities Act, as well as the opinion of the Advisory Council for Electricity, may be omitted. However, the matter shall subsequently be submitted to this Council without delay.

(4) Inasmuch as audits are conducted, the documents relating to such audits shall be submitted for an opinion to the representatives of the Federal Ministries and entities referred to in section 26 para. 3 items 1, 2 and 4 of the Energy Regulatory Authorities Act if the audit was conducted in the course of an enquiry preceding the delivery of an opinion of the Advisory Council for Electricity, save in the case referred to in para. 3, and shall, however, be submitted for an opinion to the members of the Advisory Council for Electricity pursuant to section 26 para. 3 items 1, 2 and 4 of the Energy Regulatory Authorities Act if the audit was conducted in the course of proceedings before the Advisory Council for Electricity, as well as in the case referred to in para. 3.

(5) Representatives of the audited undertakings may be summoned by Elektrizitäts-Control GmbH to furnish additional information both in any enquiry preceding the delivery of an opinion by the Advisory Council for Electricity and before the Advisory Council for Electricity.

Obligation to Pass on Tax Reductions

Section 56. (directly applicable federal law) If levies, taxes or customs duties included in the prices of goods or services are either partially or fully abolished, these prices shall be reduced by the respective amounts.

Promulgation of Ordinances

Section 57. (directly applicable federal law) Inasmuch as they relate to prices and tariffs, ordinances issued pursuant to this Federal Act shall be promulgated in the Official Journal supplementing the Wiener Zeitung. Unless a later date for their entry into force is set forth, they shall enter into force with the beginning of the day on which they are promulgated. Where promulgation in the Official Journal supplementing the Wiener Zeitung is impossible or cannot be effected in due time, such ordinances shall be promulgated in another appropriate manner – in particular by radio or by publication in one or several periodical media which publish advertisements, specifically in daily newspapers.

General Provisions

Section 58. (framework provision) The implementing legislation shall in particular lay down the specific procedural provisions required to grant licences for the operation of distribution grids.

Right to Information

Section 59. (framework provision) The implementing legislation shall ensure that State Governments be entitled to request, at any stage of the proceedings, any information required to conduct such proceedings, and may inspect financial and business records for this purpose.

Automated Data Communication

Section 60. (framework provision) The implementing legislation shall ensure that any personal data required to conduct proceedings in electricity matters, which the authorities require to perform their supervisory functions or which must be brought to the attention of the State Government, may be collected and processed by automatic means; furthermore, the implementing legislation shall regulate the transfer of processed data to third parties in accordance with the principles ensuing from section 54 para. 3.

State Governments' Obligation to Report

Section 61. (constitutional provision) The State Governments shall submit to the Federal Minister of Economics and Labour, no later than 30 June of each year, a report on the experiences made with the functioning of the internal electricity market and on the execution of the implementing legislation adopted pursuant to this Federal Act.

117 as amended by Article 2 item 16 of the Federal Act, Federal Law Gazette I no. 149/2002
118 as amended by Article 2 item 16 of the Federal Act, Federal Law Gazette I no. 149/2002
119 as amended by Article 2 item 16 of the Federal Act, Federal Law Gazette I no. 149/2002
120 now called Energie-Control GmbH
121 as amended by Article 1 item 44 of the Federal Act, Federal Law Gazette I no. 106/2006 [previously: Fund]
Section 61a. (framework provision) deleted.

Title 10
Penal Provisions

“Profiteering

Section 62. (directly applicable federal law) (1) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court or to more severe punishment under different administrative penal provisions, whosoever names, demands, accepts, or accepts a promise of, a price higher than the maximum or fixed price determined by the authority pursuant to this Federal Act or a price lower than the minimum or fixed price determined by the authority pursuant to this Federal Act for a grid service shall be deemed to have committed an administrative offence and shall be fined up to € 50,000, and up to € 80,000 in case of repetition of the offence.

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

(3) The limitation period (section 31 para. 2 of the Administrative Penal Actxxxvii) shall be one year.

Failure to Pass on Tax Reductions

Section 63. (directly applicable federal law) Whosoever contravenes section 56 or, whilst reducing prices in accordance with section 56, 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 € 5,000.”

General Penal Provisions

Section 64. (directly applicable federal law) (1) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court or to more severe punishment under different administrative penal provisions, whosoever

1. fails to perform his obligation to provide information and access to his records pursuant to section 10;
2. fails to comply with the prohibition pursuant to section 13;
3. fails to perform his obligations under the accounting provisions pursuant to section 8 or fails to comply with the provisions of an ordinance issued pursuant to section 8 para. 4 shall be deemed to have committed an administrative offence and shall be fined up to € 50,000.

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

1. fails to comply with the notification requirement pursuant to section 14 or section 45b paras. 1 and 2; fails to perform his obligation to meet the provisions pursuant to section 8 or fails to comply with the provisions of an ordinance issued pursuant to section 8 para. 4;
2. fails to comply with the pricing obligation pursuant to section 25;
3. fails to comply with the reporting requirement pursuant to section 36;
4. fails to comply with his obligation to separate indications pursuant to section 45c para. 1;
5. fails to comply with his obligations as grid operator or supplier pursuant to section 53 para. 3 and/or under an ordinance issued pursuant to section 53 para. 6;
6. fails to comply with his obligation to communicate, publish or submit data pursuant to section 52 shall be deemed to have committed an administrative offence and shall be fined up to € 3,000. Section 62 para. 3 shall apply.”

Unlawful Disclosure or Utilisation of Data

Section 65. (directly applicable federal law) (1) Whosoever unlawfully discloses or utilises data, contrary to the provisions “of section 11”124, the disclosure or utilisation of which may interfere with the legitimate interests of the party concerned shall be punished by the court with imprisonment of up to one year.

(2) The offender shall be prosecuted only on the application of a party whose interest in the maintenance of secrecy has been injured or on the application of the Data Protection Commissionxxxviii.

122 as amended by Article 7 item 47 of the Federal Act, Federal Law Gazette I no. 121/2000
123 as amended by Article 1 item 45 of the Federal Act, Federal Law Gazette I no. 106/2006 [sections 62 to 64]
124 as amended by Article 7 item 49 of the Federal Act, Federal Law Gazette I no. 121/2000
(3) The trial shall be held behind closed doors
1. if the public prosecutor, the accused or a private plaintiff so move, or
2. if the court deems this necessary with a view to safeguarding the interests of any persons who are
not parties to the proceedings.

Title 11

Transitional and Final Provisions

Entry into Force and Repeal of Federal Legal Provisions

Section 66. (1) (constitutional provision) Section 1, section 5 para. 2, section 10, section 12 para. 3,
section 20 para. 2, section 24, section 61, section 70 para. 2 and section 71 para. 3 shall enter into force
on 19 February 1999.

(2) (directly applicable federal law) The provisions of this Federal Act which are designated as
directly applicable federal law, save sections 8 and 9, shall enter into force on 19 February 1999. Ordinances
pursuant to these provisions may be issued as of the day following the promulgation of this Federal
Act; however, they shall be brought into force no earlier than 19 February 1999.

(3) (directly applicable federal law) Sections 8 and 9 shall enter into force on 1 December 1998
and shall apply to all business years beginning after this date. Ordinances pursuant to section 8 para. 4
may be issued as of the day following the promulgation of this Federal Act; however, they shall be
brought into force no earlier than 1 December 1998.

(4) (directly applicable federal law) The provisions of the 1992 Price Actxxxix, Federal Law Gazette
no. 145, shall continue to apply to any pricing procedures for the supply of electricity and related supple-
mentary services pending upon entry into force of the provisions of this Federal Act designated as directly
applicable federal law, as well as to any administrative offences committed prior to the entry into force of
this Federal Act.

(5) (directly applicable federal law) Decisions issued pursuant to the 1992 Price Act,
1. inasmuch as they are addressed to operators of distribution grids or to operators of transmission
grids for supply to non-eligible customers, shall be deemed to be decisions pursuant to the provi-
sions of directly applicable federal law contained in this Federal Act;
2. inasmuch as they are addressed to operators of transmission or distribution grids for supply to
eligible customers, shall be deemed to be decisions determining both the tariff for system use and
the price for the supply of electrical energy and related supplementary services until ordinances
or decisions pursuant to sections 25 and 34 in connection with section 55 have been issued.

(6) (directly applicable federal law) Ordinances issued pursuant to pricing regulations prior to the
entry into force of the provisions of this Federal Act which are designated as directly applicable federal
law shall remain in force as federal law until the respective matters have been newly regulated by ordi-
nances pursuant to the provisions of directly applicable federal law contained in this Federal Act.


Section 66a. (1) (constitutional provision) Section 1 and section 71 para. 9 as amended by Federal
Law Gazette I no. 121/2000 shall enter into force on the day following promulgation, sections 24 and 31,
section 46 para. 5 and section 47 para. 4 as amended by Federal Law Gazette I no. 121/2000 shall enter
into force on 1 March 2001, section 10, section 20 para. 2 and section 33 as amended by Federal Law
Gazette I no. 121/2000 shall enter into force on 1 October 2001.”

“(2) (directly applicable federal law) Section 25 as amended by Federal Law Gazette I
no. 121/2000 shall enter into force on the day following promulgation. The Federal Minister of Econom-
ics and Labour shall be competent to issue ordinances pursuant to section 25 until 30 September 2001.
The remaining provisions of the Federal Act, Federal Law Gazette I no. 121/2000 which are designated as
directly applicable federal law shall enter into force on 1 October 2001. Ordinances pursuant to these
provisions may be issued as of the day following the promulgation of the Federal Act, Federal Law Ga-
zette I no. 121/2000; however, they shall be brought into force no earlier than 1 October 2001.

(3) (directly applicable federal law) Any pricing procedures for the supply of electricity and related
supplementary services pending upon the entry into force of the Federal Act, Federal Law Gazette I
no. 121/2000 shall be concluded in accordance with the provisions of the Federal Act, Federal Law Ga-
zette I no. 121/2000.

125 as amended by Article 7 item 50 of the Federal Act, Federal Law Gazette I no. 121/2000

Inasmuch as they are addressed to operators of distribution grids or to operators of transmission grids for supply to non-eligible customers, decisions issued pursuant to pricing regulations in force prior to the entry into force of the provisions of Federal Law Gazette I no. 121/2000 designated as directly applicable federal law – save with regard to the rates contained in these decisions – shall be deemed to be decisions pursuant to the provisions of directly applicable federal law included in the Federal Act, Federal Law Gazette I no. 121/2000 until decisions or ordinances regulating these matters have been issued by *Elektrizitäts-Control GmbH*.

Ordinances issued pursuant to pricing regulations in force prior to the entry into force of the provisions of the Federal Act, Federal Law Gazette I no. 121/2000 designated as directly applicable federal law shall remain in force as federal law until new ordinances regulating these matters have been issued by the Federal Minister of Economics and Labour or, as of 1 October 2001, by *Elektrizitäts-Control Kommission*.

Ordinances issued by the State Governors pursuant to section 47 paras. 3 and 4 as amended by Federal Law Gazette I no. 143/1998 shall remain in force as federal law until the entry into force of the ordinances pursuant to section 34 as amended by Federal Law Gazette I no. 121/2000.

Inasmuch as their terms extend beyond 1 October 2001, any electricity supply contracts concluded before 19 February 1999 and involving the purchase of electrical energy from third countries with a view to covering domestic demand within the meaning of section 13 para. 1, shall be submitted to the Federal Minister of Economics and Labour no later than 1 December 2001. Any such electricity supply contracts shall be terminated at the earliest possible time. These contracts shall furthermore be made available to *Elektrizitäts-Control GmbH*.

Ordinances issued by the State Governors pursuant to section 47 paras. 3 and 4 as amended by Federal Law Gazette I no. 143/1998 shall remain in force as federal law until the entry into force of the ordinances pursuant to section 34 as amended by Federal Law Gazette I no. 121/2000.

Ordinances issued by the State Governors pursuant to section 47 paras. 3 and 4 as amended by Federal Law Gazette I no. 143/1998 shall remain in force as federal law until the entry into force of the ordinances pursuant to section 34 as amended by Federal Law Gazette I no. 121/2000.

Any such electricity supply contracts shall be terminated at the earliest possible time. These contracts shall furthermore be made available to *Elektrizitäts-Control GmbH*.

**“Clarification of the Period of Application of Ordinances Regulating Tariffs for System Use”**

Section 66b. (constitutional provision) (1) The ordinance of 18 February 1999 issued by the Federal Minister for Economic Affairs to determine the tariffs for system use, Zl. 551.352/96-VIII/1/99, shall be applied, subject to para. 2, to facts established within the period from 19 February 1999 to the end of 22 September 1999. The ordinance of 22 September 1999 issued by the Federal Minister for Economic Affairs to determine the tariffs for system use, Zl. 551.352/140-VIII/1/99, shall be applied, subject to para. 2, to facts established within the period from 23 September 1999 to the end of 31 December 2000.

(2) The ordinances referred to in para. 1 shall not be applied to those standard addressees who, owing to individual applications (Article 139 para 1, Article 140 para. 1 of the Federal Constitutional Act) filed in the course of such ordinances being repealed by the Constitutional Court or in the course of such ordinances being ruled unlawful, are to be awarded the legal consequences ensuing from such causes within the meaning of Article 139 para. 6 or Article 140 para 7 of the Federal Constitutional Act. The fact that the Constitutional Court repeals such ordinances or rules them unlawful will not result in a retroactive removal from the acquis of ordinances referred to in para. 1 for all the other standard addressees.

**Entry into Force of the Amendment, Federal Law Gazette I no. 149/2002**

Section 66c. (1) (constitutional provision) Section 1, section 10 sentence 1, section 20 para. 2, section 24 para. 1, section 31 para. 1, section 46 para.5, section 47 para.4, section 66b and section 71 para. 10 as amended by Federal Law Gazette 149/2002 shall enter into force on the day following promulgation. Repeal of section 33 shall enter into force on 1 January 2003."

“(2) (directly applicable federal law) Section 45 paras. 2 and 3 and section 45a as amended by Federal Law Gazette I no. 149/2002 shall enter into force on 1 July 2004. Section 16 paras. 1 and 2, section 25 para. 14, section 45 para. 1 and section 55 para. 1 as amended by Federal Law Gazette I no. 149/2002 shall enter into force on the day following promulgation.”

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126 now called *Energie-Control GmbH*
127 now called *Energie-Control Kommission*
128 now called *Energie-Control GmbH*
129 as amended by Article 7 item 51 of the Federal Act, Federal Law Gazette I no. 121/2000
130 to enter into force on 24 August 2002 pursuant to section 66c para 1.
131 as amended by Article 1 item 39 of the Federal Act, Federal Law Gazette I no. 148/2002
132 as amended by Article 2 item 14 of the Federal Act, Federal Law Gazette I no. 149/2002
133 as amended by Article 2 item 14a of the Federal Act, Federal Law Gazette I no. 149/2002

Section 66d. (1) (constitutional provision) Section 1, section 10, section 24 para. 1 and section 31 para. 1 as amended by Federal Law Gazette I no. 106/2006 shall enter into force on the day following promulgation.

(2) (directly applicable federal law) Sections 42a to 42d, as well as Annexes I to V, as amended by Federal Law Gazette I no. 106/2006 shall enter into force on 21 February 2006.

(3) (directly applicable federal law) Section 1a, section 2 para. 1 item 1, section 8 paras. 3 to 5, section 16 para. 2, section 21, section 45 paras. 2 to 4, section 45a para. 11, section 52 paras 1 and 2, sections 54 and 62 to 64 as amended by Federal Law Gazette I no. 106/2006 shall enter into force on the day following promulgation. Ordinances pursuant to these provisions may be issued as of the day following the promulgation of the Federal Act, Federal Law Gazette I no. 106/2006. Section 45b paras. 2 and 5, as well as section 45c, shall enter into force on 1 January 2007.

(4) (directly applicable federal law) Section 1a, section 2 para. 1 item 1, section 8 paras. 3 to 5, section 16 para. 2, section 21, section 45 paras. 2 to 4, section 45a para. 11, section 52 paras 1 and 2, sections 54 and 62 to 64 as amended by Federal Law Gazette I no. 106/2006 shall enter into force on the day following promulgation. Ordinances pursuant to these provisions may be issued as of the day following the promulgation of the Federal Act, Federal Law Gazette I no. 106/2006. Section 45b paras. 2 and 5, as well as section 45c, shall enter into force on 1 January 2007.

(5) (directly applicable federal law) Section 1a, section 2 para. 1 item 1, section 8 paras. 3 to 5, section 16 para. 2, section 21, section 45 paras. 2 to 4, section 45a para. 11, section 52 paras 1 and 2, sections 54 and 62 to 64 as amended by Federal Law Gazette I no. 106/2006 shall enter into force on the day following promulgation.

Entry into Force and Repeal of Legal Provisions of the States

Section 67. (framework provision) (1) The provisions of this Federal Act designated as framework provisions shall enter into force on the day following promulgation; the Electricity Management Act 134, Federal Law Gazette no. 260/1975, as amended by Federal Law Gazette no. 131/1979, shall be repealed as of the same day. 135

(2) The implementing legislation shall provide that any previously applicable provisions of electricity law, inasmuch as these contain provisions adopted for the implementation of the Electricity Management Act, become inoperative after 18 February 1999, upon entry into force of the implementing legislation regulating the subject matter of the framework provisions contained in this Federal Act.

“(3) The provisions of the Federal Act, Federal Law Gazette I no. 121/2000, designated as framework provisions shall enter into force on the day following promulgation.” 136


Transitional Provisions

Section 68. (framework provision) The implementing legislation shall provide that undertakings which, at the time when the respective implementing legislation comes into force,

1. legally operate a distribution grid, be deemed to be licensed to the extent of their previous activity, and that any pending procedures be concluded under the legal provisions heretofore in force;
2. distribute electrical energy within industrial premises be deemed to be end users as defined by section 7 item 9, even if not all the remaining conditions laid down in section 7 item 26 have been met.


Section 68a. (1) (framework provision) The implementing legislation shall provide for vertically integrated electricity undertakings or undertakings which belong to a vertically integrated undertaking within the meaning of section 7 item 46 and which, on 1 July 2004, hold a licence pursuant to the provisions by the Federal State adopted in execution of section 26 to name to the state government by 1 January 2006 at the latest an undertaking to which the licence is to be transferred subject to compliance with the licence prerequisites. Subject to compliance with the licence prerequisites, the undertaking thus named shall have a legal title to be issued a licence of the scope applicable at the time of entry into force of this Federal Act. Naming the current licensee shall be permissible provided that the legally stipulated licence prerequisites are complied with. The licence shall be issued by applying the state act adopted in execution of section 26. If the distribution grid extends across two or more States, the States involved shall proceed in accordance with article 15 para. 7 of the Federal Constitutional Act.

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135 as amended by Article 7 item 52 of the Federal Act, Federal Law Gazette I no. 121/2000
(2) (framework provision) Para. 1 shall not apply to vertically integrated electricity undertakings or undertakings which belong to a vertically integrated undertaking within the meaning of section 7 item 46 when the number of customers connected to the grid does not exceed 100,000.

(3) (framework provision) In the event that a vertically integrated electricity undertaking fails to perform its obligation to name a suitable licensee pursuant to para. 1 above, the state government shall institute proceedings to withdraw the licence from the previous licensee pursuant to section 37 and shall report this to the Federal Minister of Economics and Labour. In order to maintain grid operation, another electricity undertaking may be included into the grid of the previous licensee. If the distribution grid extends across two or more States, the States involved shall proceed in accordance with article 15 para. 7 of the Federal Constitutional Act.

(4) (framework provision) The implementing legislation shall provide for decisions conflicting with section 7 item 40a to be set aside not later than six months after the relevant implementing legislation enters into force. Such legislation shall furthermore provide for contracts entered into by a grid operator on the basis of general grid conditions for access to the transmission grid shall be deemed to be contracts based on the applicable General Terms and Conditions for Access to a Distribution Grid of the relevant grid operator as of the date on which section 7 item 40a first applies.

(5) (directly applicable federal law) 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 shall apply, without limitation, to the transfer of property. Such conversion processes shall be 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 shall also apply to legal relationships founded for the occasion of restructurisation, including, without limitation, tenancy agreements, servitudes or loan agreements. Conversion processes shall not be deemed to be taxable turnover within the meaning of the 1994 Turnover Tax Act 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 of Federal Law Gazette no. 699/1991 as amended shall apply, subject to the proviso that the Conversion Taxation Act shall be applicable also when there is no partial operation within the meaning of the Conversion Taxation Act. Implementing legislation pursuant to sections 22 or 26 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 Corporation Income Tax Act. Further legislation shall provide for decisions conflicting with section 7 item 40a to be set aside not later than six months after the relevant implementing legislation enters into force. Such legislation shall furthermore provide for contracts entered into by a grid operator on the basis of general grid conditions for access to the transmission grid shall be deemed to be contracts based on the applicable General Terms and Conditions for Access to a Distribution Grid of the relevant grid operator as of the date on which section 7 item 40a first applies.

(6) (directly applicable federal law) If, in connection with unbundling, ownership of a grid including the associated appurtenances is transferred to the grid operator, any and all contractually or government-founded servitudes and passage rights to land and other rights required for the safe operation and existence of the grid including the requisite appurtenances shall pass to the grid operator by operation of the law. If, for the purpose of unbundling, other usufructuary rights to the grid required for the functional operation of the grid operator are transferred, both the grid owner and the person exercising such other usufructuary rights shall be entitled to make use of such usufructuary rights.

“Transitional Provisions Regarding the Amendment of Federal Law Gazette I no. 44/2005

Section 68b. (framework provision) (1) The implementing legislation shall provide that control area managers designate a corporation to exercise the activity of settlement agent (balance group coordinator) as of 1 July 2005. Notification of designation shall include proof that the designated settlement agent is able to perform the tasks specified in section 22 paras. 4 and 5 in a cost-effective and efficient manner and meets the requirements specified in para. 3.

(2) If, by 1 July 2005, the period of six months pursuant to section 22 para. 7 has not elapsed, or if a state government submits an application pursuant to Article 15 para. 7 of the Federal Constitutional Act, the designated settlement agent may enter its activity on a provisional basis. If no notification is made pursuant to section 22 para. 6, or if the competent authority has issued a declaratory decision pursuant to section 22 para. 6, or if an implementing legislation enters into force only after 1 July 2005, the settlement agent licensed to perform its tasks on 30 June 2005 may continue to perform them on a provisional basis.

Transitional Provision Regarding Obligations Imposed and Operating Guarantees Granted

“Section 69. (directly applicable federal law) (1) Inasmuch as unprofitable investments and legal transactions of an electricity undertaking or of an undertaking affiliated with such an undertaking pursu-
to any electricity undertakings whose viability is jeopardised due to loss of revenue as a result of investments or legal transactions which have become unprofitable due to the opening of the market (stranded costs). Such ordinances shall furthermore lay down the conditions under which such undertakings shall be granted operating subsidies. The issue of such ordinances shall be subject to the consent of the Main Committee of the National Council. Prior to issuing any such ordinance, the Federal Minister of Economics and Labour shall hear the Advisory Council for Electricity (section 26 of the Energy Regulatory Authorities Act), which in this case, in addition to the chairman, shall only consist of members appointed pursuant to section 26 para. 3 items 1, 2 and 4 of the Energy Regulatory Authorities Act, as well as the Austrian Association of Electricity Utilities.

(2) The ordinance pursuant to para. 1 shall in particular contain provisions regarding
1. the nature and level of the contributions to be made by eligible customers;
2. the conditions under which compensation is to be granted for loss of revenue from investments and legal transactions which have become unprofitable as a result of market opening (stranded costs);
3. the treatment of operating subsidies in balance sheets.

(3) Contributions pursuant to para. 2 item 1 shall be set in such a way as to ensure that the amount payable covers those anticipated revenue losses of electricity undertakings for which operating subsidies are granted. In determining the conditions pursuant to para. 2 item 2, due care shall be taken to ensure that operating subsidies be granted only to the extent to which this is absolutely necessary to ensure the viability of the beneficiary undertaking, and justified by the price differences resulting from the opening of the market. Any potential for offsetting such losses within the group of affiliated undertakings shall be exploited.

(4) In assessing the viability of an undertaking, due account shall be taken of any predictable circumstances such as, in particular, the undertaking’s earning power in connection with the production, transmission and distribution of electrical energy, the capital ratio of all undertakings affiliated with the undertaking in question pursuant to section 228 para. 3 of the Commercial Code and operating in the field of production, transmission and distribution of electrical energy (the group’s capital ratio), the degree of market opening specifically affecting this undertaking, as well as the undertaking’s long-term development potential and any subsidies granted pursuant to para. 5.

(5) Operating subsidies shall in any case be granted for any differential amounts between the market price and the price prior to the entry into force of the Electricity Act as amended by Federal Law Gazette I no. 143/1998 resulting within one calendar year from the utilisation of domestic brown coal with a view to covering up to three percent of Austria’s overall electricity demand.

“(6) Grid operators shall collect the contributions set pursuant to paras. 1 to 3 and transfer them to Elektrizität-Control GmbH, which shall hold them in trust. In case of entitlement to any refund of contributions pursuant to section 69 paras. 1 to 4 vis-à-vis Elektrizität-Control GmbH or the Bund, and in case such contributions have already been used for granting operating subsidies, Elektrizität-Control GmbH or the Bund shall be entitled to reclaim such funds plus interest from the beneficiaries."

(7) The funds thus administered by Elektrizität-Control GmbH shall be used solely for operating subsidies for unprofitable investments or legal transactions of the grid operator or of undertakings affiliated with the grid operator pursuant to section 228 para. 3 of the Commercial Code (beneficiary undertakings). Elektrizität-Control GmbH may employ other, private entities in administering these funds. Any arising administrative expenses shall be paid from the contributions collected pursuant to para. 6.

(8) Paras. 1 to 7 shall become inoperative after 18 February 2009, subject to the proviso that operating subsidies may be granted until 31 December 2009.

(9) Notwithstanding any contractual agreements to the contrary, contracts involving the supply of electricity by grid operators to distribution undertakings which are eligible customers pursuant to section 44 paras. 2 and 3 of the Electricity Act as amended by Federal Law Gazette I no. 143/1998 shall in any case remain in force until 1 October 2001, even where it would become legally possible to cancel such contracts.
contracts or to abridge their term in consequence of this Federal Act. The contracting parties may annul such contracts as of this day. Supplies to eligible customers pursuant to section 44 para. 1 of the Electricity Act as amended by Federal Law Gazette I no. 143/1998 shall not be included in the quantity or covered by the terms of delivery stipulated in such contracts. This provision shall not apply to contracts whose term was based upon the useful life of one or several power stations and to contracts pursuant to section 70 para. 2.

(10) From the expiry of the decisions referred to in section 66 para. 5 until 1 October 2001, the prices of electricity supplies to distribution undertakings stipulated in contracts pursuant to para. 9 shall be subject to a special pricing procedure. Starting on 1 January 2000, the authority, correspondingly applying the provisions of section 47 para. 2 and section 55 of the Electricity Act as amended by Federal Law Gazette I no. 143/1998, shall set the prices stipulated in such contracts as maximum prices valid until 1 October 2001 in such a way as to reduce the difference between the valid tariff prices reduced, at the effective date of this Federal Act, by the tariff for system use to be determined pursuant to section 25 at the respective market price by 20 percent as of 1 January 2000 and by 50 percent as of 1 January 2001. As of 1 October 2001, such contracts shall be based on the market price level prevailing at the time.

(11) Para. 9, sentences 2 and 3, as well as para. 10 shall not apply to contracts concluded after 17 August 1998.”

Final Provisions

Section 70. (1) (directly applicable federal law) The provisions of this Federal Act shall be without prejudice to any agreements under private law involving the purchase, the supply and the exchange or the transport of electricity.

(2) (constitutional provision) The provisions of this Federal Act shall be without prejudice to the 1926 State Agreementxlvii as amended in 1940 and to the Tyrolean State Agreement of 1949, including its supplement of 1962, to the Illwerke Agreement of 1952 and to the Illwerke Agreement of 1988.

Execution

Section 71. (1) (directly applicable federal law) The Federal States shall enact the legislation implementing the framework provisions contained in this Federal Act within six months of the day of promulgation of this Federal Act. The implementing legislation shall be brought into force no later than 19 February 1999.

(2) (directly applicable federal law) The Federal Minister of Economics and Labour shall be responsible for safeguarding the rights of the Bund pursuant to article 15 para. 8 of the Federal Constitutional Act with regard to the framework provisions contained in this Federal Act.

(3) (constitutional provision) The responsibility for executing section 1, section 5 para. 2, section 10, section 12 para. 3, section 20 para. 2, section 24, section 61, section 66 para. 1 and section 70 para. 2 shall lie with the Federal Government.

(4) (directly applicable federal law) The responsibility for executing the provisions of this Federal Act designated as directly applicable federal law shall lie with

1. the Federal Minister of Justicexlviii regarding section 21 paras. 2 and 3, as well as section 65;
2. the Federal Minister of Economics and Labour in all other cases.

“(5) (framework provision) The implementing legislation shall oblige control area managers and grid operators to take, in due time, any organisational and technical measures and precautions necessary to grant all customers access to the grid by 1 October 2001 or – if an ordinance pursuant to para. 8 is issued – by the date set in this ordinance. Grid users shall have a legal claim, enforceable under civil law, for this obligation to be complied with.”

“(6) (directly applicable federal law) The Federal States shall enact and bring into force the legislation implementing the framework provisions contained in the Federal Act, Federal Law Gazette I no. 121/2000, within six months of the day of promulgation of Federal Law Gazette I no. 121/2000. Regarding general terms and conditions for grid access and for balance group representatives, provision shall be made that they be submitted to Elektrizitäts-Control Kommissionxlix for approval no later than three months prior to the date provided in section 71 para. 5.

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144 as amended by Article 7 item 53 of the Federal Act, Federal Law Gazette I no. 121/2000
145 as amended by Article 7 item 54 of the Federal Act, Federal Law Gazette I no. 121/2000
146 Promulgation was on 1 December 2000, hence implementing legislation shall be enacted and brought into force by 1 June 2001.
147 now called Energie-Control Kommission
“(6a) **(directly applicable federal law)** The States shall enact and bring into force the legislation implementing the framework provisions contained in the Federal Act of Federal Law Gazette I no. 63/2004 within six months of the day of promulgation of Federal Law Gazette I no. 63/2004.”

“(6b) **(directly applicable federal law)** The States shall enact and bring into force the legislation implementing the framework provisions contained in the Federal Act of Federal Law Gazette I no. 44/2005 within six months of the day of promulgation of Federal Law Gazette I no 44/2005.”

“(6c) **(directly applicable federal law)** The States shall enact and bring into force the legislation implementing the framework provisions contained in the Federal Act of Federal Law Gazette I no. 106/2006 within six months of the day of promulgation of Federal Law Gazette I no. 106/2006.”

(7) **(directly applicable federal law)** The Federal Minister of Economics and Labour shall be responsible for safeguarding the rights of the Bund pursuant to article 15 para. 8 of the Federal Constitutional Act with regard to the framework provisions contained in the Federal Act, Federal Law Gazette I no. 121/2000.

(8) **(directly applicable federal law)** Should the conditions for the full liberalisation of the internal electricity market be met at an earlier or later date, the Federal Minister of Economics and Labour may issue an ordinance changing the date referred to in para. 5 to 1 July 2001 or to 1 January 2002.”

“(9) **(constitutional provision)** The responsibility for the execution of sections 1, 10, section 20 para. 2, sections 24, 31, 33, section 46 para. 5, section 47 para. 4 and section 66a para. 1 as amended by Federal Law Gazette I no. 121/2000 shall lie with the Federal Government.”


“(11) **(constitutional provision)** The responsibility for the execution of section 1, section 10, section 24 para. 1 and section 31 para. 1 and section 69a as amended by the Federal Act of Federal Law Gazette I no. 106/2006 shall lie with the Federal Government.”

“Annex I
(to section 25 para. 6 item 2)

The companies referred to in section 25 para. 6 item 2 are:

a) Burgenländische Elektrizitätswirtschaft – Aktiengesellschaft for the State of Burgenland;

b) Kärntner Elektrizitäts-Aktiengesellschaft for the State of Carinthia;

c) E\textsc{\textcopyright}N AG for the State of Lower Austria;

d) Energie AG Oberösterreich for the State of Upper Austria;

e) Salzburger Aktiengesellschaft für Energiewirtschaft for the State of Salzburg;

f) Steirische Wasserkraft- und Elektrizitäts-Aktiengesellschaft for the State of Styria;

g) Tiroler Wasserkraftwerke Aktiengesellschaft for the State of Tirol;

h) Vorarlberger Kraftwerke Aktiengesellschaft for the State of Vorarlberg;

i) WIENSTROM GmbH for the State of Vienna.”

151 as amended by Article 7 item 55 of the Federal Act, Federal Law Gazette I no. 121/2000
152 as amended by Article 7 item 56 of the Federal Act, Federal Law Gazette I no. 121/2000 (to enter into force pursuant to section 66a para. 1 on the day following the day of promulgation – the day following the day of promulgation being 2 December 2000.)
154 to enter into force on 24 August 2002 pursuant to section 66c para. 1.
155 as amended by Article 2 item 15 of the Federal Act, Federal Law Gazette I no. 149/2002
156 as amended by Article 1 item 49 of the Federal Act, Federal Law Gazette I no 106/2006
157 as amended by Article 7 item 58 of the Federal Act, Federal Law Gazette I no. 121/2000
“Annex II
(to section 3 item 3 and section 42a para. 1)
Cogeneration Technologies within the Meaning of Section 3 Item 3
of the 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 item 20a.

Annex III
(to sections 42b and 42c)
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 installations the calculation may be based on certified values.

a) Electricity production from cogeneration shall be considered equal to total annual electricity production of the unit measured at the outlet of the main generators;

(i) in cogeneration units of type b), d), e), f), g) and h) referred to in Annex II, with an annual overall efficiency set by Energie-Control at a level of at least 75 %, and
(ii) in cogeneration units of type (a) and (c) referred to in Annex II with an annual overall efficiency set by Energie-Control at a level of at least 80 %.

b) In cogeneration units with an annual overall efficiency below the value referred to in subpara. a)(i) (cogeneration units of type b), d), e), f), g), and h) referred to in Annex II) or with an annual overall efficiency below the value referred to in subpara. a)(ii) (cogeneration units of type a) and c) referred to in Annex II) cogeneration is calculated according to the following formula:

\[ E_{\text{CHP}} = H_{\text{CHP}} \cdot C \]

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

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

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<tr>
<th>Type of the unit</th>
<th>Default power to heat ratio, C</th>
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</thead>
<tbody>
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<td>Combined cycle gas turbine with heat recovery</td>
<td>0.95</td>
</tr>
<tr>
<td>Steam backpressure turbine</td>
<td>0.45</td>
</tr>
</tbody>
</table>
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 type f), g), h), i), j) and k) referred to in Annex II, such default values shall be published and shall be notified to the 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 subparas. a) and b).

d) Energie-Control GmbH may determine the power to heat ratio 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) Energie-Control GmbH may use other reporting periods than one year for the purpose of the calculations according to subparas. a) and b).

Annex IV
(to section 42a)

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 Directive “high-efficiency cogeneration” shall fulfil the following criteria:

— cogeneration production from cogeneration units shall provide primary energy savings calculated according to subpara. b) of at least 10% compared with the references for separate production of heat and electricity;

— production from small scale and micro-cogeneration installations providing primary energy savings may qualify as high-efficiency cogeneration.

b) Calculation of primary energy savings

The amount of primary energy savings provided by cogeneration production defined in accordance with Annex III shall be calculated on the basis of the following formula:

\[
PES = 1 - \left( \frac{1}{CHP_{H}\eta + CHP_{E}\eta} + \frac{1}{Rwf_{H}\eta + Ref_{E}\eta} \right) \times 100\%
\]

Where:

PES is primary energy savings.

CHP_{H}\eta is the heat efficiency of the cogeneration production defined as annual useful heat output divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration.

Ref_{H}\eta is the efficiency reference value for separate heat production.

CHP_{E}\eta is the electrical efficiency of the cogeneration production defined as annual electricity from cogeneration divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration. Where a cogeneration installation generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with section 42b.

Ref_{E}\eta is the efficiency reference value for separate electricity production.
c) Calculations of energy savings using alternative calculation according to Article 12(2) of Directive 2004/8/EC:

- If primary energy savings for a process are calculated in accordance with Article 12(2) of Directive 2004/8/EC the primary energy savings shall be calculated using the formula in subpara. b) of this Annex replacing:
  ‘CHP H\(\eta\)’ with ‘H\(\eta\)’ and
  ‘CHP E\(\eta\)’ with ‘E\(\eta\),’

where:
- H\(\eta\) shall mean the heat efficiency of the process, defined as the annual heat output divided by the fuel input used to produce the sum of heat output and electricity output.
- E\(\eta\) shall mean the electricity efficiency of the process, defined as the annual electricity output divided by the fuel input used to produce the sum of heat output and electricity output. Where a cogeneration installation generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with section 42b.

d) Energie-Control may use other reporting periods than one year for the purpose of the calculations according to subparas. b) and c) of this Annex.

e) For micro-cogeneration installations 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 42a and in the formula set out in subpara. b) of this Annex shall establish the operating efficiency of the separate heat and electricity production that cogeneration is intended to substitute.

- The efficiency reference values shall be calculated according to the following principles:
  1. For cogeneration units as defined in Article 3, the comparison with separate electricity production shall be based on the principle that the same fuel categories are compared.
  2. Each cogeneration unit shall be compared with the best available and economically justifiable technology for separate production of heat and electricity on the market in the year of construction of the cogeneration installation.
  3. The efficiency reference values for cogeneration units older than ten years of age shall be fixed on the reference values of units of ten years of age.
  4. The efficiency reference values for separate electricity production and heat production shall reflect the climatic differences between Member States.

Annex IV
(to section 42a)

Criteria for Analysis of National Potentials for High-Efficiency Cogeneration

a) The analysis of national potentials referred to in section 42c shall consider:

1. the type of fuels that are likely to be used to realise the cogeneration potentials, including specific considerations on the potential for increasing the use of renewable energy sources in the national heat markets via cogeneration;
2. the type of cogeneration technologies as listed in Annex I that are likely to be used to realise the national potential;
3. the type of separate production of heat and electricity or, where feasible, mechanical energy that high-efficiency cogeneration is likely to substitute;
4. a division of the potential into modernisation of existing capacity and construction of new capacity.

b) The analysis shall include appropriate mechanisms to assess the cost effectiveness (in terms of primary energy savings) of increasing the share of high-efficiency cogeneration in the national energy mix. The analysis of cost effectiveness shall also take into account national commitments accepted in the
context of the climate change commitments accepted by the Community pursuant to the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

c) The analysis of the national cogeneration potential shall specify the potentials in relation to the timeframes 2010, 2015 and 2020 and include, where feasible, appropriate cost estimates for each of the timeframes." 158

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**GREEN ELECTRICITY ACT**

Federal Act enacting new rules in the area of electricity generation from renewable energy sources and in the area of combined heat and power (Green Electricity Act\textsuperscript{149}), Federal Law Gazette no. I no. 149/2002 [Article I] \textsuperscript{159}
as amended by

1. the Federal Act, Federal Law Gazette I no. 105/2006 \textsuperscript{160}
   (NR: GP XXII RV 655 AB 1225 p. 150. BR: 7537 AB 7574 p. 735) [CELEX-no.: 32001L0077]
   [Article 1 of the 2006 Amendment to the Green Electricity Act \textsuperscript{1}]
   [in italics in the main body of the law]

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\textsuperscript{159} Save as other dates are provided for specific provisions, this Federal Act shall enter into force on 1 January 2003.

\textsuperscript{160} Entry into force of the 2006 Amendment to the Green Electricity Act:

**Section 32a (constitutional provision)**

1. Sections 14, 14a to 14e and 30b as amended by the Federal Act, Federal Law Gazette I no. 105/2006 shall enter into force on 1 July 2006.
2. Section 10 item 5 shall enter into force on the day following the day of promulgation.
3. Any other provisions shall enter into force three months after the date specified in para. 1.
4. Sections 22a and 22b shall enter into force on 1 January 2007.
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161 inadvertently, legislators left the heading of a draft version. The correct heading reads: Lump Sum per Metering Point in 2007 and Later Calendar Years
162 in the Table of Contents section 22b has been omitted by mistake. It reads: Transfer Price
Section 31. Final Provisions

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Title 1

General Provisions

Constitutional Provision

Section 1. (constitutional provision) The responsibility for issuing, repealing and executing provisions such as those contained in this Federal Act, shall lie with the Bund even in regard to matters for which the Federal Constitutional Act provides otherwise. Matters regulated in these provisions may be discharged directly by the bodies set forth in this Federal Act.

Scope of Application

Section 2. (1) This Federal Act shall regulate
1. the guarantees of origin of electricity produced from renewable energy sources;
2. the recognition of guarantees of origin issued by another EU Member State, by a state party to the EEA Agreement or by a third country;
3. the obligations to purchase and pay for electricity;
4. the preconditions for, and the promotion of, electricity produced from renewable energy sources;
5. the nation-wide equal sharing of costs associated with the promotion of electricity produced from renewable energy sources;
6. the nation-wide equal sharing of costs associated with the promotion of electricity from cogeneration.

(2) The following areas shall be eligible for support:
1. Support through minimum prices and the obligation to purchase electricity produced from renewable energy sources, but not electricity from hydropower plants with a bottleneck capacity of more than 10 MW, from animal meal, spent lye, sewage sludge or waste, save waste containing a high percentage of biogenous materials;
2. Support through reimbursement of part of the costs associated with the operation of existing and modernised cogeneration installations for public district heating supply.
3. Support through investment aid for medium-scale hydropower plants;
4. Support through investment aid for new cogeneration installations.

Transposition of EU Law


Objectives

Section 4. (1) In the interest of climate and environmental protection the objective of this Federal Act shall be
1. to raise the proportion of electricity produced in installations from renewable energy sources to such an extent as to achieve in 2010 the national target of 78.1% specified as reference value in Directive 2001/77/EC of the European Parliament and the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market;
2. to make efficient use of the means of promoting renewable energy sources;
3. to focus on technology policies with a view to achieving market maturity for new technologies;
4. through support to existing cogeneration for public district heating supply, to ensure the continued operation and foster the modernisation of such units;
5. to raise to at least 9% by 2008 the proportion of electricity produced by hydropower plants which have a bottleneck capacity of 10 MW or less and for whose electricity a purchasing and payment requirement is set;
6. to ensure a secure investment climate for existing and future power plants;
7. to provide for a nation-wide sharing of the burden associated with the promotion of electricity produced from renewable energy sources and combined heat and power;
“8. to promote electricity produced from renewable energy sources in accordance with the principles set out in European Community law, especially in Directive 96/92/EC of 19 December 1996 concerning common rules for the internal market of electricity (OJ L 27 of 30 January 1997, p. 20; Electricity Directive) and Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market.”

“(2) In order to increase the proportion of electricity produced from renewable energy sources, the green electricity settlement centre shall seek to conclude, by 2010, contracts for purchasing electricity produced from renewable energy sources, save electricity from hydropower, to such an extent that the resultant proportion is 10%, measured against total annual electricity supplied by all of Austria’s grid operators to the end users connected to public grids. Electricity produced from animal meal, spent lye, sewage sludge or waste, save waste containing a high percentage of biogenous materials, shall not be included in the indicative target of 10% referred to above.”

**Definitions**

Section 5. (1) For the purposes of this Federal Act, the term
1. “waste containing a high percentage of biogenous materials” shall mean waste, as specified in Annex I, from industries, trades and households defined by the assigned 5-digit code number in accordance with Annex 5 of the waste catalogue of the Austrian waste catalogue ordinance, Federal Law Gazette II no. 570/2003, as amended by the ordinance promulgated in Federal Law Gazette II no. 89/2005;
2. “old plant” shall mean a green electricity generating installation having obtained the permits necessary for construction prior to 1 January 2003;
3. “existing cogeneration installations for public district heating supply” shall mean cogeneration installations having obtained the permits necessary for construction prior to 1 January 2003;
4. “biomass” shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries;
5. “fuel efficiency” shall mean the sum of electricity output and heat output used, divided by the energy input of the energy source used;
6. “constructing party” shall mean a legal or natural person having economic responsibility for the construction of a plant;
7. “own demand” shall mean the amount of energy needed for the operation of the green electricity plant;
8. “own use” shall mean the electricity used for a green electricity plant owner’s own demand which is not fed into the public grid;
9. “feed-in tariff volume” shall mean the cumulative expenses, as projected across the statutory or contractual period of purchasing obligation, for the purchase of green electricity at the prices defined by ordinance;
   a) “annual feed-in tariff volume” shall mean the amount resulting from public support and available for the purchase of green electricity in any given calendar year;
   b) “contract feed-in tariff volume” shall mean the feed-in tariff volume available for the conclusion of new contracts on the purchase of green electricity in any given calendar year (section 21a in conjunction with section 21 and section 22a para. 2)
10. “bottleneck capacity” shall mean the greatest possible continuous electricity output of the entire generating installation, including all machine sets, as limited by the lowest-output component;
11. “renewable energy sources” shall mean renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, waste containing a high percentage of biogenous materials, landfill gas, sewage treatment plant gas and biogases);

170 as amended by Article 1 item 3 of the Federal Act, Federal Law Gazette I no. 105/2006
12. “fine dust” shall mean particles that can pass a size-selecting air admission opening having a separating efficiency of 50% for an aerodynamic diameter of 10 μm;
12a. “support levy” shall mean the fee expressed in Cent per kWh or Euro per metering point (lump sum per metering point[1]) used in total to cover any additional expenses of the green electricity settlement centre;
13. “total consumption of electricity” shall mean national electricity production, including autopro-
duction, plus imports, minus exports (gross national electricity consumption);
14. “guarantee of origin” shall mean an attestation documenting the energy source from which the electrical energy fed into the public grid or supplied to third parties, respectively, was produced;
15. “hybrid plant” shall mean a generating installation that uses a combination of different technolo-
gies to convert one or more primary energy sources into electricity;
16. “small-scale hydropower plant” shall mean a recognised generating installation using hydropo-
wer as its renewable energy source and having a bottleneck capacity of 10 MW or less.
17. “cogeneration installations” (combined heat and power [CHP] installations) shall mean installa-
tions for the generation of electricity where electrical energy and useful heat are generated simulta-
aneously from primary energy sources;
18. “electricity from cogeneration” shall mean electrical energy generated directly and with max-
imum efficiency in a process linked to the production of useful heat;
19. “cofiring plant” shall mean a thermal generating installation that uses two or more fuels as prima-
ry energy sources;
20. “medium-scale hydropower” shall mean a recognised installation using hydropower as its rene-
wable energy source and having a bottleneck capacity of more than 10 MW, but not exceeding 20 MW;
21. “modernised cogeneration installations” shall mean cogeneration installations which began ope-
ration after 1 October 2001, provided that the cost of renewal amounts to 50% or more of the cost of new investment for the entire installation (less building);
22. “new installation” shall mean a green electricity generating installation having obtained the per-
mits necessary for construction after 31 December 2002;
23. “new cogeneration installations” shall mean cogeneration installations having obtained invest-
ment aid, and where construction is begun after 1 July 2006, provided that the cost of renewal amounts to 50% or more of the cost of new investment for the entire installation (including building), and provided that its waste heat is used (efficiently) for heat supply or process heat genera-
tion to such an extent that the efficiency criterion (section 13 para. 2) is met;”
24. “public district heating supply” shall mean selling useful heat, subject to general terms and con-
ditions, for space and water heating via a supply grid in a specific area to a majority of custo-
mers;
25. “public grid” shall mean a licensed distribution or transmission grid used to supply electricity to third parties and to which there is entitlement to grid access;
26. “green electricity” shall mean electricity from renewable energy sources;
27. “green electricity installation” shall mean a generating installation producing green electricity
from renewable energy sources and recognised as such; installations which serve the purpose of
green electricity production and are locally linked shall be deemed to be one installation; section 74 of the Industrial Code shall apply mutatis mutandis;
28. “normalised available capacity” shall mean the electricity output based on the flow duration
curve for a standard year (arithmetic means of a related series of as many years as possible that
are representative for the current flow formation);
29. “state of the art” shall mean the state of development, based on the relevant scientific findings, of
progressive methods, facilities or modes of operation whose operability is tried and tested. The
determination of the state of the art shall be based specifically on those comparable methods, fa-
cilities or modes of operation which are most efficient in achieving the objectives specified in
section 4;
30. “electricity produced from renewable energy sources” shall mean electricity produced by instal-
lations using only renewable energy sources, as well as the proportion of electricity produced
from biomass in hybrid or cofiring plants also using non-renewable (conventional) energy sour-
ces, including renewable electricity used for filling storage systems; excluding electricity produ-
ced as a result of storage systems;

31. “support volume” shall mean the funds generated per calendar year by the support levies plus the difference between the revenue from selling green electricity at transfer prices and the market value of the green electricity sold (value of green electricity versus average market price of the previous calendar year to be published pursuant to section 20); the support volume shall also include expenses to be reimbursed to the green electricity settlement centre pursuant to section 21 items 2 and 3 as well as funds to be paid over to the States pursuant to section 22 para. 6;
a) “additional support volume” shall mean that proportion of the support volume that is used to derive, following the entry into force of this Federal Act as amended by Federal Law Gazette I no. 105/2006, the feed-in tariff volume available for concluding contracts on the purchase of green electricity in any given calendar year (contract feed-in tariff volume);
32. “transfer price” shall mean the price electricity traders are obliged to pay to purchase the green electricity assigned to them;
33. “full-load hours” shall mean the ratio of expected annual green electricity production divided by the bottleneck capacity of the green electricity installation;
34. “metering point” shall mean a point with a unique alphanumeric designation which is used to meter electrical quantities and through which a grid operator assigns any readings relevant in accounting;
35. “certificates” shall mean tradable certificates documenting the generation of electrical energy and its injection into the public grid;

(2) In all other cases, the definitions of the Electricity Act, Federal Law Gazette I no. 143/1998, as amended, shall apply.

(3) Person-related terms shall have no gender-specific meaning. If applied to specific persons, they shall be used in the respective gender-specific form.”

Obligation to Connect

Section 6. Within the framework of its prudential supervision of competition, Energie-Control GmbH shall specifically see to it that grid operators treat all connection applicants equally and use transparent criteria. For this purpose, it may request any grid operator to disclose its procedures applicable to enquiries and applications of connection applicants, for instance how and within which period it responds to enquiries and applications, which criteria are applied to competing applications for admission to the system, and which measures are taken to ensure equal treatment of connection applicants. Unless the disclosed or actual procedures are deemed to be suited to ensure fair competition, Energie-Control GmbH may take measures pursuant to section 9 of the Energy Regulatory Authorities Act, Federal Law Gazette I no. 121/2000 as amended by Federal Law Gazette I no. 148/2002. This provision shall be without prejudice to the competence of the state authorities in disputes involving grid connection.

Recognition of Generating Installations Using Renewable Energy Sources

Section 7. (1) Electricity generating installations using only renewable energy sources shall, upon application by their operators, be recognised as eco-energy installations by decision of the State Governor where the respective plant is located. Documents stating the legitimate operation of the plant, the primary energy sources used—broken down by their share in the overall energy sources used (calorific value)—, the technical parameters (such as bottleneck capacity) and design of the plant (such as technologies used), the precise designation of the metering point through which the quantities of electricity produced are physically fed into a public grid, as well as the name and address of the grid operator whose grid the installation is connected to, shall be enclosed in duplicate with the application. If also animal meal, spent lye or sewage sludge are used as renewable energy sources, they shall be specified separately according to their share in the overall energy sources used (calorific value).

(2) Electricity generating installations using as renewable energy sources biomass, waste containing a high percentage of biogenous materials, landfill gas, sewage treatment plant gas and biogas, and where also fossil energy sources are used, shall be recognised, upon application by their operators, as hybrid or cofiring plants by decision of the State Governor. The proportion of renewable energy sources used shall be 3% or more of the primary energy sources used during the period of observation. Such period of observation shall be at least one calendar year. Documents stating the legitimate operation of the plant, the primary energy sources used, the technical parameters and design of the plant, as well as the name and address of the grid operator whose grid the installation is connected to, shall be enclosed in duplicate with the application. If also animal meal, spent lye or sewage sludge are used as renewable energy sources,
they shall be specified separately according to their share in the overall energy sources used (calorific value).

(3) Decisions pursuant to paras. 1 and 2 shall, in any case, include the energy sources used, the bottleneck capacity, the name and address of the grid operator into whose grid electricity is fed in, the percentage of the individual energy sources across one calendar year, the precise designation of the metering point through which the quantities of electricity produced are actually and physically fed into a public grid, as well as some reference to the documentation to be compiled pursuant to para. 4. If also animal meal, spent lye or sewage sludge are used as renewable energy sources, they shall be specified separately according to their share in the overall energy sources used (calorific value). In any case, the decisions shall impose conditions concerning special proofs of compliance as to the primary energy sources used. Decisions concerning plants that also use waste containing a high percentage of biogenous materials shall have the Annex to this Federal Act enclosed. A copy of the decision shall be communicated electronically to Energie-Control GmbH, the grid operator and the “green electricity settlement centre”.

(4) Operators of cofiring or hybrid plants shall continuously document the fuels used and prove once a year that the renewable energy sources used in a calendar year reach or exceed the percentage defined in para. 2. Proof shall be furnished by evaluating the documentation and shall be submitted to the State Governor no later than 31 March of the following year. The list of fuels used, which is the basis of an operator’s proof of compliance, shall be audited by a chartered accountant, a consulting engineer or a publicly certified expert or office in electrical engineering, mechanical engineering, fuel engineering or chemistry.

(5) Operators of plants recognised pursuant to paras. 1 and 2 shall be obliged to inform the State Governor of any fundamental change in any of the preconditions for recognition. If the grid operator whose grid the plant is connected to has reason to believe that the preconditions for recognition are not or no longer met, it shall notify the State Governor thereof.

(6) If there are any doubts as to the documents enclosed with the application pursuant to paras. 1 or 2, the operator shall demonstrate, at the State Governor’s request, that the plant in question can be operated with the specified primary energy sources and their respective quantities, and that the plant has the specified bottleneck capacity. If Energie-Control GmbH has reservations about a plant’s qualification as small-scale hydropower plant, it shall inform the competent State Governor who has recognised the plant pursuant to para. 1 as a hydropower plant with less than 10 MW bottleneck capacity of such reservations. The State Governor shall institute proceedings pursuant to section 68, General Administrative Procedures Act. In addition, pursuant to section 25, Energie-Control GmbH shall make a note of such reservations in the report.

(7) The State Governor shall revoke recognition if the preconditions for recognition are no longer met or the audited documentation is not submitted despite the request to do so. The State Governor shall inform without delay Energie-Control GmbH, the grid operator whose grid the plant is connected to and “green electricity settlement centre” of such revocation of recognition.

Guarantee of Origin

Section 8. “(1) Grid operators to whose grids the recognised electricity generating installations using renewable energy sources or cogeneration installations are connected shall issue to the installation operator at the latter’s request an attestation on the quantities of electricity fed into their grid from these installations. Such attestations may be issued by automated data processing.”

(2) An attestation pursuant to para. 1 shall specify:
1. the quantity of electrical energy produced;
2. the type and bottleneck capacity of the generating installation;
3. the period and place of production;
4. the energy sources used.

(3) The State Governor shall regularly supervise the issue of such guarantees of origin.

“(4) The operators of green electricity installations and of cogeneration installations, as well as the electricity traders selling electrical energy from green electricity installations as eco-energy or as electrical energy from cogeneration installations, to another electricity trader or to the green electricity settle-

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175 as amended by Article 1 item 30 of the Federal Act, Federal Law Gazette I no. 105/2006
177 as amended by Article 1 Item 4a of the Federal Act, Federal Law Gazette I no. 105/2006
ment centre shall be obliged to give the buyer, free of charge and verifiably, at the buyer’s request the guarantees of origin (via automated data processing) that correspond to the quantity sold.”

(5) VKW-Übertragungsnetz AG shall issue attestations pursuant to para. 1 for recognised electricity generating installations that use renewable energy sources and are connected to the Vorarlberger Illwerke AG’s system.

**Recognition of Guarantees of Origin Issued by Other States**

Section 9. (1) Guarantees of origin on electricity from plants located in another EU Member State, in a state party to the EEA Agreement or in a third country shall be deemed to be guarantees of origin within the meaning of this Federal Act if they comply with, or go beyond, the provisions of Article 5 of the Directive on the promotion of electricity produced from renewable energy sources in the internal electricity market.

(2) In case of doubt, Energie-Control GmbH shall determine by decision, in response to an application or by virtue of its office, whether the preconditions for recognition are met.

(3) Energie-Control GmbH may issue ordinances specifying countries where guarantees of origin for eco-energy meet the preconditions pursuant to para. 1.

**Title 2**

**Promoting Renewable Energy and Energy From Cogeneration Installations**

**Chapter 1**

**Promoting Eco-Energy**

“Obligation to Purchase and Pay for Electricity

Section 10. (1) Subject to the support funds available for green electricity installations, the green electricity settlement centre shall be obliged to purchase any electrical energy from green electricity installations offered to it under the general terms and conditions approved pursuant to section 18 and at the prices referred to below:

1. Electricity from small-scale hydropower plants, newly built or revitalised prior to 1 January 2008, at the prices determined by the ordinance of Federal Law Gazette II no. 508/2002 as amended by the ordinance of Federal Law Gazette II no. 254/2005, without prejudice to the provisions of section 10a. The obligation to purchase electricity from small-scale hydropower plants with a bottleneck capacity of no more than 1 MW, newly built or revitalised prior to 1 January 2008, shall remain in force upon expiry of the deadlines specified in the ordinance of Federal Law Gazette II no. 508/2002 as amended by the ordinance of Federal Law Gazette II no. 254/2005 for a subsequent period of 12 years at the market price determined pursuant to section 20 minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for small-scale hydropower plants and other green electricity installations (save expenses for wind power plants pursuant to section 15 para. 4) per kWh. The obligation to purchase electricity from any small-scale hydropower plants with a bottleneck capacity of no more than 1 MW which have obtained the permits necessary for construction prior to 1 January 2003, and which have not been revitalised within the deadlines specified in the ordinance of Federal Law Gazette II no. 254/2005, shall remain in force as of 1 January 2009 for a subsequent period of 12 years only at the market price published pursuant to section 20 minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for small-scale hydropower plants and other green electricity installations (save expenses for wind power plants pursuant to section 15 para. 4) per kWh. The obligation to purchase electricity from any small-scale hydropower plants having obtained the permits necessary for construction prior to 1 January 2003, shall expire on 31 December 2008;

2. Electricity from other green electricity installations having obtained construction permits in the first instance after 31 December 2002 and not later than 31 December 2004, at the prices and deadlines determined by the ordinance of Federal Law Gazette II no. 508/2002 as amended by the ordinance of Federal Law Gazette II no. 254/2005, without prejudice to the provisions of section 10a. As of the 14th year after initial operation of the installation an obligation to purchase electricity from wind power plants shall remain in force until the end of the 25th year after initial operation at the market price published pursuant to section 20 minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for wind power plants.

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178 as amended by Article 1 item 4b of the Federal Act, Federal Law Gazette I no. 105/2006
for wind power plants (section 15 para. 4) per kWh. An obligation to purchase electricity from any other green electricity installations shall remain in force from the 14th year after initial operation of the installation until the end of the 25th year after initial operation at the market price determined pursuant to section 20 minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for small-scale hydropower plants and other green electricity installations (save expenses for wind power plants pursuant to section 15 para. 4) per kWh;

3. Electricity from small-scale hydropower plants starting operation after 1 January 2008 or being revitalised after 1 January 2008 at the prices determined by ordinance pursuant to section 11 para. 1; the obligation to purchase electricity at these prices shall remain in force for at least 10 years after initial operation of the installation, without prejudice to the provision of section 10a. The obligation to purchase electricity from small-scale hydropower plants with a bottleneck capacity of no more than 1 MW shall remain in force upon expiry of the deadline specified in the ordinance for a subsequent period of 12 years only at the market prices determined pursuant to section 20 minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for small-scale hydropower plants and other green electricity installations (save expenses for wind power plants pursuant to section 15 para. 4) per kWh. The obligation to purchase electricity from any other small-scale hydropower plants shall expire with the end of the deadline specified by the ordinance;

4. Electricity from other green electricity installations which have obtained construction permits after 31 December 2004, or which start operation after the deadlines specified in the ordinance of Federal Law Gazette II no. 508/2002 as amended by the ordinance of Federal Law Gazette II no. 254/2005 and for which the green electricity settlement centre concludes a contract on the purchase of green electricity by 31 December 2011 at the latest, at the prices determined by ordinance (section 11 para. 1). The obligation to purchase electricity at these prices shall remain in force for a period of 10 years, beginning with installation initial operation; in the 11th year of operation the operators of such installations shall be entitled to be paid 75 per cent of these prices; in the 12th year they shall be entitled to be paid 50 per cent of these prices, without prejudice to the provision of section 10a. If the price thus reduced in the 11th and 12th year is lower than the market price published pursuant to section 20, the operator of such an installation shall be entitled to be paid a price that is equivalent to the market price pursuant to section 20. As of the 13th year there shall be an obligation to purchase electricity from wind power plants until the end of the 24th year at the market price published pursuant to section 20 minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for wind power plants (section 15 para. 4) per kWh. For any other green electricity installations there shall be an obligation to purchase electricity as of the 13th year until the end of the 24th year at the market price published pursuant to section 20 minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for small-scale hydropower plants and other green electricity installations (save expenses for wind power plants pursuant to section 15 para. 4) per kWh;

5. Electricity from green electricity installations that do not come under items 1 to 4 and 6, save hydropower plants with a bottleneck capacity of more than 10 MW, as well as electricity produced from animal meal, spent lye, sewage sludge, at the market prices published pursuant to section 20, for wind power plants minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for wind power plants (section 15 para. 4) per kWh, for any other green electricity installations minus the average expenses for balancing energy of the green electricity settlement centre in the respective previous calendar year for small-scale hydropower plants and other green electricity installations (save expenses for wind power plants (section 15 para. 4) per kWh, unless a price has been determined pursuant to section 11. The purchasing obligation shall expire for all green electricity installations 24 years after initial operation of such an installation;

6. Electricity from other green electricity installations which come under a purchasing obligation pursuant to section 30 para. 3 (old plants), in accordance with the provisions specified in section 30 para. 3. After expiry of the deadline pursuant to section 30 para. 3 for granting feed-in tariffs, an obligation to purchase such electricity shall remain in force for another 12 years at the market price pursuant to section 20 minus the respective expenses for balancing energy within the meaning of items 2 and 4;

179 section 10 item 5 shall enter into force pursuant to section 32a para. 2 as amended by the Federal Act, Federal Law Gazette I no. 105/2006 on the day following the day of promulgation. Promulgation on 27 June 2006, entry into force on 28 June 2006.
7. The green electricity settlement centre shall submit to the operators of green electricity installations receiving support pursuant to this Federal Act at least three months prior to expiry of such support, pursuant to the ordinance of Federal Law Gazette II no. 508/2002 as amended by the ordinance of Federal Law Gazette II no. 254/2005, an offer, pursuant to section 30 para. 3 or under the ordinances to be issued pursuant to section 11 para. 1, on a direct continuation of further electricity purchases for the periods defined in items 1 to 4 and 6 at the market price pursuant to section 20 minus the respective expenses for balancing energy. If the operator of a green electricity installation accepts this offer, the green electricity settlement centre shall conclude an appropriate contract on such purchases.”

“Restrictions on the Purchasing Obligation

Section 10a. (1) Electricity produced from spent lye, animal meal, sewage sludge or by hydropower plants with a bottleneck capacity of more than 10 MW, or for which compensation is claimed pursuant to section 13, shall be exempted from this purchasing obligation. In addition there shall be no obligation to purchase electricity from installations specified in section 10 item 4 that use solid biomass and take no precautions to avoid fine dust. An obligation to purchase electricity from photovoltaic installations pursuant to section 10 item 2 shall apply only up to a nation-wide total level of 15 MW. An obligation to purchase electricity from photovoltaic installations beyond this level at the prices issued by ordinance shall only apply if they comply with the characteristics specified in section 10 item 4 and meet the requirements described in para. 9. An obligation to purchase electricity from hybrid or cofiring plants shall be restricted to the proportion of renewable energy sources used in accordance with the percentage of green electricity specified in the decision that recognises such plants.

(2) The purchasing requirement pursuant to section 10 shall only apply if the total electrical energy supplied from a green electricity installations to the public grid is supplied to the green electricity settlement centre for a period of at least 12 calendar months, and if the operator of this plant is a member of the eco-balance group pursuant to section 16 para. 1, while own consumption shall be deducted. Regarding photovoltaic systems of electricity generation built in conjunction with buildings and not exceeding an installed output of 20 kW, the obligation to purchase such electricity shall apply even when the nation-wide total level under para.1 is exceeded or the requirements described in para. 9 are not met. In such cases, however, the rates set by ordinance shall not be applied unless they are supported pursuant to section 30 para. 4.

(3) If electricity from several plants under differing rates is supplied to the public grid via only one point of transfer (metering point), assumptions shall be based on an injection mix in accordance with the share each plant has in total production in any given calendar months, unless the operator of such plants furnishes explicit proof of such energy’s origin from a specific plant, for example by means of down-time records for individual plants or on-line status reports for these plants.

(4) The green electricity settlement centre’s obligation to conclude contracts pursuant to section 10 item 4 shall apply to newly commissioned green electricity installations only to the extent that the contract feed-in tariff volume is not exceeded. Unless the contract feed-in tariff volume is exhausted, accruals shall be made for each class of installation (section 21b) to be credited in the subsequent calendar year to the contract feed-in tariff volume of the individual classes of installations in accordance with the ratio of percentages specified in section 21b.”

(5) (constitutional provision) The prices for purchasing green electricity from green electricity installations shall be defined by the prices set by ordinance at the date of conclusion of the contract. Otherwise the approved general terms and conditions shall apply. If the contract feed-in tariff volume cannot meet demand, the green electricity settlement centre shall be obliged to purchase green electricity only from those green electricity installations from which it has received an application (offer) for concluding a contract on the purchase of green electricity prior to exhaustion of the contract feed-in tariff volume. The application (offer) for concluding a contract on the purchase of green electricity shall be submitted in accordance with the general terms and conditions approved under section 18. The general terms and conditions may specify that applications (offers) need to be filed and processed by means of automated data processing systems. The official decision relating to the installation pursuant to section 7, as well proof of any authorisations or notifications necessary for the construction of the installation shall be attached to the application. Incomplete applications shall not be considered and shall lose their priority, with the applicant being informed of this in writing. Applications for concluding a contract whose acceptance would result in the contract feed-in volume being exceeded shall not be accepted. If simultaneously filed applications exceed in sum the limit specified by the contract feed-in tariff volume, acceptance shall be decided by drawing lots. If an installation fails to start operation within 24 months following acceptance

180 as amended by Article 1 item 5 of the Federal Act, Federal Law Gazette I no. 105/2006
of the application, the contract on the purchase of green electricity shall be deemed cancelled unless the applicant shows satisfactorily that the reasons for this are not within its sphere of influence. The contract feed-in tariff volume released by cancellation of this contract shall be credited to the contract feed-in tariff volume of the respective class in the current calendar year."

“(6) The quantities used to determine the support volume are defined by multiplying the bottleneck capacity specified in the decision of recognition with the average annual number of full-load hours applicable to the green electricity installation in question. Full-load hours shall be specified as being

1. 6,5000 full-load hours for biogas installations;
2. 6,000 full-load hours for green electricity installations using solid or liquid biomass;
3. 2,300 full-load hours for wind power plants;
4. 1,000 full-load hours for photovoltaic installations, and
5. 7,250 full-load hours for other green electricity installations.

(7) If, because of exhaustion of the contract feed-in tariff volume, no contract on the purchase of green electricity could be concluded with the operator of a green electricity installation pursuant to para. 6 items 1 to 5, a contract on the purchase of green electricity shall be concluded with the applicant in the following calendar year with due regard to the priority ranking resulting from the date of application, this contract being based on the prices and other general terms and conditions of the eco-balance group representative at the date of acceptance of this application (contract conclusion) by the eco-balance group representative. In such a case the applicant shall be free to withdraw its application. In any case, the application shall expire after the following year. There shall be no further entitlement to concluding a contract on the purchase of green electricity as of the date when the feed-in tariff volume that accrues by 2011 for newly commissioned installations is exhausted.

(8) The green electricity settlement centre is obliged to record and continuously publish (update) the still available contract feed-in tariff volume broken down by classes of installations pursuant to section 21b.

“(9) (constitutional provision) The obligation to purchase electricity from photovoltaic installations pursuant to section 10 item 4 shall apply provided that 50 per cent of the expenses required for purchasing electricity are borne by the Federal State in which the photovoltaic installation has been built.”

“Payment

Section 11. (1) The Federal Minister of Economics and Labour, in agreement with the Federal Minister for Agriculture and Forestry, the Environment and Water Management and the Federal Minister for Social Security, Generations and Consumer Protection, shall set by ordinance prices per kWh for the purchase of electrical energy from small-scale hydropower plants and other green electricity installations for which a purchasing and payment requirement exists pursuant to section 10 items 3 and 4. Prices shall be guided by the average production costs of cost-efficient installations that comply with the state of the art. Distinction shall be made between new and old plants whenever they differ in terms of costs or have been granted public support. Prices shall be set in accordance with the various primary energy sources used, with due regard to technical and economic efficiency. Pricing shall also ensure that projects in the most efficient locations benefit from support. They may include other means of differentiation, such as by bottleneck capacity or annual electricity production. A time-based differentiation by day/night and summer/winter within the meaning of section 25 of the Electricity Act shall be admissible. Differentiation by bottleneck capacity of the green electricity installation and by energy sources and substrates within classes of installations using biomass or wastes containing a high percentage of biogenous materials and installations using biogas, as well as by other special technical specifications, shall be admissible. The ordinance may also specify minimum requirements concerning the technologies used, these minimum requirements shall comply with the state of the art. In any case, the ordinance shall specify a fuel efficiency of at least 60% for installations using solid or liquid biomass or wastes containing a high percentage of biogenous materials and for installations using biogas, as well as for cofiring plants. The ordinance may define more fuel efficiency if this is economically reasonable in view of the nature of the installation with due regard to the state of the art and optimal utilisation of the primary energy source (energy efficiency). Prices shall be newly set for the 2006 calendar year, while for subsequent calendar years a discount shall be provided in relation the respective previous year’s level, this discount being redefined every year (annual degression). Unless the previous maximum support volume is exceeded, the ordinance shall also specify a combined support for electrical energy and heat for green electricity installations

182 as amended by Article 1 item 6a of the Federal Act, Federal Law Gazette I no. 105/2006
183 as amended by Article 1 item 6b of the Federal Act, Federal Law Gazette I no. 105/2006
184 as amended by Article 1 item 7 of the Federal Act, Federal Law Gazette I no. 105/2006
using solid biomass that are granted a feed-in tariff pursuant to the ordinance of Federal Law Gazette II no. 508/2000. The maximum support volume shall be defined by the product from the amount of electrical energy fed into the grid in the first twelve months after starting full operation and the feed-in tariff granted minus market price. Section 20 shall be applied correspondingly. Based on this computation method a cap shall be set on the quantity supported, this cap amounting to 6,000 full-load hours. The support tariff for heat shall be calculated per efficiency class on the basis of the following formula

\[ HT = FT/4.4 - HP \]

HT is the support tariff for heat in Cent per kWh

FT is the granted feed-in tariff in Cent per kWh

HP is the heat price in Cent per kWh

(1a) If the cap on the average total cost burden defined in section 22b para. 5 for small-scale hydropower plants does not suffice in any given calendar year, the prices defined in the applicable ordinance for small-scale hydropower plants having obtained the permits necessary for construction prior to 1 January 2003 and not having made any investment after that date to achieve an increase in electricity output of at least 15% shall be cut in the following calendar year, with the difference resulting from the prices minus market price being cut at the same ratio.

(2) Pricing in accordance with the objectives of this Federal Act shall be such that a continuous rise in the production of electrical energy from green electricity installations is achieved. In order to ensure a secure investment climate, the minimum period in which the set tariffs be applied following initial operation of the respective green electricity installation shall be ten years.

(3) Determination of the average production costs shall be based on the costs of an efficiently managed undertaking which finances the plant under financial market conditions. Service life, investment cost, operating cost, adequate return on capital employed and the quantities of electricity produced per year shall be taken into account. When determining these costs, national as well as international experiences shall be considered. When re-determining the tariffs, due consideration shall be given to investor confidence in currently applicable tariffs. Reactivated or renewed green electricity installations shall be deemed to be new plants if major portions of such plants have been renewed. A renewal shall be deemed a major renewal whenever the costs of such renewal total 50% or more of the investment costs in an entirely new plant.

(4) Green electricity from hybrid or cofiring plants shall be purchased and paid for according to the percentages specified in the decision of recognition. If the percentages specified in the decision of recognition are not met according to the compiled documentation, the green electricity settlement centre, upon having been informed by the State Governor, shall recalculate payment for the previous year and pay according to the documentation. Any differences shall be offset against the next payments. If such offsetting is impossible, the State Governor shall issue a decision to oblige the operator to return any excess revenue. Excess revenue results from the difference between the prices set and the market price last published by Energie-Control GmbH pursuant to section 20 at the time of decision-making. Any excess revenue shall be paid into the account as defined by section 23.

(5) To determine the facts that decide pricing and payments, the Federal Minister of Economics and Labour may also and in particular consult experts available to the Federal Ministry of Economics and Labour, as well as to Energie-Control GmbH.”

Chapter 2

“Electrical Energy from Cogeneration Installations and Medium-Scale Hydropower Plants”

“Eligibility Criteria for CHP Energy Support

Section 12. Electrical energy produced directly and with maximised efficiency as a combined product in the generation of district heat by existing or modernised cogeneration installations (section 13) shall only be eligible for support provided that

1. the installations’ operation serves public district heating supply and
2. savings in the use of primary energy sources and in CO2 emissions as compared to separate electricity and heat generation are achieved.

(2) In new cogeneration installations with a bottleneck capacity of more than 2 MW, support shall be admissible even when they serve the purpose of process heat generation, provided that the other requirements specified in para. 1 apply and the efficiency criteria specified in section 13 para. 2 are met. Support

185 as amended by Article 1 item 9 of the Federal Act, Federal Law Gazette I no. 105/2006
186 as amended by Article 1 item 10a of the Federal Act, Federal Law Gazette I no. 105/2006
for new cogeneration installations shall be admissible even when waste, sewage sludge or spent lye are used to some extent. The inclusion of interior heat shall be admissible provided that the public district heating supply or the generation of process heat prevail. This support is intended to encourage the construction of new cogeneration installations with an output of 2000 MW (electricity) by 2014.

(3) New cogeneration installations having obtained in the first instance all the permits necessary for construction by 30 September 2012 and taking up operation by 31 December 2014 at the latest shall be supported in the form of investment aid. Upon its application, the operator of a new cogeneration installation shall be granted, depending on the available funds, an investment aid of up to 10% of the investment volume directly required for constructing the cogeneration installation (excluding land price), but for cogeneration installations

1. with a bottleneck capacity of up to 100 MW no more than € 100 per kW bottleneck capacity,
2. with a bottleneck capacity of between more than 100 MW and 400 MW no more than € 60 per kW bottleneck capacity,
3. with a bottleneck capacity of 400 MW or more no more than € 40 per kW bottleneck capacity,

with the investment volume and the respective settlement agency’s demand for support to be covered by this investment aid (section 13) requiring verifiable proof. The level of support needed shall be based on the expenses necessary for construction and management of the installation as well as the revenue to be expected in efficient plant management. Operational efficiency calculation pursuant to para. 6 shall be based on an assumed return on employed capital of six per cent. Calculation of the expected revenue shall be based on the arithmetic average of the last available forward prices fixed by the EEX (if these prices are no longer available, comparable values shall be used) for the three calendar years beginning with the year when the expertise is made. Moreover also actual revenue from heat shall be taken into account.

(4) Investment aid shall be granted provided that no other support is claimed for constructing and operating the cogeneration installation. If the Commission has established harmonised efficiency reference values in accordance with the procedure referred to in Article 1187 of Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand, compliance with these criteria shall be another requirement for granting investment aid. Investment aid shall be promised provided that, and subject to the proviso that, support funds are available (para. 5). Investment aid shall be paid when the installation takes up full operation and the submitted final accounts are audited. Final accounting shall be certified by a chartered accountant.

(5) The support funds necessary for granting investment aid and to be raised by cogeneration surcharges shall be limited to a total of € 60 million for the 2006 to 2012 period. Of these funds 30% shall be spent on support for cogeneration installations used for industrial purposes and 70% on support for cogeneration installations used for non-industrial purposes. If the funds raised for the support of existing cogeneration installations in the 2003 to 2005 period, funds which have not been necessary for covering the additional expenses of operators of cogeneration installations pursuant to section 13, do not suffice, the surcharges or lump sums per metering point, respectively, charged pursuant to section 13 para. 10 shall include a share set aside for covering the funds necessary for investment aid. Applications for investment aid shall be ranked by the chronological order of their arrival.

(6) Applications for investment aid shall be filed in writing between 1 January 2007 and 30 September 2012 to the investment aid settlement agency188. Promises to grant investment aid may be made with due regard to the provisions of paras. 4 and 5 by 31 December 2012. Any authorisations or notifications governing the construction of installations and available for enforcement, a compilation of investment costs, as well as an efficiency calculation in accordance with the net present value method shall be attached to the application. Efficiency calculation shall include the investment aid necessary for the nominal calculatory interest rate specified in para. 3. Efficiency calculation for determining the maximum amount of possible investment aid shall be based on an assumed service life of the installations of 15 years. If the conditions are met, and with due regard to the recommendation of the advisory council, the Federal Minister of Economics and Labour shall promise investment aid based on the conclusion of a contract. Efficiency calculation specifying the required investment aid shall be updated once the final accounts on the level of investment are available and shall be submitted – also duly certified by a chartered accountant - to the investment aid settlement agency. Any misleading information shall disqualify the applicant from receiving investment aid. If the funds available for granting investment aid (para. 5) are exhausted, no investment aid can be granted.”

187 wrong quote, reference is made to “Article 4”
188 as amended by Article 1 item 10b of the Federal Act, Federal Law Gazette I no. 105/2006
Reimbursing the Costs of CHP Energy

Section 13. (1) Energie-Control GmbH shall reimburse to operators of existing and modernised cogeneration installations the balance between revenue from electricity and district heat supply and the costs necessary for maintaining operation in cents per kWh of electricity produced, which amount shall be determined every year by the Federal Minister of Economics and Labour (support tariff for CHP electricity). These costs shall be composed of fuel costs, maintenance expenses and operating costs; for existing cogeneration installations the costs for an adequate return on capital employed, pension benefits, administrative expenses and taxes shall be exempted. For modernised cogeneration installations the costs for an adequate return on capital employed shall be taken into account. The amounts of electricity that are not produced directly and with maximised efficiency as a combined product in the generation of district heat shall not be eligible for any reimbursement of costs. To determine the facts that decide the support tariff, the Federal Minister of Economics and Labour may also and in particular consult independent experts.

(2) Cogeneration installations shall be deemed to achieve major savings in the use of primary energy sources as compared to modern caloric power stations without co-generation heat, if within the period under review the following ratio is attained by a plant:

\[ \frac{2}{3} \times \frac{H}{F} + \frac{E}{F} \geq 0.6 \]

\( H \) = quantity of heat (kWh) supplied to the public district heating system or efficiently used as process heat
\( F \) = total fuel used in kWh
\( E \) = electrical energy (kWh) supplied to the public electricity grid or measured at the outlet of the generator.

The efficiency criterion shall be calculated on a monthly basis per plant or per operator. Attention shall be paid to achieving an optimised total in terms of reducing greenhouse gas emissions.

(3) Operators of existing or modernised cogeneration installations that use more than 10% of the calorific value of the employed fuel as district heating power for public district heating supply shall be granted a support tariff of 1.5 Cent per kWh of CHP electricity for 2003 and 2004 to the extent their plants meet the ratio specified in para. 2. Support as of 2005 shall be determined by applying the provisions pursuant to paras. 1 and 2.

(4) Plants that do not meet the ratio specified in para. 2 or only use 3% to 10% of the calorific value of the employed fuel for public district heating supply shall be eligible for a support tariff of no more than 1.25 Cent per kWh in 2003 and 2004. Support as of 2005 shall be determined by applying the provisions pursuant to paras. 1 and 2.

(5) Support to existing cogeneration installations shall expire by 31 December 2008. For modernised cogeneration installations this period shall end after 31 December 2010.

(6) Operators of cogeneration installations shall enclose all the necessary documents with the application for verification of additional expenses and, at the request of the Federal Minister of Economics and Labour, shall supplement the documents accordingly. This shall also apply to verifications conducted by the Federal Minister of Economics and Labour. All the relevant data and documents necessary for assessing the facts shall be enclosed with the application. These data and documents shall include in particular an itemisation of all costs of generation plants, a representation of market price developments and estimates for the purchase period applied for, revenue from district heat sales including district heating supply contracts, ownership structure and contractual relationships relating to the generation plant’s components that are relevant for district heating, decisions on plant permits and other decisions relating to the plant, electricity supply contracts concluded in the past, as well as current electricity supply contracts, contracts on fuel purchases, quantities of district heat and electricity produced in the past 10 years and their breakdown by time (months), all current electricity supply contracts of all plants of the operator, as well as the proportion of district heat produced by the plant in the total amounts of district heat procured within the district heating system.

(7) The additional expenses per kWh to be covered (CHP support tariff) for electricity co-generated with district heat shall be determined by the Federal Minister of Economics and Labour for the respective plant for every calendar year in advance. The operators of cogeneration installations shall ensure that their plants be operated as efficiently as possible.

(8) The Federal Minister of Economics and Labour shall, at any time, be entitled to verify through his authorities whether the actual development of cost structures and CHP installation operation continues to correspond to the assumptions involved in determining the additional expenses. To ascertain these

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189 see transitional provision of section 30c relating to section 13 paras. 3 and 4
190 see transitional provision of section 30c relating to section 13 paras. 3 and 4
facts, the Federal Minister of Economics and Labour may also consult independent experts. Unless the assumptions involved in determining the additional expenses apply, the Federal Minister of Economics and Labour shall re-determine the additional expenses to be reimbursed.

(9) Regarding deliveries and services of undertakings affiliated with the owner or operator of the cogeneration installation, the adequacy of prices shall be substantiated by a documentation of firm price quotations of undertakings not affiliated with the owner or operator of the cogeneration installation.”

“(10) (constitutional provision) Beginning on the date specified in section 32a para. 4, additional expenses for cogeneration installations shall be funded by a lump sum per metering point pursuant to section 22a. Of the money collected under this lump sum € 60 million shall be made available for granting investment aid pursuant to section 12 para. 3. Of these funds 30% shall be spent on support for cogeneration installations used for industrial purposes and 70% on support for cogeneration installations used for non-industrial purposes. The cogeneration surcharge may be no more than 0.15 Cent per kWh in 2003 and 2004 and no more than 0.13 Cent per kWh in 2005 and 2006. In 2007 and 2008 no more than € 54.5 million each year, and in 2009 and 2010 no more than € 28 million each year, may be made available via the lump sum charged per metering point pursuant to section 22a for the support of cogeneration installations. Beginning on the date specified in section 32a para. 4, the collection of a cogeneration surcharge in Cent per kWh shall no longer be admissible. There shall be no support of existing cogeneration installations after 31 December 2008 and no support of modernised cogeneration installations after 31 December 2010. No applications for investment aid for new cogeneration installations can be filed after 30 September 2012. If the surcharges or the funds to be raised via the lump sums charged per metering point do not suffice to cover the additional expenses, the support provided pursuant to para. 1 shall be reduced on a pro rata basis for all existing and modernised installations.”

“(11) Energie Control GmbH shall reimburse the costs of CHP energy based on the funds made available pursuant to section 22a.

(12) For determining electricity revenue pursuant to para. 1 a weighted market price shall be used. This price shall be calculated as arithmetic average of the prices fixed by the EEX or, if no appropriate data are available from the EEX, by another representative electricity exchange on the trading days of July, August and September of the current year for baseload and peakload quarter futures for the respective following year. For taking into account the daytime and seasonal dispatch characteristics, calculation shall assume a baseload share of 95% and peakload share of 5%, as well as a quarter futures weighting of 37% for the first quarter, 17% for the second quarter, 10% for the third quarter and 36% for the fourth quarter.”

“Investment Aid for Electricity from Medium-Scale Hydropower Plants

Section 13a. (1) Upon filing a written application to the investment aid settlement agency, builders of medium-scale hydropower plants whose construction is to be begun between 1 July 2006 and 31 December 2013, and which are to take up operation by 31 December 2014 at the latest, shall be granted, depending on the available funds, an investment aid of up to 10% of the investment volume directly required for constructing the installation (excluding land price), but no more than € 400 per kW bottleneck capacity in investment aid and no more than € 6 million for a medium-scale hydropower plant in total. Proof of the investment volume of the plant for which investment aid has been requested and of the support needed shall be furnished by an expertise made by an independent expert to be appointed by the State Governor. The provisions of section 12 para. 6 concerning the filing of an application with the investment aid settlement agency shall apply correspondingly provided that a service life of 25 years can be assumed for electrical engineering parts and a service life of 50 years for the other parts of such medium-scale hydropower plants, an accrued volume of € 50 million at most is available for the 2006 to 2012 period for investment aid, and the requirement is met that the applications for investment aid be ranked and processed according to the date of their arrival. Investment aid shall be granted provided that no other support – save grants from the disaster fund – is claimed for constructing and operating the hydropower plant. The level of support needed shall be based on the expenses necessary for construction and management of the as well as the revenue to be expected in efficient plant management. Operational efficiency calculation shall be based on an assumed return on employed capital of six per cent. Calculation of the expected revenue shall be based on the arithmetic average of the last available forward prices fixed by the EEX (if these prices are no longer available, comparable values shall be used) for the three calendar years beginning with the year when the expertise is made. This support is intended to encourage the construction of new hydropower plants with an output of 150 MW by 2014. The funds necessary for granting

191 as amended by Article 1 item 10c of the Federal Act, Federal Law Gazette I no. 105/2006
192 as amended by Article 1 item 10d of the Federal Act, Federal Law Gazette I no. 105/2006
193 as amended by Article 1 item 10e of the Federal Act, Federal Law Gazette I no. 105/2006
an investment aid shall be raised by the money collected as a lump sum per metering point, with only a maximum amount of € 10 million per calendar year being admissible. Investment aid shall be paid when the installation takes up full operation and the submitted final accounts are audited. Final accounting shall be certified by a chartered accountant. If the volume accrued for investment aid is exhausted, no more investment aid shall be granted.

(2) Applications pursuant to para. 1 shall be filed between the date specified in section 32a para. 3 and 30 September 2012 at the latest. Payment to be made by the investment aid settlement agency pursuant to section 13c para. 1 to the builders of installations specified in para. 1 shall be promised by the Federal Minister of Economics and Labour for the installation in question based on the conclusion of a contract if the conditions are met, and with due regard to the recommendation of the advisory council pursuant to section 13b. Any relevant data and documents necessary for assessing the facts shall be enclosed with the applications for investment aid. This refers in particular to documentation that furnishes proof of the electricity quantities Federation of Austrian Social Insurance Institutions into the public grid, the date of commencement of construction and the date of initial operation.

Advisory Council for Investment Aid

Section 13b. An advisory council shall be established for the purpose of advising the Federal Minister of Economics and Labour in matters concerning the preparation of guidance rules pursuant to section 13d as well as in decisions on granting investment aid pursuant to sections 12 and 13a (section 26b of the Energy Regulatory Authorities Act – Federal Law Gazette I no. 121/2000 as amended by the Federal Act, Federal Law Gazette I no. 105/2006).

Settlement Agency for Granting Investment Aid

Section 13c. The granting of investment aid under this Federal Act shall be handled by a settlement agency. Kommunalkredit Public Consulting GmbH has been entrusted with performing this function. Being entrusted with performing this function shall require that a contract be concluded with the Federal Minister of Economics and Labour on how settlement is to be handled content-wise. The contract shall be subject to the agreement of the Federal Minister of Finance.

(2) The contract shall include details on

1. processing and reviewing applications for investment aid pursuant to the provisions of this Act and the currently applicable guidance rules;
2. communicating the processed applications for investment aid to the advisory council for enabling the latter to advise the Federal Minister of Economics and Labour in investment aid decisions;
3. concluding contracts with the applicants on behalf and on account of the Federal Minister of Economics and Labour, accounting and paying aid funds, as well as checking compliance with aid requirements;
4. reclaiming investment aid granted;
5. preparing and compiling documents for the advisory council and executing the decisions of the Federal Minister of Economics and Labour;
6. submitting an audited annual statement of accounts by 1 May of the following year at the latest to the Federal Minister of Economics and Labour;
7. submitting an economic plan for the following year by the end of the current business year to the Federal Minister of Economics and Labour;
8. submitting activity reports to the Federal Minister of Economics and Labour;
9. the supervisory powers of the Federal Minister of Economics and Labour;
10. grounds for terminating the contract;
11. choice of jurisdiction.

(3) An adequate remuneration shall be set for handling and settling investment aid with due regard to the costs that arise in handling and settling comparable state aid.

(4) Business shall be conducted with the diligence of a prudent businessman. A separate accounting group shall be established for handling and settling aid.

(5) The Federal Minister of Economics and Labour shall, at any time, be given permission to inspect documents and specifically to inspect applications for investment aid and the documents concerning their handling and settlement.

(6) The settlement agency shall give information about applications for investment aid and their handling and settlement and, upon request, communicate appropriate reports to the Federal Minister of Economics and Labour.
(7) For the purpose of auditing the activity of the settlement agency under this Federal Act, the Federal Minister of Economics and Labour shall appoint a chartered accountant not identical with the auditor of annual accounts to be appointed under commercial law. The chartered accountant shall also audit the adequacy of the remuneration to be set every year and of the costs. The chartered accountant shall, without delay, submit the outcome of the audit to the Federal Minister of Economics and Labour.

(8) As regards its activity under this Act, the settlement agency shall be subject to the control of the Court of Audit.

(9) If no contract is brought about with Kommunalkredit Public Consulting GmbH pursuant to para. 1, or if no agreement is reached with the Federal Minister of Finance about a contract concluded pursuant to para. 1 with Kommunalkredit Public Consulting GmbH, the Federal Minister of Economics and Labour shall invite tenders for the activity of a settlement agency entrusted with handling the granting of investment aid under this Federal Act and award the contract to the best bidder based on the provisions for service licences. Para. 1 shall apply correspondingly in terms of how settlement is to be handled content-wise.

(10) Any costs arising in conjunction with handling and settling investment aid for cogeneration installations and for medium-scale hydropower plants shall be covered on a pro rata basis by the support funds specified in section 13 para. 10 and section 13a. para. 1 in conjunction with section 22a para. 1.

Guidance Rules for Granting Investment Aid

Section 13d. (1) The Federal Minister of Economics and Labour shall issue guidance rules on granting investment aid.

(2) The guidance rules shall include details on
1. the object of investment aid;
2. the kind of investment cost eligible for aid;
3. personal and factual requirements for eligibility;
4. proof of expediency of the project in energy economic terms;
5. if required – the procedure adopted by the beneficiary of investment aid for awarding contracts for the project;
6. extent and type of investment aid;
7. the procedure
   a) application (nature, contents and design of documents required);
   b) mode of payment;
   c) reporting (right of control);
   d) suspension and reclaiming of investment aid granted;
8. choice of jurisdiction.

(3) The technical guidance rules shall include details on
1. the principles of planning, design and of the materials and services purchased in advance;
2. extent and nature of planning documents including the examination of variants;
3. execution, control, accounting and final audit;
4. operational and maintenance measures as well as efficiency guarantees for installations.

(5) In issuing such guidance rules, the Federal Minister of Economics and Labour shall seek agreement with the Federal Minister of Finance and the Federal Minister for Agriculture and Forestry, the Environment and Water Management. The guidance rules shall be promulgated in the Official Journal supplementing the Wiener Zeitung. This promulgation may be replaced by an announcement in the Official Journal supplementing the Wiener Zeitung that the guidance rules have been issued specifying the place where the can be consulted. Prior to the issue of these guidance rules the European Commission shall be notified as required by Article 88 (3) of the Treaty establishing the European Community. Investment aid shall not be granted prior to conclusion of the procedure set out in Article 88 TEC.**

194 as amended by Article 1 item 10f of the Federal Act, Federal Law Gazette I no. 105/2006
“Title 3
Green Electricity Settlement Centre”

“Conditions of Performance

Section 14 (1) The purchase and selling of eco-energy under the purchasing obligation specified in section 10 of the Green Electricity Act (green electricity settlement centre) shall require a licence. The licence shall be granted by the Federal Minister of Economics and Labour for the entire federal territory.

(2) The licence shall be granted in writing and may include the conditions and obligations necessary for ensuring the performance of the function of a green electricity settlement centre. The green electricity settlement centre shall be obliged to establish an eco-balance group for each control area.

(3) The provisions for issuing calls for tenders for service licences shall be applied.”

“Application for a Licence

Section 14a. The applicant shall enclose the following documents with the application for a licence:
1. details on domicile and legal form;
2. articles of association or shareholder’s agreement;
3. business plan specifying the organisational set-up of the undertaking and the internal control procedures; moreover the business plan shall include budget estimates for the first three business years;
4. a description of the technical and organisational infrastructure available;
5. proof of at least three years of practical experience in managing schedules and balance groups;
6. level of initial capital available to board members at home without restriction or encumbrance;
7. identity and invested amounts of owners holding a qualified share in the undertaking as well as details on group structure if these owners are members of a group of companies;
8. name of the appointed board members and their qualifications to run the undertaking.

Issue of a Licence

Section 14b. (1) The licence for the green electricity settlement centre (section 14) shall be granted in writing by the Federal Minister of Economics and Labour for all control areas and may include the conditions and obligations necessary for ensuring the performance of functions and cost efficiency of such performance.

(2) A licence for performing the function of a green electricity settlement centre (section 14) may only be issued
1. if the applicant or his licence is able to perform the functions assigned to it by the Green Electricity Act as amended by the Federal Act, Federal Law Gazette I no. 105/2006 in a cost efficient and safe manner;
2. if individuals holding a qualified share in the undertaking meet the requirements to be made in the interest of a solid and careful management of the undertaking, and are not subject to any conflicting interests that are incompatible with the objectives and purposes of the Green Electricity Act;
3. if supervisory authorities are not prevented from duly performing their supervisory function by the close links of the undertaking with other natural or legal persons;
4. if the initial capital amounts to € 5 million or more and is available to board members without restriction or encumbrance, and management and administration of the undertaking is ensured in the best possible way by appropriate physical assets and staffing;
5. if none of the board members is disqualified within the meaning of section 13 paras. 1 to 6 of the 1994 Industrial Code;
6. if none of the board members is subject to any judicial investigation before trial because of a wilful offence carrying a sentence of over one year until the decision terminating the criminal proceedings is final;
7. if the board members, owing to their training background, have the professional qualifications, as well as the skills and expertise, necessary for running the undertaking. Professional qualification of a board member requires sufficient know-how of aid mechanisms, EU subsidisation and

195 as amended by Article 1 item 10g of the Federal Act, Federal Law Gazette I no. 105/2006
funding schemes and green electricity accounting, as well as managerial experience; a board member shall be deemed as having the professional qualification for managing a settlement centre if this member furnishes proof of having three or more years of managerial experience in the electricity sector or in the field of accounting;
8. if at least one member of the board has the centre of vital interests in Austria;
9. if none of the board members has another mainline job outside the undertaking which is bound to cause a collision of interests;
10. if the domicile and head office are located in Austria;
11. if the available settlement system meets the requirements of a state-of-the-art accounting system;
12. if neutrality, independence and data privacy vis-à-vis market participants and an efficient regional settlement are ensured, and if efficient regional settlement is secured by at least one regional settlement centre for control areas where the undertaking is not domiciled.

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

Revocation of a Licence

Section 14c. (1) The Federal Minister of Economics and Labour may revoke the licence if the green electricity settlement centre fails to
1. take up its function within six months after having been awarded the licence, or
2. perform its function for more than a month.
(2) The Federal Minister of Economics and Labour shall revoke the licence if
1. it has been obtained by incorrect information or misleading action or by any other artifice;
2. the green electricity settlement centre fails to perform its duties vis-à-vis its creditors;
3. any of the licence conditions specified in section 14b para. 2 is no longer met once the licence has been granted, or
4. the green electricity settlement centre consistently fails to perform its functions properly and in due form.

Expiry of a Licence

Section 14d. (1) The licence shall expire:
1. by lapse of time;
2. if a condition arises that warrants expiry;
3. if its holder hands back the licence;
4. once the winding up of a licensee is completed;
5. upon initiation of bankruptcy proceedings against the assets of the green electricity settlement centre.
(2) Expiry of a licence shall be determined by official decision by the Federal Minister of Economics and Labour.
(3) A licence may only be handed back in writing (para. 1 item 3) and only if management and administration of the green electricity settlement centre have been assumed by another green electricity settlement centre.

Change in Ownership

Section 14e. (1) Whoever intends to directly or indirectly hold a qualified share in a green electricity settlement centre shall notify the Federal Minister of Economics and Labour in advance of such a move including details on the amount of such a share.
(2) Whoever intends to increase his qualified share in a green electricity settlement centre to such an extent that the limits of 20 per cent, 33 per cent or 50 per cent of the voting rights or the capital are reached or exceeded, or that the green electricity settlement centre becomes his subsidiary, shall notify the Federal Minister of Economics and Labour in advance of such a move in writing.
(3) The Federal Minister of Economics and Labour shall prohibit the intended shareholding within three months after having received a notification pursuant to para. 1 or 2, unless the conditions referred to in sections 14a or 14b are met. Unless shareholding is prohibited, the Federal Minister of Economics and Labour may specify a date by which the intentions referred to in paras. 4 and 5 have to be implemented.
(4) The duties of notification specified in paras. 1 and 2 shall apply, mutatis mutandis, to any intention of relinquishing a qualified share or dropping below the shareholding limits for a green electricity settlement centre specified in para. 2.

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

“Tasks of the Green Electricity Settlement Centre

Section 15. (1) The tasks of the green electricity settlement centre shall be:
1. to purchase green electricity according to sections 10 and 10a at prices set pursuant to section 11;
2. to conclude contracts
   a) with the other eco-balance group representatives, control area managers, grid operators and electricity undertakings (producers and electricity traders);
   b) with institutions that compile indices for the purpose of data exchange;
   c) with suppliers (producers and electricity traders), grid operators and balance group representatives on the communication of data;
3. to assign to electricity traders, as far as such traders supply electricity to domestic end users, every day according to current market rules the quantities of electrical energy purchased pursuant to item 1 against the transfer prices pursuant to section 22b paras. 2 and 3. Assignment shall be made in the form of schedules to the respective balance group of which the electricity trader is a member at the ratio of electricity quantities supplied per calendar month to end users in the control area. The settlement agencies shall make available the necessary data by automated data processing. The ratio for any current calendar month shall be computed by the month dating back three months. For newly admitted electricity traders, the quantity of the first full month shall be used for computation.
4. to ensure that each eco-balance group has the same eco-energy percentage share in final consumption, and that the raising of support funds pursuant to section 19 is distributed evenly across the eco-balance groups in accordance with the share the control area corresponding to an eco-balance group has in final consumption, with quantities supported by any surcharges set by the State Governors pursuant to section 30 para. 4 not being taken into account for balancing purposes;
5. to make projections on the electrical energy fed into the grid in future and use such projections as a basis for establishing the schedules for electrical energy under purchasing obligation (section 10) and assigning them to electricity traders. In so doing, the green electricity settlement centre shall pay attention to a possibly low involvement of balancing energy;
6. to comply with market rules.

(2) The green electricity settlement centre shall make available to the Federal Minister of Economics and Labour, as well as to Energie-Control GmbH, any data necessary for their supervisory function. In all other cases, the provision of section 47 of the Electricity Act shall apply correspondingly. It shall make available to Energie-Control GmbH in an electronic format the data necessary for establishing a database for guarantees of origin.

(3) The green electricity settlement centre shall take all and any organisational precautions to be able to perform its tasks. It shall assume the function of balance group representative (eco-balance group representative) and shall establish an eco-balance group for each control area.

(4) The green electricity settlement centre shall be obliged to exhaust all options to minimise the costs of balancing energy. It shall be authorised to take any measures necessary for compliance with schedules, including the purchase and selling of electricity. It shall show separately in the balance sheet an estimate of the balancing energy costs necessary for wind power plants.

(5) The green electricity settlement centre shall be subject to the control of the Court of Audit irrespective of its ownership situation.”
Eco-Balance Group

Section 16. (1) The eco-balance group combines all eco-energy installations that use purchasing obligations pursuant to section 10. Operators of eco-energy installations making use of purchasing obligations pursuant to section 10 shall be admitted as members to the eco-balance group.

“(2) No settlement charge shall be billed by the clearing and settlement agent (balance group coordinator) for the eco-balance group, and no collateral shall be deposited with the clearing and settlement agencies. The green electricity settlement centre shall be exempted from paying any charges for grid utilisation or grid losses, especially for schedules crossing control areas.”

Raising Funds for the Activities of Eco-Balance Groups

Section 17. The funds required for performing the tasks of an eco-balance group shall be raised through the revenue achieved by selling electricity under purchasing obligation, as well as through the reimbursement of additional expenses pursuant to section 21.

General Terms and Conditions

Section 18. (1) Based on general terms and conditions, the “green electricity settlement centre” shall conclude the contracts referred to in sections 10, 11 and 15, insofar as they concern the taking and buying of electrical energy – including the balancing procedure as defined by section 15 para. 1 item 4. The general terms and conditions shall be subject to authorisation by Energie-Control GmbH.

(2) General terms and conditions shall specifically contain:
1. the making, the dates and the methods of payments;
2. data communication and data formats to be complied with;
3. nature and extent of projections on feed-in schedules;
4. arrangements on how to balance green electricity quantities and payments pursuant to section 15 para. 1 item 4.

“(3) Authorisation shall be given, subject to obligations, conditions and time limits where applicable, if the general terms and conditions are suitable for fulfilling the tasks described in sections 10, 15 and 16 para. 3.”

(4) The “green electricity settlement centre” shall be obliged to change the existing, or prepare new, general terms and conditions at the request of Energie-Control GmbH.

Obligations of Electricity Traders, Operators of Green Electricity Installations and Grid Operators

Section 19. “(1) Electricity traders shall be obliged to purchase the electrical energy assigned to them (section 10) and to pay in any case to the green electricity settlement centre the charge amounting to the transfer price for other green electricity pursuant to section 22b para. 3 and to the transfer price for electricity from small-scale hydropower plants pursuant to section 22b para. 2 for the respective amounts of electrical energy every month. Schedules to be compiled through the balance group representative in question shall be established with due regard to minimising the cost for balancing energy and shall be accepted by the balance group representatives.”

“(2) Operators of green electricity installations and grid operators shall make available to the “green electricity settlement centre” the data necessary for compiling optimum schedules and minimising balancing energy requirements, such as electricity generation curves of previous periods, as well as projections based on meteorological and hydrological data.

“Market Price

Section 20. Energie-Control GmbH shall identify at the end of each quarter the average market price of baseload electricity and publish this price in an appropriate manner. This price shall be calculated as arithmetic average of the prices fixed by the European Energy Exchange (EEX) for the next four baseload quarter futures. Calculation shall be based on the corresponding quotations of the last five energy ex-
change trading days of the preceding quarter. If these quotations are no longer published by the EEX, comparable quotations of the EEX or of any other relevant electricity exchange shall be used.

**Reimbursing Additional Expenses of the Green Electricity Settlement Centre**

**Section 21.** The green electricity settlement centre shall be reimbursed for the following additional expenses taking into account an adequate return on the capital employed within the meaning of section 14b para. 2 item 4:

1. any differential amounts resulting from revenue generated by selling electricity produced by small-scale hydropower plants and other green electricity installations (section 22b) and the prices determined pursuant to section 11,
2. any administrative and other expenses connected with the green electricity settlement centre’s performance of tasks, as well as
3. any expenses for balancing energy.

The Federal Minister of Economics and Labour, within the framework of his supervisory function, shall verify and acknowledge by decision the expenses referred to above.”

**“Title 3a.**

**Support Volume**

**Contract Feed-In Tariff Volume**

**Section 21a.** For other newly commissioned green electricity installations (section 10 item 4) the contract feed-in volume shall be determined on the basis of the additional support volume (section 5 item 31 subpara. a) pursuant to section 22a in the calendar year in which the application is filed pursuant to section 10a para. 5, plus the value of the green electricity to be purchased under a contract at the average market price of the previous calendar year (section 20), minus the prorated expenses pursuant to section 21 items 2 and 3, as well as minus a prorated share of the funds to be paid over to the Federal States pursuant to section 22b para. 6. Any differential amounts in a calendar year between the funds raised pursuant to section 22 and the additional expenses incurred under section 21 shall be shown by losses brought forward or by the creation of reserves and shall be offset in the following calendar year by an adjustment of the support levies. The additional annual support volume for the 2007 to 2011 calendar years shall amount to € 17 million and must not be exceeded. The minimum amount of additional support volume for the 2006 calendar year shall be € 8.5 million; if section 21a as amended by the Federal Act, Federal Law Gazette I no. 105/2006 enters into force prior to 30 June 2006, calculation of the additional support volume that must not be exceeded shall be based on the prorated share of the annual support volume of € 17 million determined for the 2007 to 2011 calendar years. After this period any additional support volume shall be redetermined by law. The prorated expenses pursuant to section 21 items 2 and 3 may be determined by an ordinance issued by the Federal Minister of Economics and Labour. For this purpose adequate account shall be taken of the costs caused by the relevant technologies in previous years.

**Distribution of the Feed-In Tariff Volume**

**Section 21b.** Of the support volume later used to infer the contract feed-in volume

1. 30 per cent are attributable to green electricity installations using solid biomass or wastes containing a high percentage of biogenous materials;
2. 30 per cent are attributable to green electricity installations using biogas;
3. 30 per cent are attributable to wind power plants;
4. 10 per cent are attributable to photovoltaic installations as well as other green electricity installations (green electricity installations using liquid biomass; cofiring plants; green electricity installations using other energy sources).”

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207 as amended by Article 1 item 19 of the Federal Act, Federal Law Gazette I no. 105/2006
208 as amended by Article 1 item 20 of the Federal Act, Federal Law Gazette I no. 105/2006 [inserted as Title 3a.]
Raising and Administering Support Funds

Section 22. (1) For the purpose of raising the funds to cover the additional expenses pursuant to sections 12, 13, 13a and 21 (save additional expenses for small-scale hydropower), all customers connected to the public grid shall pay a support levy (lump sum in € per metering point), which shall be charged by grid operators and collected from customers connected to their grids together with the respective grid utilisation charge. The funds thus collected shall be paid every quarter to the green electricity settlement centre. The green electricity settlement centre shall be entitled to consolidate the support levy into a provisional lump sum and collect such lump sum every quarter against subsequent annual settlement. The support levy shall be shown and billed separately on the grid utilisation bills. The classes of installations covered by this support levy (cogeneration installations, medium-scale hydropower plants as well as other green electricity installations) shall be specified. Grid operators and clearing and settlement agencies shall make available to the green electricity settlement centre all and any data necessary for assessing the support levies and all and any other information.

(2) Disputes between the green electricity settlement centre and end users as well as grid operators, especially in matters concerning payment of the support levy, shall be settled by a court of law.

“Lump Sum per Metering Point in 2007 and Later Calendar Years

Section 22a. (1) The lump sum per metering point for 2007 until the end of 2009 shall be:
   1. € 15,000 per calendar year for grid users connected to grid levels 1 to 3;
   2. € 15,000 per calendar year for grid users connected to grid level 4;
   3. € 3,300 per calendar year for grid users connected to grid level 5;
   4. € 300 per calendar year for grid users connected to grid level 6;
   5. € 15 per calendar year for grid users connected to grid level 7;

(2) For the years following on 2009, i.e. beginning in 2010, Energie-Control Kommission shall determine every three years by ordinance the lump sums per metering point applicable to the various grid levels. In so doing, it shall use the following criteria: of the support volume necessary for supporting eco-energy (including investment aid for medium-scale hydropower plants, save support needs for small-scale hydropower plants) and investment aid for fossil cogeneration installations, as well as support to existing or modernised cogeneration installations, 38% shall be covered – based on projections – by the funds raised by the lump sum per metering point. For this purpose the lump sums per metering point specified in para. 1 shall be adjusted at the same ratio so as to achieve a 38% cover of the necessary support volume through the funds raised by charging these lump sums.

(3) If someone uses the grid for less than one calendar year, one twelfth of the applicable lump sum per metering point as specified in para. 1 shall be charged for every calendar month begun.

“Transfer Price

Section 22b. “(1) The Federal Minister of Economics and Labour shall determine every year in advance by ordinance for the years following on 2006 special transfer prices for small-scale hydropower as well as for other green electricity. Adjustments made during a year shall be admissible.

(1a) Unless the Federal Minister of Economics and Labour issues an ordinance pursuant to item 1 above, the transfer price for 2007 shall be determined as follows:
   1. for promoting small-scale hydropower at ............. .......... 6.47 cent/kWhr;
   2. for promoting other green electricity at ................. 10.33 cent/kWhr.”

(2) The transfer price for small-scale hydropower shall be determined, based on projections, at such a level that all and any additional expenses incurred by the green electricity settlement centre for small-scale hydropower shall be covered pursuant to section 21.
(3) The transfer price for other green electricity shall be determined, based on projections, at such a level that all and any additional expenses incurred by the green electricity settlement centre for other green electricity shall be covered pursuant to section 21 taking into account the revenue generated from the lump sum per metering point as specified in section 22a.

(4) Energie-Control Kommission shall seek to achieve a balanced result between the additional expenses to be expected for the following year on the one hand, and the revenue from green electricity sales projected for this period and the funds raised by the lump sums per metering point on the other. Any differential amounts between the funds raised in a calendar year and the additional expenses incurred under section 21 across this period shall be offset in the following calendar year.

(5) Total revenue from the transfer price for small-scale hydropower minus the product of the quantities generated by supported small-scale hydropower plants and the market price pursuant to section 20 shall not exceed € 85 million.”

“(6) (constitutional provision) The transfer price determined pursuant to para. 3 shall also include a share to be made available to the Federal States for the purpose of supporting new technologies of green electricity generation, save hydropower, sewage sludge, animal meal and spent lye, as well as for the purpose of supporting energy efficiency programmes. The share to be refunded to the Federal States shall amount to € 7 million a year beginning in 2007. The share to be refunded to the Federal States shall be assessed according to the quantities of electricity supplied to end users in the relevant Federal State in a calendar year. Every Federal State shall submit a written report on the use of these funds to the Federal Ministry of Economics and Labour and to Energie-Control GmbH by 30 June of the following year at the latest. In any case this report shall include details on the supported green electricity projects specifying their capacity, technology and annual electricity generation, as well as the supported energy efficiency programmes, including data on the level of support granted.”

“Administering Support Funds

Section 23. (1) The green electricity settlement centre shall open an account for administering the funds (support funds) earmarked for covering the additional expenses pursuant to section 21.

(2) The support funds pursuant to para. 1 shall be raised:
1. from support levies as defined by sections 22 and 22a;
2. from funds generated by green electricity sales pursuant to section 19 in conjunction with section 22b;
3. from the amounts collected under administrative fines imposed pursuant to section 29;
4. through other allocations;
5. from interest accrued on the deposited funds.

(3) The green electricity settlement centre shall be responsible for administering these accounts. It shall deposit the funds under an interest-bearing regime. The Federal Minister of Economics and Labour, Energie-Control GmbH, as well as the consulted experts, shall be permitted to inspect all documents and records at any time.

(4) The green electricity settlement centre shall submit a detailed report to the Advisory Council for Electricity.

(5) The green electricity settlement centre shall transfer every quarter to Energie-Control GmbH the funds for supporting cogeneration installations pursuant to section 13 (support to existing cogeneration installations). The funds for support pursuant to section 12 (investment aid for new cogeneration installations and medium-scale hydropower plants) shall be transferred every quarter to the investment aid settlement agency.”
Chapter 2
Supervisory and Reporting Requirements

Supervision

Section 24. (1) Energie-Control GmbH shall constantly monitor whether the objectives pursuant to section 4 are achieved, and identify developments impeding the achievement of these objectives.

(2) The Federal Minister of Economics and Labour shall be informed without delay of any developments as defined by para. 1.

Reporting

Section 25. (1) Energie-Control GmbH shall submit every year by the end of June to the Federal Minister of Economics and Labour, as well as to the Advisory Council for Electricity, a report analysing to what extent the objectives of this Act have been attained and which changes have taken place as compared to the previous years. The report may include proposals for improving or adapting the support schemes and other regulations of this Act. Moreover, the report shall include the quantities of, as well as the expenses for, electricity from recognised plants using solar, geothermal, wind, wave and tidal energy, biomass, wastes containing a high percentage of biogenous materials, landfill gas, sewage treatment plant gas and biogases (eco-energy installations as well as hybrid and cofiring plants).

(2) The Federal Minister of Economics and Labour shall publish and communicate to the European Commission, in 2003 no later than 27 October 2003, a report which addresses and evaluates the issue areas of “regulatory and non-regulatory barriers to the increase in electricity production from renewable energy sources”, “streamlining and expediting administrative procedures for projects involving renewable energy sources”, “ensuring that the rules governing the support of renewable energy sources are objective, transparent and non-discriminatory and take fully into account the particularities of the various renewable energy source technologies”. In addition, the report shall provide a presentation of the legislative and de facto framework, which shall also include the coordination between the different administrative bodies involved in authorisation procedures, the guidelines for relevant procedures, as well as the activities of authorities or institutions acting as mediators in disputes.

(3) The Federal Minister of Economics and Labour shall submit a report to the National Council once the objectives of this Federal Act, in particular the objectives of section 4 para. 2, are achieved.

Title 5
Ordinances, Obligation to Give Information, Automated Data Exchange, Penal Provisions

Ordinances

Section 26. (1) For the purpose of determining the preconditions necessary for issuing ordinances, the Federal Minister of Economics and Labour may also and in particular consult experts available to the Federal Ministry of Economics and Labour, as well as to Energie-Control GmbH.

(2) Prior to issuing an ordinance under this Federal Act, an enquiry preceding the delivery of an opinion of the Advisory Council for Electricity shall be conducted in which the representatives of the Federal Ministries and entities referred to in section 26 para. 3 of the Energy Regulatory Authorities Act shall be given the opportunity to make their comments.

(3) Unless a later date for their entry into force is set forth, ordinances under this Federal Act shall enter into force with the beginning of the day on which they are promulgated.

Obligation to Give Information

Section 27. (constitutional provision) Electricity undertakings, as well as undertakings involved in the issue of guarantees of origin, shall be obliged to permit the competent authorities to inspect any documents and records at any time, as well as to furnish information on any facts relevant to the respective authority's sphere of competence. This obligation to permit the inspection of records and to furnish information shall apply, without specific cause, even if such records or such information are required in order to clarify, or to prepare the clarification of, facts relevant to decisions in proceedings to be conducted in future.

Automated Data Exchange

Section 28. (1) Any personal data required to conduct proceedings in matters regulated by this Federal Act, which the authority requires to carry out its supervisory function, may be collected and processed by automatic means.

(2) Energie-Control GmbH shall be authorised, in the course of proceedings in matters regulated by this Federal Act, to transmit processed data
1. to the parties and others involved in these proceedings;
2. to any experts consulted in these proceedings;
3. to the members of the Advisory Council for Electricity; however, only to the members appointed pursuant to section 26 para. 3 items 1, 2 and 4 of the Energy Regulatory Authorities Act in matters relating to price determination;
4. to requested or instructed authorities (section 55, AVG).

**General Penal Provisions**

**Section 29.** (1) Unless the act constitutes a criminal offence which is subject to the jurisdiction of a court or to more severe punishment under different administrative penal provisions, whosoever fails to comply with his obligation to give information and permit inspection pursuant to section 27 shall be deemed to have committed an administrative offence and shall be fined up to € 20,000.

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

1. fails to comply with the obligation to issue guarantees of origin pursuant to section 8;
2. fails to comply with his obligations pursuant to section 15;
3. fails to comply with his obligations pursuant to section 19

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

(3) Fines imposed under this Federal Act shall go to the eco-energy account opened pursuant to section 23 by the “green electricity settlement centre”

**Title 6**

**Transitional and Final Provisions**

**Transitional Provisions**

**Section 30.** (constitutional provision) (1) The ordinances issued by the State Governors under section 34 paras. 1 and 3 of the Electricity Act, Federal Law Gazette I no. 143/1998 as amended by Federal Law Gazette I no. 121/2000 shall remain in force in the respective Federal State until the matter has been newly regulated by ordinances under this Federal Act.

(2) Any plants recognised and/or designated, at the time of entry into force of this Federal Act, under legislation implementing the Electricity Act, Federal Law Gazette I no. 143/1998 as amended by Federal Law Gazette I no. 121/2000 sections 40 and 41 shall be deemed to be plants recognised pursuant to section 7.

(3) For old plants

1. the respective legal provisions enacted by 31 July 2002 pursuant to section 34 para. 1 of the Electricity Act as amended by the Federal Act, Federal Law Gazette I no. 121/2000, or
2. the existing legal provisions pursuant to section 66a para. 7 of the Electricity Act, Federal Law Gazette I no. 143/1998 as amended by Federal Law Gazette I no. 121/2000 shall continue to apply.

Inasmuch as these legal provisions do not contain any time limits for granting feed-in tariffs, these tariffs shall continue to apply for ten years beginning with the operation of the plant.

(4) If pursuant to section 11 the prices for green electricity from new plants which obtain the permits necessary for construction by 31 December 2004 and are verifiably constructed by 31 December 2005 are lower than the feed-in tariffs decreed by ordinance by 1 October 2001 in the Federal States under section 34 para. 1 of the Electricity Act, the respective State Governor shall be authorised to issue an ordinance extending the applicability of the minimum prices set pursuant to section 34 para 1 of the Electricity Act and to cover this balance by a surcharge to be set by ordinance by the State Governor which supplements the grid utilisation charge for the whole period of applicability of the increased tariffs for all end users in the respective Federal State. Inasmuch as these ordinances do not contain any time limits for granting feed-in tariffs, the tariffs applicable at the time of taking up operation shall continue to apply for ten years beginning with the operation of the plant. This surcharge on the grid utilisation charge shall be shown separately on the grid utilisation bill.

(5) Until entry into force of this Federal Act, the surcharges collected by grid operators under section 34 paras. 3 and 4 of the Electricity Act, Federal Law Gazette I no. 143/1998 as amended by Federal Law Gazette I no. 121/2000 shall continue to apply for ten years beginning with the operation of the plant. This surcharge on the grid utilisation charge shall be shown separately on the grid utilisation bill.

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217 to enter into force on 24 August 2002 pursuant to section 30 para. 4.
Law Gazette I no. 121/2000 – inasmuch as they have not been used for covering loss of revenue resulting from the obligation to purchase eco-energy – shall be made available to the Federal State for the purpose of promoting new technologies of green electricity generation. Any verifiable additional expenses of grid operators which cannot be borne by the surcharges collected pursuant to section 34 paras. 3 and 4 of the Electricity Act shall have priority in being covered by the funds allocated pursuant to section 22b para. 6.

(6) The Federal States may use the funds made available to them for the purpose of promoting new technologies and energy efficiency programmes pursuant to para. 5, as well as pursuant to section 22b para. 6, also for granting production subsidies to green electricity installations.\(^{218}\)

(7) The second cut-off date for proof of compliance within the meaning of the state legislative provisions implementing section 41, section 43 para. 3 and section 45 para. 2 of the Electricity Act, Federal Law Gazette I no. 143/1998 as amended by Federal Law Gazette I no. 121/2000 shall be 31 December 2002; without prejudice to section 32 para. 4, the state legislative provisions implementing the small-scale hydropower certificate system shall apply to such proof of compliance – and, where applicable, to setting the equalisation levy. The equalisation levy shall be uniformly set at 2.55 Cent per kWh throughout Austria pursuant to the state legislative provisions implementing section 61a of the Electricity Act

1. for those Federal States which fail to fix an equalisation levy by 30 September 2002, as well as
2. in all Federal States for the proof of compliance period beginning on 1 October 2002.

(8) Agreements having as their subject matter
1. electricity supplies from eco-energy installations,
2. electricity supplies from small-scale hydropower plants, or
3. the granting of rights to buy small-scale hydropower certificates or to trade in small-scale hydropower certificates,

shall be adjusted – insofar as required – to this Federal Act. Operators of small-scale hydropower plants who have transferred to third parties, for the useful life of the plant, the right to buy energy produced in these plants, as well as the related certificates, shall only be entitled to a feed-in tariff pursuant to section 11 if the contractual relationship between the small-scale hydropower plant operator and the party entitled to the certificates has been adjusted, by the express consent of both contracting parties, to the new revenue structure of small-scale hydropower plants based on feed-in tariffs pursuant to the Green Electricity Act and on the abolishment of certificate generation as of 1 January 2003, respectively, in such a way as to ensure that the party entitled to buy energy and hold certificates enjoys the economic benefit resulting from the support of small-scale hydropower plants.

(9) “The green electricity settlement centre” \(^{221}\) shall be obliged to submit to Energie-Control GmbH its general terms and conditions within two months of the promulgation of this Federal Act.

(10) The provisions of the Electricity Act shall continue to apply to proceedings concerning administrative offences committed prior to the entry into force of the Federal Act, Federal Law Gazette I no. 149/2002.

**Conclusion of a Contract with Kommunalkredit Public Consulting GmbH**

**Section 30a.** The contract between the Federal Minister of Economics and Labour and Kommunalkredit Public Consulting GmbH on how settlement of investment aid is to be handled content-wise shall be concluded no later than three months after promulgation of section 13c as amended by Federal Law Gazette I no. 105/2006. Unless a contract with Kommunalkredit Public Consulting GmbH is concluded within this period, the Federal Minister of Economics and Labour shall invite tenders for the activity of handling the granting of investment aid.

**Transfer of Rights and Obligations to the Green Electricity Settlement Centre**

**Section 30b.** (1) The green electricity settlement centre shall be the legal successor to the previous eco-balance group representatives (control area managers) and, on the first day of the month following the granting of its licence (section 14b), it shall enter, in lieu of the previous eco-balance group representatives, the previously concluded contracts with green electricity producers, balance group representatives, electricity traders and grid operators based on the general terms and conditions (section 18). This date shall be published without delay by Energie-Control GmbH on the internet at www.e-control.at and in the Official Journal supplementing the Wiener Zeitung. In terms of eco-balance group representatives, the control area managers shall conclude contracts with the green electricity settlement centre on an eco-

\(^{218}\) as amended by Article 1 item 26 of the Federal Act, Federal Law Gazette I no. 105/2006

\(^{219}\) to enter into force on 24 August 2002 pursuant to section 32 para. 1

\(^{220}\) to enter into force on 24 August 2002 pursuant to section 32 para. 1

\(^{221}\) as amended by Article 1 item 30 of the Federal Act, Federal Law Gazette I no. 105/2006
nomic way of handing over the documents necessary for performing its tasks, especially data and databases, as well as other operating resources (IT equipment). Any rights, obligations and authorisations obtained by the control area managers in their function as eco-balance group representatives, shall devolve upon the green electricity settlement centre on the first day of the month following the granting of its licence. More specifically, the control area managers shall hand over to the green electricity settlement centre any excess funds received by them in terms of eco-balance group representatives. Any differential amounts within the meaning of section 22 para. 2 as amended by Federal Law Gazette I no. 149/2002 shall be offset between the green electricity settlement centre and the control area managers. Up until then accounting shall still be made by the control area managers in terms of eco-balance group representatives, and up until then they shall be entitled to receive payment for additional expenses pursuant to section 21.

(2) The transfer of assets, in particular the transfer of assets by the control area managers, to the green electricity settlement centre as stipulated by law shall be exempt from all any and all taxes, charges and fees which are regulated under federal law.

“Transitional Provision Concerning Section 13 Paras. 3 and 4 as Amended by the Federal Act, Federal Law Gazette I no. 105/2006

Section 30c. The procedures concluded for 2003 and 2004, under which support had been granted pursuant to section 13 paras. 3 and 4 as amended by the Federal Act, Federal Law Gazette I no. 149/2002, or under which applications for support in accordance with these provisions had been rejected, shall be resumed at the request of a party pursuant to section 69 of the General Administrative Procedures Act. The application for resumption shall be submitted to the Federal Minister of Economics and Labour within three months of entry into force of this Federal Act (section 32a para. 3). Any support having been granted under provisions applicable at the time of entry into force of this Federal Act shall be credited. In his decision, the Federal Minister of Economics and Labour shall use the criteria specified in section 13 para. 2 of the Green Electricity Act, Federal Law Gazette I no. 149/2002.

“Transitional Provision Concerning Sections 22a and 22b

Section 30d. (constitutional provision) (1) For the period between 1 January 2003 and the date referred to in section 32a para. 4 electricity traders importing green electricity or cogeneration energy and selling such imported green electricity or such imported cogeneration energy to domestic end users, as well as end users importing green electricity or cogeneration energy for their own use, shall be entitled to request refunding of the support levy for small-scale hydropower or for other green electricity with Energie-Control GmbH or refunding of cogeneration surcharges for cogeneration energy with the Federal Minister of Economics and Labour.

(2) Any response to the requests made pursuant to para. 1 shall be given by issuing an official decision. Green electricity refunds shall be paid from the green electricity support funds, cogeneration energy refunds shall be paid from the cogeneration support funds. The funds necessary for such refunding shall be taken into account when setting the transfer price pursuant to sections 19 and 22b. The level of refunding shall be determined by an official decision of the Federal Minister of Economics and Labour (cogeneration surcharges) and of Energie-Control GmbH. The amounts determined by official decision shall be disbursed by the green electricity settlement centre.

(3) The level of refunds accorded to the relevant electricity traders in 2006 shall not exceed 110% of the level of refunds disbursed in 2005. If business years deviate from a calendar year, the level of refunds accorded to the relevant electricity traders shall not exceed, in the business years concluded after the end of 2005, 110% of the refunds disbursed in the relevant previous business year period. Electricity traders not having supplied any electricity to domestic end users may request a refund for green electricity or cogeneration electricity imported in 2006 of no more than 100 GWh. Requests for 2006 may be made only by electricity traders having notified their activity prior to 1 May 2006. The level of refunds accorded in 2006 to the relevant end users importing green electricity or cogeneration energy for their own use shall not exceed 110% of the level of refunds accorded in 2005. If business years deviate from a calendar year, the level of refunds accorded to the relevant end users shall not exceed, in the business years concluded after the end of 2005, 110% of the refunds disbursed in the relevant previous business year period.

(4) Entitlement to refunding of the support levy for electricity from small-scale hydropower plants or other green electricity, or refunding of cogeneration surcharges, shall only apply provided:

1. that the completed request is filed within one month after the date specified in section 32a para. 4,


2. that the guarantees of origin in accordance with Directives 2003/54/EC or 2004/8/EC are enclosed with the request;
3. that the guarantees of origin are confirmed and deleted by the competent body of the country of origin and any documentation thereof is enclosed with the request, and
4. that, in the case of electricity traders, the guarantees of origin were verifiably and explicitly used as guarantees of origin for electricity labelling documentation pursuant to sections 45 and 45a of the Electricity Act within the relevant period of time, with such use being certified by the chartered accountant entrusted with certifying the documentation pursuant to section 45a para. 6, and with this certification being enclosed with the request;
5. that, in the case of end users importing for their own use electricity from small-scale hydropower plants or other green electricity or cogeneration energy, the guarantees of origin were verifiably available no later than three months after the end of the relevant business or calendar year.

(5) The level of refunds per kWh, as specified by the support levy ordinances for 2003 to 2006, shall amount for imported other green electricity to 0.12 Cent per kWh for the period from 1 January 2003 to 31 March 2004, to 0.183 Cent per kWh for the period from 1 April 2004 to 31 December 2004, to 0.242 Cent per kWh for the period from 1 January 2005 to 31 December 2005, and to 0.416 Cent per kWh for 2006. The level of refunds per kWh, as specified by the support levy ordinances for 2003 to 2006, shall amount for imported green electricity from hydropower plants to 0.005 Cent per kWh for the period from 1 January 2003 to 31 March 2004, to 0.035 Cent per kWh for the period from 1 April 2004 to 31 December 2004, to 0.002 Cent per kWh for the period from 1 January 2005 to 31 December 2005, and to 0.000 Cent per kWh for 2006. The level of refunds for cogeneration energy shall amount to 0.15 Cent per kWh for 2003 and 2004, to 0.13 Cent per kWh for 2005 and to 0.07 Cent per kWh for 2006.

(6) If the contracts concluded between electricity traders and end users are based on a transfer price other than the one set under section 22b of the Green Electricity Act as amended by the 2006 Amendment to the Green Electricity Act, Federal Law Gazette I no. 105/2006, and if this price according to such contracts cannot be adjusted to the legally defined transfer price, electricity traders shall be entitled to pass on directly to end users any cost changes resulting from this Act because of new transfer prices set under section 22b of the Green Electricity Act. End users who are consumers within the meaning of the Consumer Protection Act shall be free to terminate the contract for this reason within an appropriate period of time after announcement of such price adjustment.”

Final Provisions

Section 31. (1) Insofar as reference is made in this Federal Act to provisions of other Federal Acts or to instruments of Community law, such provisions shall apply as amended.

(2) Operators of recognised plants using renewable energy sources shall be entitled to issue tradable certificates which may be used in another EU Member State, in a state party to the EEA Agreement or in a third country.

Entry into Force and Repeal of Legal Provisions

Section 32. (1) (constitutional provision) Section 1 and section 30 paras. 4, 7 and 8 shall enter into force on the day following promulgation.

(2) Sections 2, 4 to 7, 14 and 18 shall enter into force on the day following promulgation.

(3) Any other provisions of this Federal Act shall enter into force on 1 January 2003.

(4) Ordinances and decisions under this Federal Act may be issued prior to the dates mentioned in paras. 1 and 2, but will become effective only on the date when the provisions to which these acts refer enter into force.

(5) (constitutional provision) Insofar as the Electricity Act, last amended by Federal Law Gazette I no. 121/2000, the respective implementing legislation adopted by the Federal States, as well as the Federal Act concerning the tasks of regulatory authorities in the electricity and natural gas sector and the establishment of Energie-Control GmbH and Energie-Control Kommission, Federal Law Gazette I no. 121/2000, contain provisions at variance with the provisions of this Federal Act, these provisions shall be repealed subject to paras. 1 and 2.

“Entry into Force of the 2006 Amendment to the Green Electricity Act

Section 32a. (constitutional provision) (1) Sections 14, 14a to 14e and 30b as amended by the Federal Act, Federal Law Gazette I no. 105/2006, shall enter into force on 1 July 2006.

(2) Section 10 item 5 shall enter into force on the day following promulgation.
(3) Any other provisions shall enter into force three months after the date specified in para. 1.

(4) Sections 22a and 22b shall enter into force on 1 January 2007.”

“Entry into force of the 2007 Amendment to the Green Electricity Act”

“Section 32b. (1) (constitutional provision) Section 1 as amended by the Federal Act, Federal Law Gazette I no. xxx/2007 shall enter into force on 1 January 2007.”

“(2) Section 22b paras 1 and 1a as amended by the Federal Act, Federal Law Gazette I no. xxx/2007, shall enter into force on 1 January 2007. Section 5 para. 1 item 23 shall enter into force on 1 July 2006.”

Execution

Section 33. The responsibility for executing this Federal Act shall lie:

1. (constitutional provision) with the Federal Government regarding section 1, section 13 para. 10, section 15 para. 3, section 22 para. 3 and sections 4, 27, 30, section 31 para. 1, and section 32 para. 4;

2. with the Federal Minister of Economics and Labour in agreement with the Federal Minister for Agriculture and Forestry, the Environment and Water Management regarding section 11 para. 1, section 19 para. 2 and section 22 para. 2;

3. with the Federal Minister of Economics and Labour in all other cases.

Annex to section 5 para. 1 item 5

“Annex 1

Wastes containing a high percentage of biogenous materials pursuant to section 5 para. 1 item 1

Wastes containing a high percentage of biogenous materials shall be the types of waste listed in Tables 1 and (with the mentioned restrictions) Table 2, defined by the assigned five-digit code number and, where applicable, by an additional two-digit specification pursuant to Annex 5 of the Austrian waste catalogue ordinance. Components of waste types not mentioned in Tables 1 and 2 shall not be deemed to be wastes containing a high percentage of biogenous materials, nor shall they be deemed to be biomass.

Table 1: Wastes containing a high percentage of biogenous materials

<table>
<thead>
<tr>
<th>Code number and specification</th>
<th>Designation of waste and specification</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>waste from vegetable and animal fat products</td>
</tr>
<tr>
<td>123</td>
<td>waste from the production of vegetable and animal fats and waxes</td>
</tr>
<tr>
<td>12301</td>
<td>waxes</td>
</tr>
<tr>
<td>125</td>
<td>emulsions and mixtures with vegetable and animal fat products</td>
</tr>
<tr>
<td>12501</td>
<td>contents of grease traps</td>
</tr>
<tr>
<td>12503</td>
<td>oil, fat, wax emulsions</td>
</tr>
<tr>
<td>17</td>
<td>wood waste</td>
</tr>
<tr>
<td>171</td>
<td>waste from wood working and manufacturing</td>
</tr>
<tr>
<td>17104</td>
<td>wood sanding dust, grits and grinds</td>
</tr>
<tr>
<td>17104 01</td>
<td>wood sanding dust, grits and grinds – (from) treated wood</td>
</tr>
</tbody>
</table>
| 17104 02                     | wood sanding dust, grits and grinds – (from) wood that has verifiably been treated only mechani-

<table>
<thead>
<tr>
<th>Code number and specification</th>
<th>Designation of waste and specification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>callly</td>
</tr>
<tr>
<td>17104 03</td>
<td>Wood sanding dust, grits and grinds – (from) treated wood, free from any harmful substances</td>
</tr>
<tr>
<td>17114</td>
<td>dust, grits and grinds from particle board production</td>
</tr>
<tr>
<td>17115</td>
<td>particle board waste</td>
</tr>
<tr>
<td>17202</td>
<td>structural timber and timber from demolished buildings ¹)</td>
</tr>
<tr>
<td>17202 01</td>
<td>structural timber and timber from demolished buildings –(from) treated wood</td>
</tr>
<tr>
<td>17202 02</td>
<td>structural timber and timber from demolished buildings –(from) wood that has verifiably been treated only mechanically</td>
</tr>
<tr>
<td>17202 03</td>
<td>structural timber and timber from demolished buildings – (from) treated wood, free from any harmful substances</td>
</tr>
<tr>
<td>17207</td>
<td>railway sleepers</td>
</tr>
<tr>
<td>17209</td>
<td>tar oil-impregnated wood (e.g. poles and masts)</td>
</tr>
<tr>
<td>17209 99</td>
<td>tar oil-impregnated wood (e.g. poles and masts) – if proved to be non-hazardous</td>
</tr>
<tr>
<td>18</td>
<td>cellulose, paper and cardboard waste</td>
</tr>
<tr>
<td>18401</td>
<td>papermaking residue (rejects) without recycling paper</td>
</tr>
<tr>
<td>18702</td>
<td>coated paper and cardboard</td>
</tr>
<tr>
<td>19</td>
<td>other wastes from processing and refining animal and plant products</td>
</tr>
<tr>
<td>19909</td>
<td>boiling pan residue (soap production)</td>
</tr>
<tr>
<td>94</td>
<td>wastes from water and sewage treatment, or the utilisation of bodies of water</td>
</tr>
<tr>
<td>94705</td>
<td>grease trap contents</td>
</tr>
<tr>
<td>94902</td>
<td>waste from the utilisation of bodies of water</td>
</tr>
<tr>
<td>94902</td>
<td>residues from rakes of power plants</td>
</tr>
</tbody>
</table>

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

Notes to Table 1:
The solids content of the wastes referred to above primarily consists of (i.e. 90% and more) organic carbon. We may distinguish between three groups of waste:

Group 1:
The following wastes are derived directly, or indirectly (in the form of cellulose or lignin), from wood, the oldest biofuel:
17104 (with specification where applicable), 17114, 17115, 17202 (with specification where applicable), 17207, 17209 (with specification where applicable), 1840, 94902

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

Group 2:
The below wastes are essentially derived from animal and vegetable fats. The carbon content is of biological origin and is mainly present in the form of glycerides and fatty acids. The calorific value of the organic matter is thus very high (roughly 30 MJ per kg)

12301, 12501, 12503, 19909, 94705

Group 3:
The below wastes are a mixture between Group 1 waste and synthetic polymers (PE, etc.), or metals (Al), respectively. Although the specific calorific value of the non-biological substances is higher than that of the biological substances, the calorific value of the biological substances in the mixture is far beyond 50% (the calorific value of PE is roughly twice as high as that of paper, but this plastics content is usually below 25%).

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**Table 2: Wastes containing a high percentage of biogenous materials, insofar as a biological utilisation is neither possible nor preferable**

<table>
<thead>
<tr>
<th>Code number specification</th>
<th>Designation of waste</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>food, beverages, stimulants and tobacco wastes</td>
</tr>
<tr>
<td>111</td>
<td>waste from food production</td>
</tr>
<tr>
<td>11102</td>
<td>food beyond expiry date</td>
</tr>
<tr>
<td>11103</td>
<td>glumes, glume and grain dust</td>
</tr>
<tr>
<td>11104</td>
<td>spice residue</td>
</tr>
<tr>
<td>11110</td>
<td>Molasses</td>
</tr>
<tr>
<td>11111</td>
<td>Dough</td>
</tr>
<tr>
<td>11112</td>
<td>beet chips, beet tails</td>
</tr>
<tr>
<td>114</td>
<td>waste from the production of beverages, stimulants and tobacco</td>
</tr>
<tr>
<td>11401</td>
<td>beverages, stimulants and tobacco beyond expiry date</td>
</tr>
<tr>
<td>11402</td>
<td>tobacco dust, tobacco soot, tobacco ribs</td>
</tr>
<tr>
<td>11404</td>
<td>spent malt, malt sprouts, malt dust</td>
</tr>
<tr>
<td>11405</td>
<td>spent hops</td>
</tr>
<tr>
<td>11406</td>
<td>barley floaters and skimmings</td>
</tr>
<tr>
<td>11415</td>
<td>Marc</td>
</tr>
<tr>
<td>11416</td>
<td>coffee production residue (e.g. roasting and extraction residue)</td>
</tr>
<tr>
<td>11417</td>
<td>tea production residue</td>
</tr>
<tr>
<td>11418</td>
<td>cocoa production residue</td>
</tr>
<tr>
<td>11419</td>
<td>yeast and yeast-like residue</td>
</tr>
<tr>
<td>11423</td>
<td>residue and waste from fruit juice production</td>
</tr>
<tr>
<td>117</td>
<td>waste from fodder production</td>
</tr>
<tr>
<td>11701</td>
<td>Fodder</td>
</tr>
<tr>
<td>11702</td>
<td>fodder beyond expiry date</td>
</tr>
<tr>
<td>12</td>
<td>waste from vegetable and animal fat products</td>
</tr>
<tr>
<td>121</td>
<td>waste from the production of vegetable and animal oils</td>
</tr>
<tr>
<td>12101</td>
<td>oil seed residue</td>
</tr>
<tr>
<td>12102</td>
<td>spoilt vegetable oils</td>
</tr>
<tr>
<td>Code number and specification</td>
<td>Designation of waste</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>123</td>
<td>waste from the production of vegetable and animal fats and waxes</td>
</tr>
<tr>
<td>12302</td>
<td>fats (e.g. deep frying oils)</td>
</tr>
<tr>
<td>127</td>
<td>sludge from the production of vegetable and animal fats</td>
</tr>
<tr>
<td>12702</td>
<td>sludge from the production of edible fat</td>
</tr>
<tr>
<td>12703</td>
<td>sludge from the production of edible oil</td>
</tr>
<tr>
<td>12704</td>
<td>separator slime</td>
</tr>
<tr>
<td>129</td>
<td>refining residue from the processing of vegetable and animal fats</td>
</tr>
<tr>
<td>12901</td>
<td>oily bleaching clay</td>
</tr>
<tr>
<td>17</td>
<td>wood wastes</td>
</tr>
<tr>
<td>171</td>
<td>waste from wood working and manufacturing</td>
</tr>
<tr>
<td>17101</td>
<td>Bark</td>
</tr>
<tr>
<td>17102</td>
<td>pieces, splinters of untreated, clean, uncoated wood</td>
</tr>
<tr>
<td>17103</td>
<td>sawdust and chips of untreated, clean, uncoated wood</td>
</tr>
<tr>
<td>172</td>
<td>wood waste from use</td>
</tr>
<tr>
<td>17201</td>
<td>wood packing and waste wood, uncontaminated</td>
</tr>
<tr>
<td>17201 01</td>
<td>wood packing and waste wood, uncontaminated – (from) treated wood</td>
</tr>
<tr>
<td>17201 02</td>
<td>wood packing and waste wood, uncontaminated – (from) wood that has verifiably been treated only mechanically</td>
</tr>
<tr>
<td>17201 03</td>
<td>wood packing and waste wood, uncontaminated – (from) treated wood, free from any harmful substances</td>
</tr>
<tr>
<td>17203</td>
<td>wood wool, uncontaminated</td>
</tr>
<tr>
<td>18</td>
<td>cellulose, paper and cardboard waste</td>
</tr>
<tr>
<td>181</td>
<td>waste from woodpulp production</td>
</tr>
<tr>
<td>18101</td>
<td>residue from woodpulp production (rejects and trash)</td>
</tr>
<tr>
<td>19</td>
<td>other waste from the processing and refining of animal and plant products</td>
</tr>
<tr>
<td>199</td>
<td>other waste from the processing and refining of animal and plant products</td>
</tr>
<tr>
<td>19901</td>
<td>starch sludge</td>
</tr>
<tr>
<td>19903</td>
<td>waste gelatine</td>
</tr>
<tr>
<td>19904</td>
<td>residue in potato starch production</td>
</tr>
<tr>
<td>19905</td>
<td>residue in maize starch production</td>
</tr>
<tr>
<td>19906</td>
<td>residue in rice starch production</td>
</tr>
<tr>
<td>19911</td>
<td>waste intestines from processing</td>
</tr>
<tr>
<td>53</td>
<td>waste from botanical plant treatment substances and insecticides, as well as from pharmaceutical products and disinfectants</td>
</tr>
<tr>
<td>535</td>
<td>waste from pharmaceutical products</td>
</tr>
<tr>
<td>53504</td>
<td>marc of medicinal plants</td>
</tr>
<tr>
<td>91</td>
<td>solid residential waste including similar business and industrial waste</td>
</tr>
<tr>
<td>916</td>
<td>waste from markets</td>
</tr>
<tr>
<td>91601</td>
<td>waste from food markets</td>
</tr>
<tr>
<td>917</td>
<td>green waste</td>
</tr>
<tr>
<td>Code number and specification</td>
<td>Designation of waste</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>91701</td>
<td>garden and park waste, as well as other biogenous waste that does not meet the requirements of the compost ordinance as currently amended</td>
</tr>
<tr>
<td>94</td>
<td>waste from water treatment, waste water treatment and utilisation of bodies of water</td>
</tr>
<tr>
<td>949</td>
<td>waste from the utilisation of bodies of water</td>
</tr>
<tr>
<td>94901</td>
<td>residue from cleaning waters (such as residue generated when sweeping, mowing and fishing out brooks)</td>
</tr>
</tbody>
</table>

**Notes to Table 2:**

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

**Group 1:**

“Native” biological matter, i.e. plants and their parts (including extraction residue) and animal tissues in their natural composition. The solids content consists primarily of biologically fixed carbon in the form of cellulose/lignin (cell wall, storage body), protein and glycerides (cellular membrane, storage body). The “anthropogenic” content is insubstantial (only in the form of contamination)

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

**Group 2:**

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

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

**Group 3:**

Processing residue having a higher inorganic content but whose organic content is of entirely biogenous origin.

12901^229

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229 The entire Annex to section 5 para. 1 item 5 is worded as amended by Article 1 item 29a of the Federal Act, Federal Law Gazette I no. 105/2006
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230 Meanwhile, the Directive of the European Parliament and Council of 26 June 2003 on common regulations for the internal market in natural gas and on the annulment of Directive 98/30/EC has been passed and promulgated in OJ L 176 of 15 July 2003, p. 57. Implementation was not necessary.
231 Entry into force see Section 78b. Except where a special note is included in the footnote to the amended provision, the provisions of the Federal Act, Federal Law Gazette I no. 106/2006 shall enter into force after 27 June 2006.
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232 Due to a legistic error, the heading number and heading were not included in the table of contents: “Part 3a / Producers”.

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233 Due to a legistic error, the heading “Authorities” was not included in the table of contents.
234 Due to a legistic error, the heading “Proceedings” was not included in the table of contents.
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Title 1
Principles

“Constitutional Provision

“Section 1. (constitutional provision) The matters regulated in this federal law may be discharged directly by the institutions provided for in these provisions.”

Implementation of Community Law

Section 1 “a”. This Act implements

Scope of Application

Section 2. (1) The purpose of this Federal Act is
“1. to enact provisions on the transmission, distribution, supply, purchase and sale of natural gas, including access to the system for customers and access to storage for producers, natural gas traders and suppliers domiciled in the European Union”;
2. to regulate the system utilisation charge and provide rules on accounting, internal organisation, divestment and transparency of bookkeeping by natural gas undertakings;
3. to provide for other rights and obligations of “natural gas undertakings” as well as
4. to regulate the construction, extension, alteration and operation of natural gas pipeline systems, unless otherwise provided in para. 2.

(2) The scope of application of this Federal Act shall not extend
1. to activities requiring a production permit or a storage licence pursuant to the provisions of the Minerals Act, Federal Law Gazette I no. 38/1999;
2. to natural gas pipeline systems which form part of an industrial production plant and which are located within its premises; or
3. to the construction or operation of natural gas pipeline systems beginning at the end of the service connection branch.”

“Objectives

Section 3. The objective of this Federal Act is:
1. to ensure the environmentally sound, cost-effective and secure supply, at high quality, of the Austrian population and of Austrian industry with a sufficient quantity of natural gas, as well as

237 as amended by Article 1 item 2 of the Federal Act, Federal Law Gazette I no. 148/2002
241 as amended by Article 1 item 2b of the Federal Act, Federal Law Gazette I no. 148/2002
the efficient utilisation of this natural gas, including, without limitations, in generating electricity and heat;
2. to create a market organisation for the natural gas sector in accordance with EU primary law and with the principles of the internal market in natural gas as provided in the Gas Directive;
3. to ensure reasonable distribution of the system cost among system users by introducing tariffs for the system utilisation charge and a cost reallocation procedure;
4. to offset public service obligations, imposed upon natural gas undertakings in the general economic interest, relating to the security – including the security of supply –, the regularity, the quality and the price of supplies, as well as to environmental and climate protection;
5. to set up the groundwork for an increasing utilisation of the potential of biogenic gas for Austrian gas supply.”

“Public Service Obligations”

“Section 4. (1) The following public service obligations shall be imposed upon system operators in the general economic interest:
1. to grant equal treatment to all customers of a system, given equal characteristics of the transport service to be rendered;
2. to conclude private-law contracts with end users, providing for the latter’s connection to their natural gas pipeline system (general obligation to connect);
3. to set up and maintain a suitable infrastructure to ensure domestic natural gas supply and the performance of obligations under public international law.
(2) Owners of transport rights shall perform their function in accordance with the provisions of the Competition Law.
(3) The following public service obligations shall be imposed on natural gas undertakings in the general economic interest:
1. to attain, with the means available to them, the objectives referred to in para. 3 items 1 and 2;
2. to perform the obligations imposed upon them by law in the general economic interest.
(2) Natural gas undertakings shall endeavour to perform the obligations imposed upon them in the general economic interest pursuant to paras 1 to 3 to the best of their ability.”

Principles Regarding the Operation of Natural Gas Undertakings

“Definitions

Section 5. Natural gas undertakings shall act as customer- and competition-oriented providers of energy services according to the principles of secure, cost-effective, environmentally sound and efficient supply of the services demanded and of a competitive natural gas market. They shall adopt these principles as company objectives.

“Definitions

Section 6. For the purposes of this Federal Act,
1. “balancing energy” shall mean the difference between supply and sale of a balance group for each defined metering period, where the energy per metering period may be either metered directly or determined by computation;
2. “balance group” shall mean the combination of suppliers and customers in a virtual group within which incoming energy and outgoing energy are balanced,
3. “balance group coordinator”, aka “clearing and settlement agent”, shall mean the operator of a clearing and settlement agency;
4. “balance group representative” shall mean the natural or legal person who represents the members of a balance group and is responsible vis-à-vis other market participants and the balance group coordinator;
5. „direct line” shall mean a natural gas pipeline complementary to the interconnected system;
6. “third-party states” shall mean states which have not acceded to the Agreement on the European Economic Area or which are not members of the European Union;
7. “injecting party” shall mean any producer of biogenic gas, any producer of natural gas, any natural gas undertaking or any storage undertaking which feeds natural gas into the system;
8. “end user” shall mean a consumer purchasing natural gas for own use;
9. “withdrawing party” shall mean a end user, a storage undertaking or a system operator taking natural gas from the system;
10. “natural gas trader” shall mean a natural or legal person buying and selling natural gas without carrying out the function of transmission or distribution within or outside the system in which such natural gas trader is established;
11. “natural gas pipeline system” shall mean an installation constructed or operated for the purpose of transmitting or distributing natural gas via pipelines or a system of pipelines, or as a system of direct lines, but shall not include upstream pipeline networks (item 65); the term “natural gas pipeline system” shall in particular include compressor stations, pig traps, gate valves, metering stations and gas pressure regulator stations;
12. “natural gas supplier” shall mean a natural or legal person supplying natural gas;
13. “natural gas undertaking” shall mean any natural or legal person carrying out, with a view to profit, at least one of the following functions: transmission, distribution, supply, sale, purchase or storage of natural gas, including liquefied natural gas, or performance of hub services, and which is responsible for the commercial, technical and/or maintenance tasks related to such functions, excluding end users; undertakings within the meaning of items 20, 43 and 48 shall be deemed to be natural gas undertakings;
14. “schedule” shall mean the document specifying the energy (kWh per time unit) exchanged between balance groups commercially or across control area boundaries within a constant time pattern (metering periods);
15. “transmission line” shall mean any facility for the purpose of transporting natural gas via high-pressure lines or via a high-pressure system which is also intended for cross-border transport or for transportation to other transmission or distribution undertakings;
16. “transmission undertaking” shall mean any natural or legal person which operates a transmission line and has been issued a licence pursuant to section 13 or which, pursuant to section 76, does not require a licence under section 13;
17. “cross-border transport” shall mean the transport of natural gas into a destination state even when the natural gas is interim-stored in Austria;
18. “service connection branch” shall mean that part of the distribution system which connects the distribution system with the customer’s facilities; the service connection branch commences at the point of connection to the system (item 30) of the distribution system existing at the date of the contract to provide a connection, and it terminates at the main shutoff valve or – if available – the house pressure controller. A house pressure controller, if available in the end user’s system, shall be part of the service connection branch;
18a. “house pressure controller” shall mean a pressure controller owned by the system operator which has a pressure control range ranging from an input side excess pressure >0.5 bar (0.05 Mpa) and ≤ 6 bar (0.6 Mpa) to an output side excess pressure ≤ 0.5 bar (0.05 Mpa), except when the pressure controller is part of a commercial facility;
19. “horizontally integrated natural gas undertaking” shall mean a natural gas undertaking performing at least one of the functions of transmission, distribution, supply, sale, purchase or storage of natural gas, as well as another non-gas activity;
19a. “hub” shall mean a gas pipeline node where logistic and/or commercial hub services are rendered;
20. “owner of transport rights” shall mean a natural gas undertaking which has the sole right to transport natural gas or to enter into contracts on the transport of natural gas with regard to a transmission line;
21. “integrated natural gas undertaking” shall mean a vertically or horizontally integrated natural gas undertaking;
21a. “commercial hub services” shall mean services in support of natural gas trading transactions such as, without limitations, title tracking (the tracing of transfers of title to natural gas in commercial deals);
22. “cost reallocation” shall mean a calculation method used to apportion, on a pro-rata base, to a group of consumers the costs of all system levels above the connection level;
23. “customers” shall mean the end users, natural gas traders and natural gas undertakings which purchase natural gas;
24. “long-term planning” shall mean the long-term planning of the supply and transportation capacity of natural gas undertakings with a view to covering the system’s natural gas requirements, to diversifying sources and to ensuring the supply of customers with natural gas;
25. “load profile” shall mean a quantity drawn by a withdrawing party or delivered by an injecting party, shown in time intervals;
26. “supplier” shall mean a natural or legal person supplying natural gas;
26a. “logistic hub services” shall mean storage and transport services rendered at the hub;
27. “market rules” shall mean the sum total of all legal or contractual rules, regulations and provisions which natural gas market participants must comply with in order to facilitate and guarantee the proper functioning of this market;
28. “market participants” shall mean balance group representatives, balance group members, natural gas suppliers, natural gas traders, producers, system users, customers, end users, natural gas exchanges, balance group coordinators, transmission undertakings and distribution undertakings, control area managers and storage undertakings, owners of transport rights and hub services;
29. “system” shall mean any transmission or distribution system owned and/or operated by a natural gas undertaking, including any facilities of this undertaking which are used to provide ancillary services (such as control and metering equipment), as well as any facilities of affiliated undertakings which are required for access to transmission and distribution facilities;
30. “point of connection” shall mean a technically feasible point in the system existing at the date of the contract to provide a connection which is technically suitable for withdrawal or injection of natural gas, with due regard to the economic interests of the system user;
31. “system user” shall mean any natural or legal person supplying to, or being supplied by, the system;
32. “system area” shall mean any part of the system for the use of which the same rates apply;
33. “system operator” shall mean any transmission or distribution undertaking;
34. “system level” shall mean a section of the system mainly defined by its pressure level;
35. “system access” shall mean the use of a system by customers, producers of biogenic gas and producers of natural gas;
36. “party entitled to system access” shall mean any customers, producers of biogenic gas entitled to access to the system, and producers of natural gas entitled to access to the system, as well as system operators and control area managers to the extent required to fulfill their responsibilities;
37. “system access contract” shall mean the individual agreement made between the party entitled to system access and a system operator in accordance with section 17, regulating connection to and utilisation of the system;
38. “admission to the system” shall mean the initial provision of system access or the change of capacity for an existing system access;
40. “producer” shall mean a legal or natural person or commercial operation extracting natural gas;
41. “technical rules” shall mean any technical rules containing principles derived from scientific studies or from technological experience which are generally considered to be correct and expedient in practice; compliance with the technical rules shall be assumed if the rules of the Austrian Association for the Gas and Water Industry as well as the relevant Austrian standards are complied with;
42. “control area” shall mean the spatial arrangement of the system formed from transmission lines and distribution lines with throughput and pressure control and maintenance and associated storage facilities in the form of geographical areas with due regard to existing system structures to the extent they are dedicated to domestic supply;
43. “control area manager” shall mean the person responsible for pressure regulation (control) in a given control area, which function may also be carried out by an undertaking domiciled in another member state of the European Union;
44. “compensatory energy” shall mean the energy required for the short-term compensation of pressure variations in the system which occur in a given interval;
45. “security” shall mean both security of supply and provision of natural gas, operating safety and technical safety;

46. “other market rules” shall mean that part of the market rules and arrangements which are established under section 9 para. 1 item 1 of the Federal Act concerning the tasks of regulatory authorities in the electricity and natural gas sector and the establishment of Energie-Control GmbH and Energie-Control Kommission (Energy Regulatory Authorities Act – E-RBG) as amended by Federal Act, Federal Law Gazette I no. 148/2002, and which applies due to legal instructions by way of the approved general terms and conditions;

46a. “other transports” shall mean transports from the injection points of the control zone to storage facilities and transports from production or storage facilities to withdrawal points of the control zone;

47. “storage facility” shall mean a facility used for storing natural gas, owned and/or operated by a natural gas undertaking, excluding any parts used for activities pursuant to the Mineralrohstoffgesetz;

48. “storage undertaking” shall mean any natural or legal person that manages storage facilities;

49. “party entitled to storage access” shall mean producers, natural gas traders and suppliers domiciled in the European Union;

50. “state of the art” shall mean the state of tried and tested advanced technological processes, facilities and operating methods based on the relevant scientific findings; any evaluation of the state of the art shall primarily be based on comparable processes, facilities and operating methods;

51. “standardised load profile” shall mean a characteristic load profile of a certain group of injecting or withdrawing parties which has been drawn up by a suitable procedure;

52. “charge for system use” shall mean the charge payable for transports by domestic end users;

53. “affiliated natural gas undertaking” shall mean
   a) an affiliated undertaking pursuant to section 228 para. 3 of the Commercial Code;
   b) an associated undertaking pursuant to section 263 para. 1 of the Commercial Code; or
   c) any constellation in which the shareholders of two undertakings are identical;

54. “interconnected system” shall mean a number of systems which are linked with each other;

55. “available line capacity” shall mean the difference between the maximum technical capacity of the transmission or distribution line and the actual throughput at a given time at the injection and withdrawal points of the natural gas line;

56. “clearing and settlement agency for transactions and pricing of balancing energy” shall mean an agency that calculates the balancing energy for each system operator and market participant based on the data made available by system operators and market participants and which handles the organisational and settlement administration for the balance groups;

57. “supplier” shall mean a natural or legal person handling the supply;

58. “supply” shall mean the delivery or sale of natural gas, including liquefied natural gas, to customers;

59. “area of distribution” shall mean a delimitable geographic area which is covered by a distribution system;

60. “distribution lines” shall mean pipelines which are mainly or solely used for the transportation of natural gas with a view to supplying it directly to customers;

61. “distribution undertaking” shall mean any natural or legal person carrying out the function of distribution;

62. “distribution” shall mean the transport of natural gas via local or regional distribution pipeline systems with a view to supplying customers, excepting the supply;

63. “vertically integrated natural gas undertaking” shall mean an undertaking or group of undertakings whose mutual relations are founded on rights, contracts or other means that individually or collectively and with due regard to all actual and legal circumstances enable it to have a controlling influence on an undertaking’s activities, especially through:
   a) ownership or usufructuary rights in all or parts of the undertaking’s assets,
   b) rights or contracts granting a controlling influence on the composition, deliberations or decision-making of the undertaking’s bodies, where the undertaking or group of undertakings performs at least one of the functions of transmission, distribution or storage and at least one of the functions of production or supply of natural gas;
64. “management of natural gas storage facilities” shall mean the conclusion of contracts with third parties for making storage capacity available, including injection and withdrawal rates;

65. “upstream pipeline network” shall mean any pipeline or system of pipelines operated or constructed as part of a gas production or storage project, or used to convey natural gas from one or more such projects to a processing plant or terminal; the term “upstream pipeline network” shall also include storage stations;

66. “destination country” shall mean a European Union member state or signatory state of the European Economic Area not included in the scope of this Federal Act which is the destination of the natural gas delivery for which a transport service has been applied.”

Title 2

“Accounting, Internal Organisation, Divestment and Transparency of Bookkeeping by Natural Gas Undertakings”

Accounting

Section 7. (1) Natural gas undertakings having their seat in Austria, regardless of ownership and type of company, shall prepare annual accounts, 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 whether the obligation to avoid abusive cross-subsidies pursuant to para. 4 is observed.” Annual accounts shall be prepared, audited and published in accordance with the provisions of the Accounting Act. Natural gas undertakings which are not obliged by law to publish their annual accounts shall keep a copy of these at the disposal of the public at their head office.

“(2) System operators and holder of transport rights furthermore shall be independent, in terms of the legal form, organisation and decision-making authority, of the activities of supply, sales, provision with and production of natural gas of integrated natural gas undertakings. Energie-Control Kommission may furthermore permit, through issuing an ordinance or decree, the joint operation of networks for natural gas, electric energy and other line-bound sectors in a single company (combination network operators) and the pursuit of other activities for as long as such activities do not restrict the system operators in their independence. The simultaneous operation of a transmission network and a distribution network and the operation and administration of a storage facility shall be approved provided that the criteria provided in para. 3 are met. These provisions shall not establish any obligation to make a division in terms of ownership of the vertically integrated company in network assets.”

“(3) The system operators shall be ensured in their independence on the basis of the following criteria:

a) in a vertically integrated natural gas undertaking, the persons responsible for the activities of a system operator or transport rights administrator shall not be part of operational departments which are directly or indirectly responsible for ongoing operations in the fields of natural gas production, purchase or supply;

b) provision must be made to ensure that the personal interests of the persons responsible for the activities of a system operator or holder of transport rights shall be taken into account so that their independence in taking action is ensured;

c) with regard to assets required for operation, maintenance or extension of the system, the system operator (holder of transport rights) shall have actual decision-making authority which it exercises independently of the integrated natural gas undertaking. This shall not be contrary to suitable co-ordination mechanisms that ensure that the economic needs of the parent undertaking and its supervisory rights over the management with regard to a subsidiary’s profitability are protected. This shall, without limitation, enable the parent undertaking to approve the annual budget or similar instrument of the system operator and determine general limits for the debt undertaken by its subsidiary. Any instructions regarding ongoing operation or specific decisions regarding the construction or modernisation of lines that do not exceed the frame of the approved budget or similar instrument shall not be permissible;

d) the system operator (holder of transport rights) shall develop an equality of treatment programme that specifies the measures to be taken to prevent discriminatory behaviour. The programme shall identify the special obligations incumbent upon the employees to achieve this
objective. The management of the integrated natural gas undertaking to which the system operator or holder of transport rights belongs shall appoint an equality of treatment expert who is responsible for developing the said programme and monitoring its observance and who reports to the management. This expert shall submit to Energie-Control GmbH an annual report on measures taken, which report shall be published.”

“(4) Para. 2 shall apply only to such integrated natural gas undertakings as operate a system of more than 50,000 service connection branches prior to 1 October 2002 or as operate a transmission line. Integrated natural gas undertakings shall be obliged, within the scope of their internal bookkeeping, to

1. keep separate accounts within separate accounting systems for their transmission, distribution and storage activities, as well as

2. keep consolidated accounts for any non-gas activities (item 1).

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

“(5) The annual accounts shall indicate in its annex any transaction with a performance, consideration or other economic advantage exceeding the value of one million euro carried out with affiliated undertakings (section 6 item 53). If the subject of a transaction consists of several parts for each of which a separate transaction is concluded, the value of each partial transaction shall be considered in calculating the threshold.”

Title 3

Right to Obtain Information and to Inspect Records; Business and Trade Secrets; Notification Requirements

“Right to Obtain Information and to Inspect Records

Section 8. Natural gas undertakings shall be obliged at any time to grant the authorities, including Energie-Control GmbH and Energie-Control Kommission, the right to inspect their records, and to disclose information on all matters relevant to the duties of such authorities imposed on them under sections 10 and 16a Energy Regulatory Authorities Act E-RBG or ordered on behalf of Energie-Control Kommission for audits within the scope of tariff procedures. This duty to accept inspections of records and disclosure of information shall also apply without any specific case if such records or information are required for the clarification or run-up to the clarification of facts which may be relevant in future proceedings.”

“Specifically, the system operator shall make available any information that enables the authority proper assessment. If the system operator fails to meet this obligation, the authority shall be entitled to use an estimate.”

Business and Trade Secrets

Section 9. Without prejudice to their statutory obligation to disclose information, natural gas undertakings shall preserve the confidentiality of any economically sensitive information and of any business or trade secrets of which they obtain knowledge in the course of carrying out their business.

“Obligation to Report Natural Gas Supply Contracts

Section 10. The conclusion of natural gas supply contracts having a duration in excess of one year and involving the purchase of a quantity of natural gas in excess of 250 million cubic metres per year, as compared to the normal status, from the territory of the European Union or from third countries shall be notified to Energie-Control GmbH. Energie-Control GmbH shall keep a record of such natural gas supply contracts.”
Obligation to Provide Information

“Section 11.” System operators and storage undertakings shall provide sufficient information to other system operators or storage undertakings to ensure that the transport and storage of natural gas can be effected in a manner which is compatible with the secure and efficient operation of the interconnected system.

“Title 4

Operation of Natural Gas Systems

Part 1

Control Areas

Section 12. (1) The Austrian grid system consists of the following control areas:
1. Control Area East,
2. Control Area Tyrol, and
3. Control Area Vorarlberg.

(2) The Control Area East comprises the systems located in the states of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria and Vienna.

(3) The Control Area Tyrol comprises the systems located in the state of Tyrol.

(4) The Control Area Vorarlberg comprises the systems located in the state of Vorarlberg.

Control Area Managers

Section 12a. (1) The control area managers shall be
1. for Control Area East: the natural gas undertaking nominated by OMV Erdgas GmbH which actually performs pressure control of WAG, TAG, Penta West, SOL, HAG and the primary distribution system;
2. for Control Area Tyrol: the natural gas undertaking nominated by Tiroler Ferngas AG;
3. for Control Area Vorarlberg: the natural gas undertaking nominated by Vorarlberger Ferngas AG.

(2) The undertakings listed in para. 1 above shall nominate the control area managers to Energie-Control GmbH.

Responsibilities of the Control Area Managers

Section 12b. (1) The control area manager shall undertake the following responsibilities:
1. provide the system service (performance and pressure control and pressure maintenance) by handling the technical/physical compensation or by entering into relevant contracts with third parties;
2. control the transmission lines by issuing instructions to the transmission undertaking;”
3. schedule management;
4. long-term planning;
5. prepare forecasts for summation loads for early detection of imbalances;
6. measure state variables at the interfaces of the natural gas lines assigned to the control area manager’s control;”
7. initiate measures to overcome bottlenecks in co-ordination with system operators and storage undertakings;
8. call off natural gas to obtain balancing energy;”
9. delimit standard energy against balancing energy by transparent and objective criteria; the method of delimitation shall require to be approved by Energie-Control GmbH.

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255 as amended by Article 1 items 10 (former section 11 cancelled) and 11 (section 12 changed to “11”)
256 applicable as of 24 August 2002 pursuant to section 78a para. 1
“10. obtain a physical balance between procurement and demand in the system under the control area manager’s control in co-ordination with the system operators, and co-ordinate the response to applications for system access and allocation of capacities under section 19 para. 2 and enter into relevant contracts and determine the utilisation of capacities;

11. carry out bottleneck management in the transmission lines of its control area, where, within the frame of allocated capacities, transports to supply end users have priority over other transports. Transports to supply end users shall be granted priority when allocating capacities;

12. make available to the system operators and clearing and settlement agency the data required to handle the settlement of the balancing energy, including specifically, but without limitations, the data required to calculate deviations from schedule and from the load profile for each balance group;”

13. prepare a load forecast to identify bottlenecks;

14. ensure optimum utilisation of the line capacities in the control area and the functioning of a market for balancing energy by co-ordinating the transport services;

15. enter into contracts on the exchange of data with the system operators, balance group representatives, the balance group co-ordinator and other market participants in line with the market rules;

16. follow the instructions of the balance group co-ordinator when no offers are available for balancing energy;

17. develop a harmonised calculation scheme for available line capacities at the injection and withdrawal points of the transmission system within the control area; the calculation model shall require approval of Energie-Control GmbH. Changes shall be made upon the request of Energie-Control GmbH;

“18. publish system utilisation; the maximum hourly mean values (Nm³/hr) per day, dating back one year, at all injection and withdrawal points of the transmission system of the control area shall be published on the internet homepage of the control area manager;”

19. co-ordinate transport capacities in the transmission lines in connection with responding to applications for system access and allocation of capacities as per section 19 para. 2;

20. pass on the response to applications for system access to the distribution system operator under section 17 para. 1 within not more than two weeks;

22. know the system utilisation of all transmission lines as set forth in Annex 2 at any time, including, but not limited to flows and pressure levels.

“22. within the scope of long-term planning, provide an annual report to Energie-Control GmbH on the ratio of supply and demand, expected demand development and the available supply, on additional capacities planned or under construction, and on measures to cover demand peaks and handle failures by one or more suppliers. The data obtained from long-term planning may be used for energy control (sections 20i and 20j of the Energy Management Act) and to draw up the monitoring report (section 14a E-RBG);

23. submit its General Terms and Conditions for approval by Energie-Control Kommission pursuant to section 12h.”

(2) The system operators and balance group representatives, “suppliers and operators of storage and production facilities and holders of transport rights” shall provide the control area manager with all information required to observe the tasks and duties of a control area manager. Specifically, but without limitations, the transmission undertakings shall provide information on the capacity utilisation to the control area manager. The balance group representatives shall supply to the control area manager the schedules of their balance group in advance within a period to be determined by the control area manager.

“(3) Should a dispute arise between a transmission undertaking and the control area manager with regard to the measures and information required to comply with the tasks as provided in para. 1 above, Energie-Control GmbH shall, upon the request of the transmission undertaking or the control area manager, decide by a decree which measures and information shall be taken or provided by the transmission undertaking.”

260 as amended by Article 2 item 17 of the Federal Act, Federal Law Gazette I no. 106/2006. Item 10 shall enter into force upon expiry of 27 June 2006; items 11 and 12 shall enter into force as of 1 January 2007
Independent Status of the Control Area Manager

Section 12c. “(1) The control area managers shall be independent, at least with regard to their legal form, organisation and decision-making power, from all activities not connected with performance of the activities pursuant to section 12b or the rendering of services connected with planning, managing and administration in terms of capacity and network access of natural gas lines or storage facilities. The cost incurred in rendering activities not covered by section 12b shall be deducted when calculating the fee pursuant to section 12f.”

(2) The control area manager of Control Area East shall be established in the legal form of an Aktiengesellschaft (public limited company under Austrian law).

Management of Transmission Line Transport Capacities

Section 12d. The pipeline capacities provided by the transmission pipelines pursuant to Annex 2 for the transport of natural gas or for the conclusion of contracts governing the transport of natural gas shall be managed by the control area manager in co-operation with the system operators. Title to and operation of the transmission lines shall not be affected thereby. The transmission undertakings shall provide the data required for system access as instructed by the control area manager.

“Long-Term Planning

Section 12e. (1) Long-term planning shall be directed at planning the natural gas transmission grid with regard to:

1. covering demand for transport capacities to supply end users with due regard to emergency scenarios;
2. achieving a high degree of availability of transport capacity (infrastructural security of supply);
3. and covering the transport requirements for other transports.

(2) The control area manager shall be charged with drawing up, at least once a year, a long-term plan for the control area to achieve the objects of this Act and the goals as set out in para. 1 above. The planning period shall be determined by the control area manager in a transparent and non-discriminatory manner on the basis of the data available to the control area manager. The minimum planning period shall be three years.

(3) In drawing up a long-term plan, the control area manager shall take into account the technical and economic expediencies and the goals as set out in para. 1 above. Specifically, the control area manager shall, in the case of competing proposals or options, identify the technical and economic grounds on which the measure ultimately proposed rests.

(4) All market participants, including, without limitations, transmission undertakings, distribution undertakings, balance group representatives, suppliers, producers, storage undertakings and holders of transport rights, shall, within a reasonable period, make available to the control area manager, upon such manager’s written request, the data required for drawing up the long-term plans, especially with regard to assessing existing and potential capacity bottlenecks. In addition to such data, the control area manager may draw on other data such as are expedient for long-term planning. Such data shall also be considered by the control area manager in assessing applications for system access and for capacity extension.

(5) The long-term plans shall be submitted to Energie-Control Kommission for its approval. Such approval shall be granted when the measures shown in such long-term plans appear to be suitable to support and not endanger the goals set out in para. 1 of Section 12e. Approval shall be accompanied by stipulations, conditions or shall be limited in time to the extent as is required to comply with the objectives of this Act.

(6) Upon request by Energie-Control Kommission the control area manager shall be obliged to amend or prepare anew any long-term plans submitted for approval. Applications to change the long-term plan last approved shall be allowed at any time, provided that the additional installation, extension, change or operation of natural gas pipelines or any other substantial change in the planning documents makes it necessary to perform a new overall assessment within the scope of long-term planning for the control area.

(7) In the event of capacity bottlenecks in natural gas pipelines which do not exclusively serve domestic supply, provision shall be made in long-term planning for an optional extension of the capacities reserved for domestic supply.

(8) Any pro rata costs actually accrued from implementing measures listed in an approved long-term plan shall be taken into account in calculating the affected system operator’s tariffs for system use pursuant to Sections 23 ff.

Fee Payable to Control Area Manager

Section 12f. (1) In consideration of the services rendered by the control area manager in compliance with its responsibilities, Energie-Control Kommission shall specify, by ordinance, a fee to be paid by the transmission undertakings. Such fee shall be based on the expenditure arising from compliance with the responsibilities and a reasonable profit. The rates corresponding to the services shall be determined with a view to their cost. The control area manager shall also be reimbursed for any cost resulting from the requirement to compensate for load variations by performance or pressure control or pressure maintenance (provision of control capacity).

(2) Section 23a para. 4 shall apply with regard to the share payable by each transmission undertaking and passing-on of such cost to the system users.

“Measures to Eliminate Short- or Medium-Term Capacity Bottlenecks

Section 12g. If the control area manager identifies in the short term the need for measures to eliminate seasonal capacity bottlenecks, it shall notify the affected transmission system operators, holders of transport rights, balance group representatives, suppliers, balance group coordinators and operators of storage and production facilities of the need to take measures to eliminate seasonal capacity bottlenecks pursuant to Section 12b para. 1 item 11 and draw up, jointly with such undertakings, a suitable plan of action. Measures concerning production or storage which are covered by the Mineral Resources Act shall be exempt from this obligation. The undertakings affected shall be obliged to cooperate to the best of their abilities. The control area manager shall immediately notify the plan of action to Energie-Control Kommission and Energie-Control GmbH.

General Terms and Conditions Governing the Control Area Manager

Section 12h. (1) The general terms and conditions of the control area manager shall regulate the legal relationship between, on the one hand, the control area manager and the balance group representative ("AB RZF-BGV") and, on the other hand, the control area manager and the system operators ("AB RZF-Netz"). The general terms and conditions of the control area manager and any amendments thereto shall be subject to the approval of Energie-Control Kommission. Such approval shall be given with stipulations, conditions or a time limit to the extent that such is required to comply with the provisions of this Act. The time limit shall not be less than a period of three years. Control area managers shall be obliged to amend or newly develop their general terms and conditions submitted for approval if so requested by Energie-Control Kommission.

(2) The general terms and conditions of the control area manager shall not include any discrimination or abusive practices or unjustified restrictions, nor shall they endanger the security of supply. Specifically, they shall be designed so that:

1. performance of the responsibilities incumbent upon the control area manager, the balance group representatives and the system operators shall be ensured;
2. they shall not be inconsistent with existing legislation.

(3) The AB RZF-BGV shall, without limitation, include the following:

1. the rights and duties of the contracting parties, including, without limitation, with regard to observance of the market rules;
2. handling the schedule management on the part of the control area manager;
3. the procedure concerning customer capacity management by the balance group representatives;
4. balancing energy management by the control area manager;
5. identification of the data to be exchanged between the contracting parties;
6. the procedure and modalities governing a change of supplier or balance group (Section 42e);
7. provisions pursuant to section 19 para. 2 regarding the release of unused committed system capacities.

(4) The AB RZF-Netz shall, without limitation, include the following:

1. the rights and duties of the contracting parties, including, without limitation, with regard to observance of other market rules;
2. the procedure and modalities governing applications for system access;

3. the minimum technical requirements for system access;
4. the allocation procedure regarding assignment of system capacities;
5. identification of the data to be exchanged between the contracting parties, including, without limitation, system data and information with regard to a change of supplier;
6. the obligation of system operators to determine the properties of the gas at the injection points;
7. the procedure used for reporting technical faults and failures and their remedy;
8. the fee payable by the transmission undertakings pursuant to section 12f;
9. regulations with regard to payment and accounting;
10. provisions pursuant to section 19 para. 2 regarding the release of unused committed system capacities.”

Part 2

Prerequisites for System Operators

Licensing

Section 13. Carrying out the function of a transmission undertaking (section 6 item 16) or of a distribution undertaking (section 6 item 61) shall require a licence to be issued by Energie-Control Kommission according to the provisions of this Federal Act. “The licence shall be issued subject to stipulations, conditions or a time limit as required.”

Licensing Conditions

Section 14. (1) A licence shall be granted provided:
1. that the applicant can be expected to be in a position to comply
   a) with the public service obligations imposed upon it pursuant to section 4, as well as
   b) with the obligations imposed upon it pursuant to part 2,
   “and is able to perform the function of transporting natural gas through a high-pressure transmission grid and undertake the responsibility for operation, maintenance and, where necessary, extension of the grid.”
2. that the applicant can show that it has taken out a third-party liability insurance policy with an insurer licensed to provide this type of insurance in Austria or in another member state of the EU or of the EEA, where the amount insured per event insured shall be at least € 20 million in a case of personal injury or damage to property, and where the amount insured may be limited to € 40 million per annum;
3. that the applicant, inasmuch as s/he is a natural person,
   a) is legally competent and has completed his/her 24th year of age;
   b) is an Austrian citizen or a citizen of another member state of the EU or of the EEA;
   c) has his/her principal residence in Austria or in another member state of the EU or of the EEA; and
   d) is not excluded from exercising the function specified in the licence;
4. that the applicant, inasmuch as it is a legal person, a partnership under commercial law or a registered partnership,
   a) has its seat in Austria or in another member state of the EU or of the EEA;
   b) has appointed a managing director (section 16) to exercise the function specified in the licence.

(2) The reasons for exclusion pursuant to section 13 of the 1994 Industrial Code shall apply mutatis mutandis.
(3) In the event that the licence holder should forfeit his/her legal competence (para. 1 item 3 a), his/her function may be exercised by a managing director appointed by his/her legal representative (section 16).

(4) Upon application, the authority shall waive the conditions of completion of the 24th year of age (para. 1 item 3 subpara. a), of being a citizen of Austria or of another member state of the EU or of the EEA (para. 1 item 3 subpara. b) and of having one’s principal residence in Austria or in another member state of the EU or of the EEA (para. 1 item 3 subpara. c) if operation of the distribution system is in the public interest with a view to supplying the population and industry with natural gas.

(5) The condition of having one’s principal residence or seat in Austria or in another member state of the EU or of the EEA (para. 1 item 3 subpara. b) shall not apply if a managing director (section 16) has been appointed.

**Technical Director**

**Section 15.** (1) Prior to putting a system into operation, system operators shall appoint a natural person as technical director in charge of managing and supervising operation of the system. Several technical directors may be appointed provided that their respective areas of competence are clearly delimited.

(2) The technical director shall meet the conditions pursuant to section 14 para. 1 item 3 and be properly qualified to manage and supervise the operation of a natural gas pipeline system. Section 14 para. 4 shall apply mutatis mutandis.

(3) In order to establish his/her qualification, a technical director shall prove that s/he has successfully completed a course of university studies in a relevant field and has had at least three years’ practical experience in an enterprise conveying goods by way of pipelines. Successful completion of a technical vocational college or completion of a tertiary-level technical college in conjunction with at least six years’ relevant working experience in an enterprise conveying goods by way of pipelines shall also be deemed proof of appropriate qualification.

(4) Upon application of the system operator, the authority may waive the condition pursuant to para. 3 above provided:
   1. that the person to be appointed as technical director, given his/her education and experience, can be assumed to have the requisite know-how, skills and experience to carry out his/her duties, or
   2. that s/he can be assumed to be adequately qualified.

(5) The appointment of a technical director shall be notified to the authority within two months. Proof of qualification pursuant to paras. 2 and 3 above shall be attached to this notification.

(6) In the event that the technical director should resign “from the system operator’s undertaking” or that his/her appointment should be revoked, the operation of the system may continue until the appointment of a new technical director, but for no longer than a period of two months. The system operator shall immediately notify the authority in writing if the technical director resigns or if any condition for his/her appointment ceases to be met.

**Managing Director**

**Section 16.** (1) The system operator may appoint a managing director to carry out its functions; this managing director shall be accountable to the authority with regard to compliance with the provisions of this Act. The system operator shall, however, remain accountable if it knowingly tolerates any violations of the law on the part of the managing director or fails to exercise due care in selecting the managing director.

(2) The system operator shall notify the authority of the appointment of a managing director within two months, submitting the requisite documents. The managing director to be appointed shall meet the following conditions:
   1. the conditions pursuant to section 14 para. 1 item 3;
   2. having the authority to give instructions on his/her own behalf; and,
   3. in the case of a legal person (section 14 para. 1 item 4),
      a) being a member of the body authorised by law to represent this legal person; or
      b) being employed in the enterprise to the extent of at least fifty percent of the standard weekly working hours provided by labour law; or

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4. in the case of a partnership under commercial law (section 14 para. 1 item 4), being a general partner who is authorised under the terms of the partnership agreement to manage and to represent the company.

Section 14 para. 4 shall apply *mutatis mutandis*.

(3) If a legal person is a general partner in a partnership under commercial law, the provisions of para. 2 item 4 above shall be deemed to be complied with provided that a natural person, who is a member of the body authorised by law to represent this legal person or who is employed in the enterprise to the extent of at least fifty percent of the standard weekly working hours provided by labour law, is appointed as managing director of this partnership pursuant to para. 1 above.

(4) If a partnership under commercial law is a general partner in another partnership of this kind, the provisions of para. 2 item 4 above shall be deemed to be complied with provided that a natural person, who is a general partner holding the position of managing director pursuant to para. 2 item 4 in the associated partnership, is appointed as managing director pursuant to para. 1 above. The associated partnership shall hold the position specified in para. 2 item 4 above for the managing director in the partnership under commercial law.

(5) If a legal person is a general partner in a partnership under commercial law and if this partnership under commercial law is a general partner in another partnership of this kind, the provisions of para. 2 item 4 above shall be deemed to be complied with provided that a person who is a member of the body authorised by law to represent this legal person is appointed as managing director under para. 1 above of the latter partnership, that, furthermore, the legal person holds the position specified in para. 2 item 4 above in the associated partnership, and that this associated partnership holds the position specified in para. 2 item 4 above within its partnership.

(6) If the system operator is obliged to appoint a managing director and if this managing director resigns, the appointment of a new managing director shall be notified to the authority within six months.

**Part 3**

**Rights and Obligations**

**Chapter 1**

**General Rights and Obligations**

**Sub-Chapter 1**

**System Access for Domestic Customers**

**Conditions of System Access**

Section 17. "(1) The system operator operating the system to which the customer wishes to be connected shall be obliged to grant access to the party entitled to system access (section 41) under the general terms and conditions and the statutory rates. In the event that the application for access also concerns natural gas lines upstream of the relevant distribution system, the system operator shall promptly pass on the application to the control area manager for further action. Applications for access for other transports, to the extent not covered by Section 31e, shall be submitted to the control area manager which shall pass such applications on to the system operator concerned. The control area manager shall take steps to ensure transport through the natural gas lines upstream of the relevant distribution system which are operated or owned by third-party natural gas undertakings. The natural gas undertakings concerned shall enter into contracts under civil law (section 24 para. 1 item 8; section 31a para. 2 item 6) for the benefit of the party entitled to system access. The line capacity formerly used for the customer in the line system shall continue to be available to the customer in the event of a change in supplier." 273

(2) For cross-border transports pursuant to section 6 item 17, the provisions of sections 31d to 31h shall apply.

**Non-Discrimination**

Section 18. System operators and storage undertakings shall be prohibited from:

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1. discriminating against potential and actual system users or categories of system users, in particular if this would be to the benefit of undertakings affiliated with them;
2. abusing any economically sensitive information which they obtain from third parties in connection with the utilisation of the system, when selling or purchasing natural gas through affiliated undertakings.

Refusal of System Access

Section 19. (1) Access to the system may be refused on the following grounds:
1. extraordinary system conditions (disruption of operation);
2. insufficient system capacity or insufficient interconnection of systems;
3. if granting access to the system would prevent a system operator from performing the public service obligations imposed upon it pursuant to section 4;
4. if access is to be refused to a customer which would not be entitled to access in the country in which the natural gas supplier or a company controlling such supplier is domiciled and Energie-Control Kommission obtains knowledge of such fact;
5. if compatibility of technical specifications cannot reasonably be ensured;
6. if granting access to the system would seriously impair the competitiveness of a natural gas undertaking because of a take-or-pay obligation entered into within the scope of one or more natural gas supply contracts in spite of utilisation pursuant to section 22, or if such impairment is threatened or if utilisation as per section 22 is impossible.

"7. if a time-limited exemption within the meaning of Section 20a GWG has been granted."

The system operator to which the party is connected shall notify the entitled party, in writing, of the reasons for refusal of access. If access is refused due to action of a third-party natural gas undertaking, this notification shall, where applicable, include a reference to the natural gas undertaking on whose application access is refused.

"(2) In the event of insufficient system capacity or of insufficient interconnection, access to the system shall be granted in accordance with the following principles, provided that the capacity to be utilised is notified in due time (section 26 para. 3 item 10):
1. transports under the terms of existing contracts or of contractual obligations superseding such contracts, provided that they comply with the competition rules;
2. applications to use additional capacities shall be considered in chronological order, where in the control area transports to supply end users shall have priority over other transports;
3. transports to supply customers which must perform public service obligations.

The suppliers and natural gas traders shall adjust the capacities allocated for their benefit on the basis of system access applications or applications for capacity extension or a change of supplier at the injection or withdrawing points of the control area or at the injection or withdrawal points of storage facilities to their actual capacity needs based on their procurement portfolio and, in the event of a bottleneck, carry out the minimum injections necessary for the supply of end users within the frame of allocated capacities upon being called upon by the control area manager, provided that the supplier is not hindered in complying with this obligation due to force majeure or other events beyond the supplier’s control, such as maintenance or repair work in upstream systems. Any transport capacities committed but not used shall be made accessible to third parties. If no notice of the required capacity was given, or if it was not given in due time, the respective party’s right of access shall be subject to available capacity.”

(3) If access to the system is refused on any of the grounds set out in para. 1 item 6 above, the system operator shall submit an application pursuant to section 20 para. 1. If access is refused at the request of a third-party natural gas undertaking, the application shall be submitted by this undertaking. In the event that this undertaking should fail to meet this obligation, Energie-Control Kommission shall, without further proceedings, declare the refusal of system access to be unjustified.

(4) On the application of a party claiming that its legal right of access to the system has been injured by the refusal of access, Energie-Control Kommission shall establish whether the conditions for refusal of system access pursuant to para. 1 above have been met. Parties opposing such application shall be:

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1. the operator of the system concerned in the case when access to the system to which the customer facility is connected is refused,

2. in all other cases the manager of the control area for which access by the customer facility is desired, and the system operator which has taken action to cause refusal of access.

In the cases of items 1, 2, 4 and 5 of para. 1 above, Energie-Control Kommission shall decide within one month of receiving the application.

(5) The party opposing the application shall substantiate its grounds for refusal pursuant to para. 1 above. If access is refused at the request of a third-party natural gas undertaking, substantiation may also be furnished by such third-party natural gas undertaking. Energie-Control Kommission shall endeavour at all stages of the proceedings to effect an amicable settlement between the party entitled to access and the system operator (natural gas undertaking).

(6) If it is found that access was wrongfully refused, the natural gas undertaking which wrongfully refused access shall be liable to the entitled party for any damage documented to be caused by such refusal. If several natural gas undertakings are involved in the refusal, Energie-Control Kommission shall determine in its decision which of them wrongfully refused access.

(7) In the event that access is refused by the fault of a third-party natural gas undertaking, the control area manager shall be entitled to recover the damages paid to the entitled party pursuant to section 1313 of the Austrian Civil Code lxxii. Natural gas undertakings affiliated to a natural gas undertaking (section 6 item 53) shall be jointly and severally liable.

Transparency of System Capacities

Section 19a. If so requested by Energie-Control Kommission, system operators shall notify the utilisation of the system capacities reserved for domestic supply. In their notification they shall include the granting of line rights and the relevant actual physical utilisation of the system capacities stated.

“(2a) In the event that access to the system for transports within the control area is refused pursuant to section 19 para. 1 item 2, the party entitled to system access shall be given an opportunity to submit an application for capacity extension. The capacity requirement underlying such application shall be taken into account by the control area manager in carrying out its long-term planning pursuant to section 12e. The application shall be granted subject to the following principles:

1. the long-term plan which incorporates the requisite implementation measures to cover the capacity requirement underlying the application for capacity extension was approved by Energie-Control Kommission;

2. any contracts which may be required by the affected transmission and distribution undertakings have been entered into with the control area manager regarding the implementation of the measures foreseen in the long-term plan;

3. the application for capacity extension may be granted subject to conditions where necessary.” 277

Publication of Information

Section 19b. Transmission undertakings and holders of transport rights shall publish on the internet the information arising from its obligation pursuant to section 31g.” 278

Exemption from the Obligation to Grant Access to the System

Section 20. (1) If a system operator has refused access to the system to an entitled party pursuant to section 19 para. 1 item 6, the supplier requesting such refusal of access shall immediately, but in any case within one week of receipt of the refusal by the entitled party, submit an application to Energie-Control Kommission for a declaratory decision establishing that the conditions for a temporary exemption from its obligations pursuant to section 24 para. 1 item 7 have been met. If access is refused at the request of a third-party natural gas undertaking, the application shall be submitted by this undertaking. A statement of all pertinent details concerning the nature and the extent of the problem, as well as the efforts made by the supplier to resolve this problem, shall be attached to this application. The application shall specifically contain the following information:

277 as amended by Article 2 item 31 of the Federal Act, Federal Law Gazette I no. 106/2006. Due to a legislative mistake, the amendment positioning of para. 2a assigns this paragraph to section 19a rather than (correctly, as is obvious from its content and context) to section 19. In accordance with legislative intentions, this provision enters into force in accordance with section 78b para. 2 on 1 January 2007

1. the extent to which access to the system is to be restricted and the expected duration of this 
restriction;
2. the customers affected by this measure and the extent to which their rights under section 41 have 
been restricted, if applicable broken down by categories of customers; as well as
3. any evidence pertaining to the criteria listed in para. 5 below.

(2) In the event that an application pursuant to para. 1 above should not contain all documents listed 
in items 1 to 3 and that the applicant should fail to submit these upon being summoned pursuant to sec-
tion 13 of the General Administrative Procedure Act lxxiii, this application shall be rejected without further 
proceedings.

(3) Upon initiation of proceedings in accordance with para. 1 above, any pending proceedings pursu-
ant to section 19 para. 4, inasmuch as they concern the legality of grounds for refusal of access on the 
basis of section 19 para. 1 item 6, shall be suspended until a declaratory decision has been given.

(4) Energie-Control Kommission shall rule on applications pursuant to para. 1 above by declara-
tory decision. Such applications shall be granted provided that the applicant supplier can establish that its 
competitiveness is seriously impaired owing to its unconditional payments obligations under one or seve-
ral take-or-pay natural gas supply contracts and that no economically feasible alternative solutions are 
available. The decision shall specifically state the customers affected by this measure, the extent to which 
they are respectively restricted in their right of access to the system, as well as the period of time for 
which the exemption is granted.

(5) In its decision pursuant to para. 4 above, Energie-Control Kommission shall, without limitations, 
take account of the following criteria:
   1. the objective of completing a competitive single market in natural gas in accordance with the Gas 
      Directive;
   2. the necessity of meeting public service obligations and of ensuring the security of supply;
   3. the natural gas undertaking’s position in the natural gas market and the current competitive situa-
      tion in this market;
   4. the extent to which the supplier’s competitiveness is impaired;
   5. the date of signature and the terms of the contract or contracts in question, as well as the extent to 
      which changes in the market were considered;
   6. the efforts made to resolve the problem;
   7. the extent to which the undertaking, upon entering into its take-or-pay contracts, could reason-
      ably have expected its competitiveness to be seriously impaired, given the provisions of the Gas 
      Directive;
   8. the extent to which the system is connected to other systems, and the degree of interoperability of 
      these systems;
   9. the effects which an exemption from the provisions of this Federal Act would have with regard to 
      the smooth functioning of the single market in natural gas. If a natural gas undertaking’s sales of 
      natural gas do not fall below the guaranteed minimum volume agreed in take-or-pay contracts or 
      if the take-or-pay contract in question can be modified or if economically feasible alternative op-
      tions of selling the quantity of natural gas in question can be found, this undertaking’s competiti-
      veness shall not be deemed to have been impaired.

(6) If the conditions for a temporary exemption from an obligation pursuant to section 24 para. 1 i-
tem 7 have been declared, by decision, to have been complied with (para. 4 above), Energie-Control 
Kommission shall issue an ordinance granting the system operator in question a complete or partial tem-
porary exemption from its obligation pursuant to section 24 para. 1 item 7. This ordinance shall specifi-
cally state the customers affected by this measure, the extent to which they are respectively restricted in 
their right of access to the system, as well as the period of time for which the exemption is granted. The 
extent to which customers’ right of access to the system is restricted may be differentiated according to 
category of customer. In this respect due account shall be taken of the principles to be derived from Artic-
le 18 of the Gas Directive.

(7) The ordinance to be issued pursuant to para. 6 above shall be published in the Official Journal 
supplementing the Wiener Zeitung.

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(8) Energie-Control Kommission shall immediately notify the European Commission of its decision pursuant to para. 4 above and its ordinance pursuant to para. 6 above, together with all relevant information.

(9) In the event that the European Commission should, within “eight” weeks of receiving the notification, demand an amendment or an annulment of the decision granting an exemption, Energie-Control Kommission may annul or amend its declaratory decision in accordance with section 68 para. 6 of the General Administrative Procedures Act, and amend or annul its ordinance issued pursuant to para. 6 above. In the event that the European Commission should take a final decision under the “Procedure pursuant to Articles 2 and 7 of Decision 1999/468/EC”, Energie-Control Kommission shall annul or amend its declaratory decision issued pursuant to para. 4 above in accordance with section 68 para. 6 of the General Administrative Procedure Act and amend or annul its ordinance issued pursuant to para. 6 above. A declaratory decision pursuant to para. 4 above shall also be amended in the event that the ordinance issued pursuant to para. 6 above is completely or partially annulled by the Constitutional Court.

“New Infrastructures

Section 20a. (1) Upon application Energie-Control Kommission may issue a decision that the provisions of sections 17, 23 through 23d, 31e through 31h, 39 and 39a shall, for a specified period of time, not apply to a larger new infrastructure within the meaning of section 6 item 39 (cross-border transmission lines and storage facilities) or parts thereof. Such application shall have the following information enclosed as a minimum:

1. the scope to which the right to system or storage access is limited and the expected duration of such limitation as well as the regulations replacing the above statutory provisions;
2. the group of customers affected by such measure and the scope to which their rights under Sections 17, 23 through 23d, 39 and 39a are limited, where necessary differentiated by customer categories; and
3. suitable evidence to establish the existence of the following prerequisites:
   a) the investment in the transmission line or storage facility concerned will improve competition in gas supply and security of supply;
   b) the risk associated with the investment is so high that the investment in the transmission line or storage facility would not be made if no exception pursuant to para. 1 above were granted;
   c) the infrastructure is owned by a natural or legal person which is separate, at least in its legal form, from the system operators in whose systems the infrastructure is built;
   d) a charge for system use or storage is levied from the users of this transmission line or storage facility;
   e) the exemption pursuant to para. 1 above does not negatively affect competition nor the effective functioning of the single market in natural gas nor the efficient functioning of the provisions set forth in sections 17, 23 through 23d, 39 and 39a for the distribution and transmission lines and storage facilities connected to the transmission line or storage facility;
   f) contracts in connection with the larger new infrastructure are consistent with the competition regulations.

(2) Para. 1 above shall also apply to any capacity increase in existing transmission lines or storage facilities and to any changes of such facilities that make it possible to tap new sources of gas supply.

(3) An exception pursuant to para. 1 above may be made for a new transmission line or storage facility, an existing transmission line or storage facility that is substantially extended, or a change of an existing transmission line or storage facility in its entirety or of parts thereof.

(4) Upon the request of Energie-Control Kommission, the application must be changed to the extent that is necessary in order to comply with the provisions and objectives of this Act.

(5) Energie-Control Kommission shall be authorised to issue a decision pursuant to para. 1 above that prescribes stipulations and conditions to the extent that is necessary in order to comply with the provisions and objectives of this Act.

(6) In its decision-making pursuant to para. 1 above, Energie-Control Kommission shall, without limitations, consider the term of long-term contracts in connection with the larger new infrastructure, the capacity to be created or the change of existing capacity as well as the time limits of the project.

(7) When granting an exception pursuant to para. 1 above, rules and mechanisms may be specified for capacity management and capacity assignment, where the following minimum criteria shall be observed:

1. the invitation for bids shall include information on the overall technical capacity to be awarded, the number and dimension of lots and the assignment procedure in the case of excess demand;
2. both fixed and intermittent transport and storage rights shall be offered at an annual and monthly base;
3. the invitation for bids shall be, as a minimum, published in the Official Journal supplementing the Wiener Zeitung and the Official Journal of the European Communities, to be paid for by the applicant;
4. the tender procedure shall be carried out in a fair and non-discriminatory manner;
5. in the event that any lots under the tender are not sold, the capacity assignment shall be repeated in a manner in conformity with the market.

(8) Decisions pursuant to para. 1 above shall be published by Energie-Control Kommission on the internet.

(9) Where a cross-border transmission line is involved, the relevant government authorities in the other member states concerned shall be given a hearing prior to issuance of the decision.

(10) Energie-Control Kommission shall promptly furnish the Commission of the European Union with the decision on an exception pursuant to para. 1 above together with all relevant accompanying information. Such accompanying information shall, without limitation, include the following:

1. detailed reasoning of the exception granted, including financial information that justify the need for the exception;
2. an investigation into the effects that the granting of the exception will have on competition and the effective functioning of the internal market for natural gas;
3. grounds for the duration of the exception and for the proportion of the overall capacity of the natural gas infrastructure for which the exception is granted;
4. with regard to exceptions concerning interconnectors the result of consultations between the regulatory authorities affected;
5. information on the contribution made by the infrastructure to diversification of gas supply.

(11) If the European Commission should request, within two months of receiving the notice, any change or cancellation of the decision with regard to granting an exception, Energie-Control Kommission shall be entitled to cancel or amend the decisions pursuant to Section 68 para. 6 AVG. The two-month period shall be extended by another month if the Commission of the European Union requests additional information. If the European Commission takes a final decision pursuant to procedure I of Articles 3 and 7 of the Decision 1999/468/EC, Energie-Control Kommission shall, in accordance with such decision, cancel or amend the decision pursuant to para. 1 above in accordance with Section 68 para. 6 AVG.

“Dispute Settlement and Arbitration Procedure

Section 21. (1) Except in cases coming under the jurisdiction of the Cartel Court (Section 43 of the Cartel Act 1988 Ixxvi, Federal Law Gazette no. 600), Energie-Control Kommission shall arbitrate disputes between parties entitled to system access and system operators with regard to the legality of refusing access to the system.

(2) All other disputes between parties entitled to system access and system operators regarding obligations arising from such relationship, and specifically the applicable terms and tariffs for system use, shall be settled by the courts. Only after the decision issued by the Energie-Control Kommission in the dispute settlement procedure pursuant to Section 16 para. 1 item 20 E-RBG has been served, shall a party entitled to system access be permitted to file a suit within the period provided for in Section 16 para 3a E-RBG.

(3) Notwithstanding the provisions of para. 2 above, a suit for claims arising from the refusal of system access may be filed only after the regulatory authority’s decision on the legality of access refusal has become final and absolute; if such a decision constitutes a subsidiary question for the court proceedings, such proceedings shall be suspended until the regulatory authority’s decision has become final and absolute.”

Utilisation of Non-Saleable Quantities of Natural Gas

Section 22. 284 (1) Upon application by a natural gas undertaking as named in Annex 1, an agency to be appointed by Energie-Control Kommission shall purchase a share, to be specified by a decision pursuant to para. 2 below, of the volume of natural gas which the natural gas undertaking is obliged to purchase under the terms of a take-or-pay contract existing at the time of entry into force of this Federal Act as amended by Federal Law Gazette I no. 148/2002, which obligation is passed on to the state natural gas undertakings listed in Annex 1, against reimbursement of the actual procurement costs. Actual procurement costs shall be those costs arising to the natural gas undertaking from take-or-pay contracts up to acceptance in its system. In calculating those costs, the storage and transport contracts associated with the supply of natural gas shall be included. For computing the procurement costs, all take-or-pay contracts of an undertaking shall be included pro rata. Energie-Control Kommission may change the list of natural gas undertakings included in Annex 1 in line with actual conditions. Such ordinances shall be published in the Federal Law Gazette.

(2) The share of natural gas volumes to be purchased pursuant to para. 1 above shall be determined by a decision made by Energie-Control Kommission and shall not exceed half of the total natural gas volumes contractually assigned to the relevant state natural gas undertaking. In determining the share, account shall be taken specifically of the amount of contractually assigned natural gas volumes, the residual period of the contracts, the customer structure and the economic situation of the state natural gas undertaking. The state natural gas undertakings shall be obliged to furnish to Energie-Control Kommission upon the latter’s request the documents required for performing this task and to grant it the right to inspect their records.

(3) The agency appointed pursuant to para. 1 above shall be authorised to sell the natural gas volumes acquired as per paras. 1 and 2 above on an exchange or by auctioning off delivery contracts of a period of not more than one year. Any contractual agreements on the ban of exporting natural gas shall not hinder the sale of such natural gas volumes to foreign bidders. The date of auction shall be published by the agency set forth in para. 1 above at its cost in the Official Journal supplementing the Wiener Zeitung and the Official Journal of the European Communities. Additionally, it may be published in electronic media. The provisions of the Commercial Code 1994, Federal Law Gazette no. 194 shall remain unaffected.

(4) Energie-Control Kommission shall determine, by an ordinance, guidelines for the terms of such auction. These guidelines shall be ruled by the principles of non-discrimination and transparency, shall determine the prerequisites for a valid bid and suitable securities for bids and shall include information on bidder protection as set forth in para. 5 below. The guidelines shall provide for the best bidder to win. The best bid shall be determined by the price offered. The agency appointed pursuant to para. 1 above shall notify to Energie-Control Kommission the auction terms in line with the guidelines not later than two months before the date of the auction. Energie-Control Kommission may demand amendments to these terms within two months of receiving the notification if the auction terms fail to ensure a transparent procedure or the equal treatment of all potential bidders.

(5) If bidders passed over at the auction suffered or are liable to suffer a loss, they shall be entitled, within two weeks of the knock-down, to submit a written application, including grounds for it, to Energie-Control Kommission for a review of the decision on the grounds that the terms of auction have been violated. Such application shall contain:
1. the relevant facts of the case;
2. information on the loss claimed to be impending or already suffered by the applicant;
3. the grounds for the claimed violation of the terms of auction;
4. an application for a declaratory decision finding that the knock-down violated the terms of auction.

(6) Within two months, Energie-Control Kommission shall issue a decision on whether the terms of auction were violated by the knock-down. The parties to such proceedings shall be the applicant, the agency appointed pursuant to para. 1 above and the successful bidder. Within one month of the decision becoming final and absolute, the parties may request a ruling by an ordinary court. If recourse is taken to a court, the decision by Energie-Control Kommission shall cease to be effective.

(7) Should the proceeds from the sale on an exchange or at auction fail to cover the actual costs of procuring the volumes acquired pursuant to para. 1 above, the difference shall be raised by means of a

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surcharge to the agreed charge for system use to be imposed on the end users. For this purpose, the agen-
cy appointed pursuant to para. 1 above shall report the extent of any losses incurred by selling volumes of
natural gas on an exchange or at auction to Energie-Control Kommission within four weeks of comple-
ton of the sale; failing this, these undertakings shall forfeit their rights.

(8) On the basis of the extent of the losses reported, Energie-Control Kommission shall annually is-
sue an ordinance determining the surcharge to the charge for system use per cubic metre by apportioning
this amount to the total volume of natural gas sold to end users entitled to system access in the control
area affected by such losses. Energie-Control Kommission shall furthermore provide, by ordinance, de-
tails regarding the collection and payment of this surcharge and its disbursement to the agency concerned.

Sub-Chapter 2

Charge for System Use

Section 23. (1) The charge for system use (section 6 item 52) shall be made up of the following
components:

1. the grid utilisation charge;
2. the metering charge;
3. the grid provision charge; and
4. the charge for admission to the grid.

(2) The grid utilisation charge shall cover the costs payable by the customers to the system operator
for, without limitations:

1. construction, extension, maintenance and operation of the grid;
2. operations management;
3. recovery of supply;
4. expenditure for the use of compensatory energy;
5. elimination of bottlenecks, and
6. compression of natural gas.

(3) The metering charge shall cover the costs payable by the customer to the system operator which
are directly attributable to the construction and operation of meters, calibration and data collection. To the
extent that meters are provided by the system users themselves, the metering charge shall be suitably
reduced.

(4) The grid provision charge shall be payable as a lump-sum for the development of system levels
described in section 23b items 2 and 3 made and prefinanced by the system operator to enable connection,
to the extent to which levels are actually utilised for system use as agreed. The charge shall be calculated
based on the rules of the causative principle and simple administration. The grid provision charge shall be
a single charge to the customer payable upon first connection to a system or upon changing the connecti-
on due to a change in capacity.

(5) The charge for admission to the grid payable by the customer to the system operator shall cover
all expenditures directly arising from the first connection to a system or from changing a connection due
to a change in capacity of a system user. The charge shall be waived if the cost for system connection or
for a change are discharged by the system user itself. The charge shall be a single charge to the customer
payable upon first connection to a system or upon changing the connection due to a change in capacity.

(6) The natural gas undertakings shall show each component of the charge as set forth in para. 1 a-
above to the extent charged to the end users or system operators or included in the rates charged, such as
taxes, duties and surcharges levied due to federal or state laws individually on the bills for system use or
on the gas bills.

(7) Cross-border transports shall be governed by the provisions of section 31h.

Computation of the Grid Utilisation Charge

Section 23a. (1) The grid utilisation charge (section 23 para. 1 item 1) shall be computed based on a
rate to be determined by an ordinance issued by Energie-Control Kommission (grid utilisation rate). The
grid utilisation charge shall be based on the prices determined for the system area and system level (secti-
on 23b) to which the facility is connected.

(2) The grid utilisation charge shall be computed with a focus on costs and shall comply with the
principles of causation. The revenues obtained from the grid provision charge shall be considered in com-
computing the grid utilisation rate. Revenues from cross-border transports shall be ignored in calculating the grid utilisation rate. It shall be permissible to calculate the prices using an average based on the cost of a rationally managed comparable enterprise. In addition, pricing may be based on objectives focussing on the savings potential of enterprises (productivity discounts). In computing the rates, no consideration shall be given for expenditures for damages payable for any unjustified refusal of access to the system or the cost arising from increased monitoring that integrated natural gas undertakings are required to pay. The rate structure underlying the prices shall be made uniform and shall enable a comparison between all system operators offering equivalent services.

(3) The grid utilisation charge shall be computed either in commodity terms or in commodity and capacity terms. The capacity share of the charge shall as a rule be related to a period of one year each. The rates shall be designed so that the capacity share shall not exceed 80% of the grid utilisation charge for each system level. If prices for grid utilisation vary with time, it shall not be permissible to have more than two different prices per day, per week and per year. In order to determine the basis for charging the capacity share of the grid utilisation charge, the arithmetic mean of the highest hourly average load measured each month throughout the settlement period shall be used. A minimum charge may be defined. If the system is utilised for less than a year or in the event of wholly or partly inconsistent use of the system, higher prices shall be charged. Volume-dependent rates may be defined. Energie-Control Kommission shall determine, by ordinance, the criteria applicable to computing the resulting base for charging the capacity-based share of the grid utilisation charge.

(4) The cost reallocation method to be used for calculating the rates shall be specified by Energie-Control Kommission, by ordinance, with reference to the principle of causation at each system level and rate zone. Consideration shall be given to the fact that the costs may be affected both by capacity used and commodity as well as by transported capacity and commodity.

(5) The grid utilisation rate shall comply with the principle of equal treatment of all system users. The grid utilisation rates applicable for grid access shall be given as fixed prices.

(6) Energie-Control Kommission shall, at a minimum and by ordinance, determine grid utilisation rates for system levels 2 and 3 (section 23b para. 1 items 2 and 3) for parties withdrawing and injecting natural gas. For this purpose, system operators shall be deemed to be withdrawing parties. The cost of system level 1 (section 23b para. 1 item 1) including the cost associated with payment of the fee payable to the control area manager (section 12f) shall be considered within the scope of cost reallocation (para. 4 above).

(7) The charge for admission to the grid (section 23 para. 1 item 4 and section 23 para. 5) shall be computed on the basis of expenditure, with the system operator being free to charge a lump-sum to system users connected to a system level listed in section 23b para. 1 item 3.

(8) The metering charge (section 23 para. 1 item 2) shall, as a rule, be computed on the basis of expenditure, and Energie-Control Kommission may define maximum prices by ordinance.

**System Levels and System Areas**

**Section 23b.** (1) The following system levels shall be defined for calculating the rates for system use:

1. transmission lines;
2. distribution lines of a pressure >6 bar;
3. distribution lines of a pressure <6 bar.

(2) The following system areas shall be provided:
1. For system level 1:
   a) Eastern Austria: the transmission facilities listed in Annex 2; also included in level 1 shall be the lines which connect the incoming and outgoing points of a system area or of a control area. The continuation of a distribution line shall be included in level 1 when this leads to a new connection to another distribution or transmission system or to another control area;
   b) Tyrol: the segment of all lines in Tyrol that crosses the federal border;
   c) Vorarlberg: the cross-border segment of the line from Germany to Vorarlberg;
2. for the other system levels, the areas of the undertakings listed in Annex 3 covered by the systems at the system levels pursuant to para. 1 items 1 to 3 above; it shall be permitted to combine the systems run by different system operators in a single system provided that such system operators are domiciled in the same country.
“(3) The lists of transmission facilities and natural gas undertakings included in Annex 2 and Annex 3 shall be amended to reflect actual conditions by way of an ordinance issued by Energie-Control Kommission and published in the Federal Law Gazette, upon approval of the transmission facility by the Federal Minister of Economics and Labour pursuant to Section 47.”

Section 23c. (1) If a system area includes systems of different operators, the costs per system level for such systems shall be combined for the purpose of determining rates, and the respective system operators shall allocate, by cost shares, the revenues from utilising such systems within the system areas and system levels. Compensatory payments between system operators shall be made if necessary.

(2) The organisational and technical handling of such compensatory payments pursuant to para. 1 above shall be performed by Energie-Control GmbH.

Section 23d. (1) The fixed prices (grid utilisation rates) (sections 23 to 23c) and other rates applicable for grid utilisation may be determined ex officio or upon application. Applications shall be submitted to Energie-Control GmbH. Unless otherwise provided, Energie-Control GmbH, before determining any price, shall carry out a procedure previous to the review by the advisory council for natural gas, which shall give a hearing to the party and an opportunity to comment to the Federal Ministry and bodies specified in section 26a E-RBG. Applications may be brought by the undertakings concerned, the Austrian Federal Economic Chamber, the Presidential Conference of Chambers of Agriculture, the Federal Chamber of Labour and the Austrian Trade Union Federation.

(2) Upon completion of the procedure previous to the review by the advisory council for natural gas, all documents shall be made ready and, upon request, sent to the advisory council for natural gas for inspection. The chairperson may include experts in the deliberations of the advisory council for natural gas.

(3) In the case of imminent danger, the hearing of representatives of the federal ministries and bodies named in para. 1 above and the review by the advisory council for natural gas may be waived. Subsequently, however, the latter shall immediately deal with the matter.

(4) In the event of an audit, the requisite documents shall be furnished to the representatives of the federal ministries and bodies named in para. 1 above for their comment if such an audit is made during the procedure previous to the review by the advisory council for natural gas, except in the case of para. 3 above, or to the members of the advisory council for natural gas pursuant to section 26a para. 3 items 1 and 3 E-RBG for their comment if such an audit is made during the procedure at the advisory council for natural gas and in the case of para. 3 above.

(5) Representatives of the audited undertakings may be summoned by Energie-Control GmbH to appear at the procedure previous to the review by the advisory council for natural gas and/or at the advisory council for natural gas itself to give further information.

Section 23e. For notifying transport services where the actual or contractual flow is against the flow direction of transmission lines as it is technically defined by the points of injection into the domestic system at the federal border, suppliers shall pay a reasonable fee to the system operator of system level 1 (section 23b para. 1 item 1). Energie-Control Kommission may specify fixed prices by ordinance.

Chapter 2

Distribution System Operators

Obligations of the Distribution Undertakings

Section 24. (1) Distribution undertakings shall be obliged:

“1. to operate, maintain and extend the facilities operated by them safely, reliably and efficiently in accordance with the state of the art, and to ensure the provision of all indispensable ancillary services;”

2. to provide the technical prerequisites necessary for operating the system;

3. to operate, maintain and extend the facilities with due regard to the requirements of environmental protection, to prepare safety reports including a systematic risk analysis and draw up plans to
avoid, limit and eliminate failures (action planning) and to inform the government authorities and affected public in the event of a serious failure or accident;

4. to supply adequate information to the operator of line or storage facilities connected to their own facilities so as to ensure safe and efficient operation, co-ordinated extension and interoperability of the systems and grids, and to enter into contracts on the transfer and acceptance modalities with the operator of such connected facility;

5. to keep confidential economically sensitive information obtained by them in the pursuit of their business activities, without prejudice to the duties of information, notification and disclosure under this Federal Act and the obligations to grant access to the business documents as set forth in section 8;

6. to refrain from discriminating in any way whatsoever against system users or categories of system users, including, without limitations, refrain from discriminating for the benefit of its related undertakings;

7. to grant access to their facilities to entitled parties at the approved general terms and conditions of access (section 26) and the system rates determined by Energie-Control Kommission;

8. to enter into contracts with the control area manager to the extent required to meet the claim of parties entitled to system access;

9. to follow the control area manager’s instructions in using systems to meet the claims of parties entitled to system access, especially with regard to handling the schedules;

10. to connect producers of biogenic gas that meet the quality requirements determined in the general terms and conditions to their natural gas system for the purpose of supplying their customers;

11. to enter into contracts on the exchange of data with other system operators, the control area manager, the balance group representative, the balance group coordinator and other market participants in accordance with the market rules;

12. to establish a special balance group for determining system losses and own consumption, which group shall comply only with the criteria of a balance group required for such purpose;

13. to submit general terms and conditions for the distribution system for approval to Energie-Control Kommission;

14. to furnish information regarding a change of supplier in line with the market rules, in order to ensure that the control area manager can comply with its obligations;

15. to contribute to the development of a long-term plan by the control area manager;

16. to observe the standards regarding safety, reliability and quality of the services rendered to system users and other market participants as determined in the general terms and conditions for the distribution grid (section 26 para. 3); and

17. to furnish to Energie-Control GmbH the data required to monitor the standards (item 16) of the general terms and conditions for the distribution grid and to publish the findings of such monitoring;

18. to simultaneously furnish, in electronic form, to the control area manager data on the as-is pressure situation and the volume flow at key injection and withdrawal points of the control zone.”

(2) Entitlement to system access within the meaning of para. 1 item 7 above shall be determined as provided in section 41.

(3) In the event that the operator of a distribution undertaking fails to comply with its duties as set forth in para. 1 item 8 above, it shall be liable to fully indemnify the natural gas undertaking which is liable for damages vis-à-vis the customer pursuant to section 41b.

(4) The balance group as per para. 1 item 12 above may be established jointly with other distribution undertakings. System operators which operate both transmission and distribution lines may establish a joint loss balance group for both types of systems.

**General Obligation to Connect**

Section 25. (1) Distribution undertakings shall be obliged to enter into private-law contracts with end users on the connection to the natural gas distribution system and system utilisation under the general terms and conditions (section 26) within their distribution area (general obligation to connect). The sys-

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288 applicable as of 24 August 2002 as set forth in section 78a para. 1
System user’s facility shall, as a rule, be connected to the system of the distribution undertaking at a technically suitable point with due regard to the economic interests of the system user. In developing a connection concept, due regard shall, however, be given to technical feasibilities, especially avoidance of excess technical capacities, supply quality and the economic interests of all system users with a view to allocating system costs among all system users and the justified interests of the system user applying for access, and to the legal requirements to be met by the distribution undertaking with regard to extension, operation and safety of its system.

(2) The general obligation to connect shall not apply if the operator of the distribution system cannot with any economic reasonability be expected to make an individual connection, considering the interests of all its customers.

(3) If no agreement can be achieved on whether or not a system operator is obliged to connect an end user, the state governor shall decide upon application of either party.

**Conditions for Access to Distribution Pipeline Systems**

*General Terms and Conditions for the Distribution System *

Section 26.

"(1) The general terms and conditions for the distribution system and any amendments thereto shall be subject to the approval of Energie-Control Kommission. Such approval shall be granted subject to stipulations or a time limit if so required to comply with the provisions of this Act. The time limit shall not be for less than a period of three years. Upon request of Energie-Control Kommission, distribution undertakings shall be obliged to amend or rewrite their general terms and conditions for the distribution system submitted for approval."

(2) The general terms and conditions for the distribution system shall not be discriminatory and shall not contain any abusive practices or unjustified restrictions nor jeopardise the security of supply or the quality of service. They shall, in particular, be formulated

1. to ensure that the tasks incumbent upon the distribution undertakings will be met;
2. to make for an objective connection between the performance of the system users and the performance of the distribution undertaking;
3. to assign the mutual obligations in a balanced and causative manner;
4. to contain specifications on the technical requirements for connection to the system at the system connection point and for all measures to prevent negative effects on the system of the system operator or on other facilities;
5. to define objective criteria for accepting natural gas from another system area and for the use of connecting lines;
6. to contain regulations on the allocation of costs based on causation;
7. to be clear and logical;
8. to contain definitions of terms which are not generally understood;
9. not to contradict existing legislation.

"(3) The general terms and conditions for the distribution system shall include specifically, but without limitations:

1. the rights and duties of the contracting parties, including, without limitations, the duty to observe the other market rules;
2. the technical minimum requirements for system access;
3. the quality requirements applicable for injection and transport of natural gas and biogenic gas;
4. the points available for injection of natural gas and biogenic gas;
5. the method and modalities of applications for system access;
6. the method and modalities for changing the supplier or balance group (section 42e);
7. the data to be furnished by the system users;
8. the obligation of parties entitled to access to reserve, within suitable periods of time, line capacities and the obligation of the balance group representatives to notify schedules;
9. a period of not more than two weeks upon receipt within which the distribution undertaking shall reply to the application for system access;
10. the fundamental principles of settlement;"

289 applicable as of 24 August 2002 as set forth in section 78a para. 1 subject to para. 4
11. the contract term, conditions for extensions, and termination of performance and the contractual relationship;
12. provisions regarding compensation and refunding in the event that the contractual service quality is not complied with, and information on dispute settlement procedures provided under the law;
13. the type and form of invoicing;
14. the procedure to be followed for reporting technical problems and failures and their repair;
15. the obligation of parties entitled to access to pay in advance or provide a collateral (cash deposit, bank guarantee, deposit of non-registered savings passbooks) of an adequate amount provided that, given the circumstances of an individual case, the system user is expected to be unable to meet its payment obligations at all or in good time.

In the general terms and conditions for the distribution system, technical standards and regulations (technical rules) as amended may be made binding. In order to achieve a competition-oriented market, it shall be possible to prescribe, without limitations, stipulations and conditions concerning safety, reliability and quality of the system services, including but not limited to parameters to be observed with regard to the reliability of system operation, time limits to be observed for making connections to the system and the performance of repairs and the prior notification of supply interruptions. Operators of distribution systems shall, to the extent required to achieve a competition-oriented market and upon request of Energie-Control Kommission, amend their general terms and conditions. Notwithstanding the provision of Section 42e, Energie-Control Kommission may request that the time period within which, upon a customer’s request, its metering point designation is made available to such customer or its authorised representative in a customary file format in electronic form or within which a change of supplier is to be made be included in the general terms and conditions.”

(4) Prior to their approval, the regulations contained in the general terms and conditions for the distribution system as provided in para. 2 item 4 above shall be notified to the European Commission under Article 8 of the Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, Official Journal L 204, 21/07/1998, pp. 37 bis, as amended by Directive 98/48/EC, Official Journal L 217, 05/08/1998, pp. 18 bis. This shall not apply to the extent that this requirement has already been met.

Changes in System Conditions

Section 27. (1) If new general terms and conditions for the distribution system are approved, the system operator shall inform its system users thereof in a suitable manner and send them the new terms upon their request. In the absence of an express statement to the contrary on the part of the system user, the new general terms and conditions for the distribution system shall be deemed to be agreed. The system user shall be informed of the importance of his/her action in a personal letter sent to his/her address. He/she shall be granted a period of at least one month for issuing an express statement. The changes shall be deemed to be agreed as of the first day of the month following the day of the end of the period granted.

(2) The general terms and conditions for the distribution system shall be issued to the customer upon request.

Load Profiles

Section 28. (1) Without prejudice to the following provisions, distribution undertakings shall be obliged to meter the amounts of natural gas drawn and the load profiles of the system users and to check these figures for their plausibility.

(2) Energie-Control GmbH shall, by ordinance, oblige distribution undertakings to prepare standardised load profiles for system users whose facilities are connected to a distribution system whose operating pressure is below a specified figure and whose annual consumption and meter value are below a specified figure, and to allocate such profiles to the respective system users. The specified figures shall be determined by the economic feasibility of the effort required for metering.

(3) Facilities of system users who do not meet the criteria of allocation of standardised load profiles pursuant to para. 2 above shall be fitted with hourly load profile meters by the system operator by 1 October 2002 at the latest. In the event that it should not be possible to fit load profile meters prior to 1 October 2002, standardised load profiles may be allocated within a transition phase lasting up to 31 December 2003.

292 applicable as of 24 August 2002 as set forth in section 78a para. 1
(4) The said ordinance shall also specify how the standardised load profiles are to be prepared, their number and adjustment, with a view to achieving a uniform and comparable procedure. Attention shall be given to simple handling and reproducibility of the process. In justified cases, the distribution undertakings may waive this requirement if necessary for geographical, climatic or technical reasons. However, load profiles shall always be harmonised between distribution undertakings so as to ensure that similar load profiles are used under similar conditions.

(5) The standardised load profiles shall be furnished to the balance group coordinator for administrative purposes (section 33b). The load profiles shall be prepared by 31 August 2002 at the latest, in order to be able to use them to take organisational and technical measures and precautions required in order that all customers are granted system access by 1 October 2002 at the latest. The load profiles prepared and allocated to individual system users shall be notified to Energie-Control GmbH promptly in a suitable electronic form. The distribution undertaking may use the indicated load profiles for as long as Energie-Control GmbH does not ban their use by decision.

(6) If the distribution undertaking fails to observe its obligations under the above provisions in good time, it shall be instructed, in a decision by Energie-Control GmbH, to perform the allocation at its own cost and within a period to be determined by the authority. In the event of imminent danger, Energie-Control GmbH shall have the preparation and allocation of the load profile “and the installation of an hourly load profile meter” performed by the new supplier acting as a substitute, in order to safeguard the public interest in the timely functioning of the market. Such load profile shall be used for settlement for as long as the distribution undertaking fails to perform its obligations. The cost for any balancing energy accruing therefrom shall be borne by the distribution undertaking.

Publication of the General Terms and Conditions for the Distribution System

“Section 29. (1) The distribution undertakings shall publish information on the general terms and conditions for the distribution system applicable for the utilisation of their facilities in the Official Journal supplementing the Wiener Zeitung and shall publish their entire general terms and conditions for the distribution system on the internet.

(2) The general terms and conditions for the distribution system shall be supplied to the system users upon request.”

“Publication of Metering Rates

Section 29a. Distribution undertakings shall publish the applicable fee for metering services (section 23 para.1 item 2) on the internet.”

Obligations to Provide Information

Section 30. The distribution undertakings shall advise end users in their respective area of distribution on energy conservation measures in general and on options for the conservation and efficient use of natural gas in particular.

Chapter 3

Transmission Undertakings

Sub-Chapter 1

Designation of Transmission Systems, Rights and Obligations of Transmission Undertakings

Transmission Systems

Section 31. (1) Transmission systems within the meaning of section 6 item 15 shall be the line facilities specified in Annex 2.

(2) For their operation, transmission undertakings shall require a licence as provided in section 13.

Obligations of Transmission Undertakings

Section 31a. (1) The transmission undertakings shall be charged with the following responsibilities:

293 as amended by Article 2 item 40 of the Federal Act, Federal Law Gazette I no. 106/2006
296 as amended by Article 2 item 43 of the Federal Act, Federal Law Gazette I no. 106/2006. [Section 31 para. 2 shall be cancelled; the paragraph previously numbered (3) shall be renumbered “(2)”]
1. operate, maintain and extend the transmission lines safely, reliably and efficiently in accordance with “the state of the art” 297, and pursuant to the control area manager’s standards, and ensure the provision of all indispensable ancillary services;

2. furnish to the operator of line or storage facilities connected to their own facilities adequate information so as to ensure safe and efficient operation, co-ordinated extension and interoperability of the systems, and enter into contracts on the transfer and acceptance modalities with the operator of the connected facility;

3. keep confidential economically sensitive information obtained by them in the pursuit of their business activities, without prejudice to the duties of information, notification and disclosure under this Federal Act and the obligations to grant access to the business documents as set forth in section 8;

4. refrain from discriminating in any way whatsoever against system users or categories of system users, including, without limitations, refrain from discriminating for the benefit of its associated undertakings;

5. control the transmission lines operated by them in line with the standards of the control area manager;

6. make measurements at the system borders, exchange of data;

7. keep informed of the system utilisation at any point in time, including, without limitations, information on flows and pressure, and send such information to the control area manager.

“(2) The operators of transmission facilities shall be obliged:

1. to supply adequate information to the operator of line or storage facilities connected to their own facilities so as to ensure safe and efficient operation, co-ordinated extension and interoperability of the systems, and to enter into contracts on the transfer and acceptance modalities with the operator of such connected facility;

2. to refrain from discriminating in any way whatsoever against system users or categories of system users, including, without limitations, refrain from discriminating for the benefit of its related undertakings;

3. to make measurements at the system borders as well as exchange data;

4. to keep informed of the system utilisation at any point in time, including, without limitations, information on flows and pressure, and send such information to the control area manager.

5. to operate the facilities with due regard to the requirements of environmental protection, to prepare safety reports including a systematic risk analysis and draw up plans to avoid, limit and eliminate failures (action planning) and to inform the government authorities and affected public in the event of a serious failure or accident;

6. to process applications for system access to supply domestic customers within a period of not more than two weeks and to allocate the line capacities under section 19 para. 2 in accordance with the Austrian and EU provisions to promote competition;

7. to perform cross-border transports to supply customers in another EU or EEA member state subject to the provisions of the transport contract entered into with the owner of the transport rights;

8. to enter into contracts with the control area manager which grant parties entitled to system access a direct right of access to the upstream natural gas lines (section 17 para. 1);

9. to take out a third-party liability insurance policy with an insurer licensed to provide this type of insurance in Austria or in another EU or EEA member state, where the amount insured per event insured shall be at least 20 million euro in case of personal injury or damage to property, and where the amount insured may be limited to 40 million euro per annum, and to furnish proof of such insurance to Energie-Control GmbH;

10. to follow the control area manager’s instructions in controlling systems to meet the claims of parties entitled to system access, especially with regard to handling the schedules;

11. to enter into contracts on the exchange of data with other system operators, the control area manager, the balance group representative, the balance group coordinator and other market participants in accordance with the market rules;

12. to contribute to long-term planning jointly with the control area manager (section 12e);

13. to furnish information regarding a change of supplier in line with the market rules, in order to ensure that the control area manager can comply with its obligations;

14. to comply with the standards regarding security, reliability and quality specified in the general
terms and conditions for cross-border transports (section 31g); and
15. to furnish Energie-Control GmbH with the data required to monitor observance of the standards
as set forth in item 15 and to publish the resultant monitoring findings;
16. to furnish, in electronic form, the control area manager with data on current injection and
withdrawal capacities at the injection and withdrawal points of the control area;
17. on their own part, to carry out capacity extensions in accordance with the approved long-term
plan of the control area manager (section 12e). If the transmission undertaking fails to comply
with this obligation, the control area manager shall tender the capacity extension required under
the long-term plan. The control area manager shall be excluded from submitting bids for such
tender.

(3) Entitlement to system access pursuant to para. 2 item 6 above shall be ruled by section 41.
(4) In the event that a transmission undertaking fails to comply with its duties as set forth in para. 2
item 9 above, it shall be liable to indemnify the control area manager if the latter becomes liable for da-
mages pursuant to section 19 para. 6.
(5) The provisions of para. 2 items 7 and 18 and of para. 4 shall apply mutatis mutandis to holders
of transport rights.”

Obligation to Operate

Section 31b. Upon issuance of a licence pursuant to section 13, the transmission undertaking shall
be obliged to operate its transmission line to their full extent. Any interruption, limitation or suspension of
operation shall be notified to the control area manager, the clearing and settlement agency for transactions
and price formation and Energie-Control Kommission. “If the undertaking intends to cease operation of a
transmission line, it shall also notify the Federal Minister of Economics and Labour and Energie-Control
Kommission three months prior to the intended date of cessation depending on the actual facts and shall
publish such intention on the internet.”

Sub-Chapter 2

Cross-Border Transport

Cross-Border Transport of Natural Gas

Section 31c. Cross-border transports shall be governed by the provisions of sections 18 to 21 subject
to the following provisions.

Section 31d. Cancelled.

Granting and Organisation of System Access

Section 31e. (1) Transmission undertakings and holders of transport rights in transmission lines
shall grant system access to parties entitled to system access at the general terms and conditions approved
pursuant to section 31g and the grid utilisation charges calculated on the basis of methods approved
pursuant to section 31h.

If, in order to obtain system access within the geographical territory of the Control Area East, it is
necessary to enter into contracts with more than one transmission undertaking or holder of transport
rights, the application for system access shall be submitted to OMV Gas GmbH. For the entire transport
path desired by such party, OMV Gas GmbH shall
1. respond to applications for system access within two weeks;
2. calculate and show the free line capacities;
3. calculate the grid utilisation charge;
4. furnish the requisite contract documents based on the approved general terms and conditions
   (section 31g);
5. publish unused committed line capacities pursuant to para. 7 on the internet.
If system access needs to be agreed with only one transmission undertaking or holder of transport rights, the undertaking granting system access shall comply, mutatis mutandis, with the obligations pursuant to items 1 through 5.

(3) For rendering the services to comply with its responsibilities pursuant to para. 2 above, OMV Gas GmbH shall be authorised to charge a reasonable fee. This fee shall be based on the expenditures associated with performing its responsibilities pursuant to para. 2 above including a reasonable profit markup. The rates corresponding to the services rendered shall be calculated with a view to costs. The amount of the fee shall be published on the internet.

(4) The transmission undertakings and holders of transport rights shall be obliged to furnish OMV Gas GmbH any and all information required for the obligations pursuant to para. 2 items 1 through 5 not later than seven days after being requested to do so.

(5) For performing another transport of natural gas from the production or storage facilities to a withdrawal point in the Control Area East, the control area manager of the Control Area East shall provide the data required for complying with the responsibility pursuant to para. 2 item 2.

(6) The transmission undertakings and holders of transport rights shall develop a uniform scheme to calculate available line capacities at the injection and withdrawal points for cross-border transports in the transmission system. For this, the uniform calculation scheme for available line capacities as prepared by and approved for the control area manager (section 12 para. 1 item 17) shall be used.

(7) The system user shall offer for sale any transport capacity not used by but committed to such user through a central trading platform (section 31e para. 2 item 5). If the system user fails to comply with such obligation, any unused transport capacities shall be made available to third parties by the transmission undertakings or holders of transport rights, except when such action would infringe upon requirements under existing transport contracts.

Procedure to Determine the Lawfulness of Refusal to Grant System Access

Section 31f. If a procedure to find on whether or not a refusal to grant system access was lawful (section 19 para. 4) concerns cross-border transports, both the transmission undertaking and the holder of the transport rights shall be a party to such procedure. If the refusal to grant system access is contested or if such refusal is based on the grounds of the system conditions in the destination state, Energie-Control Kommission shall suspend the procedure under section 38 AVG and obtain a comment on this issue from the agency of the destination state named pursuant to Article 21 of the Natural Gas Directive. In its decision, Energie-Control Kommission shall be bound by this comment. If the agency of the destination state fails to submit a comment within two months, Energie-Control Kommission may judge the issue of entitlement to system access on its own opinion. The period of one month specified in section 19 para. 4 shall not apply to procedures concerning cross-border transports of natural gas.

General Terms and Conditions for Cross-Border Transport

Section 31g. (1) The holders of transport rights shall publish the terms and conditions applicable in a given destination state on their internet homepage in German and English and shall, upon request, notify these terms and conditions to any interested party. The general terms and conditions for cross-border transports and any amendments thereto shall require the approval of Energie-Control Kommission. Such approval shall be given subject to stipulations or to a time limit to the extent such is required to comply with the provisions of this Act. Upon request of Energie-Control Kommission, transmission undertakings and holders of transport rights shall be obliged to amend or rewrite their general terms and conditions for cross-border transport filed for approval.

(2) The general terms and conditions for handling cross-border transports shall not be discriminatory and shall not contain any abusive practices or unjustified restrictions nor jeopardise the security of supply or the quality of service. They shall, in particular, be formulated:

1. to ensure that the tasks incumbent upon the transmission undertakings or holders of transport rights will be met;
2. to make for an objective connection between the performance of the system users and the performance of the transmission undertaking and of the holder of the transport rights;
3. to assign the mutual obligations in a balanced and causative manner;

302 as amended by Article 2 item 48 of the Federal Act, Federal Law Gazette I no. 106/2006. [Sections 31e through 31h shall be renamed “31f” through “31i”.

[as at: 4 April 2007]
4. to contain specifications on the technical requirements for connection to the system at the system connection point and for all measures to prevent negative effects on the system of the transmission undertaking or on other facilities;
5. to contain regulations on the allocation of costs based on causation;
6. to be clear and logical; and
7. to contain definitions of terms which are not generally understood, and
8. to be consistent with existing law.

(3) The general terms and conditions for cross-border transports shall cover, without limitations:

1. the rights and obligations of the contracting parties;
2. the technical minimum requirements for system access;
3. the quality requirements applicable for injection and transport of natural gas;
4. the points available for injection of natural gas;
5. the services to be made available and quality categories to be offered by the transmission undertakings or holder of transport rights within the scope of system access;
6. the method and modalities of applications for system access;
7. the provisions by which criteria and in what manner unused and committed system capacities must be made available to third parties;
8. the data to be furnished by the system users;
9. the obligation of system users. to use and pay for system capacities within reasonable periods of time;
10. a period of not more than ten days upon receipt within which the transmission undertaking or holder of transport rights shall reply to the application for system access, also in cooperation with other transmission undertakings and holders of transport rights;
11. the contract term, conditions for extensions, and termination of performance and the contractual relationship;
12. provisions regarding compensation and refunding in the event that the contractual service quality is not complied with, and information on dispute settlement procedures provided under the law;
13. the underlying principles of settlement;
14. the type and form of invoicing;
15. the procedure to be followed for reporting technical problems and failures and their repair.

In the general terms and conditions for cross-border transports, technical standards and regulations (technical rules) as amended may be made binding.

(4) Prior to their approval, the regulations contained in the general terms and conditions for cross-border transports as provided in para. 2 item 4 above shall be notified to the European Commission under Article 8 of the Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations, Official Journal L 204, 21/07/1998, p. 37, as amended by Directive 98/48/EC, Official Journal L 217, 05/08/1998, p. 18. This shall not apply to the extent that this requirement has already been met."

**Fee for Cross-Border Transports**

Section 31h. (1) In carrying out cross-border transports, transmission undertakings and holders of transport rights shall be obliged to grant system users access on the basis of grid utilisation charges that comply with the principle of non-discrimination and cost-orientation. The methods to be approved under Section 31h para. 2 below for calculating such grid utilisation charges shall refer to:

1. the cost base, consisting of the full costs for operation, fuel gas, line pack management, maintenance, extension, administration and marketing. The return on investment to be foreseen shall be adequate compared to international ROIs and suitable for the long-term capital structure of the transmission undertaking or holder of the transport rights and shall make provision for reasonable risk;
2. the other specifications. Thus tariffs shall be set on the basis of performance-dependent and distance-independent elements on the one hand and on the basis of performance-dependent and distance-dependent elements on the other hand. Underlying the tariffs shall be the capacity utili-

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sation at the time of calculation. It shall be possible to combine individual line facilities for calculating the grid utilisation charge.

The methods as set forth in section 31h para. 2 below may provide that grid utilisation charges be determined in part or, in specific cases, also by market-oriented methods such as auctions. The methods shall facilitate the efficient trade in gas and competition and avoid cross-subsidies between system users. At the same time they shall provide incentives for investment and for maintaining or establishing interoperability. Further, methods shall be designed so that necessary investments in the systems can be made so that the system’s viability is ensured.

(2) Before grid utilisation charges pursuant to para. 1 above enter into force, the methods used by the transmission undertakings or holders of transport rights to calculate such charges shall be submitted to Energie-Control Kommission for approval and upon such Kommission’s request be amended or rewritten. Such approval shall be granted by a decision when the stipulations of para. 1 above have been met and the transit charges resulting from such methods do not significantly exceed the average of published transit charges, which shall be submitted to the authority together with the method to be approved, for comparable transport services through comparable transmission systems in the European Union. The approved methods shall be published on the internet homepage of the transmission undertaking or holder of transport rights.

(3) Any party using or intending to use a system and wishing to file a complaint with regard to the aspects set forth in paras 1 and 2 above may request dispute settlement proceedings pursuant to section 21 para. 2 GWG.

(4) Any changes in the grid utilisation charges shall be notified to Energie-Control Kommission prior to their implementation. If so requested by Energie-Control Kommission, evidence shall be given for compliance with the methods named and described in paras 1 and 2 above to calculate the grid utilisation charges. Applying section 10 paras 2 and 3 E-RBG mutatis mutandis, Energie-Control Kommission shall request the transmission undertaking to calculate the grid utilisation charges in accordance with the methods.

(5) For carrying out another transport of natural gas from production or storage facilities to a withdrawal point at the control area, Energie-Control Kommission shall, upon a system user’s application, determine a grid utilisation charge for making use of the entire distance used within the control area. Sections 23 bis shall be applied mutatis mutandis.

Natural Gas Transit

Section 31l. 304 (1) OMV Erdgas GmbH shall be obliged to grant system access, subject to the regulations of para. 2 below, to undertakings which are listed in the Annex to Directive 91/296/EEC of 31 May 1991 concerning the transit of natural gas through grids (OJ L 147 of 12 June 1991; p 37; Gas Transit Directive) and which submit an application for transit within the meaning of this directive. Inasmuch as third parties have the sole right to transport natural gas by way of transmission systems operated by OMV Erdgas GmbH, or the sole right to conclude contracts involving the transport of natural gas through such transmission systems, this obligation shall equally apply to such third parties.

(2) The undertakings referred to in para. 1 above shall immediately report to the European Commission and to Energie-Control Kommission any application for transit based on a contract with a minimum duration of one year, and shall immediately enter into negotiations on the terms of transit. These terms shall be non-discriminatory. They shall contain no abusive practices or unjustified restrictions, nor jeopardise the security of supply or the quality of service.

(3) The European Commission and Energie-Control Kommission shall be notified of the conclusion of any natural gas transit contract pursuant to para. 2 above.

(4) Should no transit contract be concluded within twelve months of notification pursuant to para. 2 above, the reasons for such failure shall be reported to the European Commission and to Energie-Control Kommission.

(5) The undertakings referred to in para. 1 above shall be obliged to participate in any dispute settlement proceedings initiated by the European Commission upon being notified of the reasons pursuant to para. 4 above; in particular, these undertakings shall explain in such dispute settlement proceedings the position they took in the negotiations on a natural gas transit contract.

305 as amended by Article 2 item 48 of the Federal Act, Federal Law Gazette I no. 106/2006. [Sections 31e through 31h shall be renamed “31i” through “31l”.]
Chapter 4

Clearing and Settlement Agency for Transactions and Price Formation for Balancing Energy

Prerequisites for Operation

Section 32. (1) The operation of a clearing and settlement agency for transactions and price formation for balancing energy (balance group coordinator) shall require a licence to be issued by the Federal Minister of Economics and Labour. As a rule, a licence shall be issued for just one control area. However, for reasons of efficiency and cost savings, a licence may be issued to cover two control areas.

(2) The licence shall be issued in writing and may be made conditional upon terms and stipulations to ensure that the attendant responsibilities be met.

(3) The applicant shall include its application for the award of a licence the following documentation:

1. information on the seat and legal form;
2. the statutes or shareholders’ agreement;
3. the business plan showing the undertaking’s structure and internal audit procedures; the business plan shall furthermore include a budget forecast for the first three business years;
4. a description of the settlement and price formation system available for the balancing energy in technical and organisational terms;
5. the amount of initial capital freely available domestically for the managing directors’ disposal unencumbered and without restrictions;
6. the identity and amount of investment by the owners holding a qualified stake in the undertaking, and information on the group structure provided that such owners are part of a group;
7. the name of the prospective managing directors and their qualifications to run the undertaking.

(4) If several applications for a licence are received for a given control area, the licence shall be awarded to the applicant most closely corresponding to the licensing prerequisites and the economic interest in a functioning natural gas market.

Prerequisites for Licensing

Section 33. (1) A licence pursuant to section 32 may be issued only if:

1. the applicant is able to comply efficiently and safely with the responsibilities listed in sections 33b and 33c;
2. no licensee has been appointed for the control area for which a licence is applied;
3. the persons holding a qualified stake in the undertaking meet the requirements to be stipulated in the interest of ensuring sound and careful management of the undertaking;
4. the supervisory authorities are not hindered in duly fulfilling their supervisory duties through any close connection of the undertaking with other natural or legal persons;
5. no statutory or administrative regulations of a third country governing a natural or legal person closely connected with the undertaking nor any problems in applying such regulations hinders the supervisory authorities in duly fulfilling their supervisory duties;
6. the initial capital is at least € 3 million and is freely available for the managing directors’ disposal unencumbered and without restrictions, and the material and personal resources of the undertaking will ensure the best possible management and administration of the clearing and settlement agency;
7. none of the managing directors is disqualified within the meaning of section 13 paras 1 through 6 of the 1994 Industrial Code;
8. no judicial investigation has been initiated against any of the managing directors for any wilful action punishable by imprisonment of more than one year, until the ruling that ends the criminal proceedings becomes final;
9. based on their education and training, the managing directors are technically qualified and have acquired the properties and experience required for operating the undertaking. For a managing director to be technically qualified shall mean that s/he has sufficient theoretical and practical knowledge of settling balancing energy and experience in pipelines; a manager of the clearing

306 applicable as of 24 August 2002 as set forth in section 78a para. 1
307 applicable as of 24 August 2002 as set forth in section 78a para. 1
and settlement agency shall be assumed to be qualified if s/he can furnish proof of at least three
years experience in an executive position in the field of rates or auditing;
10. at least one managing director has his/her centre of vital interests in Austria;
11. the undertaking has at least two managing directors and its statutes expressly exclude the power
of representation, general power of commercial representation or commercial power of attor-
neymxxviii for the entire operation to be granted to a single person;
12. none of the managing directors also works full-time in another job outside the undertaking which
is liable to cause a conflict of interest;
13. the seat and head office are located in Austria;
14. the processing system available meets the requirements of a modern settlement system;
15. neutrality, independence and confidentiality of data vis-à-vis market participants are ensured.

(2) A balance group coordinator may be entered as a company in the Commercial Register only
when the requisite final decisions have been furnished in the original or a certified copy. The competent
court shall also serve rulings on such entries to the Federal Minister of Economics and Labour as the
supreme energy authority, and to Energie-Control GmbH as the supervisory authority.

Withdrawal of Licence, Expiry of Licence and Other Obligatory Notifications and Approvals

Section 33a. With regard to the withdrawal and expiry of licence, the provisions of sections 5 and
6 of the Federal Act regulating the preconditions for operation, the tasks and powers of clearing and sett-
lement agencies for transactions and price formation with regard to balancing energy, Federal Law Gazet-
te I no. 121/2000, shall be applied mutatis mutandis. In addition, the provisions of sections 7 and 8 leg. cit. shall apply to clearing and settlement agents within the meaning of this Federal Act.

Responsibilities

Section 33b. (1) The clearing and settlement agent shall have the following responsibilities:
1. manage the balance groups in terms of organisation and settlement;
2. calculate, allocate and invoice the balancing energy;
3. enter into contracts
   a) with balance group representatives, system operators, natural gas traders, producers, storage
      undertakings and the control area manager;
   b) with facilities for data exchange with a view to preparing an index;
   c) with natural gas exchanges on the disclosure of data;
   d) with natural gas traders, producers and storage undertakings on the disclosure of data;
   e) with natural gas undertakings or storage undertakings or other suitable persons operating in
      the upstream pipeline system abroad on the provision of balancing energy in the system areas
      of Tyrol and Vorarlberg (para. 4 below).

(2) The management of balance groups in terms of organisation and settlement shall include,
without limitations:
1. assign identification numbers for the balance groups;
2. provide interfaces in the information technology field;
3. manage the schedules between balance groups;
4. receive the measuring data supplied in a prespecified form by the distribution undertakings, and
   analyse and transfer them to the market participants and balance group representatives concerned
   in line with the specifications included in the contracts;
5. receive schedules from the balance group representatives and transfer them to the market partici-
   pants concerned in line with the specifications included in the contracts;
6. perform credit investigations on the balance group representatives;
7. contribute to the drafting and adjusting of regulations regarding change of customers, handling
   and settlement;
8. handle the settlement and organisational measures when balance groups are dissolved;
9. distribute and allocate the difference resulting from the use of standardised load profiles to the
   market participants connected to the system of a system operator upon receipt of the measured
   values based on transparent criteria;

308 applicable as of 24 August 2002 as set forth in section 78a para. 1
309 applicable as of 24 August 2002 as set forth in section 78a para. 1
10. charge the clearing fee (section 33e) to the balance group representatives.

(3) In the system area East, the clearing and settlement agent shall obtain and accept bids for balancing energy from natural gas traders, producers, storage undertakings and major customers, and, upon examining alternative tools for greater flexibility, draw up a call order.

(4) For the purpose of providing balancing energy in the system areas of Tyrol and Vorarlberg, the control area managers shall enter into contracts with natural gas undertakings or storage undertakings or other suitable persons active in the upstream foreign grid.

(5) Within the scope of calculating, allotting and charging for balancing energy, the balance group coordinator shall:
   1. accept the difference between schedules and measured data and calculate the balancing energy therefrom;
   2. determine the prices for balancing energy in accordance with the procedure described in section 33c and publish them regularly in a suitable manner;
   3. calculate the charges for balancing energy and invoice them to the balance group representatives and system operators (section 24 para. 1 item 12);
   4. take special action if no offer is available for balancing energy;
   5. record, archive and publish in a suitable manner the standardised load profiles used.

 Procedure to Determine the Price of Balancing Energy

Section 33c. 310 (1) The prices for balancing energy in the control area East shall be determined on the basis of the procedure set forth in paras. 2 and 3 below; the prices in the control areas Tyrol and Vorarlberg shall be negotiated with due regard to para. 3 below.

(2) In the control area East, the prices for balancing energy shall be determined from the offers supplied by the natural gas traders, producers and storage undertakings which are able to supply balancing energy (demand curve) for each balancing period.

(3) The prices for balancing energy shall be determined with due regard to a market-oriented model. Such model shall be developed by the balance group coordinator and shall be subject to approval by Energie-Control GmbH.

General Terms and Conditions

Section 33d. 311 (1) The balance group coordinator shall enter into the contracts referred to in section 33b para. 1 item 3 on the basis of general terms and conditions. The general terms and conditions shall be subject to approval by Energie-Control GmbH.

(2) The general terms and conditions shall include, without limitations:
   1. a description of the method to be applied to calculate the balancing energy accruing to market participants and distribution undertakings;
   2. the criteria used for drawing up the call order;
   3. the method used for pricing the balancing energy;
   4. the principles used for the organisational management of balance groups;
   5. the data to be furnished by the market participants, distribution undertakings and balance group representatives;
   6. the main market rules applicable to the balance group coordinator in compliance with such coordinator’s responsibilities, including the obligation binding the contracting parties to their observance; and
   7. the obligation of balance group representatives to provide a collateral (cash deposit, bank guarantee, deposit of non-registered savings passbooks) of an adequate amount provided that, given the circumstances of an individual case, the balance group representative is expected to be unable to meet its payment obligations at all or in good time.

”(3) The approval shall be granted, if necessary subject to stipulations or a time period, when the general terms and conditions meet the economic interest in a functioning natural gas market and are suitable to perform the responsibilities set forth in section 33b. The time limit shall not be less than three years.” 312

310 applicable as of 24 August 2002 as set forth in section 78a para. 1
311 applicable as of 24 August 2002 as set forth in section 78a para. 1
312 as amended by Article 2 item 50a of the Federal Act, Federal Law Gazette I no. 106/2006
(4) If requested by Energie-Control GmbH, the balance group coordinator shall be obliged to amend or rewrite the general terms and conditions submitted for approval.

Clearing Fee

Section 33e. (1) “For the services rendered in performing the responsibilities of a balance group coordinator, Energie-Control GmbH shall determine a fee in the form of a rate by way of an ordinance.” Such fee shall be based on the expenditure accruing from performance of the responsibilities, including a reasonable profit markup. The prices corresponding to the services shall be determined with a view to the costs. They shall be based on the sale of natural gas by each balance group and the degree to which the balance group coordinator’s services are used by each balance group. No clearing fee shall be paid by the special balance group for system losses and own consumption.

(2) The rate determined for setting the clearing fee shall be published in the Official Journal supplementing the Wiener Zeitung, at the cost of the balance group coordinator.

Preparations for Market Liberalisation

Section 33f. The balance group coordinator shall make provision to ensure that the organisational and technical resources required to commence its activities are available as of 1 October 2002.

Part 4

Liability

Causes of Liability

Section 34. (1) System operators (section 6 item 33) shall be liable for any loss or damage arising in the course of operating their plants inasmuch as persons are killed or physically injured or their health is impaired or property is damaged.

(2) Section 5 para. 2, sections 6 to 8 and 10 to 14, section 15 para. 2, sections 17 to 20 and section 23 of the Railway and Motor Vehicle Third-Party Liability Act xxxix, Federal Law Gazette no. 48/1959, shall apply mutatis mutandis.

Limits of Liability

Section 35. (1) Liability pursuant to this Federal Act for any act causing loss or damage shall be limited as follows:

1. regarding the death or injury of persons, the maximum liability shall be € 292,000 as a payment of principal, or € 17,520 per injured person per year as an annuity; these maximum amounts shall not apply to treatment cost or funeral costs;
2. regarding losses with respect to property, the maximum liability shall be € 8,760,000 even in the event that several things have been damaged; in the event that the loss includes damage to real property, this limit shall be increased to € 18,250,000; the differential amount of € 9,490,000 shall be used solely for compensation for damage to real property.

(2) In the event that compensation should be due to several injured parties as a result of one and the same incident, and that the sum total of these compensation payments should exceed the maximum amounts provided in para. 1 item 2 above, the payments due to the individual parties shall be reduced by the same proportion as the ratio between the total amount and the maximum amount.

(3) The provisions of this section shall apply without prejudice to any other provisions under which system operators are liable for higher losses than under the provisions of this Federal Act, and to any provisions under which other party is liable for compensation.

Exclusion of Liability

Section 36. System operators shall not be liable inasmuch as:

1. the injured or dead party was involved in operating the facility at the time of the incident;
2. the property damaged was being transported at or by the facility where the incident originated, or was being received with a view to its transport at or by this facility; or
3. the incident was caused by war, warlike activities, civil war, riots, insurrection or terrorist attacks.

314 applicable as of 24 August 2002 as set forth in section 78a para. 1
Proof of Third-Party Liability Insurance

Section 37. (1) Applicants pursuant to section 13 shall attach to their application a written statement from an insurance company, certifying that the applicant has taken out a third-party liability insurance policy pursuant to section 14 para. 1 item 2, and that the insurance company undertakes to notify the licensing authority of any circumstance leading to the lack or termination of this required third-party liability insurance coverage.

(2) Upon receiving notification of a circumstance leading to the lack or termination of the required third-party liability insurance coverage, the authority shall withdraw the system operator's license pursuant to section 38a unless the operator shows proof of appropriate third-party liability insurance within a period of time to be set by the authority.

Part 5

Expire of Licence to Operate a Natural Gas Undertaking

Grounds for Termination

Section 38. Licences pursuant to section 13 shall terminate:
1. upon withdrawal or prohibition of the licence pursuant to section 38a;
2. upon surrender of the licence;
3. upon the death of the licensee, where the licensee is a natural person;
4. upon failure of the legal person or upon the dissolution of a partnership under commercial law, save as otherwise provided by section 38b;
5. upon the institution of bankruptcy proceedings against the assets of the legal entity or the dismissal of a petition in bankruptcy due to lack of assets;
6. upon prohibition of operation (instruction) pursuant to section 38e;
7. if the features described in section 6 items 16 or 61 no longer apply to an undertaking.

Withdrawal and Prohibition

Section 38a. (1) Energie-Control Kommission shall withdraw licences pursuant to section 13:
1. if the licensing conditions (section 14) are no longer complied with;
2. if a transmission or distribution undertaking fails to comply with its obligation to furnish proof of third-party liability insurance pursuant to section 37;
3. if the licensee or the managing director has been punished for gross infringement of any provisions of this Act and if further infringement is to be feared.

(2) Energie-Control GmbH shall issue a decision prohibiting a natural gas trader from carrying out its business if it has been punished for gross infringement of any provisions of this Federal Act and if further infringement is to be feared or measures have been taken or are about to be taken in response to a natural gas trader's becoming insolvent or excessively indebted.

Reorganisation

Section 38b. (1) In the event of the transfer of companies or of parts of companies due to reorganisation (including, without limitations, due to merger, change of corporate form, capital contribution, combination, splitting or partition), the licences necessary to continue operations shall pass to the legal successor, subject to the provisions of paras. 2 and 4 below, as shall the rights required for operation. Mere reorganisation shall not constitute grounds for termination and shall, in particular, not justify withdrawal of the licence.

(2) Provided that the legal successor complies with the licensing conditions pursuant to section 14, it shall be deemed to be duly licensed to carry on operations pursuant to para. 1 above upon the reorganisation being entered in the Commercial Register. The legal successor shall notify the authority of the transfer of the licence, attaching an extract from the Commercial Register, as well as copies of the documents submitted to effect entry in the Commercial Register, within six months of the reorganisation being entered in the Commercial Register.

(3) Neither the transformation of a general partnership into a limited partnership nor the transformation of a limited partnership into a general partnership shall have any effect on the licence. The company shall notify the authority of such a transformation within four weeks of the transformation being entered in the Commercial Register.

(4) In the event that the legal successor should fail to notify the transfer of rights or, in the case referred to in section 14 para. 1 item 4 b, should fail to appoint a managing director within six months of the
transformation being entered in the Commercial Register, the successor’s licence shall terminate upon expiry of the same time period.

**Dissolution of Partnerships under Commercial Law**

**Section 38c.** The licence pursuant to section 13 of a partnership under commercial law shall terminate upon dissolution of this partnership if the partnership is not liquidated; otherwise, the licence shall terminate upon conclusion of the liquidation. The licence of a partnership under commercial law shall not terminate if the partnership is continued. The liquidator shall notify the authority of the conclusion of the liquidation within two weeks.

**Surrender of Licences**

**Section 38d.** The surrender of a licence shall take effect as of the date on which the authority receives written notice, provided that the licensee does not specify a later date of surrender. Licences may not be surrendered conditionally. Notices of surrender shall be irrevocable upon receipt by the authority.

**Measures to Ensure Security of Natural Gas Supply**

**Section 38e.** (1) In the event that a system operator should fail to carry out its duties pursuant to part 3, Energie-Control Kommission shall order it to remove the obstacles in question within a reasonable period.

(2) Insofar as it is necessary to remove any danger to the life or health of persons, or to avert severe damage to the national economy, and except when the defaulting undertaking is a transmission undertaking, the authority may instruct another system operator to carry out the duties of this undertaking, entirely or partially, on a temporary basis (instruction). In the event that

1. the nature of the obstacles is such that full performance of the legal obligations imposed upon the undertaking pursuant to part 2 is not to be expected, or that
2. the undertaking should fail to comply with Energie-Control Kommission’s order to remove these obstacles,

the undertaking in question shall be entirely or partially prohibited from continuing operations, and another system operator shall be obliged to take over system operation on a permanent basis, with due regard to the provisions of part 2 and part 3.

(3) The system operator instructed pursuant to para. 2 above shall assume the rights and obligations arising from the contracts of the undertaking affected by the prohibition.

(4) At the request of the system operator instructed pursuant to para. 2 above, Energie-Control Kommission shall permit this undertaking, against reasonable compensation, to use the facilities of the undertaking affected by the prohibition insofar as this is necessary for the instructed undertaking to carry out its duties.

(5) After the decision pursuant to para. 2 above has become final and at the request of the instructed undertaking, Energie-Control Kommission shall expropriate the system put into use by the instructed undertaking for the benefit of this undertaking and against a reasonable compensation.

(6) The provisions of the Railway Expropriation Act lxxxii shall apply mutatis mutandis to the expropriation procedure and to the official assessment of compensation payments.

**Part 6**

**Storage Undertakings**

**Access to Storage Facilities**

**Section 39.** (1) Storage undertakings shall grant access to their facilities to parties entitled to storage access (section 6 item 49) at non-discriminatory and transparent conditions.

(2) Storage access may be refused for the following reasons:
1. failure conditions;
2. lack of storage capacities;
3. if the party entitled to storage access or any associated undertaking which has a controlling influence on the party entitled to storage access is domiciled in a EU member state in which no legal entitlement to storage access is granted to the party entitled to storage access, or if storage access is impossible for factual reasons;
4. if the technical specifications cannot be reasonably harmonised;
5. if access is unreasonable economically.
The storage undertaking shall furnish grounds for its refusal of access in writing to the party entitled to storage access.

(3) In the case of lack of storage capacities, access shall be granted subject to the following principles:
1. injection and withdrawal for the purpose of providing balancing energy shall take priority over all other parties entitled to storage access;
2. injection and withdrawal based on existing contractual obligations or later obligations superseding such obligations, ranked chronologically.

(4) Upon application by a party claiming to be injured in its legally granted right to storage access by being refused access, Energie-Control Kommission shall find whether the prerequisites for refusal of access pursuant to para. 1 above apply. Energie-Control Kommission shall make its decision within two months of receiving the application.

(5) The storage undertaking shall be obliged to furnish proof of the grounds pursuant to para. 2 above. At all stages of the procedure, Energie-Control Kommission shall use its best efforts to effect an amicable agreement between the party entitled to storage access and the storage undertaking.

(6) If Energie-Control Kommission finds that the right to storage access has been violated, the storage undertaking shall grant the applicant access immediately upon service of the decision issued by Energie-Control Kommission.

(7) Actions for claims based on refusal of storage access pursuant to para. 2 above may not brought until the decision by Energie-Control Kommission has become final; if the parties to both proceedings are identical and if this decision constitutes a preliminary question to proceedings before a court, such proceedings shall be suspended until the decision of Energie-Control Kommission has become final.

Storage Utilisation Charges

**Section 39a.** “(1) Storage undertakings shall be obliged to agree with parties entitled to storage access on storage utilisation charges which comply with the principles of equal treatment. The principles underlying the calculation of the storage charge shall be published once a year and after every amendment. Proven technical and geological risks shall be reasonably taken into account, as shall be opportunity costs, if any:

(2) In the event that the storage utilisation charges for a storage service demanded by customers and published by a storage undertaking are more than 20% higher than the average charges for comparable services in the EU member states, Energie-Control Kommission, for the purposes of ensuring comparability of storage utilisation charges, shall specify by ordinance how the cost components pursuant to para. 1 above are to be used to underlie the pricing of the storage undertakings. In doing so, the principles of cost causation and cost orientation shall be applied.”315

(3) “Upon application by the party entitled to storage access, Energie-Control Kommission shall find whether the conditions underlying the storage utilisation contract comply with the principle of equal treatment.”316 If this principle is violated, the storage undertaking shall promptly ensure conditions to comply with this principle.

Submission of Contracts

**Section 39b.** (1) By 15 October 2002 at the latest, the storage undertakings shall submit and comment all contracts on the provision of storage services valid until 30 September 2002. Contracts entered into after 30 September 2002 shall be submitted to Energie-Control GmbH promptly upon their conclusion.

**General Terms and Conditions for Access to Storage Facilities**

**Section 39c.** (1) The general terms and conditions for access to storage facilities shall not be discriminatory and shall not contain any abusive practices or unjustified restrictions nor jeopardise the security of supply or the quality of service. They shall, in particular, be formulated:

1. to ensure that the tasks incumbent upon the storage undertaking will be met;
2. to make for an objective connection between the performance of the system users and the performance of the storage undertaking;
3. to assign the mutual obligations in a balanced and causative manner;
4. to contain specifications on the technical requirements for injection and withdrawal;

5. to contain regulations on the allocation of storage utilisation charges;
1. to be clear and logical;
2. to contain definitions of terms which are not generally understood;
3. to be consistent with existing law.

(2) The general terms and conditions for access to storage facilities shall cover, without limitations:

1. the rights and obligations of the contracting parties; including, without limitations, those to observe the other market rules governing access to storage facilities;
2. the technical minimum requirements for system access;
3. regulations for metering the natural gas quantity handed over to and delivered by the storage undertaking;
4. regulations concerning the point of acceptance and handing-over of natural gas;
5. the quality requirements applicable for injection and withdrawal of natural gas;
6. the services to be made available by the storage undertakings within the scope of system access;
7. the method and modalities of applications for system access;
8. the data to be furnished by the system users;
9. the modalities of call-offs;
10. a period of not more than two weeks upon receipt within which the storage undertaking shall reply to the application for system access;
11. the underlying principles of settlement;
12. the type and form of invoicing and payment;
13. the procedure to be followed for reporting technical problems and failures and their repair.
14. the obligation of parties entitled to access to storage facilities to pay in advance or provide a collateral (cash deposit, bank guarantee, deposit of non-registered savings passbooks) of an adequate amount provided that, given the circumstances of an individual case, the system user is expected to be unable to meet its payment obligations at all or in good time.

Obligations of Storage Undertakings

Section 39d. Storage undertakings shall be obliged:

1. notwithstanding the obligations under this Act to provide information, to make notifications and to respond to enquiries as well as the obligation under section 8 to grant the right to inspect business documents, to treat confidentially any economically sensitive information of which they become aware in carrying on their business, and to prevent such information on their own activities which might produce economic advantages from being disclosed in a discriminatory manner;
2. to publish the general terms and conditions governing the use of their facilities once a year and after each amendment;
3. to regularly publish information on the available injection and withdrawal capacity and the available volume on the internet;
4. unless relevant data are supplied by the downstream system operator to the control area manager, to furnish to such control area manager simultaneously through the downstream system operator data in electronic form on the current pressure situation and volume throughput at handing-over points to storage facilities in the control area;
5. to collaborate in the long-term planning activities of the control area manager. 317

Title 5
System Users

Part 1

Natural Gas Traders “and Suppliers” 318

Natural Gas Traders “and Suppliers” 319

Section 40. (1) A natural gas trader (section 6 item 10) buying or selling natural gas for customers in the federal territory shall notify its activities to Energie-Control GmbH prior to commencing them.

(2) Natural gas traders “and suppliers” 320 selling natural gas to end users who are governed by the provisions of the Consumer Protection Act lxxxiii shall always provide for an option to enter into non-interruptible natural gas supply contracts.

“(3) For customers whose consumption is not metered by a load profile meter, natural gas traders and suppliers shall prepare general terms and conditions (delivery terms) for the delivery of natural gas in which the performance offered is described. These delivery terms shall be notified in electronic form to Energie-Control Kommission prior to commencement of the service and shall be published in suitable form.

(4) Any amendments to the terms and conditions and the contractual charges shall be permissible only subject to the provisions of the General Civil Code and the Consumer Protection Act, Federal Law Gazette no. 140/1979. Any such amendments shall be notified to the customer in writing. If the contractual relationship is terminated by the customer objecting to the amendment of the terms and conditions or the charges, it shall end on the last day of the month following a period of three months.

(5) The delivery terms as set forth in para. 3 above shall, as a minimum, contain:
1. name and address of the natural gas trader or supplier;
2. performance rendered and quality categories offered, as well as the prospective date of the start of delivery;
3. method of making available to the customer current information on the relevant contractually agreed charges;
4. information on the term of the contract, conditions for the renewal and termination of performance and the contractual relationship, existence of the right of cancellation;
5. provisions governing compensation and damages in the event of non-observance of the contractually agreed performance quality; and
6. a note on the complaint procedures provided for.

(6) Energie-Control Kommission may prohibit the application of delivery terms notified pursuant to paras 1 and 2 above within two months to the extent that such terms violate a statutory prohibition or are against public policy. This shall be without prejudice to the competences for reviewing general terms and conditions on the basis of other legislation.

(7) The provisions of paras 3 through 6 above shall be without prejudice to the provisions of the Consumer Protection Act and the General Civil Code.

(8) Natural gas traders and suppliers shall furnish Energie-Control Kommission with the delivery terms and any amendment thereof in an electronic form specified by the Kommission.

(9) Natural gas traders and suppliers shall collaborate in the long-term planning activities of the control area manager.” 321

“Minimum Requirements Governing Invoices and Information and Advertising Materials

Section 40a. (1) Information and advertising material as well as invoices directed at end users shall be designed to be transparent and consumer-friendly. Where such documents are intended to inform both on the charge for system use and the price for natural gas (energy rate), to advertise for both of them or to offer the conclusion of a joint contract or to invoice such a contract, the components of the charge for

321 as amended by Article 2 item 57 of the Federal Act, Federal Law Gazette I no. 106/2006. Section 40 paras 3 through 8 shall enter into force on 1 January 2007; section 40 para. 9 shall enter into force after 27 June 2006.
system use, the surcharges for taxes and dues and the energy rate shall be shown separately in a transparent manner. The energy rate shall always be given in cent per kWhr and together with a basic rate, if any:

(2) Without prejudice to the provisions of section 23 para. 6, invoices for the system use shall, without limitation, show the following information given by system operators, natural gas traders and suppliers:

1. allocation of customer facilities to the system levels pursuant to section 23b para. 1;
2. for performance-metered customers the agreed or acquired extent of network use in kilowatt hours per hour (kwhr/hr);
3. the designations of the metering point;
4. the meter readings used for settlement;
5. information on the type of meter reading used. The invoice shall state whether the meter was read by the system operator, the customer or in the form of a calculation; and
6. the transported quantity of energy during the settlement period broken down by tariff times.”

**Part 2**

**Parties Entitled to System Access**

**Rights of Parties Entitled to System Access**

Section 41. Customers shall have the right to enter into contracts with producers, natural gas traders and natural gas undertakings, and with due regard to the periods of notice provided for former contracts, on the supply of natural gas to cover the requirements of domestic end users and to request system access for such volumes of natural gas as of 1 October 2002. With regard to cross-border transports, the right of system access shall be governed by the regulations of the destination state (section 31e).

**Application for System Access by Natural Gas Undertakings**

Section 41a. Natural gas undertakings may request access to the system on behalf of their customers. Producers of biogenic gas (bio gas and wood gas) may request access to the system on behalf of their customers, for as long as system interoperability is not impaired thereby.

**Assertion of the Right to System Access**

Section 41b. The right to system access (section 17) shall be asserted against such system operator to whose system the customer facility located in Austria is connected. If system access was refused without justification, the system operator shall be liable to the party entitled to system access for any loss ensuring from the illegal refusal of access pursuant to section 19 para. 6. If the customer facility is located in another EU member state, sections 31d to 31i shall apply.

**Part 3**

**Balance Groups**

**Formation of Balance Groups**

Section 42. (1) System users shall be obliged either to join a balance group or to form a balance group of their own. System users shall be obliged, in accordance with their statutory and contractual obligations, to prepare and furnish data, metering values and other information serving to determine their consumption to control area managers, system operators, balance group representatives and the balance group coordinator pursuant to the obligations ensuing from the contractual agreements, to the extent required to maintain a competitive natural gas market and safeguard consumer protection.

(2) Balance groups shall be formed and changed by the balance group representative. Balance groups may be formed across the state boundaries but within the control areas.

(3) The activities of a balance group representative may be exercised by a natural or legal person or a partnership under commercial law domiciled or seated in Austria or in another EU or EEA member state.

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323 applicable as of 24 August 2002 as set forth in section 78 para. 1 to the extent required for preparing for full liberalisation as of 1 October 2002.
(4) In the event that a supplier fails to meet its statutory obligation pursuant to para. 1 above, section 9 E-RBG shall apply subject to the proviso that the obligated supplier shall be requested by a procedural instruction to comply with its obligation within a reasonable period to be specified by the authority. If the supplier fails to comply with this request within the period specified, the lawful status shall be obtained by assigning the supplier to a balance group by an administrative decision (section 42f).

**Responsibilities and Obligations of the Balance Group Representatives**

**Section 42a.**

(1) The balance group representative shall be obliged to perform its responsibilities and obligations and to comply with the market rules. The balance group representative shall have the following responsibilities:

1. develop schedules and furnish them to the balance group coordinator and control area manager;
2. enter into contracts on the maintenance of reserves and the supply of customers of those suppliers assigned by Energie-Control GmbH to the balance group under section 42f;
3. report on procurement and consumption data for technical purposes;
4. report on procurement and purchase schedules of bulk buyers and injecting parties by predefined rules for technical purposes;
5. pay charges (fees) to the balance group coordinator;
6. pay the charges for balancing energy to the balance group coordinator and pass on the charges to the balance group members.

(2) The balance group representatives shall be obliged to:

1. enter into contracts with the balance group coordinator, system operators and balance group members on the exchange of data;
2. keep a list of balance group members;
3. furnish data to the balance group coordinator, the control area manager, the system operators and the balance group members in accordance with the market rules;
4. draw up schedules between balance groups and report them to the balance group coordinator; the balance group representative may make such notification retrospectively up to a date specified by the balance group coordinator;
5. obtain balancing energy for the balance group members with a view to supplying such members;
6. comply with the approved general terms and conditions for system operators;
7. submit general terms and conditions to Energie-Control GmbH for its approval and, if so required, to amend or rewrite them to the extent necessary to achieve a competitive market;

“8. manage the capacities allocated at the injection and withdrawal points of the control area for the benefit of the members of their own balance groups and to pass on applications by their balance group members for system access or for capacity extension to the control area manager.”

(3) If a balance group member changes the balance group or supplier, the data of such member shall be furnished to the new balance group or new supplier.

**General Terms and Conditions for Balance Group Representatives**

**Section 42b.**

“(1) The general terms and conditions for balance group representatives and any amendments to them shall be subject to approval by Energie-Control GmbH. Such approval shall be granted subject to stipulations or a time limit if so required to comply with the provisions of this Act. The time limit shall not be less than three years. Upon request of Energie-Control GmbH, balance group representatives shall be obliged to amend or rewrite their general terms and conditions submitted for approval.”

(2) The general terms and conditions shall not be discriminatory and shall not contain any abusive practices or unjustified restrictions. They shall, in particular, be formulated:

1. to ensure that the responsibilities incumbent upon the balance group representative will be met;
2. to make for an objective connection between the performance of the balance group members and the performance of the balance group representative;

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324 applicable as of 24 August 2002 as set forth in section 78a para. 1 to the extent required for preparing for full liberalisation as of 1 October 2002
326 applicable as of 24 August 2002 as set forth in section 78a para. 1 to the extent required for preparing for full liberalisation as of 1 October 2002
3. to assign the mutual obligations in a balanced and causative manner;
4. to bind the contracting parties to observe the market rules;
5. to be clear and logical;
6. to contain definitions of terms which are not generally understood.

(3) The general terms and conditions shall include specifically, but without limitations:
1. details on the formation of balance groups;
2. essential features of those balance group members for which natural gas consumption is to be determined by a load profile meter;
3. responsibilities and duties of the balance group representatives;
4. principles of schedule development;
5. the period within which the schedules of a balance group shall be notified to the distribution undertakings and the transmission undertaking.

**Licensing of Balance Group Representatives**

**Section 42c.**

(1) The activity performed by a balance group representative shall be subject to a licence granted by Energie-Control GmbH. The following documents shall be enclosed with the application for such licence:

1. agreements with the balance group coordinator and control area manager as required to perform the responsibilities and obligations set forth in this Act, including, without limitations, those of an administrative and commercial type;
2. proof of entry in the Commercial Register (extract from the Commercial Register) or an equivalent register and the seat (principal residence);
3. proof that that applicant and the bodies authorised to represent it:
   a) are legally competent and have completed their 24th year of age;
   b) are Austrian citizens or citizens of another member state of the EU or of the EEA;
   c) are not excluded from exercising the licence under paras. 4 through 7 below;
4. proof that the balance group representative, at least one (general) partner or at least one managing director or managing board member or executive has the requisite technical qualifications;
5. proof that the balance group representative has at its disposal a liable equity capital of at least € 50,000, in the form of a bank guarantee or requisite insurance or similar, for performing its activities as a balance group representative, without prejudice to any higher capitalisation which may be required for the type and scope of activities in accordance with the agreement to be submitted under item 1 above;
6. a current extract from the register of previous convictions or equivalent certificate by a court or administrative authority in the country of origin of the applicant (the natural persons who control the applicant) from which arises that no grounds of exclusion within the meaning of paras 3 and 4 below exist.

(2) The criterion of technical qualification shall be deemed to be met if the person has adequate theoretical and practical knowledge of the handling of natural gas transactions or has worked in an executive position in the natural gas business, especially in natural gas trading, natural gas production or in operating a system or storage facility.

(3) The licence shall be issued, if necessary subject to conditions, once all prerequisites as set forth in para. 1 above have been met. Upon receipt of the complete documentation for the application, Energie-Control GmbH shall decide within two months, failing which the applicant shall be authorised to be temporarily active as a balance group representative. Prohibition of the activity shall be by analogous application of section 42d.

(4) A person sentenced by a court to more than three months’ imprisonment or to payment of a fine of more than 180 daily rates shall be excluded from working as a balance group representative if the sentence has been neither extinguished from the register of previous convictions nor is subject to restriction of information on the register. This shall also apply to any crimes or offences committed abroad which are comparable to the above grounds of exclusion.

(5) Any person sentenced for the financial offences of smuggling, evasion of import or export duties or charges, accessory after the fact with regard to duties and other charges under section 37 para. 1 a of

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328 applicable as of 24 August 2002 as set forth in section 78a para. 1 to the extent required for preparing for full liberalisation as of 1 October 2002
the penal code for financial offences, evasion of monopoly revenues, wilful interference with a state monopoly or accessory after the fact with regard to monopolies under section 46 para. 1 a of the penal code for financial offences shall be excluded from working as a balance group representative if such person has been sentenced for such financial offence to payment of a fine in excess of € 7,300 or to imprisonment in addition to a fine and if five years have not yet passed since the punishment. This shall also apply to any crimes or offences committed abroad which are comparable to the above grounds of exclusion.

(6) Any entity against whose assets bankruptcy or composition proceedings have been instituted or against whom a petition in bankruptcy has been dismissed due to lack of assets shall be excluded from exercising a licence. This shall also apply to any crimes or offences committed abroad which are comparable to the above grounds of exclusion.

(7) A natural person shall be excluded from exercising a licence if debt management proceedings have been instituted against such person’s assets or if such person has or had a controlling influence on the business of an entity which is not a legal person to which para. 6 above is or was applied.

Revocation and Expiry of Licence

Section 42d. Energie-Control GmbH may revoke the licence granted to a balance group representative if such representative:

1. fails to start on its activities within six months of being issued the licence; or
2. fails to perform its activities for more than one month.

(2) Energie-Control GmbH shall revoke the licence granted to a balance group representative if:

1. a prerequisite specified in section 42c para. 1 is not or no longer applicable, or
2. if such representative has been finally convicted and punished at least three times for the failure to perform its responsibilities and duties (section 42a) and revocation of the licence is not an unreasonable punishment in view of the offences committed.

(3) Decisions under para. 2 above shall always be deemed to be measures of immediate effect within the meaning of section 57 para. 1 of the General Administrative Procedure Act.

(4) The licence shall expire if bankruptcy or composition or debt management proceedings have been instituted against the assets of the balance group representative or if a petition in bankruptcy has been dismissed due to lack of assets.

(5) In the event that a licence is revoked or expires or if the balance group representative wishes to dissolve the balance group, the suppliers that belong to the said balance group shall be assigned to another balance group by decision of Energie-Control GmbH (section 42f). The balance group may be dissolved only after the assignment has become final.

Change of Supplier or Balance Group

Section 42e. Energie-Control GmbH shall be authorised to regulate, by ordinance, in more detail the procedure governing a change of supplier or balance group, including the periods and deadlines to be observed. In defining such procedure, special attention shall be given, without limitations, to the technical provisions to be made by the system operator (balance group representative) in connection with the change, to the compatibility of periods and deadlines with balancing by the balance group system, to ensuring the security of supply and to implementing the customers’ wishes. “Operators of distribution systems may be obliged to make available, within a specified period of time and upon a customer’s request, to such customer or an authorised representative the customer’s metering point designation in a customary file format in electronic form.”

Assignment of Suppliers to Balance Groups

Section 42f. (1) System users

1. which do not belong to a balance group or
2. which do not form a balance group of their own

329 applicable as of 24 August 2002 as set forth in section 78a para. 1 to the extent required for preparing for full liberalisation as of 1 October 2002
330 applicable as of 24 August 2002 as set forth in section 78a para. 1 to the extent required for preparing for full liberalisation as of 1 October 2002
shall be assigned to a balance group by decision of Energie-Control GmbH. Such act of assignment shall not affect any contractual agreements covering the relationship between the assigned suppliers and their customers. The general terms and conditions for balance group representatives shall be deemed an integral part of the legal relationship of direct membership in the balance group as is constituted by the act of assignment. Such customers as are contractually bound to the suppliers at the time of assignment shall not be deemed parties to the procedure.

(2) The customers of a supplier assigned by the balance group representative to a balance group under para. 1 above shall be supplied at market prices.

Natural Gas Exchanges

Section 42g. (1) An exchange or exchange transactions agency in the natural gas market shall meet the requisite criteria of a balance group when it enters as a contracting party in the contractual relationship of the market participants and when the performance of the exchange transactions and their physical settlement is documented by the furnishing of schedules to the clearing and settlement agencies, the control area managers and the balance group coordinators concerned. This shall apply, without limitations, to schedule processing, bottleneck management, data exchange and risk assumption with regard to the accumulation of balancing energy.

(2) Such criteria shall as a rule be regulated in the general terms and conditions for balance group coordinators. In addition, the exchange or exchange transactions agency shall enter into agreements as required with the clearing and settlement agency, the control area manager and the balance group representatives covering options to avoid or minimise the risk of an accumulation of balancing energy for the exchange or exchange transactions agency. Such agreements shall also include regulations for an exceptional accumulation of balancing energy and its consequences.

(3) It shall be incumbent upon Energie-Control GmbH to monitor that the exchange or exchange transaction agency observes the regulations applicable to balance group representatives. This shall not affect the competence of the stock exchange supervision by the Federal Minister of Economics and Labour.”

“Part 3a
Producers

Data Transmission to the Control Area Manager

Section 42h. Unless relevant data are supplied by the downstream system operator to the control area manager, the latter shall be furnished simultaneously through the downstream system operator with data, in electronic form, which are essential for system stability in the control area on the current pressure situation and volume throughput at key injection and withdrawal points in the control area.”

Title 6
Natural Gas Pipeline Systems

“Chapter 1
Structure of Natural Gas Pipeline Systems

“Minimum Technical Requirements to be Met by Pipeline Systems

Section 43. In order to ensure that the system operators (section 6 item 33) will comply with the responsibilities imposed on them, the state of the art (section 6 item 41) shall be observed in constructing, making and operating natural gas pipeline systems.”

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332 as amended by Article 1 item 12 (sections 13 through 43 including the numbering shall be cancelled) and item 13 (the following Titles 4 and 5 shall be added) of the Federal Act, Federal Law Gazette I no. 148/2002
Chapter “2” 335

Construction and Closing Down of Natural Gas Pipeline Systems

“Obligation to Obtain a Licence

Section 44. (1) Notwithstanding any other obligations to obtain licences or permits, the construction, extension, substantial alteration and operation of natural gas pipeline systems shall require a licence under the provisions of natural gas law to be issued by the authority.

“(2) Natural gas pipeline systems in the pressure range of up to and including 0.6 MPa shall be exempt from the requirement to obtain a licence, provided that the following documents are available at the owner of the system for inspection by the authority at any time:

1. site and construction plans, technical specifications of the pipeline system, documentation showing that the pipeline system has been constructed and is operated according to the relevant state of the art, describing the relevant state of the art and showing that this is being complied with; or

2. the complete set of certification documents according to the ÖVGW testing standard 200lxxxv “Quality requirements to be met by gas system operators, requirements to be met by tests for certification of gas system operators”, available from Österreichische Vereinigung für das Gas- und Wasserfach, or other suitable certification procedures (e.g. ÖNORM EN ISO 9001 “Quality assurance systems – requirements (ISO 9001:2000)lxxxvi”), all of which are available from the Austrian Standards Institutelxxxvii, A-1020 Vienna, Heinestrasse 38; and

3. a safety concept pursuant to section 24 para. 1 item 3, section 31a para. 2 item 2 and section 67 para. 2 item 12, and proof of third-party liability insurance pursuant to section 37; and that no measures of compulsion pursuant to section 57 are being applied. Natural gas pipeline systems in the pressure range above 0.1 MPa shall be notified to the authority three months prior to their intended construction, attaching the documents referred to in section 67 para. 2 items 1, 5, 12 and 13. On the application of a system operator, the authority shall, within three months, prohibit the applicant from carrying out the construction if the conditions referred to in section 47 para. 3 have been met. Section 48 para. 1 item 4 shall apply mutatis mutandis. In the event that the documents listed in section 67 para. 2 items 1, 5, 12 and 13 have not been submitted together with the application and that the applicant should fail to submit these upon being summoned pursuant to section 13 of the General Administrative Procedures Act, this application shall be rejected within a period of three months.”

(3) The Federal Minister of Economics and Labour may issue ordinances amending or supplementing the conditions for the exemption of natural gas pipeline systems from the obligation to obtain a licence pursuant to para. 2 above, provided that, under the state of the art declared to be binding, no adverse effects on the legal interests safeguarded by the provisions of section 45 are to be expected. 337

Conditions

Section 45. (1) Natural gas pipeline systems shall be constructed, extended, altered and operated in such a way:

1. that they do not jeopardise the life and health
   a) of the owner of the natural gas pipeline system;
   b) of any of the owner’s family members involved in operating the system who are not subject to the provisions of the Worker Protection Act lxxxviii, Federal Law Gazette no. 450/1994; or
   c) of any neighbours;

2. that they do not jeopardise any rights in rem of any neighbours;

3. that they do not create an undue nuisance to neighbours due to the emission of noise or smell, or in any other way;

4. that the safety regulations are complied with; and

5. that the relevant state of the art in technology is complied with.

(2) The term “jeopardy of rights in rem” within the meaning of para. 1 item 2 above shall not include a mere reduction in the market value of the property in question.

335 as amended by Article 1 item 14 of the Federal Act, Federal Law Gazette I no. 148/2002
337 as amended by Article 1 item 16 of the Federal Act, Federal Law Gazette I no. 148/2002
Preliminary Examination

Section 46. (1) If an application for the temporary utilisation of properties belonging to third parties (section 56) or for a licence for a natural gas pipeline system (section 47) has been submitted and if it is to be feared that this natural gas pipeline system might seriously impair public interests as defined by section 47 para. 5, the authority may order a preliminary examination procedure, at the request of the applicant or ex officio.

(2) All authorities and all corporations under public law representing any public interests affected by the planned natural gas pipeline system (section 47 para. 5) shall be heard as part of such a preliminary examination procedure.

(3) Upon conclusion of the preliminary examination procedure, the authority shall issue a decision declaring whether and under what circumstances the planned natural gas pipeline system is not contrary to the public interests concerned.

“Licensing of Natural Gas Pipeline Systems

Section 47. (1) Without prejudice to the provision of section 44 para. 3, natural gas pipeline systems may only be constructed, extended, altered and operated on the basis of a licence issued by the authority.

(2) Such a licence shall be granted, if necessary subject to certain suitable conditions, provided:
1. that it is to be expected, according to the state of the art in technology (section 6 para. 50) and to any other relevant science, that any risks envisaged pursuant to section 45 para. 1 items 1 or 2 will be avoided and that any nuisance, interference or adverse effects pursuant to section 45 para. 1 item 3 to be expected in view of the circumstances of the case in question will be limited to an acceptable extent, either directly or upon certain suitable conditions being met;
2. that the facility is to be constructed, extended, altered and operated in accordance with the applicable safety regulations and in accordance with the state of the art; and
3. that adequate proof is provided of third-party liability insurance and of the existence of a safety plan.

(3) The licence shall be refused in the event that the construction, extension, alteration or operation of a natural gas pipeline system is not compatible with the objectives as set forth in section 3 or would prevent a system operator from complying with the public service obligations imposed upon it pursuant to section 4, and such grounds for refusal cannot be removed by imposing conditions on the applicant. Upon application by the system operator, Energie-Control Kommission shall find, by decision, on whether at least one of these grounds exists, within two months of receiving such application. The applicant system operator shall bear the burden of proof that grounds for refusal exist. Until Energie-Control Kommission has reached its decision, the authority shall suspend the licensing procedure according to section 38 of the General Administrative Procedure Act.

(4) The licence shall not be refused under para. 3 above if the natural gas pipeline system in question is to be constructed and operated solely with a view to supplying only a single end user.

(5) Suitable conditions shall be imposed to ensure co-ordination with other existing or approved energy supply systems, as well as compatibility with preserving the specific character of the region and with the interests of forestry, water law, regional planning, water management, torrent and avalanche control, nature conservation and countryside protection, the protection of monuments, agriculture, public transport and national defence. The competent authorities and corporations under public law shall be heard with a view to safeguarding these interests.

(6) In the case of conditions which, for safety reasons, must be shown to be complied with before the system is put into operation, the authority may initially only grant a licence for the construction of the system, reserving the right to withhold the operating licence.

(7) In the event that the interests to be safeguarded pursuant to section 45 para. 1 items 1 to 3 should not be adequately safeguarded despite compliance with any conditions imposed in the licence under natural gas law or, if applicable, in the operating licence, the authority shall impose any other additional measures necessary to ensure the safeguarding of these interests according to the state of the art in technology and to the state of medicine and any other relevant science. This provision shall apply mutatis mutandis to systems which do not require a licence pursuant to section 44 para. 2. The authority shall refrain from imposing such conditions if they are unreasonable, in particular if the effort required to comply with these conditions is disproportionate to the intended effect. In this, particular account shall be taken of the useful life and of the technical features of the systems.”338

338 as amended by Article 1 item 17 of the Federal Act, Federal Law Gazette I no. 148/2002
Parties

Section 48. (1) The following parties shall have locus standi in the licensing procedure for natural gas pipeline systems:

1. the applicant;
2. any property owners whose properties, including the ground underneath and the airspace above, are to be permanently or temporarily utilised with a view to constructing, extending or altering a natural gas pipeline system, as well as anyone having a right in rem in these properties, with the exception of mortgage creditors, and parties holding mining licences;
3. the neighbours (para. 2 below), inasmuch as their interests as safeguarded under section 45 para. 1 items 1, 2 and 3 are concerned;
4. system operators which have submitted an application for refusal of the licence pursuant to section 47 para. 3.

(2) The term “neighbour” shall mean any party which may be put at risk or be exposed to a nuisance, or whose property rights or other rights in rem may be jeopardised by the construction, extension, alteration, existence or operation of a natural gas pipeline system. The term shall not extend to persons temporarily staying in the vicinity of the natural gas pipeline system without having any rights in rem within the meaning of the previous sentence. The term “neighbour” shall, however, include owners of establishments in which persons regularly reside on a temporary basis, such as hotels, hospitals and homes, with regard to protecting such persons, as well as entities operating schools, with regard to protecting the pupils, the teachers and any other persons permanently employed in these schools.

(3) The term “neighbour” shall also include persons such as those referred to in the first sentence of para. 2 above residing on a property abroad, in the vicinity of the border, provided that Austrian neighbours enjoy the same protection, in law or in fact, in similar proceedings in the respective foreign country.

Further Exemptions from the Obligation to Obtain a Licence

Section 49. Without prejudice to the provision of section 44 para. 2, the Minister of Economics and Labour may issue ordinances exempting further natural gas pipeline systems from the obligation to obtain a licence, provided that the interests to be safeguarded pursuant to section 45 can be expected to be adequately safeguarded, given the condition of the natural gas pipeline system in question. Such ordinances may also declare specific technical rules to be binding with regard to the condition of the natural gas pipeline systems thus exempted from the obligation to obtain a licence.

Obligation to Report the Putting into Operation and Closing Down of Natural Gas Pipeline Systems

Section 50. (1) The system owner shall notify the completion of the natural gas pipeline system or of its main components to the authority. Provided that the authority, on issuing the construction licence, did not reserve the right to withhold the operating licence, the system owner may start regular operations upon having given notice of completion.

(2) Where commencement of operations is subject to an operating licence pursuant to section 47 para. 6, regular operations shall be permitted to begin upon notification of completion, provided that the conditions of the construction licence have been complied with.

(3) The system owner shall notify the authority if a licensed natural gas pipeline system is to be closed down permanently.

Self-Monitoring

Section 51. (1) The owner of a natural gas pipeline system shall, at regular intervals, inspect this system, or have it inspected, with a view to establishing that it conforms to the applicable regulations, to the decision granting the licence and to any other decisions issued under the provisions of this Federal Act. Save as otherwise provided in the decision granting the licence, in any other decision issued under the provisions of this Federal Act or in any other regulations applying to the system, these regular inspections shall be carried out every ten years.

(2) In carrying out the regular inspections pursuant to para. 1 above, the owner of the natural gas pipeline system shall employ federal institutions or institutions of a federal state, accredited institutions within the scope of their accreditation, state-authorised institutions, private civil engineers or businesses, each within its respective scope of competence; the regular inspections may also be carried out by the owner of the natural gas pipeline system in question, provided that such owner is suitably qualified, as well as by any of such owner’s suitably qualified employees. A person shall be deemed to be suitably qualified provided that, due to their training and experience, they have the expertise and the experience required to carry out the respective inspection, and conscientious execution of this inspection is ensured.
(3) An inspection certificate, which shall specifically include references to any defects found as well as proposals for their remedy, shall be issued after each regular inspection. Save as otherwise provided in the decision granting the licence or in any other decision, the owner of the system shall keep the certificate of inspection, as well as any other documents pertaining to the inspection, until the next regular inspection, and present these documents to the authority at its request.

(4) In the event that the inspection certificate should refer to any defects found in the course of the regular inspection, the system owner shall immediately furnish to the authority a counterpart or photocopy of this inspection certificate and, within a reasonable period of time, a description of the measures taken to remedy these defects.

**Change of Ownership of Natural Gas Pipeline Systems**

**Section 52.** Changes of ownership of a natural gas pipeline system shall not affect the validity of the licence to construct and to operate this natural gas pipeline system.

**Expiry of Licences**

**Section 53.** (1) A licence issued pursuant to section 47 shall expire:

a) if construction is not begun within three years of the licence taking effect, or

b) if notice of completion (Section 50 para. 1) is not given within five years of the construction licence taking effect.

(2) An operating licence shall expire:

a) if regular operations are not begun within one year of notice of completion being given or, in cases where commencement of operations is subject to an operating licence pursuant to section 47 para. 6, within one year of this operating licence taking effect; or

b) if the system owner gives notice that the natural gas pipeline system is to be permanently closed down, or

c) if the authority establishes that the operation of the natural gas pipeline system has been interrupted without cause for a period of over three years.

(3) Should it be necessary for reasons of planning and construction, the authority may extend the time periods pursuant to para. 1 and para. 2 item a above to a maximum of seven years in total, provided that an appropriate application has been submitted prior to the expiry of the relevant time period.

(4) Upon expiry of a construction or operating licence, the last owner of the system in question shall immediately dismantle the natural gas pipeline system and, to the extent possible, restore the property to its previous state, provided that the property owner verifiably demands this, except where private-law agreements provide that the natural gas system is to be left in place. In dismantling the natural gas pipeline system, utmost care shall be exercised and provision shall be made that the designated use of the property in question is not impeded.

(5) In the event of a complete or partial interruption of operation, all necessary provisions shall be made to prevent any risk to the interests to be safeguarded pursuant to section 45.

**Unlicensed Natural Gas Pipeline Systems**

**Section 54.** (1) In the event that a natural gas pipeline system requiring a licence is constructed, extended or significantly altered without a licence, or that an installation requiring an operating licence is operated without such a licence, the authority shall issue a decision ordering any measures to be taken which are necessary to ensure compliance with the law, such as discontinuing construction works, discontinuing operations or removing the unlicensed system or parts of the system. Due account shall be taken of the time which is reasonably required to carry out the necessary steps.

(2) The authority may not, however, order a system or parts of a system to be removed if an application for the required licence has been submitted and if this application has not been rejected or denied.

**Provisional Safety Measures**

**Section 55.** (1) With a view to averting any danger to the life or health of persons or to the neighbours’ ownership rights or other rights in rem arising from a natural gas pipeline system which is subject to the provisions of this Federal Act, or to putting a stop to any unacceptable nuisance to which the neighbours are exposed by an unlicensed natural gas pipeline system or by a natural gas pipeline system which does not require a licence, the authority shall issue a decision ordering the natural gas pipeline system in question or any machinery to be completely or partially closed down, or imposing any other safety measures or provisions relating to this system warranted by the extent of the danger or nuisance. In the event that the authority should have reason to believe that immediate measures are required with a view to averting danger, it may take such measures on the spot, without proceedings and without having
issued a decision, after notifying the director or the manager or the owner of the natural gas pipeline system or, should this not be possible, after notifying the person actually managing the system; however, a written decision to this effect shall be issued within one month, failing which any measures taken shall be deemed to be annulled. This decision shall be deemed to have been issued even if it has been returned to the authority as undeliverable pursuant to section 19 of the Service of Documents Act, Federal Law Gazette no. 200/1982, provided that two weeks have elapsed since its being posted on the official notice board by the authority. Such decisions shall be immediately enforceable. They shall cease to be effective after a period of one year, starting from their effective date, has elapsed, unless a shorter period has been specified in the decision. Changes of ownership of the system or of parts of the system in question, or of any other objects affected by these measures shall not affect the validity of such decisions.

(2) In the event that the conditions for issuing a decision pursuant to para. 1 above should no longer exist and that the undertaking wishing to operate the natural gas pipeline system in question can be expected in future to comply with the provisions the infringement of which was decisive in taking measures pursuant to para. 1 above, the authority shall, at the request of this undertaking, revoke any measures taken pursuant to para. 1 above at the earliest possible time.

**Preliminary Works for the Construction of Natural Gas Pipeline Systems**

Section 56.

(1) Upon application, the authority shall authorise the temporary utilisation of properties belonging to third parties with a view to carrying out preliminary works in connection with the construction, extension or alteration of a natural gas pipeline system.

(2) The application shall state the nature and duration of the intended preliminary works. A site plan of an appropriate scale, showing the area affected by the intended preliminary works, shall furthermore be attached to this application.

(3) The applicant shall not be legally entitled to obtain a decision unless the preliminary works are intended to begin within a year of the application being filed.

(4) In granting this permission, the authority shall also grant the applicant the right to enter the properties of third parties and to carry out any soil analyses and other technical work required to prepare the construction plan for the planned natural gas pipeline system. Neither the owners nor anyone else having a right in rem in these properties shall have locus standi.

(5) In carrying out preliminary works, the entitled party shall exercise due care with regard to existing rights and to ensure that the designated use of the property is not impeded.

(6) The permit shall be issued for a limited period of time. This time period shall be set with due regard to the nature and the extent of the preliminary works, as well as to the prevailing topographical conditions. Inasmuch as it is required with a view to preparing the construction plan, the permit may be extended to a maximum of three years, starting from the date of service of the decision permitting preliminary works to be carried out.

(7) The authority shall furnish to the local governments in whose territory preliminary works are to be carried out with a copy of the decision and a site plan pursuant to para. 2 above, both of which shall immediately be promulgated via the official notice board. The promulgation period shall be three weeks. The preliminary works may not begin until this time period has elapsed.

(8) Without prejudice to the provisions of para. 7 above, the party authorised to carry out preliminary works shall notify the owners or holders of usufructuary rights in the properties in question, as well as any parties holding mining licences for these properties, in writing, at least four weeks before the intended beginning of the preparatory works to be carried out.

(9) The party authorised to carry out preliminary works shall duly compensate the owners of the properties concerned, any other parties having a right in rem in these properties – with the exception of mortgage creditors –, as well as any parties holding mining licences, for any restriction in the rights they had at the time when the permit was granted. Should no agreement be reached on this issue, the amount of compensation shall be set by the authority on application. “Section 71” shall apply mutatis mutandis to the compensation procedure.

Chapter “3” 340

Expropriation

“Conditions for Expropriation

Section 57. (1) Expropriation by depriving or restricting property rights or rights in rem shall be permitted when this is required for the construction of a transmission or distribution line and it is in the public interest to do so. A public interest shall be deemed to exist when provision has been made for such natural gas line facility in the long-term plan (section 12e). Where natural gas line facilities are not the subject of long-term planning, a public interest shall be deemed to exist when the construction of such facility is necessary to achieve the objectives of this Federal Act, including, without limitations, the objectives set out in sections 3 and 12e. For natural gas line facilities of a pressure range up to and including 0.6 MPa, private land may be expropriated only when no public land is available in the area concerned or when the natural gas undertaking cannot, for economic reasons, be reasonably expected to use public land.” 341

(2) Expropriation shall include:
1. the granting of servitudes in immovable property;
2. the cession of title to land;
3. the cession, restriction or annulment of any other rights in rem in immovable property and of any other rights appurtenant to a specific location.

(3) The measure referred to in para. 2 item 2 above may only be applied if the other measures referred to in para. 2 above should be insufficient.

Competent Authorities

Section 58. (1) The authority which is competent to licence a system pursuant to section 60 shall also decide on the permissibility, the nature, the object and the extent of expropriation, as well as on the amount of compensation, subject to the provisions of “section 71” 342.

(2) The State Governor shall be the competent authority within the meaning of para. 1 above for natural gas pipeline systems which are exempt from the obligation to obtain a licence pursuant to section 44 para. 2.

Title 7

Statistics

Commissioning and Performance of Statistical Surveys

Section 59. (1) “Energie-Control GmbH” 343 shall be authorised to order and carry out statistical surveys and other statistical work in connection with gaseous energy carriers of any kind which are suitable for energy generation by combustion, in their original form or in an altered form. 344

(2) Orders to carry out statistical surveys shall be issued by ordinance. In addition to the actual order to carry out statistical surveys, such an ordinance shall, without limitations, contain provisions regarding:
1. the basic population;
2. statistical units;
3. the type of statistical survey to be carried out;
4. characteristics;
5. classes;
6. intervals and frequency of data collection;
7. the group of persons obliged to provide information;
8. whether and to what extent the results of such statistical surveys shall be published, with due regard to the provisions of section 19 of the 2000 Federal Statistics Act, Federal Law Gazette I no. 163/1999 xc.

(3) Individual data may be passed on to Statistik Austria for purposes of federal statistics.

341 as amended by Article 2 item 64 of the Federal Act, Federal Law Gazette I no. 106/2006
342 as amended by Article 1 item 18 of the Federal Act, Federal Law Gazette I no. 148/2002
343 as amended by Article 1 item 19 of the Federal Act, Federal Law Gazette I no. 148/2002
344 as amended by Article 1 item 19 of the Federal Act, Federal Law Gazette I no. 148/2002 (In section 59, the last sentence “This authority shall not extend to statistics on the production of gaseous hydrocarbons.” shall be deleted)
(4) In carrying out statistical surveys and in processing the data collected during such surveys, the provisions of the 2000 Federal Statistics Act shall apply mutatis mutandis.

Title 8

Authorities and Proceedings

Chapter 1

Authorities

“Competent Authorities in Gas Matters

Section 60. (1) Save as otherwise provided below, the competence of authorities in natural gas matters shall be determined by the Energy Regulatory Authorities Act E-RBG.

(2) Without prejudice to the provisions of para. 1 above and para. 3 below, authorities within the meaning of this Federal Act shall be originally competent as follows:

1. the Federal Minister of Economics and Labour, concerning
   a) the granting of licences for the construction, alteration and extension of transmission systems pursuant to section 6 item 15;
   b) the granting of licences for the construction, alteration and extension of natural gas pipeline systems extending across the boundaries of federal states;

2. the state governor, concerning
   a) the granting of licences for the construction, alteration and extension of all other natural gas pipeline systems;
   b) decisions as to whether an obligation to connect exists under section 25 para. 3.

(3) Administrative penalties pursuant to title 9 shall be imposed by the district administration authorities.

(4) In administrative matters involving the licensing of natural gas transmission systems pursuant to para. 2 item 1 above or the permissibility, the nature or the object of expropriation, the Federal Minister of Economics and Labour may completely or partially authorise the locally competent state governor to perform the duties of their office, in particular including the issuing of decisions, provided that this is in the interest of expediency, speed, simplicity and economy. In such individual case, the state governors shall assume all duties of the Federal Minister of Economics and Labour.”

Secrecy Obligation

“Section 61.” Whosoever participates in procedures pursuant to the provisions of this Federal Act, be it as a representative of an authority, as an expert or as a member of the advisory council for natural gas, shall refrain from disclosing or utilising, either during the procedures or after their conclusion, any official, business or trade secrets with which such person has been entrusted or of which such person has obtained knowledge in this capacity.

Chapter 2

Proceedings

Sub-Chapter 1

General Provisions

Appointment of Persons Authorised to Accept Service

“Section 62.” Natural gas undertakings domiciled abroad and carrying out their operations in Austria shall appoint an Austrian citizen who is authorised to accept service of documents (section 9 of the Service of Documents Act).

Obligation to Furnish Information

“Section 63.” (1) The authorities competent to carry out proceedings may demand, through their bodies, any information which they require to carry out their duties pursuant to this Federal Act from the

345 as amended by Article 1 item 20 of the Federal Act, Federal Law Gazette I no. 148/2002
346 as amended by Article 1 item 21 of the Federal Act, Federal Law Gazette I no. 148/2002 (sections 61 and 62 as well as their headings shall be cancelled. Sections 63 to 65 shall be renumbered “62” to “63”)
parties required to furnish information pursuant to para. 2 below, as well as inspect financial and business records for this purpose.”

(2) The obligation to furnish information shall apply to all undertakings and to all associations and federations of undertakings. The obligation to furnish information shall not affect legally accepted obligations of secrecy.

(3) Parties obliged to furnish information shall not be entitled to compensation for any costs arising in this connection.

“Automated Data Processing

Section 64. (1) Any personal data which are required to conduct proceedings pursuant to this Federal Act, which the authority requires to perform their supervisory duties or of which the authority has obtained knowledge pursuant to sections 8 or 10 may be collected and processed by automatic means.

(2) Within the framework of proceedings governed by the provisions of this Federal Act, the Federal Minister of Economics and Labour, Energie-Control GmbH and Energie-Control Kommission shall be authorised to transmit processed data:

1. to the parties to the proceedings in question;
2. to any experts consulted in these proceedings;
3. to the members of the advisory council for natural gas;
4. to authorities requested or instructed to take action (section 55 of the General Administrative Procedure Act);
5. to the authority competent to conduct the licensing procedure under natural gas law; inasmuch as such data are required within the scope of such procedure.

(3) The authorities shall be authorised to transmit processed data to the institutions of the European Union, inasmuch as an obligation to transmit such data is imposed by the Treaty on European Union or by other legal instruments of the European Union.”

“Promulgation of Ordinances

Section 65. Without prejudice to the provisions of sections 22 para. 1 and para. 23b item 3, ordinances issued by Energie-Control GmbH and Energie-Control Kommission pursuant to this Federal Act shall be promulgated in the Official Journal supplementing the Wiener Zeitung. Except when a later date is provided, they shall enter into force on the day on which they are promulgated. Where promulgation in the Official Journal supplementing the Wiener Zeitung is impossible or cannot be effected in due time or is unreasonable due to the size of the ordinance, such ordinances shall be promulgated in another appropriate manner, in particular by radio, internet or publication in one or several periodical media which publish advertisements, including, without limitations, in daily newspapers.

Sub-Chapter 2

Preliminary Examination Procedure and Licensing Procedure for Natural Gas Pipeline Systems

Preliminary Examination Procedure

“Section 66.” (1) Applications for the initiation of a preliminary examination procedure shall be submitted in writing.

(2) For the purpose of the preliminary examination procedure, the applicant shall submit the following documents to the authority:

1. a report on the technical design of the planned natural gas pipeline system;
2. a layout plan, showing the intended route and any installations serving public interests which are obviously affected.

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350 as amended by Article 1 item 23 of the Federal Act, Federal Law Gazette I no. 148/2002 (section 66 shall be deleted. Sections 67 through 76 shall be renumbered “64” through “73”
351 as amended by Article 1 item 24 of the Federal Act, Federal Law Gazette I no. 148/2002
352 applicable as of 24 August 2002 as set forth in section 78a para. 1
354 as amended by Article 1 item 23 of the Federal Act, Federal Law Gazette I no. 148/2002, applicable as of 24 August 2002 as set forth in section 78a para. 1
Initiation of Licensing Procedures

“Section 67.” (1) Applications for a licence under the provisions of natural gas law shall be submitted to the authority in writing.

(2) The following documents shall be attached to the application in duplicate:

1. a layout plan;
2. a technical report stating the purpose, extent, mode of operation and technical specifications of the planned natural gas pipeline system, including, without limitations, its design pressure and working pressure;
3. a route plan on the scale of 1:2,000, showing the route of the natural gas pipeline system, the affected properties and their Land Register numbers, as well as the width of the construction and safety areas;
4. a plan of all installations belonging to the natural gas pipeline system pursuant to “section 6 item 11”;
5. a list of any third-party installations affected by the natural gas pipeline system, such as railway lines, supply lines, etc., including the names and addresses of their owners;
6. the names and addresses, according to the current state of the Land Register at the time of application, of the owners of the properties on which the natural gas pipeline system is to be constructed, including any other persons having a right in rem in these properties, with the exception of mortgage creditors, and including owners of any immediately adjacent properties falling within the construction and safety areas of the natural gas pipeline system and, inasmuch as these owners are apartment owners within the meaning of the 1975 Apartment Ownership Act, Federal Law Gazette no. 417, the names and addresses of the respective property managers (section 17 of the 1975 Apartment Ownership Act);
7. an excerpt from the Land Development Plan in force, showing the designated use of the properties directly affected by the pipeline system and of the properties immediately adjacent to the system;
8. a list of any mining areas in which the natural gas pipeline system and the construction and safety areas are located or will be located, including the names and addresses of the parties holding the respective mining licences;
9. the reasons for the choice of the pipeline route, taking due account of the actual local conditions;
10. a description and an assessment of expected risks and nuisances pursuant to section 45 para. 1 items 1, 2 and 3;
11. a description of intended measures to remove, reduce or compensate for any risks and nuisances associated with the project;
12. a safety plan including, without limitations, the plans for safety reports and risk analyses, as well as emergency plans;
13. a statement from the third-party liability insurer pursuant to “section 37 para. 2”.

(3) In the event that any of the documents referred to in para. 2 above should be dispensable for the licensing procedure in question, the authority shall waive the requirement to submit these documents.

(4) Inasmuch as it is required for an evaluation by other public authorities or by experts, the authority shall demand additional copies of all or certain documents required pursuant to paras 2 or 3 above.

Licensing Procedure and Right to be Heard

“Section 68.” (1) Upon receiving an application for a licence to construct and operate a natural gas pipeline system or to extend or alter a licensed natural gas pipeline system, the authority shall fix a day for a hearing on location. The subject matter, time and place of this hearing, as well as conditions for establishing locus standi, shall be announced to the neighbours and system operators by means of a public notice to be posted in the community in question. The owners of the immediately adjacent properties

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356 as amended by Article 1 item 26 of the Federal Act, Federal Law Gazette I no. 148/2002 (In section 66 para. 2 item 2 and section 67 para. 2 item 1, the words “on the scale of 1:50,000” shall be deleted.)
357 as amended by Article 1 item 23 of the Federal Act, Federal Law Gazette I no. 148/2002
358 as amended by Article 1 item 26 of the Federal Act, Federal Law Gazette I no. 148/2002 (In section 66 para. 2 item 2 and section 67 para. 2 item 1, the words “on the scale of 1:50,000” shall be deleted.)
359 as amended by Article 1 item 27 of the Federal Act, Federal Law Gazette I no. 148/2002
360 as amended by Article 1 item 28 of the Federal Act, Federal Law Gazette I no. 148/2002
361 as amended by Article 1 item 23 of the Federal Act, Federal Law Gazette I no. 148/2002
pursuant to “section 67 para. 2 item 6” and the persons referred to in section 48 para. 1 items 1 and 2 shall be summoned in person. Inasmuch as these property owners are apartment owners, the information referred to in the second sentence above shall be verifiably communicated to the property manager in writing, instructing such manager to promptly pass this information on to the apartment owners, for example by putting up a notice in the building.

(2) In the case of any risk of a professional, trade or business secret being disclosed (section 40 of the General Administrative Procedure Act), the neighbours may only attend the inspection of the natural gas pipeline system with the agreement of the applicant; however, this shall be without prejudice to the neighbours’ right to be heard.

(3) In the event that a neighbour should raise any objections under private law to the natural gas pipeline system in question, the chairperson of the hearing shall endeavour to effect an agreement; any agreement thus achieved shall be entered in the minutes of the hearing. Failing that, this neighbour shall be referred to the civil courts.

(4) Inasmuch as the interests of system operators are affected by the construction and operation of a natural gas pipeline system, they shall be heard.

(5) The local government in whose territory the natural gas pipeline system is to be constructed and operated shall be heard within the scope of its sphere of competence in licensing procedures under natural gas law with a view to safeguarding public interests as defined by section 45.

(6) In the event that projects requiring a licence pursuant to this Federal Act should also require a licence, a permit or notification pursuant to any other provisions of federal law, the competent authorities shall co-ordinate their actions and, if possible, conduct their respective proceedings simultaneously.

Granting of Licences

“Section 69.” Licences for natural gas pipeline systems shall be granted by written decision, provided that the conditions pursuant to section 45 have been met.

(2) Provided that the authority has no reservations concerning the protection of any interests defined in section 45 para. 1 items 1, 2 and 3, it may allow the applicant to defer compliance with certain conditions until a date after the system or parts of the system have been put into operation, which date shall be fixed according to the amount of time required to take the necessary measures.

(3) In the case of extensions or of alterations requiring a licence, the licence shall also cover the natural gas pipeline system that has already been licensed, to the extent to which this is necessary with a view to safeguarding the interests defined in section 45 para. 1 items 1, 2 and 3.

(4) The authority shall record in its decision any agreements relating to the provisions of this Federal Act which were reached in proceedings carried out under this Federal Act. Any agreements recorded and any decisions issued under the provisions of this Federal Act shall be official documents as defined in section 33 para. 1 d of the 1955 General Land Register Act, Federal Law Gazette no. 39. In the event that, pursuant to such a decision, the acquisition, encumbrance, restriction or annulment of any registered rights in land should be subject to the occurrence of certain conditions, the authority shall declare, upon application, whether these conditions have occurred. Such a declaration shall be binding on the court.

Sub-Chapter 3

Procedural Aspects of Expropriation

Expropriation Proceedings

“Section 70.” The provisions of the Railway Expropriation Act, Federal Law Gazette no. 71/1954, shall apply to expropriation proceedings and to the official assessment of compensation, subject to the following derogations:

1. In expropriation proceedings, the party to be expropriated may demand that the applicant redeem and pay a compensation for any vacant properties or parts of properties to be encumbered with servitudes or other rights in rem pursuant to section 57 para. 2 if this encumbrance would render impossible the designated use of these properties or parts thereof. In the event that the designated use of a property should become impossible due to the expropriation of part of this property, the entire property shall be redeemed upon request of the owner.

363 as amended by Article 1 item 23 of the Federal Act, Federal Law Gazette I no. 148/2002
364 as amended by Article 1 item 23 of the Federal Act, Federal Law Gazette I no. 148/2002
2. The authority shall decide on the permissibility, the nature, the object and the extent of expropriation, as well as on the amount of compensation payable, after hearing the statutory bodies representing the interests of the owners of the property in question.

3. The amount of compensation shall be determined, on the basis of an appraisal by at least one sworn and certified expert, in the expropriating decision or in a separate decision; in the latter case, an amount to be provisionally deposited shall be fixed in the expropriating decision without any further enquiries.

4. Within three months of the decision fixing the amount of compensation (item 3 above) being issued, either of the two parties may request the district court in whose jurisdiction the object of expropriation is located to determine the amount of compensation. Upon application to the court, the decision shall cease to be effective with regard to the amount of compensation set therein. An application to the court to determine the amount of compensation may only be withdrawn with the agreement of the opposing party. Upon withdrawal of such application, the amount of compensation fixed in the expropriating decision shall be deemed to have been agreed upon.

5. A final expropriating decision shall not be enforceable until the amount of compensation fixed in the expropriating decision or in a separate decision, or the provisional amount fixed in the expropriating decision (item 3 above) has been deposited with the court or paid out to the expropriated party.

6. At the request of the expropriated party, an equivalent payment in kind may take the place of financial compensation, provided that this, considering the circumstances of the individual case, would not impose an unreasonable financial burden on the party applying for expropriation. The authority shall rule on this issue in a separate decision pursuant to item 3 above.

7. The authority shall notify the competent court for Land Register matters of the initiation of expropriation proceedings relating to registered land or registered rights. The court shall duly enter the initiation of expropriation proceedings in the Land Register. As a result of this entry, the expropriating decision shall apply to anyone for whose benefit a registered right is entered subsequent to this registration. This entry shall, however, be cancelled on the strength of a final decision terminating the expropriation proceedings, completely or with regard to the property or the right in question. The authority shall notify the competent court of the termination of the expropriation proceedings.

8. The authority competent to decide on the object of expropriation shall notify the owner of the encumbered property of the expiry of the licence under natural gas law for the natural gas pipeline system in question. The owner may apply to the authority for the express annulment of any servitudes granted for this system by way of expropriation. On the owner’s application, the authority shall issue a decision annulling the servitudes granted for this natural gas pipeline system by way of expropriation and determining a refund commensurate to the amount of compensation paid. Items 3 and 4 above shall apply mutatis mutandis to determining the amount to be refunded.

9. If ownership of a property has been transferred pursuant to an expropriating decision for the purpose of a natural gas pipeline system, the authority shall, on application of the previous owner or its legal successor to be submitted within one year of removal of the natural gas pipeline system, order the restitution of this property, against due compensation, to the previous owner or its legal successor. Items 3 and 4 above shall apply mutatis mutandis to the determination of this compensation payment.

Title 9
Penal Provisions

“General Penal Provisions

Section 71. (1) Unless the act in question constitutes a criminal offence which is subject to the jurisdiction of a court or to more severe punishment under different administrative penal provisions, whosoever

1. fails to comply with the obligations pursuant to section 7;
2. fails to comply with its obligation to furnish information or to permit the inspection of records pursuant to section 8;
3. fails to comply with the notification requirements pursuant to section 10 or section 11;
4. fails to furnish information pursuant to section 11;
4a. fails to comply with its obligations as control area manager pursuant to section 12b; section 12e or section 12h;
5. fails to meet its obligation to appoint a technical director pursuant to section 15 para. 1 or 6;
6. fails to comply with the notification requirements pursuant to section 15 paras 5 and 6, section 16 para. 2, section 40, section 50 para. 1 or section 50 para. 3;
7. fails to meet its obligations
   a) as a distribution system operator pursuant to sections 24 and 28 para. 6,
   b) as a transmission system undertaking pursuant to sections 31a and 31b, 31e, 31g and 31h,
   c) holder of transport rights pursuant to sections 31e, 31g and 31h;
7a. fails to meet its obligations as a storage undertaking pursuant to sections 39, 39a, 39c and 39d;
8. fails to meet its obligation as a natural gas trader or provider pursuant to section 40 paras 2 through 5 and para. 8;
8a. fails to meet its obligation to show the rates separately pursuant to section 40a;
9. fails to meet its obligation as a balance group representative pursuant to section 42a;
10. fails to comply with any obligations imposed by an ordinance of the Federal Minister of Economics and Labour pursuant to section 43;
11. infringes the prohibition of discriminatory practices pursuant to section 18;
12. fails to meet the obligation pursuant to section 23 para. 5;
13. fails to comply with any obligations imposed by an ordinance of Energie-Control Kommission pursuant to section 20 para. 6;
14. fails to meet its publication obligations pursuant to section 19a, section 19b, section 22 para. 3 or section 29;
15. fails to comply with its general obligation to connect pursuant to section 25;
16. fails to comply with the conditions imposed by an ordinance of the Federal Minister of Economics and Labour pursuant to section 44 para. 3;
17. fails to meet its obligation as a balance group coordinator to submit general terms and conditions pursuant to section 33d para. 1;
18. fails to comply with its self-monitoring obligation pursuant to section 51;
19. fails to comply with its obligations pursuant to section 53 para. 4;
20. fails to carry out the statistical surveys ordered by an ordinance of the Federal Minister of Economics and Labour pursuant to section 59 para. 2;
21. fails to furnish information pursuant to section 63, or
22. fails to comply with decisions issued pursuant to this Federal Act or with any time limits and conditions they impose;
23. fails to comply with decisions issued pursuant to section 10a para. 2 and section 16a para. 1 Energy Regulatory Authorities Act E-RBG for the scope of this Federal Act or the conditions, time limits and stipulations included therein;
24. fails to comply with the provisions of Regulation 1775/2005 on conditions for access to the natural gas transmission networks, OJ L 289 of 3.11.2005, shall be deemed to have committed an administrative offence and shall be fined up to € 14,600.

(2) The limitation period (section 31 para. 2 of the Administrative Penal Act) shall be one year.”

Unlicensed Operation

Section 72. (1) Whosoever
1. exercises the function of a natural gas undertaking without a licence pursuant to section 13 para. 1, or
2. constructs a natural gas pipeline system requiring a licence without such a licence, extends or significantly alters a natural gas pipeline system without a licence, or operates a system which is subject to an operating licence without such a licence,
shall be fined up to € 36,500.

(2) The limitation period (section 31 para. 2 of the Administrative Penal Act) shall be one year.”

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Section 73. (1) Unless the act constitutes a criminal offence which is subject to the jurisdiction of a court or to more severe punishment under different administrative penal provisions, whosoever names, demands, accepts, or accepts a promise of, a price higher than the maximum or fixed price set by the authority pursuant to this Federal Act or a price lower than the minimum or fixed price set by Energie-Control Kommission pursuant to this Federal Act or a lower price than the minimum or fixed price set by Energie-Control Kommission pursuant to this Federal Act for a system service, shall be deemed to have committed an administrative offence and shall be fined up to € 36,500, and up to € 58,400 in case of repetition of the offence.

(2) The inadmissible excess amount shall be declared forfeited.

(3) The limitation period (section 31 para. 2 of the Administrative Penal Act) shall be one year.

Unlawful Disclosure or Utilisation of Data

Section 74. (1) Whosoever unlawfully discloses or utilises data contrary to the provisions of section 9, “section 18 item 2 or section 61”369, the disclosure or utilisation of which may interfere with the legitimate interests of the party concerned shall be punished by the court with imprisonment of up to one year.

(2) The offender shall be prosecuted only on the application of a party whose interest in the maintenance of secrecy has been impaired or upon application of the Data Protection Commission.

(3) The trial shall be held behind closed doors:
1. if the public prosecutor, the accused or a private plaintiff so move, or
2. if the court deems it necessary with a view to safeguarding the interests of any persons who are not parties to the proceedings.

Title 10

Repeal of Legislation; Transitional and Final Provisions

Repeal of Legislation

Section 75.” 370 Upon entry into force of this Federal Act, the following legislation shall be repealed:

1. Verordnung über die Einführung des Energiewirtschaftsrechts im Lande Österreich (Ordinance Introducing Regulations on Energy Management in Austria) of 26 January 1939, dRGBl. (Deutsches Reichsgesetzblatt; Law Gazette of the German Reich) I, p 83 (GblfÖ (Gesetzblatt für Österreich; Law Gazette for Austria) no. 156/1939);
2. Zweite Verordnung über die Einführung des Energiewirtschaftsrechts in der Ostmark (Second Ordinance Introducing Regulations on Energy Management in the Ostmark) of 17 January 1940, dRGBl. I, p 202 (GBlfÖ no. 18/1940);

366 as amended by Article 1 item 23 of the Federal Act, Federal Law Gazette I no. 148/2002
368 as amended by Article 1 item 32 of the Federal Act, Federal Law Gazette I no. 148/2002 (sections 77 through 82 shall be renumbered as “74” through “79”.)
369 as amended by Article 1 item 33 of the Federal Act, Federal Law Gazette I no. 148/2002
370 as amended by Article 1 item 32 of the Federal Act, Federal Law Gazette I no. 148/2002 (sections 77 through 82 shall be renumbered as “74” through “79”.)
7. Anordnung der Mitteilungspflicht der Energieversorgungsunternehmen in den Reichsgauen der Ostmark (Regulation Imposing a Notification Requirement on Energy Utilities in the Ostmark) of 17 June 1940, DRAnz (Deutscher Reichsanzeiger; Official Journal of the German Reich) no. 143/1940;


9. Anordnung über die Genehmigung von Vorschriften betreffend die Speicherung, Verteilung und Verwendung von Gas (Regulation on the Approval of Rules Concerning the Storage, Distribution and Utilisation of Gas) of 31 July 1940, RWMBI (Reichswirtschaftsministerialblatt; Gazette of the Ministry of Economic Affairs of the German Reich) p 474;

10. Erlaß des Reichswirtschaftsministers über Behandlung energiewirtschaftlicher Bauvorhaben in der Ostmark (Decree of the Minister of Economic Affairs of the German Reich Concerning Energy-related Construction Projects in the Ostmark) of 17 June 1940, Verordnungs- und Amtsblatt für den Reichsgau Niederdonau (Official Journal for the Reichsgau Niederdonau) no. 141/1940;

11. Erlaß des Führers und Reichskanzlers über den Generalinspektor für Wasser und Energie (Decree of the Führer and Imperial Chancellor Concerning the Inspector General for Water and Energy) of 29 July 1941, dRGBl I, p 467/1941;

12. Verordnung des Handelsministers im Einvernehmen mit dem Minister des Inneren, dem Ackerbauminister und dem Eisenbahnminister mit welcher Vorschriften für die Herstellung, Benützung und Instandhaltung von Anlagen zur Verteilung und Verwendung brennbare Gase erlassen werden (Gasregulativ) (Ordinance of the Minister of Trade in Agreement with the Minister of the Interior, the Minister of Agriculture and the Minister of Railways providing rules on the production, utilisation and maintenance of systems for the distribution and consumption of flammable gases (Gas Regulation) of 18 July 1906, RGGBl (Reichsgesetzblatt, Austrian Imperial Law Gazette) no. 176, as amended by the ordinances Federal Law Gazette no. 63/1936 and Federal Law Gazette no. 236/1936, inasmuch as these are effective as federal legislation pursuant to the provisions of the Energy Act (Energiewirtschaftsgesetz EnWG) or of the Industrial Code;


Transitional Provisions

“Section 76.” 371 (1) Natural gas undertakings holding a licence pursuant to section 5 of the Energy Management Act or a permit for the operation of natural gas pipelines pursuant to section 3 of the Pipelines Act, Federal Law Gazette no. 411/1975, or which had already been supplying others with natural gas on 15 February 1939, shall not require a licence pursuant to section 13 to carry out their function as system operators. Their rights and obligations shall solely be determined by the provisions of this Federal Act.

(2) Inasmuch as they are inconsistent with the provisions of this Federal Act, any rights granted or obligations imposed by decisions pursuant to para. 1 above shall cease to be effective as of 10 August 2000. Specifically, but without limitations, any conditions or requirements in such decisions restricting the scope of a licence and any exclusive rights in such decisions to supply certain regions shall no longer be considered to form part of the licensing decision. Inasmuch as licences pursuant to para. 1 above are only valid for part of the federal territory, such licences shall be deemed to be valid for the entire federal territory upon entry into force of this Federal Act.

(3) Any currently valid licences for the construction or the operation of natural gas pipeline systems pursuant to the provisions of the Industrial Code, to section 4 of the Energy Management Act, to section 17 of the Pipelines Act, to the provisions of the 1975 Mining Act, Federal Law Gazette no. 73/1954, to the provisions of the 1975 Mining Act, Federal Law Gazette no. 259, or to the provisions of the Minerals Act shall be deemed to be licences pursuant to title 6 of this Federal Act. Such currently valid licences shall cease to be effective when the natural gas pipeline systems in question no longer require a licence (section 47 para. 2 and section 49). Inasmuch as such natural gas pipeline systems are subject to the provisions of this Federal Act, the provisions of title 6 shall apply to these systems.

(4) Any proceedings pending prior to the entry into force of title 6 shall be concluded pursuant to the provisions hitherto in force.

371 as amended by Article 1 item 32 of the Federal Act, Federal Law Gazette I no. 148/2002 (sections 77 through 82 shall be renumbered as “74” through “79”)
(5) Natural gas undertakings shall submit their general terms and conditions to the authority within six months of entry into force of this Federal Act. Until a decision has been issued on their application for approval of their general terms and conditions, system operators shall grant entitled parties access to their systems with due regard to section 19 para. 2.

(6) System operators shall show proof to the authority of third-party liability insurance pursuant to section 35 within six months of entry into force of this Federal Act. In the event that an undertaking should fail to comply with this obligation within one month of being summoned by the authority, the authority shall institute withdrawal proceedings pursuant to section 37.

(7) Natural gas undertakings shall appoint a technical director as provided by section 15 within two months of entry into force of this Federal Act and notify the authority of this appointment within the same period of time.

(8) The managing directors lawfully installed at the effective date of this Federal Act shall be deemed to have been duly notified pursuant to this Federal Act. In the event that several managing directors should have been installed, the respective undertaking shall notify the authority within two months of entry into force of this Federal Act as to which of these is to be accountable to the authority for the undertaking’s compliance with the provisions of this Act (section 16 para. 1).

“(9) Safety plans pursuant to section 24 para. 1 item 3 and Section 31a para. 2 item 7 shall be submitted to the authority (section 60 para. 1) within one year of entry into force of this Federal Act.”

“Transitional Provisions for the 2002 Amendment to the Natural Gas Act

Section 76a. (1) Notwithstanding the provisions of para. 2 below, any proceedings pending at the effective date of the Natural Gas Act as amended by the Federal Act, Federal Law Gazette I no. 148/2002, shall be transferred to the authority competent under the provisions of the Federal Act, Federal Law Gazette I no. 148/2002. The authority as is competent pursuant to the first sentence shall apply to any proceedings pending at the date such provisions as result from the amendment of the Natural Gas Act as amended by the Federal Act, Federal Law Gazette I no. 148/2002 and the Energy Regulatory Authorities Act E-RBG.

(2) Any proceedings concerning the licensing of construction, extension, alteration or operation of natural gas pipeline systems which were pending prior to 10 August 2002 and not completed at the effective date of the Federal Act, Federal Law Gazette I no. 148/2002, shall be carried out in accordance with the provisions applicable at the date on which the application was submitted.


(4) Any decisions issued on the basis of price regulations prior to the effective date of the Federal Act, Federal Law Gazette I no. 148/2002, with the exception of the rates included in such decisions, shall remain valid as decisions based on the Federal Act, Federal Law Gazette I no. 148/2002, until an ordinance pursuant to section 23a shall be issued.

(5) Any licence to operate a transmission undertaking or distribution undertaking granted on the basis of earlier laws shall expire if the characteristics described in section 6 item 16 or item 61 no longer apply to the holder of the licence.

(6) The control area managers and system operators shall take all requisite legal, organisational and technical action in good time to ensure that all customers have system access on 1 October 2002 at the latest. The parties entitled to access shall have the right to assert, under civil law, claims for losses accruing from delayed access to the system vis-à-vis natural gas undertakings which have failed to take action in good time.

(7) Within six months of the effective date of this Federal Act, the system operators shall furnish to Energie-Control GmbH evidence of having obtained third-party liability insurance coverage as provided in section 14 para. 1 item 2.”

“Transitional Provisions for the 2006 Amendment to the Natural Gas Act

Section 76b. (1) Section 7 paras 3 and 4 as amended by the Federal Act, Federal Law Gazette I no. 106/2006, shall apply to business years commencing after the entry into force of this Federal Act.

373 as amended by Article 1 item 34 of the Federal Act, Federal Law Gazette I no. 148/2002
(2) Section 14 para. 1 as amended by the Federal Act, Federal Law Gazette I no. 106/2006, shall apply to proceedings filed after the entry into force of this Federal Act. With regard to proceedings filed prior to this date, Energie-Control Kommission shall apply those provisions that result from the amendment of the Natural Gas act as amended in the Federal Act, Federal Law Gazette I no. 148/2002, and the Energy Regulatory Authorities Act E-RBG.


(4) Any restructurisation by way of reorganisation of whatever kind to be carried out in connection with unbundling shall be performed by way of universal succession; this shall apply specifically, but not exclusively, to the contribution of enterprises. Reorganisation processes shall be exempt from any federally regulated taxes, duties and charges whatsoever associated with the formation of a separate legal entity. Such exemption shall also be granted to legal relationships formed at the occasion of the restructurisation, including, without limitations, lease agreements, servitudes or loan and credit agreements. Reorganisation processes shall be deemed to be non-qualifying turnovers within the meaning of the 1994 Value Added Tax Act xcviii, Federal Law Gazette 663 as amended; for the purposes of VAT, the acquiring party shall directly succeed to the legal position of the transferring party. Otherwise, the provisions of the Reorganisation Taxation Act xcix, Federal Law Gazette 699/1991 as amended shall apply, provided that the Reorganisation Taxation Act be applied even when no independent division of a business within the meaning of the said Act is involved.

(5) If the unbundling process involved the transfer, to the system operator, of the title to the relevant system including any associated ancillary facilities, any servitudes and titles to pipelines granted by contract or by authorities on land as well as other thus granted titles required for the safe and secure operation and existence of the system including its associated ancillary facilities shall pass to the system operator by operation of the law. If the unbundling process involved the transfer of other usufructuary rights to the system concerned as were required to ensure the function of the system operator, both the system owner and the party exercising such other usufructuary rights shall be entitled to make use of such usufructuary rights.

(6) Paras 4 and 5 above shall also apply to all unbundling processes implemented prior to the entry into force of these provisions.

Final Provisions

“Section 77.” 375 (1) Inasmuch as reference is made in this Federal Act to other Federal Acts or to instruments of Community law, their respective provisions shall apply as amended.

(2) The gradual transition to the market organisation provided for by this Federal Act, in particular the gradual definition of the group of end users which are not to be granted access to the system until a later date, shall be regulated by a separate Federal Act. This Federal Act shall specifically regulate the obligations of natural gas undertakings vis-à-vis these customers.

(3) Customers which are not end users shall be granted access to the system as of 10 August 2000.

375 as amended by Article 1 item 32 of the Federal Act, Federal Law Gazette I no. 148/2002 (sections 77 through 82 shall be renumbered as “74” through “79”.)

The National Council has passed the following Act:
Granting of system access

Section 1. (1) As of 10 August 2000:
1. operators of gas-fired electricity generation plants;
2. end users whose natural gas consumption exceeded 25 million cubic metres in the past business year shall be granted access to the system for transporting natural gas to cover their own needs. Their natural gas consumption shall be calculated per site of consumption.

(2) The last sentence of section 80 para. 3 of the Natural Gas Act, Federal Law Gazette I no. 121/2000, shall not apply to customers which are not end users.

(3) As of 1 October 2002, system operators shall be obliged to grant system access to all end users for the transport of natural gas to cover their own needs within the meaning of section 6 item 2 Natural Gas Act.

Section 2. Without prejudice to the provisions of section 1 para. 1, operators of distribution systems may grant the right to system access to all customers or a defined number of end users which they have supplied with natural gas at the time this Federal Act enters into force. In such event, such end users shall be entitled to the right to system access
Entry into Force

“Section 78.” (1) With the exception of its section 7, this Federal Act shall enter into force on 10 August 2000. Ordinances pursuant to this Federal Act may be issued as of the day following the promulgation of this Federal Act but shall not be brought into force prior to 10 August 2000.

“Entry into Force of the 2002 Amendment to the Natural Gas Act

Section 78a. (1) (Constitutional provision) Section 1 as amended by the Federal Act, Federal Law Gazette I no. 148/2002 shall enter into force on the day following its promulgation.”

“(2) Sections 6, 12, 13, 14, 19 para. 4, 20 para. 4, 22, 25 and 26 subject to the proviso of para. 4, sections 28, 31f, 32 through 33d, 33f, 42 through 42e, 65, 66 and 79 as amended by the Federal Act, Federal Law Gazette I no. 148/2002 shall enter into force on the day following promulgation. With regard to sections 42 through 42e, this shall apply only to the extent required for preparing for full liberalisation as of 1 October 2002.

(3) Section 7 paras 2 and 4 shall enter into force on 30 September 2003 and shall apply to all business years commencing after this date. The control area managers shall take appropriate action to obtain their independence in terms of their legal form as provided in section 7 para. 2 and section 12c by 1 January 2003 at the latest. The Reorganisation Tax Act shall apply to all reorganisation processes carried out in this connection (section 7 para. 2 and section 12c) even when no independent division of a business within the meaning of the Reorganisation Tax Act is involved.

(4) Section 60 para. 1 shall enter into force as governed by section 29 of the Energy Regulatory Authorities Act E-RBG.

(5) Subject to para. 6 below, the other provisions of the Federal Act, Federal Law Gazette I no. 148/2002 shall enter into force on 1 October 2002. Ordinances based on these provisions may be issued already on the day following promulgation of the Federal Act, Federal Law Gazette I no. 148/2002; but may enter into force not earlier than 1 October 2002.

(6) The general terms and conditions for distribution systems (section 26) may be submitted to Energie-Control GmbH already on the day following promulgation. Energie Control GmbH shall furnish such applications to Energie-Control Kommission upon the latter’s institution.

also vis-à-vis all system operators. The distribution undertakings shall notify these facts to the Federal Minister of Economics and Labour. The Federal Minister shall promulgate these facts in the Official Journal supplementary to the Wiener Zeitung.

Section 3. With regard to end users not granted the right to system access pursuant to sections 1 or 2 above, the provisions of section 24 of the Natural Gas Act shall apply subject to the proviso that the obligations incumbent upon the applying undertaking shall affect the operators of distribution systems.

Section 4. An independent gas regulatory authority shall be established at the latest by the date specified in section 1 para. 2. The detailed provisions governing the establishment and responsibilities of such authority shall be set forth in a separate federal act.

Section 5. Within the meaning of this Federal Act, the following terms shall have the following meanings:

1. “Betriebsstätte” (operational facility) shall mean a geographically continuous area on which an independent activity is carried out for profit or for other economic advantage;
2. “Betriebsgelände” (operational premises) shall mean a geographical area in which undertakings carry out their business;
3. “Verbrauchsstätte” (site of consumption) shall mean one or more continuous operational premises (item 2 above) owned or held by an end user, for which an end user (section 6 item 2 of the Natural Gas Act) obtains natural gas and distributes it at cost through its own system; an operational facility and facilities that constitute a single plant shall always be sites of consumption even when there is no separate system.
4. “Betriebsanlage” (plant) shall mean any local facility designed for regularly carrying on an independent activity for profit or for other economic benefit.

Section 6. The general terms and conditions of natural gas undertakings which are applicable at the time this Federal Act enters into force and which are covered by the transitional provisions of section 79 para. 1 of the Natural Gas Act shall be deemed to be approved. They shall be harmonised with the provisions of the Natural Gas Act and shall, within six months, be submitted to the authority for approval.

Section 7. This Federal Act shall enter into force on 10 August 2000 and shall cease to be effective as of expiry of 30 September 2002.

377 as amended by Article 1 item 32 of the Federal Act, Federal Law Gazette I no. 148/2002 (sections 77 through 82 shall be renumbered as “74” through “79”).

378 as amended by Article 1 item 35 (In section 78, paras 2 and 3 shall be deleted) and item 36 (section 78 para. 1 shall be renumbered “section 78”) of the Federal Act, Federal Law Gazette I no. 148/2002

379 as amended by Article 1 item 37 of the Federal Act, Federal Law Gazette I no. 148/2002
(7) Section 22 as amended by the Federal Act, Federal Law Gazette I no. 148/2002 shall cease to be effective as of 31 December 2008.”

“Entry into Force of the 2006 Amendment to the Natural Gas Act

Section 78b. (1) (Constitutional provision) Section 1 as amended by the Federal Act, Federal Law Gazette I no. 106/2006, shall enter into force on the day following its promulgation.

(2) Section 12 b para. 1 items 11, 12, 22 and 23, section 12h, section 17 para. 1, section 19 paras 2 and 2a, section 19h, section 24 para. 1 items 16 and 17, section 26 para. 3, section 31a para. 2 items 15 and 16, section 31e, section 31g, section 40 paras 3 through 8, section 40a, section 42a para. 2 item 8 and section 42c as amended in the Federal Act, Federal Law Gazette I no. 106/2006, shall enter into force on 1 January 2007.

(3) The other provisions amended by the Federal Act, Federal Law Gazette I no. 106/2006, shall enter into force on the day following its promulgation.”

“Execution

Section 79. The responsibility for executing this Federal Act shall lie with:

1. the Federal Minister of Justice, in agreement with the Federal Minister of Economics and Labour, regarding section 7 and sections 34 through 37;
2. the Federal Minister of Justice regarding section 21, section 75, and, inasmuch as this provision refers matters to the courts for settlement, section 71;
3. the Federal Minister of Economics and Labour, in agreement with the Federal Minister of Agriculture, Forestry, Environment and Water Management, regarding section 43;
4. the Federal Minister of Economics and Labour regarding the remaining parts of this Federal Act.”

“Annex 1

to section 22 para. 1

1. Wiengas GmbH
2. EVN AG
3. Oberösterreichische Ferngas AG
4. Salzburger AG für Energiewirtschaft
5. BEGAS-Burgenländische Erdgasversorgungs-AG
6. Steirische Ferngas-AG
7. KELAG-Kärntner Elektrizitäts AG

Annex 2

to sections 12b, 12d, 23b and 31

Transmission lines
1. Trans-Austria gas pipeline (Trans-Austria-Gasleitung, TAG);
2. West-Austria gas pipeline (West-Austria-Gasleitung, WAG);
3. primary distribution system (Primärverteilungssystem, PVS);
4. EVN West, continuing to the Thann and Puchkirchen storage facilities;
5. EVN Süd, continuing to TAG-Weitendorf;
6. Pyhrn pipeline, continuing in the Styrian system until the pipeline set forth in item 5 above;
7. pipeline between Reitsham and the connection line to the Puchkirchen storage facility;
8. pipeline between WAG-Rainbach and the connection line to the Thann and Puchkirchen storage facilities;
9. connection line Reichersdorf to Eggendorf;
10. Hungaria-Austria pipeline (HAG), Penta West, March-Baumgarten gas pipeline (March-Baumgarten-Gasleitung, MAB);
11. South-East line (Süd-Ost-Leitung, SOL).

Annex 3
(to section 23b and section 29 (1))

1. Wiengas GmbH
2. EVN AG
3. Oberösterreichische Ferngas AG
4. Salzburger AG für Energiewirtschaft
5. TIGAS-Erdgas Tirol GmbH
6. VEG Vorarlberger Erdgas GmbH
7. BEGAS-Burgenländische Erdgasversorgungs-AG
8. Steirische Ferngas-AG
9. KELAG-Kärntner Elektrizitäts AG
10. Stadtwerke Bregenz GmbH
11. Stadtwerke Korneuburg GmbH
12. Linz Gas- und Wärme GmbH
13. Elektrizitätswerke Wels AG
14. Versorgungsbetriebe Gas u. Verkehr (Steyr)
15. Energie Ried GmbH
16. Salzburger Stadtwerke AG
17. Innsbrucker Kommunalbetriebe AG
18. Grazer Stadtwerke AG
19. Stadtwerke Leoben
20. Stadtwerke Kapfenberg
21. Stadtwerke Klagenfurt
22. EVA-Erdgasversorgung Außerfern GmbH”

385 as amended by Article 1 item 40 of the Federal Act, Federal Law Gazette I no. 148/2002
ENERGY REGULATORY AUTHORITIES ACT – E-RBG


The National Council has adopted:

Constitutional Provision

“Section 1. (constitutional provision) The issue, repeal and execution of provisions contained in this Federal Act shall lie with the Bund even in regard to matters for which the Federal Constitutional Law provides otherwise. The matters regulated in this Federal Act may be discharged directly by the authorities provided for in these provisions.” 389

Electricity Authority

Section 2. The Federal Minister of Economics and Labour shall be the highest electricity authority in those electricity matters in which the responsibility for execution lies with the Bund.

“Natural Gas Authority

Section 2a. 390 The Federal Minister of Economics and Labour shall be the highest natural gas authority in matters concerning the natural gas sector.” 391

Competence

“Section 3. 392 (1) The jurisdiction of the highest electricity and natural gas authority shall extend over the entire federal territory.

(2) The Federal Minister of Economics and Labour (highest electricity and natural gas authority) shall be competent for the following matters:
1. supervising the activities of Energie-Control GmbH;
2. managing the Bund's share in Energie-Control GmbH;
3. drawing up general terms of reference for the activities of Energie-Control GmbH (competence to issue guidelines);
4. issuing and administering the rules required for the performance of international agreements, e.g. general rules on handling cross-border supplies;

386 as amended by Article 2 item 1 of the Federal Act, Federal Law Gazette I no. 148/2002
387 For the entry into force of the individual provisions see section 29 paras 1 and 5.
388 entered into force on
390 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
391 as amended by Article 2 item 3 of the Federal Act, Federal Law Gazette I no. 148/2002
392 to enter into force on 24 August 2002 pursuant to section 29a para. 2.

5. deciding in matters referred to in Article 12 para. 3 of the Federal Constitutional Law; as well as
6. deciding in matters governed by the rules on high-voltage lines, inasmuch as the installation in
question extends across two or more Federal States.

(3) Under his competence to issue guidelines, the Federal Minister of Economics and Labour shall
specifically be empowered:

1. to issue ordinances
   a) on the amount of the charge to be levied by Energie-Control GmbH (section 6);
   b) on the publication of decisions (section 22);
   c) on the general rules to be applied in determining the tariffs for grid use pursuant to section 25
      of the Electricity Act civ, Federal Law Gazette I no. 143/1998, as amended by the Federal Act,
      Federal Law Gazette I no. 121/2000, and sections 23 through 23e of the Natural Gas Act cv,
      no. 148/2002 including productivity discounts (price cap system);

2. to draw up general rules
   a) regarding the contents of general terms and conditions for system operators, electricity traders,
      natural gas traders and clearing and settlement agencies;
   b) regarding the treatment of renewable energy sources;

3. to deliver opinions on fundamental questions relating to the energy sector and to energy law
   arising in connection with the activities of Energie-Control GmbH.

(4) The Federal Minister of Economics and Labour shall bring matters arising in connection with his
responsibilities under para. 3 before the Advisory Council for Electricity (section 26) or the Advisory
Council for Natural Gas (section 26a), and he shall hear the respective Council prior to issuing ordinan-
ces.”

“Regulatory Authorities

“Section 4. The regulatory authorities shall be Energie-Control GmbH and Energie-Control
Kommission.”

“Energie-Control GmbH

Establishment

Section 5. (1) A private company civ with a share capital of € 3,700,000 shall be established with a
view to discharging the regulatory tasks in the electricity and natural gas sector. The domicile of this
company shall be Vienna. The company shall be non-profit-making.

(2) This company shall have the name “Energie-Control Österreichische Gesellschaft für die Regu-
lierung in der Elektrizitäts- und Erdgaswirtschaft mit beschränkter Haftung” (Energie-Control GmbH).
The shares in this company shall be exclusively reserved for the Bund. The Federal Minister of Econo-
metics and Labour shall manage these shares on behalf of the Bund.

(3) The Federal Minister of Economics and Labour shall be empowered to authorise increases in the
share capital of this company in agreement with the Federal Minister of Finance.

(4) The Federal Minister of Economics and Labour shall ensure that the supervisory board of Ener-
gie-Control GmbH includes a representative of the Federal Ministry of Finance.

(5) Save as otherwise provided, the Private Companies Act civii, Imperial Law Gazette cviii
no. 58/1906, shall apply.

“(6) Energie-Control GmbH shall take any organisational measures necessary to enable it, as well
as Energie-Control Kommission, to perform their respective functions. Specifically, but without limitati-
ons, it shall allocate all business matters within its sphere of activities to organisational units with due
regard to their importance and scope and by subjects and objective connections (organisational struc-
ture). In the interest of rapid and expedient processing, the managers of Energie-Control GmbH may as-
sign certain business matters to the heads of such organisational units for their independent processing.
The managers’ authority to give instructions shall not be affected by the heads of units being thus

393 as amended by Article 2 item 4 of the Federal Act, Federal Law Gazette I no. 148/2002
394 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
395 as amended by Article 2 item 5 of the Federal Act, Federal Law Gazette I no. 148/2002
entrusted. Such entrustment as well as the right of representing the managers shall be regulated in rules of procedure which shall be promulgated on the homepage of Energie-Control GmbH.”

“Charge

Section 6. Energie-Control GmbH shall be entitled to charge and invoice individually a fee covering the cost of its operations, in four identical partial amounts at the beginning of every quarter of a business year, to the operators of ultra-high voltage grids (grid level 1 as defined by section 25 para. 6 item 1 of the Electricity Act) to finance its tasks regarding the electricity market, as well as to the control area managers (section 6 item 43 of the Natural Gas Act) to perform its tasks regarding the natural gas market.

(2) The total level of this financing fee shall be assessed on the basis of expenses estimated for the respective business year (budget) of Energie-Control GmbH. Any profits or losses for previous years shall be taken into account when making this estimate. Such estimate shall be prepared by Energie-Control GmbH and approved by the supervisory board prior to the beginning to the respective business year.

(3) The proportion in the total level of financing fee to be paid by an operator of an ultra-high voltage grid (grid level 1) or by control area managers, respectively, shall be based on the ratio between the nation-wide total amounts of energy supplied to end users and the amounts of energy supplied to end users by their respective system and by any lower system levels, and shall be laid down by decision of Energie-Control GmbH.

(4) The partial amounts may be reduced if lower expenses than estimated are to be expected. An increase in these partial amounts may be made only upon approval of a new estimate (para. 2 above).

(5) The operators of ultra-high voltage grids, as well as control area managers, shall be entitled to pass on the financing fee invoiced by Energie-Control GmbH as costs of the ultra-high voltage level or transmission line level, respectively, in proportion to the total amounts of energy supplied to end users in all the respective lower-level systems by electric energy (kWh) or natural gas quantity (m³), respectively, to the operators of lower-level systems. The governing rules of ordinances issued pursuant to section 25 of the Electricity Act and section 23 of the Natural Gas Act shall be applied correspondingly. Operators of ultra-high voltage grids, as well as control area managers, may add the costs arising in settlement, from the belated or reduced reimbursement of the financing fee when determining their system costs.

(6) Energie-Control GmbH shall take the necessary financial and organisational measures to be able to discharge its executory tasks regarding the natural gas market. The expenses required for the electricity- and natural gas-related spheres of activity shall be assigned in such a way as to reflect the causal connection.

(7) Insofar as it relates to tasks concerning the natural gas market, the financing fee for the 2002 business year may be charged by Energie-Control GmbH as of 1 October 2002.

(8) Any additional expenses resulting from the increased supervisory requirements in respect of integrated electricity and natural gas undertakings shall be charged separately to such undertakings. This refers in particular to cash expenses arising for Energie-Control GmbH from commissioning experts to supervise any unbundling of such undertakings.”

“Functions of Energie-Control GmbH

Section 7. (1) Energie-Control GmbH shall perform all functions assigned to the regulatory authority:
1. under the Electricity Act, and under the ordinances issued pursuant to this Act,
2. under the Federal Act regulating the preconditions of operation, the tasks and powers of clearing and settlement agencies for transactions and price formation with regard to balancing energy, and under the ordinances issued pursuant to this Act,
3. under the Natural Gas Act, and under the ordinances issued pursuant to this Act,
4. under this Federal Act, and under the ordinances issued pursuant to this Act, as well as
5. under the Green Electricity Act,

397 to enter into force on 24 August 2002 pursuant to section 29a para. 2. For the charge level see section 29a para. 2. sentence 2.
398 as amended by Article 2 item 7 of the Federal Act, Federal Law Gazette I no 148/2002
399 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
unless those functions are assigned to Energie-Control Kommission (section 16). Energie-Control GmbH shall take any organisational measures necessary to enable it, as well as Energie-Control Kommission, to perform their respective functions.

(2) The activities assigned to Energie-Control GmbH shall also include the preparation of expert opinions and position papers on the general market and competition situation in the electricity and natural gas sector, as well as the use of its rights to make applications and commentaries regarding this sector, such rights being granted to regulatory authorities under the Austrian Cartel Act. In addition, Energie-Control GmbH shall be responsible for matters involving the treatment of electricity generation in plants using renewable energy sources and in combined heat and power plants. Within this expert field, its staff members may be consulted as independent experts in legal and administrative proceedings.

(3) Energie-Control GmbH shall cooperate in matters concerning the further development of the internal European energy market.

(4) Energie-Control GmbH shall have no jurisdiction over contracts pursuant to section 70 para. 2 of the Electricity Act.”

Procedures

“Section 8. (1) Except as expressly provided otherwise, Energie-Control GmbH shall, in administrative proceedings, apply the General Administrative Procedures Act AVG, Federal Law Gazette 51/1991, as amended. In matters of section 73 para. 2 AVG, the competence for decisions upon a party’s written application shall be passed to Energie-Control Kommission.

(2) Where evidence must be gathered through experts, the regulatory authorities shall consult the experts assigned to Energie-Control GmbH as well as other persons in their capacity of experts (section 52 AVG).”

“Creation of Framework Conditions

Section 9. (1) Within its regulatory function concerning the electricity market and the natural gas market, Energie-Control GmbH shall have the task:
1. of drawing up, in cooperation with market participants, other market rules for market participants and publishing such arrangements in an appropriate way;
2. of drawing up, in cooperation with operators of electrical grids, technical and organisational rules for system operators and users and making such rules available to the public;”
3. of compiling and publishing comparisons of electricity and natural gas prices for end users;
4. of taking appropriate measures in the area of cross-border supplies necessary to ensure compliance with European Union requirements, as well as
5. of publishing general information on its sphere of activity in an appropriate way.

(2) In pursuing its activities as defined by para. 1, Energie-Control GmbH shall take due account of the requirements associated with maintaining and improving the internal electricity and natural gas market.”

“Monitoring and Supervisory Functions

Section 10. (1) Energie-Control GmbH shall exercise the following monitoring and supervisory functions in connection with the electricity and natural gas sector:
1. monitoring compliance by all market participants and system operators with competition rules, in particular with regard to the equal treatment of all market participants; this provision shall be without prejudice to the jurisdiction of the Cartel Court;
3. supervising the unbundling process;
4. supervising balance group representatives, balance group coordinators and control area managers;

400 as amended by Article 2 item 8 of the Federal Act, Federal Law Gazette I no. 148/2002
402 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
404 as amended by Article 2 item 9 of the Federal Act, Federal Law Gazette I no. 148/2002
405 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
5. supervising imports of electric energy and natural gas from the territory of the European Union and from third countries.

(2) In exercising its monitoring and supervisory functions pursuant to para. 1, Energie-Control GmbH may issue a procedural directive instructing a market participant who has violated the provisions of the areas referred to in para. 1 to restore, within an appropriate period to be determined by the authority, compliance with the general legal order. If the party concerned fails to comply with this instruction within the period set, the authority shall decree by decision the restoration of compliance with the law.

(3) Energie-Control GmbH may also, for the purpose of safeguarding the legal interests of market participants, give any directives necessary to establish and ensure compliance with the law in the areas referred to in para. 1.

(4) This shall be without prejudice to any legal consequences ensuing from any violation of the respective provisions, such consequences being dealt with according to the rules governing the violated provision."

“Settlement of Disputes

Section 10a. 407 (1) Without prejudice to the jurisdiction of Energie-Control Kommission pursuant to section 16 and of courts of law, any party including system users, suppliers, system operators, other electricity and natural gas undertakings or interest groups may submit to Energie-Control GmbH cases of disputes or complaints, in particular, but without limitations, concerning the settlement of disputes between electricity and natural gas undertakings and market participants, of disputes regarding the settlement of electricity and natural gas supply, as well as of disputes regarding the settlement of charges for system use. Energie-Control GmbH shall endeavour to achieve, within a period of six weeks, a mutually agreed solution. In dispute settlement cases concerning consumers within the meaning of the Consumer Protection Act, Federal Law Gazette no. 140/1979 as amended, Energie-Control GmbH shall be obliged to involve the Federal Chamber of Labour in such proceedings. Electricity and natural gas undertakings shall be obliged to participate in such proceedings, to provide all the information required to ascertain the facts and, where possible, to submit a proposal for a solution. The provisions of the AVG shall not apply to such cases of dispute settlement.”

(2) In conducting such settlement proceedings, Energie-Control GmbH may consult experts who are independent of the parties involved. It may choose such experts from among its own staff.

(3) If parties apply to Energie-Control GmbH to act as a conciliation board (para. 1), the due date of the amount invoiced shall be postponed as of this date until the dispute is settled. Irrespective of this, however, an amount corresponding to the average of the last three invoiced amounts may become due immediately. Any excess amounts levied shall be reimbursed including legal interest as of the day of collection.

(4) Every year, Energie-Control GmbH shall draw up a report on the conciliation cases brought before it, which report shall be communicated to the Federal Ministry of Economics and Labour, the Federal Ministry “for Social Security, Generations and Consumer Protection” 408, as well as to the Advisory Council for Natural Gas.

“(5) The General Administrative Procedures Act AVG shall not be applied for processes of dispute settlement. For the purpose of procedural details, Energie-Control GmbH shall develop procedural guidelines for dispute settlement at the conciliation board of Energie-Control GmbH and shall publish them on the internet.”

Section 11. Deleted. 412

406 as amended by Article 2 item 10 of the Federal Act, Federal Law Gazette I no. 148/2002
407 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
410 as amended by Article 2 item 11 of the Federal Act, Federal Law Gazette I no. 148/2002
Organisational Aspects of Compensation Payments between System Operators

Section 12. (1) Energie-Control GmbH shall determine, “by decision,” \(^{413}\) the amount of the compensation payments which become payable as a result of grouping systems of different owners together.

(2) Energie-Control GmbH shall set up an account for the purpose of handling such compensation payments.

(3) Energie-Control GmbH shall furthermore lay down, by ordinance, more detailed rules regarding terms of payment, the manner in which the amount of the compensation payments is to be determined, as well as operational aspects.

Execution of Provisions on Stranded Costs

Section 13. Energie-Control GmbH shall collect and administer contributions towards stranded costs, allocate these contributions to beneficiary undertakings, as well as discharge any other functions involved in the execution of section 69 of the Electricity Act which were incumbent on the Federal Minister of Economics and Labour prior to the entry into force of this Federal Act.

“Statistical Work

Section 14. \(^{414}\) Energie-Control GmbH shall carry out statistical surveys and any other statistical work within the framework of electricity statistics as well as of natural gas statistics.” \(^{415}\)

“Reporting Duties

Section 14a. Energie-Control GmbH shall prepare and publish by a suitable method a report on the findings of its monitoring activities pursuant to Article 4 of Directive 2003/54/EC and Article 5 para. 1 of Directive 2003/55/EC as well as Article 5 of Directive 2004/67/EC. For such report, it may use the results of long-term planning (section 12b para. 1 item 22 Natural Gas Act) and of its activities pursuant to sections 20i and 20j Energy Management Act.” \(^{416}\)

“Energie-Control Kommission

Section 15. \(^{417}\) (1) A special commission, Energie-Control Kommission, shall be set up with a view to performing the functions referred to in section 16.

(2) Energie-Control Kommission shall be established within the framework of Energie-Control GmbH. The affairs of Energie-Control Kommission shall be managed by Energie-Control GmbH. In carrying out their functions on behalf of Energie-Control Kommission, the staff of Energie-Control GmbH shall be bound by the instructions of the chairperson or of the member specified in the rules of procedure. Any expenses arising from the activities of Energie-Control Kommission shall be covered by Energie-Control GmbH.” \(^{418}\)

“Functions of Energie-Control Kommission

Section 16. (1) (constitutional provision) Energie-Control Kommission shall perform the following functions:

1. approving the system operators’ general terms and conditions governing the utilisation of transmission and distribution systems (sections 24 and 31 of the Electricity Act);
2. determining tariffs for system use and other tariffs pursuant to section 25 of the Electricity Act, as well as determining tariffs and clearing base for electricity supplies crossing the borders of control zones;
3. prohibiting the application of any terms applied to end users which infringe statutory prohibitions or which are contrary to public policy;
4. ruling on the justification of refusal of system access in proceedings pursuant to section 20 para. 2 of the Electricity Act;
5. settling disputes between market participants in those cases where a party entitled to system access asserts claims against a system operator (section 21 of the Electricity Act);
6. settling disputes involving the settlement of imbalances;

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\(^{414}\) to enter into force on 1 October 2002 pursuant to section 29a para. 3.


\(^{417}\) to enter into force on 24 August 2002 pursuant to section 29a para. 2.

8. issuing decisions pursuant to section 7 para. 2 of the Natural Gas Act;
10. granting licences to exercise the function of a transmission line undertaking and a distribution undertaking (section 13 of the Natural Gas Act) and withdrawal pursuant to section 38a of the Natural Gas Act;
11. determining the proportion of natural gas quantities to be purchased pursuant to section 22 para. 1 of the Natural Gas Act (section 22 para. 2 of the Natural Gas Act);
12. making ascertainments pursuant to section 22 para. 6 and section 39a para. 3 of the Natural Gas Act;
13. issuing decisions pursuant to section 31h paras 2 and 4 of the Natural Gas Act, and issuing ordinances pursuant to section 31h para. 5 of the Natural Gas Act;
14. taking measures to secure natural gas supply (section 38e of the Natural Gas Act);
15. approving the general terms and conditions of the control area manager (section 12h of the Natural Gas Act) and of the distribution undertakings (section 26 of the Natural Gas Act), the general terms and conditions for cross-border transports by transmission undertakings and holders of transport rights (section 31g of the Natural Gas Act);
16. determining tariffs (sections 23a and 23d of the Natural Gas Act);
17. prohibiting the application of terms and conditions for the natural gas sector which are applied to end users and which are contrary to a statutory prohibition or contrary to public policy;
18. issuing ordinances pursuant to section 22 para. 2 item 5a of the Electricity Act;
19. deciding on refusal of system access in proceedings pursuant to section 19 para. 4 of the Natural Gas Act;
20. ruling in disputes between market participants in cases where the party entitled to system access asserts claims against the system operator (section 21 of the Natural gas Act);
21. ascertaining whether a country is subject to refusal of system access pursuant to section 19 para. 1 item 4 of the Natural Gas Act (section 67 of the Natural Gas Act);
22. deciding on derogations from the obligation to grant system access pursuant to section 20 para. 4 of the Natural Gas Act;
23. setting fixed prices pursuant to section 23e of the Natural Gas Act;
24. ascertaining whether the construction, extension or modification of a natural gas line facility is incompatible with the objective of section 3 of the Natural Gas Act, or whether the system operator is prevented from performing its duties pursuant to section 4 (section 47 para. 3 of the Natural Gas Act);
25. issuing ordinances pursuant to section 12f of the Natural Gas Act;
26. approving long-term system extension plans (section 12e of the Natural Gas Act);
27. issuing guidelines for auctioning conditions pursuant to section 22 para. 4 of the Natural Gas Act;
28. issuing ordinances pursuant to section 39a para. 2 of the Natural Gas Act;
29. issuing ordinances pursuant to section 20 para. 6 of the Natural Gas Act;
30. issuing ordinances changing the annexes to the Natural Gas Act.

(2) Save as otherwise provided in paragraph 3, appeals against decisions of Energie-Control GmbH may be lodged with Energie-Control Kommission.

(3) Energie-Control Kommission shall rule on cases referred to in para. 1 item 1, as well as in items 3 through 15, 17, 19 through 22, 24 and 26 by decision within two months. This period may be extended by two months if Energie-Control Commission requests additional information. Any further extension shall be possible only with the consent of the parties involved in the proceedings. Decisions providing for performance, restriction or prohibition shall constitute an execution title within the meaning of section 1 of the Ordinance governing execution, Imperial Law Gazette 79/1896 as amended.

(3a) (Constitutional provision) Any party dissatisfied with decisions pursuant to para. 1 items 5, 6 and 20 may refer the matter to a court of law within four weeks of being served with the decision. A final
ruling by the court shall render the decision of Ener gie-Control Kommission ineffective. The court shall decide on petitions for restoration of the applicant to the latter’s original legal position with a view to extending the time limit for filing an application; such petitions shall be submitted directly to the court.

(4) Tariffs pursuant to para. 1 item 16 and fixed prices pursuant to para. 1 item 23 shall be determined by ordinances.

“Composition of Energie-Control Kommission

Section 17. (1) Energie-Control Kommission shall be composed of three members to be appointed by the Federal Government. One of these members shall be drawn from among the judiciary. In appointing this member, the Federal Government shall take account of a slate of three names proposed by the President of the Supreme Court. The remaining two members shall be appointed on a proposal of the Federal Minister of Economics and Labour. Appointments shall be made in such a way as to ensure that one of these two members has relevant technical expertise and that the other has legal and economic expertise. The term of office of members of Energie-Control Kommission shall be five years. This term may be renewed.

(2) The Federal Minister of Economics and Labour shall appoint a substitute member for each member of Energie-Control Kommission. In case a member should be prevented from exercising his/her function, the respective substitute member shall take his/her place.

(3) The following shall not be eligible for membership in Energie-Control Kommission:

1. members of the Federal Government or of a State Government, as well as Undersecretaries of State;
2. persons legally or otherwise connected to persons availing themselves of any of the services of Energie-Control Kommission;
3. persons who are not eligible to be elected to the National Council.

(4) In case a member of Energie-Control Kommission should fail to comply with the invitation to three successive meetings without a reasonable excuse or in case a reason for exclusion pursuant to para. 3 should arise subsequently to a member's appointment, Energie-Control Kommission shall establish this fact after hearing the member concerned. Once this fact is established, the member concerned shall consequently forfeit membership.

(5) Paras. 1, 3 and 4 shall apply mutatis mutandis to substitute members.

(6) In the event of the death, the voluntary withdrawal or the exclusion of a member pursuant to para. 5241, the respective substitute member shall become a member of Energie-Control Kommission. A new substitute member shall be appointed for the remainder of the current members’ term of office, in accordance with the provisions of paras 1 and 2.

(7) Members of Energie-Control Kommission shall be entitled to reimbursement of any reasonable travelling and cash expenses, as well as to an attendance fee to be set, by ordinance, by the Federal Minister of Economics and Labour in agreement with the Federal Minister of Finance, taking due account of the importance and extent of the functions to be discharged by Energie-Control Kommission.

Chairperson and Rules of Procedure

Section 18. (1) The judicial member of Energie-Control Kommission shall chair the commission.

(2) Energie-Control Kommission shall adopt rules of procedure designating one of its members to manage its day-to-day business.

(3) Decisions of Energie-Control Kommission shall require unanimity in order to be valid. Abstention from voting shall not be permissible.

No Instructions

Section 19. In accordance with article 20 para. 2 of the Federal Constitutional Law, members of Energie-Control Kommission shall not be bound by any instructions in discharging their functions.

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420 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
421 Erroneous citation, should mean “para. 4”.
422 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
423 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
Procedural Rules, Stages of Appeal

Section 20. (1) Save as otherwise provided in this Federal Act, in the Electricity Act or the Natural Gas Act, Energie-Control Kommission shall apply the General Administrative Procedures Act.

(2) The decisions of Energie-Control Kommission shall be final. They shall not be subject to annulment or amendment by administrative authorities; applications to the Administrative Court shall, however, be permissible.”

Supervisory Powers

Section 21. (1) Without prejudice to the rights of the General Assembly pursuant to the Private Companies Act, RGBl. no. 58/1906, the activities of Energie-Control GmbH shall be subject to the supervision of the Federal Minister of Economics and Labour.

(2) In exercising his supervisory powers, the Federal Minister of Economics and Labour may give well-reasoned written instructions to Energie-Control GmbH.

(3) The management of Energie-Control GmbH shall provide the Federal Minister of Economics and Labour with any information and pertinent documents he may require in order to discharge his functions.

(4) In case a managing director should fail to comply with any instruction pursuant to para. 2 or to furnish information pursuant to para. 3, the Federal Minister of Economics and Labour may revoke the director’s appointment. This shall be without prejudice to the provisions of section 16 of the Private Companies Act.

“Transparency

Section 22. Decisions of Energie-Control GmbH and of Energie-Control Kommission of general importance, as well as instructions pursuant to section 21 para. 2, shall be appropriately published, taking due account of data privacy provisions.”

Collective Agreements

Section 23. As an employer, Energie-Control GmbH shall be eligible to conclude collective agreements.

Duties of the Management

Section 24. The management shall draw up a working plan and revise this plan annually. In devising its measures, it shall take due account of the development of the overall situation of system operators and system users in Austria. A report on this development shall be submitted to the Federal Minister of Economics and Labour, as well as to the Supervisory Board, at least once a year. The management shall take any measures required in the interest of the efficient, appropriate and economical operation of the company, and submit proposals for any necessary changes in operating conditions to the Minister of Economics and Labour without delay.

Activity Report

Section 25. The management shall prepare an annual activity report to be submitted to the Federal Minister of Economics and Labour. This report shall specifically refer to transactions arising and dealt with, developments in the staff situation, as well as expenses incurred. “The Federal Minister of Economics and Labour shall submit this report via the Council of Ministers to the National Council and, furthermore, provide for its appropriate publication.” Energie-Control GmbH shall be obliged to furnish information directly to the National Council.

“Advisory Council for Electricity

Section 26. (1) An Advisory Council for Electricity shall be set up in the Federal Ministry of Economics and Labour with a view to advising the Federal Minister of Economics and Labour and the regulatory authority, in particular:

1. on general and fundamental matters of electricity policy;
2. on matters over which Energie-Control GmbH has original jurisdiction, save in decisions and ordinances referred to in section 13 and in section 20 para. 2 of the Electricity Act; as well as
3. in the cases referred to in section 3 para. 3 item 1.

424 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
426 to enter into force on 24 August 2002 pursuant to section 29a para. 2.
427 as amended by Article 2 item 16 of the Federal Act, Federal Law Gazette I no. 148/2002
428 as amended by Article 2 item 16a of the Federal Act, Federal Law Gazette I no. 148/2002
(2) Pursuant to para. 1 item 1, the duties of this Advisory Council shall in particular include:
1. deliberating on the harmonisation of general terms and conditions for operators of transmission and distribution grids, as well as of general terms and conditions for balance group representatives, particularly with a view to ensuring optimal management of grid access within the Austrian economic area and to safeguarding the interests of consumer protection;
2. deliberating on criteria to be observed by electricity undertakings in performing the duties imposed upon them pursuant to section 8 of the Electricity Act;
3. deliberating on the harmonisation of preconditions for granting a licence pursuant to section 26 of the Electricity Act;
4. submitting proposals for tariff structures and tariff bases pursuant to section 25 of the Electricity Act;
5. submitting proposals for any other ordinances on electricity matters to be issued by the Federal Minister of Economics and Labour and by Energie-Control GmbH;
6. delivering opinions on ordinances on electricity matters issued by the Federal Minister of Economics and Labour and by Energie-Control GmbH under the Electricity Act and the Energy Regulatory Authorities Act;
7. delivering opinions on ordinances issued by the Federal Minister of Economics and Labour under the Green Electricity Act;
8. deliberating on reports relating to complaints lodged in connection with the supply of electric energy and to the settlement of such complaints.

(3) In addition to the chairperson, the Advisory Council shall be composed of:
1. two representatives each of the Federal Ministry for Agriculture and Forestry, Environment and Water Management and of the Federal Ministry of Economics and Labour;
2. one representative each of the Federal Ministry of Finance and of the Federal Ministry of Social Security, Generations and Consumer Protection;
3. one representative of each Federal State, as well as one representative each of the League of Austrian Municipalities, of the League of Austrian Communities, and of the Federation of Austrian Industry;
4. one representative each of the Austrian Economic Chamber, of the Conference of Presidents of the Austrian Chambers of Agriculture, of the Federal Chamber of Labour, and of the Austrian Trade Union Federation.

When meeting for the purpose of price determination – save in cases of delivering an opinion on ordinances pursuant to para. 2 item 7 – the Advisory Council shall only be composed of the chairperson and of members appointed pursuant to items 1, 2 and 4. A substitute member shall be appointed for each member.

(4) The chairperson shall be appointed by the Federal Minister of Economics and Labour; the representatives of the Federal Ministries referred to in para. 3 items 1 and 2 shall be appointed by the respective Federal Ministers, and all remaining members shall be appointed by the Federal Minister of Economics and Labour on a proposal of the entities which they represent.

(5) The chairperson shall oblige the members of the Advisory Council and their substitutes, inasmuch as they are not civil servants, to discharge their duties conscientiously. The members of the Advisory Council shall serve in an honorary capacity.”

“Advisory Council for Natural Gas

Section 26a. (1) An Advisory Council for Natural Gas shall be set up with a view to advising the Federal Minister of Economics and Labour on general and fundamental matters of the natural gas sector.

(2) Pursuant to para. 1, the duties of this Advisory Council shall in particular include:
1. deliberating on the harmonisation of general terms and conditions of the system, as well as of the rates used to assess system utilisation charges, particularly with a view to ensuring optimal management of system access within the Austrian economic area and to safeguarding the interests of consumer protection;

430 as amended by Article 2 item 16b of the Federal Act, Federal Law Gazette I no 148/2002
431 to enter into force on 24 August 2002 pursuant to section 29a para. 2
2. deliberating on the harmonisation of conditions for supplying natural gas to end users who are subject to the provisions of the Consumer Protection Act;
3. deliberating on criteria to be observed by natural gas undertakings in performing the duties imposed upon them pursuant to section 7 of the Natural Gas Act;
4. submitting proposals for the basic criteria applied in determining the rates pursuant to sections 23 to 23d of the Natural Gas Act;
5. submitting proposals for any other ordinances under this Federal Act;
6. deliberating on ordinances issued under this Federal Act;
7. deliberating on reports relating to complaints lodged in connection with the supply of natural gas and to the settlement of such complaints.

(3) In addition to the chairperson, the Advisory Council shall be composed of:
2. one representative of each Federal State, as well as one representative each of the League of Austrian Municipalities, of the League of Austrian Communities, and of the Federation of Austrian Industry;
3. one representative each of the Austrian Economic Chamber, of the Conference of Presidents of the Austrian Chambers of Agriculture, of the Federal Chamber of Labour, and of the Austrian Trade Union Federation.

A substitute member shall be appointed for each member. “When meeting for the purpose of price determination the Advisory Council shall only be composed of the chairperson and of members appointed pursuant to items 1 and 3.”

(4) The chairperson shall be appointed by the Federal Minister of Economics and Labour, the representatives of the Federal Ministries referred to in para. 3 item 1 shall be appointed by the respective Federal Ministers, and all remaining members shall be appointed by the Federal Minister of Economics and Labour on a proposal of the entities which they represent.

(5) The chairperson shall oblige the members of the Advisory Council and their substitutes, inasmuch as they are not civil servants, to discharge their duties conscientiously. The members of the Advisory Council shall serve in an honorary capacity.”

“Advisory Council for Investment Promotion


(2) The recommendations submitted by the Advisory Council regarding the approval of investment grants shall be given with due regard to the requisite statutory provisions, the provisions of the guidelines governing investment grants and the financial coverage.

(3) In addition to the chairperson, the Advisory Council shall be composed of:
1. two representatives each of the Federal Ministry of Economics and Labour, of the Federal Ministry for Agriculture and Forestry, Environment and Water Management, one representative each of the Federal Ministry of Finance, of the Federal Ministry for Social Security, Generations and Consumer Protection, and one representative of Energie-Control GmbH;
2. one representative of each Federal State, as well as one representative each of the League of Austrian Municipalities and of the League of Austrian Communities;
3. one representative each of the Austrian Economic Chamber, of the Conference of Presidents of the Austrian Chambers of Agriculture, of the Federal Chamber of Labour, of the Austrian Trade Union Federation, and of the Association of Austrian Industrialists, and
4. one representative each of the parliamentary clubs represented in the National Council.

434 as amended by Article 2 item 17 of the Federal Act, Federal Law Gazette I no. 148/2002
A substitute member shall be appointed for each member.

(4) The chairperson shall be appointed from among members by the Federal Minister of Economics and Labour, the representatives of the Federal Ministries referred to in para. 3 item 1 shall be appointed by the respective Federal Ministers, and all remaining members shall be appointed by the Federal Minister of Economics and Labour on a proposal of the entities which they represent.

(5) The members and substitute members shall be obliged to discharge their functions conscientiously and objectively. The chairperson shall oblige the members of the Advisory Council and their substitutes, inasmuch as they are not civil servants, to discharge their duties conscientiously. The members of the Advisory Council shall serve in an honorary capacity."

(6) For the duration of their term and after their retirement from office, the members and substitute members shall not disclose nor make use of any business or trade secret made known or accessible to them as such in their capacity of (substitute) members.

(7) Furthermore, sections 7 through 12 of the Federal Act governing promotion of measures in water management, environment, reclamation of contaminated sites and for environmental protection ab roadexxi, Federal Law Gazette no. 185/1993 as amended shall be applied mutatis mutandis.”

“Right to Information and Inspection

Section 27. Inasmuch as this is required to exercise their functions, the regulatory authorities shall have the right to inspect any records of market participants, system operators, storage undertakings, balance group representatives and balance group coordinators, and to demand any information pertaining to their functions. Furthermore, the obligation to provide information shall include, without limitations, the regular notification of any data necessary for keeping the records required by the regulatory authorities in order to exercise their supervisory functions. If necessary, such records may also be used to draw up expert opnions which the regulatory authorities require in order to discharge the duties incumbent upon them.

Secrecy Obligation

Section 28. Whosoever participates in proceedings in electricity or natural gas matters, respectively, shall refrain from disclosing or utilising, neither during the proceedings nor after their conclusion, any official, business or trade secrets with which s/he has been entrusted or of which s/he has obtained knowledge in this capacity.”

Entry into Force

Section 29. (1) Sections 5 and 7 shall enter into force on the day following promulgation. The same shall apply to section 7, subject to the transitional provisions contained in section 66a para. 2 of the Electricity Act as amended by Federal Law Gazette I no. 121/2000. All remaining provisions of this Federal Act with the exception of para. 5, inasmuch as these activities refer to the execution of provisions referred to in the amendment to the Electricity Act, Federal Law Gazette no. 121/2000 or in legislation adopted by the Federal States to implement this Federal Act, shall enter into force on 1 March 2001; all remaining provisions of this Federal Act shall enter into force on 1 October 2001. Applications for the approval of general terms and conditions (section 7 para. 1 items 1 and 2) may be submitted prior this date. Decisions on the approval of general terms and conditions may be given prior to this date, however, they shall not be effective until the date ensuing from the provisions of section 71 para. 5 of the Electricity Act as amended by Federal Law Gazette I no. 121/2000.

(2) The Federal Minister of Economics and Labour, as well as Energie-Control GmbH, shall ensure that all organisational and technical facilities which the regulatory authority requires in order to commence its activities be available by 1 October 2001. The management of Energie-Control GmbH shall be appointed no later than 1 March 2001.

(3) Should the conditions for the full liberalisation of the internal market in electricity be met at an earlier date, the Federal Minister of Economics and Labour may, by ordinance, bring the date referred to in the first sentence of para. 2 forward to 1 July 2001 at the earliest.

(4) The regulatory authorities shall not be competent to rule on cases involving the rights and obligations ensuing from agreements pursuant to section 70 para. 2 of the Electricity Act.

436 to enter into force on 24 August 2002 pursuant to section 29a para. 2
437 to enter into force on 24 August 2002 pursuant to section 29a para. 2
438 as amended by Article 2 item 18 of the Federal Act, Federal Law Gazette I no. 148/2002
(5) **(Constitutional provision)** Section 16 para. 1 and section 30 item 1 shall enter into force on 1 March 2001.

“Entry into Force of the Amendment to the Federal Act Regulating the Tasks of Regulatory Authorities in the Electricity Sector, as well as the Establishment of Elektrizitäts-Control GmbH and Elektrizitäts-Control Kommission”

**Section 29a. (1) (constitutional provision)** Section 1 including headings, as well as section 16 para. 1 items 2, 8 through 10, 12 and 13, 15 through 19 including heading as amended by Federal Act, Federal Law Gazette I no. 148/2002, shall enter into force on the day following promulgation. Section 16 para. 1 items 11 and 14, as well as 20 through 24, shall enter into force on 1 October 2002.”

“(2) The change of name and sections 2a, 3, 4 including headings, section 6 including heading, section 7 including heading, sections 9 and 10 including headings, section 10a including heading, section 15 including heading, section 16 paras. 2 through 4, sections 17 through 20 including headings, section 22 including heading, section 26a including heading, sections 27 and 28 including headings, as amended by Federal Act, Federal Law Gazette I no. 148/2002, shall enter into force on the day following promulgation. The ordinance under section 6, as amended by Federal Act, Federal Law Gazette I no. 121/2000, issued by the Federal Minister of Economics and Labour regarding the charge for Elektrizitäts-Control GmbH, Federal Act, Federal Law Gazette II no. 453/2002, shall remain in force as Federal Act until an ordinance under section 6, as amended by Federal Act, Federal Law Gazette I no. 148/2002, becomes effective, inasmuch as this determines the level of the fee to be levied by Energie-Control GmbH to finance its tasks regarding the electricity market.


(4) Elektrizitäts-Control Kommission shall continue to perform its functions within the scope previously assigned to it, until Energie-Control Kommission has been established and has taken up its activities.”


**Section 29b. (1) (Constitutional provision)** Section 16 as amended in Federal Act, Federal Law Gazette I no. 106/2006 shall enter into force on the day following promulgation.


**Execution**

**Section 30.** The execution of this Federal Act shall lie with:

“1. (Constitutional provision) the Federal Government regarding section 1, section 16 para. 1, section 29 para. 5 and section 29a para. 1;”

2. the Federal Minister of Economics and Labour regarding all remaining provisions of this Federal Act.

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439 as amended by Article 2 item 19 of the Federal Act, Federal Law Gazette I no. 148/2002

440 as amended by Article 2 item 19a of the Federal Act, Federal Law Gazette I no. 148/2002


442 as amended by Article 2 item 21 of the Federal Act, Federal Law Gazette I no. 148/2002
"CLEARING AND SETTLEMENT AGENCIES ACT"

Federal Act regulating the preconditions for operation, the tasks and powers of clearing and settlement agencies for transactions and price formation with regard to balancing energy, Federal Law Gazette I no. 121/2000 [Article 9 of the Energy Market Liberalisation Act]

The National Council has adopted:

Scope of Application

Section 1. (1) This Federal Act shall regulate the preconditions for operation, the activities and the organisation of clearing and settlement agencies for transactions and price formation with regard to balancing energy.

(2) For the purposes of this Federal Act, clearing and settlement agencies for transactions and price formation with regard to balancing energy shall mean agencies calculating, on the basis of data provided by market participants and grid operators, the amount of balancing energy to be assigned to individual market participants and grid operators, drawing up, on the basis of offers submitted by electricity producers, the call order in which power plants are called up for dispatch with a view to procuring balancing energy and determining the prices of balancing energy, as well as managing balance groups in terms of organisation and settlement.

Balance Group Coordinator

Section 2. Whosoever operates a clearing and settlement agency for transactions and price formation with regard to balancing energy shall be deemed to be a balance group coordinator. Inasmuch as a balance group coordinator is charged with duties in accordance with this Federal Act, it shall take due account, in discharging the duties assigned to it, of the national economic interest in effective clearing and settlement arrangements (section 3 para. 1).

Preconditions for Operating a Clearing and Settlement Agency

Section 3. (1) The operation of a clearing and settlement agency for transactions and price formation with regard to balancing energy shall require a licence to be issued by the Federal Minister of Economics and Labour. A licence shall, as a rule, only be granted for one control area. In the interest of expediency and cost saving, however, a licence for two control areas may also be granted.

(2) The licence shall be issued in written form and may impose upon the licensee any conditions and duties necessary to ensure the proper discharge of responsibilities.

(3) The applicant shall attach the following documents to the application for a licence:

1. details regarding the domicile and the legal form of the enterprise;
2. the articles of association or shareholder's agreement;
3. a business plan showing the organisational structure of the enterprise, as well as its internal controlling procedures; furthermore, this business plan shall include a financial preview of the first three business years;
4. a description of the technical and organisational aspects of the system available for settlement and price formation with regard to balancing energy;
5. the amount of unencumbered initial capital at the managing directors' free and unrestricted disposal in Austria;
6. details regarding the identity of owners holding a qualified share in the enterprise, the extent of their holdings, as well as the group structure, inasmuch as these owners belong to a group;
7. the names of the proposed managing directors and details regarding their qualification for managing the enterprise.

443 in force as of 2 December 2000
444 Promulgation of the Federal Chancellor, Federal Law Gazette I no. 25/2004: With its Decision of 10 March 2004, G 140, 141/03-21, served to the Federal Chancellor on 6 April 2004, the Constitutional Court repealed sections 3, 4 and 9 of the Federal Act regulating the preconditions for operation, the tasks and powers of clearing and settlement agencies for transactions and price formation with regard to balancing energy, Article 9 of the Energy Market Liberalisation Act, Federal Law Gazette I no. 121/2000, as being unconstitutional. The repeal shall enter into force upon expiry of 30 June 2005. Earlier statutory provisions shall not be re-instituted.
Inasmuch as several applications for a licence have been submitted for one control area, the licence shall be granted to the applicant best meeting the licensing conditions and most likely to safeguard the national economic interest in a functioning internal market in electricity.

**Licensing Conditions**

**Section 4.** (1) A license pursuant to section 3 may only be granted provided:

1. that the applicant is in a position to perform the tasks set out in section 9 in a cost-effective and reliable manner;
2. that no license for a clearing and settlement agency has yet been granted for the control area in question;
3. that the persons holding a qualified share in the enterprise meet the requirements for ensuring the sound and prudent management of the company;
4. that the supervisory authorities would not be impeded in the proper exercise of their supervisory functions by any close association between the applicant enterprise and other natural or legal persons;
5. that the supervisory authorities would not be impeded in the proper exercise of their monitoring functions by any legal or administrative rules of a third country which a natural or legal person closely associated with the enterprise in question may be subject to, or by any difficulty in applying such rules;
6. that the enterprise’s initial capital amounts to no less than ATS 30 million, that this unencumbered capital is at the free and unrestricted disposal of the managing directors, and that the enterprise’s equipment and staff situation ensures optimal management and administration of the clearing and settlement agency;
7. that there are no reasons for exclusion in respect of any of the managing directors pursuant to section 13 paras 1 to 6 of the 1994 Industrial Code;
8. that no pre-trial judicial investigation for an intentionally committed offence punishable by a term of imprisonment exceeding one year has been instigated against any of the managing directors, or that the decision terminating any such penal proceedings has become final;
9. that the managing directors, owing to their educational and career background, are properly qualified and have the requisite qualities and experience to manage the enterprise. Sufficient theoretical and practical expertise in settling imbalances, as well as managerial experience, shall be deemed to be prerequisites for proper qualification; anyone who has held a managerial position in the field of tariff setting or accounting for at least three years shall be presumed to be properly qualified to operate a clearing and settlement agency;
10. that at least one managing director has the centre of his vital interests in Austria;
11. that the enterprise has at least two managing directors and that the by-laws exclude any possibility of conferring power of representation, power of attorney or commercial authority for the entire business on a single person;
12. that no managing director pursues any other regular occupation outside this enterprise which is liable to cause any conflicts of interest;
13. that the domicile and the enterprise’s headquarters are in Austria;
14. that the available facilities meet the requirements of a modern settlement system;
15. that impartiality and independence vis-à-vis market participants, as well as the confidential treatment of market participants’ data, are ensured.

(2) A balance group coordinator shall not be entered as a company in the Commercial Register unless the requisite final decisions are available in the original or in the form of certified copies. The competent court shall transmit decisions granting such entries in the Commercial Register also to the Federal Minister of Economics and Labour as the highest electricity authority, and to Elektrizitäts-Control GmbH as the supervisory authority.

**Withdrawal of Licenses**

**Section 5.** (1) The Federal Minister of Economics and Labour may withdraw a license if the balance group coordinator should fail:

1. to commence operations within six months of the license being granted, or
2. to exercise its function for a period in excess of one month.

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445 now Energie-Control GmbH
(2) The Federal Minister of Economics and Labour shall withdraw a license:
1. if it has been obtained under false pretences or by deception;
2. if the balance group coordinator should fail to meet its obligations vis-à-vis its creditors;
3. if a licensing condition pursuant to section 4 para. 1 should cease to be met subsequent to the
   licence being granted; or
4. if the balance group coordinator should consistently fail to perform its tasks properly and in
   compliance with provisions.

(3) A decision withdrawing a license shall have the same effect as a decision dissolving the company
unless the company surrenders the company objective of managing and administering a clearing
and settlement agency for transactions and price formation with regard to balancing energy and this company
is restructured accordingly within three months of the decision becoming final. The Federal Minister of
Economics and Labour shall transmit a counterpart of this decision to the competent court which holds
the respective Commercial Register; the withdrawal of the licence shall be duly entered in this Commer-
cial Register.

(4) In the event that the persons appointed as liquidators should fail to ensure proper liquidation, the
court shall appoint new liquidators on an application of the Law Office of the Republic of Austria cxxii,
whose services the Federal Minister of Economic Affairs shall make use of in such a case. Should the
Federal Minister of Economics and Labour be of the opinion that proper liquidation is not ensured by the
appointed liquidators, he shall apply, via the Law Office of the Republic of Austria, to the competent
court of first instance at the balance group coordinator’s domicile for the appointment of suitable liquida-
tors; the court shall decide under the rules on jurisdictional arbitration cxxiii.

Expiry of Licences

Section 6. (1) A licence shall expire:
1. by lapse of time;
2. upon the occurrence of a condition subsequent (section 2 para. 3);
3. upon its surrender;
4. upon conclusion of the licence holder’s liquidation;
5. upon institution of bankruptcy proceedings against the assets of the balance group coordinator.

(2) The Minister of Economics and Labour shall issue a decision declaring the licence to have expi-
red. Section 5 paras 3 and 4 shall apply.

(3) Licences may only be surrendered (para. 1 item 3) in written form and only on condition that a-
other balance group coordinator has assumed the management and administration of the clearing and
settlement agency.

Shareholding

Section 7. (1) Whosoever intends to hold, directly or indirectly, a qualified share in a balance group
coordinator shall notify this intention beforehand, in writing, to the Minister of Economics and Labour
and specify the amount of such holding.

(2) Whosoever intends to increase his qualified share in a clearing and settlement agent in such a
way as to reach or exceed the limit of 20 percent, 33 percent or 50 percent of the agency’s voting rights or
capital, or in such a way as to make the balance group coordinator its subsidiary, shall notify this intenti-
on beforehand, in writing, to the Federal Minister of Economics and Labour.

(3) In the event that the conditions referred to in section 4 para. 1 items 3 through 5 should fail to be
met, the Federal Minister of Economics and Labour shall prohibit the intended acquisition of shares
within three months of notification pursuant to para. 1 or 2. If the acquisition is not prohibited, the Fede-
ral Minister of Economics and Labour may set a date by which the intentions referred to in paras 1 and 2
must be realised.

(4) The notification requirements pursuant to paras 1 and 2 shall correspondingly apply to the inten-
ded surrender of a qualified share and to the intended reduction of shares in a balance group coordinator
below the limits mentioned in para. 2.

(5) Balance group coordinators shall notify the Federal Minister of Economics and Labour, in writ-
ing, of any acquisition and of any surrender of shares, as well as of any instance of shareholdings reach-
ing, exceeding or falling below the limits pursuant to paras. 1, 2 and 4, immediately upon obtaining
knowledge of such developments. Furthermore, balance group coordinators shall notify the Federal Mi-
ner of Economics and Labour at least once a year of the names and addresses of the shareholders hol-
ding qualified shares.
(6) In the event of any danger that the influence brought to bear by persons holding qualified shares fails to meet the requirements for a sound and prudent management of the balance group coordinator, the Minister of Economics and Labour shall take any measures necessary to avert this danger or to put an end to such a situation. Such measures shall, without limitations, include relieving the managers or any other functionaries of the balance group coordinator of their functions if they consistently infringe their duties and if the national economic interest in a functioning electricity market can only be safeguarded by this measure; in this event, suitable supervisors shall be temporarily entrusted with the management of the undertaking.

(7) The Federal Minister of Economics and Labour shall take suitable measures against the persons referred to in paras 1 and 2 if they fail to comply with the requirement of prior notification or if they acquire shares in contravention of a prohibition pursuant to para. 3 or without permission pursuant to section 8 para. 1. The voting rights associated with the shares held by such persons shall be suspended:
   1. until the Federal Minister of Economics and Labour declares that the acquisition of these shares would not have been prohibited pursuant to para. 3, or
   2. until the Federal Minister of Economics and Labour declares that the reason for the prohibition imposed no longer applies.

(8) In the event that a court of law should order the suspension of voting rights pursuant to para. 6, this court shall at the same time appoint a trustee who shall meet the requirements pursuant to section 4 para. 1 item 3 and entrust this trustee with the exercise of such voting rights. In the case referred to in para. 7 the Federal Minister of Economics and Labour shall, immediately upon obtaining knowledge of the suspension of voting rights, request the court competent pursuant to para. 6 to appoint a trustee. This trustee shall be entitled to reimbursement of expenses, as well as to a remuneration the level of which is to be determined by the court. The balance group coordinator and the shareholders concerned and any other equity holders shall be jointly and severally liable for these payments. Obliged parties shall have the right to appeal against orders determining the amount of the trustee’s remuneration and of the expenses to be reimbursed to him. No further appeal shall lie against the decision of the appellate court.

(9) Inasmuch as transactions within the meaning of paras 1 and 2 require a permit pursuant to section 8 para. 1, paras 1 through 4 and the first sentence of para. 5 shall not apply.

Special Permit

Section 8. (1) A special permit from the Federal Minister of Economics and Labour shall be required:
   1. for the merger of a balance group coordinator with a company listed on the stock exchange within the meaning of section 2 para. 1 of the Stock Exchange Act cxxiv, Federal Law Gazette no. 555/1989;
   2. for any instance of shareholdings reaching, exceeding or falling below the limit of 10 percent (qualified share), 20 percent, 33 percent and 50 percent of the voting rights or capital of a balance group coordinator, insofar as these voting rights or this capital are directly or indirectly held, acquired or sold by another balance group coordinator or by a company listed on the stock exchange;
   3. for the establishment of branch offices in a third country.

(2) Sections 3 through 5 shall apply correspondingly to the granting of permits pursuant to para. 1.

(3) Permits pursuant to para. 1 item 1 may only be entered in the Commercial Register if the requisite final decisions are produced in the original or in the form of certified copies. The competent court shall transmit decisions on such entries in the Commercial Register also to the Federal Minister of Economics and Labour.

Tasks

Section 9. (1) Clearing and settlement agencies for transactions and price formation with regard to balancing energy shall have the following tasks:
   1. to manage the balance groups in terms of organisation and settlement procedures;

446 Promulgation of the Federal Chancellor, Federal Law Gazette I no. 25/2004: With its Decision of 10 March 2004, G 140, 141/03-21, served to the Federal Chancellor on 6 April 2004, the Constitutional Court repealed sections 3, 4 and 9 of the Federal Act regulating the preconditions for operation, the tasks and powers of clearing and settlement agencies for transactions and price formation with regard to balancing energy, Article 9 of the Energy Market Liberalisation Act, Federal Law Gazette I no. 121/2000, as being unconstitutional. The repeal shall enter into force upon expiry of 30 June 2005. Earlier statutory provisions shall not be re-instituted.
2. to calculate and assign amounts of balancing energy;
3. to conclude:
   a) agreements with balance group representatives, control area managers, grid operators and electricity suppliers (producers and electricity traders);
   b) agreements with institutions for the purpose of data exchange with a view to compiling an index;
   c) agreements on data communication with electricity exchanges;
   d) agreements on data communication with suppliers (producers and traders).

(2) Managing the balance group in terms of organisation and settlement procedures shall in particular involve:
1. issuing identification numbers to balance groups;
2. providing interfaces in the field of information technology;
3. managing schedules between different balance groups;
4. receiving metering data transmitted by grid operators in the prescribed form, processing such data, as well as transmitting them to the market participants concerned and to other balance group representatives as contractually agreed;
5. receiving the schedules transmitted by balance group representatives and transmitting them to the market participants concerned (other balance group representatives) as contractually agreed;
6. examining the financial soundness of balance group representatives;
7. co-operating in the elaboration and adaptation of rules relating to issues of changes in customers, handling and settlement;
8. settlement and any organisational measures involving the dissolution of balance groups;
9. apportioning and assigning to the market participants connected to a grid operator’s grid, on the basis of transparent criteria, the difference resulting from the use of standardised load profiles once the actual readings are available;
10. passing charges pursuant to section 12 on to balance group representatives.

(3) Save as otherwise provided in contracts pursuant to section 70 para. 2 of the Electricity Act, calculating and assigning balancing energy shall in any case involve:
1. inviting and receiving offers for balancing energy, as well as drawing up the call order in which power plants are called up for dispatch by control area managers;
2. receiving data on the difference between schedules and metering data and calculating the amount of balancing energy on this basis;
3. determining the price of balancing energy in accordance with the procedure provided for in section 10, as well as regularly publishing such prices in an appropriate form;
4. calculating charges for balancing energy, as well as notifying balance group representatives and control area managers of such charges;
5. taking special measures in the event that no offers for balancing energy should be available;
6. keeping a record of, putting on file and publishing in an appropriate form, the standardised load profiles applied.

Procedure for Determining the Price of Balancing Energy

Section 10. (1) The price of balancing energy shall be determined on the basis of the procedure provided for in paras 2 and 3.

(2) The price of balancing energy shall be determined on the basis of the offers submitted by power plants which are in a position to supply balancing energy (supply curve) and of the amount of balancing energy demanded (demand curve) in a given settlement period.

(3) The calculation of the price of balancing energy shall be based on a market-oriented model. This model shall be elaborated by the clearing and settlement agency and shall be subject to approval by the regulatory authority.

(4) The price of balancing energy in the Vorarlberg control area shall be oriented on the prices prevailing in the control area of Energie Baden-Württemberg AG.
General Terms and Conditions

Section 11. (1) Balance group coordinators shall conclude the contracts referred to in section 9 para. 1 item 3 on the basis of general terms and conditions which shall be subject to approval by Elektrizitäts-Control GmbH.

(2) The general terms and conditions shall in particular include:

1. a description of the method to be applied in calculating the amount of balancing energy to be assigned to individual market participants and grid operators;
2. the criteria applied in drawing up the call order for dispatch;
3. the method applied in calculating the price of balancing energy;
4. the organisational principles governing the management of balance groups;
5. the data to be provided by market participants, grid operators, control area managers and balance group representatives; as well as
6. the key market rules applying to the performance of their tasks.

(3) The general terms and conditions shall be approved, subject to the imposition of additional requirements where necessary, provided that they are compatible with the national economic interest in ensuring a functioning electricity market and that they ensure the performance of the tasks referred to in section 9.

(4) The balance group coordinator shall be obliged to amend or rewrite their general terms and conditions at the request of Elektrizitäts-Control GmbH.

Clearing Charge

Section 12. (1) Elektrizitäts-Control GmbH shall set a tariff for the charge payable for the services rendered by balance group coordinators in discharging their tasks. This charge shall be based on the expenses arising in connection with discharging these tasks, including a reasonable profit margin. The rates corresponding to the different services shall be determined in a cost-reflective manner. The basis of assessment shall be the respective balance group’s turnover of electric energy. No clearing charge shall be imposed upon special balance groups for grid losses and for transactions relating to eco-energy.

(2) Elektrizitäts-Control GmbH shall arrange for the publication, in the Official Journal supplementing the Wiener Zeitung and at the expense of the balance group coordinator, of the tariff set with a view to calculating the clearing charge.

Entry into Force and Transitional Provision

Section 13. (1) This Federal Act shall enter into force on the day following promulgation.

(2) Balance group coordinators shall ensure that all technical and organisational facilities which they require in order to commence operations are available as of 1 October 2001.

(3) Should the conditions for the full liberalisation of the internal market in electricity be met at an earlier date, the Federal Minister of Economics and Labour may, by ordinance, bring the above date forward to 1 July 2001 at the earliest.

Execution

Section 14. The Federal Minister of Economics and Labour shall be responsible for executing this Federal Act. Execution of section 7 shall be subject to the agreement of the Federal Minister of Justice.

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i Energie-Versorgungssicherheitsgesetz 2006
ii Elektrizitätswirtschafts- und Organisationsgesetz (ElWOG)
iii Bundesgesetzblatt (BGBl.)
iv Energieliberalisierungsgebetz
v Ökostromgesetznovelle
vi Energieversorgungs-Sicherheitsgesetz (E-VSG)
vii Bund: federal authorities and institutions as opposed to authorities and institutions of the Federal States (Bundesländer or Länder)

447 now Energie-Control GmbH
448 now Energie-Control GmbH
449 now Energie-Control GmbH
450 now Energie-Control GmbH
Bundes-Verfassungsgesetz (B-VG), i.e. the Austrian Constitution

Handelsgesetzbuch (HGB)

Preisansätze (calculated by an enterprise, on the basis of market conditions, as opposed to tariffs [Tarife] determined by the authority)

Bundesminister für Wirtschaft und Arbeit

Verordnungen

Gewerbeordnung

Bescheide

Tarife (determined by the authority, as opposed to rates [Preisansätze] determined by an enterprise on the basis of market conditions)

Allgemeines Bürgerliches Gesetzbuch (ABG)

Konsumentenschutzgesetz

Kartellgericht

Kartellgesetz

E-RBG

Gewerbeordnung (GewO)

Verrechnungsstellengesetz

Firmenbuch

Eisenbahnenteignungsgesetz

Akkreditierungsgesetz

Bezirksverwaltungsbehörden

Bundespolizeidirektion (police authorities in eight of the nine state capitals)

Landeselektrizitätsbeirat

Bundesstatistikgesetz

Allgemeines Verwaltungsverfahrensgesetz (AVG)

Wirtschaftskammer Österreich

Präsidentenkonferenz der Landwirtschaftskammern Österreichs

Bundesarbeitskammer

Österreichischer Gewerkschaftsbund

Amtsblatt zur Wiener Zeitung

Verwaltungsstrafgesetz (VStG)

Datenschutzkommission

Preisgesetz

Elektrizitätswirtschaftsgesetz

Umsatzsteuergesetz

Umscheidungssteuergesetz

Organschaft

Verband der Elektrizitätsunternehmen Österreichs

Landesvertrag

Ökostromgesetz, literal translation: “Eco-Electricity Act”. Since the term “green electricity” is more common in English, the Act is called Green Electricity Act.

Ökostromgesetz-Novelle 2006

Bund: federal authorities and institutions as opposed to authorities and institutions of the Federal States (Bundesländer)

Bundes-Verfassungsgesetz (B-VG), i.e. the Austrian Constitution

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lxv ÖNORMEN
lxvi Energielenkungsgesetz
lxvii Mineralrohstoffgesetz
lxviii Personengesellschaft des Handelsrechts
lxix eingetragene Erwerbsgesellschaft
lxx höhere technische gewerbliche Lehranstalt
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lxxxi Kartellgesetz
lxxxi Allgemeines Verwaltungsverfahrensgesetz
lxxxi Konsumentenschutzgesetz
lxxxi Bundesarbeitskammer
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