

## E-Control Act

### Full title

Federal Act on the Regulatory Authority for Electricity and Gas (E-Control Act)

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

[CELEX no: 32004L0008, 32006L0032, 32008L0027, 32009L0072, 32009L0714]

### Amendments

FLG I no 107/2011 (National Council: GP XXIV RV 1081 AB 1128 p. 124. Federal Council: 8581 AB 8593 p. 801.)

[CELEX no: 32006L0032, 32009L0073]

FLG I no 51/2012 (National Council: GP XXIV RV 1618 AB 1771 p. 155. Federal Council: 8730 AB 8731 p. 809.)

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

FLG I no 107/2017 (National Council: GP XXV RV 1661 AB 1728 p. 190. Federal Council: 9823 AB 9846 p. 870.)

[CELEX no: 32014L0065, 32017L0593]

FLG I no 108/2017 (National Council: GP XXV RV 1519 AB 1527 p. 190. Federal Council: 9831 AB 9873 p. 870.)

[CELEX no: 32009L0072, 32009L0073, 32012L0027, 32014L0094]

FLG I no 150/2021 (National Council: GP XXVII RV 733 AB 982 p. 115. Federal Council: 10690 AB 10724 p. 929.)

[CELEX no: 32018L2001, 32019L0944, 32019L0692]

FLG I no 7/2022 (National Council: GP XXVII IA 2184/A AB 1304 p. 139. Federal Council: 10865 AB 10870 p. 937.)

### Text

#### Competent authorities; transposition of Union law

**Section 1. (1) (constitutional provision)** The rules provided for in in this Federal Act are issued, repealed and executed by the federal government, even with regard to matters for which the Federal Constitutional Law provides otherwise. Matters regulated in these rules may be discharged directly by the bodies named in this Federal Act.

(2) This Federal Act transposes

1. Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55, 14.08.2009;
2. Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94, 14.08.2009, last amended by Regulation (EU) 2019/692, OJ L 117/1, 03.05.2019;
3. Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, OJ L 326/1, 08.12.2011; and
4. Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115/39, 25.04.2013.

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*(item 5 deleted by virtue of Article 5 item 3 FLG I no 150/2021)*

### **Establishment of the regulatory authority**

**Section 2.** (1) The task of regulating the electricity and gas markets and industries is entrusted to Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control), an *Anstalt öffentlichen Rechts* (public authority) with legal personality, established by virtue of this provision.

(2) The authority has its seat in Vienna. Its geographical remit covers the entire federal territory of the Republic of Austria. It is entitled to bear the federal coat of arms. E-Control is an undertaking in the sense of the Business Enterprise Code, German Reich Law Gazette (GRLG) 219/1897, and as such is entered in the commercial register at the Commercial Court of Vienna.

### **Definitions**

**Section 3.** For the purposes of this Federal Act, the term

1. ‘ACER’ means the Agency for the Cooperation of Energy Regulators created by Regulation (EC) No 713/2009 of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators, OJ L 211/1, 14.08.2009;

*(item 1a deleted by virtue of Article 6 item 4 FLG I no 150/2021)*

2. ‘Regulation (EC) No 713/2009’ means Regulation (EC) No 713/2009 of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators, OJ L 211/1, 14.08.2009;

3. ‘Regulation (EC) No 714/2009’ means Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211/15, 14.08.2009;

4. ‘Regulation (EC) No 715/2009’ means Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, OJ L 211/36, 14.08.2009;

5. ‘Directive 2009/72/EC’ means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55, 14.8.2009;

6. ‘Directive 2009/73/EC’ means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94, 14.08.2009, last amended by Regulation (EU) 2019/692, OJ L 117/1, 03.05.2019;

7. ‘Regulation (EU) No 1227/2011’ means Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, OJ L 326/1, 08.12.2011;

8. ‘Regulation (EU) No 347/2013’ means Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115/39, 25.04.2013.

*(item 9 deleted by virtue of Article 6 item 4 FLG I no 150/2021)*

### **Overall objectives**

**Section 4.** In discharging regulatory tasks, E-Control shall take any and all appropriate measures to attain the following objectives, within the framework of its duties and powers and, where applicable, in cooperation with other competent national authorities, in particular the competition authorities, and without prejudice to the competences of the latter or the competences of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology in high-level energy policy matters:

1. promoting, in close cooperation with ACER, regulatory authorities of other member states and the European Commission, a competitive, secure and environmentally sustainable internal market in electricity and gas within the Union, and effective market opening for all customers and suppliers in the Union and ensuring appropriate conditions for the effective and reliable operation of electricity and gas networks, taking into account long-term objectives;

2. developing competitive and functioning regional markets within the Union in view of the achievement of the objectives referred to in item 1;

3. eliminating restrictions to trade in electricity and gas between member states, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate electricity and gas flows across the Union;
4. helping to achieve, in the quickest and most cost-effective way, the transformation of the energy system in line with the Paris Climate Agreement of 2015, while safeguarding the development of consumer-oriented, secure, reliable and efficient non-discriminatory systems and promoting system adequacy and, in line with general energy policy objectives, energy efficiency as well as the integration of large and small-scale production of electricity and gas from renewable energy sources and distributed generation in both transmission and distribution networks;
5. facilitating the connection of new generation and production capacity to the networks, in particular by removing barriers that could prevent access for new market entrants, in particular renewable energy communities pursuant to section 79 Renewable Energy Expansion Act, FLG I no 150/2021, and citizen energy communities pursuant to section 16b Electricity Act 2010, and that could hinder the injection of electricity or gas from renewable energy sources;
6. ensuring that system operators and system users are appropriately incentivised, in both the short and the long term, to increase efficiencies in system performance and foster market integration;
7. ensuring that customers benefit from the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection;
8. helping to achieve high standards of universal and public service in electricity and gas supply, contributing to the protection of vulnerable customers and contributing to the compatibility of the data exchange processes that are necessary for supplier switching;
9. ensuring the integrity and transparency of the wholesale energy market.

#### **Bodies**

**Section 5.** (1) E-Control has the following bodies:

1. the Executive Board;
2. the Regulation Commission;
3. the Supervisory Board.

(2) With the exception of matters addressed under para. 4 below, the bodies of E-Control and their members are not bound by any instructions and shall act independently of any market interest in the exercise of their duties. In particular, they shall not have any functions that jeopardise their independence. Members of the federal government, of provincial governments, of elected political bodies in Austria and of the European Parliament are excluded from membership of E-Control's bodies.

(3) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may seek information about any and all matters subject to the management and duties of E-Control at all times. All E-Control bodies shall respond to such inquiries by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology without delay and, if so requested, in writing, unless this would interfere with the independence of the regulatory authority in the meaning of Article 35(4) Directive 2009/72/EC and Article 39(4) Directive 2009/73/EC.

(4) In carrying out the duties entrusted to it by the Green Electricity Act, with the exception of sections 6 and 9 of that Act; by the Green Electricity Act 2012; by the Renewable Energy Expansion Act, with the exception of section 81 para. 1 and section 84 of that Act; by the Transparency of Prices Act; by the Energy Efficiency Act; by the Energy Intervention Powers Act 2012, with the exception of section 15 para. 2 and section 27 para. 2 of that Act; by the CHP Act; by section 69 Electricity Act, FLG I no 143/1998, as amended by FLG I no 112/2008; by section 92 Electricity Act 2010; by section 147 Gas Act 2011; and by the Alternative Fuels Infrastructure Act, FLG I no 38/2018, as amended by FLG I no 150/2021, E-Control shall follow the guidance and instructions of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

#### **Executive Board**

**Section 6.** (1) E-Control's Executive Board has two members (Executive Directors).

(2) The members of the Executive Board are appointed by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. The term of office is five years, renewable once.

(3) The members of the Executive Board must be energy experts who have the right to vote in the elections for the Austrian National Council. To qualify for appointment as Executive Director, a person must

1. have adequate personal and professional qualifications;
2. have earned a university degree in the field of law, economics or engineering; and
3. have at least five years of professional experience in energy.

(4) While in office, Executive Directors may not pursue any additional activities which hinder them in fulfilling their duties, could give rise to doubts as to their full impartiality or jeopardise other strong interests connected to their role; this particularly applies to the activities described in section 4 Incompatibility Act 1983, FLG no 330/1983.

(4) Appointment of the Executive Board is preceded by a public call for interest initiated by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology; the Appointment Act 1998, FLG I no 26/1998, applies. The Supervisory Board represents E-Control in concluding the employment contracts with the appointed Executive Directors.

(6) **(constitutional provision)** Before the Federal Minister appoints the Executive Board, a hearing before the competent National Council committee takes place.

### **Tasks of the Executive Board**

**Section 7.** (1) The Executive Board manages E-Control's operations and handles its business. It executes all tasks entrusted to E-Control which are not assigned to the Regulation Commission or the Supervisory Board by virtue of federal law. The Executive Board represents E-Control towards third parties.

(2) The Executive Board shall issue rules of procedure. The rules of procedure shall ensure that E-Control carries out its tasks in line with the principles of legality, expediency, economic feasibility and prudent financial management. In particular, the rules of procedure shall lay down the conditions under which the Executive Board, without prejudice to its own responsibility, may be represented by E-Control staff members. The rules of procedure shall also state how Executive Board decisions are taken if there is a tie. The rules of procedure shall be published on the E-Control website.

(3) The Executive Board shall create the organisational conditions that enable the bodies of E-Control to fulfil their duties.

(4) The Executive Board shall regularly report to the Supervisory Board about the development of the energy markets, the focal points of E-Control's activities and its business as well as any substantial deviations from the budget. If there are any exceptional events, the Executive Board shall inform the chair of the Supervisory Board without delay.

### **End of term of office of the Executive Board**

**Section 8.** (1) The term of office of a member of E-Control's Executive Board ends

1. when the term expires;
2. if the Board member steps down, after having discussed and coordinated this step with the Supervisory Board;
3. if the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology dismisses the member in accordance with para. 3.

(2) If a member of the Executive Board wishes to step down, they inform the Supervisory Board and the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology in writing. The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall initiate a procedure for the appointment for a new Board member.

(3) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall dismiss a member of the Executive Board for good reason

1. if time reveals that a condition for appointment had not in fact been met or is no longer met;
2. in the case of permanent incapacity to execute the function or if the Board member is absent from work for more than half a year due to illness, accident or infirmity;

3. if an Austrian court has sentenced the Board member for one or several offences committed with intent either to imprisonment of more than one year or to imprisonment of more than six months that are not suspended on probation; or
4. if the Board member has acted in gross breach of duty.

### **Remedies**

**Section 9.** (1) E-Control may appeal against decisions issued by administrative courts concerning official E-Control acts to the Administrative Court of Appeal on grounds of unlawfulness.

(2) Appeals against decisions of the E-Control Executive Board in matters concerning the allowed cost pursuant to section 48 para. 1 Electricity Act 2010, section 24 para. 1 Gas Act 2011 and section 69 para. 1 Gas Act 2011, and concerning decisions about the methodology pursuant to section 69 para. 2 Gas Act 2011 have no suspensive effect.

### **Regulation Commission**

**Section 10.** (1) The E-Control Regulation Commission consists of five members, who are appointed by the federal government. One of the members of the Regulation Commission must be a judge. In appointing this member, the government shall take into consideration three candidates proposed by the president of the Supreme Court of Justice. The other members are appointed upon a proposal by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. At least one member of the Regulation Commission must have engineering expertise, while the other members must have legal and/or economics expertise. The term of office of the members of the Regulation Commission is five years. It can be renewed once.

(2) The government appoints an alternate for each member of the Regulation Commission. The alternate replaces the member when the latter cannot execute their function.

(3) Only persons who can vote in National Council elections may be appointed as members of the E-Control Regulation Commission.

(4) While in office, members of the Regulation Commission may not pursue any additional activities which hinder them in fulfilling their duties, could give rise to doubts as to their full impartiality or jeopardise other strong interests connected to their role; this particularly applies to the activities described in section 4 Incompatibility Act 1983, FLG no 330/1983.

(5) The term of office of a member of E-Control's Regulation Commission ends

1. when the term expires;
2. if the member steps down, after having informed the government, represented by the Federal Chancellor, thereof in writing;
3. if the government dismisses the member in accordance with para. 6.

(6) The government shall dismiss a member of the Regulation Commission for good reason

1. if time reveals that a condition for appointment had not in fact been met or is no longer met;
2. in the case of permanent incapacity to execute the function or if the member is absent from work for more than half a year due to illness, accident or infirmity;
3. if an Austrian court has sentenced the member for one or several offences committed with intent either to imprisonment of more than one year or to imprisonment of more than six months that are not suspended on probation; or
4. if the member has acted in gross breach of duty.

(7) Paras 1, 3, 4, 5 and 6 apply *mutatis mutandis* to alternates.

(8) If a member's term ends prematurely, the corresponding alternate becomes a member of the Regulation Commission. A new alternate shall immediately be appointed, applying paras 1, 2 and 3, for the residual term of office, i.e. until it expires.

(9) The members of the Regulation Commission are entitled to reimbursement of adequate travel and cash expenses and to a meeting fare to be decreed by ordinance by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology in agreement with the Federal Minister of Finance, considering the significance and extent of the tasks discharged by the Regulation Commission as a body of E-Control.



(10) As far as E-Control staff serves the Regulation Commission, they are bound by instructions by the chair or another member of the Regulation Commission to be named in the rules of procedure.

#### **Meetings and voting arrangements in the Regulation Commission**

**Section 11.** (1) The Regulation Commission is chaired by the member who is a judge also.

(2) Regulation Commission decisions require simple majority; abstaining from voting is not permissible.

#### **Tasks of the Regulation Commission**

**Section 12.** (1) **(constitutional provision)** E-Control's Regulation Commission issues official decisions regarding the following matters:

1. decisions on refusal of system access in procedures pursuant to section 21 para. 2 Electricity Act 2010 in conjunction with section 22 para. 1 Electricity Act 2010 and section 33 para. 4 Gas Act 2011 in conjunction with section 132 para. 1 item 1 Gas Act 2011;
2. settlement of other disputes according to section 22 para. 2 Electricity Act 2010 and section 132 para. 2 Gas Act 2011;
3. settlement of disputes in matters of section 30 para. 3 item 2 Electricity Act 2010 and section 114 para. 3 item 2 Gas Act 2011;
4. prohibition to apply general terms and conditions for the supply of electricity or gas pursuant to section 80 Electricity Act 2010 and section 125 Gas Act 2011 if they violate a statutory provision or are unethical;
5. settlement of disputes between suppliers according to section 40 para. 3 Gas Act 2011 in conjunction with section 132 para. 1 item 3;
6. decisions on refusal of storage access in procedures pursuant to section 97 para. 4 in conjunction with section 132 para. 1 item 2 Gas Act 2011;
7. setting of storage charges pursuant to section 99 para. 2;
8. granting exemptions pursuant to section 58a Electricity Act 2010 and section 78 Gas Act 2011.

(2) **(constitutional provision)** E-Control's Regulation Commission issues ordinances regarding the following matters:

1. setting of system charges pursuant to section 49 Electricity Act 2010 and section 24 para. 2 and section 70 Gas Act 2011;
2. matters pursuant to section 59 para. 6 item 6 Electricity Act 2010 and section 79 para. 6 item 4 Gas Act 2011.

(3) In the cases listed in para. 1 items 2, 3 and 4, the Regulation Commission shall hand down its official decision within two months of the respective application having been filed. This period of time is extended by an additional two months if the authority seeks more information. Further extension of the deadline is permissible provided that all parties to the proceedings agree.

(4) Should a party not be satisfied with a decision handed down under para. 1 items 2 or 3, it may bring an appeal before the relevant court of law within four weeks of the official decision having been served. The decision of whether to accept a request for restitutio in integrum against expiry of the appeals deadline lies with the court; the respective application must be filed with the court directly.

#### **Supervisory Board**

**Section 13.** (1) The Supervisory Board consists of the chair, the vice-chair and two further members. The members are appointed by the federal government upon a proposal by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. The members of the Supervisory Board must have the required personal and professional capacity as well as particular knowledge in the fields of economics, business administration, technology or economic and consumer protection law, and experience in the energy field. Section 110 Employment Act, FLG no 22/1974, applies mutatis mutandis.

(2) The term of office of the Supervisory Board members is five years; this term is renewable.

(3) While in office, members of the Supervisory Board may not pursue any additional activities which hinder them in fulfilling their duties, could give rise to doubts as to their full impartiality or jeopardise other strong interests connected to their role; this particularly applies to the activities described in section 4 Incompatibility Act 1983, FLG no 330/1983.

- (4) The term of office of a member of E-Control's Supervisory Board ends
1. when the term expires;
  2. if the member steps down;
  3. if the member is recalled pursuant to para. 5.

In the cases listed under items 2 and 3 above, a new member shall immediately be appointed for the remaining term of office.

(5) The government shall recall a member of the Supervisory Board upon a proposal by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology

1. if any of the preconditions for the appointment is no longer fulfilled;
2. if it turns out that a condition for appointment had not in fact been fulfilled;
3. if the Board member is permanently incapable of executing their function; or
4. if an Austrian court has sentenced the Board member for one or several offences committed with intent either to imprisonment of more than one year or to imprisonment of more than six months that are not suspended on probation.

### **Rules of procedure of the Supervisory Board**

**Section 14.** (1) The Supervisory Board adopts its own rules of procedure.

(2) The chair of the Supervisory Board (or the vice-chair) convenes meetings of the Supervisory Board by circulating an agenda at least once during each quarter and immediately if there are pressing matters at hand. Meetings shall take place within two weeks of such circulation.

(3) In the event of pressing matters, any member of the Supervisory Board or the Executive Board can request that a meeting of the Supervisory Board be called without delay.

(4) The quorum for the Supervisory Board to take decisions is reached if at least three members, including either the chair or the vice-chair, are present. Supervisory Board decisions are taken by simple majority. In case of a tie, the vote cast by the member chairing the meeting is decisive; abstentions are not permissible.

(5) The meetings of the Supervisory Board shall be minuted. The minutes must be signed by the member chairing the meeting; further details shall be included in the rules of procedure of the Supervisory Board.

(6) Written procedures may only be used if no member of the Supervisory Board raises objections. Written procedures require decisions by majority of all members; abstentions are not permissible. The chair (or vice-chair) shall keep written records of any written procedures; the results shall be reported at the next meeting of the Supervisory Board.

(7) The members of the Supervisory Board are entitled to adequate compensation, the amount of which is to be determined by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and which is to be paid from the E-Control budget.

### **Tasks of the Supervisory Board**

**Section 15.** (1) The Supervisory Board oversees the management of E-Control.

(2) Management tasks cannot be transferred to the Supervisory Board. However, Supervisory Board approval is required for

1. the budget, for two consecutive financial years, drawn up by the Executive Board;
2. any investments of more than EUR 150,000 that are not already approved by virtue of the relating investment plan and that do not deviate from the budget;
3. any investments that would lead to a deviation from the budget;
4. the procurement, sale or encumbrance of real estate;
5. the annual accounts drawn up by the Executive Board;
6. the adoption and any amendment of the rules of procedure pursuant to section 7 para. 2;
7. the conclusion of employment contracts with executive staff, the termination of such employment, and the determination of principles for granting bonuses and pension payments to executive staff;
8. the taking out of any kind of loans beyond individual and cumulative thresholds per financial year to be set by the Supervisory Board;

9. the annual public relations plan.

(3) The Supervisory Board shall commission the auditor and discharge the members of the Executive Board as part of the approval of the annual accounts (section 31).

#### **Tasks of the Supervisory Board towards the Executive Board**

**Section 16.** (1) Should the Supervisory Board gain knowledge of the presence of a reason pursuant to section 8 para. 3, it shall immediately inform the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, unless para. 2 hereunder applies.

(2) If a member of the E-Control Executive Board violates a provision of this Federal Act, of one of the federal acts entrusted to E-Control for execution by section 21 or of the rules of procedure, without a gross breach of duty pursuant to section 8 para. 3 item 4 already being present, the Supervisory Board shall request of such member of the Executive Board in writing that they restore compliance with the law without delay and refrain from future breaches of duty. Should such a situation continue or arise again, the Supervisory Board shall inform the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology with a view to section 8 para. 3, unless this would be inappropriate considering the type and seriousness of the breach.

#### **Oversight of financial performance**

**Section 17.** The financial performance of E-Control is subject to oversight by the Austrian Court of Audit.

#### **Parliamentary supervision**

**Section 18.** The competent committees of the National Council and the Federal Council may request that a member of the Executive Board or the entire Executive Board of E-Control be present at committee meetings and may question them in relation to any and all management matters.

#### **Regulatory Advisory Council**

**Section 19.** (1) A Regulatory Advisory Council is established to advise the regulatory authority in matters entrusted to it for execution.

(2) In particular, the Council shall

1. discuss the system charges to be set, the allowed cost and the harmonisation of general terms and conditions for system access, in particular with a view to optimising system access in the Austrian economic territory and to protecting consumer interests;
2. give its views on other ordinances issued by the regulatory authority pursuant to this Federal Act, the Gas Act 2011 or the Electricity Act 2010.

(3) In addition to a chair, the Council has the following members:

1. two representatives each of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology and the Federal Ministry of Social Affairs, Health, Care and Consumer Protection;
2. one representative of the Ministry of Finance;
3. one representative each of the Federal Economic Chamber, the Chamber of Agriculture, the Federal Chamber of Labour and the Austrian Trade Union Federation;
4. one representative each of the Federation of Austrian Industries and the Association for Consumer Information; and
5. two representatives of the federal provinces.

An alternate shall be appointed for each member.

(4) The meetings of the Council are chaired by the regulatory authority's Executive Board. The representatives of the ministries listed in para. 3 items 1 and 2 are appointed by the relevant ministers, while the other members are appointed by the Executive Board of the regulatory authority upon a proposal by their body of origin.

(5) The members and alternates of the Council who are not public servants shall be reminded by the chair to carry out their tasks conscientiously and are subject to the rules of official secrecy in carrying out such tasks. Being a member of the Council is an honorary function.

(6) The Executive Board shall issue rules of procedure for the Regulatory Advisory Council, to be adopted by the Council by majority voting. The rules of procedure shall specifically set down the decision



modalities and the modalities for convening the meetings of the Regulatory Advisory Council. If the regulatory authority does not follow a recommendation supported by a majority decision of the Council, the former shall state its reasons towards the Regulatory Advisory Council in writing.

(7) Members of the Regulation Commission, members of E-Control's Executive Board and staff of the regulatory authority directly working on the issues consulted may participate in the meetings of the Regulatory Advisory Council without the right to vote. Other experts may be invited upon majority agreement of the Council members.

### **Energy Advisory Council**

**Section 20.** (1) An Energy Advisory Council is established to advise the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and E-Control in general and fundamental matters of energy policy as well as in matters of support policy and green electricity.

(2) In particular, pursuant to para. 1, the Council

1. advises on granting support by way of investment grants pursuant to the Renewable Energy Expansion Act, the Green Electricity Act 2012, the Heating and Cooling Network Expansion Act, and the CHP Act;
2. gives its views on ordinances issued by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology pursuant to this Federal Act, the Electricity Act 2010, the Renewable Energy Expansion Act, the Green Electricity Act 2012, the CHP Act and the Gas Act 2011.

(3) In addition to a chair, the Council has the following members:

1. two representatives of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology;
2. one representative each of the Federal Ministry of Finance, the Federal Ministry for Digital and Economic Affairs, the Federal Ministry for Agriculture, Regions and Tourism, and the Federal Minister of Social Affairs, Health, Care and Consumer Protection;
3. one representative of each federal province and one representative each of the Austrian Association of Cities and Towns, the Austrian Association of Municipalities, the Association for Renewable Energy in Austria (EEÖ), the association ÖKOBÜRO - Alliance of the Austrian Environmental Movement, and the Federation of Austrian Industries; and
4. one representative each of the Federal Economic Chamber, the Chamber of Agriculture, the Federal Chamber of Labour and the Austrian Trade Union Federation.

An alternate shall be appointed for each member.

(4) The chair is appointed by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, the representatives of the federal ministries listed in para. 3 items 1 and 2 by the relevant ministers, and all other members by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology upon a proposal by their body of origin. Should the chair not be present, they are replaced by a member of the Council representing the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

(5) The members and alternates of the Energy Advisory Council who are not public servants shall be reminded by the chair to carry out their tasks conscientiously and are subject to the rules of official secrecy in carrying out such tasks. Being a member of the Council is an honorary function.

(6) The Energy Advisory Council shall have rules of procedure, adopted by the Council by majority decision. The rules of procedure shall specifically set down the decision modalities and the modalities for convening the meetings of the Energy Advisory Council. In particular, the rules of procedure shall provide for the possibility of taking decisions by written procedure.

(7) E-Control's Executive Board and staff of the regulatory authority directly working on the issues consulted may participate in the meetings of the Energy Advisory Council without the right to vote. Other experts may be invited upon majority agreement of the Council members.

(8) When the Council discusses investment grants pursuant to the Renewable Energy Expansion Act, the Green Electricity Act 2012, the Heating and Cooling Network Expansion Act or the CHP Act pursuant to para. 2 item 1, the Council is enlarged by one representative each of the parliamentary groups that are represented in the main committee of the National Council. Paras 3 through 5 apply mutatis mutandis to such representatives.

<note not applicable to the English translation>

### **Tasks of the regulatory authority**

**Section 21. (1) (constitutional provision)** E-Control executes the tasks entrusted to it by this federal act as well as by the following acts, the ordinances based on them, and Union legislation:

1. Electricity Act 2010, FLG I no 143/1998;
2. Settlement Agencies Act, FLG I no 121/2000;
3. Gas Act 2011, FLG I no 107/2011;
4. Energy Intervention Powers Act 2012, FLG I no 41/2013;
5. Green Electricity Act, FLG I no 149/2002;
6. CHP Act, FLG I no 111/2008;
7. Regulation (EC) No 713/2009 and the guidelines issued under this Regulation;
8. Regulation (EC) No 714/2009 and the guidelines and network codes issued under this Regulation;
9. Regulation (EC) No 715/2009 and the guidelines and network codes issued under this Regulation;
10. guidelines issued under Directive 2009/72/EC;
11. guidelines issued under Directive 2009/73/EC;
12. Regulation (EC) No 1227/2011 and the guidelines, delegated acts and implementing acts issued under this Regulation;
13. Regulation (EC) No 347/2013 and the guidelines and delegated acts issued under this Regulation.

(1a) Where Commission Regulation (EU) 2016/631 establishing a network code on requirements for grid connection of generators, OJ L 112/1, 27.04.2016, and Commission Regulation (EU) 2016/1388 establishing a Network Code on Demand Connection, OJ L 223/10, 18.08.2016, state that either the regulatory authority or another national authority or body may be entrusted with executing certain tasks, the regulatory authority is the competent authority. Before decisions under these regulations are taken, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall be informed.

(2) E-Control undertakes investigations and provides expert opinions on the market and competition situation in the fields of electricity and gas.

(3) E-Control executes the application and opinion rights bestowed on regulators by the Cartel Act 2005, FLG I no 61/2005.

(4) Concerning matters that are dealt with in the legislation listed in para. 1, E-Control and its staff may be asked to participate in court or administrative proceedings as independent experts. E-Control is entitled to adequate reimbursement for such activity.

(5) As part of exemption procedures for new infrastructure (section 42 Gas Act 2011 or Article 17 Regulation (EC) No 714/2009), unless these fall within the responsibility of ACER, and as part of procedures under sections 34 to 35 Electricity Act 2010 or sections 119 to 120 Gas Act 2011, E-Control shall submit to the European Commission a substantiated draft decision including all pertinent information.

(6) E-Control shall comply with, and implement, any relevant legally binding decisions of ACER and of the Commission.

(7) The regulatory authority shall issue official decisions on investment requests under Article 12 TEN-E Regulation. Approval may be granted subject to conditions and deadlines to the extent that such is necessary to meet the objectives of this Act or of the TEN-E Regulation. Such official decision shall be based on the agreement reached with the other national regulatory authorities concerned under Article 12(4) TEN-E Regulation and shall be addressed to the relevant Austrian transmission system operators. Cross-border cost allocation decisions shall be taken into consideration when setting the allowed cost in line with section 48 Electricity Act 2010 and section 82 Gas Act 2011.

### **Level playing field**

**Section 22.** As part of its regulatory duties, E-Control shall

1. draw up an electricity market code and a gas market code in consultation with the market participants and publish them in an appropriate format;
2. draw up, in cooperation with the system operators, proposals for technical and organisational rules for the operators and users of networks and make these rules available to them;

3. compile and publish electricity and gas price comparisons for consumers (tariff calculator);
4. undertake measures that are necessary to comply with directly applicable European Union rules and that contribute to the development of the European internal energy market;
5. publish general information on its activities in an appropriate format;
6. continually act as a central information point for consumers, informing them about their rights, the applicable legal situation and dispute settlement procedures that are available;
7. ensure, in cooperation with the market participants, regional compatibility of all data exchange procedures relevant for market functioning;
8. draw up annual recommendations on the compliance of energy prices with Article 3 Directives 2009/72/EC and 2009/73/EC.

### **European, regional and cross-border regulatory framework**

**Section 23.** (1) E-Control shall contribute to the development of the European internal energy market, including regional markets. It shall consult regulatory authorities of other member states and ACER, cooperate closely with them and the member states and submit to them any and all information necessary for them to fulfil their tasks pursuant to Directives 2009/72/EC and 2009/73/EC and Regulations 713/2009, 714/2009 and 715/2009. In respect of the information exchanged, E-Control shall ensure the same level of confidentiality as is required of the originating authority.

(1a) On issues regarding gas infrastructure that crosses a border with a third country, the regulatory authority may cooperate with the competent authorities of such third country in line with the procedure under Article 41(1) Directive 2009/73/EC if the first interconnection point on such infrastructure is on Austrian territory. The regulatory authority shall also apply the procedure under Article 42(6) Directive 2009/73/EC.

(2) In particular, E-Control shall execute the following tasks in the interest of establishing a competitive internal market for electricity and gas and a high degree of supply security:

1. promoting a coherent legal, regulatory and technical framework;
2. establishing or promoting uniform rules for optimal system operation and efficient allocation of finite transmission capacity – including through cooperation with electricity or gas exchanges, where appropriate;
3. creating the conditions for sufficient interconnection capacity within and between regions;
4. promoting cooperation among transmission system operators;
5. coordinating the development of network codes for the transmission system operators concerned and other market participants at regional and supra-regional level; and
6. coordinating the development of congestion management procedures, striving for a uniform set of rules.

(3) The actions referred to in para. 2 shall be carried out, as appropriate, in coordination with other relevant national authorities and without prejudice to their specific competencies.

(4) E-Control shall cooperate with the regulatory authorities of other member states.

(5) The E-Control Executive Board may second staff members to the regulatory authority of another member state, to ACER or to the European Commission for the purpose of developing their skills, as national experts or otherwise.

### **Monitoring and supervision**

**Section 24.** (1) Without prejudice to the competence of the general competition authorities, E-Control is entrusted with the following monitoring and supervisory duties in the fields of electricity and gas:

1. monitoring market players' compliance with all duties and obligations imposed upon them by the Electricity Act 2010, the Gas Act 2011, the Settlement Agencies Act, FLG I no 121/2000, the ordinances issued pursuant to this Act, and directly applicable EU law;
2. competition supervision of market players, particularly system operators, with a view to non-discrimination;
3. supervision of unbundling;
4. monitoring of trade in wholesale energy products at national level and monitoring compliance with all duties and prohibitions imposed by Regulation (EU) No 1227/2011.

(2) In exercising its tasks pursuant to para. 1, E-Control may issue official decisions instructing that compliance with the law be restored within an appropriate period of time. E-Control shall endeavour to reach amicable settlement with the parties concerned at all stages of the proceedings.

#### **Monitoring and oversight of transmission system operators**

**Section 25.** (1) In addition, E-Control is entrusted with the following monitoring and oversight tasks in the field of unbundling of transmission system operators:

1. if an independent system operator in the sense of section 25 Electricity Act 2010 or section 109 Gas Act 2011 has been designated:
  - a) monitoring the communication and contractual relations between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations;
  - b) approving contracts between the independent system operator and the transmission system owner that are not in conflict with sections 25 through 27 Electricity Act 2010 or sections 109 through 111 Gas Act 2011.
2. if an independent transmission system operator in the sense of section 28 Electricity Act 2010 or section 112 Gas Act 2011 or a transmission system operator in the sense of section 33 Electricity Act 2010 or section 117 Gas Act 2011 has been designated:
  - a) monitoring the written communication between the vertically integrated electricity or gas company and the transmission system operator so as to ensure compliance of the latter with its obligations;
  - b) continuously overseeing business and financial relations, including loans, and approving the relating agreements between the vertically integrated electricity or gas company and the transmission system operator;
  - c) where an independent transmission system operator or a transmission system operator pursuant to section 33 Electricity Act 2010 or section 117 Gas Act 2011 has repeatedly violated provisions of sections 28 through 32 Electricity Act 2010 or sections 112 through 116 Gas Act 2011, transferring its duties to an appointed independent system operator pursuant to section 25 Electricity Act 2010 or section 109 Gas Act 2011.

(2) Where there is reasonable suspicion that the unbundling provisions of sections 24 through 33 Electricity Act 2010 or sections 108 through 117 Gas Act 2011 have been infringed and necessary to gain information from business documents, the Cartel Court shall order, upon application by E-Control, that the premises be searched.

(3) Such search is ordered by decision of the chair of the senate in the procedure for non-contested proceedings. The only legal remedy available against such decision is recourse; this has no suspensive effect. E-Control shall carry out the search and shall immediately or at least within 24 hours serve the owners of the company and their representatives, in cases of legal persons and partnerships with partial legal capacity the persons entrusted to represent in line with the law or statutes, with the search warrant.

(4) Section 121 para. 2 Criminal Procedure Code, FLG no 631/1975, applies *mutatis mutandis*. When conducting a search, E-Control has the right to

1. inspect and analyse business documents, regardless of their format, or have them inspected and analysed by competent experts, and make copies or extracts;
2. demand any and all information necessary for the investigation procedures on site.

(5) Shortly before conducting a search ordered under para. 1, the person whose premises or home are to be searched shall be questioned about search preconditions, unless there is imminent danger and such questioning would jeopardise the success of the investigation. If the owner of business documents refuses to have them inspected as part of such search, such documents shall be appropriately secured against unauthorised insight or amendment and be presented to the Cartel Court; they may not be inspected beforehand. The Cartel Court shall look through the documents and declare by senate chair decision whether and to which extent they may be searched, inspected and copied fully or in part or whether they are to be returned to the owner. The only legal remedy available against such decision is recourse. This has no suspensive effect.

(6) If so requested, the law enforcement agencies support E-Control by ensuring safety during the search within their statutory scope of action.

## **Supervision and investigation of wholesale energy market functioning**

**Section 25a.** (1) Without prejudice to the jurisdiction of the courts of law, the criminal prosecution authorities, the Federal Competition Authority, the Financial Market Authority and the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, E-Control has supervision and investigatory powers in order to safeguard compliance with the prohibitions laid down in Articles 3 and 5 Regulation (EU) No 1227/2011 and the obligation laid down in Article 4 Regulation (EU) No 1227/2011. Therefor, while maintaining the principle of proportionality and in accordance with Article 13(1) Regulation (EU) No 1227/2011, E-Control is entitled to:

1. have access to any relevant document in any form, and to receive a copy of it;
2. demand information from any relevant person, including those who are successively involved in the transmission of orders or execution of the operations concerned, as well as their principals, and, if necessary, summon and hear any such person or principal; if there is suspicion of an abuse of inside information pursuant to section 108a Electricity Act 2010 or section 168a Gas Act 2011, E-Control shall have the right to be present at and ask questions during investigation procedures of the law enforcement authorities pursuant to part 8 chapter 10 Criminal Procedure Code; E-Control shall be notified of respective scheduled dates;
3. carry out investigations on site and demand access to information necessary for executing investigation procedures and ask all representatives or employees of the company or group of companies to explain facts and circumstances or documents which are related to the subject and purpose of the investigations;
4. have access to and receive a copy (section 140 para. 3 Criminal Procedure Code) of already filed results of a provision of message transfer and message monitoring data (section 134 item 5 and section 145 Criminal Procedure Code);
5. suggest the seizure of property pursuant to section 110 Criminal Procedure Code to the competent public prosecutor's office;
6. if there is suspicion of market manipulation, request the authority that has licensed or acknowledged the activity of the company or the defendant to impose on the accused party a temporary prohibition of business activity for the duration of the proceedings, provided that the defendant is a strong suspect, the business activity is connected to the offence in question and there is a risk that the accused party would otherwise repeat the offence. E-Control is a party to such proceedings.

(2) E-Control shall request and collect data and information it needs to fulfil the responsibilities it is charged with pursuant to Regulation (EU) No 1227/2011 and section 24 para. 1 item 4. E-Control shall issue an ordinance to define the parties to whom reporting obligations apply as well as the frequency, scope and format of reporting. To avoid double reporting, the respective parties' obligations to report to other competent national authorities as well as reporting obligations that are to be set by the European Commission pursuant to Article 8(2) and (6) Regulation (EU) No 1227/2011 shall be taken into account.

(3) Exchanges and any other persons that professionally arrange transactions for the Austrian market shall provide to E-Control all information it requires to fulfil its responsibilities and shall support it in executing investigations. If there is suspicion that rules included in an exchange's scope of duties, especially trade rules, as well as rules that lie in the jurisdiction of E-Control have been violated, both parties shall cooperate and make relevant information available to each other. E-Control is entitled to order the exchange and any other persons that professionally arrange transactions for the Austrian market to stop investigations or any other measures if they complicate or obstruct the investigation of a case pursuant to Article 3 or Article 5 of Regulation (EU) No 1227/2011.

(4) E-Control, the Financial Market Authority, the Federal Competition Authority and the Exchange Commissioners pursuant to section 98 Stock Exchange Act 2018 shall inform each other about observations and findings including personal data that are necessary for fulfilling their responsibilities under Regulation (EU) No 1227/2011. Confidentiality, integrity and protection of the information received shall be safeguarded.

(5) E-Control has the right to conclude data exchange agreements with the regulatory authorities of other EU and EFTA member states and use the data thereby obtained for the purpose of fulfilling its responsibilities pursuant to Regulation (EU) No 1227/2011 and section 24 para. 1 item 4. Confidentiality, integrity and protection of the data received shall be safeguarded.



(6) E-Control is entitled to disclose to the public final and absolute decisions by the competent prosecution authorities handed down in response to violations of Regulation (EU) No 1227/2011, whereby section 36 para. 4 applies mutatis mutandis, stating who the parties involved were and what the main content of the decision is, including sanctions imposed, unless such disclosure would cause disproportionate damage to the parties involved.

(7) The provisions of the General Administrative Procedure Act 1991 apply mutatis mutandis.

#### **Use of the supervision and investigatory powers in criminal proceedings relating to suspected abuse of inside information**

**Section 25b.** E-Control shall cooperate with the criminal prosecution authorities during investigation procedures conducted to address suspected abuse of inside information pursuant to section 108a Electricity Act 2010 or section 168a Gas Act 2011 and make the findings and evidence it has gained by exercising its powers under section 25a para. 1 available to the criminal prosecution authorities. As part of such cooperation, E-Control shall analyse and assess seized documents and data saved on electronic data carriers if so requested by the public prosecutor's office.

#### **Dispute settlement**

**Section 26.** (1) Without prejudice to the competence of the Regulation Commission pursuant to section 12 or the jurisdiction of the courts of law, any concerned party, including system users, suppliers, system operators, other electricity or gas companies or interest groups, may address E-Control with disputes and complaints, in particular regarding the settlement of disputes between electricity or gas companies and market participants, and disputes concerning the billing of electricity or gas supplies and system charges. E-Control shall endeavour to reach a mutually agreed solution within six weeks. The Federal Chamber of Labour shall be involved in all dispute settlement cases that concern consumers in the sense of the Consumer Protection Act, FLG no 140/1979. Electricity and gas companies shall contribute to the dispute settlement process, provide any and all information necessary to assess the situation and make proposals for resolving the dispute, where appropriate.

(2) E-Control may involve experts in dispute settlement cases. These experts may be E-Control employees.

(3) When E-Control is called upon for dispute settlement, the term of payment of the amount in question is suspended until the matter is resolved. However, an amount corresponding to the average of the last three invoiced amounts may become due immediately. Any excess amounts collected are to be reimbursed, including legal interest from the collection date.

(4) E-Control shall present an annual report on the disputes brought before it to the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection, and the Regulatory Advisory Council.

(5) The General Administrative Procedure Act does not apply to E-Control's dispute settlement activities. E-Control shall lay down procedural rules for dispute settlement and publish them on the internet.

#### **Compliance with guidelines**

**Section 27.** (1) E-Control shall comply with any guidelines issued pursuant to Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009. It may request an opinion from ACER on the compliance of a decision taken by E-Control with such guidelines. The relating procedure is regulated in Article 39 Directive 2009/72/EC and Article 43 Directive 2009/73/EC.

(2) If the European Commission decides to recall or amend such decision pursuant to Article 39(8) Directive 2009/72/EC or Article 43(8) Directive 2009/73/EC, E-Control shall comply with the Commission's decision within two months of the date of receipt and inform the Commission accordingly.

(3) Should E-Control consider that a decision concerning cross-border trade issued by another regulatory authority is not in line with the guidelines issued pursuant to Directive 2009/72/EC or Regulation (EC) No 714/2009, it may inform the European Commission thereof.

#### **Reporting**

**Section 28.** (1) E-Control shall issue an annual activity report and submit it to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. The report shall particularly present the business cases that arose and were handled, the regulator's staff development and the budget

employed. The report shall be published in an appropriate form. The report shall be submitted to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

(2) E-Control shall issue an annual market report and submit it to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, ACER and the European Commission. The report shall present the measures taken to achieve the objectives listed in section 4 and their results. It shall also make reference to the effectiveness of measures related to the protection of customers, especially vulnerable customers, to disabling connections and the preceding payment reminder procedure, and to the use of universal service. The report shall be published in an appropriate form.

(3) By 31 July of each year, E-Control shall produce an annual report on the findings of its monitoring of supply security in accordance with section 20i and 20j Energy Intervention Powers Act 1982, publish the report in an appropriate form and submit it to the European Commission. In drawing up this report, E-Control may use the results of the network development plan and the long-term plan (section 22 Gas Act 2011, section 37 Electricity Act 2010).

(4) A task force is established at the regulatory authority to provide advice to the latter in general questions of consumer protection and in drawing up the report pursuant to para. 2, with reference to measures related to the protection of customers, especially vulnerable customers, to disabling connections and the preceding payment reminder procedure, and to the use of universal service. Among others, representatives of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection, of the Federal Chamber of Labour and of the Austrian Trade Union Federation are part of the task force.

### **Staff**

**Section 29.** (1) The Executive Board has the right to conclude employment contracts with the necessary number of staff. Such employment contracts are subject to the Salaried Employees Act, FLG no 292/1921, and all other regulations applicable to private sector employees.

(2) Concerning information whose non-disclosure is in the interest of maintaining public law and order, of comprehensive defence of the country, of external relations, of the economic interest of a public law body, of preparations for a decision or in the interest of most parties, staff employed and experts commissioned by E-Control are bound by secrecy towards any third party in relation to all such information they have gained knowledge of solely through their professional activity, unless they are obliged to make an official communication containing such information. The Executive Board can exempt employees from their secrecy obligation; section 46 paras 2, 3 and 4 of the Civil Service Act 1979, FLG no 333, apply.

(3) As an employer, E-Control may conclude a collective bargaining agreement with its employees.

### **Budget**

**Section 30.** (1) Every two years, the Executive Board shall draw up a budget for two consecutive business years, including but not limited to budgeted profit and loss accounts, budgeted balance sheets, budgeted cash flow statements, financing needs, investment plans and staff plans. Such budget shall be presented to the Supervisory Board by 31 August of the reference business year for the budgeting process. The Supervisory Board shall endeavour to reach a decision on such budget by 31 October of that same year.

(2) The budget shall include adequate human and financial resources for the execution of the regulatory authority's tasks.

(3) The Executive Board shall report to the Supervisory Board on the budgetary developments on a quarterly basis. If overspending is to be expected, the chair of the Supervisory Board shall be informed immediately.

(4) Should the Supervisory Board fail to decide on the budget by 31 October of the reference year for budgeting, the last approved budget continues to apply for the time being, albeit increased by the network operator price index, and forms the basis for the calculation under section 33. Such interim budget ceases to apply at the earlier of either the Supervisory Board approving the new budget or 30 June of the following year.

(5) E-Control shall take organisational measures to ensure that accounting for costs and revenues is done separately for its individual areas of responsibility (electricity and gas) and the other tasks entrusted to it in the general public interest (section 5 para. 4). Costs that cannot be directly allocated are allocated using appropriate distribution keys.

### **Annual accounts**

**Section 31.** (1) E-Control's business year corresponds to the calendar year.

(2) E-Control's annual accounts for the preceding business year, including a balance sheet and profit and loss account, shall be filed within the deadlines stated in para. 3. The annual accounts are subject to the provisions of the third book of the Business Enterprise Code, GRLG 219/1897, unless otherwise stated in this Federal Act.

(3) The annual accounts shall be audited by a chartered accountant.

(4) The Executive Board shall present the audited accounts, including cost accounting in line with section 30 para. 5, for approval to the Supervisory Board within five months after the end of the preceding business year. The Supervisory Board shall reach its decision on the annual accounts including cost accounting in a timely manner, enabling the Executive Board to report to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology on the result within six months after the end of the preceding business year. Following audit and approval by the supervisory board, the Executive Board shall immediately publish the annual accounts on the E-Control website and inform the public by way of a notice that includes E-Control's URL published in the Wiener Zeitung or another proliferation medium available all across Austria. The annual accounts shall remain available on E-Control's website until the annual accounts of the following year are published on the website.

(5) After the end of each business year, the Supervisory Board shall decide on the Executive Board's discharge.

### **Costs of regulation**

**Section 32.** (1) E-Control may levy a contribution covering the costs for its activities (section 30 para. 5) from the operators of extra-high voltage grids (network level 1 in accordance with section 63 item 1 Electricity Act 2010) as a way of financing its electricity market related tasks, and from the market area managers or, in case of market areas without transmission lines, the distribution area managers as a way of financing its gas market related tasks, in the form of individual contributions prescribed by official decision and invoiced in four equal payments at the beginning of each quarter of the business year. This provision does not apply to the costs arising from tasks carried out in the general public interest (section 5 para. 4).

(2) The total amount of the regulation contribution shall correspond to the budget as approved by the Supervisory Board. Carryovers or shortfalls from previous years shall be reflected in the budget.

(3) E-Control shall issue individual official decisions stating the share of the overall regulation contribution payable by each individual operator of an extra-high voltage grid (network level 1), corresponding to the share of its own system and all downstream systems or of the systems in each market area manager's area of responsibility in the total supply to final customers in Austria. Likewise, E-Control shall issue individual official decisions stating the share of the overall regulation contribution payable by each market area manager or, in case of market areas without transmission lines, each distribution area manager, corresponding to the share of its own market area in the total supply to final customers in Austria.

(4) If it is expected that actual expenses will be lower than envisaged in the budget, the quarterly payments may be reduced. An increase of payments is only possible after the Supervisory Board has approved a new budget.

(5) The operators of the extra-high voltage grid may recover the regulation contribution invoiced by E-Control from the operators of downstream grid levels as part of the costs of the extra-high voltage grid, respecting the proportion of total supplies (in kWh) to final customers in all downstream grid levels. The market area managers may recover the regulation contribution invoiced by E-Control from the gas transmission system operators, respecting the proportion of the energy transported (in kWh). The distribution area managers may recover the regulation contribution invoiced by E-Control on to the distribution system operators in line with the ordinance issued pursuant to section 24 Gas Act 2011. The operators of the extra-high voltage grid, the market area managers and the distribution area managers may include the costs arising from billing the regulation contribution or any late or reduced reimbursement of such contribution in their network costs.

(6) For the tasks entrusted to E-Control in the general public interest (section 5 para. 4), the federal state pays a contribution to E-Control for each business year. Such contribution is deducted from E-Control's total costs. In addition, the federal state may pay an extra contribution, within the amounts

provided for such purpose in the annual Federal Financing Act, if this is needed to cover necessary oversight costs in spite of economically prudent and expedient financial behaviour on E-Control's part.

#### **Reserves for unexpected costs**

**Section 33.** (1) E-Control shall form reserves in its budget that may only be used to cover unexpected costs.

(2) Such reserves may be increased each business year by up to 1 percent of E-Control's total costs as documented in the previous business year's annual accounts until their total amount reaches 3 percent of the total costs as documented in the previous year's annual accounts.

(3) Such reserves shall be itemised in the annual accounts.

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

**Section 34.** In executing its tasks, E-Control may inspect all documents of market participants, system operators, storage undertakings, balance responsible parties, imbalance settlement responsible and clearing and settlement agents, and request information on all matters relevant to its activity. Such information obligation includes but is not limited to the continuous disclosure of data, to keep on file, that serve to fulfil the authority's oversight function.

#### **Inter-authority assistance**

**Section 35.** (1) All bodies at federal, provincial and municipal level, including the Federal Competition Authority and the Financial Market Authority, are obliged to support E-Control within their statutory area of responsibility.

(2) If so requested, the law enforcement agencies support E-Control by ensuring safety in carrying out its oversight function within their statutory scope of action if the execution of ordered measures may otherwise be jeopardised.

#### **Proceedings**

**Section 36.** (1) Unless expressly provided otherwise, E-Control's proceedings shall be conducted in line with the General Administrative Procedure Act 1991.

(2) Where experts are required to establish proof, E-Control shall call in its officially appointed experts or other persons as experts (section 52 General Administrative Procedure Act 1991).

(3) E-Control's ordinances are promulgated in the Federal Law Gazette. Where promulgation in the Federal Law Gazette is impossible or cannot be effected in due time or is unreasonable due to the size of an ordinance, such ordinance 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.

(4) The decisions of the regulatory authority are published on the regulatory authority's website, while maintaining the confidentiality of sensitive commercial information.

#### **Fees and charges for daily business**

**Section 37.** (1) E-Control is exempted from paying stamp and legal fees, federal administration fees, court and legal administrative fees. For turnover tax purposes, E-Control classifies as an entrepreneur.

(2) E-Control does not owe any local authority tax for its employees.

(3) E-Control is exempted from corporate tax.

#### **Liability for E-Control actions**

**Section 38.** (1) Liability for damage caused by E-Control's bodies or employees when implementing the federal acts listed in section 21 lies with the federal state in accordance with the provisions of the Liability of Public Bodies Act, FLG no 20/1949. Damage in the sense of this provision is damage directly inflicted on legal entities that are subject to the actions of the authority under this Federal Act. Neither E-Control nor its employees or bodies are liable towards the damaged party.

(2) Where the federal state has compensated a damaged party for damage pursuant to para. 1, it may claim reimbursement from E-Control's bodies or employees in line with the provisions of the Liability of Public Bodies Act.

(3) E-Control shall assist the federal state in the public liability and reimbursement proceedings under paras 1 and 2 in all appropriate ways. In particular, it shall provide all information and documents regarding such proceedings and ensure that the federal state has access to the knowledge of E-Control's bodies and employees regarding the oversight functions that are subject of the proceedings.

#### **References**

**Section 39.** Insofar as reference is made in this Federal Act to provisions of other federal acts, they apply as last amended.

#### **Employment Act**

**Section 40.** E-Control is a firm in the sense of section 34 Employment Act, FLG no 22/1974, and is subject to that Act, in particular to part II.

#### **Gender equality in language**

**Section 41.** *<not applicable to the English version>*

#### **Entry into force**

**Section 42.** (1) **(constitutional provision)** The provisions of section 1, section 6 para. 6, section 12 paras 1, 2 and 4, as well as section 21 para. 1 of this Federal Act enter into force on 3 March 2011. At the same time, the Energy Regulatory Authorities Act, FLG I no 121/2000, ceases to be in force. Section 1 and its heading, section 21 para. 1 items 8, 9 and 13, as amended by FLG I no 108/2017, enter into force at the end of the day of promulgation.

(2) All other provisions of this Federal Act enter into force on 3 March 2011.

(3) Section 2, section 3 item 7, section 4 item 9, section 21 para. 1 item 12, section 24 para. 1 item 4, section 25a and section 25b as amended by FLG I no 174/2013 enter into force on the first day of the month following promulgation. Section 9 and section 12 para. 4 as amended by the Federal Act in FLG I no 174/2013 enter into force on 1 January 2014.

(4) Section 25a para. 4 as amended by the Federal Act in FLG I no 107/2021 enters into force on 3 January 2018.

(4) Section 1 para. 2, section 3 items 1a, 8 and 9, section 5 paras 3 and 4, section 15 para. 3, section 21 paras 1a and 7, section 22a and its heading, section 26 para. 1 first sentence and section 44 para. 2 as amended by the Federal Act in FLG I no 108/2017 enter into force at the end of the day of promulgation.

#### **Transformation and existing contracts, exemption from levies**

**Section 43.** (1) At the end of 2 March 2011, Energie-Control Österreichische Gesellschaft für die Regulierung in der Elektrizitäts- und Erdgaswirtschaft mit beschränkter Haftung, Vienna Commercial Court registration number FN 206078 g, is transformed by way of universal succession into the *Anstalt öffentlichen Rechts* (public authority) Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control) and continues to exist as such henceforth.

(2) The E-Control Executive Board shall enter E-Control in the commercial register by 31 March 2011.

(3) The transformation is exempt from all taxes, fees and levies under federal law and does not trigger an adjustment of input tax according to section 12 para. 10 or 11 Turnover Tax Act 1994, FLG no 663/1994.

(4) The interest in Energie-Control Österreichische Gesellschaft für die Regulierung in der Elektrizitäts- und Erdgaswirtschaft mit beschränkter Haftung, Vienna Commercial Court registration number FN 206078 g, voids at the end of 31 December 2011.

#### **Transitional provisions**

**Section 44.** (1) The responsibility for continuing proceedings that are pending with Energie-Control GmbH and Energie-Control Commission at the end of 2 March 2011 is transferred to Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft.

(2) When the members of the Regulation Commission are appointed for the first time after the amendment in FLG I no 108/2017 enters into force, an exceptional term of office of six years applies.

#### **Execution**

**Section 45.** The responsibility for executing this Federal Act lies with



1. the federal government regarding section 1, section 6 para. 6, section 12 paras 1, 2 and 4, section 21 para. 1 and section 42 para. 1;
2. the Federal Minister of Finance regarding section 10 para. 9, as well as section 43 para. 3;
3. the Federal Minister of Justice regarding the second sentence in section 10 para. 1;
4. the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology for all other provisions.

#### **Transposition notice**

*(from FLG I no 107/2017, regarding section 25a, FLG I no 110/2010)*

This Federal Act transposes the following Union legislation:

1. Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173/349, 12.06.2014, last amended by Directive (EU) 2016/1034, OJ L 175/8, 23.06.2016, as amended by the corrigendum in OJ L 64/116, 10.03.2017; and
2. Commission Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, OJ L 87/500.

This Federal Act also serves to execute the following Union legislation:

1. Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173/84, 12.06.2014, last amended by Regulation (EU) 2016/1033, OJ L 175/1, 23.06.2016;
2. Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 87/1; and
3. Commission Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No 600/2014 with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, OJ L 87/90.