Gas Act 2011

Long title

Bundesgesetz, mit dem Neuregelungen auf dem Gebiet der Erdgaswirtschaft erlassen werden (Federal Act Providing New Rules for the Gas Sector) (*Gaswirtschaftsgesetz* [Gas Act] 2011)
Original text: *BGBl.* (Federal Law Gazette, 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]

Amendments

FLG I no 138/2011 (National Council: GP XXIV RV 1524 AB 1538 p. 135. Federal Council: AB 8626 p. 803.)
FLG II no 474/2012 (amended by ordinance)
FLG I no 83/2013 (National Council: GP XXIV RV 2168 AB 2268 p. 200. Federal Council: AB 8968 p. 820.)
[CELEX no: 31995L0046]
FLG I no 174/2013 (National Council: GP XXIV IA 2323/A AB 2389 p. 213. Federal Council: 9043 AB 9077 p. 823.)
FLG II no 211/2014 (amended by ordinance)
FLG I no 31/2015 (Constitutional Court)
FLG II no 226/2015 (amended by ordinance)
FLG I no 19/2017 (National Council: GP XXV RV 1341 AB 1405 p. 158. Federal Council: AB 9710 p. 862.)
[CELEX no: 32009L0103]
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 245/2021 (National Council: GP XXVII RV 1170 AB 1258 p. 137. Federal Council: AB 10840 p. 936.)
FLG I no 38/2022 (National Council: GP XXVII IA 2359/A AB 1392 p. 149. Federal Council: 10919 AB 10940 p. 939.)
FLG I no 67/2022 (National Council: GP XXVII AB 1462 p. 158. Federal Council: 10960 AB 10975 p. 941.)
FLG I no 94/2022 (National Council: GP XXVII IA 2600/A AB 1501 p. 162. Federal Council: 10979 AB 10989 p. 942.)

Preamble/promulgation clause

Contents

Text

Title 1
Principles

Execution by federal bodies

Section 1. (constitutional provision) The matters regulated in this Federal Act may be discharged directly by the institutions provided for in these provisions.

Transposition of European Union law

Section 2. (1) This Federal Act transposes the following directives:

1. 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;
2. Directive 2012/27/EU on energy efficiency, OJ L 315/1, 14.11.2012, last amended by Regulation (EU) 2019/944, OJ L 158/125, 14.06.2019.

(2) Further, this Federal Act serves to execute the following regulations:

1. Regulation 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators, OJ L 158/22, 14.06.2019;
2. Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, OJ L 211/36, 14.08.2009;
3. Regulation (EU) No 2017/1938 concerning measures to safeguard security of gas supply and repealing Regulation (EC) No 994/2010, OJ L 280/1, 28.10.2017;
4. Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, OJ L 326/1, 08.12.2011;
5. Regulation (EU) No 2018/1999 on the Governance of the Energy Union and Climate Action, OJ L 328/1, 08.12.2011;
6. Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation 2019/2088, OJ L 198/13, 22.06.2020.

Scope

Section 3. (1) The purpose of this Federal Act is

1. to enact provisions on the transmission, distribution, purchase and supply of gas, including network access and access to storage;
2. to regulate the system charges and provide rules on billing, internal organisation, unbundling and transparency of the accounts of gas companies;
3. to provide for other rights and obligations of gas companies; as well as
4. to regulate the construction, expansion, alteration and operation of gas pipeline systems

unless otherwise provided in para. 2.

(2) The scope of application of this Federal Act does not extend

1. to activities requiring a production permit or a storage licence pursuant to the provisions of the Mineral Resources Act, FLG I no 38/1999;
2. to 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 gas pipeline systems beginning at the end of the service connection branch.

Objectives

Section 4. The objective of this Federal Act is

1. to ensure security of supply with and efficient use of gas, including providing the infrastructure that is necessary for secure gas supply, while planning gas pipelines in such a way as to lay the groundwork for decarbonisation and the economical supply and efficient use of gaseous energy carriers;

1a. to create the infrastructure that is necessary for secure gas supply in the EU member states;

2. to organise the gas market in accordance with EU primary law and with the principles of the internal market in gas as provided in the Gas Directive;

3. to ensure reasonable distribution of the network cost among network users by introducing a calculation method for the system charges and a cost cascading procedure;
4. to offset public service obligations imposed upon system operators in the general economic interest, and those relating to the safety and security – including the security of supply –, the continuity, the quality and the price of supplies, as well as to environmental and climate protection;
5. to lay the groundwork for increasingly exploiting the potential of biogenic gas for Austrian gas supply;
6. to ensure that the infrastructure standard pursuant to Article 4 Regulation (EU) No 2017/1938 is fulfilled;
7. to contribute to the goals of the Paris Climate Agreement 2015 and take steps towards Austria's climate neutrality in 2040, in particular when it comes to planning gas pipelines;
8. to continuously raise the share of renewable gas in Austria's gas network;
9. to realise national potentials for sector coupling and sector integration in existing gas infrastructure; and
10. to continuously promote the use of renewable gas in Austria's gas supply.

Public service obligations

Section 5. (1) The following public service obligations are imposed on system operators in the general public interest:

1. to treat all customers of a system equally if the transport service to be rendered to them is the same;
2. to conclude private-law contracts with system users, providing for the latter's connection to their gas pipeline systems (general obligation to connect);
3. to set up and maintain gas infrastructure that is suitable for domestic gas supply and for fulfilling obligations under public international law.

(2) The following public service obligations are imposed on gas companies in the general public interest:

1. to attain the objectives set in section 4 items 1 and 2 with the means available to them;
2. to perform the statutory obligations imposed upon them in the general public interest.

(3) Gas companies shall endeavour to perform the obligations imposed upon them in the general public interest pursuant to paras 1 to 2 to the best of their ability.

Operating principles for gas companies

Section 6. As customer-oriented and competitive providers of energy services, gas companies shall strive to render their services in a safe, environmentally sound and efficient manner, at reasonable cost, and in line with the principles of a competitive gas market. They shall adopt these principles as company objectives.

Definitions

Section 7. (1) For the purposes of this Federal Act, the term

1. 'ACER' means the Agency for the Cooperation of Energy Regulators according to Regulation (EC) No 2019/942 establishing an Agency for the Cooperation of Energy Regulators, OJ L 158/22, 14.06.2019;
2. 'imbalance' means the difference between a balance group's injections and withdrawals during each defined imbalance settlement period, where the energy per period may be either metered or calculated;
3. 'exit point' means a point at which gas can be withdrawn from a system operator's system by a party other than a final customer;
4. 'balance group' means the combination of system users in a virtual group within which injection and withdrawal are balanced;
5. 'clearing and settlement agent' means the operator of a clearing and settlement agency as defined in item 67;
6. 'balance responsible party' means the natural or legal person or registered partnership that represents the members of a balance group and is responsible vis-à-vis other market participants and the clearing and settlement agent;
7. 'direct line' means a gas pipeline complementary to the interconnected system;

8. ‘third countries’ means countries which have not acceded to the Agreement on the European Economic Area and which are not members of the European Union;

8a. ‘solidarity protected customer’ means a household customer connected to the gas distribution system and basic social services outside of education or public administration;

9. ‘injecting party’ means a natural or legal person or registered partnership feeding gas into the network at an entry point so that it can be transported;

10. ‘entry point’ means a point at which gas can be fed into a system or part of a system of a system operator;

11. ‘final customer’ means a natural or legal person or a registered partnership purchasing gas for own use;

12. ‘withdrawing party’ means a natural or legal person or a registered partnership taking gas out of the network at an exit point;

13. ‘ENTSOG’ means the European Network of Transmission System Operators for Gas as defined in Article 5 of Regulation (EC) No 715/2009;

14. ‘gas trader’ means a natural or legal person or a registered partnership buying and selling gas without carrying out the functions of transmission or distribution, neither within nor outside the system in which such gas trader is established;

15. ‘gas pipeline system’ means an installation constructed or operated for the purpose of transmitting or distributing gas via pipelines or a system of pipelines, or as a system of direct lines, but does not include upstream pipeline systems (item 77); the term ‘gas pipeline system’ includes in particular compressor stations, pig traps, gate valves, metering stations and gas pressure regulator stations;

16. ‘gas company’ means any natural or legal person or registered partnership which carries out, with a view to profit, at least one of the functions of transmission, distribution, supply, sale, purchase or storage of gas, including liquefied gas, which is responsible for the commercial, technical and/or maintenance tasks related to such functions, and which is not a final customer; companies according to item 58 and sections 13 and 17 as well as storage maintenance companies are gas companies;

16a. ‘renewable hydrogen’ means hydrogen exclusively produced from renewable energy sources;

16b. ‘renewable gas’ means renewable hydrogen or gas from biological or thermo-chemical conversion, produced exclusively from energy from renewable sources, or synthetic gas produced from renewable hydrogen;

17. ‘schedule’ means the document specifying the energy per time unit foreseen for supplying final customers or for injection into and withdrawal from the distribution network, in a constant time pattern (imbalance settlement periods);

18. ‘transmission’ means the transport of gas through a network which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of gas, with a view to its delivery to customers, but not including supply;

19. ‘transmission line’ means a gas line for the purpose of transmission;

20. ‘transmission system operator’ means a natural or legal person or a registered partnership that carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission network in a given area and, where applicable, its interconnections with other networks, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of gas;

20a. ‘protected customer’ means a household customer connected to the gas distribution system and basic social services outside of education or public administration;

20b. ‘essential social service’ means a service related to healthcare, essential social care, emergency, security, education or public administration;

21. ‘service connection branch’ means that part of the distribution network which connects the distribution system with the customer’s facilities; the service connection branch commences at the connection point to the distribution system (item 40) that exists on the date of the contract, and it terminates at the main shutoff valve or – if available – the house pressure controller. Any house pressure controller at the final customer facility forms part of the service connection branch;

22. ‘house pressure controller’ means a pressure controller owned by the system operator which has a pressure control range from an input side excess pressure between >0.5 bar (0.05 MPa) and ≤6 bar

(0.6 MPa) to an output side excess pressure ≤0.5 bar (0.05 MPa), unless the pressure controller is part of a commercial facility;

22a. ‘household customer’ means a customer purchasing gas for their own household consumption;

23. ‘horizontally integrated gas company’ means a gas company performing at least one of the functions of transmission, distribution, supply, sale, purchase or storage of gas, as well as another non-gas activity;

24. ‘hub service company’ means a company offering services that support transactions in gas trading;

25. ‘integrated gas company’ means a vertically or horizontally integrated gas company;

26. ‘smart meter’ means a piece of technical equipment that records actual meter readings and periods of use as they occur and allows for remote meter reading. Smart meters are intended for blanket installation and therefore generally differ from load meters in their design, installation and data transmission technology;

27. ‘promotional material subject to labelling obligations’ means any promotional material addressed to final customers and designed to sell gas. This includes:

    a) promotional materials for selling products for individual customers, such as product brochures;

    b) other standardised printed product materials for sales purposes;

    c) online product promotion;

28. ‘small business’ means an enterprise according to section 1 para. 1 item 1 Consumer Protection Act that has fewer than 50 employees, that consumes less than 100,000 kWh of gas per year and whose annual turnover or balance sheet does not exceed 10 million EUR;

29. ‘commercial hub services’ means services in support of gas trading transactions such as, without limitation, title tracking (the tracing of transfers of title to gas in commercial deals);

30. ‘control’ means any rights, contracts or any other means which, either separately or in combination and having regard to both the legal and the factual situation, confer the possibility of exercising decisive influence on an undertaking, in particular through

    a) ownership or usufructuary rights in all or part of the company's assets;

    b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of a company;

31. ‘cost cascading’ means a calculation method used to allocate to final customers the network costs they must bear as a group, i.e. the costs of the grid level at which they are connected and a portion of the costs of all upstream grid levels;

32. ‘customers’ means final customers, gas traders, and gas companies which purchase gas;

33. ‘integrated long-term plan’ means the integrated and long-term planning of gas companies’ supply and transport capacity with a view to satisfying the system’s gas demand, to diversifying sources and to ensuring the supply of customers;

34. ‘load profile’ means an injecting or withdrawing party’s injection or withdrawal shown in time intervals;

35. ‘load meter’ means a piece of technical equipment which registers actual load at hourly intervals;

36. ‘market area’ means the combination of systems of different system operators within which a prospective system user can flexibly use their booked capacity at entry and exit points;

37. ‘market rules’ means the sum total of all legal or contractual rules, regulations and provisions which gas market participants must comply with in order to facilitate and guarantee the proper functioning of this market;

38. ‘market participants’ means balance responsible parties, balance group members, suppliers, gas traders, producers, system users, customers, final customers, clearing and settlement agents, transmission system operators, distribution system operators, market area managers, distribution area managers, storage system operators, storage maintenance companies, gas exchanges and hub service companies;

39. ‘system’ means any transmission or distribution system owned and/or operated by a gas company, including any facilities of this company which are used to provide ancillary services (such as control and metering equipment), as well as any facilities of affiliated companies which are required for access to transmission and distribution facilities;

40. ‘connection point’ means a point on the system existing at the date of the connection contract which is technically suitable for withdrawal or injection of gas, with due regard to the economic interests of the system user;
41. ‘system user’ means any natural or legal person or registered partnership injecting gas into a system or withdrawing gas from a system or being supplied through a system or whose facility is connected to a system;
42. ‘network area’ means that part of the network for the use of which the same system charges apply;
43. ‘system operator’ means any transmission or distribution system operator;
44. ‘grid level’ means a section of the network mainly delimited by its pressure level;
45. ‘interconnection point’ means a point at which systems of different system operators are connected with each other;
46. ‘system access’ means use of a system;
47. ‘prospective system user’ means a natural or legal person or registered partnership that wishes to gain access to a system, including but not limited to gas companies, to the extent required to fulfil their responsibilities;
48. ‘system access contract’ means the individual agreement signed between a prospective system user and a system operator in accordance with section 27 or 31, regulating connection as well as entry and exit points and utilisation of the system;
49. ‘system admission’ means the initial connection to a system or the change of capacity of an existing connection;
50. ‘new infrastructure’ means new gas infrastructure, i.e. interconnectors and storage facilities not completed by 4 August 2003;
51. ‘nomination’ means the quantity of energy during a certain time interval that is to be handed over or received at an entry or exit point of the transmission network or at the virtual trading point;
52. ‘producer’ means a legal or natural person or a registered partnership extracting gas;
53. ‘technical rules’ means any technical rules containing principles derived from academic knowledge or experience in technology which are generally considered to be correct and expedient in practice; construction, expansion, modification, operation and maintenance activities that are carried out in line with the rules of the *ÖVGW* (Austrian Association for the Gas and Water) as well as the relevant *ÖNORMs* (Austrian standards) are assumed to comply with the technical rules;
54. ‘balancing energy’ means the energy required for the short-term compensation of pressure variations in the system which occur within a given interval;
55. ‘security’ means security of supply and provision of gas as well as operational and technical safety;
56. ‘gas market code’ means that part of the market rules and arrangements which are established under section 22 para. 1 item 1 E-Control Act, FLG I no 110/2010, and which applies by virtue of the approved general terms and conditions that are legally foreseen;
57. ‘storage facility’ means a facility used for storing gas, owned and/or operated by a gas company, excluding any parts used for activities pursuant to the Mineral Resources Act, and excluding facilities reserved exclusively for system operators to carry out their functions;
58. ‘storage system operator’ means a natural or legal person or a registered partnership that provides storage services and is responsible for operating a storage facility; this includes undertakings that merely manage a storage facility;
59. ‘prospective storage user’ means a natural or legal person or a registered partnership that wishes to gain storage access, including but not limited to gas companies, to the extent required to fulfil their responsibilities;
60. ‘state of the art’ means the state of tried and tested advanced technological processes, facilities and operating methods based on relevant academic findings; determination of the state of the art shall primarily be based on comparable processes, facilities and operating methods;
61. ‘standard load profile (SLP)’ means a load profile characteristic of a certain group of injecting or withdrawing parties which has been drawn up by a suitable procedure;

61a. ‘synthetic gas’ means gas produced from hydrogen;

62. ‘system charges’ means the fees payable for injecting gas into or withdrawing gas from a system;
63. ‘interconnector’ means a transmission line which crosses or spans a border between member states for the sole purpose of connecting the national transmission systems of those member states or a

transmission line between a member state of the European Union and a third country up to the territory of the member states or the territorial sea of that member state;

64. ‘affiliated gas company’ means
    a) an affiliated undertaking pursuant to section 189a item 8 Business Enterprise Code;
    b) an associated undertaking pursuant to section 189a item 9 Business Enterprise Code; or
    c) two or more undertakings with identical shareholders;
65. ‘interconnected system’ means a number of systems which are connected with each other;
66. ‘available capacity’ means the difference between the maximum technical capacity at entry/exit points accessible via transmission or distribution lines and the actual load at a given time at these points of the gas pipeline system;
67. ‘clearing and settlement agency for transactions and formation of imbalance prices’ means a body pursuant to section 85 in the distribution network;
68. ‘supplier’ means a natural or legal person or a registered partnership executing the function of supply;
69. ‘supply’ means the sale, including resale, of gas, including LNG, to customers;
70. ‘distribution area’ means a geographic area covered by the entire distribution network in a market area;
71. ‘distribution system’ means a gas pipeline system for the purpose of distribution;
72. ‘distribution system operator’ means a natural or legal person or a registered partnership that carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution network 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 gas;
73. ‘distribution’ means the transport of gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;
74. ‘vertically integrated gas company’ means a gas company or a group of companies in which the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings performs at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply with gas;
75. ‘management of gas storage facilities’ means the conclusion of contracts with third parties for making storage capacity available, including stipulations regarding injection and withdrawal rates;
76. ‘virtual trading point (VTP)’ means a notional point in a market area at which gas can be traded within the market area after injection and before withdrawal. The virtual trading point is not a physical entry/exit point but enables gas buyers and sellers to purchase and sell gas without having to book capacity;
77. ‘upstream pipeline network’ means any pipeline or system of pipelines operated or constructed as part of a gas production or storage project, or used to convey gas from one or more such projects to a processing plant or terminal; the term ‘upstream pipeline network’ also includes storage stations;
78. ‘metering point’ means any injection or withdrawal point where gas volumes are metered and registered. Combining several metering points is not admissible.

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

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

(4) As a matter of clarity, all references to gas in this Federal Act shall be understood to equally refer to all types of gas that are in line with the applicable technical rules for gas quality.

Title 2

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

Accounting and prohibition of cross-subsidies

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

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

1. keep separate accounts within separate accounting systems for their transmission, distribution and storage activities;
2. publish the balance sheets and profit and loss accounts of the individual gas-related accounting systems, as well as allocation rules applied in accordance with para. 3;
3. keep consolidated accounts for their other, non-gas activities and publish a balance sheet and a profit and loss account in accordance with para. 3.

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

(3) The annex to the annual accounts shall list all transactions with affiliated gas companies (section 7 para. 1 item 64) that involve a service, remuneration or other economic advantage worth more than one million Euro. If a transaction consists of several parts for each of which a separate transaction is concluded, the value of each partial transaction shall be considered in calculating the threshold.

Non-discrimination

Section 9. It is not admissible for system operators, storage system operators, hub service companies, clearing and settlement agents, the operator of the virtual trading point, distribution area managers or market area managers to discriminate against potential or actual system users, potential or actual customers of their services, or categories thereof, in particular if this would be to the benefit of vertically integrated gas companies.

Right to information and inspection

Section 10. Gas companies, hub service companies, clearing and settlement agents, the VTP operator, distribution area managers, and market area managers shall permit the authorities, including the regulatory authority, to inspect any documents and records relevant for their business activities at any time, and shall provide all information relevant to the respective authority's competence. This duty to grant access and to provide information applies even if there is no specific incident as long as such documents, records or information are required for the discovery or in the run-up to the discovery of facts which are relevant to future proceedings. Gas companies, hub service companies, clearing and settlement agents, the VTP operator, distribution area managers and market area managers shall make available, without limitation, any information that enables proper assessment by the authority. If a gas company fails to meet this obligation, the authority may base its assessment on estimates.

Disclosing inside information

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

Confidentiality

Section 11. Without prejudice to their information disclosure obligations under Austrian law, under Regulation (EC) No 715/2009 or under legal instruments adopted on the basis of that Regulation, system operators, storage system operators, hub service companies, clearing and settlement agents, the VTP operator, distribution area managers, and market area managers shall preserve the confidentiality of any commercially sensitive information and of any business or trade secrets which they obtain knowledge of while carrying out their business. They shall prevent information about their own activities which might produce economic advantages from being disclosed in a discriminatory manner, in particular if this would be to the benefit of a vertically integrated gas company.

Title 3
System operation

Part 1
Market areas and distribution areas

Chapter 1
Market areas and market area managers

Market areas

Section 12. (1) The Austrian system is comprised of the following market areas, within which a market area manager, a distribution area manager and a clearing and settlement agent are entrusted with providing system services in accordance with this Federal Act:

1. eastern market area;
2. Tyrol market area;
3. Vorarlberg market area.

(2) The eastern market area comprises the systems located in the federal provinces of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, and Vienna.

(3) The Tyrol market area comprises the systems located in the federal province of Tyrol.

(4) The Vorarlberg market area comprises the systems located in the federal province of Vorarlberg.

(5) Where systems in different market areas are interconnected with each other, they shall be merged into one market area, within which one market area manager, one distribution area manager and one clearing and settlement agent are entrusted with providing system services in accordance with this Federal Act.

(6) Where this is conducive to attaining the European internal energy market, systems or parts thereof may form a market area with the systems of adjoining system operators in other member states. To attain the European internal energy market, the operational coordination of systems or parts thereof in a market area which fully relies on supplies from a neighbouring member state and for which no separate balancing market exists with the adjoining system operator of that neighbouring member state shall enable partial or full supply from the adjoining market area of the member state. Forming a joint market area with system operators in other member states is subject to approval by the regulatory authority.

(7) Storage facilities on Austrian territory shall be connected to the respective market area.

Market area managers

Section 13. (1) The transmission system operators of a market area shall designate a market area manager which performs the tasks according to section 14. The designation of the market area manager is subject to approval by the regulatory authority. Market areas without transmission lines do not have a market area manager. The appropriate cost of the market area manager shall be borne by the transmission system operators and be included in the transmission system operators' allowed costs.

(2) Approval shall be given if it is expected that the designated market area manager is capable of efficiently exercising the tasks according to section 14 and if it fulfils the conditions in section 15.

(3) In market areas where, by 3 March 2012, no market area manager has been designated according to para. 1, the regulatory authority shall ex officio choose an undertaking suitable for this role, respecting

the preconditions laid down in para. 2 above, and oblige it to exercise the tasks of a market area manager on an interim basis. The authority shall revoke this official decision as soon as a suitable market area manager is designated in accordance with para. 1.

Tasks of market area managers

Section 14. (1) Market area managers shall

1. ensure establishment of and non-discriminatory access to the virtual trading point, designate the operator of the virtual trading point in accordance with section 68, and cooperate with it;
2. manage the balance groups which are active in the market area; this includes, without limitation, informing market participants regarding the balance group system and balancing rules, assigning balance group IDs in cooperation with the clearing and settlement agent, and organising the conclusion of the contracts required according to section 91 para. 2 item 1 on behalf and for account of the relevant contract parties in accordance with the market rules;
3. coordinate system operation and the use of linepack as well as the use of balancing energy together with the market area's distribution area manager, mainly via the virtual trading point, with the aim to minimise the need for balancing energy by efficiently deploying linepack;
4. establish a uniform methodology for calculating and announcing capacity at the entry/exit points of the market area's transmission network pursuant to sections 34 and 35; the methodology is subject to approval by the regulatory authority. Changes shall be made if requested by the regulatory authority;
5. organise the establishment and operation of the online platform for offering capacity pursuant to section 39 and for publishing information about the market area pursuant to Regulation (EC) No 715/2009;
6. on the basis of a variety of load-flow scenarios and together with the transmission system operators and the distribution area manager, draw up a common forecast of the capacity need and utilisation in the market area's transmission network over the next ten years;
7. draw up a coordinated network development plan;
8. coordinate measures to overcome physical congestions with the distribution area manager, the system operators and storage system operators in the market area;
9. enter into contracts on the exchange of data with the distribution area manager, the system operators, the balance responsible parties, the operator of the virtual trading point, the clearing and settlement agent and other market participants in line with the market rules;
10. submit their general terms and conditions to the regulatory authority for approval pursuant to section 16;
11. coordinate maintenance of the transmission and distribution network with the distribution area manager pursuant to section 18 para. 1 item 28 such that the impact on system users is kept as small as possible;
12. determine and publish the calorific values for the market area, based on the data submitted by the system operators;
13. coordinate the nomination procedure for the transmission system, including the exchange of nominations with the operator of the virtual trading point;
14. organise the financial settlement of imbalance charges in the transmission network with the operator of the virtual trading point and the transmission system operators.

(2) The distribution area manager, system operators, balance responsible parties, suppliers, operators of storage or production facilities, and the operator of the virtual trading point shall provide the market area manager with all information required to exercise the tasks and duties of a market area manager. In particular, the system operators shall provide the market area manager with information on capacity utilisation. The balance responsible parties shall provide the market area manager with their balance group's schedules and nominations within a reasonable advance deadline to be determined by the market area manager.

(3) Should disputes arise between a party listed in paras 1 or 2 and the market area manager with regard to the measures and information required to comply with the tasks as provided in paras 1 and 2, the regulatory authority shall upon request specify by official decision which measures shall be taken and which information shall be provided.

Independence of market area managers

Section 15. Market area managers are independent, at least with regard to their legal form, organisation and decision-making power, from all activities not connected with the activities pursuant to section 14 or the activities of a transmission system operator pursuant to section 7 para. 1 item 20. Sections 108 through 120 apply mutatis mutandis.

General terms and conditions of market area managers

Section 16. (1) The general terms and conditions of the market area manager govern the legal relationship between the market area manager and the balance responsible parties. The general terms and conditions of the market area manager and any amendments thereto are subject to approval by the regulatory authority. Such approval shall be granted subject to additional stipulations, conditions or a time limit to the extent that such is required to comply with the provisions of this Act. Any time limit shall not become effective before three years have passed. Upon request of the regulatory authority, market area managers shall amend or rewrite their general terms and conditions to the extent that such is required to comply with the provisions of this Federal Act.

(2) The general terms and conditions of the market area manager shall not include any discrimination or abusive practices or unjustified restrictions, nor shall they endanger security of supply. They shall, in particular be formulated

1. to ensure execution of the tasks incumbent upon the market area manager, the distribution area manager, the balance responsible parties, the clearing and settlement agent and the system operators;
2. to be consistent with existing law.

(3) The general terms and conditions of the market area manager shall specifically lay down

1. the rights and obligations of the contracting parties, in particular regarding compliance with the gas market code;
2. the management of nominations on the part of the market area manager;
3. the procedure concerning customer capacity management by the balance responsible parties;
4. provisions pursuant to section 27 para. 2 regarding the release of unused committed capacity;
5. the identification of the data to be exchanged between the contracting parties.

Chapter 2
Distribution areas and distribution area managers

Distribution area managers

Section 17. (1) The distribution area comprises the distribution systems at network levels 1 to 3 in a market area.

(2) The distribution area managers are:

1. for the eastern market area: the gas company nominated by the operators of the pipeline systems listed in Annex 1;
2. for the market area Tyrol: the gas company nominated by TIGAS-Erdgas Tirol GmbH;
3. for the market area Vorarlberg: the gas company nominated by VEG Vorarlberger Erdgas GmbH.

(3) The undertakings listed in para. 2 above shall inform the regulatory authority of the distribution area managers nominated. The designation of the distribution area manager is subject to approval by the regulatory authority. Approval shall be given if it is expected that the designated distribution area manager is capable of efficiently exercising the tasks according to section 18 and if it fulfils the conditions in section 20.

(4) In market areas where, by 3 March 2012, no distribution area manager has been designated according to para. 2, the regulatory authority shall ex officio choose an undertaking suitable for this role and oblige it to exercise the tasks of a distribution area manager on an interim basis. The authority shall revoke this official decision as soon as a suitable distribution area manager is designated in accordance with para. 2.

Tasks of distribution area managers

Section 18. (1) Distribution area managers shall

1. book capacity to match the forecast capacity needs at the internal interconnection points from the transmission into the distribution network in the market area;
2. manage capacities pursuant to item 1, capacities at internal interconnection points from the distribution into the transmission network and capacities in the distribution pipeline systems at network level 1 listed in Annex 1;
3. handle nominations at the internal interconnection points from the transmission into the distribution network in accordance with the market rules;
4. delimit balancing energy from imbalances in the distribution network, using transparent and objective criteria; the delimitation method is subject to approval by the regulatory authority;
5. establish a uniform methodology for calculating and announcing capacity at the entry/exit points of the market area at distribution level, i.e. at those points which are not internal interconnection points with the transmission network; the methodology is subject to approval by the regulatory authority. Changes shall be made if requested by the regulatory authority;
6. react to applications for access to the distribution network, coordinate capacity allocation pursuant to section 27 para. 2, conclude the related contracts and ascertain capacity utilisation;
7. enter into contracts with the system operators to grant prospective system users the right of access to the upstream gas lines (section 27 para. 1) up to the virtual trading point pursuant to section 31 para. 3 to the necessary extent;
8. purchasing balancing energy in the distribution area mainly via the virtual trading point, with the aim to minimise the need for such correctional measures by efficiently deploying linepack;
9. provide system services (load/pressure control and pressure maintenance) by physically balancing the network or by entering into relevant contracts with third parties;
10. control the distribution pipeline systems listed in Annex 1 by issuing instructions to the distribution system operators;
11. draw up an integrated long-term plan towards climate neutrality by 2040;
12. within the scope of integrated long-term planning, report to the regulatory authority 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 outages of one or more suppliers. The data obtained in drawing up the integrated long-term plan may be used for crisis prevention measures and for the monitoring report (section 28 para. 3 E-Control Act);

12a. together with the system operators and the control area operator under section 7 para. 1 item 60 Electricity Act 2010, identify and publish potential entry points and areas suitable for renewable gas in the market areas, taking into consideration the regional production and demand potential and other locational factors;

13. prepare total load forecasts so that any imbalances can be detected well in advance;
14. monitor state variables at the interconnections of the systems assigned to their control;
15. stay informed of current system utilisation of all systems assigned to their control at all times, including but not limited to flows and pressure levels;
16. prepare a load projection with a view to diagnosing congestions;
17. ensure optimum capacity utilisation in the systems assigned to their control by coordinating transports;
18. forward the reactions to system access applications to the distribution system operator pursuant to section 27 para. 1 within five days;
19. publish capacity utilisation levels on the systems assigned to their control;
20. take congestion management measures, giving transports for the supply of final customers priority over other transports;
21. submit their general terms and conditions to the regulatory authority for approval pursuant to section 26;
22. correcting imbalances pursuant to item 8 by purchasing energy at market prices, mainly via the virtual trading point, on behalf and for account of the clearing and settlement agent, insofar as the distribution area manager can project such imbalances in line with the applicable nomination deadlines; any further imbalances shall be corrected pursuant to section 87 paras 3 and 6 through the clearing and settlement agent in line with the market rules;

23. initiate measures to overcome physical congestions in the systems assigned to their control in coordination with system operators and storage system operators;
24. make available to the system operators and the clearing and settlement agent the data required for settling imbalance charges in the distribution network, including, without limitation, the data required to calculate deviations from schedules and from the load profiles for each balance group;
25. enter into contracts on the exchange of data with the system operators, balance responsible parties, the clearing and settlement agent and other market participants in line with the market rules;
26. manage schedules;
27. coordinate maintenance of the distribution pipeline systems listed in Annex 1 such that the impact on network users is kept as small as possible; and
28. execute solidarity measures in line with Article 13 Regulation (EU) 2017/1938 by accepting offers for energy to correct imbalances and by transporting the gas from or to the relevant interconnection point, for account of the clearing and settlement agent, while respecting the solidarity agreements concluded between Austria and the neighbouring member state.

(2) The market area manager, the clearing and settlement agent, the system operators, the balance responsible parties, the suppliers and the operators of storage or production facilities shall provide the distribution area manager with all information required to exercise the tasks and duties of a distribution area manager. In particular, the system operators shall provide the distribution area manager with information on capacity utilisation.

(3) Should disputes arise between a party listed in paras 1 or 2 and the distribution area manager with regard to the measures and information required to comply with the tasks as provided in paras 1 and 2, the regulatory authority shall upon request specify by official decision which measures shall be taken and which information shall be provided.

Strategic gas reserves

Section 18a. (1) To ensure security of supply in the market areas defined in section 12 para. 1, the distribution area manager is officially entrusted with keeping strategic gas reserves. The reserves shall be kept in storage facilities from which gas can be directly injected into the market areas. For the Tyrol and Vorarlberg market areas, the reserves may also be kept in storage facilities connected to neighbouring market areas.

(2) **(constitutional provision)** The quantity of gas to be kept as strategic reserves during a gas year depends on the quantity delivered to system users in January of the previous gas year, to be calculated and published by the regulatory authority by 1 March. The federal government may adjust this quantity by way of an ordinance; any EU targets for filling levels and the current market situation shall be taken into account. If the strategic gas reserves are reduced, the ordinance shall also state what is to be done with the excess gas previously kept in storage for this purpose. The ordinance may decree further details on the procurement modalities and activation of the strategic reserves, e.g. the minimum withdrawal rate from storage to be contracted. The ordinance requires approval by the main committee of the National Council; article 55 para. 5 Federal Constitutional Law applies mutatis mutandis.

(3) The distribution area manager shall present an annual report on the procurement and use of the strategic gas reserves to the National Council, the regulatory authority, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, the Federal Minister for Digital and Economic Affairs, and the Federal Minister of Finance and publish it by 30 April each year. The report shall particularly contain a summary of the results of the tendering procedure under section 18b para. 1.

(4) The distribution area manager shall establish a full subsidiary with limited liability for the exclusive purpose of executing the duties entrusted in sections 18a through 18c. All rights and duties of the distribution area manager in connection with the strategic gas reserves exclusively apply to that subsidiary. It shall discharge its duties in a financially prudent, economically efficient and expedient way. The shares in the subsidiary may not be sold.

(5) Direct and indirect claims against the shareholders of the distribution area manager and the general partner of the company established under para. 4 to satisfy the accounts payable of that company are inadmissible, unless the shareholders or the general partner have dishonestly induced the company's insolvency alone or together. In the case of dissolution, shareholders of the distribution area manager or the general partner of the company established under para. 4 neither receive any profits from its activities in connection with the strategic gas reserves nor are they liable for any losses arising from them.

Procurement of the strategic gas reserves

Section 18b. (1) The distribution area manager shall procure the strategic gas reserves through a market-based, transparent, non-discriminatory, public tendering procedure; it also acts as the owner of the reserves. The strategic gas reserves may be procured in several parts. The full quantity of reserves shall be available as from 1 November 2022 or, if circumstances outside the distribution area manager's control have prevented so, at the earliest possible point in time thereafter. The tendering conditions shall be notified to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and the Federal Minister of Finance in advance.

(2) As soon as the tendering procedure in accordance with para. 1 is concluded, the distribution area manager shall immediately inform the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and the Federal Minister of Finance of the results.

(3) If the strategic gas reserves are reduced because they have been activated in line with section 18c, they shall be replenished so that the full quantity is again available by 1 October of each year. The necessary quantities shall be procured either from the gas exchange at the virtual trading point or through a tendering procedure in line with para. 1.

(4) The costs associated with fulfilling the tasks in the general public interest under sections 18a through 18c are covered from the federal budget. The federal administration shall make them available as part of the relevant Federal Financing Act. This includes any and all necessary and adequate costs for procuring the strategic gas reserves, including cost of capital, storage fees, system charges, operational expenses, any valuation gains or losses, costs relating to section 18a para. 4,and any taxes, fees or levies payable. Any profits or losses from transferring gas to market participants, from a reduction or increase of the strategic gas reserves or from a complete dissolution of the reserves shall be taken into account. The distribution area manager shall make no profits or losses from the duties officially entrusted to it.

(5) The federal administration shall make the necessary funds available to the distribution area manager, respecting the needed liquidity.

(6) The distribution area manager shall provide evidence of the costs incurred in line with para. 4 to the federal administration by 31 January of each year. An auditor to be commissioned by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall find whether the incurred costs were adequate. By 31 March of that same year, any shortfalls or overhangs shall be offset or shall be netted against open positions.

(7) The strategic gas reserves shall be shown at its initial value on the balance sheet. Section 67 of the Insolvency Code does not apply to the subsidiary established under section 18a para. 4.

Activation of the strategic gas reserves

Section 18c. (1) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may issue an ordinance under sections 5 and 26 Energy Intervention Powers Act 2012 decreeing that the strategic gas reserves be activated. Activation shall stop once the relevant circumstances are no longer present.

(2) When quantities from the strategic gas reserves are transferred to market participants, the distribution area manager instructs the clearing and settlement agent that they be used in line with section 87 para. 4. The distribution area manager shall fix and charge a price for these quantities that corresponds to the higher of the following, plus an appropriate share of the other costs under section 18b para. 4:

1. the initial costs of the transferred quantity of gas, using the gas with the highest initial costs first;
2. for the eastern market area, the CEGHIX reference price for the relevant gas day; for the Tyrol and Vorarlberg market areas, the volume-weighted spot price index for the relevant gas day published by the gas exchange at the virtual trading point in the upstream market area.

Liability

Section 18d. (1) In line with the Liability of Public Bodies Act, liability for any damage inflicted by executive directors, managing directors or employees of the distribution area manager in exercising the duties officially entrusted in sections 18a through 18c lies with the federal administration. Executive directors, managing directors or employees are not liable towards the damaged party.

(2) Once the federal administration has reimbursed the damaged party pursuant to para. 1, it may recover the damages from the executive directors, managing directors or employees of the distribution area manager in line with the Liability of Public Bodies Act.

(3) Without prejudice to para. 2, the distribution area manager shall fully reimburse the federal administration for the services it has provided in discharging its duties under para. 1.

(4) If the distribution area manager has provided services to the federal administration, the administration's claim to recovery from the executive directors, managing directors or employees of the company under para. 2 passes to that company.

Cooperation between the market area manager and the distribution area manager

Section 19. (1) The distribution area manager and the market area manager shall support and coordinate with each other in the execution of their tasks and obligations with the aim to use the market area's entire network in a holistic, uniform and consistent manner. This particularly applies to the establishment of a uniform methodology for calculating and publishing capacity, of preconditions for interconnection agreements, and of the coordinated network development plan and the integrated long-term plan, to the procurement and deployment of balancing energy, the development of the action plan pursuant to section 25, and to the publication of information about the market area. The cooperation contract shall be made available to the regulatory authority upon its request and due account shall be taken of the regulatory authority's remarks and comments.

(2) Subject to the agreement of the owners, the roles of the distribution area manager and the market area manager may be merged. The resulting undertaking takes the legal form of an *Aktiengesellschaft* (public limited company under Austrian law).

Independence of distribution area managers

Section 20. (1) Distribution area managers are independent, at least with regard to their legal form, organisation and decision-making power, from all activities not connected with the activities pursuant to section 18 or the rendering of services related to planning, control or administration of capacity or network access of gas pipeline or storage facilities.

(2) Distribution area managers take the legal form of an *Aktiengesellschaft* (public limited company under Austrian law).

Management of transport capacity in distribution areas

Section 21. The capacity of the distribution pipeline systems listed in Annex 1 and the capacity booked at the internal interconnection points from the transmission into the distribution network in the market area are managed by the distribution area manager together with the system operators. Ownership and operation of the systems are not affected thereby. The system operators shall provide the data required for system access as instructed by the distribution area manager.

Integrated long-term plan

Section 22. (1) Integrated long-term planning has the objective of

1. supporting the objectives stated in section 4, in particular climate neutrality by 2040, including taking into consideration interdependencies with other energy carriers, infrastructures, and consumption sectors;

1a. planning the distribution pipeline systems listed in Annex 1 with a view to

   a) covering the demand for transport capacity to supply final customers while considering emergency scenarios;

   b) achieving a high level of system availability;

   c) addressing the capacity needs at the internal interconnection points with the transmission network and at storage-related entry/exit points;

2. ensuring consistency with the Union-wide network development plan and the coordinated network development plan according to section 63 et sqq.;
3. ensuring compliance with the infrastructure standard according to Article 5 Regulation (EU) No 2017/1938 in the market area;
4. increasing transparency for the market with respect to planned and already decided system expansions and development measures, including the planned timing of such investment projects;
5. enabling the injection of and supply with renewable gas.

(2) The distribution area manager shall draw up, at least once every two years, an integrated long-term plan with projects for the distribution pipeline systems listed in Annex 1 to achieve the objectives of this

Act and the goals as set out in para. 1 above. The planning period shall be determined by the distribution area manager in a transparent and non-discriminatory manner on the basis of the data available to the distribution area manager. The minimum planning period is ten years.

(3) The integrated long-term plan shall take due account of

1. technical and economic expediency;

1a. the integrated network plan under section 94 Renewable Energy Expansion Act;

2. reasonable assumptions about the evolution of production, supply, consumption, storage needs, and cross-border flows in line with the integrated national energy and climate plans pursuant to Article 3 Regulation (EU) No 2018/1999, the investment plans for regional and Union-wide networks, the coordinated network development plan, the investment plans for storage facilities, the network development plan pursuant to section 37 Electricity Act 2010, and the results of the load-flow simulations under section 34 para. 2;

3. the demand and supply situation and projections;

4. the goals as set out in para. 1 above.

(4) In substantiating its application for approval of the integrated long-term plan, especially if there are competing projects for pipeline system construction, expansion, alteration or operation, the distribution area manager shall explain the technical and economic reasons for including or excluding individual projects and provide the authority, upon its request, with the relating documents.

(5) All market participants, the control area operator pursuant to section 7 para. 1 item 60 Electricity Act 2010, and distribution system operators pursuant to section 7 para. 1 item 67 Electricity Act 2010 shall provide the distribution area manager, upon its written request, with the data required to draw up the integrated long-term plan, and in particular to assess existing and potential congestions, within a reasonable period of time. In addition to such data, the distribution area manager may draw on other data such as are useful for integrated long-term planning. Such data shall also be considered by the distribution area manager in assessing applications for system access and for capacity expansion.

(5a) Prior to submitting the integrated long-term plan for approval, the distribution area manager shall consult all relevant market participants. This shall be done as part of the consultation on the coordinated network development plan under section 63 para. 2. The results of the consultation shall be published.

(6) The integrated long-term plan shall be submitted to the regulatory authority for its approval. Such approval shall be granted if the projects from the integrated long-term plan appear to be suitable to support and not endanger the goals set out in para. 1 above and if the plan is consistent with the integrated network plan under section 94 Renewable Energy Expansion Act, the Union-wide network development plan, the coordinated network development plan, and the network development plan under section 37 Electricity Act 2010. Approval shall be granted subject to additional stipulations, conditions or a time limit to the extent that such is required to comply with the objectives of this Act.

(7) The distribution area manager shall amend or rewrite any integrated long-term plan submitted for approval if requested to do so by the regulatory authority. Applications for changing the most recent approved integrated long-term plan can be handed in at any time, provided that the additional construction, expansion, alteration or operation of gas pipelines or any other significant changes in the underlying situation create the need for a new overall assessment within the scope of integrated long-term planning.

(8) If there are congestions at the internal interconnection points from the transmission into the distribution network, the integrated long-term plan shall include measures for how to expand the capacity at such points.

(9) Any costs actually incurred when realising measures listed in an approved integrated long-term plan shall be prorated and taken into account when setting the system charges pursuant to title 5.

Monitoring of the integrated long-term plan

Section 23. (1) The regulatory authority shall monitor and evaluate the implementation of the integrated long-term plan and may request that the distribution area manager change the integrated long-term plan insofar as this is necessary to attain the aims of integrated long-term planning according to section 22 para. 1.

(2) In circumstances where a system operator, other than for overriding reasons beyond its control, does not execute an investment which is foreseen under the integrated long-term plan, the regulatory authority shall take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent integrated long-term plan:

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

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

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

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

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

Fee payable to distribution area managers

Section 24. (1) The regulatory authority shall determine ex officio by official decision the allowed costs for the services of a distribution area manager, and include therein a reasonable profit mark-up. The rates applied for each service shall be cost reflective. The distribution area manager shall also be reimbursed for any reasonable expenses resulting from the requirement to offset load variations by load/pressure control or pressure maintenance activities (provision of balancing capacity). Costs that are not related to activities under section 18 shall not be included in the allowed costs.

(2) In its ordinance issued pursuant to section 70 the regulatory authority shall, based on the allowed cost determined in accordance with para. 1 above, set a fee payable by a distribution system operator of the relevant network area which is named in the ordinance. The share of the fee for the distribution area manager allocated to a network area is prorated according to the amount of energy (kWh) supplied to final customers in that network area, but excludes the costs incurred by the distribution area manager according to section 74 in booking capacity at the internal interconnection points from the transmission into the distribution network. The costs for booking capacity at the internal interconnection points into the distribution network according to section 74 are allocated to the distribution system operators based on the system charges and the cost cascading principle according to section 83 para. 3, and to the relevant distribution system operator at each internal interconnection point from the transmission network, and are thus reimbursed to the distribution area manager.

Measures to eliminate short and medium-term congestions

Section 25. If the distribution area manager identifies the need for short-term measures to eliminate seasonal congestions, it shall notify the market area manager as well as the affected system operators, balance responsible parties, suppliers, clearing and settlement agents, storage system operators and operators of production facilities and draw up, jointly with such undertakings, a suitable action plan. Measures concerning production or storage which are subject to the Mineral Resources Act are exempt from this obligation. The undertakings affected shall cooperate to the best of their abilities. The distribution area manager shall notify the plan of action to the regulatory authority without delay.

General terms and conditions of distribution area managers

Section 26. (1) The general terms and conditions of distribution area managers govern the legal relationship between, on the one hand, the distribution area manager and the balance responsible parties (GTC DAM-BRP) and, on the other hand, the distribution area manager and the system operators (GTC DAM-SO). The general terms and conditions of the distribution area manager and any amendments thereto are subject to approval by the regulatory authority. Such approval shall be granted subject to additional stipulations, conditions or a time limit to the extent that such is required to comply with the provisions of this Act. Any time limit shall not become effective before three years have passed. Upon request of the regulatory authority, the distribution area manager shall amend or rewrite its general terms and conditions to the extent that such is required to comply with the provisions of this Act.

(2) The general terms and conditions of the distribution area manager shall not include any discrimination or abusive practices or unjustified restrictions, nor shall they endanger security of supply. They shall, in particular, be formulated

1. to ensure the execution of the tasks incumbent upon the market area manager, the distribution area manager, the balance responsible parties and the system operators;
2. to be consistent with existing law.

(3) The GTC DAM-BRP shall, without limitation, include

1. the rights and obligations of the contracting parties, in particular regarding compliance with the gas market code;
2. the management of nominations and schedules on part of the distribution area manager;
3. the procedure concerning customer capacity management by the balance responsible parties;
4. the imbalance management by the distribution area manager in the distribution area;
5. the data to be exchanged between the contracting parties;
6. the procedure and modalities governing access to the distribution network (section 27) and those governing a change of supplier or balance group (section 123);
7. provisions pursuant to section 27 para. 2 regarding the release of unused committed system capacity.

(4) The GTC DAM-SO shall, without limitation, include

1. the rights and obligations of the contracting parties, in particular regarding compliance with the gas market code;
2. the procedure and modalities for network access applications;
3. the technical minimum requirements for network access;
4. the network capacity allocation mechanism;
5. the data to be exchanged between the contracting parties, including, without limitation, system data and information with regard to supplier switching;
6. the obligation of distribution system operators to check gas quality at entry points;
7. the procedure to be followed in reporting technical problems and failures and their repair;
8. the fee payable by the distribution system operators pursuant to section 24;
9. regulations with regard to payment and invoicing;
10. provisions pursuant to section 27 para. 2 regarding the release of unused committed system capacity.

Part 2
General rights and obligations of system operators

Chapter 1
Network access

Access to the distribution network

Section 27. (1) The system operator operating the system to which the customer, production, storage or pipeline facility for which network access is desired is connected shall grant access to the prospective system user under the general terms and conditions and at the system charges set by ordinance. Inasmuch as the application for access also concerns gas lines upstream of the relevant distribution system, the system operator shall immediately pass the application on to the distribution area manager for further action. For this purpose, the gas companies concerned shall enter into contracts under civil law for the benefit of the prospective system user. The line capacity currently used for the customer in the network up to the virtual trading point shall continue to be available to the customer in the event of a supplier switch or supply by several suppliers. In the latter case, the current supplier shall make available that part of the capacity currently used for the customer that is needed by the second supplier for the partial supply of the customer. Imbalance charges relating to customers with several suppliers shall be settled in the balance group to which the customer's metering point is assigned.

(2) The balance groups shall adjust the capacity allocated for their benefit on the basis of system access applications, capacity expansion applications or supplier switches by the distribution area manager at the

entirety of internal interconnection points from the transmission into the distribution network in the market area to their actual capacity needs and, when there are congestions, carry out the minimum injections as instructed by the distribution area manager, provided that they are not prevented from complying with this obligation by force majeure or other events which are unforeseeable or beyond their control, such as maintenance or repair work in upstream systems. Any transport capacity committed but not used shall be made available to third parties. If the amount of capacity required is not notified, or if it is not notified in due time, the respective party's right of access is subject to the availability of capacity.

(3) The system operators shall assign a system user category to each metering point. The regulatory authority shall issue an ordinance defining the injecting and withdrawing system user categories and the time line for categorisation.

General terms and conditions for distribution system access

Section 28. (1) The general terms and conditions for the distribution network and any amendments thereto are subject to approval by the regulatory authority. Approval shall be granted subject to obligations and conditions to the extent that such is required to comply with the provisions of this Act. Upon request of the regulatory authority, distribution system operators shall amend the general terms and conditions for the distribution network to the extent that such is required to attain a competitive market. The regulatory authority may also request that the general terms and conditions include the period within which, at a customer's request, the meter point reference number is to be made available to the customer or to their authorised representative in a standard electronic data format, or within which a supplier switch is to be carried out. The approved general terms and conditions for the distribution network shall be published on the internet.

(2) The general terms and conditions for the distribution network shall be non-discriminatory and shall not contain any abusive practices or unjustified restrictions nor jeopardise security of supply or quality of service. They shall, in particular, be formulated

1. to ensure that the tasks incumbent upon the distribution system operator are performed;
2. to make for an objective link between the obligations of the system users and the services provided by the distribution system operator;
3. to assign the mutual obligations in a balanced manner in line with their origin;
4. to contain specifications on the technical requirements for system connections and for all measures to prevent negative effects on the system of the system operator or other facilities;
5. to define objective criteria for accepting gas from another grid area and for the use of interconnections;
6. to contain cost-reflective cost allocation rules;
7. to be clear and logical;
8. to contain definitions of terms which are not generally understood;
9. to be consistent with existing law.

(3) The general terms and conditions for the distribution network shall include, without limitation,

1. the rights and obligations of the contracting parties, in particular regarding compliance with the gas market code;
2. the technical minimum requirements for network access;
3. the quality requirements for injecting and transporting gas;
4. the entry points available for gas;
5. the procedure and modalities for network access applications;
6. the procedure and modalities governing supplier and balance group switches (section 123);
7. the data to be supplied by system users;
8. the obligation of system users to submit schedules, respecting the deadlines laid down in the market rules, to indicate the utilisation of their booked capacity;
9. a time period of no more than 14 days following receipt within which the distribution system operator has to respond to applications for system access; for supplier switches, this period shall be specified in the ordinance pursuant to section 123 para. 5;
10. the principles underlying billing and invoicing;
11. the contract term, conditions for extension and termination of services and the contractual relationship;

12. any compensation and refunding arrangements which apply if contracted service quality levels are not met, as well as information on dispute settlement options provided by law;
13. the type and form of billing;
14. the procedure to be followed in reporting technical problems and failures and their repair;
15. the obligation of prospective system users to pay in advance or provide collateral (cash deposit, bank guarantee, deposit of savings books with unrestricted transferability) in an appropriate amount if the circumstances of the individual case so warrant, i.e. if there is reason to assume that the system user will fail to meet financial obligations or will fail to do so in due time;
16. the modalities for partial payments by the customer; the customer shall have the possibility of spreading their dues across at least ten payments a year;
17. the period within which customer inquiries have to be answered.

Technical standards and regulations (technical rules) in their most recent applicable version may be made binding by virtue of the general terms and conditions for the distribution network.

(4) Before concluding a contract with a customer, the system operators shall inform the customer about the essential contents of the general terms and conditions. To this end customers shall receive an information leaflet. System operators shall also provide system users with transparent information about the applicable prices and rates. The customer protection measures laid down in Annex I to Directive 2009/73/EC shall be complied with. The general terms and conditions for the distribution network shall be sent to customers upon request.

Changes in the general terms and conditions for the distribution network

Section 29. If new general terms and conditions for the distribution network are approved, the system operator shall inform the system users within four weeks of approval by way of a personally addressed communication and shall send them the new terms upon their request. Such communication or the customer invoice shall contain readily understandable information about the changes introduced to the general terms and conditions and the criteria to be complied with when making such changes in accordance with this Federal Act. The changed general terms and conditions are considered agreed from the first day of the month following a three-month period after the communication.

Quality standards for network services towards connected final customers

Section 30. (1) In addition to the tasks and obligations bestowed upon system operators by virtue of this Act, the regulatory authority shall by ordinance set standards regarding the safety, reliability and quality of the services rendered to system users and other market participants, and define indicators for monitoring compliance with these standards. If compliance with such standards cannot be fully ensured without provisions regarding compensation and refunding in the event of non-compliance by system operators, the ordinance shall contain such provisions. The ordinance can enter into force only after a consultation procedure has taken place, giving particularly the concerned system operators the opportunity to comment.

(2) The standards may include, without limitation,

1. operational security and reliability, including the duration and frequency of supply interruptions;
2. deadlines for the establishment of system connections, for repairs and for announcing supply interruptions;
3. deadlines for reacting to queries relating to the provision of system services;
4. complaint handling.

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

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

Access to the transmission network

Section 31. (1) The transmission system operator whose system is to be used for injection to and withdrawal from the market area, giving regard to the stipulations under para. 4, shall grant access to prospective system users under the general terms and conditions and at the system charges set by ordinance.

(2) Access to the transmission network is realised by booking capacity at the transmission network's entry/exit points that can be freely allocated and traded and by entering such booked capacity into balance groups.

(3) Entry capacity rights entitle the holder to injecting gas into the transmission network and to transporting it to the market area's virtual trading point. Exit capacity rights entitle the holder to transporting gas from the virtual trading point to the exit point and to withdrawing it from the transmission network. Trading takes place at the virtual trading point only and is subject to the general terms and conditions of the operator of the virtual trading point. These general terms and conditions shall ensure, in particular, that the tasks incumbent upon the operator of the virtual trading point are exercised. The general terms and conditions of the operator of the virtual trading point and any amendments thereto are subject to approval by the regulatory authority. Approval shall be granted subject to additional stipulations and conditions to the extent that such is required to comply with the provisions of this Act. Upon request of the regulatory authority, the operator of the virtual trading point shall amend the general terms and conditions to the extent that such is required to comply with the provisions of this Act. Contracts of transmission system operators for capacity at the internal interconnection points into the distribution network in the market area can be concluded with the distribution area manager only. Balance groups which are also registered in the distribution network are entitled to transporting gas from the virtual trading point to the internal interconnection point into the distribution network and feeding it into the market area's distribution network to the extent of the capacity assigned to the balance group by the distribution area manager.

(4) New industrial facilities may be connected to a transmission system if the distribution system operator in whose distribution area the facility is located has refused connection in accordance with section 33 para. 1. The industrial customer shall provide proof of such refusal to the transmission system operator.

(5) The system operators shall assign a system user category to each metering point. The regulatory authority shall issue an ordinance defining the injecting and withdrawing system user categories and the time line for categorisation.

General terms and conditions for transmission network access

Section 32. (1) The general terms and conditions for transmission network access and any amendments thereto are subject to approval by the regulatory authority. Approval shall be granted subject to additional stipulations and conditions to the extent that such is required to comply with the provisions of this Act. Upon request of the regulatory authority, the transmission system operators shall amend the general terms and conditions to the extent that such is required to comply with the provisions of this Act. The approved general terms and conditions shall be published on the internet in German and English.

(2) The general terms and conditions for transmission network access shall not be discriminatory and shall not contain any abusive practices or unjustified restrictions nor jeopardise security of supply or quality of service. They shall, in particular, be formulated

1. to ensure that the tasks incumbent upon the transmission system operator are performed;
2. to make for an objective link between the obligations of the system users and the services provided by the transmission system operator;
3. to assign the mutual obligations in a balanced manner in line with their origin;
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 system operator or other facilities;
5. to contain cost-reflective cost allocation rules;
6. to be clear and logical;
7. to contain definitions of terms which are not generally understood;
8. to be consistent with existing law.

(3) The general terms and conditions for transmission network access shall cover, without limitation,

1. the rights and obligations of the contracting parties;
2. the technical minimum requirements for network access;
3. the quality requirements for injecting and transporting gas;
4. the points available for injecting and withdrawing gas;
5. the various services to be provided by the transmission system operator relating to system access, and the quality levels offered for these services;
6. the procedure and modalities for network access applications;
7. effective provisions on the criteria and manner in which unused committed system capacity must be made available to third parties;

8. the data to be supplied by system users;
9. the obligation of system users to submit nominations, respecting the deadlines laid down in the market rules, to indicate the utilisation of their booked capacity;
10. a time period of no more than ten days following receipt within which the transmission system operator has to respond to applications for network access, including the communication and cooperation with other transmission system operators;
11. the contract term, conditions for extension and termination of services and the contractual relationship;
12. any compensation and refund arrangements which apply if contracted service quality levels are not met, as well as information on dispute settlement options provided by law;
13. the principles underlying billing and invoicing;
14. the type and form of billing;
15. capacity booking fees;
16. the procedure to be followed for reporting technical problems and failures and their repair.

Technical standards and regulations (technical rules) in their most recent applicable version may be made binding by virtue of the general terms and conditions for the distribution network.

Refusal of system access

Section 33. (1) Access to the system may be refused on the following grounds:

1. extraordinary system conditions (incidents);
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 5;
4. if access is to be refused to a customer that would not be entitled to access in the country in which the supplier or a company controlling such supplier is domiciled and the regulatory authority obtains knowledge of such fact;
5. if the technical specifications cannot be reasonably harmonised.

The system operator to whose system the customer facility is connected or to whose system's entry/exit point access is desired shall notify the prospective system user of the reasons for refusal of access in writing. If access is refused due to action of a third-party gas company, the notification shall name the gas company on whose application access is refused.

(2) Where system access for transports in the distribution system is refused pursuant to para. 1 item 2, the prospective system user may file an application for capacity expansion. The distribution area manager shall take due account of the capacity need indicated in such application when drawing up the integrated long-term plan. Capacity expansion applications shall be approved if the following conditions are met:

1. the integrated long-term plan which includes the measures necessary to satisfy the capacity need indicated in the application has been approved by the regulatory authority;
2. all contracts between the transmission and distribution system operators concerned and the distribution area manager needed for the realisation of the measures from the integrated long-term plan have been concluded;
3. all additional conditions that have been imposed for approval of the application have been met.

(3) In the event that access is refused by the fault of a third-party gas company, the distribution area manager may recover the damages paid to the prospective system user pursuant to section 1313 General Civil Code. Gas companies affiliated with a gas company (section 7 para. 1 item 64) are jointly and severally liable.

(4) On the application of a party claiming that their legal right of access to the system has been injured by the refusal of access, the regulatory authority shall establish whether the conditions for refusal of system access have been met. Parties opposing such application are

1. the operator of the system to which the customer facility is connected or to whose entry/exit point access is desired if access to such system is refused;
2. in all other cases in which system access for a customer facility is desired, the distribution area manager in whose distribution area the customer facility is located 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, the regulatory authority shall decide within one month of receiving the application.

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

(6) If it is found that access was wrongfully refused, the gas company which wrongfully refused access is liable to the prospective system user for any damage documented to be caused by such refusal. If several gas companies are involved in the refusal, the regulatory authority shall determine in its decision which of them wrongfully refused access.

Chapter 2
Rules on network access

Capacity calculation

Section 34. (1) The market area manager shall, on the basis of a variety of load-flow scenarios and together with the transmission system operators and the distribution area manager, draw up a common forecast of the capacity need and utilisation of the market area's network over the next ten years. The forecast shall be updated every two years and be consulted with ENTSOG and the prospective system users.

(2) Transmission system operators operating interconnected systems and the distribution area manager, for the distribution systems assigned to their control pursuant to Annex 1, shall cooperate in calculating and announcing technical capacity so as to maximise such coordinated capacity in the interconnected systems. Capacity shall be calculated on the basis of state-of-the-art load-flow simulations, with the aim of addressing the need determined in the common forecast pursuant to para. 1 to the greatest possible extent. Calculation shall, as a minimum, include the market area's transmission systems and the distribution pipeline systems listed in Annex 1 and shall take due account of the adjoining systems.

Increasing capacity

Section 35. (1) If the calculation conducted in accordance with section 34 para. 2 reveals that capacity will continually fall short of the current demand and the demand forecast pursuant to section 34 para. 1, the market area manager shall coordinate measures that are suitable to result in an increase of the capacity to the extent needed. The system charges for transports in the distribution network in accordance with the first sentence shall be set by the regulatory authority pursuant to section 70 and be collected by the distribution area manager. The transmission system operators shall cooperate with the market area manager to this end and implement the relevant measures. These measures shall be notified to the regulatory authority without delay.

(2) If the measures implemented pursuant to para. 1 above do not lead to the capacity demand being satisfied and if there are permanent or frequent high actual load flows and a decrease of such load flows is not to be expected, the transmission system operators shall assess appropriate network expansion measures and take them into account in network development planning. This also applies if the forecast under section 34 para. 1 indicates that permanent or frequent high actual load flows are to be expected.

Capacity allocation

Section 36. (1) The transmission system operators shall offer firm and interruptible capacity. The capacity offers of transmission system operators shall be designed to enable the capacity on offer to be booked and used without predefining a transport path or fulfilling other additional preconditions. System users shall be enabled to book capacity at entry and exit points independently of each other, in different amounts and for different times.

(2) System users shall be offered at least annual, monthly and daily contracts for the capacity calculated pursuant to sections 34 and 35 at each entry/exit point. How much of the capacity is allocated to contracts of each duration shall depend on demand.

Interruptible capacity

Section 37. (1) Interruptible capacity differs from firm capacity only in its interruptible character and the charge to be set pursuant to sections 72 et sqq.

(2) Interruptible capacity shall enable use of the system capacity that is not used by holders of firm capacity or cannot be firmly calculated beforehand.

(3) Transports may only be interrupted if it is to be expected that the transports nominated on an interruptible basis cannot all be executed even if use is made of all short-term coordinated options at the system operators' disposal. Any interruptions shall be announced in due time ahead of the interruption to enable the system user to take compensatory steps.

Secondary capacity market

Section 38. System users have the right to resell or sublet, without the agreement of the transmission system operator, their capacity entirely or partially to third registered system users. System users may trade their capacity on the secondary market through the common online platform pursuant to section 39 or, after consultation of the market in cooperation with the market area manager, through an energy exchange.

Online capacity platform

Section 39. (1) Capacity in each market area is allocated through an electronic online platform. The platform shall be designed in a user-friendly way and shall particularly enable anonymous capacity trading. It shall be available at least in German and English.

(2) The information about relevant points in the market area's transmission network in accordance with Regulation (EC) No 715/2009 shall be published on the online platform. The list of relevant points shall be drawn up by the transmission system operators and is subject to approval by the regulatory authority.

(3) The information about the distribution area, including but not limited to the information pursuant to section 18 para. 1 item 19, shall be published on the online platform.

(4) The market area manager shall offer a balance group contract for the establishment of balance groups in accordance with section 91 para. 2 item 1 on the online platform.

Capacity transfer

Section 40. (1) In case of a supplier switch the future supplier may request that the market area entry capacity actually used to supply the relevant customer at the moment be transferred from the current supplier if it is not otherwise possible to supply the customer in accordance with the supply contract concluded. This shall be done via a reasoned request towards the current supplier.

(2) The stipulations in para. 1 apply pro rata where one metering point is serviced by several suppliers.

(3) If the current supplier refuses to transfer such entry capacity, the regulatory authority shall, upon request by the future supplier, determine whether the capacity transfer was rightfully refused. In doing so, regard shall be given to any obligations of the current supplier that stand against such transfer. The regulatory authority shall take its decision within one month of receiving the request.

Details to be decreed by ordinance

Section 41. (1) To achieve efficient network access as well as harmonised rules for all market participants and to attain the aims of this Act, the regulatory authority may, heeding the requirement of safe and reliable system operation and the need to balance the interests of market participants, issue ordinances with separate rules for each market area, respecting the network codes adopted in accordance with Article 6 Regulation (EC) No 715/2009 and the guidelines pursuant to Article 23 Regulation (EC) No 715/2009. Any such ordinances shall only be issued after a public consultation on the rules contained therein pursuant to para. 2.

(2) The regulatory authority may set rules pursuant to para. 1 regarding

1. the contents and execution of the common forecast of the transmission system operators regarding the capacity needed and the utilisation of the Austrian transmission network over the next ten years, and of the capacity calculation pursuant to section 34;
2. the measures to increase capacity pursuant to section 35; this may include partially or completely alleviating the possibility for allocation restrictions if such restrictions would hamper the development of competition;
3. the tender procedure for balancing energy and the determination of the balancing energy price in accordance with section 87, the setting of minimum offer sizes, as well as the data to be provided by market participants, distribution system operators and balance responsible parties to enable the calculation and allocation of balancing energy;

4. the design and application of standard load profiles and the adjustment of the thresholds for their application;
5. the non-discriminatory establishment and operation of the online platform pursuant to section 39 and the procedures for offering capacity through such platform;
6. the conditions for and execution of requests for capacity transfers pursuant to section 40.

(3) In the absence of rules in ENTSOG guidelines on the topics listed below or in cases where the transmission system operators do not implement such guidelines within the deadlines provided, or differ in their implementation, the regulatory authority may set rules

1. on capacity offers pursuant to section 36; this may include, without limitation, further details on capacity offers, on how much of the available capacity must be allocated to offers of each contract duration and on differing contract durations;
2. on interruptible capacity pursuant to section 37; this may include, without limitation, the procedure to be followed in allocating necessary interruptions to interruptible capacity nominations;
3. on the timing for the allocation of capacity with different contract durations pursuant to section 36 para. 2;
4. on the timing of nominations;
5. on re-nominations; this may include, without limitation, the introduction of a fee, the determination of different deadlines for re-nomination and the restriction or elimination of the possibility to re-nominate;
6. on the contents of interconnection agreements and system access contracts;
7. on the proof and collateral necessary for system users to register;
8. on the conditions for the provision of balancing services at transmission level mainly through the virtual trading point.

(4) The regulatory authority may set rules on the conditions for the provision of balancing services in the market area, including, without limitation, the duration of the balancing period, handling of nominations and schedules, the exchange of data between the market participants and the definition of the gas day. Such rules shall be consulted with all concerned market participants and consider the outcome of such consultation while aiming to harmonise the balancing regime at transmission and distribution level within two years of entry into force of the network code pursuant to Article 8(6)(j) Regulation (EC) No 715/2009.

Chapter 3
Exemptions from third-party access

New infrastructure

Section 42. (1) Upon application the regulatory authority may declare by official decision that the provisions of sections 27, 31, 69 through 84, 97 through 104 and 108 do not, for a specified period of time, apply to a large new infrastructure as defined in section 7 para. 1 item 50 (interconnectors and storage facilities) or parts thereof. Such application shall include the following information as a minimum:

1. the long-term economic effects and the impact on the environmental objectives under Article 17 Regulation (EU) 2020/852;

1a. the extent of the limitation of the right to system or storage access and the expected duration of such limitation as well as the regulations replacing the above statutory provisions;

2. the customers affected by this measure and the extent to which their rights under sections 27, 31, 69 through 84, 97 through 104 and 108 are restricted, if applicable broken down by categories of customers;
3. suitable evidence to establish the existence of the following prerequisites:
   a) the investment in the interconnector 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 interconnector or storage facility would not be made if no exemption pursuant to para. 1 above were granted;
   c) the infrastructure is owned by a natural or legal person or a registered partnership which is separate, at least in its legal form, from the system operators in whose systems the infrastructure is built;
   d) system charges or storage charges are levied from the users of this infrastructure;

e) the exemption pursuant to para. 1 above does not negatively affect competition nor the effective functioning of the single gas market nor the efficient functioning of the provisions set forth in sections 27, 31, 69 through 84, 97 through 104 and 108 for the distribution and transmission lines and storage facilities connected to the interconnector or storage facility nor the Union's security of gas supply;

f) any long-term contracts in connection with the large new infrastructure are consistent with competition rules; and

4. suitable evidence to establish compatibility with the objectives under section 4.

(2) Para. 1 above also applies to any capacity increases at existing interconnectors or storage facilities and to any alterations of such facilities that enable the use of new sources of gas supply.

(3) An exemption pursuant to para. 1 above may be made for a new interconnector or storage facility, an existing interconnector or storage facility that is substantially expanded, or an alteration of an existing interconnector or storage facility, in its entirety or for parts thereof.

(4) Upon the request of the regulatory authority, the application shall be amended to the extent that such is necessary to comply with the provisions and objectives of this Act.

(5) The regulatory authority may attach additional stipulations and conditions to an official decision pursuant to para. 1 above to the extent that such is necessary to comply with the provisions and objectives of this Act. With regard to section 108, the regulatory authority may only grant temporary and partial exemptions subject to additional stipulations and conditions.

(6) In its decision-making pursuant to para. 1 above, the regulatory authority shall in particular consider the duration of long-term contracts in connection with the large new infrastructure, the additional capacity to be created or the alteration of the existing capacity as well as the time limits of the project and non-discriminatory access to the new infrastructure.

(7) When granting an exemption pursuant to para. 1 above, rules and mechanisms for capacity management and allocation may be specified, while observing the following minimum criteria:

1. when publishing capacity offers, they shall include information on the overall technical capacity to be awarded, the number and dimension of lots and the allocation procedure in the case of excess demand;
2. both fixed and interruptible transport/storage capacity shall be offered, on an annual and monthly basis;
3. potential customers of the new infrastructure shall be given the opportunity to signal their interest to contract capacity at the new infrastructure in a transparent, fair and non-discriminatory procedure to be conducted before the regulatory authority takes an exemption decision;
4. 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 Union, to be paid for by the applicant;
5. the tender procedure shall be carried out in a fair and non-discriminatory manner;
6. in the event that any lots under the tender are not sold, capacity allocation shall be repeated through a market-based procedure.

(7a) Before granting an exemption, the regulatory authority shall consult the regulatory authorities of the other member states whose markets will likely be affected by the new infrastructure and the competent authorities of the third countries, where the infrastructure in question is connected with the Union network under the jurisdiction of a member state, and originates from or ends in one or more third countries.

(7b) The regulatory authority shall give the authorities consulted in line with para. 7a an appropriate period of time to react, but no longer than three months.

(8) Official decisions pursuant to para. 1 above shall be published by the regulatory authority on the internet.

(9) If an interconnector or a storage facility connected to the network of another member state are involved, the relevant regulatory authorities in the other member states concerned shall be heard before an exemption decision is taken. The regulatory authority shall inform the Agency about the agreement reached between the concerned national regulatory authorities about their decisions within six months from the date an application in accordance with para. 1 above is filed with the last of these regulatory authorities.

(9a) Where the infrastructure concerned is a transmission line between a member state and a third country, and where the first interconnection point is located on Austrian territory, before the adoption of

the decision on the exemption, the regulatory authority may consult the competent authority of that third country. Para. 7b applies mutatis mutandis.

(10) ACER shall be the competent authority for exemption decisions and the tasks in this stipulation shall be transferred to ACER in the following cases:

1. upon a joint request from the national regulatory authorities concerned; or
2. if the competent national regulatory authorities have not reached an agreement pursuant to para. 9 above within a period of six months from the date on which the request for exemption is received by the last of those regulatory authorities. The competent national regulatory authorities may jointly request that this period be extended by a period of up to three months.

Before taking a decision, ACER consults the relevant regulatory authorities and the applicants.

(11) Unless ACER is competent in accordance with para. 10 above, the regulatory authority shall submit a copy of the application to the European Commission without delay. The regulatory authority shall submit to the European Commission a substantiated draft decision that includes all information relevant to decision-making, including, but not limited to,

1. detailed reasoning of the exemption granted, including financial information that corroborates the need for the exemption;
2. an investigation into the effects that granting the exemption will have on competition and the effective functioning of the single market for gas;
3. grounds for the duration of the exemption and for the proportion of the overall capacity of the gas infrastructure for which the exemption is granted;
4. with regard to exemptions concerning interconnectors, the result of consultations between the regulatory authorities concerned;
5. information on the contribution made by the infrastructure to diversifying gas supplies.

(12) If the European Commission should request, within two months of receiving notice, any modification or cancellation of the decision, the regulatory authority shall follow the European Commission's request within one month and inform the European Commission thereof. That two-month period is extended by an additional period of two months if further information is sought by the European Commission.

(13) Any exemption decision ceases to be effective two years after the official decision entered into force if construction of the infrastructure concerned has not begun. Any exemption decision ceases to be effective five years after the official decision entered into force if the infrastructure has not started operating, unless the European Commission decides that the delay is due to circumstances outside the applicant's influence.

(14) Any exemptions granted under Directive 2003/55/EC concerning common rules for the internal market in gas and repealing Directive 98/30/EC, OJ L 176/57, 15.07.2003, remain in force until the date set in the official decision granting the exemption.

Part 3
Prerequisites for system operators

Chapter 1
Prerequisites

Licensing

Section 43. Carrying out the function of a transmission system operator or of a distribution system operator requires a licence by the regulatory authority according to the provisions of this Federal Act. The licence shall be issued subject to additional stipulations, conditions or a time limit as required.

Licensing conditions

Section 44. (1) The 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 5; as well as
   b) with the obligations imposed upon it by the stipulations of this Act

and in a position to perform the function of transporting gas through a system and undertake the responsibility for operation, maintenance and, where necessary, expansion of the system.

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 is at least 20 million EUR in a case of personal injury or damage to property, and where the amount insured may be limited to 40 million EUR per annum;
3. that the applicant, inasmuch as they are a natural person,
   a) is legally competent and at least 24 years old;
   b) is an Austrian citizen or a citizen of another member state of the EU or of the EEA;
   c) has their 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 or a registered partnership,
   a) has its seat in Austria or in another member state of the EU or of the EEA; and
   b) has appointed a managing director to exercise the function specified in the licence;
5. that the applicant, inasmuch as it is a transmission system operator, has been certified in accordance with section 119.

(2) The reasons for exclusion pursuant to section 13 Industrial Code 1994 apply mutatis mutandis.

(3) In the event that the licence holder forfeits their legal competence, their function may be exercised by a managing director appointed by their legal representative.

(4) Upon application, the authority shall waive the conditions pursuant to para. 1 item 3(a-c) if operation of the distribution system is in the public interest with a view to supplying the population and industry with gas.

(5) The condition in para. 1 item 3(b) does not apply if a managing director has been appointed.

Technical director

Section 45. (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 must meet the conditions pursuant to section 44 para. 1 item 3 and be properly qualified to manage and supervise the operation of a gas pipeline system. Section 44 para. 4 applies mutatis mutandis.

(3) In order to establish their qualification, a technical director shall prove that they have successfully completed university studies in a relevant field and have 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 studies at a university of applied sciences in a relevant field in conjunction with at least six years' relevant working experience in an enterprise conveying goods by way of pipelines is deemed proof of appropriate qualification also.

(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 their education and experience, can be assumed to have the requisite knowledge, skills and experience to carry out their duties; or
2. that they can be assumed to be adequately qualified.

(5) The system operator shall notify the appointment of a technical director 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 resigns from the system operator's undertaking or that their appointment is revoked, operation of the system may continue until a new technical director is appointed, but for no longer than two months. The system operator shall immediately notify the authority in writing if the technical director resigns or if any condition for their appointment ceases to be met.

Managing director

Section 46. (1) The system operator may appoint a managing director to carry out its functions; this managing director is accountable to the authority with regard to compliance with the provisions of this Act.

The system operator, however, remains 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 must meet the following conditions:

1. the conditions pursuant to section 44 para. 1 item 3;
2. having the authority to give instructions on their own behalf; and
3. in case of a legal person or a registered partnership, in addition
   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
4. in the case of a registered partnership, being a general partner who is authorised under the terms of the partnership agreement to manage and to represent the company.

Section 44 para. 4 applies mutatis mutandis.

(3) If a legal person is a general partner in a registered partnership, the provisions of para. 2 item 4 above are 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 registered partnership is a general partner in another partnership of this kind, the provisions of para. 2 item 4 above are 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 must hold the position specified in para. 2 item 4 above for the managing director in the registered partnership.

(5) If a legal person is a general partner in a registered partnership and if this registered partnership is a general partner in another partnership of this kind, the provisions of para. 2 item 4 above are 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.

Obligation to operate

Section 47. Upon issuance of a licence pursuant to section 43, the system operator shall operate its systems to their full extent. Any interruption, limitation or termination of operation shall be notified to the market area manager, the distribution area manager, the clearing and settlement agency for transactions and price formation and the regulatory authority. If the system operator intends to cease operation of a system, it shall also notify the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and the regulatory authority three months prior to the intended date of cessation with reference to the actual facts and shall publish such intention on the internet.

Chapter 2
Liability

Causes of liability

Section 48. (1) System operators are liable for any loss or damage arising in the course of operating their systems 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, sections 10 to 14, section 15 para. 2, sections 17 to 20 and section 23 Railway and Motor Vehicle Third-Party Liability Act, FLG no 48/1959, apply mutatis mutandis.

Limits of liability

Section 49. (1) Liability pursuant to this Federal Act for any act causing loss or damage is limited as follows:

1. regarding the death or injury of persons, the maximum liability is 2,080,000 EUR as a payment of principal, or 130,000 EUR per injured person per year as an annuity; these maximum amounts do not apply to treatment cost or funeral costs;
2. regarding losses with respect to property, the maximum liability is 8,760,000 EUR even in the event that several things have been damaged; in the event that the loss includes damage to real property, this limit is increased to 18,250,000 EUR; the differential amount of 9,490,000 EUR 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 exceeds the maximum amounts provided in para. 1 item 2 above, the payments due to the individual parties are reduced by the same proportion as the ratio between the total amount and the maximum amount.

(3) The provisions of this section 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 any other party is liable for compensation.

Exclusion of liability

Section 50. System operators are not 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.

Proof of third-party liability insurance

Section 51. (1) Applicants pursuant to section 43 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 44 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 licence in accordance with section 53 unless the operator shows proof of appropriate third-party liability insurance within a period of time to be set by the authority.

Chapter 3
Termination of operating licences

Grounds for termination

Section 52. The licence pursuant to section 43 terminates

1. upon withdrawal of the licence in accordance with section 53;
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 the registered partnership, save as otherwise provided by section 54;
5. upon the institution of bankruptcy proceedings against the assets of the legal entity or the non-institution of insolvency proceedings for lack of assets to cover costs;
6. upon prohibition of operation pursuant to section 57;
7. if the features described in section 7 para. 1 items 20 or 72 no longer apply to an undertaking.

Withdrawal

Section 53. The regulatory authority shall withdraw the licence pursuant to section 43 if

1. the licensing conditions (section 44) are no longer complied with;

2. a transmission or distribution system operator fails to comply with its obligation to furnish proof of third-party liability insurance pursuant to section 51;
3. the licensee or the managing director have been found guilty of gross infringement of any provisions of this Act and further infringement is to be feared.

Reorganisation

Section 54. (1) In the event of the transfer of companies or of parts of companies due to reorganisation (including, without limitation, due to merger, change of corporate form, capital contribution, combination, splitting or partition), the licences necessary to continue operations pass to the legal successor, subject to the provisions of paras 2 and 3 below, as do the rights required for operation. Mere reorganisation does not constitute grounds for termination and does not, in particular, justify withdrawal of the licence.

(2) Provided that the legal successor complies with the licensing conditions pursuant to section 44, it is 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) In the event that the legal successor fails to notify the transfer of the licence or, in the case referred to in section 44 para. 1 item 4b, fails to appoint a managing director within six months of the transformation being entered in the commercial register, the successor's licence terminates upon expiry of the same time period.

Dissolution of registered partnerships

Section 55. The licence pursuant to section 43 of a registered partnership terminates upon dissolution of this partnership if the partnership is not liquidated; if it is liquidated, the licence terminates upon conclusion of the liquidation. The licence of a registered partnership does 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 56. The surrender of a licence takes 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 cannot be revoked once the authority has received them.

Measures to ensure security of gas supply

Section 57. (1) In the event that a system operator fails to carry out its duties under this Federal Act, the regulatory authority shall order it to remove the obstacles in question within a reasonable period.

(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, and except when the defaulting undertaking is a transmission system operator, the authority may instruct another system operator to carry out the duties of this operator, entirely or partially, on a temporary basis (instruction).

1. If the nature of the obstacles is such that full performance of the legal obligations imposed upon the undertaking is not to be expected; or
2. if the undertaking fails to comply with the authority's order to remove the obstacles,

the undertaking in question shall be entirely or partially prohibited from continuing operations, and another system operator shall be instructed to take over system operation on a permanent basis.

(3) The system operator instructed pursuant to para. 2 above assumes 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, the regulatory authority shall permit this system operator to use against just compensation the facilities of the undertaking affected by the prohibition insofar as this is necessary for the instructed undertaking to perform its tasks.

(5) After the official decision pursuant to para. 2 has entered into force and upon application of the instructed system operator, the authority shall expropriate against just compensation the system now operated by the instructed undertaking for the latter's benefit.

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

Part 4
System operation
Chapter 1
Distribution systems

Tasks of distribution system operators

Section 58. (1) Distribution system operators have the following tasks and duties:

1. to operate, maintain and optimally devise or expand with a view to sustainable use the facilities operated by them safely, reliably and efficiently in accordance with the technical rules, and to ensure the provision of all indispensable ancillary services;
2. to ensure the technical prerequisites necessary for operating the system;
3. to operate, maintain and expand 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 authorities and affected public in the event of a serious failure or accident;
4. to supply adequate information to the system operators or storage system operators connected to their facilities so as to ensure safe and efficient operation, coordinated expansion and interoperability of the networks and systems, and to enter into contracts on the transfer and acceptance modalities with the operator of such connected facility;
5. to keep confidential commercially 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 10;
6. to refrain from discriminating in any way whatsoever against system users or categories of system users, in particular if this would be to the benefit of their affiliated undertakings;
7. to grant access to their facilities to prospective system users in a non-discriminatory manner, at the approved general terms and conditions and the system charges set by the regulatory authority;
8. to enter into contracts with the distribution area manager so as to grant prospective system users a direct right of access to the upstream gas lines (section 27 para. 1);
9. to follow the distribution area manager's instructions in using systems to meet the system access claims of prospective system users, especially with regard to handling schedules;
10. to connect producers of gas that meets the quality requirements set in the general terms and conditions to their gas systems for the purpose of supplying customers;
11. to enter into contracts on the exchange of data with other system operators, the market area manager, the distribution area manager, the balance responsible parties, the clearing and settlement agent 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 need to comply only with the criteria of a balance group required for such purpose;
13. to coordinate their general terms and conditions for the distribution network within the market area and submit them to the regulatory authority for approval;
14. to furnish information necessary for supplier switching in line with the market rules, in order to ensure that the market area manager and the distribution area manager can comply with their obligations;
15. to collaborate in the establishment of the integrated long-term plan and the network development plan, and to realise projects from the approved integrated long-term plan that concern the facilities operated by them;
16. to comply with the quality standards for network services provided to system users and other market participants set in the ordinance issued by the regulatory authority pursuant to section 30;
17. to furnish to the regulatory authority the data required to monitor the quality standards for network services set by the regulatory authority in its ordinance pursuant to section 30 and to publish the results of such monitoring;
18. to simultaneously furnish, in electronic format, to the distribution area manager data on the current pressure and flows at key injection and withdrawal points of the distribution network;

19. 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 is at least 20 million EUR in a case of personal injury or damage to property, and where the amount insured may be limited to 40 million EUR per annum, and to furnish proof of such insurance to the regulatory authority.

(2) Distribution system operators operating one or more distribution pipeline systems listed in Annex 1 shall, in addition to para. 1 above, for these systems

1. operate, maintain and expand the systems safely, reliably and efficiently in accordance with the technical rules and pursuant to the distribution area manager's specifications, and ensure the provision of all indispensable ancillary services;
2. on their own part, carry out capacity expansions to cover demand in accordance with the approved integrated long-term plan of the distribution area manager. In the event that the distribution system operator fails to comply with this obligation, the procedure provided in section 23 applies;
3. control the systems operated by them in line with the specifications of the distribution area manager;
4. undertake metering at the borders of these systems as well as exchange data with the distribution area manager;
5. stay informed of system utilisation at all times, including, without limitation, of flows and pressure, and send such information to the distribution area manager;
6. following the specifications of the distribution area manager, define contractual maximum capacities per flow direction at each interconnection point.

(3) The balance group as per para. 1 item 12 above may be established jointly with other distribution system operators.

General obligation to connect

Section 59. (1) Distribution system operators shall enter into private-law contracts with final customers on the connection to the gas distribution system and system utilisation under the general terms and conditions for the distribution network within the area covered by their distribution system (general obligation to connect). The system user's facility shall, as a rule, be connected to the system of the distribution system operator 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, in particular as regards the avoidance of excess technical capacities, the supply quality, the economic interests of all system users, bearing in mind the sharing of system costs among all system users, and the justified interests of the system user seeking access, and to the legal requirements to be met by the distribution system operator with regard to expansion, operation and safety of its system.

(2) The general obligation to connect does 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 reached between a system operator and a final customer on whether or not the general obligation to connect applies, the provincial governor shall decide upon application of either party.

Load profiles

Section 60. (1) Without prejudice to the following provisions, distribution system operators shall meter the amounts of gas withdrawn and the load profiles of the system users and check these figures for their plausibility.

(2) The regulatory authority shall, by ordinance, oblige distribution system operators to prepare standard load profiles for system users whose facilities are connected to a distribution system with an operating pressure below a certain threshold and whose annual consumption and meter size are below a certain threshold, and to assign such profiles to the respective system users. The thresholds to be applied shall be determined with a view to the economic feasibility of the metering effort.

(3) In the interest of a uniform and comparable procedure, said ordinance shall also specify how the standard load profiles are to be prepared and adjusted as well as the number of standard load profiles. This procedure shall be easy to handle and understand. In justified cases, the distribution system operators may diverge from this procedure if necessary for geographical, climatic or technical reasons. However, load

profiles shall always be harmonised between distribution system operators so as to ensure that under the same conditions the same load profiles apply.

(4) The standard load profiles shall be submitted to the clearing and settlement agent for administrative handling (section 87). The distribution system operator may use the submitted load profiles for as long as the regulatory authority does not prohibit their use by official decision.

(5) If the distribution system operator fails to observe its obligations under the above provisions in good time, it shall be instructed by the regulatory authority by official decision to perform the assignment at its own cost and within an appropriate period to be determined by the authority.

Obligation to provide information

Section 61. The distribution system operators shall advise the final customers whose facilities are connected to their systems on energy saving measures in general and on possibilities for the conservation and efficient use of gas in particular.

Chapter 2
Transmission systems

Tasks of transmission system operators

Section 62. (1) Transmission system operators shall have the following tasks and duties:

1. to operate, maintain and expand as needed the facilities operated by them safely, reliably and efficiently in accordance with the technical rules, and to ensure the provision of all indispensable ancillary services;
2. to furnish to the system operators or storage system operators connected to their systems adequate information so as to ensure safe and efficient operation, coordinated expansion and interoperability of the systems, and to enter into contracts on the transfer and acceptance modalities with the operator of such connected facility;
3. to keep confidential commercially 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 business documents as set forth in section 10;
4. to refrain from discriminating in any way whatsoever against system users or categories of system users, in particular if this would be to the benefit of undertakings affiliated with them;
5. to control the transmission systems operated by them, respecting the coordinating function of the market area manager;
6. to conduct maintenance on the transmission systems such that the impact on system users is kept as small as possible, respecting the coordinating function of the market area manager;
7. to undertake metering at the borders of the systems as well as exchange data with the market area manager and the distribution area manager;
8. to stay informed of system utilisation at all times, including, without limitation, of flows and pressure, and to send such information to the market area manager;
9. to operate the system with due regard to the requirements of environmental protection, 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 the affected public in the event of a serious failure or accident;
10. to process applications for system access without delay and grant system access to prospective system users in a non-discriminatory manner, at the approved general terms and conditions and at the system charges set by the regulatory authority;
11. to collaborate in the market area manager’s establishment of a common forecast of capacity needs and utilisation in the market area’s network over the next ten years;
12. to enter into contracts with the distribution area manager at the market area’s internal interconnection points to the distribution network to grant prospective (distribution) system users access to the virtual trading point pursuant to section 31 para. 3;
13. 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 is at least 20 million EUR in a case of personal injury or damage to property, and where

the amount insured may be limited to 40 million EUR per annum, and furnish proof of such insurance to the regulatory authority;

14. to enter into contracts on the exchange of data with other system operators, the market area manager, the distribution area manager, the balance responsible parties and other market participants in accordance with the market rules;
15. to contribute to the establishment of the integrated long-term plan together with the distribution area manager;
16. to comply with the quality standards for network services defined in the ordinance issued by the regulatory authority pursuant to section 30;
17. to furnish to the regulatory authority the data required to monitor the quality standards for network services set by the regulatory authority in its ordinance pursuant to section 30 and to publish the results of such monitoring;
18. to provide the market area manager with data in electronic format on current injection and withdrawal capacity at the entry and exit points of the market area;
19. to expand capacity so as to cover demand in accordance with the approved network development plan;
20. to establish each year a network development plan or collaborate in the establishment of the coordinated network development plan and to submit this plan to the regulatory authority for its approval;
21. to establish a special balance group for determining system losses and own consumption, which group needs to comply only with the criteria of a balance group required for such purpose. This balance group may be established jointly with other system operators;
22. to cooperate with ACER and the regulatory authority to ensure the consistency of regional regulatory frameworks with the aim of creating a competitive internal market in gas;
23. to have at their disposal one or more integrated system(s) at regional level covering two or more member states for capacity allocation, congestion management and for verifying the safety of the network;
24. to coordinate at regional and supra-regional level the calculation of cross-border capacity and its allocation in keeping with the stipulations of Regulation (EC) No 715/2009;
25. to coordinate market transparency measures across borders;
26. to collaborate with other transmission system operators to establish a regional security of supply assessment and outlook;
27. to collaborate with other transmission system operators and exchange data with them to establish a regional network development plan;
28. to coordinate their general terms and conditions for the transmission network within the market area and submit them to the regulatory authority for approval;
29. to conclude contracts on cooperation with the market area manager which enable the latter to perform its tasks;
30. to implement the rules on the settlement of imbalance charges in the transmission network;
31. to match the energy nominated for entry and exit by system users with the corresponding nominations of system users with upstream and downstream transmission system operators.

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

Coordinated network development plan

Section 63. (1) Every year, the market area manager shall, in coordination with the transmission system operators, with due regard to the long-term plan of the distribution area manager and after consultation of all relevant stakeholders, establish a coordinated network development plan based on current and forecast supply and demand. The minimum planning period is ten years.

(2) The transmission system operators of a market area shall jointly submit the coordinated network development plan to the regulatory authority for approval. The market area manager is a party to this approval procedure. Prior to submitting the network development plan for approval, the market area manager shall consult all relevant market participants. This shall be done as part of the consultation on the integrated long-term plan under section 22 para. 5a. The results of the consultation shall be published.

(3) The network development plan shall in particular

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

(4) The network development plan shall in particular have the aim of

1. meeting the demand for line capacity to supply final customers while considering emergency scenarios;
2. ensuring a high degree of availability of line capacity (security of supply of the infrastructure);
3. covering transport needs;
4. complying with the obligation to meet the infrastructure standard according to Article 5 Regulation (EU) No 2017/1938 in the market area; and
5. integrating the energy sector by linking the energy carriers and sectors with each other, considering that gases are high-quality energy carriers.

(5) When elaborating the network development plan, reasonable assumptions about the evolution of production, supply, consumption and exchanges with other countries shall be made, taking into account the integrated network plan under section 94 Renewable Energy Expansion Act, the investment plans for regional networks pursuant to Article 12(1) Regulation (EC) No 715/2009 and Union-wide networks pursuant to Article 8(3)(b) Regulation (EC) No 715/2009, the integrated long-term plan, the investment plans for storage and LNG regasification facilities, the network development plan under section 37 Electricity Act 2010, and the results of the load flow simulations pursuant to section 34 para. 2. The network development plan shall contain efficient measures to guarantee the adequacy of the system and ensure a high degree of availability of capacity (security of supply of the infrastructure).

(6) In drawing up the network development plan, particular consideration shall be given to technical and economic expediency, reaching climate neutrality by 2040, the interests of all market participants, and consistency with the integrated network plan under section 94 Renewable Energy Expansion Act, the Union-wide network development plan, and the integrated long-term plan.

(7) All market participants shall make available within an appropriate period of time to the market area manager or, as applicable, the transmission system operator, upon its written request any data necessary for drawing up the network development plan, including but not limited to fundamental data, meter readings and technical, economic and other project documents on planned pipeline and storage systems to be constructed, expanded, altered or operated, if these have any effects on the line capacity of the transmission network. In addition to such data, the market area manager or, as applicable, the transmission system operator, may draw on other data such as are useful for the network development plan.

(8) In substantiating the application for approval of the network development plan, especially in the case of competing projects for the construction, expansion, alteration or operation of systems, the technical and economic reasons for approving or rejecting individual projects shall be explained and, upon the authority's request, the relating documents shall be provided to the authority.

Approval of the network development plan

Section 64. (1) The regulatory authority approves the network development plan by official decision. For the network development plan to be approved, the transmission system operators must prove that the investments listed are technically necessary, are adequate and are economically feasible, and the targets set in the integrated national energy and climate plan pursuant to Article 3 regulation (EU) No 2018/1999 must have been taken into account. Approval may be granted subject to conditions to the extent that such is necessary to meet the objectives of this Act.

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

(3) In particular, the regulatory authority shall verify whether the network development plan covers the investment needs identified in the consultation to their full extent, whether the network development plan is consistent with the integrated network plan pursuant to section 94 Renewable Energy Expansion Act, with the network development plan under section 37 Electricity Act 2010, and with the Union-wide network development plan pursuant to Article 8(3)(b) Regulation (EC) No 715/2009, and whether the measures contained in the network development plan appear suitable to fulfil the conditions listed in section 63 paras 3 to 6. If there are doubts about the consistency of the network development plan with the integrated network plan under section 94 Renewable Energy Expansion Act, with the network development plan under section 37 Electricity Act 2010 or with the Union-wide 10-year network development plan, the regulatory authority shall consult ACER.

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

(5) As long as a network development plan has been submitted but not yet approved, the regulatory authority may request the transmission system operator to change it at any time to bring it into line with the targets from the integrated national energy and climate plans pursuant to Article 3 Regulation (EU) No 2018/1999. Requests for adjustments to the latest approved network development plan are admissible if significant changes in the underlying situation cause the need for a reassessment.

Monitoring the network development plan

Section 65. (1) The regulatory authority shall monitor and evaluate the implementation of the network development plan and may request the transmission system operators to adjust such plan.

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

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

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

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

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

(5) When the regulatory authority makes use of its powers under para. 2 items 1 to 3, the adequate costs of the investments in question shall be included in accordance with section 82.

Reverse flows

Section 66. The proposals and requests for exemptions of transmission system operators pursuant to annex III to Regulation (EU) No 2017/1938 are subject to approval by the regulatory authority. Approval may be granted subject to conditions or be limited in time to the extent that such is necessary to meet the objectives of this Act.

Technical agreements regarding the operation of transmission lines

Section 66a. Gas companies shall notify any technical agreements regarding the operation of transmission lines that relate to third countries to the regulatory authority.

Transmission system operation agreements with third countries

Section 66b. (1) Insofar as the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology is authorised to conclude inter-ministerial agreements pursuant to Article 66 para. (2) Federal Constitutional Law, she may conclude agreements with third countries on the operation of transmission lines.

(2) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall inform the European Commission five months before starting negotiations with a third country on the operation of a pipeline or an upstream pipeline system.

(3) Such information shall particularly contain details that enable an assessment under Article 49b(3) Directive (EU) 2019/692. Negotiations with the third country may only start once the European Commission has given its approval.

(4) During the negotiations, the European Commission shall be kept informed of the progress and results achieved with respect to changing, expanding, adjusting, extending or concluding an agreement.

(5) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall submit the agreement to the European Commission before signing it. The agreement may only be signed after the European Commission has given its approval.

(6) Entry into force and any future amendments to the agreement shall be notified to the European Commission.

Chapter 3
Common provisions

Interconnection agreements

Section 67. (1) The system operators shall conclude uniform interconnection agreements with each other for all interconnection points between their systems. Such interconnection agreements at interconnection points shall be concluded in consultation with and following the specifications of the market area manager and the distribution area manager, as applicable. The same applies for interconnection agreements with system operators in other countries and the operators of storage or production facilities. Inasmuch as such agreements with system operators in other countries or operators of storage or production facilities impact on distribution network control, the corresponding contracts shall be concluded following the specifications of the distribution area manager.

(2) Interconnection agreements shall regulate, in line with the aims of this Act, the technical terms for the interconnection of the systems. Interconnection agreements shall include the following arrangements as a minimum:

1. technical specifications for the operation of the interconnection point and the systems interconnected at such point, including, but not limited to, gas pressure and quality;
2. a list of the data necessary for the technical control of the interconnection point;
3. data and information exchange procedures;
4. procedures for handling any deviations, in particular in the case of compressor station breakdowns, metering inaccuracies and differences between nominated and allocated gas quantities;
5. procedures and conditions for the mutual provision of linepack pursuant to para. 3.

The interconnection agreements shall be notified to the regulatory authority. The regulatory authority may request by official decision that the interconnection agreements be amended where they do not conform with the provisions of this Act.

(3) Each transmission system operator shall establish operational balancing accounts at the interconnection points for the adjoining transmission system operators and the downstream distribution system operators, to enable use of each other’s linepack. Such operational balancing accounts shall be as large as is technically possible and economically feasible. The limits of the operational balancing accounts at an interconnection point may differ for different systems.

(4) In cases of interconnection points at which schedules or nominations must be submitted, the contracts shall be designed so that system users can normally rely on them being exercised precisely.

Title 4
Virtual trading point

Tasks and obligations of the operator of the virtual trading point

Section 68. (1) The virtual trading point is a notional point in a market area at which market participants can trade gas even without having the right to system access for the market area. Access to the virtual trading point is subject to the operational rules of the market area manager and the transmission system operators, in line with the market rules. The virtual trading point is not a physical entry or exit point but enables gas buyers and sellers to purchase and sell gas without the need to book capacity.

(2) The market area manager shall designate an operator for the virtual trading point and notify such designation to the regulatory authority.

(3) The operator of the virtual trading point is independent, especially from the vertically integrated gas company, in terms of its legal form, organisation and decision-making power. In addition,

1. it takes the legal form of an *Aktiengesellschaft* (public limited company under Austrian law) and has a share capital of at least 2 million EUR;
2. the persons responsible for the management shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of the vertically integrated gas company or with its controlling shareholders;
3. the operator of the virtual trading point shall inform the regulatory authority without delay of the identity of and the conditions governing the function as well as term and termination of office of the persons responsible for the management, and the reasons for their nomination or termination of their contract.

(4) For the purpose of concentrating gas trade at the virtual trading point, the operator of the virtual trading point has the following responsibilities:

1. to autonomously operate the virtual trading point in cooperation with the market area manager;
2. to offer commercial hub services, including, without limitation, title tracking to prove the transfer of ownership rights in gas at the virtual trading point;
3. to electronically record and settle energy quantities from trades at the virtual trading point;
4. to continuously handle trade nominations (168 hours per week) regarding market participants at the virtual trading point;
5. to provide for an electronic back-up/back-down platform to maintain continuous handling of trades as much as possible in cases of under-supply or over-supply to the virtual trading point;
6. to provide for supra-regional interconnection with adjoining market areas, in cooperation with neighbouring system operators;
7. to cooperate with exchanges and clearing houses to enable settlement of exchange nominations relating to the virtual trading point on behalf of the clearing house;
8. to provide for a supra-regional balancing platform, in cooperation with the system operators concerned and in line with Union law.

(5) Furthermore, the operator of the virtual trading point may offer all other services and fulfil all functions which are necessary for and conducive to the operation of the virtual trading point in line with this Act, as long as the tasks listed in para. 4 above are not impaired thereby.

(6) The operator of the virtual trading point shall actively consult market participants and the regulatory authority. In addition, the regulatory authority may request the operator of the virtual trading point to provide services a demand for which is expressed during these consultations by the market participants. Such request is subject to the consistency of such services with the international standards of EASEE-gas, ACER, ENTSOG and the European Federation of Energy Traders (EFET), and their economic and legal feasibility.

(7) The operator of the virtual trading point shall comply with the following obligations and conditions:

1. The operator of the virtual trading point does not discriminate against potential and actual users of its services, in particular if this would be to the benefit of vertically integrated gas companies.
2. To enable a factual assessment of the legal compliance of the operation of the virtual trading point, the operator of the virtual trading point keeps records of the operation and permits the regulatory authority, upon its substantiated request, to inspect these records.

3. Without prejudice to its statutory obligation to disclose information, the operator of the virtual trading point preserves the confidentiality of any commercially sensitive information and of any business or trade secrets of which it obtains knowledge in carrying out its business.
4. Unless otherwise provided in other statutory obligations, the operator of the virtual trading point particularly ensures the strict confidentiality of bilateral price information. Special confidentiality obligations apply regarding its shareholders.
5. The shareholders of the operator of the virtual trading point refrain from any actions which would impair or endanger the execution of the obligations of the operator of the virtual trading point. Any contractual relations between the operator of the virtual trading point with contractors or service providers include the requisite confidentiality clauses.
6. In addition, the operator of the virtual trading point takes the appropriate compliance actions to ensure that confidentiality is also maintained with regard to its functions in exchange and OTC trades.
7. The persons responsible for OTC trading at the operator of the virtual trading point are not responsible for exchange trading at the same time. The area of confidentiality "middle office" established by the operator of the virtual trading point comprises all OTC activities and physical hub services, while the area of confidentiality "market operations" ensures compliance with the statutory requirements for tasks concerning gas exchanges. The operator of the virtual trading point appoints a compliance officer to monitor compliance with these stipulations. This compliance officer submits their annual report to the regulatory authority.
8. In the interest of transparency, the operator of the virtual trading point regularly publishes anonymous and aggregate general market information on the internet. It also provides any information of which it obtains knowledge and which might have an impact on the market in a non-discriminatory manner and without undue delay, in an appropriate format.
9. Sections 9 to 11 also apply to the operator of the virtual trading point.

Title 5
System charges

Part 1
Review of system charges

Allowed cost

Section 69. (1) The regulatory authority shall regularly ex officio establish the allowed cost, targets and volumes transported by distribution system operators by official decision.

(2) The regulatory authority shall, either upon application of the transmission system operator or regularly ex officio, approve the methodologies submitted by the transmission system operator pursuant to section 82 by official decision. Such approval shall be granted for a limited time.

(3) Prior to taking a final decision on the allowed cost, the Federal Economic Chamber, the Federal Chamber of Agriculture, the Federal Chamber of Labour and the Austrian Trade Union Federation shall have the opportunity to comment. The regulatory authority shall provide information to these bodies' representatives and allow them to inspect the relating documents. Any commercially sensitive information which the representatives obtain knowledge of in exercising their right to inspection shall be treated confidentially. The Federal Economic Chamber and the Federal Chamber of Labour may appeal against the decisions of the regulatory authority pursuant to paras 1 and 2 with the *Bundesverwaltungsgericht* (federal administrative court) if the stipulations of sections 73 to 82 have been violated, and in a next step to the *Verwaltungsgerichtshof* (administrative court of appeal) pursuant to section 133 Federal Constitutional Law.

System charges and compensation payments

Section 70. (1) The regulatory authority shall set the system charges for the distribution network by ordinance, employing a cost cascading mechanism as described in section 83 and based on the allowed cost and the volumes transported established in accordance with sections 79 et sqq. The system charges for the transmission network calculated by applying the methodology referred to in section 82 shall be enacted by the regulatory authority by ordinance.

(2) Where necessary, the ordinance shall set compensation payments among system operators of the same network or market area. The methodology pursuant to section 82 shall also include the calculation method for the compensation payments between transmission system operators.

(3) Prior to issuing the ordinance, a consultation shall take place to enable particularly the concerned system operators, system users and the representative bodies listed in section 69 para. 3 to comment within an appropriate period of time.

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

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

Regulatory account

Section 71. (1) Any differences between the actual revenues earned and the revenue assumptions from the Gas System Charges Ordinance shall be offset when establishing the allowed cost for the next Gas System Charges Ordinances.

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

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

(4) If an official decision establishing allowed costs has been amended, the allowed costs for the next tariff periods shall take into account the corrected costs for the current tariff period.

(5) Should the *Verfassungsgerichtshof* (constitutional court) revoke a Gas System Charges Ordinance or an ordinance issued pursuant to sections 23 to 23c Gas Act, FLG I no 121/2000 as amended by the Federal Act in FLG I no 148/2002, or should the constitutional court find that an ordinance was in conflict with the law and should this entail decreased or increased revenues, these shall be taken into account in establishing the future allowed costs over an appropriate period of time.

(6) The amounts from the regulatory account shall be recorded as assets/liabilities in the annual accounts. The items shall be valued in line with the accounting rules in place.

(7) Paras 3 to 5 apply mutatis mutandis to official decisions pursuant to section 82.

Part 2
Components of the system charges

Setting of system charges

Section 72. (1) For the services provided by the system operators in exercising the duties imposed upon them, the system users shall pay system charges. The system charges shall respect the principles of equal treatment of all system users, facilitation of efficient gas trade and competition, cost reflectiveness and, to the greatest possible extent, cost causality and shall ensure that gas is efficiently used and that the amount of energy distributed or transported is not unnecessarily increased. The system charges for the distribution network are made up of the components listed in para. 2 items 1 to 5. Any charges over and above the ones listed in para. 2 items 1 to 5 are not admissible, save as otherwise provided in other provisions of this Federal Act. The system charges for the transmission network are made up of the components listed in para. 2 items 1 to 3. Levying charges as part of market-oriented capacity allocation procedures is admissible.

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

1. a system utilisation charge;
2. a system admission charge;
3. a system provision charge;
4. a metering charge; and
5. supplementary service charges.

The regulatory authority shall set the distribution system charges listed above under items 1, 3, 4 and 5, with the charges under items 1, 3 and 5 being fixed rates, by ordinance. For the charge under item 4, a ceiling shall be set. The rates for the transmission system charges listed under items 1 to 3 at the entry and exit points concerned shall be determined applying a methodology to be approved by the regulatory authority pursuant to section 82 upon a proposal by the transmission system operators and shall be enacted by ordinance in accordance with section 70. The rates shall be stated in Euro and cents per unit.

(3) In its system charges ordinance for users of the distribution network, the regulatory authority shall determine rates which make reference to the relevant entry and exit points, and to the system area and the network level to which the facility is connected. The ordinance shall list the relevant entry and exit points of the distribution network. It shall also contain rules on the allocation of facilities to network levels and on billing modalities.

System utilisation charge at distribution level

Section 73. (1) The system utilisation charge is designed to compensate the system operator for the cost of constructing, expanding, maintaining and operating the system, including the costs arising in connection with installing and operating meters as well as their calibration and meter reading at entry and exit points, except at customer facilities; it also covers the prorated cost for the distribution area manager according to section 24. The regulatory authority may design the system utilisation charge to reflect time of use and/or load, as long as rate structures are kept uniform. There may be different rates for firm and interruptible capacity bookings as long as the probability of the transport being interrupted is reflected adequately. The capacity part of the system utilisation charge may be calculated with reference to a one-year period and set as a flat rate. If the billing period is shorter or longer than one year, then this flat rate shall be prorated on a daily basis. A minimum capacity and fees for excess capacity use may be defined. The system utilisation charge may differ from the above if the system is used for less than one year or on an intermittent basis during part or all of the time.

(2) The distribution system utilisation charge is payable by final customers per metering point at the network level concerned and by system operators in network areas per interconnection point. The system utilisation charge at network level 1 shall not be lower than that at network level 2. It shall have a commodity and a capacity part and be billed for at regular intervals. The basis for the capacity part of the system utilisation charge shall be derived from either the arithmetic mean of the highest hourly average loads on each day or in each month of the billing period or the contracted maximum capacity.

(3) The distribution system utilisation charge at interconnection points between the network areas according to section 84 para. 2 item 3 shall reflect the quantity of energy and/or the contracted maximum capacity and is payable by the system operators per interconnection point and/or shall be levied by way of cost cascading in accordance with section 83 para. 3 per network area.

(4) The distribution system utilisation charge at market area borders is payable by injecting and withdrawing parties and shall reflect the contracted capacity per entry and exit point.

(5) The distribution system utilisation charge for exits from the distribution network into storage is payable by all storage system operators that manage storage facilities as a uniform rate for contracted capacity at all storage-related exit points.

(6) The distribution system utilisation charge for injecting gas from production shall reflect the contracted capacity per entry point and is payable by the gas producer.

(7) Where consumption must be calculated for billing purposes, the system operator shall make such calculations for metering points without load meters in a transparent and understandable manner and exclusively based on the standard load profiles in force. If the results of the calculation differ from actual consumption, the bill shall be corrected free of charge.

(8) No system utilisation charge is due for gas that is withdrawn for the purpose of blending with hydrogen and that is then re-injected.

System utilisation charge at transmission level

Section 74. (1) The system utilisation charge is designed to compensate the system operator for the cost of constructing, expanding, maintaining and operating the system, including the costs arising in connection with installing and operating meters as well as their calibration and meter reading; it also covers the prorated cost for the market area manager. Transmission-level system utilisation charges shall be set separately to reflect the contracted capacity per entry/exit point in the market area's transmission network on the one hand and that per internal interconnection point into the distribution network on the other; the

former charge is payable by injecting/withdrawing parties, the latter by the distribution area manager. There shall be rates for firm and interruptible capacity bookings. Capacity with limited allocability and flow commitments shall be taken into account when setting the rates. The charges for contracts with a term of more than one day shall not be substantially lower than the sum of the charges for daily contracts for this term. A minimum capacity and fees for excess capacity use may be defined.

(2) The transmission system utilisation charge at storage-related exit points from the transmission network shall reflect the contracted capacity per storage-related exit point and is payable by the storage system operators that manage storage facilities.

(3) The transmission-level system utilisation charge for injecting gas from production shall reflect the contracted capacity per entry point and is payable by the gas producer.

System admission charge

Section 75. (1) The system admission charge compensates the system operator for all reasonable cost, considering normal market prices, directly arising from connecting a facility to a system for the first time or altering a connection to account for a system user's increased connection capacity. The system admission charge is a one-off payment; the system user shall be informed of how it is made up in a transparent and understandable manner. In cases where connection costs are borne by system users themselves, the system admission charge shall be reduced accordingly.

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

(3) When connecting existing biogas facilities that produce and process renewable gas in line with the requirements and the applicable technical rules pursuant to section 7 para. 1 item 53 Gas Act 2011 and that have a connection ratio of up to 60 m/m3 CH4 equivalent/h agreed energy quantity to be injected into the gas network each year, the system operator shall bear the costs for the following components:

1. system admission for the injection of renewable gas;
2. metering of quantities;
3. quality assurance;
4. any odorisation;
5. any compressor stations or lines necessary for continuous injection.

These costs shall be allowed when setting the system charges in line with title 5 of this Federal Act. If several facilities apply for a joint connection, their connection ratios may be summed up. Connection costs for new lines to be constructed beyond 10 km shall be borne by the injecting party. This threshold does not apply if several facilities apply for a joint connection.

(4) When connecting new facilities that produce and process renewable gas in line with the requirements and the applicable technical rules pursuant to section 7 para. 1 item 53 Gas Act 2011 and that have a connection ratio of up to 60 m/m3 CH4 equivalent/h agreed energy quantity to be injected into the gas network each year, the system operator shall bear the costs for the following components:

1. system admission for the injection of renewable gas;
2. metering of quantities;
3. quality assurance;
4. any odorisation;
5. any compressor stations or lines necessary for continuous injection.

These costs shall be allowed when setting the system charges in line with title 5 of this Federal Act. If several facilities apply for a joint connection, their connection ratios may be summed up. Connection costs for new lines to be constructed beyond 3 km shall be borne by the injecting party. This threshold does not apply if several facilities apply for a joint connection.

System provision charge

Section 76. (1) The system provision charge, payable by system users at the time of first connection or increase of contracted maximum capacity as a one-off payment reflective of capacity, covers the past and future network development measures necessary to enable such connection. It shall reflect the agreed extent of system utilisation. It is a one-off payment billed for at the time of signature of a system access contract or increase of the contracted maximum capacity.

(2) If the contracted maximum capacity is contractually reduced for a continuous period of at least three years or if the system user's connection has been decommissioned for three years, the system

provision charge defrayed shall upon the user's request within 15 years of payment be reimbursed in proportion to the utilisation reduction. Reimbursement of the system provision charge payable for the minimum capacity is not possible.

(3) If the maximum capacity contracted for customer installations in existence on 31 December 2008 is reduced, no system provision charge is payable for raising the contracted maximum capacity to the original level again at a later point in time.

(4) The system provision charge shall reflect the average costs incurred in constructing new and expanding existing networks.

(5) The system provision charges actually collected shall be reversed over an appropriate period of time, and such reversal disaggregated by network levels, such that the system utilisation charge is reduced.

(6) The transmission-level system provision charge shall be determined separately, as part of the methodologies pursuant to section 82. Paras 2 to 5 apply to the distribution network only.

Metering charge

Section 77. (1) The metering charge payable by system users compensates the system operator for the costs directly related to the installation and operation of metering equipment, including calibration and meter reading. Metering services related to injection into or withdrawal from storage facilities and to injection from production are covered by the system utilisation charge pursuant to section 73 paras 5 and 6.

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

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

(4) Meters shall be read at least annually, except in the case of load meters, which shall in any case be read at least monthly, and in the case of smart meters, which shall be read in accordance with section 129 para. 1. The system operator shall carry out meter reading itself at least once every three years. If the reading and transmission of the metering data are performed by the system user, the system operator shall check the plausibility of the data. Calculation of the metering data is only permissible if the system user has not made use of the option of self-reading and transmitting the data to the system operator and the system operator has not been able to perform meter reading for a reason within the system user's responsibility.

Supplementary service charges

Section 78. System operators may bill system users for services provided in addition to those covered by the charges listed in section 72 paras 1 to 4 if such services are directly caused by the system users themselves. The regulatory authority shall set appropriate amounts for supplementary service charges by ordinance, taking due account of the principles in section 72 para. 1 and social acceptability. The charges so set shall include, without limitation, charges for payment reminders and for alterations of the metering equipment caused by the system user. The charge for disabling a metering point in accordance with section 127 para. 3 and re-establishing system access shall not exceed 30 EUR in total.

Exemptions for research and demonstration projects

Section 78a. (1) The regulatory authority may issue official exemption decisions with system charges for research and demonstration projects that differ from the provisions under title 5 or from ordinances issued under sections 70 and 72, if such projects fulfil the conditions hereunder.

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

1. system integration of renewable energy technologies, storage technologies or energy efficiency technologies, for instance by way of new and innovative business models;
2. replacing fossil fuels with renewable fuels and the latter's technically and economically optimised injection into the grid;
3. digitalisation of the energy system and smart energy use;
4. strengthening the acceptance of the energy transition and the relating transformation processes among the public;
5. improvement of energy transformation or storage, and implementation of sector coupling and sector integration by realising the necessary conversion processes in the requisite facilities;

6. increasing flexibility potential in the market or in the network;
7. increasing efficiency or security of system operation or energy supply, in particular by providing balancing services or operating the system to contribute to operational security;
8. simplification or reduction of the overall need for grid expansion by way of alternative concepts for the use of existing network infrastructure.

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

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

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

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

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

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

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

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

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

Part 3

Principles for establishing allowed costs and transported volumes

Establishing the allowed cost for distribution system operators

Section 79. (1) The allowed cost from which the system charges are derived shall reflect actual costs and shall be determined for each network level separately. Costs which are reasonable in their origin and amount shall be allowed. Due consideration shall be given to network security, security of supply that integrates quality criteria, market integration and energy efficiency. The allowed costs may be determined on the basis of the average costs of a comparable, rationally operated company. Appropriate allowances for investments shall be made, based on the historical cost and cost of capital involved. Extraordinary

expenditure or revenues may be spread over several years. The costs arising from the efficient implementation of new technologies shall be appropriately reflected in the system charges, while respecting the principles described and exploiting synergies. The distribution system operator's costs arising from the transmission-level system utilisation charge pursuant to section 74 shall be allowed as network level 1 cost.

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

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

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

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

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

1. the costs for the use of directly or indirectly connected systems in Austria, as well as the distribution area manager's costs;
2. community levies for the use of public land;
3. the costs for covering system losses by way of a transparent and non-discriminatory procurement procedure;
4. the costs arising from statutory rules to be followed in cases of *Ausgliederung* (a type of de-merger under Austrian law) which existed on the merits of the situation at the time of full opening of the gas market on 1 October 2002. The Regulation Commission shall issue an ordinance defining these cost types more precisely no later than three months after entry into force of this Act.

(7) The costs from which the system utilisation charge pursuant to section 73 for each network level is derived shall be determined based on the total costs identified less the metering charges and supplementary service charges collected and less the prorated reversal of the system provision and system admission charges recorded as liabilities. Also, the total cost identified shall be reduced by any support payments and subsidies received.

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

Cost of capital of distribution system operators

Section 80. (1) The cost of capital comprises the reasonable cost of interest on debt and equity, taking capital market conditions and income tax expense into account. Any subsidised financing schemes shall be reflected appropriately.

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

(3) The rate of return shall be derived from the weighted average cost of capital for a normal capital structure and the income tax burden. The normal capital structure shall reflect overall industry aspects as well as significant factors for individual companies which undercut the equity capital share by more than

10%. A market risk premium for equity and debt, the capital market conditions and a risk-free interest rate shall be taken into account. The latter may be derived from a multi-year average.

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

Volumes transported by distribution system operators

Section 81. (1) The volumes transported as reflected in the system charges shall be derived from the quantities injected and withdrawn in kWh, the arithmetic mean of the highest hourly average loads calculated or metered in each month of the period under review in kWh/h and the number of metering points at each network level during the most recent available business year. The commodity and capacity rates as well as the number of metering points may be adjusted for any considerable current or expected volume trends and structural developments which impact the gas market.

(2) The capacity cascaded at each network level shall be derived from the highest hourly load, the total capacity billed for or the total contracted maximum capacity.

Allowed cost and volumes transported by transmission system operators

Section 82. (1) The rates for transmission system operators shall be calculated applying a methodology which is subject to approval by the regulatory authority by official decision and must comply with the requisites of Article 13 Regulation (EC) No 715/2009. The regulatory authority's official decision shall also state the cost and volume to be used in calculating the rates. Transmission system operators shall be incentivised to increase efficiency and execute the necessary investments in an appropriate manner. In establishing the calculation method, reference shall be made to the handling of proceeds from market-oriented capacity allocation procedures. Section 80 applies mutatis mutandis. Upon request of the regulatory authority, the methodology shall be adjusted or redesigned. The rates resulting from the application of the approved methodology shall be enacted by ordinance of the regulatory authority and published on the internet.

(2) The volume transported shall be established based on the contractually committed capacity as compared to the technical maximum capacity.

(3) Proof of the costs calculated by the transmission system operators by applying the methodology shall be furnished to the regulatory authority and substantiated by providing all underlying documentation. The volume data shall be proven and substantiated by furnishing adequate documentation. The allowed cost and the volume data shall be approved by official decision if they have been calculated in line with the methodology. If a transmission system operator fails to comply with the methodology in calculating the costs, the regulatory authority shall establish the allowed cost anew.

(4) Approval by official decision shall be granted if the stipulations of paras 1 and 2 above have been met and the rates resulting from the application of such methodologies do not significantly exceed the average of published transmission charges for comparable transport services through comparable pipeline systems in the European Union, which information shall be submitted to the authority together with the methodology to be approved.

Part 4

System charges review

Tariff setting and cost cascading

Section 83. (1) The distribution-level system charges shall make reference to the network area and network level at which an installation is connected and are payable per metering/entry/exit point. The charges build on the cascaded allowed cost and the identified transported volume.

(2) Where several system operators are active within one network area, the costs and volume identified for each of these system operators are summed up at each network level for the purpose of setting the system charges. There shall be compensation within the network area for any differences between the allowed costs and the revenue resulting from the transported volume identified for each system operator. Compensation payments among the system operators active in the same network area shall be set in the ordinance issued

pursuant to section 72 para. 3. Such compensation payments shall be derived from the allowed cost and volume transported which are also used to set the system charges.

(3) The system utilisation charge defined in section 73 shall be based on a system operator's network level 1 costs. The latter costs, considering the revenues collected at this network level 1, are cascaded to levels 2 and 3. The costs at network level 2, considering the revenues at this network level 2, are cascaded to level 3. The cost cascading method to be applied shall be defined by the regulatory authority by ordinance pursuant to section 72 para. 3. This method shall provide for an adequate allocation of the costs in each network area in accordance with capacity (net, kWh/h) and commodity (gross, kWh).

Network levels and network areas

Section 84. (1) The system charges shall refer to the following network levels:

1. the transmission systems listed in Annex 2;
2. the distribution systems at network level 1 listed in Annex 1;
3. distribution systems with a pressure >6 bar;
4. distribution systems at network level 3 with a pressure ≤6 bar.

(2) The network areas are:

1. for the transmission systems listed in Annex 2: the transmission systems listed in Annex 2.
2. for network level 1:
   a) eastern Austria: the distribution systems listed in Annex 1; also included are the lines which connect network areas or market areas. The continuation of a distribution line is included in level 1 where this leads to a new connection to another distribution or transmission system or to another market area;
   b) Tyrol: those segments of all lines in Tyrol that cross market area borders;
   c) Vorarlberg: the cross-border segment of the line from Germany to Vorarlberg;
3. for the other network levels, the areas covered by the systems of the undertakings listed in Annex 3 at the network levels pursuant to para. 1 items 2 to 4 above; the systems of several system operators which are domiciled in the same federal province jointly form one network area.

(3) The lists of transmission systems, distribution systems and gas companies in Annexes 1, 2 and 3 shall be adjusted to reflect the actual situation by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology by ordinance. Prior to issuing such ordinance, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall obtain an opinion of the regulatory authority.

Title 6
Imbalance settlement

Part 1
Clearing and settlement agency

Nomination

Section 85. (1) Following a transparent selection procedure that respects the principles of free and fair competition and of equal treatment of all applicants, the regulatory authority nominates a clearing and settlement agency for transactions and formation of imbalance prices in the distribution network for each market area. In the interests of efficiency and cost saving, nominating an undertaking for several market areas is admissible.

(2) The undertakings are nominated by official decision that may specify conditions, time limits and stipulations to the extent that such is necessary for meeting the objectives of this Act. (2) Nominations shall be made if it is expected that the designated undertaking is capable of efficiently, safely and reliably exercising the tasks according to section 87 and if it fulfils the conditions in section 86. Following the nomination, it shall be ensured that the market participants' administrative effort for registering is minimised and the imbalance settlement rules at transmission and distribution level are harmonised in accordance with section 41 para. 4.

Preconditions for nomination

Section 86. Nomination pursuant to section 85 is only possible if

1. the nominated undertaking is able to perform the duties of a clearing and settlement agent economically, effectively and with neutrality towards market players; duties are deemed to be performed economically if the settlement agency's costs are established on the basis of the procedures and principles to be used in setting the system charges;
2. the nominated undertaking is independent of any vertically integrated gas company, in terms of its legal form, organisation and decision-making power;
3. the nominated undertaking takes the legal form of an *Aktiengesellschaft* (public limited company under Austrian law) and has a share capital of at least 3 million EUR;
4. the persons holding a qualified stake in the nominated undertaking meet the conditions to be asked in the interest of ensuring sound and careful management of the undertaking;
5. the seat and head office are located in the market area concerned and regional branches can be set up in market areas where the undertaking is not domiciled;
6. the nominated undertaking has at least two board members and its statutes expressly exclude the power of representation, general power of commercial representation or commercial power of attorney for the entire operation to be granted to a single person;
7. none of the board members is disqualified within the meaning of section 13 paras 1 through 6 Industrial Code 1994;
8. none of the board members also works full-time in another job outside the undertaking which could cause a conflict of interest;
9. board members of the nominated undertaking have no professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of a vertically integrated gas undertaking or with its controlling shareholders;
10. based on their education and training, the board members of the nominated undertaking are technically qualified and have acquired the characteristics, skills and experience required for operating the undertaking. For a board member to be technically qualified means that they have sufficient theoretical and practical knowledge of settling imbalances and management experience; a manager of the clearing and settlement agent shall be assumed to be qualified if they can furnish proof of at least three years' experience in an executive position in the field of system charges review or auditing;
11. the available settlement system meets the requirements of a state-of-the-art settlement system.

Tasks

Section 87. (1) The clearing and settlement agent has the following responsibilities:

1. to manage the balance groups in the distribution network in terms of organisation and financial settlement;
2. to calculate, allocate and invoice imbalance charges in the distribution network;
3. to enter into contracts
   a) with balance responsible parties, system operators, gas traders, producers and storage system operators as well as the distribution area manager, the operator of the virtual trading point and the market area manager;
   b) with bodies for data exchange with a view to preparing an index;
   c) with the operator of the virtual trading point on the disclosure of data;
   d) with gas traders, producers and storage system operators on the disclosure of data;
   e) with gas companies or storage system operators or other suitable persons active in the upstream pipeline system abroad on correcting imbalances in the network areas of Tyrol and Vorarlberg (para. 4 below);
4. to instate market makers to ensure security of supply in line with paras 6 and 7.

(2) The management of balance groups in the distribution network in terms of organisation and financial settlement includes, without limitation,

1. assigning identification numbers to balance groups, in coordination with the market area manager;
2. providing IT interfaces;
3. charging the clearing fee (section 89) to the balance responsible parties;

4. receiving the meter readings from the distribution system operators in a predefined format, analysing them and submitting them to the market participants and balance responsible parties concerned in line with the provisions in the contracts;
5. receiving schedules from the balance responsible parties and submitting them to the market participants concerned in line with the provisions in the contracts;
6. exercising the credit check of the balance responsible parties with a view to their activities in the distribution network;
7. cooperating in the preparation and adjustment of rules for supplier switching, clearing and settlement;
8. exercising settlement in the distribution network when balance groups are dissolved;
9. distributing and allocating, based on transparent criteria and once meter readings become available, any differences resulting from the use of standard load profiles to the market participants connected to the system of a system operator.

(3) To the extent that procurement via the virtual trading point pursuant to section 18 para. 1 item 22 is not sufficient, the clearing and settlement agent shall procure balancing energy for the distribution network following a transparent, non-discriminatory and market-based procedure that explores all suitable procurement options. The applicable procedure shall be defined by the regulatory authority by ordinance pursuant to section 41 para. 2 item 3.

(4) Within the scope of calculating, allocating and billing for imbalance charges for the distribution network, the clearing and settlement agent shall

1. receive data stating the difference between schedules and nominations and meter readings and calculate the resulting imbalances;
2. determine the imbalance price employing the procedure described in the ordinance pursuant to section 41 para. 2 item 3 and publish it regularly in a suitable format;
3. calculate the imbalance charges and invoice them to the balance responsible parties active in the distribution network and to distribution system operators (section 58 para. 1 item 12);
4. take special measures if no balancing energy offers for the distribution network are received;
5. record, archive and publish in a suitable manner the standard load profiles used.

(5) Any deviation resulting from the settlement of imbalances during a business year shall be recorded as a separate position in the clearing and settlement agent's annual accounts for that year and offset during the next year. If any portion of a business year's imbalances cannot be covered from revenues, it shall be recorded as accounts receivable in the clearing and settlement agent's annual accounts and be offset against future surplus income from imbalance charges. If the imbalance charges collected outweigh the imbalance payments during a business year, the surplus shall be recorded as accounts payable in the clearing and settlement's accounts and be offset against future shortfalls.

(6) Following an instruction by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, the clearing and settlement agent shall conduct a transparent, non-discriminatory, market-based, public tendering procedure for gas balancing stock in the interest of ensuring security of supply. The balancing stock shall be kept in storage facilities from which gas can be directly injected into the market areas. For the Tyrol and Vorarlberg market areas, the balancing stock may also be kept in storage facilities connected to neighbouring market areas. The instruction by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall specify the total quantity of balancing stock to be kept, considering current and forecast storage filling levels, as well as imminent or realised interferences with or disturbances of security of supply.

(7) **(constitutional provision)** The gas procured in line with para. 6 serves as balancing energy to be used once the mechanisms under para. 3 have been exhausted. The costs for keeping the gas in storage are covered from the federal budget. The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, together with the Federal Minister of Finance, shall decree via ordinance details on the use of the balancing stock, on the energy price, and on cost-reflective cost allocation. The ordinance may also specify further uses of the balancing stock and the origin of the gas procured in line with para. 6. The ordinance requires approval by the main committee of the National Council; article 55 para. 5 Federal Constitutional Law applies mutatis mutandis.

General terms and conditions

Section 88. (1) The clearing and settlement agent shall enter into the contracts referred to in section 84 para. 1 item 3 on the basis of general terms and conditions. These general terms and conditions are subject to approval by the regulatory authority.

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

1. a description of the method to be applied in calculating the imbalances for each market participant and distribution system operator;
2. the criteria used for drawing up the merit order list, considering procurement provided for in section 18 para. 1 item 22;
3. the method used for pricing imbalances in the distribution network;
4. the principles used for the organisational management of balance groups;
5. the data to be furnished by the market participants, distribution system operators and balance responsible parties;
6. the main market rules for performing the responsibilities of the clearing and settlement agent, including the obligation binding the contracting parties to their observance; and
7. the obligation of balance responsible parties of balance groups which are active in the distribution network to provide collateral (cash deposit, bank guarantee, deposit of savings books with unrestricted transferability) of an adequate amount if the circumstances of the individual case so warrant, i.e. if there is reason to assume that the balance responsible party will fail to meet its financial obligations or will fail to do so in due time;
8. specifications on the instatement of market makers in line with section 87 paras 6 and 7.

(3) Approval shall be granted, if necessary subject to stipulations or a sunset clause, where the general terms and conditions meet the economic interest in a functioning gas market and are suitable for performance of the responsibilities set forth in section 87. Any time limit shall not become effective before three years have passed.

(4) If requested by the regulatory authority, the clearing and settlement agent shall amend or rewrite the general terms and conditions.

Clearing fee

Section 89. For the services rendered in performing the responsibilities of a clearing and settlement agent, the regulatory authority shall determine a fee by ordinance. Such fee shall be based on the expenditure accruing from performance of the responsibilities, including a reasonable profit mark-up. The principles of establishing costs pursuant to sections 79 and 80 apply mutatis mutandis. Costs shall be allocated based on the gas transaction volume of each balance group in the distribution network and the degree to which the clearing and settlement agent's services are used by each balance group. The special balance group for system losses and own consumption is exempt from payment of the clearing fee. The regulatory authority may provide in its ordinance exemptions from the clearing fee in the framework of performing solidarity measures in line with Article 13 Regulation (EU) 2017/1938.

Part 2
Balance groups

Balance group members

Section 90. (1) System users shall either join a balance group or form a balance group of their own.

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

1. make available and transmit to market area managers, distribution area managers, system operators, balance responsible parties and the clearing and settlement agent, in accordance with their obligations under contractual agreements, any data, meter readings and other information required to determine their consumption or transport needs insofar as this is required with a view to maintaining a competitive gas market and affording consumer protection;
2. comply with the technical specifications of system operators inasmuch as they use their own metering and data transmission equipment;
3. submit information in connection with supplier or balance group switches, and adhere to the time limits provided therefor;

4. report contract data to bodies charged with drawing up indices;
5. submit schedules to the system operator and to the distribution and market area managers in the event that this should be required for technical reasons;
6. enter into contracts on the exchange of data with other system operators, the balance responsible parties, the clearing and settlement agents, the market area manager, the distribution area manager and other market participants in accordance with the market rules.

Balance groups may be formed within a market area or for several market areas. The establishment and alteration of balance groups shall be carried out by the balance responsible party. Information about whether the balance group intends to be active in the transmission network only or in the distribution network as well shall be given.

(3) The activities of a balance responsible party for a balance group active in the distribution network may be exercised by a natural or legal person or a registered partnership domiciled or seated in Austria or in another EU or EEA member state.

(4) If a system user fails to meet its obligations pursuant to paras 1 and 2 above, section 24 E-Control Act applies subject to the proviso that the obligated system user is requested to comply with these obligations within a reasonable period to be specified by the authority. Should the system user fail to comply with this request within the period specified, compliance with the law shall be established by assigning the final customers that are customers of this system user to a balance group by official decision (section 95).

Tasks and obligations of balance responsible parties

Section 91. (1) Balance responsible parties shall perform their responsibilities and obligations and comply with the market rules. Balance responsible parties have the following responsibilities:

1. to draw up schedules and submit them to the clearing and settlement agent and market area manager or distribution area manager, as applicable;
2. to nominate capacity at the transmission network's entry/exit points with the transmission system operator, with the exception of the internal interconnection points from the transmission to the distribution network;
3. to balance their balance group's injections and withdrawals during each measurement period by taking suitable action, while including all information available to them already in drawing up schedules and nominating;
4. to enter into contracts on the availability of reserves and the supply of customers of those suppliers assigned to their balance group by the regulatory authority in accordance with section 95;
5. to report certain procurement and consumption data for technical purposes;
6. to submit procurement and purchase schedules of large withdrawing and injecting parties for technical purposes, following predefined rules;
7. to pay the applicable charges (fees) to the clearing and settlement agent;
8. to pay the imbalance charges to the clearing and settlement agent and pass on these charges to the balance group members;
9. to nominate trade transactions with the operator of the virtual trading point.

(2) The balance responsible parties shall

1. conclude balance group contracts with the market area manager to establish balance groups and organise registration, balancing and settlement of the group's imbalances between injection and withdrawal for each defined measurement period;
2. conclude agreements on the exchange of data with the market area manager, the distribution area manager, the clearing and settlement agent, the system operators and the balance group members;
3. keep a record of balance group members;
4. submit data to the clearing and settlement agent, the market area manager, the distribution area manager, the system operators and the balance group members in accordance with the market rules;
5. manage the total capacities allocated to the direct balance group members at the internal interconnection points from the transmission into the distribution network in the market area and pass on applications by their balance group members for system access or for capacity expansion to the distribution area manager;
6. procure energy for balance group members to offset their imbalances;
7. comply with the approved general terms and conditions for the system;

8. submit general terms and conditions to the regulatory authority for its approval and, if so requested, amend or rewrite them to the extent necessary to achieve a competitive market, provided that the balance group is active in the distribution network.

(3) If a balance group member switches to another balance group or supplier, the data of such member shall be furnished to the new balance group or new supplier and the distribution area manager.

General terms and conditions of balance responsible parties

Section 92. (1) The general terms and conditions of balance responsible parties pursuant to section 91 para. 2 item 8 and any amendments thereto are subject to approval by the regulatory authority. Such approval shall be granted subject to additional stipulations or a sunset clause if such is required to comply with the provisions of this Act. Any time limit shall not become effective before three years have passed. Upon request of the regulatory authority, balance responsible parties shall amend or rewrite the general terms and conditions they have 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 tasks incumbent upon the balance responsible party are performed;
2. to make for an objective link between the obligations of the balance group members and the services provided by the balance responsible party;
3. to assign the mutual obligations in a balanced manner in line with their origin;
4. to ensure that the contracting parties are bound 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, without limitation,

1. details on the formation of balance groups;
2. the basic criteria for those balance group members whose gas consumption is to be registered by load meter;
3. the responsibilities and tasks of balance responsible parties;
4. principles of schedule establishment;
5. the period within which the schedules and nominations of a balance group must be notified to the distribution area manager and the transmission system operator.

Licensing of balance responsible parties

Section 93. (1) The activity performed by a balance responsible party is subject to a licence granted by the regulatory authority. The following documents shall be enclosed with the application for such licence:

1. agreements with the clearing and settlement agent, the distribution area manager, the operator of the virtual trading point, the gas exchange at the virtual trading point, and the market area manager as required to perform the responsibilities and obligations set forth in this Act, including, without limitation, those of an administrative and commercial type;
2. proof of entry in the *Firmenbuch* (commercial register) in the form of an extract from the commercial register or an equivalent register and the seat (principal residence);
3. proof that that the applicant and the bodies authorised to represent it towards third parties
   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 the EEA;
   c) are not excluded from exercising the licensed activities according to paras 4 through 7 below;
4. proof that the balance responsible party, 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 responsible party has at its disposal a liable equity capital of at least 50,000 EUR for performing its activities as a balance responsible party, in the form of a bank guarantee or requisite insurance or similar, without prejudice to any higher capital 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 (of the natural persons who control

the applicant) from which arises that no grounds of exclusion within the meaning of paras 4 and 5 below exist.

(2) The criterion of technical qualification is met if the person has adequate theoretical and practical knowledge of handling gas transactions or has worked in an executive position in the gas business, especially in gas trading, gas logistics, gas production or in operating a system or storage facility.

(3) The licence shall be issued, if necessary subject to additional stipulations, where all prerequisites as set forth in para. 1 above are met. Upon receipt of the complete documentation for the application, the regulatory authority shall decide within two months, failing which the applicant is authorised to be temporarily active as a balance responsible party. Prohibition of the activity is by analogous application of section 94.

(4) Any person sentenced by a court to more than three months' imprisonment or to payment of a fine of more than 180 daily rates is excluded from performing the activity of a balance responsible party if the sentence has been neither extinguished nor is subject to restriction of information from the register of previous convictions. This also applies 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 *Schmuggel* (smuggling), *Hinterziehung von Eingangs- oder Augsangsabgaben* (evasion of import or export duties or charges), *Abgabenhehlerei* (accessory after the fact with regard to duties and other charges) under section 37 para. 1 a Penal Code for Financial Offences, *Hinterziehung von Monopoleinnahmen* (evasion of monopoly revenues), *vorsätzlicher Eingriff in ein staatliches Monopolrecht* (wilful interference with a state monopoly) or *Monopolhehlerei* (accessory after the fact with regard to monopolies) under section 46 para. 1(a) Penal Code for Financial Offences is excluded from performing the activity of a balance responsible party if such person has been sentenced for such financial offence to payment of a fine in excess of 7,300 EUR or to imprisonment in addition to a fine and if five years have not yet passed since the punishment. This also applies to any crimes or offences committed abroad which are comparable to the above grounds of exclusion.

(6) Any entity whose assets have ever been subject of any kind of insolvency proceedings or for which such proceedings have not been finally opened due to lack of sufficient assets to cover costs are excluded from performing the activity of a balance responsible party. This also applies to any crimes or offences committed abroad which are comparable to the above grounds of exclusion.

(7) Any natural person is excluded from exercising the activities of a balance responsible party if any kind of debt management proceedings has been opened 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 applies or applied.

Withdrawal and termination of licences

Section 94. (1) The regulatory authority may withdraw the licence granted to a balance responsible party if such party

1. fails to commence activities within six months of being issued the licence; or
2. fails to perform its activities for more than one month.

(2) The regulatory authority shall withdraw the licence granted to a balance responsible party if

1. any of the prerequisites specified in section 93 para. 1 is not or no longer fulfilled; or
2. such party has been finally convicted and punished at least three times for the failure to perform its responsibilities and duties (section 91) and withdrawal of the licence is not an unreasonable punishment in view of the offences committed.

(3) Official decisions under para. 2 above are always measures of immediate effect within the meaning of section 57 para. 1 General Administrative Procedure Act.

(4) The licence terminates if any kind of insolvency proceedings is instituted against the assets of the balance responsible party or if such proceedings are not finally opened due to lack of assets to cover costs.

(5) In the event that a licence is withdrawn or terminates or if a balance responsible party wishes to dissolve the balance group, the suppliers that belong to said balance group shall be assigned to another balance group by official decision of the regulatory authority (section 95). The balance group may be dissolved only after the assignment has become final.

Assignment of suppliers to balance groups

Section 95. (1) System users

1. that do not belong to a balance group and
2. that do not form a balance group of their own

shall be assigned to a balance group by official decision of the regulatory authority. Such act of assignment does not affect any contractual agreements governing the relationship between the assigned suppliers and their customers. The general terms and conditions of the balance responsible party are an integral part of the legal relationship of direct membership in the balance group that is constituted by the act of assignment. Such customers as are contractually bound to the suppliers concerned at the time of assignment are not parties to the procedure.

(2) The customers of a supplier assigned to a balance group under para. 1 above shall be supplied by the balance responsible party at market prices.

Operator of the virtual trading point

Section 96. The operator of the virtual trading point shall conclude any necessary agreements with the market area manager and the clearing and settlement agency for transactions and formation of imbalance prices in the distribution network. These agreements shall ensure that all balancing activities caused by the network users' exchange trading and controlled by network users by way of nominations are concentrated at the virtual trading point.

Title 7

Storage system operators

Access to storage facilities

Section 97. (1) Storage system operators that manage gas storage facilities shall grant access to their facilities to prospective storage users at non-discriminatory and transparent conditions.

(2) Storage access may be refused for the following reasons:

1. failures;
2. lack of storage capacities;
3. if the prospective storage user or an undertaking associated with it which has a controlling influence on the prospective storage user is domiciled in a EU member state in which no legal entitlement to storage access is granted to the prospective storage user or storage access is impossible for factual reasons;
4. if the technical specifications cannot be reasonably harmonised;
5. if access is unreasonable economically.

The storage system operator shall furnish grounds for its refusal of access in writing to the prospective storage user.

(3) In the case of lack of storage capacities, injections and withdrawals of balancing energy, and injections and withdrawals based on existing contractual obligations or later obligations superseding such obligations, ranked chronologically, take priority over all other prospective storage user.

(4) Upon application by a party claiming to be injured in its legally granted right to storage access by being refused access, the regulatory authority shall find whether the prerequisites for refusal of access pursuant to para. 2 above are met. The regulatory authority shall take its decision within one month of receiving the request.

(5) The storage system operator shall furnish proof of the grounds for refusal pursuant to para. 2 above. The regulatory authority shall endeavour at all stages of the procedure to effect an amicable settlement between the prospective storage user and the storage system operator.

(6) If the regulatory authority finds that the right to storage access has been violated, the storage system operator shall grant the applicant access immediately upon service of the decision issued by the regulatory authority.

Storage access proceedings

Section 98. (1) Depending on the results of the assessment of the storage market applying the criteria specified in para. 2 below, negotiated access to gas storage facilities shall be implemented. The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may prescribe

by ordinance that regulated storage access applies. In doing so, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may provide that

1. the methods for calculating storage charges are subject to approval by the regulatory authority; and/or
2. the general terms and conditions for storage access are subject to approval by the regulatory authority; and/or
3. the capacity allocation mechanisms and procedures are subject to approval by the regulatory authority.

The decision regarding the regulated access regime shall be made public.

(2) As part of the assessment process about which access regime to apply, the regulatory authority shall draw up and publish a report on the situation on the Austrian flexibility and storage market prior to the ordinance of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology being issued. In this report, the regulatory authority shall assess the level of competition on the storage market by referencing price comparisons, the range of products on offer and their use, market concentration (supply and demand side) with consideration of the availability of alternative sources of flexibility and the availability of storage capacity compared to demand for it. In executing the price comparisons, the costs incurred by storage system operators pursuant to section 73 para. 5 and section 74 para. 2 shall be discounted. The storage system operators concerned have the right to comment on the report. The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology shall consider this report in arriving at the decision pursuant to para. 1 above and base such decision pursuant to para. 1 above on the regulatory authority's having identified repeated infringements of the stipulations in sections 101 through 105.

(3) The regulatory authority shall draw up and publish a report pursuant to para. 2 every three years or upon the substantiated application of a storage system operator or prospective storage user.

Storage charges under negotiated access

Section 99. (1) Storage system operators shall agree with prospective storage users in good faith storage charges which comply with the general terms and conditions for storage access and the principles of equal treatment. The principles underlying the calculation of the storage charges shall be published once a year and after every amendment.

(2) In the event that the storage charges for a storage service demanded by customers and published by a storage system operator exceed the average charges for comparable services in the EU member states by more than 20%, the regulatory authority, for the purposes of ensuring comparability of storage charges, shall specify by official decision the costs that are to underlie the rates of the storage system operators pursuant to para. 1 above. In doing so, the principles of cost causation and cost orientation shall be applied. In comparing the storage charges, the costs incurred by storage system operators pursuant to section 73 para. 5 and section 74 para. 2 shall be discounted.

(3) Upon application by a prospective storage user, the regulatory authority shall find whether the conditions underlying the storage service contract comply with the principle of equal treatment and issue an official decision with its finding. If this principle is violated, the storage system operator shall promptly ensure compliance with this principle.

(4) Any changes in the storage charges shall be notified to the regulatory authority prior to their application.

Storage charges under regulated access

Section 100. (1) If the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology has issued an ordinance pursuant to section 98 para. 1 item 1 specifying that regulated access to storage facilities applies, the methods used to calculate the storage charges are subject to approval by the regulatory authority. Upon request of the regulatory authority, the methods shall be adjusted or redesigned.

(2) The methods used to calculate the storage charges shall be based on

1. the allowed cost, which consists of the adequate costs for operation, maintenance, expansion, management and marketing, including a rate of return derived from the weighted cost of capital; the regulatory asset base in this case consists of the assets necessary for operation reduced by the prepayments for construction costs recorded as liabilities and any items identified by the regulatory authority;

2. the other specifications for the calculation of the rates, which shall reflect capacity utilisation at the time of calculation. In the case of new facilities, the calculation shall be based on forecasts subject to approval by the regulatory authority. The joint calculation of storage charges for several storage facilities is admissible.

(3) The methods may specify that storage charges be set by way of market-oriented processes such as auctions. The methods shall facilitate efficient trade in gas and competition and avoid cross-subsidies between storage users. At the same time they shall provide incentives for investment and for maintaining or establishing interoperability. Further, the methods shall be designed so that necessary investments in the storage facilities can be made in a manner ensuring the facilities' profitability.

(4) Prior to approving the methods, the regulatory authority shall consult them with the prospective storage users. Approval shall be granted by official decision if the stipulations of para. 2 above are met and the storage charges resulting from such methods do not exceed the average of published storage charges for comparable storage services at comparable storage facilities in the European Union by more than 20%, which average shall be submitted to the authority together with the method to be approved. In comparing the storage charges, the costs incurred by storage system operators pursuant to section 73 para. 5 and section 74 para. 2 shall be discounted. The approved methods shall be published on the website of the storage system operator.

(5) Upon request of the regulatory authority, proof of compliance with the approved methods in calculating the storage charges shall be furnished and substantiated by providing all related documents. The regulatory authority shall request the storage system operator to calculate the storage charges in compliance with the methods.

Submission of contracts

Section 101. The storage system operators shall provide all contracts on the provision of storage services to the regulatory authority immediately upon their conclusion and furnish any necessary explanations.

General terms and conditions for storage access

Section 102. (1) The general terms and conditions for storage access shall not be discriminatory and shall not contain any abusive practices or unjustified restrictions nor jeopardise security of supply or quality of service. They shall, in particular, be formulated

1. to ensure that the tasks incumbent upon the storage system operator are performed;
2. to make for an objective link between the obligations of the prospective storage users and the services provided by the storage system operator;
3. to assign the mutual obligations in a balanced manner in line with their origin;
4. to contain specifications on the technical requirements for injection and withdrawal;
5. to contain regulations on the allocation of storage charges;
6. to be clear and logical;
7. to contain definitions of terms which are not generally understood;
8. to be consistent with existing law.

(2) The general terms and conditions for storage access shall cover, without limitation,

1. the rights and obligations of the contracting parties, including, without limitation, the obligation to observe the rules of the gas market code governing storage access;
2. the technical minimum requirements for storage access;
3. regulations for metering the gas quantity handed over to and delivered by the storage system operator;
4. regulations concerning the point of acceptance and delivery of gas;
5. the quality requirements for injection and withdrawal of gas;
6. the services to be made available within the scope of storage access;
7. the method and modalities of applications for storage access;
8. the data to be furnished by the prospective storage users;
9. the modalities of using contracted capacity;
10. a period of not more than 14 days upon receipt within which the storage system operator shall reply to applications for storage access;

11. the principles underlying billing and invoicing;
12. the type and form of invoicing and payment;
13. the procedure to be followed in reporting technical problems and failures and their repair;
14. the obligation of prospective storage users to pay in advance or provide collateral (cash deposit, bank guarantee, deposit of savings books with unrestricted transferability) of an adequate amount if the circumstances of the individual case so warrant, i.e. if there is reason to assume that the prospective storage user will fail to meet its financial obligations or will fail to do so in due time;
15. provisions on the criteria and manner in which unused committed storage capacity must be made available to third parties pursuant to section 104 paras 3 and 4;
16. reference to dispute settlement procedures provided by law.

(3) In drawing up the general terms and conditions for regulated storage access, the storage system operator shall consult the prospective storage users. The general terms and conditions for storage access shall be issued to the storage users upon request and published on the internet.

(4) If the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology has decided pursuant to section 98 para. 1 that regulated access applies to a storage facility, the general terms and conditions and any amendments thereto are subject to approval by the regulatory authority. Such approval shall be given subject to stipulations or to a sunset clause to the extent that such is required to comply with the provisions of this Act. Any time limit shall not become effective before three years have passed. Upon request of the regulatory authority, storage system operators shall amend or rewrite the general terms and conditions for storage access to the extent that such is required to comply with the provisions of this Federal Act. By derogation from para. 3, the regulatory authority shall consult the general terms and conditions with the prospective storage users prior to approving them.

(5) If new general terms and conditions for storage access are approved, the storage system operator shall inform the storage users thereof within four weeks following approval in an appropriate manner.

Capacity allocation mechanisms

Section 103. (1) Storage system operators shall publish and apply non-discriminatory and transparent capacity allocation mechanisms. Such mechanisms shall contain adequate deadlines for announcing allocation and the duration of the procedure. Depending on the demand for capacity, the mechanism that best ensures non-discriminatory and transparent capacity allocation shall be chosen. If demand exceeds the capacity available in the procedure, capacity shall be allocated by way of auctions. Storage products may be allocated on a first come first serve basis if the bids relate to a small portion of the overall capacity.

(2) Where investments in new storage facilities and substantial investments in the expansion of existing storage facilities are concerned, open season procedures shall be held to determine demand prior to allocating capacity.

(3) All planned capacity allocation procedures shall be notified to the regulatory authority in a timely manner, including explanatory notes. Upon request of the regulatory authority, the conditions of capacity allocation mechanisms shall be adjusted or redesigned.

(4) If the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology has decided pursuant to section 98 para. 1 item 3 that regulated access applies to a storage facility, the capacity allocation mechanism according to paras 1 to 3 above is subject to approval by the regulatory authority. Upon request of the regulatory authority, the capacity allocation mechanism shall be adjusted or redesigned.

Congestion management

Section 104. (1) The storage system operators shall enable transparent and efficient secondary capacity trade at an overarching secondary market platform or cooperate in the establishment of a joint platform.

(2) Contracts on the provision of storage services shall contain measures to prevent capacity hoarding. In cases of contractual congestion, the storage user shall be obliged to resell its unused contracted capacity on a secondary market platform to third parties.

(3) **(constitutional provision)** In the event that a storage user leaves all of or parts of their booked capacity systematically unused, they shall offer it through a secondary market platform without delay or shall immediately return it to the storage system operator, while their contractual rights and obligation remain in force.

(4) **(constitutional provision)** If a storage user fails to comply with their obligation under para. 3, the storage system operator shall notify the storage user of the next steps without delay and shall then immediately withdraw the systematically unused booked capacity for the period of time until the following 31 March. Storage capacity held by electricity generation facilities for the purpose of avoiding, eliminating or overcoming congestion at transmission level in line with section 23 para. 2 item 5 Electricity Act 2010 or for the purpose of providing balancing services on the electricity balancing market does not count as systematically unused. The storage system operator shall market the withdrawn capacity and shall reduce the relevant storage user's storage fee by the resulting revenue, minus an adequate administration fee for the storage system operator and up to the storage user's full storage fee. The storage user continues to be bound by the rights and obligations from their storage contract insofar as the storage capacity is not marketed by the storage system operator. The regulatory authority may issue an ordinance with further details relating to this stipulation and to the obligation under para. 3. As long as no such details have been decreed, any booked storage capacity that is being used to an extent of less than 10% on 1 July 2022, and then on 1 July of the following years, counts as systematically unused, and the unused part shall be withdrawn.

Loss of storage system operator rights

Section 104a. (constitutional provision) (1) Storage system operators lose their storage system operator rights if

1. the requisite contracts with the storage maintenance company, the owner or the authorised agent of the storage facility are no longer in place;
2. the grid connection or system access to a market area listed in section 12 para. 1 is lost;
3. the company, its authorised representatives or special responsible representatives pursuant to section 9 Administrative Penal Act have been penalised at least three times for intentionally infringing or assisting in committing an administrative offence under this Act and given the type of offence and the penalised person it is to be expected that the same or a similar offence will be committed in executing their function;
4. the company infringes the stipulations in section 97 para. 1, section 101, section 104 para. 4 or section 170 para. 26 while a crisis level as in Article 11(1) Regulation (EU) 2017/1938 has been declared;
5. the company continuously fails to comply with its duties under section 105 para. 1 item 8 for a period of at least three months;
6. the company has been officially prohibited from continuing operations or other statutory conditions for exercising storage system operator rights are no longer present.

(2) Loss of storage system operator rights is declared by the regulatory authority by official decision, without prejudice to any right to compensation under civil law. Appeals do not have suspensory effect.

(3) Once loss of storage system operator rights has been declared, the storage maintenance company shall temporarily assume the storage system operator function; it may delegate its tasks to third parties; section 9 applies mutatis mutandis to the storage maintenance company. The storage maintenance company shall immediately take any and all steps needed to conclude contracts with companies that want to act as storage system operator for the capacity in future. Section 97 para. 1 applies mutatis mutandis. These shall be fixed term contracts for no more than three years. The assuming storage system operator shall market the capacity from the loss of storage system operator rights under para. 2, shall keep an adequate administrative fee for itself and shall transfer the rest of the revenue to the storage maintenance company. The storage maintenance company shall in turn offset that revenue against the original storage system operator's storage fee up until the full amount of that fee. Insofar as capacity cannot be marketed, the original storage system operator's payment obligations towards the storage maintenance company remain in place fully and completely. Existing storage contracts with storage users also continue to be valid.

(4) If a storage system operator's rights are wrongly withdrawn under para. 2, it has the right to enter into the contracts concluded under para. 3; in this case, the limitation to no more than three years under para. 3 is invalid. Storage system operators whose rights have been wrongfully withdrawn shall be granted adequate compensation.

Tasks of storage system operators

Section 105. (1) Storage system operators shall

1. 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 10, treat

confidentially any commercially sensitive information of which they obtain knowledge in carrying on their business, and prevent information on their own activities which might produce economic advantages from being disclosed in a discriminatory manner;

2. supply adequate information to the system operators whose systems are connected to their own facilities so as to ensure safe and efficient operation, coordinated expansion and interoperability of the networks and systems, and enter into contracts on the transfer and acceptance modalities with the operator of the connected facility;
3. publish the general terms and conditions governing the use of their facilities and the storage charges once a year and after each amendment;
4. publish numerical information on the contracted and available injection and withdrawal capacity and the contracted and available volume on the internet on a daily basis and in a user-friendly and standardised way;
5. unless the relevant data are supplied by the downstream system operator to the distribution area manager and the market area manager, furnish to the distribution area manager and market area manager simultaneously through the downstream system operator data in electronic format on the current pressure situation and volume throughput at storage-related exit points in the market area;
6. contribute to the establishment of the integrated long-term plan and the network development plan;
7. reliably and efficiently operate, maintain and, where necessary, expand the storage systems operated by them with a view to ensuring adequate means to meet the service obligations;
8. ensure grid connection and system access to the domestic grid for their storage facilities while maximising use of existing capacity and conclude the requisite contracts in particular with the system operator.

(2) The obligations of storage system operators pursuant to Articles 15, 17 and 19 of Regulation (EC) No 715/2009 remain unaffected thereby.

Interministerial agreements on joint use of storage facilities

Section 105a. Where the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology has the power to conclude interministerial agreements in line with Article 66 para. 2 Federal Constitutional Law, she may conclude agreements with the Federal Minister of Finance on the joint use of storage facilities on Austrian territory with member states of the European Union or with third countries. In particular, filling targets for storage facilities under EU law shall be taken into account.

Title 8
Unbundling

Part 1
Unbundling of distribution system operators

Prerequisites

Section 106. (1) Distribution system operators are independent, in terms of the legal form, organisation and decision-making power, of the activities of delivery, sales, supply and production of gas of vertically integrated gas companies. These provisions do not establish any obligation to make a division in terms of ownership of the vertically integrated undertaking in network assets.

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

1. in a vertically integrated gas company, the persons responsible for the management of a distribution system operator are not part of business departments which are directly or indirectly responsible for the day-to-day operation in the fields of gas production, purchase or supply;
2. the professional interests of the individuals responsible for managing the distribution system operator are taken into account so that their independence of action is ensured, and specifically the reasons for removing an executive body of the distribution system operator be clearly specified in the statutes of such distribution system operator;
3. the distribution system operator has effective decision-making rights, independent of the integrated gas company, with respect to the assets necessary to operate, maintain or expand the network. The distribution system operator has at its disposal all necessary human, technical, physical and

financial resources to fulfil these tasks. This is not contrary to suitable coordination mechanisms that ensure that the economic competences of the vertically integrated gas undertaking and its supervisory rights over the management of the distribution system operator with regard to profitability are protected. This enables the vertically integrated gas undertaking to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of the distribution system operator. 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 are not permissible. The supervisory board of distribution system operators belonging to a vertically integrated gas company includes at least two members who are independent of such vertically integrated undertaking;

4. the distribution system operator establishes a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme identifies the special obligations incumbent upon the employees to achieve this objective. The distribution system operator designates a person or body (compliance officer) to monitor observance of the programme. The compliance officer has access to all information of the distribution system operator and any affiliated undertakings. The compliance officer submits annual reports to the regulatory authority on the measures taken and such reports are published. In carrying out these tasks, the compliance officer is completely independent and not bound by any instructions. The compliance officer receives suggestions made by the management of the distribution system operator but may reject them, while providing arguments. If the compliance officer is an employee of the distribution system operator, for the duration of their appointment the compliance officer is treated as a safety officer (section 73 para. 1 *ArbeitnehmerInnenschutzgesetz* [Health and Safety at Work Act], FLG no 450/1994) in terms of protection against dismissal or removal. The appointment of the compliance officer is without prejudice to the responsibility of the management of the distribution system operator to ensure compliance with the provisions of this Federal Act.

(3) The distribution system operator shall not, in its communication activities or branding and corporate identity policies, create confusion in respect of the separate identity of the retail business of the vertically integrated gas undertaking.

(4) Paras 1 to 3 only apply to vertically integrated distribution system operators whose systems have more than 50,000 final customer connections.

(5) Undertakings which have already taken unbundling measures at the time this Federal Act enters into force may not reverse such measures.

Part 2
Unbundling of storage system operators

Prerequisites

Section 107. (1) Where the storage system operator is part of a vertically integrated gas undertaking, it is independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission, distribution and storage.

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

1. in a vertically integrated gas company, the persons responsible for the activities of a storage system operator are not part of business departments which are directly or indirectly responsible for the day-to-day operation in the fields of gas production or supply;
2. appropriate measures are taken to ensure that the professional interests of the persons responsible for the management of the storage system operator are taken into account so that their independence of action is ensured;
3. storage system operators have effective decision-making rights, independent of the vertically integrated gas company, with respect to the assets necessary to operate, maintain or expand the storage facilities. This is not contrary to suitable coordination mechanisms that ensure that the economic competences of the vertically integrated gas undertaking and its supervisory rights over the management of the storage system operator with regard to profitability are protected. This

enables the vertically integrated gas undertaking to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of the storage system operator. Any instructions regarding ongoing operation or specific decisions regarding the construction or modernisation of storage facilities that do not exceed the frame of the approved budget or similar instrument are not permissible;

4. storage system operators establish a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The programme identifies the special obligations incumbent upon the employees to achieve this objective. The storage system operator designates a person or body (compliance officer) to monitor observance of the programme. The compliance officer submits annual reports to the regulatory authority on the measures taken and such reports are published. In carrying out these tasks, the compliance officer is completely independent and not bound by any instructions. If the compliance officer is an employee of the storage system operator, for the duration of their appointment the compliance officer is treated as a safety officer (section 73 para. 1 *ArbeitnehmerInnenschutzgesetz* [Health and Safety at Work Act], FLG no 450/1994) in terms of protection against dismissal or removal. The appointment of the compliance officer is without prejudice to the responsibility of the management of the storage system operator to ensure compliance with the provisions of this Federal Act.

Part 3
Unbundling of transmission system operators

Chapter 1
Ownership unbundling of transmission system operators

Prerequisites

Section 108. (1) The transmission system operator must be the owner of the transmission system.

(2) One person shall not have the right to

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

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

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

(4) The obligation set out in para. 1 above is deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more member states for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved as an independent system operator under section 109 or as an independent transmission operator under section 112.

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

(6) Para. 2 items 1 and 2 also apply to electricity undertakings in the meaning of section 7 para. 1 item 11 Electricity Act 2010, FLG I no 110/2010.

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

Chapter 2
Independent system operators (ISOs)

Prerequisites

Section 109. (1) Where the transmission system was owned by a vertically integrated gas undertaking on 3 September 2009, there is the option of not applying ownership unbundling pursuant to section 108 and instead designating an independent system operator upon a proposal from the transmission system owner.

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

1. it complies with the prerequisites in section 108 para. 2;
2. it has at its disposal the required financial, technical, human and physical resources;
3. it undertakes to implement the ten-year network development plan monitored by the regulatory authority;
4. it is able to comply with its obligations under Regulation (EC) No 715/2009 including the cooperation of transmission system operators at European and regional level;
5. the owner of the transmission system is able to fulfil its obligations pursuant to section 110 para. 2. For this purpose, all agreements, including, without limitation, with the independent system operator, shall be provided.

Obligations

Section 110. (1) Each independent system operator is responsible for granting and managing third-party access, including the collection of access charges and congestion management charges, for operating, maintaining and expanding the transmission system, as well as for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system the independent system operator is responsible for planning (including licensing and permitting procedures), construction and commissioning of the new infrastructure. For this purpose, the independent system operator acts as a transmission system operator in accordance with the applicable stipulations. The transmission system owner is not responsible for granting and managing third-party access, nor for investment planning.

(2) The transmission system owner shall

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

Independence of transmission system operator

Section 111. (1) Where the transmission system owner is part of a vertically integrated undertaking, it must be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission or distribution.

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

1. the persons responsible for the management of the transmission system owner do not participate in business structures of the vertically integrated gas company responsible, directly or indirectly, for the day-to-day operation of the production, distribution or supply of gas;
2. appropriate measures are taken to ensure that the professional interests of the persons responsible for the management of the transmission system owner are taken into account so that their independence of action is ensured;
3. the transmission system owner establishes a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded, and ensures that observance of it is adequately monitored. The compliance programme sets out the specific obligations of employees to meet those objectives. The compliance officer submits annual reports to the regulatory authority on the measures taken and such reports are published. If the compliance officer is an employee of the transmission system operator, for the duration of their appointment the compliance officer is treated as a safety officer (section 73 para. 1 *ArbeitnehmerInnenschutzgesetz* [Health and Safety at Work Act], FLG no 450/1994) in terms of protection against dismissal or removal.

Chapter 3
Independent transmission system operators (ITOs)

Assets, independence, services, branding

Section 112. (1) Where the transmission system was owned by a vertically integrated gas company on 3 September 2009, there is the option of not applying ownership unbundling pursuant to section 108 and instead designating an independent transmission system operator.

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

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

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

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

integrated gas undertaking and that do not contain any references to the membership in the vertically integrated gas undertaking.

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

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

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

(8) The activity of the independent transmission system operator shall include at least the following tasks in addition to those listed in section 62:

1. the representation of the independent transmission system operator and contacts to third parties and the regulatory authorities;
2. the representation of the independent transmission system operator within ENTSOG;
3. the granting and managing of third-party access without discriminating between system users or classes of system users;
4. the collection of all the transmission system related charges including access charges, imbalance charges for ancillary services such as purchasing of services (imbalance charges, energy for losses);
5. the operation, maintenance and development of a safe, efficient and economic transmission system;
6. investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;
7. setting up appropriate joint ventures, including with one or more transmission system operators, gas exchanges, and other relevant actors pursuing the objective to promote the creation of regional markets or to facilitate the liberalisation process. In the case of joint ventures with regard to gas trade, the operator of the virtual trading point shall be adequately included in such cooperation.

(9) Only undertakings that take one of the legal forms specified in Article 1 of Directive 2009/101/EC may be designated as independent transmission system operators.

Independence of transmission system operators

Section 113. (1) Without prejudice to the decisions of the supervisory body, the independent transmission system operator shall have effective decision-making rights, independent from the vertically integrated gas undertaking, with respect to the assets and resources necessary to operate, maintain or expand the transmission system, and have the power to raise money on the capital market in particular through borrowing and capital increase.

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

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

(4) The independent transmission system operator shall inform the regulatory authority of the financial resources, referred to in section 112 para. 2, available for future investment projects and for the replacement of existing assets.

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

Independence of management and staff

Section 114. (1) The persons responsible for the management must be professionally independent. In particular, they shall:

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

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

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

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

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

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

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

Independence of supervisory bodies

Section 115. (1) The supervisory body of the independent transmission system operator shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the independent transmission system operator, in particular decisions regarding the approval of the

annual and longer-term financial plans, the level of indebtedness of the independent transmission system operator and the amount of dividends distributed to shareholders. Decisions regarding the appointment, renewal, employment conditions including remuneration and the termination of the term of office of the persons responsible for the management of the independent transmission system operator shall be taken by the supervisory body of the transmission system operator, unless other statutory stipulations rule differently. The decisions falling under the remit of the supervisory body exclude those that are related to the day-to-day activities of the independent transmission system operator and management of the system, and those related to activities necessary for the preparation of the network development plan.

(2) Section 114 paras 1 to 3 equally apply to half of the members of the supervisory body minus one.

Compliance programme and compliance officer

Section 116. (1) The independent transmission system operators shall develop a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded. The compliance programme shall set out the specific obligations incumbent upon the employees to meet those objectives. It is subject to approval by the regulatory authority. Observance of the programme shall be monitored by a compliance officer.

(2) The compliance officer shall be appointed by the supervisory body, subject to approval by the regulatory authority by official decision. The regulatory authority may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity, by official decision. The compliance officer may be a natural or legal person or a registered partnership. Section 114 paras 1 to 3 equally apply to the compliance officer.

(3) The compliance officer shall be in charge of

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

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

(5) Where the vertically integrated undertaking, in the general assembly or through the vote of the members of the supervisory body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying investments which under the network development plan were to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with section 65.

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

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

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

1. conditions for access to the system as defined in Regulation (EC) No 715/2009, in particular regarding system charges, third-party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;

2. projects undertaken in order to operate, maintain or develop the transmission system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;
3. energy purchases or sales necessary for the operation of the transmission system.

(9) The compliance officer shall monitor the compliance of the independent transmission system operator with section 11.

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

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

(12) If the compliance officer is an employee of the transmission system operator, for the duration of their appointment the compliance officer is treated as a safety officer (section 73 para. 1 Health and Safety at Work Act, FLG no 450/1994) in terms of protection against dismissal or removal.

Chapter 4
More effective independence of transmission system operators

Prerequisites

Section 117. Where, on 3 September 2009, the transmission system was owned by a vertically integrated gas undertaking and there are arrangements in place which without a doubt guarantee more effective independence of the transmission system operator than the provisions on the independent transmission system operator (sections 112 through 116), it is possible not to apply the unbundling provisions of section 108.

Chapter 5
Combined operators

Combined operators

Section 118. (1) The regulatory authority may permit by official decision the concurrent operation of systems for electric energy, gas and other network industries in a single undertaking and the pursuit of other activities if the independence of the system operator is not impaired thereby. The regulatory authority shall approve the simultaneous operation of a transmission network and a distribution network and the operation and management of a storage facility provided that the criteria in paras 108 through 117 are met.

(2) The first sentence in para. 1 only applies to vertically integrated distribution system operators whose systems have more than 50,000 final customer connections.

Chapter 6
Procedures for transmission system operators

Certification and designation of transmission system operators

Section 119. (1) The regulatory authority shall continuously monitor compliance with the unbundling provisions (sections 106 through 118). It shall certify a transmission system operator by official declaratory decision as

1. transmission system operator with ownership unbundling in the meaning of section 108; or
2. independent system operator in the meaning of sections 109 to 111; or
3. independent transmission system operator in the meaning of sections 112 to 116; or
4. transmission system operator in the meaning of section 117.

(2) A certification procedure shall be opened

1. upon the application of a transmission system operator pursuant to para. 3 item 1;

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

Article 3 of Regulation (EC) No 715/2009 applies to the certification procedure.

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

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

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

(5) Notwithstanding para. 4 above, the following applies:
1. In certification procedures under para. 1 item 2 above, the regulatory authority shall comply with the decision of the European Commission.
2. In certification procedures under para. 1 item 4 above, the regulatory authority and the European Commission shall verify whether the arrangements in place actually guarantee more effective independence of the transmission system operator than the provisions on the independent transmission system operator (sections 112 through 116); the regulatory authority shall comply with the decision of the European Commission.

(6) The regulatory authority shall keep detailed records of all correspondence with the European Commission that is part of a procedure under Article 3 of Regulation (EC) No 715/2009. These records shall be made available to the company applying for certification and the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology. The regulatory authority shall publish its official declaratory decision including a statement of the grounds for the decision while blacking out any commercially sensitive information. The opinion of the European Commission shall be published as well unless it is reproduced in the statement of grounds.

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

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

(9) Transferring one or several of the functions typically attributed to
1. the transmission system operator with ownership unbundling in the meaning of section 108; or

2. the independent system operator in the meaning of sections 109 to 113; or
3. the independent transmission system operator in the meaning of sections 112 to 116; or
4. the transmission system operator in the meaning of section 117

to an entity or body in the sense of Article 1 Regulation (EC) No 715/2009 is admissible under Union law. That entity or body is subject to certification pursuant to this chapter. Paras 1 through 7 also apply to entities or bodies in the sense of Article 1 last subparagraph Regulation (EC) No 715/2009.

Certification of third-country transmission system operators

Section 120. (1) Where certification is requested by a transmission system operator which is controlled by a person or persons from a third country or third countries, section 119 applies with the following derogations.

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

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

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

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

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

Title 9
Gas traders and suppliers

Obligations

Section 121. (1) A gas trader shall notify its activities to the regulatory authority prior to commencing them. The regulatory authority shall keep, update and publish a list of gas traders.

(2) Gas traders and suppliers selling gas to consumers subject to the provisions of the Consumer Protection Act shall always provide for an option to enter into non-interruptible gas supply contracts.

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

(4) Gas traders and suppliers, with the exception of traders that only trade at the virtual trading point, shall contribute to the preparation of the integrated long-term plan and the network development plan.

(5) Retailers supplying gas to protected customers shall comply with the supply standard set in Article 6 Regulation (EU) 2017/1938.

(6) The conclusion of gas supply contracts having a duration in excess of one year and involving the purchase of a quantity of gas in excess of 250 million normal cubic metres per year from the territory of

the European Union or from third countries, as well as their duration and the quantity of gas they relate to, shall be notified to the regulatory authority. The regulatory authority shall keep a record of such gas supply contracts.

(7) The regulatory authority shall prohibit a gas trader from carrying out its business by official decision if it has been punished for gross infringement of any provisions of this Federal Act and further infringement is to be feared or if measures have been taken or are about to be taken in response to a gas trader's becoming insolvent or excessively indebted.

Title 10
Obligations towards customers

Right of system access

Section 122. (1) Customers have the right to enter into contracts with producers, gas traders and gas companies on the supply of gas to cover the demand of domestic final customers and to request system access with a view to these quantities of gas.

(2) Gas undertakings may demand system access on behalf of their customers. Producers of biogenic gas (biogas and wood gas) may request access to the system on behalf of their customers if system interoperability is not impaired thereby.

Switching, enabling and disabling metering points, objections

Section 123. (1) Consumers as defined in section 1 para. 1 item 2 Consumer Protection Act and small businesses may terminate their supply contracts by giving two weeks' notice, without the need to adhere to any particular deadlines for giving notice. Suppliers may terminate their contracts with consumers as defined in section 1 para. 1 item 2 Consumer Protection Act or small businesses by giving at least eight weeks' notice. Where minimum contract terms have been agreed, the first possibility for termination with notice shall be no later than at the end of the first contract year and then after a two-week notice period if the contract is terminated upon the wish of the consumer as defined in section 1 para. 1 item 2 Consumer Protection Act or a small business, or after an eight-week notice period if the contract is terminated upon the wish of the supplier.

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

(3) Final customers without load meters may at any time, electronically and without adhering to any particular format, submit declarations of intent to suppliers through websites to be provided by the latter, in order to authorise such suppliers to instate and execute the switching process. Suppliers that have been authorised in this way shall submit suitable evidence to the system operators and other suppliers to establish the existence of such declarations of intent. The system operator shall inform the final customer immediately once the switch has been instated. Suppliers shall provide for user-friendly mechanisms to verify and authenticate the final customer's identity. The regulatory authority shall enable users to find supplier websites by including hyperlinks in its tariff calculator (section 22 E-Control Act). The suppliers shall provide and update the pertaining information to the regulatory authority without the latter having to request it.

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

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

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

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

Universal service

Section 124. (1) Gas traders and other suppliers whose function includes supply to consumers as defined in section 1 para. 1 item 2 Consumer Protection Act shall publish, in an appropriate manner (e.g. on the internet), their rates for universal service to consumers in the meaning of section 1 para. 1 item 2 Consumer Protection Act. They shall deliver, at their general terms and conditions in force and at these rates, gas to consumers as defined in section 1 para. 1 item 2 Consumer Protection Act and small businesses that claim their right to be supplied with gas (universal service obligation). The regulatory authority may specify further details on the reasonableness of the universal service obligation and on the design of rates for universal service to consumers as defined in section 1 para. 1 item 2 Consumer Protection Act and small businesses by ordinance.

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

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

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

operators may reject prepayments only if there are safety concerns. For cases of repeated payment arrears, section 127 para. 3 applies mutatis mutandis. The prepayment obligation does not apply to small businesses with load meters.

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

Replacing suppliers

Section 124a. (1) If a clearing and settlement agent terminates its contract with a balance responsible party, either with notice or with immediate effect, the clearing and settlement agent shall notify the regulatory authority, the market area manager and the system operators in whose systems the concerned metering points are located of such termination and time of effect. This applies mutatis mutandis to the following situations:

1. if the contract between a supplier and a balance responsible party is terminated, in which case the notification obligations rest with the balance responsible party;
2. if the contract between a balance responsible party and the operator of the virtual trading point is terminated, in which case the obligation to notify the regulatory authority rests with the operator of the virtual trading point;
3. if the contract between a balance responsible party and the market area manager is terminated, in which case the obligation to notify the regulatory authority rests with the market area manager.

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

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

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

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

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

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

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

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

General terms and conditions for gas supply

Section 125. (1) Gas traders and suppliers shall draw up general terms and conditions for gas supply to customers whose consumption is not metered with load meters. Prior to their entry into force, the general terms and conditions and any amendments thereto shall be electronically notified to the regulatory authority and published in a suitable format.

(2) Any amendments to the general terms and conditions and the contractual charges are permissible only subject to the provisions of the Civil Code and the Consumer Protection Act, FLG no 140/1979. Customers shall be informed of such amendments by way of a personally addressed written communication

or, if so requested by the customer, electronically. This communication must logically reproduce the amendments introduced to the general terms and conditions. If the customer objects to the amendment of the general terms and conditions or the charges and this terminates the contractual relationship, such termination takes effect on the last day of the month following a period of three months.

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

1. name and address of the gas trader or supplier;
2. the services rendered and quality levels offered, as well as the prospective date of the start of delivery;
3. the method of making available to the customer current information on the applicable contractually agreed charges;
4. the term of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;
5. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
6. information on the available complaint procedures;
7. the modalities for partial payments by the customer; the customer shall have the possibility of spreading their dues across at least ten payments a year;
8. the energy rate in cent per kWh including any additional fees, levies and taxes;
9. the conditions for supply pursuant to section 124.

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

(5) The regulatory authority may prohibit the application of the general terms and conditions for gas supply notified pursuant to para. 1 above within two months to the extent that such terms violate a statutory prohibition or are unethical. This is without prejudice to the competences for reviewing general terms and conditions on the basis of other legislation.

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

Minimum requirements for bills and information and advertising materials

Section 126. (1) Information and advertising materials as well as bills directed at final customers shall be transparent and consumer-friendly. Where such documents are intended to inform both on the system charges and the price for gas (energy rate), to advertise for both of them, to offer the conclusion of a joint contract or to invoice such a contract, the components of the system charges, the surcharges for taxes, fees and levies, and the energy rate shall be itemised in a transparent manner. The energy rate shall, in any case, be stated in cent per kWh, and any standing charges shall be listed. Electronic delivery of bills is permissible upon the customer's wish, but the contract may not curtail the customer's right to receive paper bills. Receiving paper bills shall not give rise to any additional cost for the customer.

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

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

1. the allocation of the customer facilities to the network levels pursuant to section 84;
2. for load-metered customers, the contracted maximum capacity in kilowatt hours per hour (kWh/h);
3. the metering point reference numbers;
4. the meter readings used for billing;
5. information about how meters have been read. Such information shall specify whether meters have been read by the system operator, by the customer, remotely, or whether the meter data have been calculated;
6. the quantity of energy transported per time of use during the billing period; for load-metered customers, also the load information used for billing; and a year-on-year comparison for each of these;

7. the calorific value in kWh/cu m used for calculating the amount of energy billed as well as the conversion factor applied to convert the gas volume in operating state into the energy quantity;
8. information on the option of meter reading by the customer;
9. telephone numbers for incidents and failures;
10. the process for instating a dispute settlement procedure pursuant to section 26 E-Control Act.

(4) Suppliers shall use the calorific value set by the regulatory authority by ordinance pursuant to section 72 para. 3 for billing except where the calorific value is determined directly at the customer facility.

(5) For the purpose of confirming correctness and legality, and to be able to provide authorised final customers and, upon explicit request by such final customers, expressly named third parties, with data free of charge, system operators and suppliers shall keep records of consumption and billing data for a period of three years after their becoming available. This is without prejudice to the competence of the regulatory authority pursuant to section 131, provided that such data are aggregated with other the data relating to other final customers as much as possible and anonymised immediately after being retrieved and are only used in such anonymised format,

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

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

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

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

Consumption and cost information for final customers with smart meters

Section 126a. (1) Final customers whose consumption is registered via smart meters shall receive clear and understandable information about their gas consumption and overall gas costs from their supplier each month within one week after the smart meter readings pursuant to section 129 para. 1 have been retrieved; such information shall be calculated based on the daily or, where they are relevant to billing, hourly readings and shall be submitted electronically and free of charge. Information submission shall not take place if final customers expressly waive this right. Final customers shall have the possibility to opt for receiving such information in paper format, free of charge.

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

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

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

Consumption and cost information for final customers without smart meters

Section 126b. Final customers without load meters or smart meters shall find detailed, clear and understandable information about their consumption and gas costs enclosed with their bills. System operators shall offer all such final customers the possibility to notify their meter readings once every three months. Whenever a final customer does so, the system operator shall pass the meter reading on to the supplier without delay, and in no case later than ten days after receiving the reading from the final customer. The final customer shall receive detailed, clear and understandable consumption and gas cost information in an electronic format within two weeks, free of charge. Section 126a applies mutatis mutandis. Information submission shall not take place if final customers expressly waive this right.

Disabling of connections and customer information

Section 127. (1) System operators shall provide final customers with the following information, free of charge and in an easily and directly accessible way through the internet and by way of an information sheet enclosed with bills once a year:

1. name and address of the undertaking;
2. the services provided, the service quality levels offered, as well as the time for the initial connection;
3. the types of maintenance services offered;
4. the means by which up-to-date information on all applicable rates may be obtained;
5. the term of the contract, the conditions for extending or terminating the services and the contract, and any right of withdrawal;
6. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
7. the right to be supplied with gas pursuant to section 124;
8. any statements of the European Commission on energy consumer rights;
9. information about the rights of final customers pursuant to section 126b;
10. information about the rights of final customers pursuant to section 129.

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

1. name and address of the undertaking;
2. the means by which up-to-date information on all applicable rates may be obtained;
3. the term of the contract, the conditions for extending or terminating the services and the contract, and any right of withdrawal;
4. information about the rights of final customers pursuant to section 126b;
5. the right to be supplied with gas pursuant to section 124;
6. any compensation and refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing;
7. any statements of the European Commission on energy consumer rights.

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

(4) If an energy supply contract is terminated with notice, expires or terminates because of an objection pursuant to section 125 para. 2, neither the system operator nor the supplier shall issue reminders pursuant to para. 3. The same applies in cases of abusive behaviour by the final customer, e.g. if metering devices have been manipulated.

(5) Where system operators or suppliers request collateral or prepayment, final customers without load meters have the right, without prejudice to their rights under section 124, to use prepayment meters if this does not raise safety concerns.

(6) Suppliers shall bill customers no later than six weeks after a supplier switch or contract termination has become effective.

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

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

Smart meters

Section 128. (1) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may decide smart meter rollout following a cost-benefit analysis. Such decision shall take the form of an ordinance issued following hearings with the regulatory authority and the representatives of consumer protection organisations. If such ordinance is issued, the system operators shall install smart meters at customer facilities without load meters, report on the roll-out – in particular with regard to costs, the system situation, data protection and data security, and these final customers' consumption trends – and inform these final customers about the smart meter installation at their facility and the overall situation without delay. If the provisions on smart meter roll-out in the ordinance allow so, the system operators shall respect the final customer's wish not to have a smart meter. The regulatory authority shall inform final customers about the general aspects of smart meter roll-out and draw up an annual report about the status of roll-out, in particular with regard to costs, the network situation, data protection and data security, the current developments at EU level (as far as known), and about consumption trends at final customer installations with smart meters.

(2) The regulatory authority shall detail the minimum requirements for smart meters by ordinance and include the related costs in the allowed cost for the system charges pursuant to section 79. Such ordinance shall prescribe at least the minimum features which smart meters must have to enable execution of the tasks specified in paras 3 to 5 below, and in sections 129 and 129a. Smart meters must at least be able to record hourly meter readings, save data for 60 calendar days inside the device, and enable remote retrieval of the data stored in the device through a communications interface. The regulatory authority may, in its ordinance, decree exemptions from the requirements if this is necessary for technical reasons. The regulatory authority shall involve consumer representatives, the data protection authority and the Data Protection Council in the development of such ordinance as far as possible. The operation of smart meters and their communication, including with external devices, shall be secured in accordance with the recognised state of the art to ensure that unauthorised parties do not gain access to data beyond the current meter reading. The operation of smart meters shall comply with the provisions of metrology and calibration law and data protection law as well as the recognised state of the art.

(3) The default setting for the smart meter display shall only show the current meter reading. If a customer wishes to verify additional data that are stored in the device and relevant for billing, such customer's smart meter, if it enables registering and saving meter readings within the device at intervals of 24 hours and 60 minutes, shall be configured so as to enable verification of such data at the smart meter display. Such configuration operation shall be free of charge and shall not cause disproportionate efforts for the final customer. If a final customer explicitly requests so, the smart meter shall be returned to its default configuration without delay and free of charge.

(4) In particular where a supplier switch has taken place or a contract with a system operator is terminated, display of historical metering data that refer to the previous contracts, if available, shall be disabled so that they are not shown to non-authorised parties on the smart meter display. The display shall be returned to its full functionality free of charge once the smart meter does not hold any readings relating to the previous contract anymore. The system operator's obligation to provide consumption data pursuant to section 129 paras 1 and 2 and to transmit data to the supplier pursuant to section 129a para. 2 that arise from statutory obligations or the current contract remain unaffected thereby.

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

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

Smart metering data

Section 129. (1) The system operators shall ensure that daily submission of meter readings begins no later than six months after a smart meter has been installed at a final customer's facility. If the smart meter has internal memory, it shall record and keep all hourly values for 60 calendar days at the disposal of the customer for the purposes of billing, customer information (section 126a), energy efficiency, energy

statistics, and maintaining secure and efficient system operation. All smart meters shall be assigned to a user category pursuant to section 27 para. 3.

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

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

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

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

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

Section 129a. (1) System operators shall only retrieve and use hourly consumption data if the concerned final customer explicitly agrees or if the data are necessary to fulfil duties that arise from the customer's having chosen a time-of-use supply contract. In addition, system operators may retrieve such data from smart meters without customer agreement in justified local cases where this is necessary to maintain secure, safe and efficient system operation. The relating data shall be deleted immediately once they are no longer needed to fulfil this task. The system operators shall submit annual reports about the reasons for such data retrievals to the regulatory authority. Also, the regulatory authority may instruct that hourly values be extracted from smart meters for the purpose of gas statistics pursuant to section 147, in particular so as to analyse the development of intraday variations in withdrawals from the public grid (daily load variations), for the purposes of crisis prevention measures in accordance with the Energy Intervention Powers Act 2012 and for the purpose of monitoring in accordance with section 131, if such data are aggregated with the data of other final customers as much as possible and anonymised immediately after being retrieved and are only used in such anonymised format. Data retrieval from smart meters for statistical purposes is only allowed if the necessary statistical data are not available at the system operators'. Final customers who have not consented to hourly values being retrieved shall be informed of such retrieval without delay.

(2) The system operators shall submit all daily consumption data of final customers equipped with smart meters to the respective suppliers for the purposes listed in section 126a and for the purpose of billing at the beginning of the next calendar month and no later than on the fifth day of such month; hourly values may only be submitted upon the customer's express consent or if required for the supplier to fulfil its contractual duties. The regulatory authority may issue an ordinance detailing the requirements for standardised transmission of these data from system operators to suppliers or to third parties authorised by the final customer and their format.

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

(4) If smart meters pursuant to section 128 para. 1 are installed at final customers' with a valid contract whose continuation would require retrieving data beyond daily granularity to allow for time-of-use billing, such final customers shall be verifiably informed about this situation in a transparent and understandable manner. Final customers shall also verifiably receive transparent and understandable information about the possibility to switch to a billing method that requires daily consumption data only. Continuing an existing contract at the original conditions requires the explicit consent of the final customer.

(5) Using consumption data from smart meters for purposes that are not listed in paras 1 to 4, section 123, section 126, section 126a or section 129, for procedures of administrative, administrative penal or civil nature that do not make immediate reference to the purposes of this Act is not permissible.

Guarantees of origin for gas

Section 129b. (1) The regulatory authority is appointed as competent body for issuing guarantees of origin and for monitoring that they are correctly transferred and cancelled. The regulatory authority shall establish an automated database for this purpose (GO database).

(2) All gas production plants that are connected to the public grid must be registered in the regulatory authority's GO database pursuant to para. 1 by their operator or an appointed third party before they start operating. The registration deadline for existing facilities is three months after this Federal Act enters into force. As a minimum, registration shall require the following data:

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

The signed system access contract and other adequate documentation must be supplied to evidence the above information. The regulatory authority may request further documentation for this purpose; in particular, it may ask for plant audit documentation and permits to be submitted. Information may be supplied by the clearing and settlement agent or other parties acting on behalf of the plant operator.

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

(4) Upon the request by a plant operator, the clearing and settlement agent shall enter the gas quantity injected into the public grid into the GO database and thus trigger issuing of guarantees of origin by the regulatory authority.

(5) Operators of power-to-gas plants shall transfer the guarantees of origin and environmental impacts from electricity generation to gas production. This shall be achieved by reducing the guarantees of origin and environmental impacts from the electricity generated by the conversion losses and marking them as energy input for gas production on the electricity side. The conversion losses must be marked as final consumption in the electricity labelling and disclosure.

(6) Only one guarantee of origin may be issued per unit of gas produced. A guarantee of origin is normally valid for 1 MWh but its amount may be broken down into quantities with up to three decimal places and guarantees for smaller amounts are admissible.

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

(8) Guarantees of origin shall include the following information:

1. quantity of energy produced;
2. type and maximum capacity of the production plant;
3. period and place of production;
4. energy sources used;
5. type of investment aid received;
6. type of other support received;
7. operational date of the plant;
8. date and country of issue and unique identification number;
9. whether a renewable gas badge is attached or not.

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

(10) Operators of gas plants, gas traders and gas suppliers selling gas to other gas traders shall verifiably transfer the guarantees of origin corresponding to the quantity of energy sold to the buyer (via an automated process) if the latter requests so.

Guarantees of origin from other countries

Section 129c. (1) Guarantees of origin for gas from plants located in other EU member states or in states party to the EEA Agreement are deemed guarantees of origin within the meaning of this Federal Act if they meet the requirements set out in section 129b para. 8. The regulatory authority may lay down additional requirements.

(2) Guarantees of origin for gas from plants located in third countries are deemed guarantees of origin within the meaning of this Federal Act if the European Union has concluded an agreement with that third country on the mutual recognition of guarantees of origin issued in the Union and compatible guarantees of origin systems established in that third country, and only where there is direct import or export of energy.

(3) In case of doubt, the regulatory authority shall declare by official decision, in response to a request or ex officio, whether the conditions for recognition as laid down in paras 1 and 2 are met.

(4) The regulatory authority may issue ordinances listing countries where guarantees of origin for gas meet the preconditions pursuant to para. 1.

(5) The preconditions for the recognition of guarantees of origin for the purpose of gas labelling may be laid down in the ordinance to be issued under section 79 para. 11.

Disclosure (labelling)

Section 130. (1) Suppliers providing gas to final customers in Austria shall show on, or on annexes to, final customers' gas bills (annual statements) their supply mix, taking into account the total amount of gas procured by the supplier for final customers. This obligation shall also apply to the website and promotional material addressed to final customers and subject to labelling obligations. This information shall be based on the total gas quantity sold by a supplier to final customers during the previous calendar year.

(2) The supplier mix also includes a representation of the environmental impact of the gas on the bill, on promotional material subject to labelling obligations and on the website. Further details may be decreed as part of the gas labelling ordinance under para. 8.

(3) Gas labelling shall disclose the supplier mix in terms of the (primary) gases that compose the total gas quantity a supplier has sold to final customers, detailing the percentages of renewable gas on the one hand and fossil gas and other gas on the other hand. The share of renewable gas in the supplier mix must be evidenced by guarantees of origin that shall then be cancelled in the regulatory authority's GO database. Any gas supplied to final customers that has no guarantee of origin attached shall be labelled as fossil gas.

(4) If a supplier offers products with differing energy mixes to final customers, paras 1 and 2 apply mutatis mutandis to these products.

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

(6) A confirmation on the technology used to produce the gas issued by a control, auditing or certification body accredited under the Accreditation Act 2012, FLG I no 28/2012, shall be submitted to the regulatory authority. (6) The documentation shall be audited by a chartered accountant, a suitable consulting engineer or civil engineer or a suitable sworn and certified expert. 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 supplier. The documentation, to be completed within three months of the end of the calendar year, shall be kept available for inspection by final customers at the supplier's premises for three years.

(7) At the request of the regulatory authority, suppliers shall submit within a reasonable period of time any documents necessary to verify the correctness of the information provided. In case of incorrect statements, an official decision shall be issued to request the supplier concerned to correct such statements or labelling.

(8) The regulatory authority may specify further details on gas labelling and on the guarantees of origin by ordinance. In particular, such ordinance shall specify the scope of the existing obligations under sections 129b and 130 and establish the pertaining standards for the guarantees of origin for the various renewable gases and for labelling in detail.

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

Title 11
Monitoring

Monitoring

Section 131. (1) As part of its task to supervise the gas market, the regulatory authority shall continuously monitor

1. the security of supply with regard to the reliability and quality of the network as well as the commercial quality of the system services provided;
2. the level of transparency in the gas market, with special reference to wholesale prices;
3. the level and effectiveness of market opening and competition at wholesale and retail levels, including any distortion or restriction of competition;
4. any restrictive contractual practices, including exclusivity clauses, which may prevent large load-metered business customers from contracting simultaneously with more than one supplier or restrict their choice to do so;
5. the duration and quality of new connection, maintenance and repair services provided by transmission and distribution system operators;
6. compliance with the rules relating to the roles and responsibilities of transmission system operators, distribution system operators, market area managers, distribution area managers, clearing and settlement agencies, suppliers, customers and other market parties pursuant to Regulation (EC) No 715/2009;
7. the conditions for storage access, linepack and other ancillary services in the meaning of Article 33 Directive 2009/73/EC;
8. the investment plans of transmission and distribution system operators;
9. the implementation of crisis prevention measures in the sense of section 20a Energy Intervention Powers Act 1992.

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

1. from system operators: the number of new connections including the time required for their setup; the maintenance and repair services provided including the fees collected in this regard and the time required; the number of planned supply interruptions at each network level including their

duration and the number of final customers affected; the number of unplanned supply interruptions at each network level including their causes and duration as well as the number of final customers affected, separated into cases of system operator vs. third-party fault; the number of system admission and system access requests including their average processing time;

2. from transmission system operators: the number of interruptions at each entry/exit point; the method used to calculate the interruptible capacity offered to third parties;
3. from distribution system operators: the total number of final customers; the number and quantities (in kWh) of supplier switches at each network level and for each supplier; the number of disabled metering points including separate information on disabled metering points in cases of contract suspension or termination due to breach of contract; the number of requests for enabling new connections and disabling existing ones; the number of prepayment meters in use; the number of switches notified to the system operator including unsuccessful switches; the number of final bills and the share of such bills sent later than six weeks after contract termination; the number of customer complaints and requests including their topic (e.g. bills and amounts billed, meters, meter reading or consumption calculation) and their average processing time;
4. from suppliers: the energy rates billed to each defined customer category in cent/kWh; the number and quantities (in kWh) of supplier switches in each customer category; the number of complaints received including their topics; the number of final customers supplied including the quantities supplied, for each customer category;
5. from injecting parties: the average import price in cent/kWh excluding taxes and surcharges, as well as the quantities imported, at each contractual entry point; the average purchasing price in cent/kWh and the quantities purchased from domestic producers;
6. from the operator of the virtual trading point: aggregated transaction data (OTC volumes and data on market concentration, separately for the buying and selling sides);
7. from the operator of the virtual trading point: aggregated trade volume information relating to trades on the spot and forward/future markets of gas exchanges (transaction data and data on market concentration, separately for the buying and selling sides);
8. from the clearing and settlement agents: the quantities of imbalances of each balancing energy supplier and balance group; bids and accepted bids of each balancing energy supplier; clearing prices; supply and demand structure;
9. from the market and distribution area managers: capacity utilisation in accordance with Regulation (EC) No 715/2009; linepack; entry and exit points of the market area; from the market area manager also the weighted average calorific value of all gas (except for gas from storage) injected into a market area;
10. from storage system operators: information about injection and withdrawal rates as well as working gas volume (including, without limitation, whether it is contracted on a firm or interruptible basis, used, not contracted); the day-ahead storage capacity sold pursuant to Article 17(3) Regulation (EC) No 715/2009, itemised into interruptible and firm arrangements.

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

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

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

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

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

Title 12
Dispute settlement

Dispute settlement procedures

Section 132. (1) Where disputes arise

1. between prospective system users and system operators regarding the legality of refusal of system access;
2. between prospective storage users and storage system operators regarding the legality of refusal of storage access; or
3. between suppliers regarding the legality of refusal to transfer entry capacity

the decision lies with the regulatory authority, except in cases within the jurisdiction of the cartel court (section 38 Cartel Act 2005, FLG I no 61/2005).

(2) In all other disputes

1. between prospective system users and system operators regarding the obligations arising from this relationship;
2. between prospective storage users and storage system operators regarding the obligations arising from this relationship;
3. between customers and the operator of the virtual trading point;
4. between an independent system operator pursuant to section 109 and the owner of the transmission system according to section 111;
5. between a vertically integrated undertaking and the independent transmission system operator pursuant to section 112; or
6. regarding the financial settlement of imbalance charges

the courts have jurisdiction. An action by a prospective system user in disputes pursuant to item 1 above or by a prospective storage user pursuant to item 2 above or an action in disputes under items 3 to 6 above cannot be brought until the official decision of the regulatory authority on the dispute settlement procedure has been served within the time period set in section 12 para. 4 E-Control Act. For as long as a procedure in accordance with items 1 or 2 is pending conclusion at the regulatory authority, no judicial proceedings may be opened in this same case.

(3) Without prejudice to the provisions of para. 2, an action for claims based on refusal of system or storage access cannot be brought until the regulatory authority's decision 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.

Title 13
Gas pipelines and storage facilities not subject to the Mineral Resources Act

Chapter 1
Characteristics of gas pipeline systems

Technical minimum requirements for pipeline systems

Section 133. In order to ensure that the system operators comply with the responsibilities imposed on them, the technical rules (section 7 para. 1 item 53) shall be observed in constructing, establishing and operating gas pipeline systems.

Hydrogen blending threshold

Section 133a. The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, together with the Federal Minister for Digital and Economic Affairs, may decree by ordinance the technical maximum percentage of hydrogen in gas pipelines.

Chapter 2
Construction and decommissioning of gas pipeline systems

Permitting

Section 134. (1) Without prejudice to any other obligations to obtain licences or permits, the construction, expansion, substantial alteration and operation of gas pipeline systems requires a permit under the provisions of gas law to be issued by the authority defined in section 148 para. 2.

(2) Gas pipeline systems in the pressure range of up to and including 0.6 MPa are exempt from the permitting requirement, provided that the following documents are available at the possessor of the system for inspection by the authority defined in section 148 para. 2 at any time:

1. site and construction plans, technical specifications of the pipeline system, documentation showing that the pipeline system is constructed and operated according to the relevant technical rules, describing such technical rules and showing that they are complied with; or
2. the complete set of certification documents according to the Austrian Association for Gas and Water testing standard PV 200 Quality requirements to be met by gas system operators, requirements to be met by tests for certification of gas system operators, available from the Austrian Association for Gas and Water, or other suitable certification procedures (e.g. ÖNORM EN ISO 9001 Quality assurance systems – requirements [ISO 9001:2000]), all of which are available from Austrian Standards, A-1020 Vienna, Heinestrasse 38; and
3. a safety concept pursuant to section 58 para. 1 item 3, section 62 para. 1 item 9 and section 150 para. 2 item 12, and proof of third-party liability insurance pursuant to section 51;

and provided that no expropriation measures pursuant to section 145 are taken. Gas pipeline systems in the pressure range above 0.1 MPa shall be notified to the authority specified in section 148 para. 2 three months prior to their intended construction, attaching the documents referred to in section 150 para. 2 items 1, 5, 12 and 13. On the application of a system operator, the authority specified in section 148 para. 2 shall, within three months, prohibit construction if the conditions referred to in section 137 para. 3 are met. Section 138 para. 1 item 4 applies mutatis mutandis. In the event that the documents listed in section 150 para. 2 items 1, 5, 12 and 13 have not been submitted together with the notification and are not submitted to the authority specified in section 148 para. 2 upon a request pursuant to section 13 General Administrative Procedures Act, the notification shall be rejected within a period of three months.

(3) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may amend or supplement by ordinance the conditions for the exemption of gas pipeline systems from the permitting requirement pursuant to para. 2 above, provided that, under the technical rules declared binding, no adverse effects on the legal interests safeguarded by the provisions of section 135 are to be expected.

(4) Without prejudice to the provisions under para. 2, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may exempt further gas pipeline systems by ordinance from the permitting obligation, provided that the interests to be safeguarded pursuant to section 135 can be expected to be adequately protected given the condition of the gas pipeline system in question. Such ordinance may also declare specific technical regulations with regard to the condition of the gas pipeline systems thus exempted from the licensing obligation to be binding.

Prerequisites

Section 135. (1) Gas pipeline systems shall be constructed, expanded, altered and operated in such a way

1. that they do not jeopardise the life and health

a) of the possessor of the gas pipeline system;

b) of any of the possessor's family members involved in operating the system who are not subject to the provisions of the Employees Protection Act, FLG 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;
5. that the relevant technical rules are complied with; and

6. that the waste heat resulting from compressing gas is used to a technically feasible and economically reasonable extent; and
7. that long-term climate neutrality by 2040 is supported.

(2) The term "jeopardy of rights in rem" within the meaning of para. 1 item 2 above does not include a mere reduction in the market value of the property in question.

Preliminary examination

Section 136. (1) If an application for temporary utilisation of properties belonging to third parties or for a permit for a gas pipeline system has been submitted and it is to be feared that this gas pipeline system might seriously impair public interests as defined by section 137 para. 5, the authority specified in section 148 para. 2 may order a preliminary examination procedure, at the request of the applicant or ex officio. The authority specified in section 148 para. 2 shall decide on such application within three months.

(2) All authorities and all entities under public law representing any public interests (section 137 para. 5) affected by the planned gas pipeline system shall be heard as part of such a preliminary examination procedure.

(3) Upon conclusion of the preliminary examination procedure, an official decision shall declare whether and under what circumstances the planned gas pipeline system is not contrary to the public interests concerned.

Permits for gas pipeline systems

Section 137. (1) Without prejudice to the provisions of section 134 para. 3, gas pipeline systems may only be constructed, expanded, altered and operated on the basis of a permit issued by the authority specified in section 148 para. 2.

(2) Such permit shall be granted, if necessary subject to suitable conditions, provided

1. that it is to be expected, according to the state of the art (section 7 para. 1 item 60) and to any other relevant academic knowledge, that any foreseeable risks pursuant to section 135 para. 1 items 1 or 2 to be expected in view of the circumstances of the case in question will be avoided and that any nuisance, interference or adverse effects as defined in section 135 para. 1 item 3 will be limited to an acceptable extent, either directly or upon the imposed suitable conditions being met;
2. that the facility is to be constructed, expanded, altered and operated in accordance with the applicable safety regulations and in accordance with the relevant technical rules; and
3. that adequate proof is provided of third-party liability insurance and of the existence of a safety plan.

(3) The permit shall be refused if the construction, expansion, alteration or operation of a gas pipeline system is not compatible with the objectives set forth in section 4 or would prevent a system operator from complying with the public service obligations imposed upon it pursuant to section 5, and such grounds for refusal cannot be removed by imposing conditions. Upon application by a system operator, the regulatory authority shall find, by official decision, on whether at least one of these grounds exists, within two months of receiving such application. The applicant system operator bears the burden of proof that grounds for refusal exist. Until the regulatory authority has reached its decision, the authority specified in section 148 para. 2 shall suspend the permitting procedure according to section 38 General Administrative Procedures Act.

(4) The permit shall not be refused under para. 3 above if the gas pipeline system in question is to be constructed and operated solely with a view to supplying a single final customer.

(5) Suitable conditions shall be imposed to ensure coordination with other existing or approved energy supply facilities, as well as compatibility with the requirements that arise from the specific character of the region and forestry, water law, land-use 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 entities 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 specified in section 148 para. 2 may initially grant a permit for the construction of the system only, reserving the right to withhold the operating license.

(7) In the event that the interests to be safeguarded pursuant to section 135 para. 1 items 1 to 3 should not be adequately safeguarded despite compliance with the conditions imposed in the permit under gas law

or, if applicable, in the operating licence, the authority specified in section 148 para. 2 shall impose any other additional conditions necessary to ensure the safeguarding of these interests according to the state of the art of technology, of medicine and any other relevant academic field. This provision applies mutatis mutandis to systems which do not require a permmit pursuant to section 134 para. 2. The authority specified in section 148 para. 2 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.

(8) In the event that the interests to be safeguarded pursuant to section 135 para. 1 items 1 to 3 should be adequately safeguarded even without compliance with parts of the conditions imposed in the permit under gas law or, if applicable, in the operating licence, the authority specified in section 148 para. 2 may, upon application, lift the conditions not necessary to ensure the safeguarding of these interests according to the technical rules and, if necessary, impose other conditions in their stead.

(9) Changes of possession of a gas pipeline system do not affect the validity of the permit to construct and operate the gas pipeline system.

Parties

Section 138. (1) The following parties have locus standi in the permitting procedure for 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, expanding or altering the 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 135 para. 1 items 1 to 3 are concerned;
4. the system operators which have submitted an application for refusal of the permit pursuant to section 137 para. 3;
5. the locally competent labour inspectorate, inasmuch as the procedure concerns employee protection measures.

(2) The term “neighbour” means 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, expansion, alteration, existence or operation of the gas pipeline system. The term does not extend to persons temporarily staying in the vicinity of the gas pipeline system without having any rights in rem within the meaning of the previous sentence. The term “neighbour” does, however, include possessors 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” includes any party as defined in the first sentence in para. 2 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.

Obligation to notify start of operations and decommissioning

Section 139. (1) The system possessor shall notify the completion of the gas pipeline system or of its main components to the authority specified in section 148 para. 2. Provided that the authority specified in section 148 para. 2, on issuing the construction permit, did not reserve the right to withhold the operating licence, the system possessor may start regular operations upon having given notice of completion.

(2) Where starting operation of the pipeline system is subject to an operating licence pursuant to section 137 para. 6, regular operations shall be permitted to begin upon notification of completion provided that the conditions of the construction permit are complied with.

(3) The system possessor shall notify the authority specified in section 148 para. 2 if a licensed gas pipeline system is to be decommissioned permanently.

Self-monitoring

Section 140. (1) The possessor of a gas pipeline system shall, at regular intervals, inspect this system, or have it inspected, with a view to establishing that it conforms with the applicable regulations, with the official permit and with any other official decisions issued under the provisions of this Federal Act. Save

as otherwise provided in the official permit, in any other official 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 possessor of the gas pipeline system shall make use of federal or provincial institutions, accredited bodies 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 possessor of the gas pipeline system in question, provided that such possessor is suitably qualified, or by any of such possessor's suitably qualified employees. A person is 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 ensure conscientious execution of this inspection.

(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 official permit or in any other official decision, the possessor 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 upon request.

(4) In the event that the inspection certificate should refer to any defects found in the course of the regular inspection, the system possessor shall immediately furnish to the authority specified in section 148 para. 2 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.

Expiry of permits

Section 141. (1) A permit issued pursuant to section 137 expires

1. if construction is not begun within three years of the permit taking effect; or
2. if notice of completion (section 139 para. 1) is not given within five years of the construction permit taking effect.

(2) An operating licence expires

1. if regular operations are not begun within one year of notice of completion being given or, in cases where commissioning is subject to an operating licence pursuant to section 137 para. 6, within one year of this operating licence taking effect; or
2. if the licensee gives notice that the gas pipeline system is to be permanently decommissioned; or
3. if the authority specified in section 148 para. 2 establishes that operation of the gas pipeline system was interrupted without cause for a period of over three years.

(3) Should it be necessary for reasons of planning and construction, the authority specified in section 148 para. 2 may extend the time periods pursuant to para. 1 and para. 2 item 1 above to a maximum of seven years in total, provided that a relating application has been submitted prior to the expiry of the relevant time period.

(4) Upon expiry of a construction permit or operating licence, the last possessor of the system in question shall immediately dismantle the gas pipeline system and, to the extent possible, restore the property to its previous state, provided that the land owner verifiably demands this, except where private-law agreements provide that the gas system is to be left in place. In dismantling the 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 135.

Gas pipeline systems without permits

Section 142. (1) In the event that a gas pipeline system requiring a permit is constructed, expanded or significantly altered without such a permit, or that an installation requiring an operating licence is operated without such a licence, the authority specified in section 148 para. 2 shall order by official decision any measures which are necessary to ensure compliance with the law, such as discontinuing construction works, discontinuing operations or dismantling the system in question or parts of it. 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 permit has been submitted and if this application has not been rejected or denied.

Temporary safety measures

Section 143. (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 gas pipeline system which is subject to the provisions of this Federal Act, and to putting a stop to any unacceptable nuisance to which the neighbours are exposed by a gas pipeline system without a permit or by a gas pipeline system which does not require a permit, the authority specified in section 148 para. 2 shall, by official decision, order the gas pipeline system in question or any machinery to be completely or partially closed down, or impose any other safety measures or provisions relating to this system, as warranted by the extent of the danger or nuisance. In the event that the authority specified in section 148 para. 2 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 an official decision, after notifying the possessor or the director or the owner of the gas pipeline system or, should this not be possible, the person actually operating the system; however, a written official decision to this effect shall be issued within one month, failing which any measures taken shall be deemed to be annulled. This official decision is deemed to have been issued even if it has been returned to the authority as undeliverable pursuant to section 19 Service of Documents Act, FLG no 200/1982, provided that two weeks have elapsed since its being posted on the official notice board by the authority specified in section 148 para. 2. Such official decisions are immediately enforceable. They cease to be effective after a period of one year, starting from their effective date, unless a shorter period has been specified in the official decision. Changes of possession of the system or of parts of the system in question, or of any other objects affected by these measures do not affect the validity of such official decisions.

(2) In the event that the conditions for issuing the official decision pursuant to para. 1 above should no longer exist and that the undertaking wishing to operate the 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 specified in section 148 para. 2 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 gas pipeline systems

Section 144. (1) Upon application, the authority specified in section 148 para. 2 shall permit the temporary utilisation of properties belonging to third parties with a view to carrying out preliminary works in connection with the construction, expansion or alteration of a 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 is not legally entitled to obtain a decision unless the preliminary works are intended to begin within a year of the application being filed.

(4) The permit 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 gas pipeline system. Neither the owners nor anyone else having a right in rem in these properties has locus standi.

(5) In carrying out preliminary works, the entitled party shall exercise due care with regard to existing rights and to ensuring 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 official decision permitting the preliminary works to be carried out.

(7) The authority specified in section 148 para. 2 shall furnish the local governments in whose territory preliminary works are to be carried out with a copy of the permit and a site plan pursuant to para. 2 above, both of which shall immediately be promulgated via the official notice board. The promulgation period is 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, of the intended beginning of the preparatory works in writing at least four weeks in advance.

(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 specified in section 148 para. 2 upon application. Section 151 applies mutatis mutandis to the compensation procedure.

Chapter 3
Expropriation

Expropriation

Section 145. (1) Expropriation by depriving or restricting property rights or other rights is permitted where this is required for the construction of the transmission or distribution line and it is in the public interest to do so. The property owners affected shall be informed of the grounds for the existence of such public interest as early on as possible. A public interest is deemed to exist if provision has been made for such gas pipeline facility in the integrated long-term plan or the network development plan. In such a case, the regulatory authority shall confirm the existence of a public interest by official decision. Where a gas pipeline facility is not included in the integrated long-term plan or network development plan, a public interest is deemed to exist if the construction of such facility is necessary to achieve the objectives of this Federal Act, including, without limitation, the objectives set out in sections 4, 22 and 63. For gas line facilities of a pressure range up to and including 0.6 MPa, private land may be expropriated only if no public land is available in the area concerned or if the gas company cannot, for economic reasons, be reasonably expected to use public land.

(2) Expropriation includes

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 whose exercise is bound 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.

(4) The authority which is competent to issue a permit pursuant to section 148 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 151.

(5) The competent authority within the meaning of para. 1 above for gas pipeline systems which are exempt from the obligation to obtain a permit pursuant to section 134 para. 2 is the provincial governor.

Chapter 4
Storage facilities not subject to the Mineral Resources Act and measures to minimise the dangers emanating from serious accidents

Scope

Section 146. (1) Gas storage pipes and spherical gas storage tanks require a permit in accordance with this Federal Act. The provisions of section 133 apply mutatis mutandis to such storage facilities.

(2) The operator of gas storage pipes or spherical gas storage tanks that fall within the scope of application of this chapter and exceed the volume thresholds specified in Annex 5 Title 1 item 14 Industrial Code 1994 shall take all measures necessary in accordance with the state of the art to prevent serious accidents and minimise their consequences for persons and the environment. Sections 84a to 84f, 84g para. 2, 84h, 84k and 84l paras 2, 4, 5 and 7 Industrial Code 1994 apply mutatis mutandis to such facilities. In this context, the conditions listed in annex 4 must also be complied with.

Title 14
Statistics

Commissioning and conducting statistical surveys

Section 147. (1) The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, upon a proposal by the regulatory authority, may order and carry out statistical surveys including, without limitation, price surveys and the collection of other information about the market, including but not limited to the number of switches and new customers in each customer group, and other statistical work in connection with gaseous energy carriers of any kind, including, without limitation, biogenic gas, which are suitable for energy generation by combustion, in their original form or in an altered form.

(2) Orders to carry out statistical surveys shall be given by ordinance. In addition to the actual commission to conduct statistical surveys, such ordinance shall include specifications regarding

1. the survey samples;
2. statistical units;
3. the type of statistical survey to be conducted;
4. variables;
5. attributes;
6. 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 Federal Statistics Act 2000.

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

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

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

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

Title 15
Authorities and procedures

Chapter 1
Authorities

Competent authorities in gas matters

Section 148. (1) Save as otherwise provided in individual cases or in the below paragraphs, the authority within the meaning of the provisions of this Federal Act is the regulatory authority as per section 2 E-Control Act.

(2) Without prejudice to the provisions of para. 1 above and para. 3 below, authorities within the meaning of this Federal Act are originally competent as follows:

1. the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology for

a) the granting of permits for constructing, altering or expanding transmission lines as defined in section 7 para. 1 item 19 and of distribution pipeline systems at network level 1;

b) the granting of permits for constructing, altering or expanding gas pipeline systems crossing provincial borders;

2. the provincial governor, concerning

a) the granting of permits for constructing, altering or expanding all other gas pipeline systems;

b) the granting of permits for constructing, altering or expanding storage facilities pursuant to section 146;

c) decisions as to whether an obligation to connect exists under section 59 para. 3.

(3) Administrative penalties pursuant to sections 159 through 162 are imposed by the district administration authorities. The regulatory authority is a party to such proceedings. It may assert a right to compliance with the statutory regulations that protect the public interests to be safeguarded by the regulatory authority in the proceedings and appeal to the provincial administrative court.

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

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

(6) Fines pursuant to section 164 are imposed by the cartel court.

(7) In administrative matters involving the permits for the construction, alteration or expansion of gas transmission systems pursuant to para. 2 item 1 above or the permissibility, the nature and the object of expropriation for the purposes of their construction, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may completely or partially authorise the locally competent provincial governors to perform the duties of office in an individual case, including but not limited to the issuing of official decisions, provided that this is in the interest of expedience, speed, simplicity and economy. In such individual case, the provincial governors assume all duties of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

Chapter 2
Preliminary examination procedures and permitting procedures for gas pipeline systems

Preliminary examination procedures

Section 149. (1) Applications for initiating a preliminary examination procedure must be submitted in writing.

(2) The applicant must submit the following documents to the authority:

1. a report on the technical design of the planned gas pipeline system;
2. a site plan, showing the intended route and any installations serving public interests which are obviously affected.

Initiation of permitting procedures

Section 150. (1) Applications for a licence under gas law must be submitted to the authority in writing.

(2) The following documents must be attached to the application in duplicate:

1. a site plan;
2. a technical report stating the purpose, extent, mode of operation and technical specifications of the planned gas pipeline system, including, without limitation, its design pressure and working pressure;
3. a route plan of the scale of 1:2,000, showing the route of the 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 gas pipeline system pursuant to section 7 para. 1 item 15;
5. a list of any third-party installations affected by the 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 information from the land register at the time of application, of the owners of the properties on which the 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 gas pipeline system and, inasmuch as these owners are apartment owners within the meaning of the Apartment Ownership Act 2002, FLG no 70/2002, the names and addresses of the respective property managers (section 20 Apartment Ownership Act 2002);
7. an excerpt from the land-use 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 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 in the meaning of section 135 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 limitation, the plans for safety reports and risk analyses, as well as emergency plans;
13. a confirmation from the third-party liability insurer pursuant to section 51 para. 1.

(3) If any of the documents referred to in para. 2 above are not necessary for the licensing procedure in question, the authority shall waive the requirement to submit these documents.

(4) If needed for 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.

Permitting procedure and right to be heard

Section 151. (1) Upon receiving an application for a permit to construct and operate a gas pipeline system or to expand or alter a gas pipeline system that already has a permit, 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 pursuant to section 150 para. 2 item 6 and the persons referred to in section 138 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 General Administrative Procedures Act), the neighbours may only attend the inspection of the gas pipeline system with the agreement of the applicant; however, this is without prejudice to the neighbours' right to be heard.

(3) If a neighbour raises any objections under private law against the gas pipeline system in question, the chairperson of the hearing shall endeavour to achieve 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 gas pipeline system, they shall be heard.

(5) The local government on whose territory the gas pipeline system is to be constructed and operated shall be heard in the permitting procedure under gas law within the scope of its sphere of competence with a view to safeguarding public interests as defined by section 135.

(6) If projects requiring a permit pursuant to this Federal Act also require a licence, permit or notification pursuant to any other provisions of federal law, the competent authorities shall coordinate their actions and, if possible, conduct their respective procedures simultaneously.

Concentration of procedures

Section 152. (1) In the event that a gas pipeline system requiring a permit under this Federal Act also requires a permit pursuant to the Pollution Control Act for Boiler Installations or contains parts that require a permit pursuant to the Pollution Control Act for Boiler Installations, the requirement for a separate permit pursuant to the Pollution Control Act for Boiler Installations is waived while applying its substantive permitting provisions in the permitting procedure for the gas pipeline system.

(2) Gas pipeline systems or parts thereof with a fuel heat capacity of 50 MW or more are subject to section 7 paras 2 and 3 Pollution Control Act for Boiler Installations in addition to para. 1.

(3) The official decision issued regarding gas pipeline facilities pursuant to para. 2 shall comply with the requirements of section 8 para. 3 Pollution Control Act for Boiler Installations. The permitting decision shall be published in accordance with the stipulations of section 8 para. 4 Pollution Control Act for Boiler Installations.

Granting of permits

Section 153. (1) Gas pipeline systems that meet the conditions pursuant to section 135 shall receive a permit by way of a written official decision.

(2) Provided that there are no reservations concerning the protection of any interests defined in section 135 para. 1 items 1, 2 and 3, the authority 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 depending on the time required to take the necessary measures.

(3) In the case of expansions or of alterations requiring a permit, the permit also covers the gas pipeline system that has already received a permit, to the extent to which this is necessary with a view to safeguarding the interests defined in section 135 para. 1 items 1, 2 and 3 after the expansion or alteration of the system under the existing permit.

(4) The authority shall record in its official decision any agreements relating to the provisions of this Federal Act which were reached in proceedings carried out under this Federal Act. Any such records and any official decisions issued under the provisions of this Federal Act are official documents as defined in section 33 para. 1(d) General Land Register Act 1955, FLG no 39/1955. If such an official decision makes the acquisition, encumbrance, restriction or annulment of any registered rights in land dependent on certain conditions, the authority shall declare, upon application, whether these conditions have occurred. Such a declaration is binding on the court.

Experts and costs of proceedings

Section 153a. (1) External experts may be consulted in proceedings under this Federal Act even if the conditions in section 52 paras 2 and 3 General Administrative Procedure Act are not fulfilled. Technically competent public authorities, institutes or companies may act as experts in this sense.

(2) Any costs that arise for the authority when conducting proceedings under this Federal Act, such as any charges or fees for experts, are borne by the project promoters. The authority may issue official decisions declaring that the project promoters must directly pay the relating invoices after the authority has verified them as to their contents and amounts.

Chapter 3
Procedural aspects of expropriation

Expropriation proceedings

Section 154. The provisions of the Railway Expropriation Compensation Act, FLG no 71/1954, apply mutatis mutandis to the 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 145 para. 2 if this encumbrance would render impossible the designated use of these properties or parts thereof. If the designated use of a property becomes impossible due to the expropriation of part of this property, the entire property shall be redeemed upon request of the owner.
2. The authority decides 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 relating to the property in question.
3. The amount of compensation is determined, on the basis of an appraisal by at least one sworn and certified expert, in the official expropriating decision or in a separate official decision; in the latter case, an amount to be provisionally deposited is fixed in the official expropriating decision without any further enquiries.
4. Within three months of the official 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 official decision ceases 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 official expropriating decision is deemed to have been agreed upon.

5. A final official expropriating decision is not enforceable until the amount of compensation fixed in the official expropriating decision or in a separate official decision, or the provisional amount fixed in the official 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, does not impose an unreasonable financial burden on the party applying for expropriation. The authority shall rule on this issue in a separate official 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 subordinate to this registration is entered. This entry shall, however, be cancelled on the strength of a final official decision terminating the expropriation proceedings, completely or with regard to the property or the registered right in question. The authority shall notify the court for land register matters 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 permit under gas law for the gas pipeline system. 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, by official decision, annul the servitudes granted for this gas pipeline system by way of expropriation and determine a refund commensurate to the amount of compensation paid. Items 3 and 4 above apply mutatis mutandis to the determination of the amount to be refunded.
9. If ownership of a property has been transferred pursuant to an expropriating decision for the purpose of a gas pipeline system, the authority shall, on application of the previous owner or their legal successor to be submitted within one year of removal of the 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 apply mutatis mutandis to the determination of this compensation payment.

Title 16

Special organisational provisions

Appointment of authorised recipients

Section 155. Gas undertakings domiciled abroad and supplying final customers in Austria shall appoint a person who is authorised to accept service of documents in accordance with section 9 Service of Documents Act.

Obligation to furnish information and secrecy obligation

Section 156. (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 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 applies to all undertakings and to all associations and federations of undertakings. The obligation to furnish information is without prejudice to any legally accepted obligations of secrecy.

(3) Parties obliged to furnish information are not entitled to compensation for any costs arising in this connection.

(4) Whosoever participates in procedures pursuant to the provisions of this Federal Act in accordance with section 69 para. 3 or as a representative of an authority, as an expert or as a member of the Regulatory Advisory Council or of the Energy Advisory Council, 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.

Obligation to pass on tax reductions

Section 157. 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.

Automated data communication

Section 158. (1) Any personal data which are required to conduct proceedings pursuant to this Federal Act, which the authority requires to perform its supervisory duties or of which the authority has obtained knowledge pursuant to section 10 or section 121 para. 6 may be collected and processed by automatic means pursuant to the provisions of the Data Protection Act.

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

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

(3) The authorities are 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.

Title 17
Penalties and fines

Part 1
Administrative offences

General penal provisions

Section 159. (1) Unless an act constitutes a criminal offence which is subject to the jurisdiction of a court, constitutes a finable offence according to sections 164 et sqq. or is subject to more severe punishment under different administrative penal provisions, whosoever

1. fails to comply with the obligations pursuant to section 106 para. 2 item 4;
2. fails to comply with the obligations pursuant to section 107 para. 2 item 4;
3. fails to comply with the obligations pursuant to section 111 para. 2 item 3;
4. fails to comply with the obligations pursuant to section 116 para. 1;
5. causes non-compliance with the time limit for switching set in section 123 para. 2;
6. in contravention of the last sentence of section 123 para. 4, initiates a process without a final customer's declaration of intent;
7. fails to comply with their obligations pursuant to section 123 paras 5 to 7;
8. in contravention of Article 4(1) Regulation (EU) No 1227/2011, fails to publish inside information, to publish it correctly, to publish it in full, to publish it effectively or to publish it in a timely manner;
9. in contravention of Article 4(2) Regulation (EU) No 1227/2011, fails to submit inside information, to submit it correctly, to submit it in full or to submit it without delay;
10. in contravention of Article 4(3) Regulation (EU) No 1227/2011, fails to ensure simultaneous, complete and effective public disclosure;
11. in contravention of Article 8(1) Regulation (EU) No 1227/2011 in conjunction with implementing legislation in accordance with Article 8(2) Regulation (EU) No 1227/2011, fails to submit a record mentioned therein, to submit it correctly, to submit it in due time or to submit it in full;
12. in contravention of Article 8(5) Regulation (EU) No 1227/2011 in conjunction with implementing legislation in accordance with Article 8(6) Regulation (EU) No 1227/2011, fails to submit information mentioned therein, to submit it correctly, to submit it in due time or to submit it in full;
13. in contravention of Article 9(1) in conjunction with para. 4 Regulation (EU) No 1227/2011, fails to register with the regulatory authority or fails to do so in due time;
14. in contravention of Article 9(1)(2) Regulation (EU) No 1227/2011, registers with more than one national regulatory authority;

15. in contravention of Article 9(5) Regulation (EU) No 1227/2011, fails to notify a change in the information necessary for registration without delay;
16. in contravention of Article 15 Regulation (EU) No 1227/2011, fails to inform the regulatory authority, to inform it correctly or to inform it in due time;
17. uses inside information in the manner described in Article 3(1) Regulation (EU) No 1227/2011, while without intending to generate a pecuniary advantage for themselves or a third party, thereby counteracting the insider trading prohibition if they knows or should know pursuant to Article 3(2)(e) Regulation (EU) No 1227/2011 that it is inside information as defined in Article 2(1) Regulation (EU) No 1227/2011;
18. in contravention of Article 14(6) Regulation (EU) 2017/1938, fails to provide information about the gas supply contracts, provides incorrect information, fails to provide full information or fails to provide such information in time to the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology,

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

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

1. fails to comply with the obligations pursuant to section 8 paras 1, 2 or 3 or section 9;
2. fails to comply with their obligation to furnish information and provide access to documents and records pursuant to section 10;
3. unlawfully discloses data, contrary to the provisions of section 11, section 69 para. 3, section 123, section 129, section 129a or section 156 para. 4;
4. fails to comply with their obligations as a market area manager pursuant to sections 14 to 16, 19 or 63;
5. fails to comply with their obligations as a distribution area manager pursuant to sections 18 to 23, 25 or 26;
6. fails to comply with their obligations as a system operator pursuant to sections 23, 28 and 29, section 43, section 47, section 60 para. 5 or section 67;
7. fails to comply with their obligation to appoint a technical director pursuant to section 45 para. 1 or para. 6 or to appoint a managing director pursuant to section 44 para. 1 item 4 b in conjunction with section 46 para. 1;
8. fails to comply with their notification obligations pursuant to section 45 paras 5 or 6, section 46 para. 2, section 51 para. 1, section 121 or section 139 paras 1 or 3;
9. fails to comply with their general obligation to connect pursuant to section 59;
10. fails to perform their responsibilities as a clearing and settlement agent pursuant to section 87;
11. fails to comply with the obligations pursuant to section 90;
12. fails to comply with their obligation as a balance responsible party pursuant to section 91;
13. fails to comply with their obligations as a storage system operator or storage user pursuant to sections 97 or 99 through 105 or section 108 paras 25 to 29;
14. fails to comply with the obligations for distribution system operators pursuant to section 106, with the exception of section 106 para. 2 item 4;
15. fails to comply with the obligations for storage system operators pursuant to section 107, with the exception of section 107 para. 2 item 4;
16. fails to comply with their obligation as a gas trader or supplier pursuant to sections 121 or 125;
17. fails to comply with their data provision obligation pursuant to section 123 para. 4;
18. fails to comply with their obligation pursuant to section 124;
19. fails to comply with their obligations pursuant to sections 126 to 126b;
20. fails to comply with obligations arising from an ordinance issued pursuant to sections 126a, 126b, 128 or 129a;
21. fails to comply with their obligations pursuant to sections 127 or 128;
22. fails to comply with their obligations pursuant to section 129;
23. fails to comply with their obligations pursuant to section 129a;

23a. fails to comply with their obligations pursuant to section 130;

24. fails to comply with their obligation pursuant to section 133;
25. fails to comply with their obligation according to the ordinance issued pursuant to section 131 paras 2 and 3;
26. fails to comply with any stipulation set by an ordinance of the regulatory authority issued pursuant to sections 30 or 41;
27. fails to comply with the prerequisites imposed by an ordinance of the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology pursuant to section 134 para. 3;
28. fails to comply with their obligation as a clearing and settlement agent to submit general terms and conditions pursuant to section 88 para. 1;
29. fails to comply with their self-monitoring obligation pursuant to section 140;
30. fails to comply with their obligations pursuant to section 141 para. 4;
31. fails to cooperate in the statistical surveys ordered by an ordinance pursuant to section 147 para. 2;
32. fails to comply with their information obligation pursuant to section 156;
33. fails to comply with official decisions issued pursuant to this Federal Act or with any conditions, time limits and stipulations they impose;
34. fails to comply with official decisions issued pursuant to section 12 and section 24 para. 2 E-Control Act for the scope of this Federal Act or the conditions, time limits and stipulations included therein,

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

(Para. 3 deleted by virtue of Article 3 item 13 FLG I no 108/2017)

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

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

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

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

1. fails to comply with their obligation to notify inside information pursuant to section 10a;
2. fails to submit data as ordered by an ordinance pursuant to section 25a para. 2 E-Control Act;
3. fails to comply with the information and cooperation obligation pursuant to section 25a para. 3 E-Control Act;
4. fails to register in the GO database pursuant to section 129b in spite of having been reminded by the regulatory authority;
5. fails to request guarantees of origin pursuant to section 129b,

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

(6) Whosoever, in contravention of section 146 para. 2 first sentence, does not take any and all necessary measures to prevent serious accidents from happening or to limit their consequences for human health or the environment is deemed to have committed an administrative offence and shall be fined up to 3,600 EUR.

(7) Whosoever

1. in contravention of section 146 para. 2 second sentence in conjunction with section 84d para. 1, para. 2, para. 3 or para. 4 Industrial Code, fails to notify the authority in time;
2. in contravention of section 146 para. 2 second sentence in conjunction with section 84d para. 5 Industrial Code, fails to notify the authority or fails to update their notifications to the authority;

3. in contravention of section 146 para. 2 second sentence in conjunction with section 84e para. 1 and para. 2 Industrial Code, fails to elaborate, realise or keep for authority inspection a concept for preventing serious accidents or an amendment of such a concept,

is deemed to have committed an administrative offence and shall be fined up to 2,180 EUR.

Failure to pass on tax reductions

Section 160. Whosoever contravenes section 157 or, whilst reducing prices in accordance with section 157, 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, is deemed to have committed an administrative offence and shall be fined up to 50,000 EUR.

Operation without a license or permit

Section 161. Whosoever

1. exercises the function of a gas company without a license pursuant to section 43 para. 1; or
2. constructs a gas pipeline system requiring a permit without such a permit, expands or significantly alters a gas pipeline system without a permit, or operates a system which requires an operating licence without such a licence; or
3. does not apply for certification pursuant to section 119 para. 2 item 1 or section 120 as transmission system operator or operates a transmission system without being certified after such certification application has been finally rejected,

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

Profiteering

Section 162. (1) Unless an act constitutes a criminal offence subject to the jurisdiction of a court or is subject to more severe punishment under different administrative penal provisions, whosoever names, demands, accepts, or accepts a promise of an amount higher than the maximum or fixed rate or charge determined by the regulatory authority pursuant to this Federal Act or an amount lower than the minimum or fixed rate or charge determined by the regulatory authority pursuant to this Federal Act for a system service is deemed to have committed an administrative offence and shall be fined up to 100,000 EUR.

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

Special provisions for administrative penal proceedings

Section 163. (1) The limitation period (section 31 para. 2 Administrative Penal Act) for administrative offences pursuant to sections 159 through 162 is one year.

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

Part 2
Fines

Discrimination and other finable offences

Section 164. (1) Upon application of the regulatory authority, the cartel court shall issue rulings in proceedings, with the exception of non-contentious proceedings, imposing fines of up to 10% of the annual turnover in the previous business year on a transmission system operator, a storage system operator, operator of the virtual trading point or an undertaking that is part of a vertically integrated gas company which, intentionally or negligently,

1. fails to comply with the obligations pursuant to section 8 paras 1, 2 or 3 or section 9;
2. unlawfully discloses data, contrary to the provisions of section 11, section 69 para. 3, section 123, section 129, section 129a or section 156 para. 4;
3. fails to comply with the obligations pursuant to sections 32, 34 through 37, section 43, section 47, section 62 through 65 or section 67;
4. fails to comply with the obligations of transmission system operators with ownership unbundling pursuant to section 108;
5. fails to comply with the obligations for independent system operators and transmission system owners pursuant to sections 109 through 111, with the exception of section 111 para. 2 item 3;

6. fails to comply with the obligations for independent transmission system operators and transmission system owners pursuant to sections 112 through 116, with the exception of section 116 para. 1;
7. fails to comply with the obligations pursuant to section 117;
8. fails to comply with the stipulations set in the official declaratory decision pursuant to sections 119 or 120;
9. fails to comply with the notification requirements pursuant to section 119 para. 2 or section 119 para. 6;
10. fails to comply with the information obligation pursuant to section 156;
11. fails to comply with the provisions of Regulation (EC) No 715/2009 or Regulation (EC) No 713/2009, or with the guidelines or network codes issued pursuant to these regulations;
12. fails to comply with decisions based on the provisions of Regulation (EC) No 715/2009 or Regulation (EC) No 713/2009 or of the guidelines or network codes issued pursuant to these regulations;
13. fails to comply with the provisions of the guidelines issued in accordance with Directive 2009/73/EC;
14. fails to comply with decisions based on guidelines issued pursuant to Directive 2009/73/EC.

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

1. interferes with the compliance officer performing their duties;
2. refuses access for reasons of potential future restrictions of the available system capacity, where this does not reflect the actual situation;
3. does not comply with the information and reporting obligations imposed upon it by Regulation (EC) No 715/2009;
4. does not comply with the decisions of the regulatory authority taken pursuant to Regulation (EC) No 715/2009;
5. does not comply with its obligations arising from the guidelines in the Annex to Regulation (EC) No 715/2009.

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

Related companies and legal successors

Section 165. (1) Concerning the finable offences of section 164 paras 1 and 2, not only the system operator, the storage system operator or the operator of the virtual trading point but also any undertakings that entrust them with implementation or otherwise contribute to implementation shall be deemed to have committed these offences.

(2) Regarding legal succession, section 10 Corporate Liability Act, FLG I no 151/2005, applies mutatis mutandis.

Assessment

Section 166. (1) Where the offending system operator, storage system operator or operator of the virtual trading point is part of a vertically integrated gas company, the fine shall be calculated based on the annual turnover of the vertically integrated gas company.

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

Limitation of actions

Section 167. Fines may only be imposed upon applications submitted no later than five years after the violation of the law has stopped.

Part 3
Offences punishable by court

Unlawful disclosure or utilisation of data

Section 168. (1) Whosoever unlawfully discloses or utilises data, contrary to the provisions of section 11, section 69 para. 3, section 123 para. 4, section 129 or section 156 para. 4, the disclosure or utilisation of which may interfere with the legitimate interests of the party concerned shall be punished by court with imprisonment of up to one year.

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

Abuse of inside information

Section 168a. (1) Persons as defined in Article 3(2)(a) to (d) Regulation (EU) No 1227/2011, i.e.

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

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

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

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

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

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

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

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

Title 18
Repeal of legislation; transitional and final provisions

Entry into force

Section 169. (1) Unless otherwise provided in para. 2 below, this Federal Act enters into force on the day following promulgation. The Federal Act Providing New Rules for the Gas Sector (Gas Act), FLG I no 121/2000, as amended by Federal Law Gazette II no 479/2009, is repealed as of the same day.

(2) Section 120 comes into force on 3 March 2013.

(3) Section 49 as amended by the Federal Act in Federal Law Gazette I no 138/2011 comes into force on 1 January 2012. The amended provisions only apply to such events as have occurred after 31 December 2011. Existing insurance contracts shall be adjusted to comply with the amended provisions as of that date.

(4) Section 2, section 10a, section 159 para. 1 items 8 to 17, section 159 paras 4 and 5, and section 168a as amended by the Federal Act in Federal Law Gazette I no 174/2013 enter into force on the first day of the month following promulgation. Section 69 para. 3, section 71 para. 4 and section 148 para. 3 as amended by the Federal Act in Federal Law Gazette I no 174/2013 come into force on 1 January 2014.

(5) Section 49 as amended by the Federal Act in Federal Law Gazette I no 19/2017 comes into force on 1 January 2017. The amended provisions only apply to such events as have occurred after 31 December 2016. Existing insurance contracts shall be adjusted to comply with the amended provisions as of that date.

(6) The table of contents, section 30 para. 3, sections 85 and 86 and their headline, section 112 para. 4 last sentence, section 159 para. 2, section 164 para. 1, and section 170a and its headline, as amended by FLG I no 108/2017, enter into force at the end of the day of promulgation; at the same time, section 114 para. 1 item 2 last sentence, section 115 para. 2 second sentence, and section 159 para. 3 cease to be in force.

(7) Section 147 paras 1, 3 and 6 enter into force on 1 January 2018.

(8) Section 49 para. 1 as amended by the Federal Act in FLG I no 245/2021 enters into force on 1 April 2022. The amended provisions only apply to such events as occur after 31 March 2022. Existing insurance contracts shall be adjusted to comply with the amended provisions as of 1 April 2022.

(9) **(constitutional provision)** Section 1, sections 18a through 18d and section 171 items 1a to 1d as amended by FLG I no. 38/2022 enter into force on the day following promulgation. Sections 18a through 18d and section 171 items 1a to 1d shall be evaluated in the sense of section 18 Federal Organic Budget Act 2013 by 30 September 2024 and cease to be in force at the end of 30 September 2025. The federal government shall decree by ordinance what shall be done with the strategic gas reserves thereafter. The ordinance requires approval by the main committee of the National Council; article 55 para. 5 Federal Constitutional Law applies mutatis mutandis. If sold, the resulting revenue shall be immediately reimbursed to the federal administration.

(10) **(constitutional provision)** Section 87 para. 1 item 4, section 87 paras 6 and 7, and section 88 para. 2 item 8 cease to be in force at the end of 31 May 2025.

(10) **(constitutional provision** The table of contents, section 1 and its headline, section 7 para. 1 items 16 and 38, section 9, section 12 para. 7, section 18 para. 1 item 22, section 18a para. 1, section 87 para. 6, section 102 para. 1 item 15, section 104 paras 3 and 4, section 104a and its headline as amended by item 12 in the federal act in FLG I no 94/2022, section 105 para. 1 items 7 and 8, section 105a and its headline, section 159 para. 2 item 13, and section 170 paras 25 to 29 as amended by the federal act in FLG I no 94/2022 enter into force on the day following promulgation. Section 104 paras 3 and 4 and section 104a also apply to situations that arise before these stipulations come into force.

(11) **(constitutional provision)** Section 104a para. 1 item 4 as amended by item 13 of the federal act in FLG I no 94/2022 enters into force on 1 June 2022. At the same time, section 102 para. 2 item 15 and section 104 paras 3 and 4 cease to be in force.

Transitional provisions

Section 170. (1) Restructuring to be performed in connection with unbundling through any type of conversion to another legal form shall be done by way of universal succession; this applies, without limitation, to the transfer of property. Such conversion processes are exempt from any and all taxes, charges and fees which are regulated under federal law and which are linked to formation or property transfer. Such exemption also applies to legal relationships founded for the occasion of restructuring, including, without limitation, tenancy agreements, servitudes or loan agreements. Conversion processes are non-taxable turnover within the meaning of the Turnover Tax Act 1994, FLG no 663/1994, as amended; with regard to turnover tax matters, the transferee shall directly assume the legal status of the transferor. In other respects, the provisions of the Conversion Taxation Act, FLG no 699/1991, as amended, apply, subject to the proviso that the Conversion Taxation Act is applicable also if there is no partial operation within the meaning of the Conversion Taxation Act.

(2) Transmission system operators shall achieve compliance with the provisions of sections 108 through 119 by 3 March 2012.

(3) System users not currently belonging to a balance group shall either join a balance group or form a balance group of their own by 10 September 2012.

(4) The ordinances issued pursuant to the Gas Act, FLG I no 121/2000, prior to the entry into force of this Federal Act remain in force until the respective matters have been newly regulated by ordinances

pursuant to this Federal Act. Should this Federal Act be amended, ordinances issued pursuant to stipulations in this Federal Act remain in force.

(5) System charges pursuant to sections 69 et sqq. may be enacted as of 1 January 2013 at the earliest. Cost review procedures pursuant to sections 69 et sqq. may be initiated once this Federal Act has entered into force. The system charges for the period before 1 January 2013 shall be set by the Regulation Commission in accordance with section 12f, sections 23 to 23b, section 23d and section 31h para. 5 Gas Act, FLG I no 121/2000, as amended by Federal Law Gazette I no 45/2009, after the Regulatory Advisory Council has discussed the matter pursuant to section 19 E-Control Act. Section 70 para. 2 first sentence applies to such procedures. The charges for cross-border transports for the period before 1 January 2013 shall be set in accordance with section 31h paras 1 to 4 Gas Act, FLG I no 121/2000, as amended by Federal Law Gazette I no 45/2009, subject to the proviso that the regulatory authority replaces the E-Control Commission.

(6) Agreements under private law regarding the transport of gas remain unaffected by the provisions of this Federal Act, subject to the proviso that

1. booked transport capacity is replaced by separate entry and exit capacity bookings to the same amount at the relevant entry and exit points;
2. upon publication of the rates pursuant to section 82, the system user must pay the resulting entry and exit charges; and
3. the transmission system operator gives the system user the possibility to trade at the virtual trading point, on a firm basis; if this is technically impossible, on an interruptible basis.

The changes pursuant to items 1 to 3 above to contracts held by OMV Gas GmbH for the benefit of AGGM Austrian Gas Grid Management AG at the time of entry into force of this Act take effect on 1 October 2012. On this day, the distribution area manager assumes all rights and obligations of OMV Gas GmbH in connection with the transmission network's internal interconnection points with the distribution network. The changes pursuant to items 1 to 3 above to contracts on cross-border transports also take effect on 1 October 2012. The regulatory authority may extend this deadline by official decision upon application by the transmission system operator if otherwise, negative consequences for the overall financial situation regarding the operation of its transmission system, and therefore for security of supply, are to be expected. Section 38 applies as from the time the contractual changes take effect. The related changes to existing contracts regulating the access to the transmission network do not constitute a right to fully or partially terminate these contracts.

(7) The entry capacity booked by OMV Gas GmbH at the market area borders for the purpose of supplying final customers is transferred to the suppliers it is assigned to that same extent, by way of the balance responsible parties, as of 1 January 2013. In this transfer process, it shall be ensured that all suppliers can continue fulfilling their contractual obligations to the fullest extent.

(8) Licences of clearing and settlement agents pursuant to sections 33 et sqq. Gas Act, FLG I no 121/2000, are transformed into licences pursuant to section 85 for the respective distribution area.

(9) Storage system operators may pass the costs for the system charges pursuant to section 73 para. 5 and section 74 para. 2 on to storage users. Producers may pass the additional costs for the system charges pursuant to section 73 para. 6 and section 74 para. 3 on to their customers. The related changes to existing contracts do not constitute a right to fully or partially terminate these contracts.

(10) Suppliers may pass the entry charges payable by them pursuant to section 74 and the cost charged on to them pursuant to para. 9 on to their customers without constituting a right for customers to terminate their contracts. Any contractual agreements to the contrary are invalid.

(11) Market area managers, distribution area managers, clearing and settlement agents, system operators, balance responsible parties, the operator of the virtual trading point and storage system operators shall take all requisite legal, organisational and technical action in good time to ensure that all system users can be granted system access pursuant to the provisions of this Act on 1 January 2013 at the latest.

(12) The coordinated network development plan pursuant to section 63 shall be submitted for approval for the first time twelve months after entry into force of this Federal Act.

(13) System operators holding a licence pursuant to section 13 or section 76 para. 1 Gas Act, FLG I no 121/2000, at the time of entry into force of this Federal Act do not require a new licence pursuant to section 43 to carry out their function as system operators. Their rights and obligations are fully determined by the provisions of this Federal Act.

(14) Existing permits and licences and permits for the construction or operation of gas pipeline systems pursuant to section 76 para. 3 Gas Act, FLG I no 121/2000, shall be deemed to be permits and licences pursuant to this Federal Act. Inasmuch as such gas pipeline systems are subject to the provisions of this Federal Act, the provisions of this Federal Act apply to these systems.

(15) Proceedings concerning administrative offences committed prior to the entry into force of this Federal Act continue to be subject to the provisions of the Gas Act, FLG I no 121/2000, as amended at the time of the offence.

(16) Distribution system operators whose system was owned by a vertically integrated gas company on 3 September 2009 and that fulfil the characteristics of section 7 para. 1 item 20 at a later time may opt for not applying ownership unbundling pursuant to section 108 and instead apply sections 109 et sqq., sections 112 et sqq. or section 117. Section 119 applies mutatis mutandis. In the case of undertakings which fulfil the characteristics of section 7 para. 1 item 20 at a later time, the time period set in section 114 para. 1 item 2 applies only to appointments of persons responsible for the management that are made after the transmission system operator has been certified.

(17) The contracts concluded prior to the entry into force of this Federal Act based on an approved integrated long-term plan between system operators and control area managers regarding network expansion and between system operators and customers or control area managers and customers regarding capacity increase remain in full force until their realisation. Changes imposed by this Act do not constitute a right to withdraw from or rescind these contracts. Where the regulatory authority makes use of its powers under section 23 para. 5 and existing network expansion contracts are interfered with, the costs arising based on such existing contracts shall be covered by the system charges.

(18) For as long as no distribution area manager has been appointed pursuant to section 17 para. 1, the role of distribution area manager is assumed by the undertaking appointed as control area manager of the control area corresponding to the concerned market area at the time of entry into force of this Federal Act.

(19) For as long as no market area manager has been appointed pursuant to section 13 para. 1, the role of market area manager is assumed by OMV Gas GmbH.

(20) Apprentices in a transmission undertaking who started their apprenticeship in a trainee workshop of the vertically integrated undertaking before the entry into force of this Act may conclude their apprenticeship in this trainee workshop.

(21) Holders of transport rights as defined in section 6 item 20 Gas Act, FLG I no 121/2000, as amended by Federal Law Gazette I no 45/2009, shall correspondingly be deemed to be transmission system operators pursuant to section 7 para. 1 item 20 and be subject to the provisions of this Federal Act applicable to transmission system operators.

(22) Distribution area managers may continue in the legal form they have at the time of entry into force of this Federal Act. Distribution area managers already fulfilling section 20 para. 2 at the time of entry into force of this Federal Act may not choose a different legal form.

(23) Storage facilities pursuant to section 146 with a final construction licence or permit at the time of entry into force of this Federal Act shall be deemed to be licensed in the meaning of this Federal Act. The provisions of section 146 apply to such storage facilities.

(24) The place of execution of contracts in existence on 1 January 2013 for commercial hub services and the trades connected thereto shall be transferred to the virtual trading point in the market area concerned, and the corresponding nominations shall be made with the operator of such virtual trading point.

(25) **(constitutional provision)** Section 102 para. 2 item 15 as amended by the federal act in FLG I no 94/2022 also applies to existing storage contracts. The changes to existing storage contracts emanating from this stipulation to not constitute a right for storage users to fully or partially terminate or to adjust these contracts.

(26) **(constitutional provision)** Storage system operators whose storage facilities are not yet connected to the domestic grid shall file an application for system access and system admission at the connection point determined in line with para. 27, for an amount of capacity that corresponds to the amount necessary to manage their storage capacity, and they shall conclude the requisite contracts within an appropriate period of time. An adequate and prorated portion of the expenses resulting from this stipulation may be added into existing storage contracts with storage users, without constituting a right for these storage users to fully or partially terminate their contracts.

(27) **(constitutional provision)** Storage maintenance companies whose storage facilities are not yet connected to the domestic grid in line with section 105 para. 1 item 8 shall undertake any and all construction necessary to establish grid connection at the technically suitable connection point, preferably at grid level 1, to the greatest extent technically possible, and shall conclude the requisite contracts, in particular with the system operator, within an appropriate deadline. An adequate and prorated portion of the expenses resulting from this stipulation may be added into existing contracts with storage system operators, without constituting a right for these storage system operators to fully or partially terminate their contracts.

(28) **(constitutional provision)** If technically possible, the system operator to whose system a storage facility is to be connected under para. 26 shall immediately establish a temporary connection and temporarily provide the assets necessary until a physical connection in line with para. 26 has been established. The expenses emanating from this provision are borne by the storage maintenance company in line with para. 27.

(29) **(constitutional provision)** Until a new storage system operator has been found in line with section 104a para. 3, the storage maintenance company shall assume the storage system operator rights and duties. Sections 97 through 105 apply mutatis mutandis.

Transitional provisions with reference to article 3 FLG I no 108/2017

Section 170a. (1) The licenses of clearing and settlement agents under section 85 Gas Act 2011, FLG I no 107/2011, cease to be in effect once the company nominated in line with section 85 assumes its responsibilities. The clearing and settlement agents shall be nominated after the end of 30 September 2021 and before the end of 30 September 2023, in line with section 85 Gas Act 2011, FLG I no 108/2017.

(2) Until the ordinance under section 147 para. 1 enters into force, the Gas Statistics Ordinance 2017, FLG II no 417/2016, applies.

Execution

Section 171. The responsibility for executing this Federal Act lies with

1. the Federal Minister of Justice, in agreement with the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, regarding section 8 and sections 48 through 51;

1a. the federal government regarding section 18a para. 2 and section 169 para. 9;

1b. the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, the Federal Minister for Digital and Economic Affairs, and the Federal Minister of Finance regarding section 18a para. 3;

1c. the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and the Federal Minister of Finance regarding section 18b paras 1 and 2;

1d. the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, together with the Federal Minister of Finance regarding section 18b para. 6;

2. the Federal Minister of Justice regarding section 132 and sections 164 through 168;
3. the Federal Minister of Finance regarding section 170 para. 1;
4. the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology for all other provisions.

Annex 1

(regarding section 84)

Distribution pipeline systems at network level 1

1. The western lines 2 and 4 in Lower Austria, the continuation of the western line 4 in Upper Austria up to Thann, Puchkirchen, 7Fields and Haidach storage facilities (western line);
2. the southern line 2 up to Wiener Neustadt point and the southern line 3 up to Eggendorf, as well as the continuation of southern line 3 in Styria up to TAG-Weitendorf (southern line);
3. the Pyhrn line, starting from Krift in Upper Austria, and its continuation in Styria until the A5 station, as link between the lines listed in items 1 and 2;
4. the Reitsham-Puchkirchen line as link with the lines listed in item 1;
5. the line linking WAG-Rainbach and the lines listed under item 1;
6. the southwestern Reichersdorf-Eggendorf line as link between the lines listed in items 1 and 2;

7. the EGO pipeline between Eggendorf and Lichtenwörth;
8. the eastern line up to Edelsthal;
9. the southeastern branch line up to Wilfleinsdorf;
10. the Hornstein branch line;
11. the TAG branch line between Eggendorf GCA and Wiener Neustadt point;
12. the north pipeline from GCA Laa/Thaya by metering/transfer point Laa/Thaya West to Laa/border;
13. the pipeline from Bad Leonfelden point on WAG up to the line listed in item 5;
14. the primary distribution system 2, i.e. the lines of GCA's primary distribution system dedicated to distribution;
15. the Gas Connect Austria GmbH points on TAG and WAG;
16. the line linking WAG-Kirchberg point and the lines listed under item 1;
17. the pipeline from St. Margarethen point on TAG to Fürstenfeld high-pressure reduction station (Raab valley pipeline);
18. the high-pressure pipeline 076 Zagling-Kühschinken;
19. the pipeline from Reitsham to Freilassing and up to the Hochfilzen connection point;
20. the pipeline from Hochfilzen up to the Austrian border at Kiefersfelden.

Annex 2

(to section 84)

Transmission pipeline systems

1. The Trans-Austria pipeline (TAG);
2. the West-Austria pipeline (WAG);
3. the primary distribution system 1 (PVS 1);
4. the Hungaria-Austria pipeline (HAG);
5. the Süd-Ost pipeline (SOL);
6. the Penta West pipeline;
7. the Kittsee-Petrzalka pipeline (KIP).

The PVS 1 comprises those parts of the gas pipeline system as defined in section 7 para. 1 item 15 of Gas Connect Austria GmbH that establish a connection with the Slovak network or connect the gas pipelines at Baumgarten with each other to create a coherent entry/exit zone in the market area, with the exception of those assigned to TAG or WAG.

Annex 3

(regarding section 84)

1. Wiener Netze GmbH
2. Netz Niederösterreich GmbH
3. Netz Oberösterreich GmbH
4. Salzburg Netz GmbH
5. TIGAS Erdgas Tirol GmbH
6. Vorarlberger Energienetze GmbH
7. Netz Burgenland GmbH
8. Energienetze Steiermark GmbH
9. KNG-Kärnten Netz GmbH
10. Stadtwerke Bregenz GmbH
11. LINZ NETZ GmbH
12. eww ag
13. Stadtbetriebe Steyr GmbH
14. Energie Ried GmbH
15. Energie Graz GmbH & Co KG
16. Stadtwerke Leoben e.U.

17. Stadtwerke Kapfenberg GmbH
18. Energie Klagenfurt GmbH
19. Elektrizitätswerke Reutte AG
20. GasNetz Veitsch
21. Gas Connect Austria GmbH

Annex 4

(section 146 para. 2)

I. Minimum data and information to be taken into consideration in the safety report under section 146 para. 2 in conjunction with section 84f Industrial Code

1. Information about the management system and operational organisation towards preventing serious accidents. Such information shall address the elements listed under point II of this annex.
2. Site:
   (a) a description of the site and its surroundings, including its geographical location, the meteorological, geological and hydrographical data, and where relevant, previous uses of the site;
   (b) a list of facilities and activities at the site where the risk of a serious accident might arise;
   (c) based on available information, a list of neighbouring sites and facilities without the scope of section 146, areas and developments that could cause a serious accident or could increase the risk of such an accident happening, could aggravate such an accident's consequences or could cause or aggravate a domino effect;
   (d) a description of the areas that could be affected by a serious accident.
3. Facility:
   (a) a description of the main activities and products, of the facility's parts that are relevant for safety, of the causes of potential serious accidents, and of the conditions under which each serious accident might happen, as well as a description of the measures foreseen for the prevention of serious accidents;
   (b) a description of the processes and their steps; if necessary, considering available information about tried and tested processes;
   (c) a description of hazardous substances;
      (aa) a list of hazardous substances, including
         - an identification of the hazardous substances: chemical formula, CAS registry number, IUPAC nomenclature;
         - the maximum amount of hazardous substances that are or could be on site;
      (bb) physical, chemical and toxicological characteristics, along with the associated risks for human health and for the environment that could materialise immediately or in the long term;
      (cc) the physical and chemical behaviour of the substances under normal conditions and during foreseeable incidents.
4. Identification and analysis of potential accidents and prevention measures:
   (a) a thorough description of serious accident scenarios with estimates of the probability and the conditions of them materialising, including the situations that would trigger each of the scenarios, regardless of whether the causes lie within or without the facility; in particular:
      (aa) operational causes;
      (bb) external causes, e.g. in combination with domino effects, facilities without the scope of section 146, areas and developments that could cause a serious accident or could increase the risk of such an accident happening or could aggravate such an accident's consequences;
      (cc) natural causes, e.g. earthquakes or floods;
   (b) an assessment of the extent and impact of the consequences of the serious accidents that have been identified, including maps, pictures or possibly descriptions to illustrate the areas that could be affected by such accidents at the site;

(c) an assessment of previous accidents and incidents that involved the same substances and procedures, an explanation of the lessons learnt and express reference to specific measures taken to prevent such accidents from occurring again;

(d) a description of the technical parameters and equipment to ensure the safety at the site.

5. Protection and emergency measures to limit the consequences of serious accidents:

(a) a description of the equipment and features on site to limit the consequences of serious accidents for human health and the environment, including such features as notification and protection systems, technical equipment to limit unplanned emissions, including sprinkler systems, vapor barriers, collection equipment or container, emergency shut-off valves, inerting systems, fire water retention;

(b) triggering the alarm and executing emergency measures;

(c) a description of the means available for emergency situations at the site or outside it;

(d) a description of technical and non-technical measures relevant for limiting the consequences of serious accidents.

II. Information under section 146 para. 2 in conjunction with section 84e para. 3 and section 84f Industrial Code on the safety management system and the organisation of measures for the prevention of serious accidents

The operator shall take into account the following elements when implementing a safety management system:

1. The safety management system must adequately match the hazards, industrial activity, and the complexity of the organisational arrangements on site and must be based on a risk assessment; it should include the part of the overall management system that hosts the organisational units, responsibilities, actions, processes and assets relevant for determining and applying the concept for preventing serious accidents (hereafter: concept);

2. The safety management shall consider the following aspects:

(a) Organisation and personnel: the tasks and responsibilities of the personnel responsible for monitoring the risk of serious accidents at all organisational levels, in combination with the measures for sensitising employees towards the need for continuous improvements; an identification of any need for educating employees on these issues and the implementation of the respective educational measures; an integration of all employees relevant for safety, including both direct employees and those employed by contractors;

(b) Identification and assessment of serious accidents: the definition and implementation of procedures for systematically identifying the risk of serious accidents under normal operational conditions and extraordinary conditions, including when triggered by activities that are outsourced, and an assessment of their probability and impact of such accidents;

(c) Inspection: the definition and implementation of procedures and instructions for safe operation, including maintenance, procedures and setup as well as the management of alert situations and temporary shut-downs; the consideration of available information about tried and tested measures for monitoring and verification for reducing the risk of a system outage; the management and control of risks related to the ageing assets at the site, including corrosion; the inventory of the operational assets, the strategy and methodology to monitor and inspect the assets' condition; adequate measures for further action and any necessary counter measures;

(d) Safe alterations: the definition and implementation of procedures for planning alterations of the site, procedures or storage facility, or for the roll-out of a new site, procedure or storage facility;

(e) Emergency plans: the definition and implementation of procedures for identifying foreseeable emergency situations through systematic analysis, and for determining, testing and evaluating the emergency plans, so that emergency situations can be met with the appropriate reactions and so that the relevant personnel can be trained. Such training must be provided for all employees, including those employed by subcontractors;

(f) Compliance assessment: the definition and implementation of procedures for continuously assessing the achievement of targets laid down in the operator's concept and in the safety management, and of mechanisms for reviewing and executing corrective measures in the event of non-compliance. The procedures encompass the operator's system for notifying serious accidents or 'almost accidents', in particular those where the protective measures have failed,

and the investigations and corrective measures triggered on the basis of the experience gained. The procedures may also include indicators, e.g. relating to safety or others;

(g) Audit and review: the definition and implementation of procedures for regular, systematic reviews of the concept and the effectiveness and adequacy of the safety management; an audit of the existing concept's and safety management's results, adequately recorded by management staff, including updates and including the consideration of necessary adjustments following the review and audit.

III. Data and information to be included in internal emergency plans in accordance with section 146 para. 2 in conjunction with section 84h Industrial Code

1. the name or position of the persons authorised to trigger emergency protocols, and of the persons responsible for executing and coordinating corrective measures on site;
2. the name or position of the person responsible for communication with the authority competent for the external emergency plan;
3. for foreseeable circumstances or incidents that might cause a serious accident, a description of the measures to be executed in each case to control the circumstances or incidents and to limit their consequences, including a description of the safety equipment and materials available;
4. the measures that limit risks for the persons on site, including information about how they will be alerted and how they are expected to react to an alert;
5. the protocols for early notification of an accident to the authority competent for the external emergency plan, the type of information to be provided as part of such first notification, and the protocols for submitting detailed information as soon as it becomes available;
6. where necessary, the plans for training personnel in the tasks that are part of their responsibilities, and possibly the coordination of such training with external emergency services;
7. the protocols for supporting corrective measures off-site.