

# FEDERAL LAW GAZETTE

## OF THE REPUBLIC OF AUSTRIA

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Part I

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**Chapter 41:**    **Energielenkungsgesetz 2012 – Energy Intervention Powers Act 2012**  
(Version referenc GP XXIV RV 1962 AB 2066 S. 187. BR: 8883 AB 8890 S. 817.)  
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**Chapter 41 on intervention measures to safeguard energy supplies** (*Energielenkungsgesetz 2012* [Energy Intervention Powers Act 2012])

The National Council has enacted:

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### Part 1 Principles

#### Constitutional provision

**1. (Constitutional provision)** The enactment, repeal and enforcement of provisions such as those contained in this Federal Act are a federal matter unless the *Bundes-Verfassungsgesetz* (B-VG) [Federal Constitution Act], BGBl. (Federal Law Gazette [FLG]) No. 1/1930 provides otherwise. In accordance with section 7(6) of this Act, the matters governed by these provisions may, without prejudice to the powers of provincial governors under Article 102(1) B-VG, be directly attended to by the organisations of the statutory interest groups within the scope of powers assigned to them, as well as Energie-Control Austria (E-Control) and the control area managers, market area managers and distribution area managers.

#### Reference to Union legislation

**2.** This Act transposes:

1. Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.08.2009, p. 55; and
2. Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.08.2009, p. 94,

as well as those provisions of Regulation (EU) No 994/2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, OJ L 295, 12.11.2010, p. 1, relating to measures to be implemented by the member states.

#### General provisions

**3. (1)** Documents and official acts relating to procedures under this Act shall be exempt from stamp duty and legal fees, federal administrative fees, and court and legal administrative fees.

(2) Where this Act refers to persons only in the masculine gender, such references include the feminine. When applied to specific persons, the gender-specific form shall be used.

(3) The definitions contained in the *Elektrizitätswirtschafts- und -organisationsgesetz* (EIWOG) [Electricity Act] 2010, FLG I No. 110/2010, the *Gaswirtschaftsgesetz* (GWG) [Natural Gas Act] 2011, FLG I No. 107/2011, and the *Erdölbevorrattungsgesetz* (EBG) [Oil Stockholding Act] 2012, FLG I No. 78/2012, all as amended, shall apply.

#### Application of intervention measures

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

1. 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 means of market-based measures; or

2. 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 object of intervention measures is:

1. in the case of subsection 1(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 case of subsection 1(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(1) affects only parts of federal territory or certain areas of energy supplies. If a disruption in the meaning of subsection 1(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.

#### **Enactment of intervention measures**

5. (1) Intervention measures shall be taken by order by the Federal Minister of Economy, Family and Youth. 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, and safeguarding supplies of electrical energy and natural gas 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. Measures covering a range of energy products may be taken if required.

(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 of up to six months 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 enacted under this Act by the Federal Minister of Economy, Family and Youth shall be published in the Federal Law Gazette, and those enacted by the provincial governors in the respective provincial law gazette, and shall commence upon such publication unless a later date is prescribed. In the event that publication in the Federal Law Gazette or the provincial law gazettes is not possible, or is not possible in a timely manner, the order in question shall be made known in another 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 Economy, Family and Youth 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.

#### **Disclosure of data**

6. (1) Data and information transmitted to executive agencies pursuant to the provisions of this Act may only be used for the purposes specified herein.

(2) The bodies entrusted with preparing and implementing intervention measures under sections 7(6), 14 and 26 shall be empowered to process and transmit data in the meaning of the *Datenschutzgesetz* (DSG) [Data Protection Act] 2000, FLG I No. 165/1999, insofar as this is essential for the fulfilment of the duties conferred on them.

(3) 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 shall be permissible.

(4) The business and operational secrets of companies affected by intervention measures which become known to those bodies charged with implementing such measures must be kept confidential wherever possible and may not be disclosed.

## **Part 2**

### **Intervention measures for solid and liquid energy products**

#### **Stipulation and implementation of intervention measures relating to energy products**

7. (1) 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.

(2) The Federal Minister of Economy, Family and Youth may, in the contingencies set out in section 4(1), and subject to section 4(2-4), enact by order intervention measures in respect of energy products creating:

1. rights of disposal, access and requisition (section 8);
2. regulations governing production, transportation, storage, distribution, sale and purchase, import restrictions and export obligations (section 9);
3. transport restrictions (section 10);
4. reporting duties (section 11);
5. changes in required specifications (section 12).

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.

(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 1 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 2(1) or (2).

(6) The implementation of orders enacted under subsection 2 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 Economy, Family and Youth has been charged therewith. The tasks to be performed by the various authorities shall be assigned by the orders under subsection 2, having regard to the expediency, simplicity, expeditiousness, economy and effectiveness of implementation. The Federal Minister of Economy, Family and Youth 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 the Minister that this is conducive to the expeditious implementation of the orders.

#### **Rights of disposal, access and requisition**

8. Measures pursuant to section 7(2)(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.

### **Regulations on production and use**

9. (1) Orders enacted under section 7(2)(2) may, in particular, provide for the restricted sale, purchase and use of energy products in specified periods of time, locations or quantities, 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 be introduced determining the conditions, arising from the objects specified in section 4(2) 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.

### **Transport restrictions**

10. (1) Orders under section 7(2)(3) may forbid:

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(1) may be granted by notice 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 are 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 exceptions under subsection 3 are to be substantiated.

(5) Orders under subsections 1, 2 and 4 shall require the agreement of the Federal Ministers of Transport, Innovation and Technology, and Defence and Sports, 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.

### **Reporting duties**

11. (1) Orders under section 7(2)(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 Economy, Family and Youth 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.

### **Changes in required specifications**

**12.** Orders under section 7(2)(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.

### **Compensation for pecuniary losses**

**13.** (1) Pecuniary compensation shall be paid for pecuniary losses arising from measures under section 7(2)(1–2). On application, the Federal Minister of Economy, Family and Youth shall determine such compensation by notice. Such notice shall be issued within eight weeks of the application.

(2) 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 under subsection 1. The competent court shall be the district court having material jurisdiction over the claim for compensation in the district where the applicant resides or, if the applicant is a legal entity or partnership under commercial law, the district where its registered office is located. In the event that the applicant is not resident/domiciled in Austria, the district court having material jurisdiction over the claim for compensation in the district where the measure was taken shall be competent. The procedure shall be governed by the rules on court proceedings in civil legal disputes (Civil Procedure Code); the provisions of the *Eisenbahn-Enteignungsentschädigungsgesetz* (EisbEG) [Railway Expropriation Act] 1954, FLG No. 71/1954 as amended by FLG I No. 111/2012 shall be applied by analogy to the judicial assessment of the compensation. Upon receipt of the application by the competent court, the notice issued in accordance with subsection 1 shall lapse. If the application is withdrawn, the notice shall come into full effect again.

(3) Liens on energy products subject to measures under section 7(2)(1) shall also extend to compensation claims under paras. 1 or 2, provided that the person obliged to pay the compensation has been notified in writing of the existence of such liens, stating the name and address of the lien holder and lienee. Section 34 Railway Expropriation Act 1954 shall be applied by extension.

## **Part 3**

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

#### **Stipulation and implementation of intervention measures relating to electricity**

**14.** The Federal Minister of Economy, Family and Youth may, in the contingencies set out in section 4(1), subject to section 4(2-4) and taking account of electricity supplies in the individual federal provinces, enact by order the following intervention measures to safeguard electricity supplies:

1. directions to generators, system operators, balance group coordinators, balance group representatives and electricity wholesalers and retailers regarding the generation, transmission, distribution, wholesaling and retailing of electrical energy (section 16);
2. appeals and directions to final consumers regarding the allocation, withdrawal and use of electrical energy, as well as the exclusion of consumers from the withdrawal of electrical energy (section 17);
3. regulations regarding the supply of electrical energy to and from EU member states and third countries (section 18);
4. regulations regarding the operation of electricity generating stations and permission to breach emission limits (section 19);
5. the granting of permission for deviations from the requirements of other legislation regarding renewable energy sources, insofar as such deviations are necessary to safeguard supplies of electrical energy (section 20);
6. regulations regarding the use of renewable electricity under section 5(1)(22) *Ökostromgesetz* (ÖSG) [Green Electricity Act], FLG I No. 75/2011 (section 21);
7. determination of consumption quotas for the provinces (section 21);
8. directions to:

- a) generators operating combined heat and power plants with a maximum thermal capacity of at least 50 MW or an annual heat output of at least 300 GW; and
- b) district heating companies operating heating stations and district heating power plants with a total maximum thermal output of at least 50 MW or an annual heat output of at least 300 GW,

requiring the substitution of natural gas with other energy products, insofar as this is technically possible, and the reduction of the inlet temperature for injections into the district heating network (section 22);

9. appeals to district heating customers in relation to the use of district heating (section 22).

Paras. 1 and 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 are inadequate due to cross-control-area utilisation of such generating stations for crisis management purposes.

### **Preparation, implementation and coordination of intervention measures**

**15.** (1) The preparation and coordination of the measures to be taken in the Austrian control areas in case of need shall be delegated to E-Control (pursuant to section 5 *Energie-Control-Gesetz* [E-ControlG] [E-Control Act], FLG I No. 110/2010). The operational implementation of the measures enacted by order under sections 16-20, on the basis of the criteria set out in the intervention orders, shall be the responsibility of the control area managers, acting in conjunction with the system operators, balance group coordinators, balance group representatives and electricity wholesalers and retailers, which shall coordinate their activities in the interests of a uniform approach throughout federal territory.

(2) E-Control shall assist in the preparation of the intervention measures under subsection 1 by monitoring electricity supply security. The balance group coordinators, balance group representatives, injectors, electricity undertakings, system operators and control area managers in the meaning of section 7 Electricity Act 2010 shall support such monitoring activities. 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.

(3) E-Control is empowered to require by order the reporting of historical, current and projected data at periodic intervals, even if the contingencies set out in section 4(1) do not apply, in order to:

1. draw up intervention measures to safeguard supplies of electrical energy (subsection 1); and
2. monitor security of supply in the electricity sector (subsection 2).

Such reporting duties may be extended in the event of congestion, which is to be defined in detail in the respective order, or in the event that the contingencies set out in section 4(1) apply.

(4) Reporting of the following forms of information under subsection 3 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.

(5) Reporting orders under subsection 3 may prescribe presentation broken down by uses, economic activities, system 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 16) may be collected on a monthly and supplier basis.

(6) Persons subject to reporting requirements must nominate to E-Control a representative responsible for data acquisition and transmission. Control area managers, system operators, generators and consumers in the meaning of subsection 5 (final sentence) must nominate to E-Control those representatives responsible for implementing



intervention measures internally.

(7) The results of the monitoring activities under subsection 2 may be used for long-term planning and the preparation of a report under section 28(3) E-Control Act.

(8) Data collected under section 27 of this Act and section 92 Electricity Act 2010, and data available to control area managers in connection with congestion management may be used to draw up and coordinate intervention measures to safeguard supplies of electrical energy.

(9) E-Control shall provide the control area managers and provincial governors with such data collected under subsections 3, 6 and 8 as is necessary for the preparation and operational implementation of intervention measures.

(10) The system for collecting data to be reported solely in the event of congestion may be reviewed at least once a year at the request of E-Control.

(11) E-Control may require drills every two years under the assumption of a crisis situation.

#### **Directions to market participants**

**16.** Orders enacted under section 14 para. 1 shall make such directions to generators, system operators, balance group coordinators and electricity wholesalers and retailers regarding generation, transmission, distribution, wholesaling and retailing as are necessary to safeguard electricity supplies.

#### **Distribution according to the degree of urgency**

**17.** Orders under section 14 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, E-Control may be empowered to separately regulate final consumers with an average monthly consumption of over 500,000 kWh in the previous calendar year.

#### **Imports and exports**

**18.** Orders under section 14 para. 3 shall take account of the Austrian electricity supply situation and obligations in the meaning of section 4(2).

#### **Operation, emission limits**

**19.** Orders under section 14 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.

#### **Renewable energy sources**

**20.** Orders under section 14 para. 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.

#### **Energy supply in the federal provinces**

**21.** (1) Orders under section 14 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 14 para. 7 and the enactment of regulations under section 14 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 system operators, balance group coordinators, balance group representatives and electricity wholesalers and retailers operating in such province with implementing the measures.

(3) In implementing intervention measures consonant with provincial consumption quotas under section 14 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, E-Control 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. Account must be taken of measures implemented by order under section 17.

#### **Consideration of district heating supply**

**22.** Orders enacted under section 14 paras. 8 and 9 shall make such directions to district heating companies and appeals to district heating customers as are necessary to safeguard electricity supplies and domestic heating supplies.

#### **Excess consumption surcharges for electricity**

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

(2) E-Control 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 E-Control 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 in order to prevent cases of economic and social hardship upon applications which shall be made within two weeks of the determination of such surcharges.

(5) E-Control may, by notice, reduce excess consumption surcharges payable by final consumers subject to separate regulation by it under section 17 in order to prevent cases of economic and social hardship, upon applications which shall be made within two weeks of the determination of such surcharges.

#### **General terms and conditions**

**24.** (1) Regulations and measures under sections 16-22, and arrangements for excess consumption surcharges (section 23) 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 16-22, this shall not give rise to any claim for damages against the defaulting party. The provisions of the *Amtshaftungsgesetz* [Public Liability Act], FLG No. 20/1949, shall not be affected hereby.

#### **Provision of information**

**25.** Where necessary to safeguard electricity supplies, generators, control area managers, system operators, balance group coordinators, balance group representatives and consumers shall be obliged to provide information to E-Control and to the provincial governors in accordance with their powers. E-Control and the provincial governors shall be empowered to 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.

### **Part 4**

#### **Intervention measures to safeguard natural gas supplies**

##### **Stipulation and implementation of intervention measures relating to natural gas**

**26.** (1) The Federal Minister of Economy, Family and Youth may, in the contingencies set out in section 4(1), and subject to section 4(2-4), enact by order the following intervention measures to safeguard supplies of natural gas:

1. directions to natural gas undertakings in the meaning of section 6(13) Natural Gas Act, distribution area managers, market area managers, the operator of the virtual trading point, balance group representatives, balance group coordinators and producers regarding the production, transmission, distribution, storage, wholesaling and retailing of natural gas (section 28);

2. appeals and directions to final consumers regarding the allocation, withdrawal and use of natural gas, and the exclusion of consumers from the withdrawal of natural gas (section 29);
3. regulations regarding the supply of natural gas to and from EU member states and third countries (section 30);
4. regulations regarding the operation of large gas customers which substitute natural gas with other energy products pursuant to directions under para. 2, and the granting of permission to breach emission limits (section 31);
5. instructions and directions to:
  - a) generators operating combined heat and power plants with a maximum thermal capacity of at least 50 MW or an annual heat output of at least 300 GW; and
  - b) district heating companies operating heating stations and district heating power plants with a total maximum thermal output of at least 50 MW or an annual heat output of at least 300 GW,

requiring the substitution of natural gas with other energy products, insofar as this is technically possible, and the reduction of the inlet temperature for injections into the district heating network (section 32);

6. appeals to district heating customers in relation to the use of district heating (section 32).

(2) The Federal Minister of Economy, Family and Youth shall be the responsible authority in accordance with Article 3(2) Regulation (EU) No 994/2010.

#### **Preparation, implementation and coordination of intervention measures**

**27.** (1) The preparation and coordination of the measures to be taken in the Austrian distribution areas in case of need shall be delegated to E-Control. This includes involvement in drafting a preventive action plan and an emergency plan pursuant to Articles 4 and 5 Regulation (EU) No 994/2010 and the risk assessment under Article 9 of said Regulation. The operational implementation of the measures enacted by order under sections 28 and 32 on the basis of the criteria set out in the intervention orders shall be the responsibility of the distribution area managers and the market area managers, acting in conjunction with the natural gas undertakings, including the balance group coordinators, balance group representatives and producers.

(2) E-Control shall assist in the preparation of the intervention measures under subsection 1 by monitoring gas supply security. The distribution area managers nominated under section 17 Natural Gas Act 2011, and the market area managers nominated under section 13 of said Act, are required to support these activities. 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.

(3) E-Control is empowered to require by order the reporting of historical, current and projected data at periodic intervals, even if the contingencies set out in section 4(1) do not apply, in order to:

1. draw up intervention measures to safeguard supplies of natural gas (subsection 1); and
2. monitor security of supply in the electricity sector (subsection 2).

Such reporting duties may be extended in the event of congestion, which is to be defined in detail in the respective order, and in the event that the contingencies set out in section 4(1) apply.

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

1. information on supply, demand, final demand, imports and exports including transmission, as well as

production and storage availabilities and capacity;

2. technical indicators regarding pipeline and production systems, and storage facilities;
3. data pursuant to Article 13 Regulation (EU) No 994/2010;
4. information on district heating supply and demand, and the primary energy sources used in district heating generation;
5. technical indicators regarding district heating generation and transmission systems.

(5) Reporting orders under subsection 3 may prescribe presentation broken down by uses, economic activities, system operators and provinces. In addition, data from final consumers with a contractually agreed consumption of over 50,000 kWh/h (section 29) may be collected on a monthly or one-off basis.

(6) Persons subject to reporting requirements must nominate to E-Control a representative responsible for data acquisition and transmission. Natural gas undertakings and consumers in the meaning of subsection 5 (final sentence) must nominate to E-Control those representatives responsible for implementing intervention measures internally.

(7) The results of the monitoring activities under subsection 2 may be used for long-term planning and the preparation of a report under section 29(3) E-Control Act.

(8) Data collected under section 15 of this Act and section 147 Natural Gas Act 2011, and data available to the distribution area managers in connection with congestion management may be used to draw up and coordinate intervention measures to safeguard natural gas supplies.

(9) E-Control shall provide the distribution area managers and the market area managers with such data collected under subsections 3, 6 and 8 as is necessary for the preparation and operational implementation of intervention measures.

(10) The system for collecting data to be reported solely in the event of congestion may be reviewed at least annually at the request of E-Control.

(11) E-Control may require drills every two years under the assumption of a crisis situation.

#### **Directions to market participants**

**28.** Orders under section 26(1)(1) shall make provision for the giving of such directions to natural gas undertakings, including distribution area managers, producers, balance group representatives, balance group coordinators, market area managers and the operator of the virtual trading point regarding production, transportation, transmission, distribution, storage, wholesaling and retailing as are necessary to safeguard natural gas supplies.

#### **Distribution according to the degree of urgency**

**29.** Orders under section 26(1)(2) shall provide 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 safeguarding gas supplies to protected customers under Regulation (EU) No 994/2010 and supplies for domestic heating. In particular, such orders may determine that final consumers, with the exception of protected customers, may without additional procedures be temporarily excluded from deliveries or that such deliveries may be limited. If necessary, E-Control may be empowered to separately regulate final consumers with a contractually agreed consumption of over 50,000 kWh.

#### **Imports and exports**

**30.** Orders under section 26(1)(3) shall take account of the Austrian gas supply situation and obligations in the meaning of section 4(2).

### **Operation, emission limits**

**31.** Orders under section 26(1)(4) shall only be enacted if this is necessary to safeguard supplies of natural gas. 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.

### **Consideration of district heating supply**

**32.** Orders enacted under section 26(1)(5-6) shall make such instructions or directions to district heating companies and appeals to district heating customers as are necessary to safeguard gas supplies and domestic heating supplies.

### **Excess consumption surcharges for natural gas**

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

(2) E-Control 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 concerned according to a formula to be determined by E-Control to meet the cost of the intervention measures taken to safeguard the supply of natural gas.

(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 the determination of such surcharges.

(5) E-Control may, by notice, reduce excess consumption surcharges payable by final consumers subject to separate regulation by it under section 28 in order to prevent cases of economic and social hardship, upon applications which shall be made within two weeks of the determination of such surcharges.

### **General terms and conditions**

**34.** (1) Regulations and measures under sections 28-32, and arrangements for excess consumption surcharges (section 33) shall be deemed to form integral parts of 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 28-32, this shall not give rise to any claim for damages against the defaulting party. The provisions of the Public Liability Act shall not be affected hereby.

### **Provision of information**

**35.** Where necessary to safeguard natural gas supplies, natural gas undertakings, including distribution area managers, producers, balance group representatives, balance group coordinators, market area managers, the operator of the virtual trading point, and consumers shall be obliged to provide information to E-Control and to the provincial governors in accordance with their powers. E-Control and the provincial governors shall be empowered to process and transmit data in the meaning of the Data Protection Act to the extent that this is essential to safeguard natural gas supplies.

## **Part 5 Energy Intervention Council**

### **Tasks and composition**

**36.** (1) An advisory council (Energy Intervention Council) shall be established at the Ministry to advise the Federal Minister of Economy, Family and Youth, and draw up and report on measures under sections 7, 14 and 26. In particular, the Council is to be consulted prior to the enactment of orders under this Act. 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 E-Control, and the provincial governors concerned according to the scope of their powers.

(2) The membership of the Council shall comprise:

1. three representatives of the Federal Ministry of Economy, Family and Youth, and one representative, respectively, of the Federal Chancellery, the Federal Ministries of European and International Affairs, Finance, Defence and Sports, Agriculture and Forestry, Environment and Water Management, and Transport, Innovation and Technology;
2. two representatives, respectively, of the Austrian Federal Economic Chamber, the Austrian Chamber of Agriculture, the Austrian Federal Chamber of Labour, the Austrian Trade Union Federation and the Federation of Austrian Industries;
3. one representative of E-Control;
4. one representative of each province;
5. one expert, respectively, on the petroleum industry, energy wholesaling and retailing, and gas and heating supply;
6. one representative of Österreichs E-Wirtschaft;
7. one representative of each of the parties represented in the Main Committee of the National Council.

(3) The members of the Council shall be appointed by the Federal Minister of Economy, Family and Youth. The members referred to in subsections 2, 4, 6 and 7 shall be appointed on the recommendation of the nominating bodies. The members referred to in subsection 2(5) shall be appointed on the recommendation of the Austrian Federal Economic Chamber.

(4) The Energy Intervention Council shall be chaired by the Federal Minister of Economy, Family and Youth, who may be represented in his absence by an official of the Ministry.

(5) The Energy Intervention Council 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 members shall reconvene one hour after the time stated in the invitation and address the items on the agenda irrespective of the number of members present.

(6) The Energy Intervention Council shall adopt standing orders by simple majority. Such standing orders shall regulate the activities of the Council in as expedient a manner as possible. The standing orders are subject to the approval of the Federal Minister of Economy, Family and Youth.

#### **Duty of confidentiality**

**37.** The members of the Council may not disclose or exploit for commercial gain any official, business or operational secrets, or any information 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 Economy, Family and Youth to give an undertaking to perform their duties in a conscientious manner.

#### **Provincial councils**

**38.** (1) Advisory councils shall be established to advise the provincial governors (section 21[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 members of the councils shall be appointed by the provincial governors. The members referred to in subsection 1(1) shall be appointed on the recommendation of the nominating bodies. The composition of the councils and any changes in their membership shall be notified to the Federal Minister of Economy, Family and Youth.

(3) The provincial governors shall make the arrangements for chairmanship of the councils. In addition, sections

36(5-6) and 37 shall apply with any necessary modifications.

## **Part 6 Penal provisions**

### **General penal provisions**

**39.** (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 administrative authority:

1. by a fine of up to EUR 72,660 if such person
  - a) fails to observe prescriptions and prohibitions imposed by orders enacted under sections 7, 14 and 26 or notices issued under such orders, insofar as the offence is not punishable under paras. 2 or 3;
  - b) wilfully obstructs or prevents the implementation of prescriptions or prohibitions under clause a;
2. by a fine of up to EUR 2,180 if such person
  - a) contravenes an order enacted under section 7 regarding a prohibition of use (section 10[1][1]) or vehicle identification (section 10[4]), falsely claims an exemption from a prohibition or obtains an exemption by false pretences;
  - b) contravenes orders regarding reporting duties (sections 11[1], 15[2] and 27[2]) or fails to provide timely, correct and complete information in accordance with sections 11(2-3), 25 and 35;
  - c) wilfully breaches his duty to suffer inspections under section 11(2-3);
3. by a fine of up to EUR 726 if such person exceeds a speed limit (section 10[1][2]) imposed under section 7 by at least 30km/h.

(2) Attempts to commit offences under subsection 1(1) are punishable.

(3) Account shall be taken of the degree of obstruction of efforts to safeguard energy supplies or supplies of feedstocks (section 7[4]) when assessing penalties for offences under subsection 1(1). In the event that a fine is uncollectible, imprisonment of up to six weeks for default shall be imposed for an offence under subsection 1(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.

### **Excess consumption**

**40.** (1) If a punishable offence under section 39 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 the offender pays an excess consumption surcharge under section 23 or section 33.

(2) Without prejudice to the right to impose a penalty under section 39, or an excess consumption surcharge under sections 23 or 33, the responsible authority under sections 15 or 27 may exclude an electricity or natural gas consumer from electricity or natural gas withdrawal up to the extent of the prohibited excess consumption.

### **Involvement of the Federal Police**

**41.** The officers of the Federal Police constabularies shall, as the law enforcement agencies of the district administrative authorities, participate in the enforcement of section 39(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.

## **Part 7**

### **Transitional and final provisions**

#### **Commencement**

**42.** (1) (**Constitutional provision**) Section 1 shall enter into force on the day after the publication of this Act. At the same time Article I Energy Intervention Powers Act 1982, FLG No. 545/1982, as amended by Federal Act FLG I No. 50/2012, shall be repealed.

(2) With the exception of section 1, this Act shall enter into force on the day after its publication. At the same time Article II Energy Intervention Powers Act 1982, FLG No. 545/1982, as amended by Federal Act FLG I No. 50/2012, shall be repealed.

#### **Enforcement**

**43.** The following persons are entrusted with the enforcement of this Act:

1. (**Constitutional provision**) in respect of sections 1 and 42(1), the Federal Government;
2. in respect of section 3(1), the Federal Government or the Federal Minister of Finance, according to their respective responsibilities;
3. in respect of sections 7(2)(5), 12, 14(4), 19, 26(1)(4) and 31, the Federal Minister of Economy, Family and Youth in consultation with the Federal Minister of Agriculture and Forestry, Environment and Water Management;
4. in respect of section 7(2)(final sentence), 13(2) and 24, the Federal Minister of Justice;
5. in respect of section 9(1)(second sentence), the Federal Minister of Economy, Family and Youth in consultation with the Federal Minister of Transport, Innovation and Technology;
6. in respect of section 10(5), the Federal Minister of Economy, Family and Youth in consultation with the Federal Ministers of Defence and Sports, Innovation and Technology and, subject to these provisions, the Federal Minister of Agriculture and Forestry, Environment and Water Management;
7. in respect of section 13(3), according to their respective responsibilities, the Federal Ministers of Economy, Family and Youth, and Justice;
8. in respect of section 41, the Federal Minister of the Interior;
9. in all other respects, the Federal Minister of Economy, Family and Youth.

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