

# Energy Intervention Powers Act

**Federal Act of 21 October 1982 on  
intervention measures to safeguard  
energy supplies (Energy Intervention  
Powers Act 1982)**  
[BGBl. 1982/545<sup>1</sup>]

The National Council has enacted:

**Article 1  
(Constitutional provision)**

(1) The enactment and repeal of provisions such as those contained in Art. II Energy Intervention Powers Act 1982, BGBl. No. 545 as amended by Federal Acts BGBl. No. 267/1984, BGBl. No. 336/1988, BGBl. No. 382/1992, BGBl. No. 834/1995, BGBl. No. 791/1996, BGBl. I No. 178/1998, BGBl. I No. 149/2001, BGBl. I No. 151/2004 and BGBl. I No. 106/2006, as well as the enforcement of such provisions are a federal responsibility, even in matters regarding which the Federal Constitution Act<sup>2</sup> provides otherwise. The matters governed by these statutes may, under section 9, without prejudice to the powers of provincial governors under Art. 102 subsection 1 Federal Constitution Act, be directly attended to by the organisations of the statutory interest groups within the scope of powers conferred on them, as well as Energie-Control GmbH and the control area managers.

(2) This Article shall come into force on 1 January 2007.

(3) The Federal Government is entrusted with the enforcement of this article.

**Article II**

**1. Application of intervention  
measures**

**1. (1)** Intervention measures may be taken under this Act:

1. to avert imminent or overcome actual disruptions of Austrian energy supplies insofar as these:
  - a) do not represent seasonal shortages; and
  - b) cannot be averted or overcome at all, in a timely manner or at reasonable cost by market based measures; or

2. to take emergency measures pursuant to decisions by the governing bodies of international organisations where this is necessary to fulfil obligations under international law.

(2) The objects of intervention measures are:

1. in the contingencies set out in subsection 1 para. 1, to safeguard the fulfilment of essential energy requirements including those of national defence, the undisturbed production of goods and provision of services, and the supply of the general public and other consumers;
2. in the contingencies set out in subsection 1 para. 2, to permit the fulfilment of obligations under international law to take emergency measures pursuant to decisions by the governing bodies of international organisations.

(3) Intervention powers may be used in their entirety, separately or in combination with each other, irrespective of whether a disruption in the meaning of subsection 1 para. 1 affects only parts of federal territory or certain areas of energy supplies. If a disruption in the meaning of subsection 1 para. 1 only affects parts of federal territory intervention measures may likewise be limited to parts of federal territory.

(4) Intervention measures may only be taken to an extent and for a duration necessary to avert or overcome supply disruptions, or to fulfil obligations under international law to implement emergency measures pursuant to decisions by the governing bodies of international organisations. Infringements of property rights and the freedom to practise a trade or occupation are only permissible if the objects referred to in subsection 2 cannot otherwise be achieved.

1a. This Act transposes:

1. Directive 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, OJ L 176, 15.7.2003, p. 37;
2. Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, OJ L 176, 15.10.2003, p. 57;
3. Directive 2004/67/EC concerning measures to safeguard security of

<sup>1</sup> Translator's note: In the legal citations, BGBl stands for *Bundesgesetzblatt* (Federal Law Gazette).

<sup>2</sup> Translator's note: *Bundes-Verfassungsgesetz*.

natural gas supply, OJ L 127, 29.4.2004, p. 92.

2. (1) Intervention measures shall be taken by order by the Federal Minister of Economics and Labour. Unless they relate exclusively to the total or partial revocation of intervention measures such orders shall require the assent of the Main Committee of the National Council. Orders imposing intervention measures regarding energy products, safeguarding electricity supplies and safeguarding gas supplies shall, without exception, be enacted separately from each other. Intervention measures affecting a given sector shall take account of the energy supply situation in the other sectors.

(2) In case of urgency, orders requiring the assent of the Main Committee of the National Council shall be enacted simultaneously with the application for the Committee's assent. Orders not preceded by the assent of the Main Committee of the National Council shall be immediately revoked if the Committee does not assent to their enactment or does not do so within one week of receipt of the application.

(3) Intervention measures may only be taken for periods of six months. In the case of an energy supply disruption which has already come about an extension beyond this six month period is possible, subject to the assent of the Main Committee of the National Council. Upon the cessation of the circumstances giving rise to the orders the latter shall be revoked forthwith.

(4) Orders under sections 3 to 20h of this Act shall be published in the official gazette section of the Wiener Zeitung, and shall come into force upon such publication unless a later date is prescribed. In the event that publication in the official gazette section of the Wiener Zeitung is not possible, or is not possible in a timely manner, the order in question shall be made known in another appropriate manner, such as announcement on radio, television or other acoustic media, or in one or more periodical publications which accept advertisements, especially daily newspapers, and shall also be posted on the internet.

(5) The Federal Minister of Economics and Labour shall report to the National Council

on the intervention measures taken for the first time within three months and thereafter at intervals of two months.

2a. Documents and official acts relating to procedures under this Act shall be exempt from federal administrative fees. Documentary submissions directly occasioned by this Act shall be exempt from stamp duty.

## **2. Intervention measures relating to energy products**

3. (1) The Federal Minister of Economics and Labour may, in the contingencies set out in section 1 (1), and subject to section 1(2–4), take energy intervention measures in respect of energy products creating:

1. rights of disposal, access and requisition (section 4);
2. regulations governing the production, transportation, storage, distribution, sale and purchase of, import restrictions and export obligations (section 5);
3. transport restrictions (section 6);
4. reporting duties (section 7);
5. changes in required specifications (section 7a).

Upon the enactment of measures under para. 1, all property rights in respect of the energy products concerned shall be extinguished insofar as such rights conflict with the objects of the measures taken.

(2) The energy products which may be subjected to intervention measures are:

1. crude oil and petroleum products;
2. other liquid fuels except for operational wastes;
3. solid fossil fuels.

(3) Energy products held as stocks for the purpose of safeguarding public energy supplies and not destined for sale to third parties shall continue to be reserved for this purpose.

(4) The energy products named in subsection 2 may also be subjected to intervention measures under this Act if they are used as feedstocks.

(5) Energy products not destined for supply to third parties and held in stock for military purposes, or owned by a final consumer and held to meet his personal needs and those of other members of his household, and energy

products held to meet the needs of the stockholder's own business may not be subjected to measures under subsection 1 paras. 1 or 2.

4. Measures under section 3 (1)(1) shall initially relate to compulsory emergency energy reserves established under other legislation. They may also extend to means of transport, storage facilities and distribution systems for energy products if this is found to be essential.

5. (1) Orders under section 3 (1)(2) may, in particular, make provision for the sale, purchase and use of energy products for priority supply purposes or to fulfil obligations under international law. Where they relate to the transportation of energy products such orders shall require the agreement of the Federal Minister of Transport, Innovation and Technology.

(2) In particular, the importation of solid fossil fuel may be restricted to one or more undertakings, and regulations may introduced determining the conditions, arising from the objects of this Act, which natural and legal persons must fulfil in order to be included in such ventures. In addition, such regulations may determine to whom, in what manner and in what amounts such undertakings shall supply the said fuels.

(3) Such orders may also make provision for directions to owners of energy transport, storage and distribution systems.

6. (1) Orders under section 3 (1)(3) may prohibit:

1. the use of all, or certain types of road vehicles, as well as powered water craft and aircraft, for certain periods, throughout federal territory or in parts thereof;

2. exceeding of certain speed limits applicable to all or certain classes of vehicles on all or certain types of roads, and to all or certain classes of powered water craft on all or certain types of water bodies;

3. the use of the vehicles referred to in paras. 1 and 2 for certain purposes or events.

(2) In order to protect significant economic, social or cultural interests, or the public interest, such orders may make permanent or temporary general or limited exceptions.

(3) On application, permanent or temporary exceptions from the restrictions ordered under subsection 1 para. 1 may be made in individual cases, throughout federal territory or in certain areas, if such exceptions are of particular importance to the Austrian economy or of material economic, occupational or social importance to the applicant.

(4) Orders under subsection 1 may also determine the manner in which vehicle documents is to be identified or another form of identification is to be effected in order to permit supervision of compliance with the restrictions and the verification of exceptions under subsections 2 or 3. Such orders may also determine how the reasons for making exceptions under para. 3 are to be substantiated.

(5) Orders enacted under subsections 1, 2 and 4 shall require the agreement of the Federal Ministers of Transport, Innovation and Technology, and Defence and, if they make provision for traffic restrictions affecting vehicles employed by the agricultural, forestry and food industries, the Federal Minister of Agriculture and Forestry, Environment and Water Management.

7. (1) Orders under section 3 (1)(4) may require undertakings which produce, treat, process, consume, store or otherwise hold, or trade energy products to report their requirements, production, treatment and processing, consumption, inventory additions and disposals, and inventories, as well as such information on their operating facilities as is necessary for the enforcement of this Act.

(2) The Federal Minister of Economics and Labour may inspect reports and information required under subsection 1 and, in the event that persons subject to reporting requirements fail to submit the reports in a timely manner despite express notice, may direct the preparation of such reports *in situ* at the expense of such persons. The Minister may have recourse to authorities of the general state administration or duly accredited bodies for this purpose.

(3) The inspection bodies shall, at any time, be granted access to the operating and storage facilities, and to areas of premises and records relating to energy products, knowledge of which is essential for implementation of the intervention measures.

The information required to make inspections shall be furnished to them.

**7a.** Orders under section 3 (1)(5) shall only require the agreement of the Federal Minister of Agriculture and Forestry, Environment and Water Management for their enactment insofar as this is necessary for the maintenance of supplies of energy products. Due regard shall be paid to avoiding hazardous environmental impacts. Regulations conflicting with such orders shall not be made for the duration of the validity thereof.

**8.(1)** Pecuniary compensation shall be paid for pecuniary losses arising from measures under section 3 (1)(1–2). On application, the Federal Minister of Economics and Labour shall determine such compensation by notice. Such notice shall be issued within eight weeks of the application. An application for the determination of compensation by the competent court of general jurisdiction may be made within three months of delivery of such notice. The competent court shall be the district court for the district where the applicant resides or, if the applicant is a legal entity or commercial law partnership, the district where its registered office is located. In the event that the applicant is not resident/domiciled in Austria the district court for the district where the measure was taken shall be competent. The procedure shall be governed by the rules for non-contentious court proceedings; the provisions of the Railway Expropriation Act<sup>3</sup> 1954, BGBl. No. 71 shall be applied by extension to the judicial assessment of the compensation. Upon receipt of the application by the district court the notice issued in accordance with the second sentence hereof shall lapse. If the application is withdrawn, then the notice shall come into full effect again.

(2) Liens on energy products subject to measures under section 3 (1)(1) shall also extend to compensation claims (subsection 1) provided that the person obliged to pay the compensation has been notified of the existence of such liens, stating the name and address of the lien holder and lienee in writing. Section 34 Railway Expropriation Act 1954 shall be applied by extension.

**9.** The implementation of orders enacted under section 3 shall be the responsibility of

the authorities of the general state administration and the local authorities within the scope of the powers conferred on them, unless the Federal Minister of Economics and Labour has been charged therewith. The tasks to be performed by the various authorities shall be assigned by the orders under section 3, having regard to the expediency, expeditiousness, economy and effectiveness of implementation. The Federal Minister of Economics and Labour may also, have recourse to the organisations of the statutory interest groups within the scope of the powers conferred on them if it appears to him that this is conducive to the expeditious implementation of the orders.

**9a.** (1) The bodies entrusted with implementing intervention measures under section 9 shall be empowered to acquire, process and transmit data in the meaning of the Data Protection Act<sup>4</sup>, BGBl. No. 565/1978 insofar as this is essential for the fulfilment of the duties conferred on them.

(2) Without prejudice to other reporting and information duties under this Act, the transmission of data serving as a basis for the allocation of the controlled energy product in question, including information as to the identity of those entitled to purchase such products, to the bodies entrusted with implementing intervention measures (subsection 1) shall be permissible.

### **3. Intervention measures to safeguard electricity supplies**

**10.** The Federal Minister of Economics and Labour may, by order, in the contingencies set out in section 1 (1), and in accordance with the provisions of section 1 (2–4), and having regard to the energy supply situation in the various provinces, intervene to safeguard supplies of electrical energy by:

1. making directions to generators, network operators, balancing group coordinators, balancing group representatives and electricity merchants regarding the generation, transmission, distribution, wholesaling and retailing of electrical energy (section 12);
2. making directions to final consumers regarding the allocation, withdrawal and use of electrical energy, as well as the exclusion of consumers from the

<sup>3</sup> Translator's note: *Eisenbahnteilungsgesetz*.

<sup>4</sup> Translator's note: *Datenschutzgesetz*.

- withdrawal of electrical energy (section 13);
3. issuing regulations regarding the supply of electrical energy from and to EU member states and third countries (section 14);
  4. issuing regulations regarding the operation of electricity generating stations and permission to breach emission limits (section 15);
  5. permitting deviations from the requirements of other legislation regarding renewable energy sources, insofar as such deviations are necessary to safeguard supplies of electrical energy (section 16);
  6. issuing regulations regarding the use of renewable electricity under section 5 (1)(15) Green Electricity Act<sup>5</sup>, BGB. No. 149/2002 (section 17);
  7. setting consumption quotas for the provinces (section 17).

Paras. 1–3 shall be inapplicable to generating stations used to provide system services and cover peak loads within control areas if the provision of system services and the coverage of peak loads is inadequate due to cross control area utilisation of such generating stations for crisis management purposes.

**11.** (1) The preparation and coordination of the measures to be taken in the Austrian control areas in case of need shall be delegated to Energie-Control GmbH (section 5 Regulatory Authorities Act<sup>6</sup>, BGBl. I No. 121/2000 as amended by Federal Act BGBl. I No. 106/2006. The operational implementation of the measures under sections 12–16 shall be the responsibility of the control area managers, acting in conjunction with the network operators, balancing group coordinators, balancing group representatives and electricity merchants, which shall coordinate their activities in the interests of a uniform approach throughout federal territory.

(2) Energie-Control GmbH shall be empowered to require, by order, the reporting of historical, current and projected data at periodic intervals, even if the contingencies set out in section 1(1) do not apply, in order to draw up intervention measures to safeguard supplies of electrical energy, and to

monitor security of supply in the electricity sector (section 20i).

(3) Reporting of the following forms of information under subsection 2 may be required by order:

1. information on electricity supply, demand, final demand, imports and exports, as well as the nature, amount and inventories of the primary energy sources used;
2. technical indicators regarding power lines and generating stations.

Reporting orders may prescribe presentation broken down by uses, economic activities according to the ÖNACE classification, network operators and provinces. In addition, data from final consumers with an average monthly consumption of over 500,000 kWh in the previous calendar year (section 13) may be collected on a monthly and supplier basis.

(4) Data collected under section 20b of this Act and section 52 Electricity Act<sup>7</sup> and data available to control area managers in connection with congestion management may be used to draw up and coordinate intervention measures to safeguard electricity supplies.

(5) Energie-Control GmbH shall provide the control area managers and provincial governors with such data collected under subsections 2 and 4 as is necessary for the preparation and operational implementation of intervention measures.

**12.** Orders enacted under section 10 para. 1 shall make such directions to generators, network operators, balancing group coordinators and electricity merchants regarding generation, transmission, distribution, wholesaling and retailing as are necessary to safeguard electricity supplies.

**13.** Orders under section 10 para. 2 shall make provision for the supply of the available electrical energy to final consumers according to the degree of urgency. In particular, such orders may determine that final consumers may, without additional procedures, be temporarily excluded from deliveries or that such deliveries may be limited. If necessary, final consumers with an average monthly consumption of over 500,000 kWh in the previous calendar year may be separately regulated by Energie-Control GmbH.

<sup>5</sup> Translator's note: *Ökostromgesetz*.

<sup>6</sup> Translator's note: *Energie-Regulierungsbehördengesetz (ERBG)*.

<sup>7</sup> Translator's note: *Elektrizitätswirtschafts- und organisationsgesetz (EIWOG)*.

**14.** Orders under section 10 para. 3 shall take account of the Austrian electricity supply situation and obligations in the meaning of section 1(2).

**15.** Orders under section 10 para. 4 shall only be enacted if this is necessary to safeguard supplies of electrical energy. Due regard shall be paid to avoiding hazardous environmental impacts. Regulations conflicting with such orders shall not be made for the duration of the validity thereof.

**16.** Orders under section 10(5) may make provisions deviating from the requirements of other legislation regarding renewable energy sources if this is necessary to safeguard supplies of electrical energy.

**17.** (1) Orders under section 10 paras. 6 and 7 shall take account of the energy supply situation in the various provinces.

(2) The implementation of intervention measures relating to the provincial consumption quotas under section 10 para. 7 and the enactment of regulations under section 10 para. 6 in the provinces shall be the responsibility of provincial governors. A provincial governor may charge the designated control area manager in the respective province, as well as the network operators, balancing group coordinators, balancing group representatives and electricity merchants operating in such province with implementing the measures.

(3) In implementing intervention measures consonant with provincial consumption quotas under section 10 para. 7, provincial governors shall be bound by the federal allocation regulations insofar as the electricity supply situation is such that a deviation from such regulations would risk failure to meet their provinces' power saving targets. In the event of non-attainment of a province's power saving target Energie-Control GmbH may enact the measures necessary to meet such target with binding effect for the province concerned.

(4) The delivery of the available electrical energy to final consumers in the provinces shall be regulated in accordance with the degree of urgency. In particular, final consumers may, without additional procedures, be temporarily excluded from deliveries or such deliveries may be limited.

(5) Geographically circumscribed areas may be excluded from electricity withdrawal or cut off by order of provincial governors.

(6) Orders enacted by provincial governors shall be published in the daily newspapers customarily used to make official announcements, and shall be posted on the internet.

**18.** (1) Surcharges shall be imposed on electricity use in excess of the consumption limits.

(2) Energie-Control GmbH shall, by order, make detailed provisions for the payment modalities, the determination of the excess consumption surcharges and operational management of such surcharges.

(3) The excess consumption surcharges shall be allocated among the electricity undertakings concerned according to a formula to be determined by Energie-Control GmbH to meet the cost of the intervention measures taken to safeguard the supply of electrical energy.

(4) Provincial governors may, by notice, reduce excess consumption surcharges so as to prevent cases of economic and social hardship, upon applications which shall be made within two weeks of the entry into force of such notices.

(5) Energie-Control GmbH may, by notice, reduce excess consumption surcharges payable by final consumers subject to separate regulation by it under section 13 in order to prevent cases of economic and social hardship, upon applications which shall be made within two weeks of the entry into force of such notices.

**19.** (1) Regulations and measures under sections 12–18, and arrangements for excess consumption surcharges (section 18) shall be deemed to form integral parts of suppliers' general terms and conditions, and electricity supply agreements.

(2) In the event of the non-fulfilment or improper fulfilment of a contract due to measures taken under sections 10–17 this shall not give rise to any claim for damages against the defaulting party. The provisions of the Public Liability Act<sup>8</sup>, BGBl. No. 20/1949 as amended shall not be affected hereby.

**20.** Where necessary to safeguard electricity supplies, generators, control area managers, network operators, balancing group

<sup>8</sup> Translator's note: *Amtshaftungsgesetz*.

coordinators, balancing group representatives and consumers shall be obliged to provide information to Energie-Control GmbH and to the provincial governors in accordance with their powers. Energie-Control GmbH and the provincial governors shall be empowered to acquire, process and transmit data in the meaning of the Data Protection Act insofar as this is essential to their ability to safeguard electricity supplies within the scope of their powers.

### 3a. Intervention measures to safeguard natural gas supplies

20a. The Federal Minister of Economics and Labour may, by order, in the contingencies set out in section 1 (1), and in accordance with the provisions of section 1 (2–4), intervene to safeguard supplies of natural gas by:

1. giving directions to natural gas undertakings in the meaning of section 6 para. 13 Natural Gas Act<sup>9</sup>, BGBl. I No. 121/2000 as amended by Federal Act BGBl. I No. 106/2006, control area managers, balancing group representatives, balancing group coordinators and producers regarding the production, transportation, transmission, distribution, storage, wholesaling and retailing of natural gas;
2. making directions to final consumers regarding the allocation, withdrawal and use of natural gas, and the exclusion of consumers from the withdrawal of natural gas;
3. issuing regulations regarding the supply of natural gas from and to EU member states and third countries.

**20b.** (1) The preparation and coordination of the measures to be taken in the Austrian control areas in case of need shall be delegated to Energie-Control GmbH (section 5 Regulatory Authorities Act<sup>10</sup>). The operational implementation of the measures under sections 20c–20g shall be the responsibility of the control area managers, acting in conjunction with the natural gas undertakings, including the balancing group representatives, balancing group coordinators and producers.

(2) Energie-Control GmbH shall be empowered to require, by order, the reporting of historical, current and projected data at periodic intervals, even if the contingencies set out in section 1(1) do not apply, in order

to draw up intervention measures to safeguard natural gas supplies and to monitor security of supply in the natural gas sector (section 20j).

(3) Reporting of the following forms of information under subsection 2 may be required by order:

1. information on supply, demand, final demand, imports and exports including transits, as well as production and storage availabilities and capacity;
2. technical indicators regarding pipeline and production systems, and storage facilities.

In addition, data from final consumers with a contractually agreed consumption of over 100,000 kWh/h in the previous calendar year (section 20d) may be collected on a monthly or one-off basis.

(4) Data collected under section 11 of this Act and section 59 Natural Gas Act, and data available to control area managers in connection with congestion management may be used to draw up and coordinate intervention measures to safeguard natural gas supplies.

(5) Energie-Control GmbH shall provide the control area managers with such data collected under subsections 2 and 4 as is necessary for the preparation and operational implementation of such measures.

**20c.** Orders under section 20a para. 1 shall make provision for the giving of such directions to natural gas undertakings, including control area managers, producers, balancing group representatives and balancing group coordinators, regarding production, transportation, transmission, distribution, storage, wholesaling and retailing as are necessary to safeguard natural gas supplies.

**20d.** Orders under section 20a para. 2 shall make provision for the delivery of the available natural gas to final consumers according to the degree of urgency, substitutability by other energy forms and economic impact, while having regard to supplies for domestic heating. In particular, such orders may determine that final consumers may, without additional procedures, be temporarily excluded from deliveries or that such deliveries may be limited. If necessary, final consumers with a contractually agreed consumption of over

<sup>9</sup> Translator's note: *Gaswirtschaftsgesetz* (GWG).

<sup>10</sup> *Energie-Regulierungsbehördengesetz*

100,000 kWh/h may be separately regulated by Energie-Control GmbH.

**20e.** Orders under section 20a para. 3 shall take account of the Austrian gas supply situation and obligations in the meaning of section 1(2).

**20f.** (1) Surcharges shall be imposed on natural gas use in excess of the consumption limits.

(2) Energie-Control GmbH shall, by order, make detailed provisions for the payment modalities, the determination of the excess consumption surcharges and operational management of such surcharges.

(3) The excess consumption surcharges shall be allocated among the natural gas undertakings according to a formula to be determined by Energie-Control GmbH to meet the cost of the intervention measures taken to safeguard natural gas supplies.

(4) Provincial governors may, by notice, reduce excess consumption surcharges in order to prevent cases of economic and social hardship upon applications which shall be made within two weeks of entry into force of such notices.

(5) Energie-Control GmbH may, by notice, reduce excess consumption surcharges payable by final consumers subject to separate regulation by it under section 20d in order to prevent cases of economic and social hardship, upon applications which shall be made within two weeks of entry into force of such notices.

**20g.** (1) Regulations and measures under sections 20a–20e, and regulations relating to excess consumption surcharges (section 20f) shall be deemed to form integral parts of the suppliers' general terms and conditions, and gas supply agreements.

(2) In the event of the non-fulfilment or improper fulfilment of a contract due to measures taken under sections 20a–20e this shall not give rise to any claim for damages against the defaulting party. The provisions of the Public Liability Act, BGBl. No. 20/1949 as amended shall not be affected hereby.

**20h.** Where necessary to safeguard natural gas supplies, natural gas undertakings, including control area managers, producers, balancing group representatives, balancing group coordinators and consumers shall be obliged to provide information to Energie-Control GmbH and to the provincial governors

in accordance with their powers. Energie-Control GmbH and the provincial governors shall be empowered to acquire, process and transmit data in the meaning of the Data Protection Act to the extent that this is essential to safeguard natural gas supplies.

### **3b. Preparation of intervention measures**

**20i.** (1) Energie-Control GmbH shall assist in the preparation of the intervention measures by monitoring electricity supply security. The balancing group coordinators, balancing group representatives, injectors, electricity under-takings, network operators and control area managers in the meaning of section 7 Electricity Act shall cooperate to the best of their ability. Such monitoring shall, in particular, concern:

1. the balance of supply and demand on the domestic market;
2. the anticipated evolution of demand and supply availabilities;
3. additional capacity at the planning and construction stages;
4. the quality and extent of network maintenance;
5. measures taken to meet peak demand and cope with outages affecting one or more suppliers; and
6. the availability of electricity generating stations and networks.

(2) The results of the monitoring activities under subsection 1 may be used for long-term planning and the preparation of a report under section 14a Regulatory Authorities Act.

**20j.** (1) Energie-Control GmbH shall assist in the preparation of the intervention measures by monitoring natural gas supply security. The control area managers designated by section 12a Natural Gas Act shall collaborate to the best of their ability in the assessment of congestion on transmission pipelines. Such monitoring shall, in particular, concern:

1. the balance of supply and demand on the domestic market;
2. the anticipated evolution of demand and supply availabilities;
3. additional capacity at the planning and construction stages;
4. the quality and extent of network maintenance;

5. measures taken to meet peak demand and cope with outages affecting one or more suppliers; and
6. the availability of sources of natural gas supplies (domestic production, storage and imports) and networks.

(2) The results of the monitoring activities under subsection 1 may be used for long-term planning and the preparation of a report under section 14a Regulatory Authorities Act.

#### **4. Advisory councils**

**21.** (1) An advisory council (Energy Intervention Council) shall be established to advise the Federal Minister of Economics and Labour at the Ministry, and draw up and report on measures under sections 3–9. It shall, in particular, be consulted prior to the enactment of orders under sections 2(1), 3, 10 and 20a.

(2) The membership of the Council shall comprise:

1. three representatives of the Federal Ministry of Economics and Labour, and one representative, respectively, of the Federal Chancellery, the Federal Ministries of Foreign Affairs, Finance, Defence, Agriculture and Forestry, Environment and Water Management, and Transport, Innovation and Technology;
2. two representatives, respectively, of the Austrian Federal Economic Chamber, the Presidential Conference of Austrian Chambers of Agriculture, the Austrian Federal Chamber of Labour, the Austrian Trade Union Federation and the Federation of Austrian Industry;
3. One representative of Energie-Control GmbH;
4. one representative of each province;
5. one oil production industry, oil wholesale and retail industry, natural gas industry and coal industry expert, respectively;
6. one representative of the Austrian Association of Electricity Companies.

**22.** Repealed.

**23.** The Minister of Economics and Labour shall appoint the members of the Council under section 21. The members referred to in section 21(2)(2, 4 and 6) shall be appointed on the recommendation of the nominating

bodies. The members referred to in section 21(2)(5) shall be appointed on the recommendation of the Austrian Federal Economic Chamber.

**24.** (1) The Energy Intervention Council (section 21) shall be chaired by the Federal Minister of Economics and Labour who may be represented in his absence by an official of his Ministry.

(2) The Energy Intervention Council and the Electricity Advisory Board shall require a duly issued invitation to all members and the presence of at least one-third of the members for a quorum when considering matters relating to this Act. In the event that the requisite number of members are not present at the beginning of a meeting the councillors shall reassemble one hour after the time stated in the invitation and consider the agenda irrespective of the number of members present.

(3) The Minister may waive consultation of the Energy Intervention Council in case of urgency. However the matter concerned shall be placed before the Council retroactively without delay. In the case of intervention measures affecting the electricity or natural gas sectors the Minister shall hear Energie-Control GmbH, and the provincial governors concerned according to the scope of their powers.

**25.** The Energy Intervention Council shall adopt standing orders by simple majority. Such standing orders shall regulate the activities of the advisory councillors in as expedient a manner as possible. They shall require the approval of the Minister, who shall grant such approval if this condition is met.

**26.** The members of the Energy Intervention Council may not disclose or exploit for commercial gain any official, business or operational secrets entrusted or accessible to them during or after their service. Those members who are not ministerial representatives shall be required by the Federal Minister of Economics and Labour to give an undertaking to perform their duties in a conscientious manner.

**27.** (1) Advisory councils shall be established to advise the provincial governors (section 17 [2]). The membership of such councils shall comprise:

1. one representative, respectively, of the provincial chambers of commerce,

agriculture and labour, and the Austrian Trade Union Federation;

2. not more than ten experts from the electricity industry of the province in question;
3. two officials of the office of the provincial government.

(2) The councils shall be appointed by the provincial governors. The members referred to in section subsection 1 para. 1 shall be appointed on the recommendation of the nominating bodies. The composition of the councils, and changes in their membership shall be notified to the Federal Minister of Economics and Labour.

(3) The provincial governors shall make the arrangements for chairmanship of the councils. Otherwise, sections 24–26 of this Act shall apply by extension.

#### 5. Penal provisions

**28.** (1) Any person who commits an offence not constituting a criminal offence subject to the jurisdiction of the courts shall be guilty of an administrative offence and shall be punished by the district administration:

1. by a fine of up to 72,660 euro if such person

- a) fails to observe prescriptions and prohibitions imposed by orders enacted under sections 3, 10 and 20a or notices issued under such orders, insofar as the offence is not punishable under paras. 2 or 3;
- b) disobeys intervention measures under sections 13, 17 and 20d;
- c) wilfully obstructs or prevents the implementation of prescriptions or prohibitions under clause a or measures under clause b;

2. by a fine of up to 2,180 euro if such person

- a) contravenes an order enacted under section 3 regarding a prohibition of use (section 6[1][1]) or vehicle identification (section 6[4]), falsely claims an exemption from a prohibition or obtains an exemption by false pretences; b) contravenes orders regarding reporting duties (section 7[1], section 11[2] and section 20[2]) or fails to provide timely, correct and

complete information in accordance with sections 7(2–3) and 19;

c) wilfully breaches his duty to suffer inspections under section 7(2–3);

3. by a fine of up to 726 euro if such person significantly exceeds a speed limit (section 6[1][2]) imposed under section 3.

(2) In the cases set out in subsection 1 para. 1 an attempt to commit an offence shall be punishable.

(3) Account shall be taken of the degree of obstruction of efforts to safeguard energy supplies or supplies of feedstocks (section 3[4]) when assessing penalties for offences under subsection 1 para. 1. In the event that a fine is uncollectible imprisonment for default of up to six weeks shall be imposed for an offence under subsection 1 para. 1, and otherwise a period of imprisonment of up to two weeks shall be imposed.

(4) In the case of wilfully committed administrative offences under subsection 1, the energy products giving rise to the offence and belonging to the offender or an accessory may be declared forfeited. However the value of the forfeited energy products may not be disproportionate to the seriousness of the offence.

**29.** (1) If a punishable offence under section 28 is constituted by the offender's energy consumption in contravention of ordered restrictions on electricity or natural gas use, then no penalty shall be imposed if he pays an excess consumption surcharge under section 18 or section 20f.

(2) Without prejudice to the right to impose a penalty under section 28, or an excess consumption surcharge under sections 18 or 20f, the responsible authority under sections 11, 20b or 17 may exclude an electricity or natural gas consumer from electricity or natural gas withdrawal up to the extent of the prohibited excess consumption.

**30.** (1) The Federal Police shall, as the law enforcement agency of the district administrative authorities, participate in the enforcement of section 28 (1)(2a and 3) by:

1. taking preventive measures against imminent administrative offences;

2. taking such action as is required to institute and conduct administrative penal proceedings;
3. applying physical coercion where provided for by the law.

(2) The federal police authorities shall report administrative offences under section 28(1)(2a and 3) of which they become aware in the course of duty to the district administrative authority responsible.

## **6. Final and transitional provisions**

### **31. (1) Repealed.**

(2) Art. II section 3(1), section 5(1), section 6(5), section 8, section 20(2)(1), section 21(2)(1), and section 34(1) and 34(2)(4,5,6,8 and 9) as amended by Federal Act BGBl. No. 791/1996 shall come into force on 1 January 1997.

(3) Art. II section 5(1), section 6(5), section 20(2)(1–2), section 22(2)(1–2), section 34(1) and 34(2)(5–6) as amended by Federal Act BGBl. I No. 178/1998 shall come into force on 1 January 1999.

(4) Art. II section 2(1, 4 and 5), section 3(1), section 6(5), section 7(2), section 7a, section 8(1) and sections 10–35 as amended by Federal Act BGBl. I No. 149/2001 shall come into force on 1 January 2002.

(5) Art. II section 1a, section 2(1 and 4), section 10(6), section 11(1,2 and 4), section 13, section 17(3), section 18(2,3 and 5), section 20, sections 20a–20j, section 21(1–2), and 21(2)(3), section 22a, section 23(1), section 24(3), section 25, section 26, section 28(1)(1a–1b), section 29 and section 31(1) as amended by Federal Act BGBl. I No. 106/2006 shall come into force on xxxxx. Orders under Art. II section 11(2) and section 20b(2) may be enacted from the day after publication of this Act; however they may not be put into force until 1 January 2007 at the earliest.

(6) The members of the advisory councils of the provincial load dispatchers appointed under section 26 Energy Intervention Powers Act 1982, BGBl. No. 545, as amended by BGBl. I No. 178/1998 shall be deemed to be members of the provincial governors' advisory councils under section 26 Energy Intervention

Powers Act 1982, BGBl. No. 545 as amended by BGBl. I No. xxx/2001 until their recall.

(7) The data collected by the Federal Load Dispatcher up to 31 December 2001 and analyses thereof performed for load dispatching purposes shall be transferred to Energie-Control GmbH.

**32.** The following persons are entrusted with the enforcement of Article II of this Act:

1. in respect of section 2a, the Federal Government or the Federal Minister of Finance, according to their respective responsibilities;
2. in respect of section 30, the Federal Minister of the Interior;
3. in respect of section 3 (1) (last sentence), section 8 (1) (fourth to seventh sentence) and section 19, the Federal Minister of Justice;
4. in respect of section 6 (5), the Federal Minister of Economics and Labour in consultation with the Federal Ministers of Defence and Transport, Innovation and Technology and, subject to these provisions, the Federal Minister of Agriculture and Forestry, Environment and Water Management;
6. in respect of section 5 (1)(second sentence), the Federal Minister of Economics and Labour in consultation with the Federal Minister of Transport, Innovation and Technology;
7. in respect of sections 3 (1)(5), 7a, 10(4) and 14a, the Federal Minister of Economics and Labour in consultation with the Federal Minister of Agriculture and Forestry, Environment and Water Management;
8. in respect of section 8 (2), according to their respective responsibilities, the Federal Ministers of Economics and Labour, and Justice;
9. in all other respects, the Federal Minister of Economics and Labour.

Sections 33–35 repealed (as amended by subsection 7 BGBl. I No. 149/2001).

