

No. 57177*

**Germany
and
Austria**

Agreement between the Government of the Federal Republic of Germany and the Austrian Federal Government, represented by the Federal Minister for climate protection, environment, energy, mobility, innovation and technology, concerning solidarity measures to safeguard the security of gas supply (with annexes). Brussels, 2 December 2021

Entry into force: *2 March 2022, in accordance with article 14(1)*

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**Allemagne
et
Autriche**

Accord entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement fédéral autrichien, représenté par le Ministre fédéral de la protection du climat, de l'environnement, de l'énergie, de la mobilité, de l'innovation et de la technologie, concernant des mesures de solidarité visant à garantir la sécurité de l'approvisionnement en gaz (avec annexes). Bruxelles, 2 décembre 2021

Entrée en vigueur : *2 mars 2022, conformément au paragraphe 1 de l'article 14*

Texte authentique : *allemand*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 1^{er} mai 2022*

**Aucun numéro de volume n'a encore été attribué à ce dossier. Les textes disponibles qui sont reproduits ci-dessous sont les textes originaux de l'accord ou de l'action tels que soumis pour enregistrement. Par souci de clarté, leurs pages ont été numérotées. Les traductions qui accompagnent ces textes ne sont pas définitives et sont fournies uniquement à titre d'information.*

[TRANSLATION – TRADUCTION]

AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE AUSTRIAN FEDERAL GOVERNMENT, REPRESENTED BY THE FEDERAL MINISTER FOR CLIMATE PROTECTION, ENVIRONMENT, ENERGY, MOBILITY, INNOVATION AND TECHNOLOGY, CONCERNING SOLIDARITY MEASURES TO SAFEGUARD THE SECURITY OF GAS SUPPLY

The Government of the Federal Republic of Germany and the Austrian Federal Government, hereinafter referred to as the “Contracting Parties”,

Pursuant to Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No. 994/2010 (Official Journal L 280 of 28 October 2017, pp. 1–56), in particular to article 13,

Having regard to Commission Recommendation (EU) 2018/177 of 2 February 2018 on the elements to be included in the technical, legal and financial arrangements between the Member States of the European Union for the application of the solidarity mechanism under article 13 of Regulation (EU) 2017/1938 of the European Parliament and of the Council concerning measures to safeguard the security of gas supply,

Guided by the desire to mitigate the effects of a severe emergency and ensure gas supply to solidarity protected customers,

Considering that solidarity is needed to safeguard the security of gas supply in the Union,

Based on a common understanding that a request for solidarity will generally only be necessary when the requesting Contracting Party’s market is no longer functioning and adjacent markets are no longer liquid to the extent that the requesting Contracting Party can no longer acquire gas volumes in adjacent markets through normal market means and solidarity is therefore provided, to the extent and for as long as possible, through market-based measures designed to enable the Contracting Party requesting solidarity to meet the gas supply needs of its solidarity protected customers itself through the market,

Have agreed as follows:

Article 1. Subject matter and scope of the Agreement

(1) With the present Agreement, in accordance with the second sentence of article 13, paragraph 10, of Regulation (EU) 2017/1938, in conjunction with the applicable national law, agreement is reached on technical, legal and financial arrangements for the application of solidarity measures. The Contracting Parties request the solidarity measures as a last resort in an emergency where solidarity protected customers are unable on their own to ensure the supply of gas.

(2) In the case of solidarity, the providing Contracting Party shall take solidarity measures on its territory to supply gas to solidarity protected customers on the territory of the requesting Contracting Party.

Article 2. Definitions

(1) For the purposes of the present Agreement, the definitions in the following statutory provisions shall apply:

1. Article 2 of Regulation (EU) 2017/1938;
2. Article 2 of Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005 (Official Journal L 211, of 14 August 2009, pp. 36–54);
3. Article 3 of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No. 984/2013 (Official Journal L 72, of 17 March 2017, pp. 1–28);
4. Article 3 of Commission Regulation (EU) No. 312/2014 of 26 March 2014 establishing a network code on gas balancing of transmission networks (Official Journal L 91, of 27 March 2014, pp. 15–35);
5. Article 2 of Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (Official Journal L 113, of 1 May 2015, pp. 13–26); and
6. Article 2 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Official Journal L 211, of 14 August 2009, pp. 94–136).

(2) In addition, the following definitions shall apply to the present Agreement:

1. “Solidarity measures” means measures on the territory of the providing Contracting Party necessary to generate solidarity offers to the extent required.
2. “Market-based solidarity measures” means the requests initiated by the providing Contracting Party to market participants on its own territory, with a view to the adoption of voluntary measures, on a contractual basis, on the supply and demand side for the provision of gas volumes against payment of a contractually fixed price, which are intended to enable the Contracting Party requesting solidarity to be able on its own to meet the gas supply needs of its solidarity protected customers through the market.
3. “Non-market-based solidarity measures” means sovereign supply-side and demand-side measures taken by the providing Contracting Party on its own territory with the aim of contributing to the gas supply of the requesting Contracting Party’s solidarity protected customers. These include the obligation of market participants to offer their already purchased natural gas volumes via flexibility instruments.
4. “Requesting Contracting Party” means the Contracting Party requesting solidarity measures.
5. “Providing Contracting Party” means the Contracting Party taking solidarity measures.
6. “Solidarity request” means the formal request by the requesting Contracting Party to the providing Contracting Party to provide solidarity, specifying the details set forth in article 3, paragraph 4.
7. “Solidarity offer” means the listing by the providing Contracting Party of the solidarity measures that may be taken in return for the payment of compensation.

8. “Offers by market participants” means contractual offers for the voluntary provision of gas volumes by market participants.

9. “Delivery point” means

(a) In the case of gas volumes acquired not through normal market procedures but by means of market-based measures, one or more points in the market area of the providing Contracting Party at which the gas is delivered to the requesting Contracting Party;

(b) In the case of gas volumes procured through non-market-based measures, one or more border crossing points of the national gas transport system of the providing Contracting Party at which the gas leaves the territory of the providing Contracting Party.

10. “Transport risk” means the risk that the gas volumes made available through solidarity measures cannot be transported to the delivery point because network or contractual restrictions, due in particular to renomination, of pre-contracted capacities have come into effect at the relevant border crossing points after the solidarity offer has been made, resulting in capacity constraints.

11. “Emergency” or “emergency level” means an emergency situation as defined in article 11, paragraph 1 (c), of Regulation (EU) 2017/1938.

12. “Gas coordination group” means the body established by article 4 of Regulation (EU) 2017/1938.

13. “Delivery day” means the gas day as defined in article 3, paragraph 16, of Regulation (EU) 2017/459 on which the solidarity measures are to be initiated.

14. “Third party acting for the requesting Contracting Party” means an entity designated in respect of the providing Contracting Party that is appointed by the requesting Contracting Party to process the solidarity measures in compliance with the regulatory framework of the providing Contracting Party.

Article 3. Solidarity request

(1) The solidarity request shall be conditional upon the declaration of the emergency level referred to in article 11, paragraph 1 (c), of Regulation (EU) 2017/1938 and the assurance by the requesting Contracting Party that the conditions referred to in article 13, paragraph 3, of Regulation (EU) 2017/1938 have been met at the time of the initiation of the requested solidarity measures.

(2) The competent authority of the requesting Contracting Party shall, by use of the means of communication referred to in article 11, transmit the solidarity request using the contact details of the competent authority of the providing Contracting Party listed in the members directory of the gas coordination group. After transmitting the solidarity request in accordance with the first sentence, the requesting Contracting Party shall immediately inform the Commission of the transmission and the content of the solidarity request. The requesting Contracting Party shall immediately notify the providing Contracting Party of its compliance with the obligation to provide information pursuant to the second sentence.

(3) The competent authority of the requesting Contracting Party shall transmit the solidarity request to the competent authorities of all member States of the European Union directly connected to the requesting Contracting Party pursuant to article 13, paragraph 1, of Regulation

(EU) 2017/1938 and to the competent authorities of other member States of the European Union which are connected to the State of the requesting Contracting Party pursuant to article 13, paragraph 2, of Regulation (EU) 2017/1938 through a third country that is not a member State of the European Union.

(4) The solidarity request must include at least the following information:

1. Contact details of the competent authority of the requesting Contracting Party;
2. Contact details of the relevant transmission system operators of the requesting Contracting Party (where relevant);
3. Contact details of the competent market area managers of the requesting Contracting Party;
4. Contact details of the third party acting for the requesting Contracting Party;
5. Delivery period;
6. Gas volume in kWh;
7. Gas quality (H-gas);
8. Delivery point;
9. Assurance pursuant to paragraph 1;

10. Statement as to whether contracts offered by market participants following the implementation of solidarity measures by the providing Contracting Party are to be concluded directly by the requesting Contracting Party or by a third party acting for the requesting Contracting Party;

11. Assurance that claims of market participants arising from the conclusion of contracts with third parties acting for the requesting Contracting Party will be secured through guarantees by the requesting Contracting Party or through an appropriate security deposit, provided that the requesting Contracting Party is not itself the direct obligee of such claims; and

12. Recognition of the requesting Contracting Party's obligation to pay solidarity compensation in accordance with the provisions of the present Agreement and article 13, paragraph 8, of Regulation (EU) 2017/1938.

(5) If the security of supply situation permits, the solidarity request must be made at least 20 hours before the start of the delivery day. The providing Contracting Party shall endeavour to consider requests for solidarity with shorter notice if this is permitted by the crisis situation and the lead times necessary for the gas industry to provide a solidarity offer.

(6) The solidarity request shall be limited to no later than the following gas day. Further solidarity requests for subsequent gas days may be made, taking into account the time limits in paragraph 5.

(7) Upon receipt of the solidarity request, the providing Contracting Party shall immediately review the solidarity request for errors or omissions that could make it impossible to respond properly to the solidarity offer. If this review reveals errors or omissions in the solidarity request within the meaning of the first sentence, the competent authority of the providing Contracting Party shall immediately contact the competent authority of the requesting Contracting Party using the contact details provided in the solidarity request and ask that the solidarity request be corrected.

(8) The competent authority of the providing Contracting Party shall acknowledge receipt of the solidarity request to the competent authority of the requesting Contracting Party within half an

hour of receipt of the solidarity request using the contact details provided in the solidarity request. If, within half an hour of submission of the solidarity request, the requesting Contracting Party has not received an acknowledgement of receipt of the solidarity request pursuant to the first sentence above, it shall endeavour to contact the providing Contracting Party using all available means of communication.

Article 4. Implementation of market-based solidarity measures

(1) Upon receipt of the solidarity request, the providing Contracting Party shall promptly implement market-based solidarity measures to enable the requesting Contracting Party to conclude contracts with market participants on the territory of the providing Contracting Party to procure the gas volumes needed to supply its solidarity protected customers.

(2) If, after the implementation of market-based solidarity measures by the providing Contracting Party, the requesting Contracting Party has at hand offers from market participants on the territory of the providing Contracting Party, it shall be the responsibility of the requesting Contracting Party to procure the required gas volumes by concluding contracts with the market participants that it has selected no later than 14 hours prior to the start of the delivery day and taking into account the necessary lead times in the gas industry. The providing Contracting Party shall not be a contractual partner to these contracts and shall not be liable for their performance.

(3) The claims of market participants arising from the conclusion of contracts pursuant to the first sentence of paragraph 2 shall be covered by guarantees of the requesting Contracting Party or by the corresponding security deposits. This shall not apply if the requesting Contracting Party is itself the direct debtor of such claims.

(4) The requesting Contracting Party shall ensure that the necessary transport capacities are booked for the takeover of the gas volumes delivered pursuant to offers from market participants. If the requesting Contracting Party is unable to book transport capacities as specified in the first sentence, it shall notify the providing Contracting Party thereof without delay, stating the reasons.

Article 5. Implementation of non-market-based solidarity measures

(1) To the extent that the requesting Contracting Party, even after the implementation of market-based solidarity measures by the providing Contracting Party, is unable fully to cover its needs for the delivery period indicated in the solidarity request by accepting all available offers from market participants on the territory of the providing Contracting Party and on the territories of the other member States of the European Union directly connected to the requesting Contracting Party pursuant to article 13, paragraph 1, of Regulation (EU) 2017/1938 and of other member States of the European Union which, pursuant to article 13, paragraph 2, of Regulation (EU) 2017/1938, are connected to the requesting Contracting Party via a third country which is not a member State of the European Union, it may submit a second solidarity request for that delivery period for the quantity of gas still required up to 13 hours before the start of the delivery day; article 3 shall apply mutatis mutandis. In this case, the providing Contracting Party shall submit a solidarity offer up to nine hours before the beginning of the delivery day. To the extent that the time limits pursuant to the first sentence of article 3, paragraph 5, or the first sentence of article 5, paragraph 1, have not been observed, the solidarity offer shall be transmitted within the lead times required by the exigencies of the gas industry and the law. If, with regard to the lead times required by the exigencies of the gas industry and the law, the providing Contracting Party is not

in a position to submit a solidarity offer by the expiry of the period specified in the second sentence or in the case specified in the third sentence, it shall without delay notify the requesting Contracting Party thereof, stating the reasons.

(2) The solidarity offer must include at least the following information:

1. Contact details of the competent authority of the providing Contracting Party;
2. Contact details of the relevant transmission system operators of the providing Contracting Party (where relevant);
3. Contact details of the competent market area managers of the providing Contracting Party;
4. Gas volume in kWh;
5. Gas quality (H-gas);
6. Delivery point;
7. Delivery period;
8. Projected cost of solidarity measures; and
9. Details of the payee.

(3) The gas volumes included in the solidarity offer may be less than the gas volume requested by the requesting Contracting Party.

(4) A solidarity offer shall include the gas volumes potentially available at the time that the solidarity offer is made, including necessary transport services to the delivery point.

(5) All solidarity offers shall be subject to the technically secure and reliable operation of the gas system of the providing Contracting Party and the export capability of the interconnections between the Contracting Parties and subject to the proviso that, upon acceptance of a solidarity offer and during its implementation, the gas volume required to supply the providing Contracting Party's own solidarity protected customers shall be available without restriction and without risk.

(6) Upon receipt of the solidarity offer, the competent authority of the requesting Contracting Party shall promptly acknowledge receipt of the offer to the competent authority of the providing Contracting Party using the contact details provided in the solidarity offer.

(7) Acceptance of the solidarity offer shall be made by the competent authority of the requesting Contracting Party using the contact details provided in the solidarity offer.

(8) Solidarity offers may only be accepted up to seven hours before the start of the delivery day. Solidarity offers pursuant to the third sentence of paragraph 1 may only be accepted within two hours of their receipt by the requesting Contracting Party. Solidarity offers not accepted within the time limit will be forfeited.

(9) In order to accept a solidarity offer, the requesting Contracting Party shall declare acceptance of the offer to the providing Contracting Party in compliance with the time limits set forth in paragraph 8. Upon receipt of the declaration of acceptance by the providing Contracting Party, a contract shall be concluded between the providing and the requesting Contracting Parties, pursuant to which the providing Contracting Party shall be obliged to ensure by sovereign measures that the gas volumes that have been offered are made available to the requesting Contracting Party and transported to the delivery point. If several declarations of acceptance are received for a solidarity offer, the declaration of acceptance submitted first shall prevail.

(10) By accepting the solidarity offer, the requesting Contracting Party undertakes to comply with the compensation obligations under article 13, paragraphs 8 and 10, of Regulation (EU) 2017/1938 and article 8 of the present Agreement.

Article 6. Delivery and acceptance of gas volumes in the implementation of non-market-based solidarity measures

(1) The gas volumes accepted shall be the gas volumes delivered in accordance with the regulations in force at the delivery point.

(2) The exact designation of the delivery points is specified in the current gas network map of the European Network of Transmission System Operators for Gas.

(3) The providing Contracting Party shall bear the transport risk for the transport to the delivery point.

(4) The requesting Contracting Party shall ensure that the gas volumes made available at the agreed delivery points are duly taken over.

(5) Irrespective of the actual takeover of the gas volumes provided to the requesting Contracting Party in accordance with the contract, the payment obligations arising from acceptance of the solidarity offer shall be settled in full by the requesting Contracting Party to the providing Contracting Party.

Article 7. End of the solidarity measures

(1) The obligation of the providing Contracting Party to carry out solidarity measures shall end if:

1. The Commission concludes, following a verification procedure pursuant to the first subparagraph of article 11, paragraph 8, of Regulation (EU) 2017/1938, that the declaration of the emergency is not or is no longer justified;

2. The end of the emergency is declared by the requesting Contracting Party or no new solidarity request is made pursuant to article 3 for the gas day following the delivery day; or

3. The supply of the providing Contracting Party's own solidarity protected customers is substantially endangered.

(2) In the cases referred to in paragraph 1, points 1 and 2, the solidarity measure shall end at the end of the respective gas day for which a solidarity request was made pursuant to article 3. In the case of paragraph 1, point 3, the providing Contracting Party shall have the right to terminate the solidarity measure immediately upon giving notification to the requesting Contracting Party.

Article 8. Compensation for non-market-based solidarity measures

(1) Compensation for gas volumes delivered under the non-market-based solidarity measures pursuant to the first sentence of article 13, paragraph 8, of Regulation (EU) 2017/1938 shall be paid directly by the requesting Contracting Party to the providing Contracting Party and shall, as a rule, include the following:

1. The gas price, which

- (a) Results from those prices which are demanded from end consumers who are obliged to offer their already purchased or booked natural gas volumes via flexibility instruments; or
- (b) Shall be calculated from the last available spot market price on the exchange of the providing Contracting Party or, if there are several exchanges on the territory of the providing Contracting Party, from the arithmetic mean of the last available spot market prices on all exchanges, for gas of the gas quality delivered by the providing Contracting Party prior to the implementation of the respective non-market-based solidarity measure, which shall, however, correspond at least to the amount that parties are willing to pay for the maintenance of the gas supply;

2. The compensation to be paid by the providing Contracting Party to affected third parties pursuant to the relevant legal regulations in connection with the implementation of the respective non-market-based solidarity measure, including, where applicable, any related extrajudicial and judicial procedural costs; and

3. Transport costs.

The requesting Contracting Party shall pay compensation pursuant to sentence 1, point 2, only to the extent that the disadvantages indemnified by such compensation are not already expressly part of the gas price pursuant to sentence 1, point 1.

(2) The determination of compensation under paragraph 1, point 2, shall be based on the relevant legal regulations of the providing Contracting Party. The relevant statutory regulations in force in the Federal Republic of Germany at the time of conclusion of the present Agreement are attached as annex 1.

Each Contracting Party shall be obliged to notify the other Contracting Party of any such changes without delay.

(3) The projected costs indicated in the solidarity proposal of non-market-based solidarity measures under article 5, paragraph 2, point 8, are not exhaustive. Costs eligible for compensation under article 13, paragraph 8 (c), of Regulation (EU) 2017/1938 and article 8, paragraph 1, point 2, of the present Agreement may be submitted subsequently upon termination of the solidarity measures, with the submission of appropriate justification, without being bound by any time limits.

(4) The obligation to pay compensation shall remain in force even if, after the solidarity measures have been taken, it turns out that the request for solidarity measures was not necessary.

(5) In the event that the compensation provided by the requesting Contracting Party for non-market-based solidarity measures exceeds the actual cost of the non-market-based solidarity measures of the providing Contracting Party, the providing Contracting Party shall return the excess compensation payment to the requesting Contracting Party within a reasonable period of time after the completion of all administrative and judicial or similar compensation proceedings and all arbitration proceedings related to the non-market-based solidarity measures in question. This shall not preclude the right of the providing Contracting Party to claim additional payment in accordance with paragraph 3.

(6) Article 6, paragraph 5, shall remain unaffected by this provision.

Article 9. Payment methods, invoice and time limits for compensation of non-market-based solidarity measures

(1) For solidarity measures of the Republic of Austria in favour of the Federal Republic of Germany, the billing and invoicing for the solidarity volumes invoked in the name and for the account of the third party acting on behalf of the Federal Republic of Germany shall be carried out in compliance with the regulatory framework applicable in the Republic of Austria, in particular the general terms and conditions of the balance group coordinator for the Eastern Distribution Area, attached as annex 3, and with annex 4 (on billing and invoicing, annexed to the general terms and conditions of the balance group coordinator, in their current version).

(2) The following shall apply to solidarity measures of the Federal Republic of Germany in favour of the Republic of Austria:

1. Payments shall be due in full within 20 calendar days of receipt of the invoice or interim invoice pursuant to paragraph 2.

2. The providing Contracting Party shall have the right to issue an interim invoice for the gas volumes provided.

3. At the end of the non-market-based solidarity measures, the Contracting Parties shall agree on the necessity and timing of the transmission of the final invoice.

4. Late payments shall bear interest at the default interest rate from the due date, inclusive of that date, until the payment date, which is not included. "Default interest rate" in this sense means the interest rate of 5 percentage points above the prime rate of the European Central Bank.

Article 10. Compliance with time limits

The Contracting Parties shall take all necessary measures at the domestic level and take the necessary steps to ensure compliance with their commitment to solidarity and the implementation of the present Agreement.

Article 11. Means of communication

(1) Communication between the Contracting Parties shall be effected primarily by email. If not available, communication will be by telephone. Other communication channels may be used as appropriate to the situation.

(2) The Contracting Parties shall ensure that, in the event of changes in the contact details of the competent authority, the contact details listed in the members directory of the gas coordination group are updated and a notification is immediately provided to the other Contracting Party.

Article 12. Jurisdiction clause

(1) Disputes concerning the interpretation or application of the present Agreement shall be settled, insofar as possible, through the competent authorities of the two Contracting Parties.

(2) If a dispute cannot be settled in this manner within six months, either Contracting Party may refer the matter to the European Court of Justice. Decisions by the European Court of Justice shall be binding on the Contracting Parties.

(3) If the European Court of Justice finds that a Contracting Party has failed to fulfil its obligations under the present Agreement or has infringed the Agreement, the Contracting Party concerned shall, within a period to be determined by the European Court of Justice, take the necessary measures to comply with the judgment of the European Court of Justice.

(4) Paragraphs 2 and 3 shall constitute an arbitration agreement between the Contracting Parties within the meaning of article 273 of the Treaty on the Functioning of the European Union.

Article 13. Termination

The present Agreement shall be of indefinite duration. It may be terminated in writing by either Contracting Party; The Agreement shall cease to have effect six months after the day on which the notice of termination is received by the other Contracting Party.

Article 14. Entry into force

(1) The present Agreement shall enter into force on the ninetieth day following the date of its signature.

(2) The Government of the Federal Republic of Germany shall, in accordance with Article 102 of the Charter of the United Nations, have the present Agreement registered with the Secretariat of the United Nations immediately after its entry into force. The other Contracting Party shall be informed of the registration and provided with the United Nations registration number as soon as the registration has been confirmed by the Secretariat of the United Nations.

DONE at Brussels on 2 December 2021 in two originals in the German language.

For the Government of the Federal Republic of Germany:

[SIGNED]

For the Austrian Federal Government:

[SIGNED]

ANNEX 1 TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL
REPUBLIC OF GERMANY AND THE AUSTRIAN FEDERAL GOVERNMENT,
REPRESENTED BY THE FEDERAL MINISTER FOR CLIMATE PROTECTION,
ENVIRONMENT, ENERGY, MOBILITY, INNOVATION AND TECHNOLOGY,
CONCERNING SOLIDARITY MEASURES TO SAFEGUARD THE SECURITY OF GAS
SUPPLY

Extract from the 1975 Energy Security Act of the Federal Republic of Germany of 20 December 1974 (Federal Law Gazette. I, p. 3681), as most recently amended by article 324 of the Ordinance of 31 August 2015 (Federal Law Gazette. I, p. 1474):

[. ..] Section 11. Compensation

(1) If a statutory instrument issued under this Act or a measure taken pursuant to a statutory instrument issued under this Act constitutes an expropriation, compensation in money shall be paid. Compensation shall be calculated on the basis of the customary remuneration for a comparable service in commercial transactions or, in the absence of a comparable service or if a customary remuneration cannot be determined, on the basis of an equitable balance between the interests of the general public and the parties involved.

(2) The person who is the beneficiary of the statutory instrument or measure within the meaning of the first sentence of paragraph 1 shall be obliged to pay the compensation. If there is no beneficiary, the Federal Government shall pay the compensation if the expropriation was effected by a statutory instrument issued pursuant to the present Act or by a measure taken by a federal authority; in the remaining cases, the Land which ordered the measure shall be obliged to pay the compensation. If the compensation cannot be obtained from the beneficiary, the Federal Government or the Land shall be liable in accordance with the second sentence; insofar as the Federal Government or the Land satisfies the person entitled to compensation, the latter's claim against the beneficiary shall pass to the Federal Government or the Land. The transfer cannot be claimed to the detriment of the person entitled to compensation.

(3) If the expropriation has been effected by a statutory instrument issued pursuant to the present Act or by a measure of a federal authority, the compensation shall be determined by such authority. In other cases, the compensation shall be determined by the authorities specified in section 4, paragraph 5.

(4) The Federal Government shall be authorized to enact by statutory instrument, with the approval of the Bundesrat, provisions on a statute of limitations for claims pursuant to paragraph 1, on the procedure for determining compensation and on the jurisdiction and procedure of the courts in accordance with the principles of sections 34, 49–63 and 65 of the Federal Benefits Act. In this respect, the bodies referred to in paragraph 3 shall take the place of the requesting authorities.

Section 12. Hardship compensation

(1) If, as a consequence of a statutory instrument or measure within the meaning of the first sentence of section 11, paragraph 1, the person concerned suffers a pecuniary disadvantage which is not subject to compensation pursuant to section 11, compensation shall be granted in money to the extent that that person's economic existence is endangered or destroyed by unavoidable damage or the compensation is required to avert or compensate for similar undue hardship.

(2) The Federal Government shall be obliged to pay compensation if the pecuniary disadvantage has been inflicted by a statutory instrument issued pursuant to the present Act or by a measure taken by a federal authority; in other cases, compensation shall be paid by the Land that ordered the measure.

(3) Section 11, paragraphs 3 and 4, shall apply *mutatis mutandis*. [...]

ANNEX 2 TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE AUSTRIAN FEDERAL GOVERNMENT, REPRESENTED BY THE FEDERAL MINISTER FOR CLIMATE PROTECTION, ENVIRONMENT, ENERGY, MOBILITY, INNOVATION AND TECHNOLOGY, CONCERNING SOLIDARITY MEASURES TO SAFEGUARD THE SECURITY OF GAS SUPPLY

The general terms and conditions of the balance group coordinator for the Eastern Distribution Area and the annex on billing and invoicing to the general terms and conditions of the balance group coordinator, which apply pursuant to article 9, paragraph 1, shall apply between the Contracting Parties and to the third party acting for the requesting Contracting Party subject to the following provisions:

1. The Contracting Parties shall mutually waive the levying of consumption and trade-related charges for the provision of solidarity measures (clearing charge, virtual trading point charge).
2. No credit check shall be conducted; securities shall be provided in accordance with the provisions of article 3, paragraph 4, point 11, and article 4, paragraph 3, of the Agreement.
3. No single European payment area (SEPA) corporate direct debit mandate shall be issued for invoices and no credit notes shall be issued in the course of settlement with the balance group manager.
4. Payments shall fall due in full within 20 calendar days of receipt of the invoice.

ANNEX 3 TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE AUSTRIAN FEDERAL GOVERNMENT, REPRESENTED BY THE FEDERAL MINISTER FOR CLIMATE PROTECTION, ENVIRONMENT, ENERGY, MOBILITY, INNOVATION AND TECHNOLOGY, CONCERNING SOLIDARITY MEASURES TO SAFEGUARD THE SECURITY OF GAS SUPPLY

AGCS balance group coordinator

AGCS Gas Clearing and Settlement Ltd.

General terms and conditions of the balance group coordinator, version 13.0, for the distribution area East

Document management

Document history

Version	Status	Date	Responsible official	Reason for change
0.1	Drafting		AGCS	
1.0	Approval	27 September 2002	ECG	
0.2	Submission			Market rules II
2.0	Approval		ECG	
0.3	Submission		AGCS	Market rules III
3.0	Approval		ECG	
0.4	Submission			Residual load error
4.0	Approval	16 September 2010	ECG	
0.5	Submission		AGCS	Gas market model 2012
5.0	Approval	14 September 2012	ECA	
0.5	Submission	4 December	AGCS	Change platform

1	ssion	er 2012		
0.6	Submi ssion	10 Decem ber 2012	AGCS	Gas market model
5.1	Appro val	19 Decem ber 2012	ECA	
6.0	Appro val	19 Decem ber 2012	ECA	
0.7	Submi ssion		AGCS	Gas Market Model Ordinance, amendment April 2013
7.0	Appro val		ECA	
0.8	Submi ssion	19 July 20 13	AGCS	
8.0	Appro val	29 July 20 13	ECA	
0.9	Submi ssion	26 Novem ber 2013	AGCS	
9.0	Appro val	18 Decem ber 2013	ECA	
0	0.1 Submi ssion			Joint procurement of network losses and own consumption
0	10. Appro val		ECA	
1	0.1 Submi ssion	13 Februa ry 2017	AGCS	Gas Market Model Ordinance, amendment 2016
0	11. Appro val	16 March 2017	ECA	
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1 General part

1.1 Object of regulation

1) These general terms and conditions of the balance group coordinator govern the rights and obligations of the balance group coordinator and its contractual partners (all hereinafter referred to as the “contracting parties”) for a fully functioning liberalized natural gas market for the purpose of forming the retrieval sequence of control energy offers on the Merit Order List, the pricing of balancing energy and the determination and settlement of balancing energy on the basis of sections 85 ff. of the Federal Act enacting new regulations in the field of natural gas management (Gas Act 2011), Federal Law Gazette I No. 107/2011, and the ordinances issued in implementation of those regulations by the E-Control Austria Management Board on regulations governing the gas market model.

2) The contractual partners of the balance group coordinators are in particular the balance group managers, the network operators, the balancing energy providers, the biogas plant operators, the distribution area manager, the market area manager, the operator of the virtual trading point and the gas exchange. The legal relationship between the contracting parties shall also be governed by the Other Market Rules as published from time to time by Energie-Control Austria for the regulation of the electricity and natural gas industry (“E-Control”, “ECA”), which have been drawn up for the market participants in cooperation with the market participants (section 22, point 1, of the Energy Control Act), and also the current version of the Gas Market Model Ordinance.

3) Furthermore, the following annexes attached to these general terms and conditions of the balance group coordinator form an integral part of the legal relationship between the balance group coordinator and its contractual partners:

- Annex on the management of balancing energy
- Annex on billing and accounting
- Annex on credit check
- Annex on risk management and the provision of securities
- Annex on change platform

4) Any services beyond the scope of the balance group coordinator functions pursuant to section 87 of the Gas Act shall be agreed upon separately.

5) Balance group managers shall take appropriate measures to balance the incoming and outgoing volumes allocated to their balance group within the balancing period. The balance group managers shall bear the economic responsibility vis-à-vis the balance group coordinators for any deviations in their balance group balanced by the balance group coordinator or, as the case may be, their balance groups of end consumers in the distribution area.

1.2 Performance of tasks by third parties

1) The balance group coordinator may use third parties for the performance of its tasks for limited and specific areas, insofar as this is permissible in accordance with the licence notice issued by the Federal Ministry of Economic Affairs and Labour. The balance group coordinators shall be liable for such third parties pursuant to section 1313a of the General Civil Code and the responsibility of the balance group coordinator may neither be limited nor be reassigned by this provision.

2) These areas are in particular:

- Development and maintenance of the information technology systems required for the performance of the tasks of the balance group coordinator, in particular the billing system and the pricing module for balancing energy and for hardware and database support, including assessment of the availability of the required technical prerequisites of the contractual partners in accordance with the present general terms and conditions of the balance group coordinator.

- Financial clearing for balancing energy, in particular credit assessment, security ordering, management and utilization, invoicing, dunning and collection.

1.3 Data

1.3. 1 Data management

To perform data management, unique identifiers are used for the balance group coordinator's contractual partners ("contractual partners").

1.3. 2 Provision of data

1) The contractual partners shall be obliged to provide the balance group coordinator with the data required for the performance of its tasks.

2) The form, security standards and content of the data to be exchanged, and also the manner of data transmission shall be governed by the Other Market Rules.

1.3. 3 Transmission of data

1) Successful data transfers must be verified immediately by the contractual partner and the balance group coordinator. Insofar as the data transfer verification is not automated, it will be performed during normal office hours. The balance group coordinator shall allow the contractual partner to inspect the data received. Erroneous transmissions and the transmission of incorrect data shall be notified to the balance group coordinator by the contractual partner and shall be corrected by the contractual partner.

2) If the balance group coordinator notices errors or inconsistencies in the data in the course of plausibility verifications, it will notify the contractual partner thereof. The balance group coordinator shall incur no liability vis-à-vis the contractual partner arising from such notification or failure to make notification or, where applicable, from the content of the notification.

1.3. 4 Data accuracy and storage

1) The contractual partners shall be responsible for the correctness of the content of the data that they compile and transmit. The contractual partner shall be obliged to verify the proper and, in terms of content, accurate transmission of the data being transmitted in the system of the balance group coordinator. The balance group coordinator shall allow the contractual partner to inspect the data received. In the event of reasonable doubt as to the accuracy of the content of the data, the balance group coordinator may request proof of the accuracy of the reported data in a form and scope appropriate to the circumstances. Reasonable costs of verification shall be borne by the contractual partner if the doubts prove to be justified, otherwise by the balance group coordinator.

2) The contractual partners are obliged to keep the data transmitted by them in each case available for inspection for two years and to keep them for a further year and to transmit them again on request if necessary.

1.3. 5 Measures in the event of technical faults

1) In the event of technical malfunctions, each contracting party shall be obliged to inform the other contracting party without undue delay and to initiate all economically reasonable measures in order once again to ensure the prompt and proper performance of the contract.

2) The contracting parties shall be entitled to authorize the transmission and receipt of data for the purpose of carrying out operationally necessary work on the computer system used for the performance of functions. The contracting parties shall notify each other of such work, insofar as it is foreseeable, in good time, but at least 48 hours before it begins.

3) Data not transmitted owing to malfunctions and service disruptions shall be promptly deleted after the malfunction or service disruption has ended.

1.3. 6 Data protection and maintenance of confidentiality by the balance group coordinator

1) The balance group coordinator may use the data of the contractual partners required for the performance of its tasks exclusively in accordance with the applicable statutory provisions and may transmit and transfer them to other balance group coordinators, distribution area managers, market area managers, balance group managers, network operators, biogas plant operators, virtual trading point operators and gas exchanges which require such data for the performance of their statutory tasks.

2) The balance group coordinator shall treat as confidential any business and trade secrets of the contractual partners of which it becomes aware in connection with its activities.

3) The balance group coordinator shall be obliged to transfer the above data protection and confidentiality obligations to employees and contractors.

1.3. 7 Data inspection

1) Each contractual partner managed by the balance group coordinator in its system shall be entitled to inspect the data concerning that partner electronically via a password-protected Internet connection.

2) Each market participant shall be entitled to obtain information electronically at any time via the bidding curve of the Merit Order List for the last 16 months.

1.4 Accounting principles

1) Payments in connection with the settlement of the balancing energy and the clearing fee are due within three banking days of the invoice date and are collected by way of the SEPA business-to-business direct debit. The balance group manager is obliged to issue and transmit the SEPA business-to-business direct debit mandate required for this purpose to the balance group coordinator and to transmit a copy of this mandate to its banking institution, in which process the documents in question must be received by the respective recipient at the latest upon conclusion of the contract. Account relationships with individual account-holding banks may only be refused by the balance group coordinator for substantively justified reasons. A substantively justified reason is in particular the case in which the balance group manager's banking institution is not in a position to carry out the SEPA corporate direct debit procedure taking into account the due dates and payment periods as specified in the present general terms and conditions of the balance group coordinator, including all its annexes.

2) In the event of collection of a due claim by way of the SEPA corporate direct debit procedure, the balance group coordinator shall be obliged to notify the balance group manager of the collection of the amount of money due at least three working days prior to the due date of the respective claim. This notification must include the amount to be collected and the time limit for collection and may be made in writing or electronically (for example, by email or fax). Invoices

shall be deemed to be notifications for the purposes of this provision if they include the details of the amount to be collected and the time limit for collection.

3) In the event of default, interest on arrears shall be charged from the due date at the prime rate (sect. 1, para. 1, of the Euro-Justiz-Begleitgesetz, the Act regarding measures in connection with the introduction of the euro) plus 4 percentage points per annum, and also, in the case of entrepreneurial transactions, at the rate of 8 percentage points per annum above the base interest rate (section 352 of the Austrian Corporate Code).

4) Detailed provisions on accounting may be found in the annex on accounting and financial reporting.

1.5 Charging arrangements

1) Services provided by the balance group coordinator in fulfilment of the tasks specified in section 87 of the Gas Act shall be recompensed by the clearing fee determined by Energie-Control Austria in accordance with the tariff pursuant to section 89 of the Gas Act.

2) If a contractual partner is temporarily unable to provide data in the manner specified in the Other Market Rules for reasons within its control, the balance group coordinator shall be entitled to charge at market rates for the additional expenditure incurred thereby.

1.6 Amendments to the general terms and conditions of the balance group coordinator

1) If Energie-Control Austria approves general terms and conditions of the balance group coordinator that have been amended since the time of conclusion of the contract, the balance group coordinator shall promptly notify the contractual partners of the amendments and make the amended version available to the contractual partners in an appropriate manner, including by publication on the Internet.

2) Amendments to the general terms and conditions of the balance group coordinator shall enter into force at the indicated time, but no sooner than 14 days after notification of the contractual partners, unless the contractual partners object in writing within 14 days of such notification. In the event of an objection, the balance group coordinator shall be entitled to terminate the contractual relationship with one month's notice from the receipt of the objection to the last day of the month.

1.7 Termination of the contractual relationship

1.7.1 Dissolution of the contract by the balance group coordinator

1) The balance group coordinator shall be entitled to terminate the contract with immediate effect or to increase the security requirement determined on the basis of the annex risk management by up to 100 per cent if a contractual partner breaches material provisions of the contract despite a written reminder and the setting of a reasonable grace period and the expiry of this period without any result. Such breaches include:

- The repeated omission of data or incorrect data transmission as set out in point 2.1.3
- Infringement of the reporting obligations pursuant to item 2.5

•Non-compliance with due payment obligations; in particular if the collection procedure fails repeatedly because of inability to collect against a SEPA mandate; the balance group manager or its contact person are constantly unreachable by telephone during the operating hours of the balance group coordinator

•Failure to comply with section 18, paragraph 4, of the Gas Market Model Ordinance, in particular if the market participant systematically covers the supply of its consumers predominantly with balancing energy

Dissolution for material cause due to failure to deposit securities in a timely and proper manner is governed by the annex on risk management and the provision of securities.

2) The balance group coordinator shall be entitled to terminate the contract with immediate effect without according a grace period in the event of withdrawal of the relevant notice by the regulatory authority or expiry of the contractual partner's licence by the competent authorities. The balance group coordinator shall be entitled to close balance groups of the balance group manager with the termination of the balance group manager contract or, where applicable, to reject communications of schedules and measured values that concern the balance group manager's balance groups. Pursuant to section 94, paragraph 4, of the Gas Act, the licence to act as a balance group manager shall expire if insolvency proceedings are opened against the assets of the balance group manager or if such proceedings cannot be legally opened owing to the lack of cost-covering assets. The balance group coordinator shall be entitled to terminate the contract with immediate effect if the contractual relationship between the balance group manager and the market area manager and/or the balance group manager and the distribution area manager has been terminated or, where applicable, dissolved.

3) The balance group coordinator shall not assume any liability for damages incurred by the contractual partner or third parties as a result of the termination or dissolution of the contract and the blocking of the communication of schedules and measured values.

1.7. 2 Termination by the contractual partner

The contractual partners shall be entitled to terminate the contract with the balance group coordinator in writing by giving three months' notice to the last day of the month, in which case the securities shall be released in accordance with section 2.3.4. This shall not affect the right to immediate dissolution of the contract without notice for good cause,

1.7. 3 Further grounds for termination

Additional good cause within the meaning of point 1.7.1 of the general terms and conditions of the balance group coordinator, which entitles the balance group coordinator to immediate dissolution of the contractual relationship, shall be furnished if the balance group manager has not run any balance group for more than three months.

For the rest, point 2.3 shall prevail, insofar as applicable.

1.7. 4 Further procedure following termination or dissolution of the contract

In the event of termination or dissolution of the contract, the balance group coordinator shall immediately notify Energie-Control Austria, the market area manager, the distribution area manager and the distribution system operators, all balance group managers and all suppliers. The balance group coordinator shall be exempt from any liability for the execution or omission of the notification.

1.8 Disruptions to the performance of contracts

Each contracting party shall be obliged promptly to notify the other contracting party of the occurrence of disruptions to the performance of the contract and, on a continuous basis, about the steps taken to eliminate such disruptions. The affected contracting party shall immediately take the steps necessary to eliminate the disruption to performance of the contract. This notification shall

be provided irrespective of whether the fault has occurred in the contracting party's own area or that of a third party.

1.9 Liability

1) The contracting parties shall be liable in accordance with the general provisions of the law on damages. Insofar as liability is based on fault, liability shall only be incurred in cases of intent and gross negligence. Liability for damages due to force majeure and other circumstances beyond the parties' control, consequential damages, damages to third parties or for loss of profit shall in any event be excluded.

2) If a contracting party suffers damage within the scope of the credit assessment or security management for which the balance group coordinator is responsible, the balance group coordinator shall be liable within the scope of the preceding paragraph in accordance with the general provisions of the law on damages. In this case, however, the liability of the balance group coordinator shall be limited to a total of 1.2 million euros per calendar year.

3) Insofar as provisions are contained in these general terms and conditions of the balance group coordinator which pertain to the relationship between market participants (and not to the balance group coordinator), this shall only affect the contractual relationship with the balance group coordinator insofar as it is assumed within this relationship that the relevant agreements exist between these market participants. Any liability of the balance group coordinator towards those market participants arising from these provisions [affecting the contractual relationship between the market participants themselves (and not that with the balance group coordinator)], and also, in particular, with regard to the validity of the agreement between the market participants, shall be excluded.

1.10 Partial ineffectiveness

Should individual provisions of the general terms and conditions of the balance group coordinator or the contracts concluded on the basis thereof be or become void and/or legally ineffective, the validity of the remaining provisions shall not be affected. The contracting parties already undertake, as things stand, to replace the null and void and/or invalid provision by mutual agreement with a legally valid provision that comes as close as possible to the invalid provision in terms of its legal, economic and technical effects.

1.11 Writing and business language

1) Contracts and notifications of the contractual partners must be in writing. Any deviation from this requirement must also be in writing. Electronic transmissions with an electronic signature or sent by fax shall also be deemed to be in writing.

2) The business and contractual language shall be German. All communications of the contractual partners shall therefore be made in German to ensure their validity, unless this requirement is waived by mutual agreement.

1.12 Legal succession

1) The contracting parties shall be entitled to transfer the contractual rights and obligations to legal successors if the legal successor meets the requirements for the related activity in accordance with the applicable statutory provisions and Other Market Rules as amended from time to time.

2) In the event of singular succession, the transfer of the contract shall become effective in respect of the balance group coordinator 14 days after notification thereof, provided that the legal

successor has assumed rights and obligations in a legally effective and unrestricted manner and evidence thereof is provided to the balance group coordinator in writing.

3) In the event of universal succession, the balance group coordinator must be notified and the requirements for the associated activity must continue to be met by the universal successor.

1.13 Applicable law

Austrian law shall apply, with the exclusion of the provisions on private international law contained within Austrian law.

1.14 Place of performance

The place of performance for all contractual services shall be the registered office of the balance group coordinator.

1.15 Jurisdiction

Insofar as the courts have jurisdiction over disputes arising from the present contract, the competent court at the registered office of the balance group coordinator shall have exclusive jurisdiction, unless the law dictates otherwise.

2 Special conditions for the relationship between the balance group coordinator and the balance group manager

2.1 Contract between the balance group coordinator and the balance group manager

2.1.1 Legal basis

The business relationship between the balance group coordinator and the balance group manager shall be developed on the basis of a balance group manager contract.

Pursuant to section 19, paragraph 4, of the Gas Market Model Ordinance 2012, the balance group coordinator shall authorize the market area manager to conclude the balance group manager contract in the name and on behalf of the balance group coordinator on the basis of the general terms and conditions of the balance group coordinator in the online system of the market area manager. The balance group coordinator shall not assume any liability in relation to the online system of the market area manager. Parties interested in approval as balance group managers for the distribution area shall meet the following requirements for the conclusion of the contract:

1) Credit assessment by the balance group coordinator: the credit assessment shall be carried out in accordance with the provisions of the annex on credit assessment;

2) Deposit of security required by the balance group coordinator in accordance with the annex on risk management;

3) SEPA business-to-business direct debit mandate for invoices/credit notes that arise in the course of settlement with the balance group manager;

4) Collection of the following key data by the market area manager and their transmission to the balance group coordinator, in particular:

- Identifier and identification number of the balance group manager

- Current extract from the commercial register

- Authorized signatories

- Name and address, email address according to the Other Market Rules, telephone number and fax number of the balance group manager

- Bank details and billing address

- Responsible technical officer and at least one representative with name and address, email address according to the Other Market Rules, telephone number and fax number

- Responsible commercial officer and at least one representative with name and address, email address according to the Other Market Rules, telephone number and fax number

- Email address according to the Other Market Rules for data transmission.

2.1. 2 Condition precedent

The balance group manager contract is subject to the condition precedent that Energie-Control Austria grants the balance group manager legally valid authorization to perform the activity and that this legally valid authorization is demonstrated by the market area manager to the balance group coordinator.

2.1. 3 Constant review of the balance group manager by the balance group coordinator

The balance group coordinator shall regularly monitor compliance with the conditions for the continuation of the contract. Each balance group manager shall be obliged to inform the balance group coordinator immediately and without being so requested about any changes concerning these requirements.

2.2 Principles of balance group management

2.2. 1 Establishment of a balance group

1) A balance group shall be established at the instigation of the balance group manager. The registration process shall be carried out through the market area manager in accordance with the applicable regulations. The market area manager shall notify the balance group coordinator of the registration of the balance group manager via a data interface.

2) For a balance group manager which supplies end users, at least one balance group for the distribution area shall be set up at the office of the balance group coordinator in addition to the establishment of a balance group in the market area.

2.2. 2 Requirements for the establishment of a balance group

1) In order to establish a balance group for a balance group manager in a distribution area, the balance group manager shall submit the following information to the balance group coordinator in writing, if these details have not already been submitted by the market area manager:

- Name, address, email address according to the Other Market Rules, telephone and fax number of the balance group schedule manager

- Estimated turnover of natural gas per year for receipt and/or delivery by the balance group and affiliated suppliers

- Date of commencement of balance group activity

- Responsible technical manager with name and address, email address according to the Other Market Rules, telephone number and fax number

- Responsible commercial manager with name and address, email address according to the Other Market Rules, telephone number and fax number

2) A list of the balance groups operating in the distribution area with the validity date shall be published by the balance group coordinator on its homepage.

3) A balance group shall be activated in the system of the balance group coordinator on condition that the balance group manager has deposited the security with the balance group coordinator in accordance with the annex on risk management and the provision of securities.

2.3 Dissolution of the balance group and discontinuation of the business activities of the balance group manager

1) If the balance group manager plans to deactivate a balance group in the distribution area, it must notify the balance group coordinator, the distribution area manager, the market area manager and the affected network operators immediately, but no later than 21 days prior to the date of the planned deactivation. The notification to the balance group coordinator shall contain in particular:

- Name of the balance group (identifier, identification number)
- Date of the planned deactivation
- Evidence of notification to the affected network operators, the distribution area manager and the market area manager

2) The balance group may only be dissolved by the balance group manager if all members of the balance group also belong to other balance groups.

3) In the event of the planned discontinuation of the business operation of the balance group manager, termination of the contract or dissolution of the contract, the above provisions shall apply *mutatis mutandis*. In this case, Energie-Control Austria and the other balance group coordinators must also be notified by the balance group manager.

4) The settlement of the balancing energy and the clearing fees by the balance group coordinator shall take place within the framework of the first and second clearings. The release of all securities shall take place after the second clearing.

5) In the event of the dissolution of a balance group, subject to compliance with the provisions of this section, the related expenses of the balance group coordinator shall be covered by the clearing fee pursuant to section 89 of the Gas Act.

2.4 Description of the method used to calculate the amount of balancing energy and to determine the price

The balancing energy in the distribution area shall be determined per balance group for the clearing period defined by the balance group coordinator. Balancing energy is the difference between procurement schedules and consumption values, for biogas plants the difference between feed-ins and delivery schedules, for distribution networks the difference between network takeovers and network deliveries, taking into account the network loss schedules and also the corrections of the residual load.

The method for calculating the amount of balancing energy, the price calculation for balancing energy and the technical clearing are regulated in the annex on balancing energy management.

2.5 Reporting obligations and data exchange between balance group managers and the balance group coordinator

1) The balance group manager shall report the following circumstances to the balance group coordinator at any time and without being requested to do so:

- Significant changes in the scope and nature of business activities
- Circumstances that may lead to significant changes in its balancing energy requirement

- Changes in the data and information to be notified to the balance group coordinator

2) The balance group coordinator shall provide the balance group manager, via the clearing system of the balance group coordinator, with the aggregated time series of the standard load profiles and the aggregated time series of the metered values per balance group for injection and withdrawal, as well as the aggregated sum of the schedule values per billing period per balance group for the control of the balancing energy billing. These data shall only be accessible to the balance group manager via an individually assigned password and shall be made available as a download.

2.6 Schedule management

1) For the distribution area, the balance group manager shall prepare schedules for the supply of its consumer balance groups for daily and hourly balancing, together with schedules for the receipt of volumes of biogas from plants feeding into the network. These schedules shall be transmitted by the balance group manager to the distribution area manager and, in the event of technical requirements, such as delivery situations that cannot be properly managed, capacity bottlenecks and errors, shall be modified or, where appropriate, improved by the balance group manager in accordance with the specifications of the distribution area manager.

2) Notification of the schedules by the balance group manager to the distribution area manager, determination of the scope of the content and processing of the schedules shall be carried out in accordance with the Other Market Rules.

3) Schedules shall be transmitted by the distribution area manager to the balance group coordinator in accordance with the content and format requirements of the Other Market Rules. The distribution area manager shall submit the schedules to the balance group coordinator no later than on the working day following the day on which the schedules are processed. The schedules shall form the basis for the determination of the balancing energy and cannot be changed after processing by the distribution area manager.

2.7 Billing and accounting

Billing and accounting are regulated in the annex on billing and accounting.

2.8 Risk management and the provision of securities

Risk management and the organization of the provision of securities are regulated in the annex on risk management and the provision of securities and shall include, in particular:

- The identification, collection, management and release of securities
- The type of securities to be provided and the form of deposit and
- The disposal of securities

2.9 Training

As soon as it becomes apparent that the balance group manager is unable to fulfil its obligations owing to insufficient technical and/or commercial knowledge of the balance group model, the balance group manager shall be obliged to enlist the involvement to the necessary extent of professionally trained employees in the information events offered as needed by the balance group coordinator.

3 Special conditions for the relationship between the balance group coordinator and the network operator

3.1 Amendments to the general terms and conditions of the balance group coordinator

The general terms and conditions of the balance group coordinator shall apply to the legal relationship between the balance group coordinator and the network operator, subject to the following proviso:

1) Point 1 of the general terms and conditions of the balance group coordinator shall apply, with the exception of points 1.7.1 (1) and 1.7.2.

2) Points 1.7.2, 1.7.3, 1.7.4, 2.1.1, 2.3, 2.4, 2.5, 2.6 and 2.7 of the section “Special terms and conditions for the relationship between the balance group coordinator and the balance group manager”, but excluding the provisions of this item on credit assessment, clearing fee, risk management and the provision of securities, shall apply mutatis mutandis to the network operator as the party responsible for network losses and own consumption. This balance group shall be exempt from the clearing fee. No metering points of end consumers may be allocated to this balance group.

3.2 Duties of the network operators

3.2. 1 Duties of the network operator

The network operator shall provide the balance group coordinator with the data required for clearing. These shall include in particular

- Consumption value aggregates per supplier (balance group) and network disaggregated by:
 - SLP consumption volumes (for daily balancing)
 - Non-SLP consumption volumes (for daily balancing)
 - Non-SLP consumption volumes (for hourly balancing)
- Acceptance values and delivery values of the networks relating to the distribution area;
- Acceptance and delivery metering values of the production and storage facilities relating to the distribution networks
- Transfer values of the cross-border transfer points in the distribution area allocated according to balance groups
- Metering values of the biogas feed-ins
- Values for linepack formation
- Values for linepack formation
- Values for the network losses actually determined
- Values for self-consumption
- Values for positive measurement differences
- Values for negative measurement differences
- Schedule for the recovery of network loss volumes

The metering data for network users with load profile meters (non-SLP), provided that these are read daily, shall be transmitted daily by the distribution system operators to the balance group coordinator.

3.3 Establishment of the network loss balance groups

1) To set up a balance group for a network operator in a distribution area, the network operator shall submit the following information in writing to the balance group coordinator responsible for the distribution area no later than 14 days prior to activation of the balance group in question:

- Identifier and identification number of the network operator
- Name and address, email address according to the Other Market Rules, telephone number and fax number of the network operator
- Name, address, email address according to the Other Market Rules, telephone and fax number of the balance group's schedule manager, estimated energy per year for receipt and/or delivery by the balance group
- Date of commencement of the balance group's activity
- Bank details with SEPA business-to-business direct debit mandate and billing address
- Responsible technical manager with contact address
- Responsible commercial manager with contact address
- Email address according to the Other Market Rules for data transmission

The network operator must notify the balance group coordinator immediately of any changes to these data.

2) If the network operator does not itself operate the balance group for network losses and own consumption, but connects itself to another balance group for network losses and own consumption, it must notify the balance group coordinator accordingly.

3) The contents and formats of the data to be continuously transmitted by the network operator to the balance group coordinator shall be in accordance with the specifications in the Other Market Rules.

Network losses and own consumption are to be covered by purchasing from a commercial balance group. The transmission of the network loss schedule must take place either monthly together with the other measurement aggregates or daily. The volumes shall be taken into account in the end customer schedule of an existing daily balancing group and transferred to the network loss balancing groups via internal schedule in the AGCS clearing system, in which process it shall be permitted to establish a separate daily balancing group to map the network loss schedules.

Transmission of the internal schedules can be effected by a third party or automated by delegation.

3.4 Establishment of the special balance group for joint procurement of network losses and own consumption

Several network operators may form a special balance group for joint procurement of network losses and own consumption. The balance group manager for the special balance group for joint procurement of network losses and own consumption shall set up a special separate balance group for this purpose in the distribution area attached to the market area manager and also to the balance group coordinator.

The network operator performing the role of the balance group manager of the joint network loss balance group as network operator or, as applicable, the service provider (both of whom shall subsequently be balance group managers for the special balance group for joint procurement of network losses and own consumption) shall have a private-law contract with the balance group coordinator or, as applicable, the market area manager and the operator of the virtual Flandel point.

The balance group manager for the special balance group for joint procurement of network losses and own consumption shall notify the balance group coordinator which network operators are involved in the joint network loss balance group.

In any event, the balance group manager for the special balance group for joint procurement of network losses and own consumption shall prepare a schedule for the procurement of network losses and own consumption. The balance group manager of the special balance group shall organize, based on the long and short-term forecasts of the participating network operators, the market-conforming and non-discriminatory procurement of volumes for network loss and own consumption, and the sale of surplus volumes, if applicable, and shall organize the settlement in respect of all participating network operators.

In order to prepare a network loss schedule, each network operator must forecast the network losses to be expected in its network and its own consumption. These represent a certain percentage of the total energy output from the network under consideration.

The actual network loss and own consumption volumes determined by the participating network operator shall be compared with the procurement volumes for network loss and own consumption of the special balance group. This shall be effected through the process of transmitting these actual volumes by means of schedules from the participating network operator to the balance group coordinator, or by the participating network operator instructing the balance group coordinator, after submitting the written consent of the balance group manager for the special balance group for joint procurement of network losses and own consumption, to even up the transmitted metered values for the determination of its own network balance as network loss and own consumption volumes.

Within the framework of clearing, the balance group coordinator shall determine the balancing energy volumes of the special balance group for the joint procurement of network losses and own consumption and shall allocate these to the responsible balance group manager.

3.5 Training

As soon as it becomes apparent that the network operator is unable to fulfil its obligations owing to insufficient technical and/or commercial knowledge of the balance group model, the network operator shall be obliged to enlist the involvement to the necessary extent of professionally trained employees in the information events offered as needed by the balance group coordinator.

4 Special conditions for the relationship between the balance group coordinator and the balancing energy providers

4.1 Registration in the balance group coordinator system

1) The balancing energy provider shall be registered in the system of the balance group coordinator with an identifier (alias) and an ID number after fulfilment of the requirements specified in point 4.1 3.

2) The balancing energy provider shall be obliged to submit the following information in writing to the balance group coordinator and the distribution area manager:

Name and address, email address according to the Other Market Rules, telephone number and fax number of balancing energy provider;

Responsible technical manager with contact address, responsible commercial manager with contact address;

Proof of the existence of online metering for the feed-in point or points under consideration.

3) Changes to these details shall be promptly notified by the balancing energy provider to the balance group coordinator and the distribution area manager.

4) The balance group coordinator shall publish the identifier and ID number on its homepage.

4.2 Data inspection

The balancing energy provider shall be given access to the provider system and its associated order book via the secure area of the balance group coordinator homepage. These data shall only be accessible to the respective balancing energy provider via an individually assigned password.

4.3 Further provisions for balancing energy providers

Further provisions for balancing energy providers are regulated in the annex on balancing energy management.

5 Special conditions for the relationship between the balance group coordinator and the distribution area manager

5.1 Contract

The business relationship between the distribution area manager and the balance group coordinator shall be handled on the basis of a written distribution area manager contract, which shall in particular specify the data formats to be used between the distribution area manager and the balance group coordinator for the purposes of data exchange.

Where the legal relationship between the balance group coordinator and the distribution area manager is concerned, point 1 of the general terms and conditions of the balance group coordinator shall apply mutatis mutandis with the proviso that points 1.7.1 (1) and 1.7.2 shall not apply.

5.2 Reporting obligation of the distribution area manager

The distribution area manager shall be obliged to inform the balance group coordinator immediately if a provider of balancing energy does not properly fulfil its duties or if a balance group manager does not properly carry out the scheduling process (dispatch of schedules and their correctness in terms of form, content and timing as specified in the Other Market Rules).

The distribution area manager shall be obliged to notify the balance group coordinator, the bypassed balancing energy providers and Energie-Control Austria of the reason for non-compliance with the retrieval sequence within 3 (three) working days.

5.3 Schedules

Movements of volumes relating to the distribution area shall be tracked by the balance group coordinator in accounts set up for this purpose.

For the acceptance and delivery of volumes between the distribution area and the market area, the following schedules in particular shall be handled by the balance group coordinator:

- Scheduled transfer of gas volumes to the distribution area, per balance group category (with hourly, daily balancing)
- Scheduled delivery of biogas volumes
- Scheduled mapping of balancing energy volumes with the gas exchange
- Scheduled mapping of balancing energy retrievals from the Merit Order List
- Scheduled mapping of network loss purchases by distribution system operators
- Transfer schedules of the border transfer points (small border traffic) in the distribution area

5.4 OBA values

Pursuant to section 28, paragraph 6, of the Gas Market Model Ordinance 2012 as amended, control energy from network interconnection contracts used for the distribution area shall be tracked by the balance group coordinator in accounts set up for this purpose.

5.5 Principles of balancing energy management

1) The balance group coordinator shall be liable to the balancing energy provider within the scope of point 1.10 only for damages incurred by it as a result of an incorrect retrieval by the distribution area manager of balancing energy from the providers caused by gross negligence on the part of the balance group coordinator, provided that the retrieval was made by the distribution area manager in accordance with the specifications of the balance group coordinator.

If the retrieval of balancing energy by the distribution area manager is not made in accordance with the requirements of the balance group coordinator and the Other Market Rules, the distribution area manager shall be exclusively liable to the balancing energy provider for the resulting damage. If claims are asserted by the balancing energy provider against the balance group coordinator or the distribution area manager due to an error for which the other is responsible, they shall indemnify and hold harmless that other and notify it of the dispute or consent to its intervention in the legal dispute in accordance with section 19, paragraph 2, of the Code of Civil Procedure.

2) The bidding procedure for the balancing energy, the order in which the balancing energy bids are retrieved and the pricing for the balancing energy are set forth in the annex on balancing energy management.

5.6 Data inspection

The balance group coordinator shall enable the distribution area manager to inspect the data transmitted by the distribution area manager via secure Internet access, in particular those data which the distribution area manager requires for the performance of its duties.

6 Special conditions for the relationship between the balance group coordinator and the balance group manager with the special balance group for emergency supply

If a request for solidarity is submitted by a member State directly connected with Austria (“connected member State”) pursuant to article 13 of Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No. 994/2010 (hereinafter referred to as the “SoS Regulation”) to the competent Austrian authority, Austrian physical balancing energy volumes may be made available to secure the gas supplies of solidarity protected customers for that member State.

1) The contractual relationship between a balance group manager of a neighbouring country and the balance group coordinator for the provision of physical balancing energy volumes in the event of a crisis is regulated by means of a supplementary agreement to the balance group manager contract.

2) The company responsible for the handling of the emergency volume shall be notified to the balance group coordinator by the responsible authority in Austria. Based on this notification, the balance group coordinator shall offer the designated company a balance group manager contract with a supplementary agreement (“emergency supply”) and set up a special balance group for this balance group manager. The following conditions shall apply to this contractual relationship:

□The organizational and technical processing shall be published in an account of the procedure for emergency assistance on the homepage of the balance group coordinator and shall form part of the supplementary agreement (“emergency supply”).

□The special balance group shall be exempt from the provisions of the annex on risk management of the general terms and conditions of the balance group coordinator. Where securities are concerned, the balance group manager responsible for the special balance group shall provide security in advance in the form of cash collateral. Retrievals of physical balancing energy volumes may only be made to the extent of the securities that have been deposited and are eligible.

□Requests for assistance shall be made through the balance group manager to the Austrian distribution area manager.

□The distribution area manager shall verify the commercial and technical feasibility of meeting the requirement.

□The requested volume of physical balancing energy shall be provided to the special balancing group of the balance group manager on an “ability and capability” basis at the virtual trading point by the distribution area manager.

□The balance group manager shall ensure that the appropriate legal relationships are in place in respect of the transport of the emergency volume.

□Billing of the physical balancing energy to the balance group manager shall take place on a daily basis, including fees and taxes.

□In the event of payment delays, the balance group coordinator shall be entitled to realize the security immediately and in full and to terminate the supplementary agreement.

3) The balance group coordinator shall be exempt from any liability for discrepancies between the emergency volume designated by the distribution area manager and the emergency volume actually allocated. The principle of “designated equals allocated” shall apply to the emergency volume.

7 Load profiles

7.1 Determination

The load profiles must be determined in accordance with the Energie-Control Austria load profile regulation.

7.2 Cataloguing, archiving and publication

The balance group coordinator shall post the standard load profiles in the respective valid version on its website for information purposes.

The locations assigned by the network operator to the respective measuring points of the Central Institution for Meteorology and Geodynamics shall be transmitted by each network operator to the balance group coordinator in electronic form, with an indication of the postal code, the name of the location and the associated measuring point. The balance group coordinator shall publish these details on the Internet.

ANNEX 4 TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE AUSTRIAN FEDERAL GOVERNMENT, REPRESENTED BY THE FEDERAL MINISTER FOR CLIMATE PROTECTION, ENVIRONMENT, ENERGY, MOBILITY, INNOVATION AND TECHNOLOGY, ON SOLIDARITY MEASURES TO ENSURE SECURITY

Annex on billing and accounting to the general terms and conditions of the balance group coordinator, version 6.0

Document management

Document history

Ve	Status	Date	Official responsible	Reason for change
0.1	Draftin		AGCS	
1.0	Appro	27 September	ECG	
0.2	Submi			Market rules II
2.0	Appro		ECG	
0.3	Submi		AGCS	Market rules III
3.0	Appro		ECG	
0.4	Submi		AGCS	Reverse charge
4.0	Appro		ECG	
0.5	Submi		AGCS	Gas market model
5.0	Appro	14 September	ECA	
0.6	Submi	26 November	AGCS	
6.0	Appro	18 December	ECA	

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1 Scope of settlement

Billing and accounting shall include, in particular:

- a) Determination of monetary balances per clearing period and balance group;
- b) Determination of monetary balances for a settlement period per balance group;
- c) Determination of the clearing fee;
- d) Preparation of settlements for the individual market participants (balance group manager, balancing energy providers or suppliers);
- e) Payment processing.

2 Basis for billing

The billing of a market participant, which is carried out by the balance group coordinator, comprises the following elements:

- Balances of the balancing energy volumes resulting from allocations by the balance group to the balance group manager, multiplied by the balancing energy price, disaggregated by delivery and receipt

- Energy deliveries as part of the processing of energy volumes via the balancing energy market, disaggregated by delivery and receipt

- Provision of energy volumes for the balancing energy market

- Clearing fee

- Taxes

3 Invoicing, reverse charge and payment processing

- a) Payments are processed by direct debits or credit notes. The market participant shall be invoiced by a date to be determined by the balance group coordinator. In any event, the balance group coordinator must be informed of the VAT number.

Each invoice is denominated in euros and will be inclusive of value added tax, if the transaction is taxable and subject to taxation according to the Austrian Value Added Tax Act. These or, where applicable, any further future taxes or duty becoming payable pursuant to or in connection with the activity of the balance group coordinator shall be included by the balance group coordinator in addition to the fee and shall be paid by the market participant.

- b) If a foreign market participant does not have a permanent establishment in Austria, the invoices for the receipt of energy by the foreign market participant shall be issued without value added tax, as these transactions are not taxable in Austria. The market participant shall be liable for any due taxation arising in its country of residence and shall indemnify and hold balance group coordinator harmless in this respect.
- c) For credit notes issued by the balance group coordinator for the supply of energy by a foreign market participant that does not have a permanent establishment in Austria, the balance group coordinator shall apply the reverse-charge rule pursuant to article 19, paragraph 1c, in combination with section 3, paragraph 13, of the 1994 Value Added Tax Act, as amended: the balance group coordinator retains the value added tax and remits it to the tax office.
- d) Each market participant is obliged to notify the balance group coordinator without delay, in other words, within no more than 14 days, of the establishment or

dissolution of any business operation or, as applicable, the establishment or discontinuation of a registered office in Austria. If this notification is not made, the market participant shall indemnify and hold harmless the balance group coordinator in its entirety in the event that claims are asserted against it by the tax authorities.

- e) Invoice amounts shall be payable on the due date specified in the invoice and shall be collected by SEPA business-to-business direct debit. Credit and debit notes shall be cleared by the balance group coordinator with a settlement date of T+3. Invoices for clearing may also be submitted as a payment on account in the amount of the estimated invoice amount.
- f) Each market participant must notify the balance group coordinator of an account at a credit institution in the European Union or in Switzerland through which payment transactions are processed and which is technically capable of carrying out the SEPA business-to-business direct debit procedure, taking into account the due dates and payment periods pursuant to the general terms and conditions of the balance group coordinator, including all its annexes. Account relationships with individual account-operating banks may only be refused by the balance group coordinator for substantively justified reasons. Each market participant must grant the balance group coordinator or its agent a SEPA business-to-business direct debit mandate for this account in favour of an account of the balance group coordinator or its agent and ensure that its account has sufficient cover on the due date. Credits shall be posted from the balance group coordinator account in favour of the market participant's account.

4 Right of objection

The market participant has the possibility to file a written objection against invoices submitted to the balance group coordinator within 30 days. This right does not relieve the market participant of the obligation to pay the invoice considered erroneous, subject to its clarification. If the objection is not made in due time, the invoice shall be deemed binding. The balance group coordinator shall correct erroneous invoices in the next two subsequent periods. A separate indication shall be made of this subsequent recalculation.

5 Adjustments to the payment on account

The balance group coordinator shall reserve the right to adjust the amount of the charge based on the available billing details for the balance group.

6 Offsetting of counterclaims

Offsetting with counterclaims is fundamentally excluded.

This shall only be permissible for the balance group coordinator in the event of the imminent insolvency of the market participant. Furthermore, offsetting shall be permissible with and against claims of the contracting parties which are legally connected with the liability for offsetting and which have been established by a court or acknowledged by the balance group coordinator.

7 Changes in the legal situation

Should there be any change in the underlying legal situation, in particular the Austrian Value Added Tax Act, the accounting will be carried out directly in accordance with the legal provisions until such time as the annex on billing and accounting has been aligned with the new legal situation.

8 Settlement components and obligation to submit a declaration to establish the taxable event

8.1. Introduction

Pursuant to section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud (Federal Law Gazette II No. 369/2013), the value added tax on transactions from deliveries of gas and electricity to a trader whose main activity in relation to the acquisition of these goods consists in their redelivery and whose own consumption of these goods is of lesser significance shall be paid by the recipient of the service, if that person is a trader. In connection with the Ordinance on combating value added tax fraud, the Federal Ministry of Finance published information on its website about a provision related to cases of doubt recognized by the Ministry, according to which, in the event of doubt as to whether a service within the meaning of section 2 of the ordinance has been attested in a given case, it shall be mutually agreed by the service provider and the service recipient that the tax liability is transferred to the service recipient, and a written declaration by the service recipient shall be sufficient proof of such transfer. In order to facilitate the traceability of invoices issued, a presentation is provided below of the invoicing components used by the balance group coordinator, and also of the required provisions for the application of the Ordinance on combating value added tax fraud.

8.2. Obligation to submit a declaration to establish the taxable event

Each contractual partner shall be obliged to make a declaration as to whether it falls within the scope of section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud or is subject to section 3, paragraphs 13 and 14, and section 19, paragraph 1c, or section 3a, paragraphs 6 and 7, of the Value Added Tax Act. This declaration shall be sent to the balance group coordinator by means of an appropriate form within 14 days of the request by the balance group coordinator to this effect, the postmark being decisive for establishing compliance with this deadline. If the contractual partner does not comply with this obligation, the balance group coordinator shall assume as a rule that a balance group manager with a permanent establishment in Austria falls within the scope of section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud. The present provision shall not apply to companies without a permanent establishment in Austria.

8.3. General presentation of the invoice types

The following presentation is a technical overview of the invoice types used by the balance group coordinator and is intended to provide the contractual partners with an insight into how invoices are created and to make it easier to verify them.

8.3. 1. Invoice type "Delivery of balancing energy balance group manager to balance group coordinator" ("ELF")

Position per balance group manager balance group; Quantity of balancing energy is indicated on the invoice in kWh.

The item contains balancing energy per settlement period delivered by the balance group manager and, in the event of a positive clearing price ("CLP"), per hour (hourly balancer) or, as applicable, per day (day balancer) shall mean revenues for the balance group manager and costs for the balance group coordinator.

The item contains balancing energy per settlement period delivered by the balance group manager and, in the event of a negative clearing price ("CLP"), per hour (hourly balancer) or, as applicable, per day (day balancer) shall mean costs for the balance group manager and revenues for the balance group coordinator. (Explanation: this is a "disposal service" and therefore a different service within the meaning of section 3a of the Value Added Tax Act, which is why there

is no energy delivery within the meaning of section 2, point 2, of the Ordinance on combating value added tax fraud.

8.3. 2. Invoice type “Receipt of balancing energy balance group manager from balance group coordinator” (“EBZ”)

The item contains balancing energy per settlement period delivered by the balance group manager and, in the event of a positive clearing price (“CLP”), shall mean per hour (hourly balancer) or, as applicable, per day (day balancer) costs for the balance group manager and revenues for the balance group coordinator.

The item contains balancing energy per settlement period delivered by the balance group manager and, in the event of a negative clearing price (“CLP”), shall mean per hour (hourly balancer) or, as applicable, per day (day balancer) revenues for the balance group manager and costs for the balance group coordinator. (Explanation: this is a “disposal service” and therefore a different service within the meaning of section 3a of the Value Added Tax Act, which is why there is no energy delivery within the meaning of section 2, point 2, of the Ordinance on combating value added tax fraud.

8.3. 3. Apportionment invoice type

Includes the item apportionment; in the event of a positive price this means costs for the balance group manager and revenues for the balance group coordinator.

8.3. 4. Invoice type “Clearing fee pursuant to section 89 of the 2011 Gas Act (Federal Law Gazette I No. 107/2011) in conjunction with the Natural Gas Clearing Fee Ordinance (Federal Law Gazette II No. 479/2012)”

Position per balance group manager balance group; Volume for trade/consumption is indicated on the invoice in kWh.

The basis of assessment is the consumption turnover of the balance group manager per billing period, which shall mean costs for the balance group manager and revenues for the balance group coordinator.

8.4. Balance group manager billing (explanation: with energy supply as main activity)

8.4. 1. Tax resident with application case as per section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud.

The following shall apply to contractual partners who have indicated in writing to the balance group coordinator that they fall within the scope of section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud.

a. Supplies and other services against payment, balance group coordinator delivers energy to the balance group manager (CLP):

i. In the event of a positive price, the “reverse charge” rule pursuant to section 19, paragraph 1d, of the Value Added Tax Act, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud shall apply; in this case, the recipient of the service (balance group manager) shall bear the tax liability (reverse charge);

ii. In the event of a disposal service (negative energy price) 20 per cent value added tax shall be charged.

b. Allocation (other service against payment), the balance group manager renders to the balance group coordinator:

i. In the event of a positive price, 20 per cent value added tax will be charged (explanation: this is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act).

ii. In the event of a negative price, 20 per cent value added tax will be charged (explanation: this is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act).

c. Deliveries and other services against payment; the balance group manager delivers energy to the balance group coordinator (CLP):

i. In the event of a positive price, the “reverse charge” rule pursuant to section 19, paragraph 1d, of the Value Added Tax Act shall apply in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud; in this case, the recipient of the service (balance group coordinator) shall bear the tax liability (reverse charge);

ii. In the event of a negative price, 20 per cent value added tax will be charged (explanation: this is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act).

d. Clearing fee pursuant to section 89 of the 2011 Gas Act (Federal Law Gazette I 107/2011), in conjunction with the Natural Gas Clearing Fee Ordinance (Federal Law Gazette II No. 479/2012):

This is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act.

8.4. 2. Resident taxpayers outside the scope of application of section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud

The following shall apply to contractual partners who have indicated in writing to the balance group coordinator that they do not fall within the scope of section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud.

a. Deliveries and other services against payment; the balance group coordinator delivers energy to the balance group manager (CLP):

i. In the event of a positive price (CLP), 20 per cent value added tax will be charged pursuant to section 3 of the Value Added Tax Act; In this case, value added tax is normally charged at a rate of 20 per cent, as secondary activity is not provided for in the Ordinance on combating value added tax fraud.

ii. In the event of a negative price (CLP), 20 per cent value added tax shall be charged pursuant to section 3 of the Value Added Tax Act; in this case, value added tax is normally charged at a rate of 20 per cent, as it is an “other service”.

b. Allocation (other service against payment), the balance group manager renders to the balance group coordinator:

i. In the event of a positive price, 20 per cent value added tax shall be charged (explanation: this is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act).

ii. In the event of a negative price, 20 per cent value added tax shall be charged (explanation: this is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act).

c. Deliveries and other services against payment; the balance group manager delivers energy to the balance group coordinator (CLP):

i. In the event of a positive price (CLP), zero per cent value added tax shall be charged; the “reverse charge” rule pursuant to section 19, paragraph 1d, of the Value Added Tax Act shall apply in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud; in this case, the recipient of the service (balance group coordinator) shall bear the tax liability (reverse charge);

ii. In the event of a negative price (CLP), 20 per cent value added tax shall be charged (explanation: this is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act).

d. Clearing fee pursuant to section 89 of the 2011 Gas Act (Federal Law Gazette 107/2011) in conjunction with the Natural Gas Clearing Fee Ordinance (Federal Law Gazette II No. 479/2012):

This is an “other service” and not a delivery in accordance with section 3a of the Value Added Tax Act.

8.4. 3. Non-resident taxpayers (explanation: contractual partners from other European Union countries and Switzerland do not fall within the scope of the Ordinance on combating value added tax fraud).

a. Supplies and other services against payment, balance group coordinator delivers energy to the balance group manager (CLP):

i. In the event of a positive price (CLP), zero per cent value added tax shall be charged; the “reverse charge” rule pursuant to section 19, paragraph 1c, of the Value Added Tax Act shall apply; If there is no permanent establishment in Austria, the tax liability shall be transferred to the recipient of the service.

ii. In the event of a negative price (CLP), zero per cent value added tax is charged and the “reverse charge” rule pursuant to section 3a, paragraphs 6 and 7, of the Value Added Tax Act applies (explanation: this is a “disposal service”, since this procurement of energy by the balance group manager also includes payment for the balance group manager – zero per cent reverse charge, since the recipient of the service has its registered office outside Austria).

b. Allocation (other service against payment), the balance group manager renders to the balance group coordinator:

i. In the event of a positive price (CLP), zero per cent value added tax is charged and the “reverse charge” rule pursuant to section 3, paragraphs 13 and 14, of the Value Added Tax Act applies (explanation: this is an “other service” and not a delivery of energy – zero per cent reverse charge, since the recipient of the service has its registered office outside Austria).

ii. In the event of a negative price, zero per cent value added tax is charged and the “reverse charge” rule pursuant to section 3a, paragraphs 6 and 7, of the Value Added Tax Act applies (explanation: this is an “other service” and not a delivery of energy – zero per cent reverse charge, since the recipient of the service has its registered office outside Austria).

c. Deliveries and other services against payment; the balance group manager delivers energy to the balance group coordinator (CLP):

i. In the event of a positive price (CLP), zero per cent value added tax shall be charged; the “reverse charge” rule pursuant to section 19, paragraph 1c, of the Value Added Tax Act shall

apply; If there is no permanent establishment in Austria, the tax liability shall also be transferred to the service recipient (balance group coordinator) and is to be charged at zero per cent.

ii. In the event of a negative price (CLP), zero per cent value added tax shall be charged; the “reverse charge” rule pursuant to section 3a, paragraphs 6 and 7, of the Value Added Tax Act shall apply; This particular case involves a “disposal service”, since this acceptance of the energy by the balance group coordinator also includes remuneration for the balance group coordinator, which is therefore offset at zero per cent reverse charge pursuant to section 3a, paragraphs 6 and 7, of the Value Added Tax Act.

d. Clearing fee pursuant to section 89 of the 2011 Gas Act (Federal Law Gazette 107/2011) in conjunction with the Natural Gas Clearing Fee Ordinance (Federal Law Gazette II No. 479/2012):

This is an “other service” and not a delivery of energy, therefore the reverse charge rule pursuant to section 3a, paragraphs 6 and 7, of the Value Added Tax Act shall apply.

8.5. Network operator billing

As a rule, it is assumed that network operators in Austria are covered by section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud; any deviation from this must be notified to the balance group coordinator by means of a written declaration by the network operator.

Network operators are therefore deemed to be tax residents with the application of section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud.

8.5. 1. Integrated network operator

The status of integrated network operator is deemed to exist if the supplier and network operator is the same legal entity and the main activity is therefore assumed (in this context, reference is made to the published letter from the association Österreichs E-Wirtschaft to the Federal Ministry of Finance dated 2 December 2013 regarding its interpretation of the Ordinance on combating value added tax fraud).

8.5. 2. Unbundled network operator

A network operator shall be deemed to be an unbundled network operator if the supplier and the network operator are independent/autonomous legal entities and the main activity is therefore assumed (in this context, reference is made to the published letter from the association Österreichs E-Wirtschaft to the Federal Ministry of Finance dated 2 December 2013 regarding its interpretation of the Ordinance on combating value added tax fraud).

8.5. 3. Network operator with special agreement not in accordance with section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud

If the network operator explicitly wishes to deviate from the above, this deviation must be notified to the balance group coordinator by means of a written declaration.

In this case, the network operator shall be deemed to be a tax resident outside the scope of application of section 1, in conjunction with section 2, point 2, of the Ordinance on combating value added tax fraud.

9 Transitional provisions

9.1. The present annex on billing and accounting, in its version 6.0, shall apply as from 1 January 2014, whereas the provisions of item 3 shall only apply as from 1 February 2014. With

regard to item 3, item 3 of version 5.0 of the annex on billing and accounting shall apply until 31 January 2014.

9.1. The provisions of item 8 shall only apply to transactions effected after 31 December 2013. In the event of a subsequent or, as applicable, final settlement, the statutory provisions applicable to such transactions shall also apply to transactions executed by 31 December 2013.