

**Act on granting priority to renewable energy sources**

**(Renewable Energy Sources Act – EEG)**

Gesetz für den Vorrang Erneuerbarer Energien

("Erneuerbare-Energien-Gesetz" – EEG)

Consolidated (non-binding) version of the Act  
in the version applicable as at 1 January 2012\*

**Amendments to existing legislation are highlighted in bold**

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\* Note: The following consolidated version is not binding. All liability for its accuracy is excluded. Only the version published in the Federal Law Gazette is binding. Please direct any comments by e-mail to [KIII4@bmu.bund.de](mailto:KIII4@bmu.bund.de).

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Part 1  
General provisions

Section 1  
Purpose

(1) The purpose of this Act is to facilitate a sustainable development of energy supply, particularly for the sake of protecting our climate and the environment, to reduce the costs of energy supply to the national economy, also by incorporating external long-term effects, to conserve fossil fuels and to promote the further development of technologies for the generation of electricity from renewable energy sources.

**(2) To achieve the purpose set out in subsection (1) above, this Act aims to increase the share of renewable energy sources in electricity supply to at least:**

- 1. 35 percent by no later than 2020;**
- 2. 50 percent by no later than 2030;**
- 3. 65 percent by no later than 2040; and**
- 4. 80 percent by no later than 2050;**

**and to integrate these quantities of electricity in the electricity supply system.**

**(3) The goal set forth in subsection (2) no. 1 above is also intended to increase the share of renewable energy sources in the total gross final consumption of energy to at least 18 percent by the year 2020.**

Section 2  
Scope of application

This Act regulates:

1. priority connection to the grid systems for general electricity supply of installations generating electricity from renewable energy sources and from mine gas within the territory of the Federal Republic of Germany, including its exclusive economic zone (territorial application of this Act);
2. **the priority purchase, transmission, distribution of and payment for such electricity by the grid system operators, also in relation to electricity from combined heat and power (CHP) generation, and including premiums for integrating this electricity in the electricity supply system; and**

3. **the nationwide equalisation scheme for the quantity of electricity purchased for which a tariff or premium has been paid.**

Section 3  
Definitions

Within the meaning of this Act:

1. "installation" shall mean any facility generating electricity from renewable energy sources or from mine gas. Installations generating electricity from renewable energy sources or from mine gas shall also mean all those facilities which receive energy which has been temporarily stored and originates exclusively from renewable energy sources or from mine gas and convert it into electricity;
2. "installation operator" shall mean anyone, irrespective of the issue of ownership, who uses the installation to generate electricity from renewable energy sources or from mine gas;
- 2a. **"rated average annual capacity" of an installation shall mean the ratio of the total kilowatt-hours generated in the calendar year in question to the total number of full hours for that calendar year less the number of full hours prior to the generation of the first electricity from renewable energy sources in the installation and after final decommissioning of the installation;**
- 2b. **"biogas" shall mean gas generated from the anaerobic fermentation of biomass;**
- 2c. **"biomethane" shall mean biogas or other gaseous biomass which has been processed and fed into the natural gas grid;**
- 2d. **"electricity supplier" shall mean any natural or legal person that delivers electricity to final consumers;**
3. "renewable energy sources" shall mean hydropower, including wave power, tidal power, salt gradient and flow energy, wind energy, solar radiation, geothermal energy, energy from biomass, including biogas, **biomethane**, landfill gas and sewage treatment gas, as well as the biodegradable fraction of municipal waste and industrial waste;
4. "generator" shall mean any technical facility converting mechanical, chemical, thermal or electromagnetic energy directly into electricity;
- 4a. **"business" shall mean a business operation of a commercial nature and scale, which participates in the general economy with the consistent intention of generating a profit;**
- 4b. **"manure" shall mean all substances classed as manure within the meaning of Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not**

**intended for human consumption and repealing Regulation (EC) No 1774/2002 (OJ L 300, 14.11.2009, p. 1), which was amended by Directive 2010/53/EU (OJ L 276, 20.10.2010, p. 33);**

- 4c. "guarantee of origin" shall mean an electronic document which has the sole function of providing proof to a final customer for the purpose of electricity labelling in accordance with section 42(1) no. 1 of the Energy Industry Act (Energiewirtschaftsgesetz) that a given share or quantity of electricity was produced from renewable energy sources;**
- 5. "commissioning" shall mean the first time the generator of an installation is put into operation, following the establishment of the installation's operational readiness, irrespective of whether the generator was put into operation using renewable energy sources, mine gas or other energy sources; replacing the generator or other technical or structural components after it was first commissioned shall not change the date of commissioning;**
- 5a. "CHP installation" shall mean a CHP installation within the meaning of section 3(2) of the Combined Heat and Power Act (Kraft-Wärme-Kopplungsgesetz);**
6. **"installed capacity" of an installation** shall mean the effective electrical capacity which the installation may technically produce during regular operation without time restrictions, irrespective of short-term deviations;
7. "grid system" shall mean all the interconnected technical facilities used for the purchase, transmission and distribution of electricity for general supply;
8. "grid system operators" shall mean the operators of grid systems of all voltages for general electricity supply;
9. "offshore installation" shall mean any wind-powered installation which has been erected **at sea** at least three nautical miles seawards from the shoreline. This shoreline shall be the shoreline as represented on map no. 2920, "Deutsche Nordseeküste und angrenzende Gewässer", 1994 edition, XII, as well as map no. 2921 "Deutsche Ostseeküste und angrenzende Gewässer", 1994 edition, XII, issued by the Federal Maritime and Hydrographic Agency (Bundesamt für Seeschifffahrt und Hydrographie) on a scale of 1:375,000\*;
- 9a. "storage gas" shall mean any gas that is not a renewable energy source, but is generated for the purpose of temporarily storing electricity generated from renewable energy sources using only electricity generated from renewable energy sources;**
- 10. "electricity from combined heat and power generation" shall mean electricity within the meaning of section 3(4) of the Combined Heat and Power Act;**

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\* Official information: This publication can be ordered from the Federal Maritime and Hydrographic Agency, 20359 Hamburg.



11. "transmission system operator" shall mean the system balancing grid operators of high-voltage and extra-high voltage grid systems which are used for the supraregional transmission of electricity to downstream grid systems;
12. "environmental verifier" shall mean any person or organisation entitled to act as an environmental verifier or environmental verification organisation in accordance with the Environmental Audit Act in the version promulgated on 4 September 2002 (Federal Law Gazette I p. 3490), as last amended by Article 11 of the Act of 17 March 2008 (Federal Law Gazette I p. 399), in the version currently in force;
13. **"enterprise" shall mean the smallest legally independent entity;**
14. **"manufacturing enterprise" shall mean any enterprise which, at the delivery point to be given preferential treatment, is to be classified under mining, quarrying or manufacturing according to Parts B and C of the German Classification of Economic Activities, edition 2008<sup>†</sup>, published by the Federal Statistical Office (Statistisches Bundesamt).**

Section 4  
Statutory obligations

(1) Grid system operators shall not make the fulfilment of their obligations arising from this Act conditional upon the conclusion of a contract.

**(2) Notwithstanding sections 8(3) and (3a), no deviations from this Act shall be permissible at the expense of the installation operator or the grid system operator. This shall not apply to contractual agreements deviating from sections 3 to 33i, 45, 46, 56 and 66 and from ordinances enacted pursuant to this Act which:**

1. **are the subject matter of a settlement within the meaning of section 794(1) no. 1 of the Code of Civil Procedure (Zivilprozeßordnung);**
2. **correspond with the outcome of proceedings conducted by one of the parties before the clearing house in accordance with section 57(3) first sentence no. 1;**
3. **correspond with an opinion issued by the clearing house for the parties in accordance with section 57(3) first sentence no.2; or**
4. **correspond with a decision of the Federal Network Agency (Bundesnetzagentur) in accordance with section 61.**

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<sup>†</sup> Official information: This publication can be ordered from the Federal Statistical Office, Gustav-Stresemann-Ring 11, 65189 Wiesbaden, and can also be ordered at [www.destatis.de](http://www.destatis.de).

Part 2  
Connection, purchase, transmission and distribution

Chapter 1  
General provisions

Section 5  
Connection

(1) Grid system operators shall immediately and as a priority connect installations generating electricity from renewable energy sources and from mine gas to that point in their grid system (grid connection point) which is suitable in terms of the voltage and which is at the shortest linear distance from the location of the installation if no other grid system has a technically and economically more favourable grid connection point. In the case of one or several installations with a total maximum **installed capacity** of 30 kilowatts located on a plot of land which already has a connection to the grid system, the grid connection point of this plot shall be deemed to be its most suitable connection point.

(2) Installation operators shall be entitled to choose another grid connection point in this grid system or in another grid system which is suitable with regard to the voltage.

(3) In derogation of subsections (1) and (2) above, the grid system operator shall be entitled to assign the installation a different grid connection point. This shall not apply where the purchase of electricity from the installation concerned would not be guaranteed in accordance with section 8(1).

(4) The obligation to connect the installation to the grid system shall also apply where the purchase of the electricity is only made possible by optimising, strengthening or expanding the grid system in accordance with section 9.

**(5) Grid system operators shall, without delay after receiving a grid system connection request, provide those interested in feeding in electricity with a precise timetable for processing the grid system connection request. This timetable shall state:**

- 1. the procedural steps involved in processing the grid system connection request; and**
- 2. the information those interested in feeding in electricity are required to transmit from their field of responsibility to the grid system operators to enable the grid system operators to determine the grid connection point or conduct planning in accordance with section 9.**

**(6) Grid system operators shall, without delay after receiving the necessary information, but within no more than eight weeks, provide the following to those interested in feeding in electricity:**

1. a timetable for immediately establishing the grid connection, including all the necessary procedural steps;
2. all information required by those interested in feeding in electricity in order to test the grid connection point and, upon request, the grid system data required to test grid compatibility;
3. a comprehensible and detailed estimate of the costs likely to be incurred by the installation operators by virtue of the grid connection; this cost estimate shall only include the costs associated with technically establishing the grid connection and, in particular, shall not include the costs of obtaining permission to use plots of land owned by third parties to enable grid connection cables to be laid.

The right of installation operators under section 7(1) shall remain unaffected even if the grid system operator has provided a cost estimate in accordance with the first sentence no. 3 above.

## Section 6 Technical requirements

(1) Installation operators and operators of CHP installations shall provide installations with an installed capacity exceeding 100 kilowatts with technical facilities with which the grid system operator can, at any time:

1. reduce output by remote means in the event of grid overload; and
2. call up the current electricity feed-in at any given point in time.

(2) Operators of installations generating electricity from solar radiation:

1. with an installed capacity between 30 kilowatts and 100 kilowatts shall fulfil the obligation pursuant to subsection (1) no. 1 above;
2. with a maximum installed capacity of 30 kilowatts shall:
  - a) fulfil the obligation pursuant to subsection (1) no. 1 above; or
  - b) limit the maximum effective capacity fed in at the grid connection point with the grid system to 70 percent of the installed capacity.

(3) Several installations generating electricity from solar radiation shall be classified as one installation, notwithstanding ownership, and solely for the purpose of determining the installed capacity within the meaning of subsections (1) and (2) above where:

1. they are located on the same plot of land or are otherwise in direct spatial proximity; and
2. they were commissioned within a period of 12 consecutive calendar months.

If an installation operator becomes subject to an obligation pursuant to subsections (1) and (2) above only as a result of the addition of another installation operator's installations, such installation operator may claim compensation from the other installation operator for the resulting costs.

(4) Operators of installations generating electricity from biogas shall ensure that, when generating the biogas:

1. a new digestate storage facility to be constructed at the site of biogas generation is gas proof, and the average hydraulic retention time in a gas-tight system (digesters and digestate storage facility) connected to a gas utilization device is at least 150 days; and
2. an additional gas utilization device is used to avoid any escape of biogas.

The requirement under the first sentence no. 1 above shall not apply if solely manure within the meaning of section 2 first sentence no. 4 of the German Fertilizer Act ( DüngeG) is used to produce the biogas.

(5) Operators of wind-powered installations shall ensure that the requirements of the System Services Ordinance (Systemdienstleistungsverordnung) are fulfilled at the grid connection point with the grid system.

(6) Section 17(1) shall govern the legal consequences of contraventions of subsections (1), (2), (4) or (5) above in cases involving installations whose electricity generation gives rise to a entitlement to tariff payment on the merits under section 16. In the case of other installations, the installation operators' entitlement to priority purchase, transmission and distribution under section 8 shall lapse for the duration of the contravention of subsection (1), (2), (4) or (5) above; in such cases, operators of CHP installations forfeit their entitlement to the supplementary payment under section 4(3) of the Combined Heat and Power Generation Act or, if they have no such entitlement, their entitlement to priority grid access under section 4(4) of the Combined Heat and Power Act.

## Section 7

### Establishment and use of connection

(1) Installation operators shall be entitled to commission the grid system operator or a qualified third party with connecting the installations as well as with establishing and operating the metering devices, including the taking of measurements. **Sections 21b to 21h of the Energy Industry Act and ordinances enacted pursuant to section 21i of the Energy Industry Act shall govern the operation of measuring stations and the taking of measurements.**

(2) Implementation of this connection and the other installations required for the safety of the grid system shall meet the technical requirements of the grid system operator in a given case as well as section 49 of the Energy Industry Act of 7 July 2005 (Federal Law Gazette I p. 1970, 3621), as last amended by Article 2 of the Act of 18 December 2007 (Federal Law Gazette I p. 2966).

(3) Where electricity from renewable energy sources or from mine gas is fed into the grid system, section 18(2) of the Low-Voltage Connection Ordinance (Niederspannungsanschlussverordnung) of 1 November 2006 (Federal Law Gazette I p. 2477) shall apply mutatis mutandis in favour of the installation operator.

## Section 8

### Purchase, transmission and distribution

(1) Subject to section 11, grid system operators shall immediately and as a priority purchase, transmit and distribute the entire available quantity of electricity from renewable energy sources and from mine gas. **The obligation pursuant to the first sentence above and the obligations pursuant to section 4(1) first sentence and (4) second sentence of the Combined Heat and Power Act shall have the same priority.**

(2) The obligations pursuant to subsection (1) above shall also apply if the installation is connected to the grid system of the installation operator or of a third party who is not a grid system operator within the meaning of section 3 no. 8 and the electricity is delivered via this grid system to a grid system within the meaning of section 3 no. 7 for commercial and accounting purposes.

(3) The obligations pursuant to subsection (1) above shall not apply where installation operators and grid system operators, notwithstanding section 12, agree by contract to deviate, **by way of exception**, from this priority purchase in order to better integrate the installation into the grid system.

**(3a) The obligations pursuant to subsection (1) above shall not apply where installation operators and grid system operators agree by contract to deviate, by way of exception, from this priority purchase, and this is permitted pursuant to the Equalisation Scheme Ordinance (Ausgleichsmechanismusverordnung).**

(4) In the relationship to the purchasing grid system operator who is not the transmission system operator, the obligations in respect of priority purchase, transmission and distribution refer to:

1. the upstream transmission system operator;
2. the nearest domestic transmission system operator if there is no domestic transmission grid system in the area serviced by the grid operator entitled to sell the electricity; or
3. particularly in the case of delivery in accordance with subsection (2) above, any other grid system operator.

Chapter 2  
Capacity expansion and feed-in management

Section 9  
Grid capacity expansion

(1) Upon the request of those interested in feeding in electricity, grid system operators shall immediately optimise, strengthen and expand their grid systems in accordance with the best available technology in order to guarantee the purchase, transmission and distribution of the electricity generated from renewable energy sources or from mine gas. **This entitlement also exists as against grid system operators to whose grid system the installation is not directly connected, provided it is an upstream grid system with a maximum voltage of 110 kilovolts and this is necessary in order to guarantee the purchase, transmission and distribution of the electricity.**

(2) This obligation shall apply to all technical facilities required for operating the grid system and to all connecting installations which are owned by or passing into the ownership of the grid system operator.

(3) The grid system operator shall not be obliged to optimise, strengthen or expand his grid system if this is economically unreasonable.

(4) The obligations pursuant to section 4(6) of the Combined Heat and Power Act and pursuant to section 12(3) of the Energy Industry Act shall remain unaffected.

Section 10  
Compensation

(1) In the event that the grid system operator violates his obligations under section 9(1), those interested in feeding in electricity may demand compensation for the damage incurred. The liability to pay compensation shall not apply if the grid system operator was not responsible for the violation of the obligation.

(2) Where there are facts to substantiate the assumption that the grid system operator did not fulfil his obligation under section 9(1), installation operators may require the grid system operator to submit information concerning whether and to what extent the grid system operator did not meet his obligation to optimise, strengthen and expand his grid system. This information may be withheld if it is not necessary in order to establish whether the entitlement in accordance with subsection (1) above exists.

**Section 11**  
**Feed-in management**

**(1) Notwithstanding their obligation in accordance with section 9, grid system operators shall be entitled, by way of exception, to assume technical control over installations and CHP installations connected directly or indirectly to their grid system which have a facility to reduce output by remote means in the event of grid overload within the meaning of section 6(1) no. 1, (2) no. 1 or no. 2(a) where:**

- 1. a grid bottleneck would otherwise arise in the respective grid system area, including the upstream grid;**
- 2. priority is given to electricity generated from renewable energy sources, mine gas and combined heat and power generation, unless other installations generating electricity must remain connected to the grid system in order to guarantee the safety and reliability of the electricity supply system; and**
- 3. they have called up the available data on the current feed-in situation in the relevant region of the grid system.**

**When assuming technical control over installations in accordance with the first sentence above, control shall not be assumed over installations within the meaning of section 6(2) until after control is assumed over the other installations. Grid system operators shall otherwise ensure that the largest possible quantity of electricity from renewable energy sources and from combined heat and power generation is being purchased.**

**(2) Grid system operators shall notify operators of installations as referred to in section 6(1) no later than the day before, but otherwise without delay, of the expected date, scope and duration of the assumption of technical control, provided it is foreseeable that such measure will be taken.**

**(3) Grid system operators shall, without delay, notify the parties affected by measures pursuant to subsection (1) of the actual dates, the respective scope, duration and reasons for the assumption of technical control, and, upon request, provide verification within four weeks of the need for the measure. The verification must enable a qualified third party to fully understand the need for the measure without any additional information; in the event of a request pursuant to the last half-sentence of the first sentence above, particularly the data ascertained in accordance with subsection (1) first sentence no. 3 above shall serve that purpose. In derogation of the first sentence above, grid system operators may notify the operators of installations in accordance with section 6(2) in conjunction with subsection (3) once a year only of the measures taken pursuant to subsection (1) above, as long as the total duration of such measures did not exceed 15 hours per installation in the calendar year; such notice must be given by 31 January of the following year. Section 13(5) third sentence of the Energy Industry Act shall remain unaffected.**

Section 12  
Hardship clause

**(1) If the feed-in of electricity from installations generating electricity from renewable energy sources, mine gas or combined heat and power generation is reduced as a result of a grid bottleneck within the meaning of section 11(1), the operators affected by the measure shall, in derogation of section 13(4) of the Energy Industry Act, be compensated for 95 percent of their lost income as well as for additional expenses, but less any expenses saved. If the lost income under the first sentence above exceeds, in a single year, 1 percent of the income for that year, the operators affected by the assumption of technical control shall be compensated for 100 percent of their lost income from that date . The grid system operator whose grid system gives rise to the need for the assumption of technical control under section 11 shall be liable for the costs of the compensation. Such grid system operator and the grid system operator whose grid system is connected to the installation shall be jointly and severally liable to the operators affected.**

(2) The grid system operator may, when determining the charges for use of the grid system, add any charges arising on account of subsection (1) above if the measure was necessary and he bears no responsibility for it. The grid system operator shall, in particular, bear responsibility if he did not exhaust all the options for optimising, strengthening and expanding the grid system.

(3) Claims for compensation made by installation operators against the grid system operator shall remain unaffected.

Chapter 3  
Costs

Section 13  
Grid connection

(1) The costs associated with connecting installations generating electricity from renewable energy sources or from mine gas to the grid connection point as defined under section 5(1) or (2) and with installing the necessary metering devices for recording the quantity of electricity transmitted and received shall be borne by the installation operator.

(2) If the grid system operator assigns the installations a different grid connection point in accordance with section 5(3), he shall bear the resulting incremental costs.



Section 14  
Capacity expansion

The grid system operator shall bear the costs of optimising, strengthening and expanding the grid system.

Section 15  
Contractual agreement

(1) When determining the charges for use of the grid system, grid system operators may take account of any costs incurred in accordance with a contractual agreement pursuant to section 8(3), **provided that such costs are economically reasonable having regard to section 1.**

(2) These costs shall be subject to an examination of efficiency by the regulatory authority pursuant to the provisions of the Energy Industry Act.

Part 3  
**Feed-in tariffs**

Chapter 1  
General provisions regarding tariffs

Section 16  
Entitlement to tariff payments

**(1) Grid system operators shall pay installation operators tariffs at least pursuant to sections 18 to 33 for electricity generated in installations exclusively utilising renewable energy sources or mine gas. This shall apply only to electricity that is actually purchased in accordance with section 8 or used in accordance with section 33(2). Monthly advance payments of an appropriate amount shall be made for the anticipated payments.**

**(2) The obligation pursuant to subsection (1) above shall also apply where the electricity was temporarily stored prior to being fed into the grid system. In such cases, the obligation shall apply to the quantity of electricity that is fed into the grid system from the temporary store. The amount of the tariff shall be determined based on the amount of the tariff that the grid system operator would be required to pay to the installation operator in accordance with subsection (1) above if the electricity were fed into the grid system without being temporarily stored. The obligation pursuant to the first sentence above shall also apply where a mixture of renewable energy sources and storage gases are used. Sentence 1 above shall not apply to electricity generated from solar radiation if a tariff has been claimed for this electricity in accordance with section 33(2).**

**(3) Installation operators who assert the entitlement to tariff payments in accordance with subsection (1) above for electricity from an installation shall, from that time, put at the disposal of the grid system operator the entire electricity generated in that installation:**

- 1. for which a entitlement to tariff payment exists on the merits under subsection (1) above;**
- 2. which the installation operator himself or third parties in the immediate vicinity of the installation are not using; and**
- 3. which is transmitted via a grid system;**

**and they may not sell the electricity generated in the installation as balancing energy.**

### **Section 17**

#### **Reduction in entitlement to tariff payment**

**(1) Entitlement to tariff payment under section 16 shall be reduced to zero for as long as installation operators contravene section 6(1), (2), (4) or (5).**

**(2) Entitlement to tariff payment under section 16 shall be reduced to the actual monthly average of the market value of the specific energy source in accordance with no. 1.1 of Annex 4 to this Act ("MW"):**

- 1. for as long as operators of installations generating electricity from solar radiation have not given notice of the location and the installed capacity of the installation to:**
  - a) the Federal Network Agency by means of the forms provided by it; or**
  - b) a third party who, in derogation of (a) above, is under an obligation by virtue of an ordinance enacted pursuant to section 64e no. 2 to maintain a Register of Installations, or who has been nominated in any such ordinance as the addressee for notices under that ordinance;**
- 2. for as long as, in the event that a general Register of Installations has been established, installation operators have not applied for registration of their installation in the Register of Installations in accordance with any ordinance enacted pursuant to section 64e;**
- 3. for as long as installation operators contravene section 16(3), however at least for the duration of the entire calendar month in which any such contravention occurs, and provided they have put the electricity at the disposal of the grid system operator; or**
- 4. where the erection or operation of the installation is intended to fulfil the function of a model public building pursuant to provisions of Land legislation in accordance with section 3(4) no. 1 of the Renewable Energies Heat Act (Erneuerbare-Energien-Wärmegesetz), and provided the installation is not a CHP installation.**

**(3) The entitlement to tariff payment under section 16 shall also be reduced to the actual monthly average of the market value of the specific energy source in accordance with no. 1.1 of Annex 4 to this Act ("MW") where installation operators who have sold their electricity directly have not notified the grid system operator of the change in tariff under section 16 in accordance with section 33d(2) in conjunction with section 33d(1) no. 3 and (4). The first sentence above shall apply until the end of the third calendar month following the end of direct selling.**

### **Section 18 Calculation of tariffs**

**(1) The amount of the tariffs paid for electricity depending on the rated average annual capacity or the installed capacity of the installation shall be determined, in relation to the threshold value to be applied in each case:**

- 1. according to the share of the rated average annual capacity of the installation where sections 23 to 28 apply; and**
- 2. according to the share of the installed capacity of the installation where section 33 applies.**

**(2) The tariffs shall not include value-added tax.**

### **Section 19 Tariffs paid for electricity from several installations**

**(1) Several installations shall be classified as one installation, notwithstanding ownership, and solely for the purpose of determining the tariff to be paid for the latest generator commissioned where:**

- 1. they are located on the same plot of land or are otherwise in the immediate vicinity;**
- 2. they generate electricity from the same kind of renewable energy source;**
- 3. the electricity generated in them is paid for in accordance with the provisions of this Act depending on the **rated average annual capacity or installed capacity** of the installation; and**
- 4. they were commissioned within a period of twelve consecutive calendar months.**

**In derogation of the first sentence, several installations shall be classified as one installation, notwithstanding ownership, and solely for the purpose of determining the tariff to be paid for the latest generator commissioned where they generate electricity from biogas, except biomethane, and the biogas originates from the same installation generating biogas.**

(2) Installation operators may bill electricity produced by several generators using the same kind of renewable energy source **or mine gas** via a shared metering device. In such cases the **rated average annual capacity** of each individual installation shall be relevant to the calculation of the tariffs, subject to subsection (1) above.

(3) If electricity from several wind-powered installations to which different tariffs are applicable is billed via a shared metering device, the quantities of electricity shall be attributed to the wind-powered installations in proportion to their reference yields.

## **Section 20**

### **Reductions in tariffs and bonuses**

(1) **Tariffs and bonuses in accordance with sections 23 to 31 shall apply, notwithstanding section 66, to electricity from installations commissioned prior to 1 January 2013. They shall also apply to electricity from installations commissioned after 31 December 2012, subject to the proviso that the tariffs and bonuses shall be reduced in accordance with subsections (2) and (3) below. The tariffs and bonuses calculated as of the respective date of commissioning shall apply for the entire period in which tariffs are paid in accordance with section 21(2).**

(2) **The tariffs and bonuses shall decrease by the following percentages on 1 January each year for electricity generated from:**

- 1. hydropower (section 23) from the year 2013 onwards: 1.0 percent;**
- 2. landfill gas (sections 24 and 27c(2)) from the year 2013 onwards: 1.5 percent;**
- 3. sewage treatment gas (sections 25 and 27c(2)) from the year 2013 onwards: 1.5 percent;**
- 4. mine gas (section 26) from the year 2013 onwards: 1.5 percent;**
- 5. biomass (section 27(1), sections 27a, 27b and 27c(2)) from the year 2013 onwards: 2.0 percent;**
- 6. geothermal energy (section 28) from the year 2018 onwards: 5.0 percent;**
- 7. wind energy:**
  - a) from offshore installations (section 31) from the year 2018 onwards: 7.0 percent; and**
  - b) from other installations (section 29) from the year 2013 onwards: 1.5 percent.**

(3) **The annual tariffs and bonuses shall be rounded to two decimal places after being calculated in accordance with subsections (1) and (2) above. The amount of the tariffs and bonuses for the following calendar year shall be calculated based on the unrounded figures from the previous year.**

## Section 20a

### Reduction in tariffs paid for electricity generated from solar radiation

(1) The tariffs under sections 32 and 33 shall be reduced for electricity from installations commissioned after 31 December 2011 in accordance with subsections (2) to (7) below.

(2) Subject to subsections (3) and (4) below, the tariffs under sections 32 and 33 shall be reduced on 1 January each year from the year 2012 onwards by 9.0 percent relative to the tariff rates applicable on 1 January of the previous year.

(3) The percentage under subsection (2) above shall increase by the following percentage points from the year 2012 onwards as soon as the installed capacity of the installations registered within the twelve months before 30 September of the previous year in accordance with section 17(2) no. 1 exceeds:

1. 3,500 megawatts: 3.0 percentage points;
2. 4,500 megawatts: 6.0 percentage points;
3. 5,500 megawatts: 9.0 percentage points;
4. 6,500 megawatts: 12.0 percentage points; or
5. 7,500 megawatts: 15.0 percentage points.

(4) The percentage under subsection (2) above shall decrease by the following percentage points from the year 2012 onwards as soon as the installed capacity of the installations registered within the twelve months before 30 September of the previous year in accordance with section 17(2) no. 1 falls below:

1. 2,500 megawatts: 2.5 percentage points;
2. 2,000 megawatts: 5.0 percentage points; or
3. 1,500 megawatts: 7.5 percentage points.

(5) The tariffs under sections 32 and 33 shall also decrease by the following percentages from the year 2012 onwards relative to the tariff rates applicable on 1 January of each previous year for electricity from installations commissioned after 30 June of the current year and prior to 1 January of the following year where the installed capacity of the installations registered after 30 September of the previous year and before 1 May of the current year in accordance with section 17(2) no. 1 multiplied by a factor of 12 and divided by a factor of 7 exceeds:

1. 3,500 megawatts: 3.0 percentage points;
2. 4,500 megawatts: 6.0 percentage points;
3. 5,500 megawatts: 9.0 percentage points;
4. 6,500 megawatts: 12.0 percentage points; or

**5. 7,500 megawatts: 15.0 percentage points.**

**(6) The Federal Network Agency, in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit) and the Federal Ministry of Economics and Technology (Bundesministerium für Wirtschaft und Technologie), shall publish in the Federal Gazette:**

- 1. on 31 October of each year the percentages applicable for the following year in accordance with subsections (3) and (4) in conjunction with subsection (2) above as well as the resulting tariffs, which shall apply from 1 January of the following year onwards;**
- 2. on 30 May of each year the percentage calculated in accordance with subsection (5) above as well as the resulting tariffs, which shall apply from 1 July of the current year onwards.**

**(7) Section 20(1) third sentence and (3) shall apply mutatis mutandis to subsections (1) to (5) above.**

## **Section 21**

### **Commencement and duration of tariff payment**

**(1) The tariffs shall be paid from the time when the generator first produces electricity exclusively from renewable energy sources or from mine gas and has fed this electricity into the grid system in accordance with section 8(1) or (2) or the electricity was first used in accordance with section 33(2).**

**(2) The tariffs shall each be paid for a period of 20 calendar years, as well as for the year in which the installation was commissioned. The period under the first sentence above shall commence when the generator is commissioned, unless the following provisions provide otherwise.**

## **Section 22**

### **Setting off entitlement to tariff payment**

**(1) The set-off of entitlement to tariff payment by the installation operator in accordance with section 16 against a claim by a grid system operator shall only be permissible where the claim is undisputed or has been legally established.**

**(2) The prohibition of setting off such claims under section 23(3) of the Low-Voltage Connection Ordinance shall not apply where a set-off against claims arising from this Act takes place.**

Chapter 2  
Special provisions regarding tariffs

Section 23  
Hydropower

**(1) The tariff paid for electricity generated from hydropower shall amount to:**

- 1. 12.7 cents per kilowatt-hour for the first 500 kilowatts of the rated average annual capacity;**
- 2. 8.3 cents per kilowatt-hour for the rated average annual capacity between 500 kilowatts and 2 megawatts;**
- 3. 6.3 cents per kilowatt-hour for the rated average annual capacity between 2 and 5 megawatts;**
- 4. 5.5 cents per kilowatt-hour for the rated average annual capacity between 5 and 10 megawatts;**
- 5. 5.3 cents per kilowatt-hour for the rated average annual capacity between 10 and 20 megawatts;**
- 6. 4.2 cents per kilowatt-hour for the rated average annual capacity between 20 and 50 megawatts;**
- 7. 3.4 cents per kilowatt-hour for the rated average annual capacity of over 50 megawatts.**

**(2) The entitlement to tariff payment in accordance with subsection (1) above shall also apply to electricity from installations commissioned prior to 1 January 2009 if, after 31 December 2011:**

- 1. the installed capacity or potential capacity of the installation was increased; or**
- 2. the installation was first retrofitted with a technical facility to reduce output by remote means in accordance with section 6(1) no. 1.**

**The entitlement to tariff payment in accordance with the first sentence above shall apply for a period of 20 years from the time the measure is completed, as well as for the remainder of the year in which the measure referred to in the first sentence above was completed.**

**(3) For electricity generated in hydroelectric power installations in accordance with subsection (2) above with an installed capacity of over 5 megawatts, the entitlement to tariff payment in accordance with subsection (1) above shall only apply to the electricity which can be ascribed to the increase in capacity referred to in subsection (2) first sentence no. 1 above.**

Where the installation had a maximum installed capacity of 5 megawatts prior to 1 January 2012, the entitlement to tariff payment in accordance with the previously applicable provision shall apply to the electricity which can be ascribed to that share of the capacity.

**(4) The entitlement to tariff payment in accordance with subsections (1) and (2) above shall apply to installations on surface waters only if the use of hydropower complies with the requirements of sections 33 to 35 and 6(1) first sentence nos. 1 and 2 of the Federal Water Act (Wasserhaushaltsgesetz). The authorisation for use of hydropower shall be deemed proof of fulfilment of the conditions under the first sentence above for installations in accordance with subsection (1) above and, where a new authorisation for the use of hydropower is issued in connection with the measures referred to in subsection (2) above, for installations in accordance with subsection (2) above. Fulfilment of the conditions under the first sentence above may otherwise be verified as follows:**

- 1. by a certification from the competent water authority; or**
- 2. by a technical expert opinion from an environmental verifier who is accredited in the field of electricity generation from hydropower, which must be confirmed by the competent water authority; confirmation shall be deemed given if the authority fails to comment within two months after the technical expert opinion was presented; such confirmation may only be refused if the authority has serious doubts about the accuracy of the technical expert opinion.**

**(5) The entitlement to tariff payment in accordance with subsection (1) above shall, furthermore, only apply where the installation was erected:**

- 1. in the spatial context of an existing barrage weir or dam which wholly or partly existed before or was newly built primarily for purposes other than the generation of electricity from hydropower; or**
- 2. without complete weir coverage.**

**(6) The entitlement to tariff payment in accordance with subsection (1) above shall apply in the case of storage power installations only if they were erected at the site of an existing store or an existing storage power installation.**

Section 24  
Landfill gas

**The tariff paid for electricity generated from landfill gas shall amount to:**

- 1. 8.60 cents per kilowatt-hour for the first 500 kilowatts of the rated average annual capacity; and**



2. **5.89 cents per kilowatt-hour for the rated average annual capacity between 500 kilowatts and 5 megawatts.**

Section 25  
Sewage treatment gas

**The tariff paid for electricity generated from sewage treatment gas shall amount to:**

1. **6.79 cents per kilowatt-hour for the first 500 kilowatts of the rated average annual capacity; and**
2. **5.89 cents per kilowatt-hour for the rated average annual capacity between 500 kilowatts and 5 megawatts.**

Section 26  
Mine gas

**(1) The tariff paid for electricity generated from mine gas shall amount to:**

1. **6.84 cents per kilowatt-hour for the first 1 megawatt of the rated average annual capacity;**
2. **4.93 cents per kilowatt-hour for the rated average annual capacity between 1 and 5 megawatts; and**
3. **3.98 cents per kilowatt-hour for the rated average annual capacity of over 5 megawatts.**

(2) The obligation to pay a tariff shall only apply where the mine gas derives from active or abandoned mines.

Section 27  
Biomass

(1) The tariff paid for electricity generated from biomass within the meaning of the Biomass Ordinance (**Biomasseverordnung**) shall amount to:

1. **14.3 cents per kilowatt-hour for the first 150 kilowatts of the rated average annual capacity;**
2. **12.3 cents per kilowatt-hour for the rated average annual capacity between 150 and 500 kilowatts;**
3. **11.0 cents per kilowatt-hour for the rated average annual capacity between 500 kilowatts and 5 megawatts; and**

4. **6.0 cents per kilowatt-hour for the rated average annual capacity between 5 and 20 megawatts.**

Those quantities of vegetable oil methyl ester required as start-up, priming and supporting fuel shall be deemed to be biomass.

**(2) The tariff pursuant to subsection (1) shall increase:**

1. **where the electricity is generated from substances listed in Annex 2 to the Biomass Ordinance (substance tariff class I) in accordance with the energy yield table set forth therein:**
  - a) **by 6.0 cents per kilowatt-hour for the first 500 kilowatts of the rated average annual capacity;**
  - b) **by 5.0 cents per kilowatt-hour for the rated average annual capacity between 500 and 750 kilowatts; and**
  - c) **by 4.0 cents per kilowatt-hour for the rated average annual capacity between 750 kilowatts and 5 megawatts; or**
  - d) **in the case of electricity generated from bark or forest waste wood, by 2.5 cents per kilowatt hour in each case for the first 5 megawatts of the rated average annual capacity, in derogation of (b) and (c) above;**
2. **where the electricity is generated from substances listed in Annex 3 to the Biomass Ordinance (substance tariff class II) in accordance with the energy yield table set forth therein:**
  - a) **by 8.0 cents per kilowatt-hour for the first 5 megawatts of the rated average annual capacity; or**
  - b) **in the case of electricity generated from manure within the meaning of nos. 3, 9, 11 to 15 of Annex 3 to the Biomass Ordinance, in derogation of (a) above:**
    - aa) **by 8.0 cents per kilowatt-hour for the first 500 kilowatts of the rated average annual capacity; and**
    - bb) **by 6.0 cents per kilowatt-hour for the rated average annual capacity between 500 kilowatts and 5 megawatts.**

**(3) For electricity from installations utilising biogas that are commissioned after 31 December 2013, subsections (1) and (2) above shall only apply if the installed capacity of the installation does not exceed 750 kilowatts.**

**(4) The entitlement to tariff payment in the amounts set forth in subsections (1) and (2) above shall only apply if and while:**

1. at least:
  - a) 25 percent by the end of the first calendar year following the first-time generation of electricity in the installation; and thereafter

- b) 60 percent;

of the electricity generated in the installation in the respective calendar year is from combined heat and power generation in accordance with Annex 2 to this Act; where the electricity is generated from biogas, heat equivalent to 25 percentage points of the electricity from combined heat and power generation shall be credited towards heating the fermenter; or

2. the electricity is generated in installations utilising biogas and, on average, the share of manure used to generate the biogas in the respective calendar year is at least 60 mass percent.

(5) The entitlement to tariff payment in the amounts set forth in subsections (1) and (2) above shall, furthermore, only apply insofar as the installation operator provides proof of which type of biomass is being used by presenting a copy of a record of the substances used with details and documentation of the type, quantity, unit and origin of the substances used, and provides proof that no other substances are used, and for electricity:

1. from installations utilising biogas, only insofar as the share of maize (whole crop) and cereal grain kernels, including corn-cob mixes and grain maize as well as ground ear maize in each calendar year totals no more than 60 mass percent;
2. from installations utilising biomethane in accordance with section 27c(1), only insofar as, in derogation of subsection (4) above, the electricity derives from combined heat and power generation in accordance with Annex 2 to this Act;
3. from installations utilising liquid biomass, only for the share of electricity generated from liquid biomass which is required as start-up, priming and supporting fuel; liquid biomass shall mean biomass that is in liquid form when it is introduced to the combustion chamber.

(6) Upon claiming a tariff for the first time in accordance with section 16, and thereafter annually by 28 February of each year, proof of the following shall be provided for the previous calendar year:

1. fulfilment of the conditions under subsection (2) above for the previous calendar year by presenting a technical expert opinion from an environmental verifier who is accredited in the field of electricity generation from renewable energy sources;
2. fulfilment of the conditions under subsection (4) no. 1 above in accordance with no. 2 of Annex 2 to this Act;

3. fulfilment of the conditions under subsection (4) no. 2 above by presenting a technical expert opinion from an environmental verifier who is accredited in the field of electricity generation from renewable energy sources;
4. fulfilment of the conditions under subsection (5) no. 1 above and the share of electricity generated from liquid biomass in accordance with subsection (5) no. 3 above for the previous calendar year by presenting a copy of a record of the substances used;
5. fulfilment of the conditions under subsection (5) no. 2 above in accordance with no. 2 of Annex 2 to this Act.

(7) The entitlement to tariff payment in accordance with subsections (1) and (2) above shall decrease in total in the respective calendar year to the actual monthly average of hour contracts on the spot market of the EPEX Spot SE energy exchange in Leipzig if compliance with the conditions under subsections (4) and (5) above is not verified. In derogation of the first sentence above, the entitlement to tariff payment in accordance with subsection (1) above shall decrease after the end of the fifth calendar year following the first-time assertion of a entitlement to tariff payment under section 16 to 80 percent of the tariff for each subsequent calendar year for which fulfilment of the conditions under subsection (4) above is not verified, provided compliance with all other necessary conditions is verified.

(8) Where the entitlement to tariff payment is required to be verified in accordance with subsection (5) or (6) above by presenting a copy of a record of the substances used, the installation operator shall black out the personal information in the record of substances used that is not necessary for verifying the entitlement.

#### **Section 27a**

##### **Fermentation of biowaste**

(1) The tariff paid for electricity from installations utilising biogas which is generated from the anaerobic fermentation of biomass within the meaning of the Biomass Ordinance, where the share of separately collected biowaste within the meaning of waste codes 20 02 01, 20 03 01 and 20 03 02 of no. 1 of Annex 1 to the Biowaste Ordinance (Bioabfallverordnung) in the respective calendar year is, on average, at least 90 mass percent, shall amount to:

1. 16.0 cents per kilowatt-hour for the first 500 kilowatts of the rated average annual capacity; and
2. 14.0 cents per kilowatt-hour for the rated average annual capacity between 500 kilowatts and 20 megawatts.

(2) For electricity from installations that are commissioned after 31 December 2013, subsection (1) above shall only apply if the installed capacity of the installation does not exceed 750 kilowatts.

**(3) The entitlement to tariff payment in accordance with subsection (1) above shall only exist if the installations for the anaerobic fermentation of the biowaste are directly linked to a final composting facility for solid fermentation residues and the composted material is recovered.**

**(4) Notwithstanding section 27c(2), the tariff pursuant to subsection (1) above may not be combined with a tariff pursuant to section 27.**

**(5) The following applies mutatis mutandis for the purpose of section 27a:**

- 1. the obligation to furnish proof of which type of biomass is being used and that no other substances are being used by presenting a copy of a record of the substances used in accordance with section 27(5);**
- 2. section 27(5) nos. 2 and 3, including the proof requirements under subsection (6) nos. 4 and 5;**
- 3. section 27(7) first sentence with regard to the legal consequences if fulfilment of the conditions for payment of a tariff under section 27a is not verified; and**
- 4. section 27(8).**

#### **Section 27b Fermentation of manure**

**(1) The tariff paid for electricity from installations utilising biogas which is generated from the anaerobic fermentation of biomass within the meaning of the Biomass Ordinance shall amount to 25.0 cents per kilowatt hour where:**

- 1. the electricity is generated on the site of the biogas generation installation;**
- 2. the total installed capacity at the site of the biogas generation installation does not exceed 75 kilowatts; and**
- 3. the share of manure within the meaning of nos. 9 and 11 to 15 of Annex 3 to the Biomass Ordinance used to generate the biogas in the respective calendar year is, on average, at least 80 mass percent.**

**(2) The tariff pursuant to subsection (1) above may not be combined with a tariff pursuant to section 27.**

**(3) The following applies mutatis mutandis for the purpose of section 27b:**

- 1. the obligation to furnish proof of which type of biomass is being used and that no other substances are being used by presenting a copy of a record of the substances used in accordance with section 27(5);**

2. section 27(5) no. 3, including the proof requirement under subsection (6) no. 4;
3. section 27(7) first sentence with regard to the legal consequences if fulfilment of the conditions for payment of a tariff under section 27b is not verified; and
4. section 27(8).

#### Section 27c

##### Common provisions regarding gaseous energy sources

**(1) Gas withdrawn from a natural gas network shall be deemed to be landfill gas, sewage treatment gas, mine gas, biomethane or storage gas:**

1. where the thermal equivalent of the withdrawn quantity of such gas at the end of a calendar year corresponds to the thermal equivalent of the quantity of landfill gas, sewage treatment gas, mine gas, biomethane or storage gas fed into the natural gas network elsewhere within the territorial application of this Act; and
2. if mass balance systems were used for the entire transportation and distribution of the gas, from its production or generation, feed-in to the natural gas network and its transportation within the natural gas network through to its withdrawal from the natural gas network.

**(2) The tariff pursuant to sections 24, 25, 27(1) and section 27a(1) shall increase in accordance with Annex 1 (bonus for gas processing) for electricity from installations utilising gas withdrawn from a natural gas network deemed to be landfill gas, sewage treatment gas or biomethane pursuant to subsection (1) above, and which was processed prior to being fed into the natural gas network .**

**(3) For electricity from installations utilising gas withdrawn from a natural gas network deemed to be biomethane pursuant to subsection (1) above, and which are commissioned after 31 December 2013, subsection (2) shall only apply if the installed capacity of the installation does not exceed 750 kilowatts.**

#### Section 28

##### Geothermal energy

**(1) The tariff paid for electricity generated from geothermal energy shall amount to 25.0 cents per kilowatt-hour.**

**(2) The tariff pursuant to subsection (1) above shall increase by 5.0 cents per kilowatt-hour for electricity which is generated utilising petrothermal technology.**

Section 29  
Wind energy

(1) The tariff paid for electricity from wind-powered installations shall amount to **4.87** cents per kilowatt-hour (basic tariff).

(2) In derogation of subsection (1) above, the tariff paid in the first five years after the installation is commissioned shall amount to **8.93** cents per kilowatt-hour (initial tariff). This period shall be extended by two months for each 0.75 percent of the reference yield by which the yield of the installation falls short of 150 percent of the reference yield. The reference yield is the calculated yield for the reference installation pursuant to Annex 3 to this Act. The initial tariff shall increase for electricity from wind-powered installations commissioned prior to 1 January **2015** by **0.48** cents per kilowatt-hour (system services bonus) if it demonstrably fulfils the requirements of **section 6(5)** from the date of commissioning.

**(3) Installations with a maximum installed capacity of 50 kilowatts shall, for the purpose of subsection (2) above, be deemed installations with a yield of 60 percent of their reference yield.**

Section 30  
Wind energy – repowering

**(1) The initial tariff paid for electricity from wind-powered installations which are permanent replacements for one or more existing installations within the same or an adjoining district (repowering installations) shall increase by 0.5 cents per kilowatt-hour where:**

- 1. the installations they replaced were commissioned prior to 1 January 2002;**
- 2. an entitlement to tariff payment exists on the merits for the installations they replaced pursuant to the tariff provisions of the Renewable Energy Sources Act in the version applicable to the respective installation;**
- 3. the installed capacity of the repowering installations amounts to at least two times that of the installations they replaced; and**
- 4. the number of repowering installations does not exceed the number of installations they replace.**

Moreover, section 29 shall apply mutatis mutandis.

**(2) An installation shall be deemed replaced if it was completely dismantled no more than one year prior to and no later than six months after the repowering installation was commissioned and was decommissioned prior to the repowering installation being commissioned. The entitlement to tariff payment for the replaced installations shall lapse permanently.**

Section 31  
Wind energy – offshore

(1) The tariff paid for electricity from offshore installations shall amount to 3.5 cents per kilowatt-hour (basic tariff).

**(2) During the first twelve years after the commissioning of the offshore installation the tariff shall amount to 15.0 cents per kilowatt-hour (initial tariff). The period in accordance with the first sentence above in which the initial tariff is paid shall be extended by 0.5 months for each full nautical mile beyond 12 nautical miles that the installation is distanced from the shoreline as defined in section 3 no. 9 second sentence, and by 1.7 months for each full metre of water depth beyond a water depth of 20 metres.**

**(3) If the offshore installation was commissioned prior to 1 January 2018 and the installation operator so requests from the grid system operator before commissioning the installation, the installation operator shall receive an increased initial tariff of 19.0 cents per kilowatt-hour during the first eight years from the date of commissioning. In such cases, the entitlement pursuant to subsection (2) first sentence above shall lapse, while the entitlement to tariff payment under subsection (2) second sentence above shall apply mutatis mutandis, subject to the proviso that the extended initial tariff shall amount to 15.0 cents per kilowatt-hour.**

**(4) If feed-in from an offshore installation is not possible for a period of more than seven consecutive days because the cable pursuant to section 17(2a) first sentence of the Energy Industry Act is not completed on time or is disrupted and the grid system operator is not responsible for such delay or disruption, the tariff pursuant to subsections (2) and (3) above shall be extended for the duration of the disruption, commencing on the eighth day of the disruption.**

**(5) Subsections (1) to (3) above** shall not apply to electricity from offshore installations whose erection was licensed after 31 December 2004 in an area of Germany's exclusive economic zone or coastal waters which has been declared a protected part of nature and landscape in accordance with section 57 in conjunction with section 32(2) of the Federal Nature Conservation Act (Bundesnaturschutzgesetz) or in accordance with Land legislation. The first sentence above shall also apply to such areas which the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety has notified to the **European Commission** as sites of Community importance or as Special Protection Area, until they have been declared protected areas.

Section 32  
Solar radiation

**(1) The tariff paid for electricity from installations generating electricity from solar radiation shall amount to 21.11 cents per kilowatt-hour, less any reduction pursuant to section 20a, where the installation:**



1. is attached to or on top of a building structure erected primarily for purposes other than the generation of electricity from solar radiation;
2. was erected on a site for which a procedure in accordance with section 38 first sentence of the Federal Building Code (Baugesetzbuch) was carried out; or
3. was erected within the territorial application of an adopted local development plan (Bebauungsplan) within the meaning of section 30 of the Federal Building Code; and:
  - a) the local development plan was drawn up prior to 1 September 2003 and not subsequently amended for the purpose of erecting an installation generating electricity from solar radiation;
  - b) the land on which the installation was erected had been designated in the local development plan as a business park or an industrial estate within the meaning of sections 8 and 9 of the Federal Land Utilisation Ordinance (Baunutzungsverordnung) before 1 January 2010, even if the designation was amended after 1 January 2010 at least also for the purpose of erecting an installation generating electricity from solar radiation; or
  - c) the local development plan was drawn up after 1 September 2003 at least also for the purpose of erecting an installation generating electricity from solar radiation and the installation is located on land along motorways and railway tracks, and was erected at a distance of up to 110 meters measured from the outside edge of the paved carriageway.

(2) In derogation of subsection (1) above, the tariff shall amount to 22.07 cents per kilowatt-hour, less any reduction pursuant to section 20a, if the installation was erected within the territorial application of an adopted local development plan within the meaning of section 30 of the Federal Building Code, which was drawn up after 1 September 2003 at least also for the purpose of erecting an installation generating electricity from solar radiation, and the installation:

1. is located on plots of land which were already sealed when the decision on drawing up or amending the local development plan was adopted; or
2. on land used for economic, transport, housing or military purposes and such land had not, at the time of adopting the decision to draw up or amend the local development plan, been declared, with legally binding force:
  - a) a nature conservation area within the meaning of section 23 of the Federal Nature Conservation Act (Bundesnaturschutzgesetz); or
  - b) a national park within the meaning of section 24 of the Federal Nature Conservation Act.

**(3) In derogation of section 3 no. 5, installations generating electricity from solar radiation that replace, on the same site, installations generating electricity from solar radiation because of a technical defect, damage or theft shall be deemed commissioned on the date on which the installations they replace were commissioned. The entitlement to tariff payment for the installations replaced in accordance with the first sentence above shall lapse permanently.**

Section 33

Solar radiation **in**, attached to or on top of buildings

(1) The tariff paid for electricity from installations generating electricity from solar radiation which are exclusively **in**, attached to or on top of a building or noise protection wall shall amount to:

1. **28.74** cents per kilowatt-hour for the first 30 kilowatts of **the installed capacity**;
2. **27.33** cents per kilowatt-hour for **the installed capacity** between 30 and 100 kilowatts;
3. **25.86** cents per kilowatt-hour for **the installed capacity** between 100 kilowatts and 1 megawatt; and
4. **21.56** cents per kilowatt-hour for **the installed capacity** over 1 megawatt;

**in each case less any reduction pursuant to section 20a. Section 32(3) shall apply mutatis mutandis.**

(2) For electricity from installations pursuant to subsection (1) above with a maximum installed capacity of 500 kilowatts, the installation operator shall be entitled to tariff payment where the installation operator or a third party is using the electricity himself in the immediate vicinity of the installation, can furnish proof of that fact, and the electricity is not transmitted via a grid system. Tariffs pursuant to subsection (1) above shall be reduced for that electricity:

1. **by 16.38 cents per kilowatt-hour for the share of the electricity that does not exceed 30 percent of the electricity generated by the installation in the same year; and**
2. **by 12.00 cents per kilowatt-hour for the share of the electricity that exceeds 30 percent of the electricity generated by the installation in the same year.**

**The entitlement to tariff payment under the first sentence above shall lapse if the tariff pursuant to the second sentence above is reduced to a value of less than zero. Subject to any ordinance enacted pursuant to section 64f no. 2a, the first and second sentences above shall only apply to electricity from installations commissioned prior to 1 January 2014.**

(3) Buildings shall mean roofed building structures which can be independently used and entered by humans and are primarily designed for the purpose of protecting humans, animals or objects.

**Part 3a**  
**Direct selling**

**Chapter 1**  
**General provisions**

**Section 33a**  
**Basic principle, definition**

**(1) Installation operators may sell electricity generated in installations exclusively utilising renewable energy sources or mine gas to third parties in accordance with sections 33b to 33f (direct selling).**

**(2) In derogation of subsection (1) above, the sale of electricity to third parties shall not be deemed direct selling if installation operators sell electricity generated from renewable energy sources or mine gas to third parties who use the electricity in the immediate vicinity of the installation, and the electricity is not transmitted via a grid system.**

**Section 33b**  
**Forms of direct selling**

**Direct selling pursuant to section 33a may take the following forms:**

- 1. direct selling for the purpose of claiming the market premium under section 33g; or**
- 2. direct selling for the purpose of a electricity supplier reducing the EEG surcharge in accordance with section 39; or**
- 3. other direct selling.**

**Section 33c**  
**Direct selling obligations**

**(1) Installation operators may only directly sell electricity that is billed with electricity from at least one other installation via a shared metering device if the entirety of the electricity billed via such metering device is directly sold to third parties.**

**(2) Installation operators may, furthermore, only directly sell electricity in the forms set forth in section 33b no. 1 or 2 if:**

1. for the directly sold electricity:
    - a) an entitlement to tariff payment exists on the merits under section 16 notwithstanding section 33e first sentence, and such entitlement to tariff payment is not reduced pursuant to section 17;
    - b) no avoided grid use charges pursuant to section 18(1) first sentence of the Ordinance on Electricity Grid Access Charges (Stromnetzentgeltverordnung) are claimed;
  2. the directly sold electricity is generated in an installation that has been equipped with a technical facility within the meaning of section 6(1) nos. 1 and 2;
  3. the entire current electricity feed-in from the installation is measured and accounted for at quarter-hourly intervals;
  4. the directly sold electricity is accounted for in a balancing group or sub-balancing group which only accounts for electricity that is directly sold in the same form as described in section 33b no. 1 or 2.
- (3) In derogation of subsection (2) no. 1(a) above, operators of installations generating electricity from biomass may also directly sell electricity if an entitlement to tariff payment under section 16 does not exist only because the conditions under section 27(3) and (4), section 27a(2) or section 27c(3) are not fulfilled.
- (4) Section 33g(3) and section 39(2) shall govern the legal consequences of contraventions of subsections (1) and (2) above.

#### **Section 33d**

##### **Switching between different forms of direct selling**

- (1) Installation operators may only switch between entitlement to tariff payment pursuant to section 16 and direct selling or between different forms of direct selling on the first calendar day of the month; the foregoing shall apply to:
1. switching from entitlement to tariff payment pursuant to section 16 to direct selling pursuant to section 33a;
  2. switching between the different forms of direct selling under section 33b; and
  3. switching from direct selling pursuant to section 33a to entitlement to tariff payment pursuant to section 16.
- (2) Installation operators must notify the grid system operator of any switch pursuant to subsection (1) above before the start of the previous calendar month. In cases involving the

situations described in subsection (1) no. 1 or 2 above, installation operators shall also give notice of:

1. the form of direct selling being switched to within the meaning of section 33b; and
2. the balancing group within the meaning of section 3 no. 10a of the Energy Industry Act to which the directly sold electricity is to be allocated.

(3) Grid system operators must, without delay, however from 1 January 2013 at the latest, make available nationwide, standardised procedures capable of handling bulk transactions for switching installations within the meaning of subsections (1) and (2) above, including fully automated procedures for electronically transmitting and using the reported data which satisfy the requirements of the Federal Data Protection Act (Bundesdatenschutzgesetz). A standardised data format shall be specified in accordance with the Federal Data Protection Act for the electronic exchange of data. Electricity supplier associations and installation operators shall be involved to a reasonable extent in developing the procedures and formats for data exchange.

(4) Installation operators must transmit notices under subsection (2) above to the grid system operator in accordance with the procedure and format under subsection (3) above as soon as they have been made available.

(5) Section 33g(3) and section 39(2) shall govern the legal consequences of contraventions by installation operators of subsection (1) nos. 1 and 2, subsection (2) or subsection (4) above. Other claims shall be excluded for the duration of the relevant legal consequences.

#### Section 33e

##### Relationship to feed-in tariffs

For as long as installation operators directly sell electricity from their installation, no entitlement to tariff payment in accordance with section 16(1) and (2) shall exist, and no obligation under section 16(3) shall apply for the entire electricity generated in the installation. This period shall then be credited against the duration of tariff payment in accordance with section 21(2).

#### Section 33f

##### Direct selling of a percentage of electricity

(1) Installation operators may apportion the electricity generated in their installations between electricity for which a tariff is claimed pursuant to section 16 and electricity to be directly sold pursuant to section 33a, or between electricity to be directly sold in different forms pursuant to section 33b if they:

1. have given notice to the grid system operator in accordance with section 33d(2) of the percentages allocated as electricity for which a tariff is claimed pursuant to section 16 and electricity to be directly sold in the different forms pursuant to section 33b; and
2. the percentages under no. 1 above have been demonstrably complied with at all times.

(2) In derogation of section 33e first sentence, where electricity is directly sold pursuant to subsection (1) above, the entitlement to tariff payment under section 16(1) and (2) and the obligation under section 16(3) shall lapse only in respect of the percentage of electricity that is directly sold, and installation operators may claim payment of a tariff for the remaining share in accordance with section 16.

(3) In the event of contraventions of subsection (1) above, the entitlement to tariff payment under section 16 for the share of electricity generated in the installation that is not directly sold shall be reduced to the actual monthly average of the market value of the specific energy source in accordance with no. 1.1 of Annex 4 to this Act ("MW"). The first sentence above shall apply until the end of the third calendar month following the end of the contravention of subsection (1) above. Section 33g(3) and section 39(2) shall otherwise govern the legal consequences of contraventions of subsection (1) above.

## Chapter 2 Direct selling premiums

### Section 33g Market premium

(1) Installation operators may claim a market premium from the grid system operator for electricity generated from renewable energy sources or mine gas which they directly sell in accordance with section 33b no. 1. This shall only apply to electricity which has actually been fed into the grid system and purchased by a third party; the grid system operator must be notified of the relevant quantity of such electricity each month by the tenth working day of the following month.

(2) The amount of the market premium shall be calculated each calendar month. The amount shall be calculated retrospectively using the actually determined or calculated figures for the respective calendar month based on the expected value pursuant to section 33h, and in accordance with Annex 4 to this Act. Monthly advance payments of an appropriate amount shall be made for the anticipated payments.

**(3) The claim under subsection (1) above shall lapse if installation operators:**

- 1. contravene section 33c(1) or (2);**
- 2. have failed to notify the grid system operator in accordance with section 33d(2) in conjunction with subsection (1) no. 1 or 2 and subsection (4) of a switch to the form of direct selling pursuant to section 33b no. 1; or**
- 3. contravene section 33f(1).**

**The first sentence above shall apply until the end of the third calendar month following the end of the contravention referred to in nos. 1, 2 or 3 above.**

**(4) Section 22 shall apply mutatis mutandis.**

#### **Section 33h**

##### **Market premium – reference tariff**

**The market premium shall be calculated based on the amount of the tariff pursuant to section 16 which could actually be claimed for the directly sold electricity generated in the specific installation if a tariff were paid in accordance with sections 23 to 33, also having regard to sections 17 to 21 (reference tariff). Section 27(3) and (4), section 27a(2) and section 27c(3) shall not apply in calculating the reference tariff.**

#### **Section 33i**

##### **Flexibility premium**

**(1) Operators of installations generating electricity from biogas may, in addition to the market premium, claim a premium from the grid system operator for providing additional installed capacity to generate electricity on a demand basis (flexibility premium):**

- 1. where the entire electricity generated in the installation is directly sold pursuant to section 33b no. 1 or 3 and an entitlement to tariff payment exists on the merits under section 16 notwithstanding section 33e first sentence, and such entitlement to tariff payment is not reduced pursuant to section 17;**
- 2. where the rated average annual capacity of the installation within the meaning of no. 1 of Annex 5 to this Act amounts to at least 0.2 times the installed capacity of the installation;**
- 3. as soon as they have reported the location and the installed capacity and the fact that they are claiming the flexibility premium to:**

- a) **the Federal Network Agency by means of the forms provided by it; or**
  - b) **a third party who, in derogation of (a) above, is under an obligation by virtue of an ordinance enacted pursuant to section 64e no. 2 to maintain a general Register of Installations, or who has been nominated in any such ordinance as the addressee for notices under that ordinance; and**
4. **as soon as an environmental verifier who is accredited in the field of electricity generation from renewable energy sources has certified that the installation is technically suitable to be operated on a demand basis as required in order to claim the flexibility premium.**

**(2) The amount of the flexibility premium shall be calculated each calendar year. The amount shall be calculated for the additionally provided installed capacity in each case in accordance with Annex 5 to this Act. Monthly advance payments of an appropriate amount shall be made for the anticipated payments.**

**(3) Installation operators must notify the grid system operator in advance of their first claim for the flexibility premium.**

**(4) The flexibility premium shall be paid for a period of ten years. The period shall commence on the first day of the second calendar month following the notification under subsection (3) above.**

**(5) Section 22 shall apply mutatis mutandis.**

#### Part 4

#### Equalisation scheme

#### Chapter 1

#### Nationwide equalisation scheme

#### Section 34

#### Delivery to transmission system operator

Grid system operators shall immediately deliver to the upstream transmission system operator the electricity for which tariffs are paid in accordance with section 16.

#### Section 35

#### **Equalisation between grid system operators and transmission system operators**

**(1) Upstream** transmission system operators shall pay tariffs in accordance with sections **16** to **33** for the quantity of electricity for which grid system operators **have** paid tariffs in accordance with



section 16.

**(1a) Upstream transmission system operators shall also pay the premiums paid by grid system operators in accordance with sections 33g and 33i.**

**(2) Grid system operators shall pay upstream transmission system operators any avoided grid use charges pursuant to section 18 of the Ordinance on Electricity Grid Access Charges not granted to installation operators in accordance with section 18(1) third sentence no. 1 of the Ordinance on Electricity Grid Access Charges and determined in accordance with section 18(2) and (3) of the Ordinance on Electricity Grid Access Charges. Section 8(4) no. 2 shall apply mutatis mutandis.**

**(3) The payments under subsections (1) to (2) above shall be netted. Monthly advance payments of an appropriate amount shall be made for the payments.**

**(4) Where a transmission system operator pays the grid system operator a higher tariff than that provided for in sections 16 to 18 or a higher premium than that provided for in sections 33g and 33i, the transmission system operator shall claim a refund of the amount overpaid. The refund claim shall become time-barred upon the expiry of 31 December of the second calendar year following the feed-in; the obligation under the first sentence above shall then be extinguished to that extent. The first and second sentences above shall apply mutatis mutandis in the relationship between the purchasing grid system operator and installation operator, unless the payment obligation arises pursuant to a contractual agreement. Section 22 (1) shall not apply to claims under the third sentence above.**

#### Section 36

##### Equalisation amongst transmission system operators

(1) Transmission system operators shall:

1. **record** the different quantities and temporal sequence of the quantities of electricity for which tariffs were paid in accordance with section 16;
2. **record payments of tariffs in accordance with section 16, including the tariff in accordance with section 33(2);**
3. **record payments of premiums in accordance with sections 33g and 33i;**
4. provisionally equalise the quantities of electricity **pursuant to no. 1 above** amongst themselves without delay;
5. **make monthly advance payments of an appropriate amount for the payments pursuant to nos. 2 and 3 above; and**
6. settle the accounts with regard to the quantities of electricity **pursuant to no. 1 above and the payments pursuant to nos. 2 and 3 above** pursuant to subsection (2) below.

**The netted amounts referred to in section 35(3) shall be used as the basis when recording and settling the accounts with regard to the payments pursuant to the first sentence nos. 2, 3 and 5.**

(2) By 31 July of each year the transmission system operators shall determine the quantity of electricity which they purchased in accordance with section 8 or section 34 and paid for in accordance with section 16 or section 35 **or paid a premium for in accordance with sections 33g and 33i** in the previous calendar year and which they have provisionally equalised in accordance with subsection (1) above, and shall determine the percentage share of this quantity in relation to the total quantity of electricity which the **electricity suppliers** delivered to the **final consumers** in each area served by the individual transmission system operator in the previous calendar year.

(3) Transmission system operators who had to purchase quantities greater than this average share shall be entitled to sell electricity to and receive tariffs from the other transmission system operators in accordance with sections 16 to 33 until these grid system operators have also purchased a quantity of electricity equal to the average share.

### **Section 37**

#### **Selling and EEG surcharge**

(1) **Transmission system operators must, either themselves or jointly, sell the electricity paid for in accordance with sections 16 and 35(1) without discrimination, transparently and in accordance with the requirements of the Equalisation Scheme Ordinance (Ausgleichsmechanismusverordnung).**

(2) **Transmission system operators may, after deducting the generated income and in accordance with the Equalisation Scheme Ordinance, require electricity suppliers delivering electricity to final consumers to pay a share of the necessary expenditure proportionate to the respective quantity of electricity delivered by the electricity suppliers to their final consumers (EEG surcharge). Such share shall be determined in such a way that each electricity supplier bears the same costs for each kilowatt-hour of electricity delivered by it to a final consumer. Monthly advance payments of an appropriate amount shall be made for payment of the EEG surcharge.**

(3) **Final consumers shall be placed on an equal footing with electricity suppliers if they use electricity that is not delivered by a electricity supplier insofar as such electricity:**

- 1. is delivered by a third person; or**
- 2. is transmitted via a grid system, unless:**
  - a) the electricity is withdrawn from the grid system for storage in an electrical, chemical, mechanical or physical storage facility and later fed into the same grid system again; or**

- b) the final consumer operates the electricity-generating installation as an independent producer and uses the generated electricity himself/herself in the vicinity of the electricity-generating installation.**

Section 38  
Subsequent corrections

Where any changes regarding the quantity of electricity to be billed or the payment of tariffs **or premiums arise due to:**

- 1. refunds pursuant to section 35(4);**
- 2. a valid court decision in the principal proceedings;**
- 3. proceedings conducted between the parties before the clearing house in accordance with section 57(3) first sentence no. 1;**
- 4. an opinion issued by the clearing house for the parties in accordance with section 57(3) first sentence no. 2;**
- 5. decisions of the Federal Network Agency in accordance with section 51(1a); or**
- 6. an enforceable title which was only issued after billing pursuant to section 36(1),**

such changes shall be taken into account in the next billing statement.

**Section 39**  
**Reduction in EEG surcharge**

**(1) The EEG surcharge shall decrease for electricity suppliers in a given calendar year by 2.0 cents per kilowatt hour, however by no more than the amount of the EEG surcharge, where:**

- 1. the electricity they deliver to all of their final consumers fulfils the following requirements in that calendar year and also during at least eight months of that calendar year:**
  - a) at least 50 percent of the electricity is electricity within the meaning of sections 23 to 33; and**
  - b) at least 20 percent of the electricity is electricity within the meaning of sections 29 to 33;**

**when calculating the percentages under the first half-sentence above, electricity within the meaning of sections 23 to 33 may only be taken into account up to the amount of the aggregated demand of all final consumers to whom electricity was delivered, based on**

**15-minute intervals;**

- 2. the electricity suppliers have notified their regular transmission system operator by 30 September of the previous calendar year that they are claiming a reduction in the EEG surcharge; in so doing they shall also state the quantity of electricity the electricity suppliers expect to deliver to all of their final consumers during the calendar year; this quantity shall be estimated based on the electricity delivered in the first half of the previous calendar year;**
- 3. the electricity suppliers furnish proof in accordance with section 50 to their regular transmission system operator that the conditions under no. 1 above have been fulfilled; and**
- 4. delivered electricity within the meaning of no. 1 (a) and (b) above is disclosed to final consumers pursuant to the electricity labelling requirements under section 42 of the Energy Industry Act as renewable energy only if the electricity's green characteristics have not, based on 15-minute intervals, been used independently of the electricity itself.**

**(2) For the purpose of calculating the quantities of electricity under subsection (1) no. 1 (a) and (b) above, only electricity generated from renewable energy sources and mine gas may be credited where the respective installation operators:**

- 1. directly sell the electricity in accordance with section 33b no. 2;**
- 2. do not contravene section 33c(1) or (2);**
- 3. have notified the grid system operator in accordance with section 33d(2) in conjunction with subsection (1) no. 1 or 2 and subsection (4) of any switch to a different form of direct selling pursuant to section 33b no. 2; and**
- 4. do not contravene section 33f(1).**

**Insofar as electricity may not be credited pursuant to the first sentence above, this shall apply to the respective quantity of electricity for the entire calendar month in which the conditions under the first sentence above are wholly or partially unfulfilled.**

## Chapter 2

### Special equalisation scheme for electricity-intensive enterprises and rail operators

#### Section 40

##### Basic principle

(1) The Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle) shall upon request limit for a delivery point the **EEG surcharge** which is delivered by the **electricity suppliers** to the final consumers which are electricity-intensive

manufacturing enterprises with high electricity consumption or rail operators, **as set forth in sections 41 and 42**. This limitation aims to reduce the electricity costs for these enterprises and thereby maintain their international and intermodal competitiveness, insofar as this is compatible with the goals of this Act and the limit imposed is still compatible with the interest of the electricity users as a whole.

Section 41  
Manufacturing enterprises

(1) In the case of manufacturing enterprises, a limit shall only be set where they furnish proof that and to what extent:

1. in the last financial year:
  - a) the electricity purchased from a **electricity supplier** and used by the enterprises themselves **was at least 1 gigawatt-hour** at a certain delivery point;
  - b) the ratio of the electricity costs **to be borne by the enterprise** to its gross value added as defined by the Federal Statistical Office, Fachserie 4, series 4.3, Wiesbaden 2007<sup>2</sup>, **was at least 14 percent**;
  - c) an individual share of the **EEG surcharge** was delivered to the enterprise; and
2. the enterprise has ascertained and assessed energy consumption and the potential for energy savings and this process has been certified; **the foregoing shall not apply to enterprises whose electricity consumption is less than 10 gigawatt-hours.**

(2) Proof of **fulfilment of** the requirements pursuant to subsection (1) **no. 1** above shall be furnished by producing the contracts on electricity supply and electricity bills for the last completed financial year and **the** certification of a chartered or certified accountant **or auditing firm** based on the financial statement of the last completed financial year. **Section 319(2) to (4), section 319b(1), section 320(2) and section 323 of the Commercial Code (Handelsgesetzbuch) shall apply mutatis mutandis to the certifications pursuant to the first sentence above.** Proof of the requirements pursuant to subsection (1) **no. 2** above shall be furnished by submission of the certification issued by the certifier.

(2a) New enterprises founded after 30 June of the previous year may, in derogation of subsection (1) above, **submit** data regarding a short business year. Subsection (2) above shall apply mutatis mutandis. New enterprises shall be defined as only those enterprises which, **having created a largely new asset base, commence operations for the first time; they may** not arise on account of a conversion of form. The date on which the new enterprise was founded shall be the date on which the enterprise purchased electricity for the purposes of manufacturing or train operations **for the first**

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<sup>2</sup> Official information: This publication can be ordered from the Federal Statistical Office, *Gustav-Stresemann-Ring 11, 65189 Wiesbaden and can also be ordered at [www.destatis.de](http://www.destatis.de).*

time.

(3) In the case of enterprises for which the purchased quantity of electricity referred to in subsection (1) no. 1 (a) above:

1. **was at least one gigawatt-hour, the EEG surcharge in respect of the electricity used by the enterprises themselves at the relevant delivery point in the period during which a limit applies:**
  - a) shall not be limited for the first 1 gigawatt-hour of that electricity;
  - b) shall be limited to 10 percent of the EEG surcharge determined in accordance with section 37(2) for the share of electricity between 1 and 10 gigawatt-hours;
  - c) shall be limited to 1 percent of the EEG surcharge determined in accordance with section 37(2) for the share of electricity between 10 and 100 gigawatt-hours; and
  - d) shall be limited to 0.05 cents per kilowatt-hour for the share of electricity exceeding 100 gigawatt-hours; or
2. **was at least 100 gigawatt-hours and the ratio of electricity costs to gross value added was more than 20 percent, the EEG surcharge determined in accordance with section 37(2) shall be limited to 0.05 cents per kilowatt-hour.**

**Proof shall be furnished in accordance with subsection (2) above.**

(4) A delivery point shall be the **total of all spatially and physically** connected electrical installations of **an enterprise located on a discrete** industrial site and connected to the grid system of the grid system operator by one or several withdrawal points.

(5) Subsections (1) to (4) shall apply mutatis mutandis to the independent parts of the enterprise. **An independent part of an enterprise shall only be deemed where it is an independent site or an operating unit with the key functions of an enterprise which is segregated from the rest of the enterprise on the site, and the part of the enterprise could conduct transactions as a legally independent enterprise at all times. A separate balance sheet and a separate profit and loss account shall be drawn up for the independent part of an enterprise in accordance with the provisions of the Commercial Code applicable to all merchants (Kaufleute). The balance sheet and the profit and loss account pursuant to the third sentence above shall be audited in accordance with sections 317 to 323 of the Commercial Code.**

Section 42  
Rail operators

**(1) The EEG surcharge for rail operators may only be limited for the quantity of electricity exceeding 10 percent of the electricity purchased or used by the rail operators themselves at the relevant delivery point in the period during which a limit applies. The limited EEG**

surcharge shall amount to 0.05 cents per kilowatt-hour.

(2) In the case of rail operators, a limit on the EEG surcharge shall only be set where they furnish proof that and to what extent:

1. the purchased quantity of electricity is directly used for rail transport operations and is at least 10 gigawatt-hours; and
2. an individual share of the EEG surcharge was passed on to the rail operator.

(3) The delivery point within the meaning of subsection (1) above shall be understood as the total of the consumption points in the rail transport operations of the enterprise. Section 41(2) and (2a) shall apply mutatis mutandis.

#### Section 43

##### Deadline for applications and effect of decisions

(1) The application in accordance with section 40(1) in conjunction with section 41 or section 42, including the complete application documents, shall be submitted by 30 June of the given year (substantive preclusive period). The decision shall be binding to the applicant, the **electricity supplier** and the regular transmission system operator. It shall take effect on 1 January of the following year for the duration of one year. The effects caused by a prior decision shall not be taken into account when calculating the ratio of electricity costs to gross value-added pursuant to section 41(1) no. 1 (b) and subsection (3).

(2) In derogation of subsection (1) first sentence above, new businesses within the meaning of section 41(2a) may submit the application up until 30 September of the given year. The first sentence shall apply mutatis mutandis to rail operators.

(3) The claim for payment of the EEG surcharge by the regular transmission system operator responsible for the delivery point against the **electricity supplier** concerned shall be limited in accordance with the decision by the Federal Office of Economics and Export Control; the transmission system operators shall take such limits into consideration as required by section 36.

#### Section 44

##### Information obligation

Those benefiting from the decision taken in accordance with section 40 shall, upon request, provide the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and its authorised representatives with information about all the facts which are necessary in order to assess whether the objectives under section 40(1) second sentence will be met. Trade and business secrets shall not be disclosed.

Part 5  
Transparency

Chapter 1  
Notification and publication obligations

Section 45  
Basic principle

Installation operators, grid system operators and **electricity suppliers** shall make available to each other without delay the data required for the nationwide equalisation scheme in accordance with sections 34 to 39, in particular those referred to in sections 46 to 50. Section 38 shall apply mutatis mutandis.

Section 46  
Installation operators

Installation operators shall:

1. inform the grid system operator of the location and **installed** capacity of the installation as well as of the quantity of electricity in accordance with section 33(2);
2. in the case of biomass installations in accordance with **sections 27 to 27b, notify the grid system operator of the type and quantity of the substances used in accordance with section 27(1) and (2), sections 27a and 27b, as well as of details on the uses of heat and the technologies used in accordance with section 27(4) no. 1 and (5) no. 2 and section 27a(3), or on the share of manure used in accordance with section 27(4) no. 2 and section 27b(1) no. 3 in the manner prescribed for furnishing proof under sections 27 and 27a; and**
3. by 28 February of each year provide the grid system operator with the data required for the final accounts of the previous year.

Section 47  
Grid system operators

(1) Grid system operators which are not transmission system operators shall:

1. **transmit to their upstream transmission system operator, in summary form without delay after these data become available, details of the actual tariffs paid in accordance with section 16, the premiums in accordance with sections 33g and 33i, the notices received from installation operators pursuant to section 33d(2) (separately for each different form of direct selling pursuant to section 33b) and the details provided by them in accordance with section 46, as well as the other details required for the nationwide equalisation scheme;**



and

2. submit, by 31 May of each year, using forms to be made available by the transmission system operator on his website, the final accounts in electronic form for the previous year both for each individual installation and for all the installations combined; section 19(2) and (3) shall apply mutatis mutandis.

**(2) To determine the quantities of electricity and tariff payments pursuant to subsection (1) above that are to be equalised, the following are especially important:**

1. details regarding the voltage to which the installation is connected;
2. the amount of the avoided grid use charges in accordance with section 35(2);
3. details regarding the extent to which the grid system operator has purchased quantities of electricity from a downstream grid system; and
4. details regarding the extent to which the grid system operator has delivered the quantities of electricity in accordance with no. 3 above to final consumers, grid system operators or electricity suppliers or has used them himself.

#### Section 48

##### Transmission system operators

(1) Section 47 shall apply mutatis mutandis for transmission system operators, with the proviso that the details and the final accounts in accordance with section 47(1) for installations which are directly or indirectly connected to their grid in accordance with section 8(2) shall be published on their website.

(2) **Furthermore**, transmission system operators shall present to their regular electricity suppliers, by 31 July of each year, the final accounts for **the EEG surcharge for the previous year**. Section 47(2) shall apply mutatis mutandis.

**(3) Transmission system operators shall also:**

1. **publish the data used to calculate the market premium in accordance with no. 3 of Annex 4 to this Act in an anonymised form;**
2. **publish the data for the equalisation scheme pursuant to section 7 of the Equalisation Scheme Ordinance and transmit such data to the Federal Network Agency.**

Section 49  
Electricity suppliers

Electricity suppliers shall immediately inform their regular transmission system operator in electronic form of the quantity of electricity delivered to final consumers and present, by 31 May of each year, the final accounts for the previous year.

Section 50  
Certification

Grid system operators and electricity suppliers may request that the final accounts in accordance with section 47(1) no. 2, sections 48 and 49 be **audited upon submission** by a chartered or certified accountant or auditing or accounting firm. **In the process of the audit, case law established at the highest court level and decisions of the clearing house in accordance with section 57(3) first sentence no. 2 which have general significance beyond the individual case, and decisions in accordance with section 57(4) shall be taken into account. Section 319(2) to (4), section 319b(1), section 320(2) and section 323 of the Commercial Code shall apply mutatis mutandis to the audit in accordance with the first sentence above.**

Section 51  
Data to be provided to the Federal Network Agency

(1) Grid system operators shall present to the Federal Network Agency in electronic form the details which they receive from the installation operators in accordance with section 46, the details in accordance with section 47(2) no. 1 and the final accounts in accordance with section 47(1) no. 2 and **section 48(2)**, including the data required to check these, before the expiry of the respective deadlines; this provision shall apply mutatis mutandis to electricity suppliers as regards the details referred to under section 49.

(2) **(repealed)**

(3) Insofar as the Federal Network Agency makes forms available, the grid system operators, electricity suppliers and installation operators shall transmit the data using these forms. The data in accordance with **subsection (1)** above, with the exception of the purchase costs, shall be made available to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and to the Federal Ministry of Economics and Technology by the Federal Network Agency for statistical purposes, for the evaluation of this Act and for **reporting** in accordance with **sections 65 and 65a**.

Section 52  
Data to be made public

(1) Grid system operators and electricity suppliers shall publish on their website:

1. any details in accordance with sections 45 to 49 immediately after their transmission; and
2. the report concerning the ascertainment of data they have provided in accordance with sections 45 to 49, without delay after 30 September of any given year,

and retain this information until the end of the following year; section 48(1) shall remain unaffected.

**(1a) Transmission system operators shall publish, in an anonymised form on a shared website, the quantities of electricity paid for in accordance with section 35(1) and sold in accordance with section 37(1) pursuant to the Equalisation Scheme Ordinance.**

(2) The information and the report must enable a qualified third party to fully understand the equalised quantities of electricity and tariff payments without further information being required.

Chapter 2  
**EEG surcharge and electricity labelling**

**Section 53  
Disclosure of the EEG surcharge**

(1) Electricity suppliers may **disclose the EEG surcharge to final consumers, provided the EEG surcharge has not been limited in accordance with section 40 for this electricity.**

(2) When giving notice of the **EEG surcharge**, the number of kilowatt-hours of electricity from **renewable** energy sources and from mine gas on which the calculation of **the EEG surcharge** is based must be stated in a clearly visible and easily legible fashion. The calculation of the **EEG surcharge** shall be laid out in a manner which is understandable without the need for further information.

**Section 54  
Electricity labelling in accordance with the EEG surcharge**

**(1) Electricity suppliers shall disclose to final consumers pursuant to the electricity labelling requirements under section 42 of the Energy Industry Act the value calculated in accordance with subsection (2) below as the share, in percent, of "renewable energy sources, promoted under the Renewable Energy Sources Act".**

**(2) The share to be disclosed to final consumers in accordance with subsection (1) above shall be calculated in percent by taking the EEG surcharge actually paid by the electricity supplier for the quantity of electricity delivered to its final consumers in a given year:**

- 1. and multiplying it by the EEG ratio referred to in subsection (3) below;**
- 2. then dividing that figure by the total quantity of electricity delivered to its final consumers in that year; and**
- 3. finally multiplying that figure by 100.**

**The share to be disclosed in accordance with subsection (1) above shall be a direct component of the quantity of electricity delivered and may not be disclosed separately or resold.**

**(3) The EEG ratio shall mean the ratio of (i) the quantity of electricity for which a tariff was claimed in accordance with section 16 in the previous calendar year, plus the quantity of electricity that was directly sold in the form referred to in section 33b no. 1 to (ii) the total income received by transmission system operators from the EEG surcharge for the quantities of electricity delivered to final consumers by the electricity suppliers in the previous calendar year. Transmission system operators shall, by 30 September 2011, and thereafter by 31 July each year, publish the EEG ratio in an anonymised form and standardised format for the previous calendar year on a shared website.**

**(4) The shares of energy sources to be specified under section 42(1) no. 1 and (3) of the Energy Industry Act shall, with the exception of the share of electricity generated from "renewable energy sources, promoted under the Renewable Energy Sources Act", be proportionately reduced for each final consumer by the percentage to be disclosed in accordance with subsection (1) above.**

**(5) Electricity supplier shall, in addition to the overall energy mix, disclose to final consumers whose obligation to pay the EEG surcharge is limited in accordance with sections 40 to 43 a separate "energy mix for enterprises receiving preferential treatment under the Renewable Energy Sources Act" to be calculated separately in accordance with the third and fourth sentences below. Such energy mix shall disclose the shares pursuant to section 42(1) no. 1 of the Energy Industry Act. The share in percent of "renewable energy sources, promoted under the Renewable Energy Sources Act" shall, in derogation of subsection (2) above, be calculated by taking the EEG surcharge actually paid by the electricity supplier for the quantity of electricity delivered to the respective final consumer in a given year**

- 1. and multiplying it by the EEG ratio referred to in subsection (3) above;**
- 2. then dividing that figure by the total quantity of electricity delivered to the respective final consumer; and**
- 3. finally multiplying that figure by 100.**

**The shares of the other energy sources to be disclosed under section 42(1) no. 1 of the Energy Industry Act shall be proportionately reduced for each final consumer by the percentage calculated in accordance with the third sentence above.**

### Chapter 3

#### Guarantee of origin and prohibition of multiple sale

### Section 55

#### Guarantees of origin

**(1) The competent authority shall issue installation operators with guarantees of origin for electricity generated from renewable energy sources. The first sentence above shall not apply to electricity that is directly sold in accordance with section 33b no. 1 or for which a tariff is claimed in accordance with section 16. The competent authority shall transfer and cancel guarantees of origin. Guarantees of origin shall be issued, transferred and cancelled electronically and in accordance with any ordinance enacted pursuant to section 64d; they must be protected from fraud or abuse.**

**(2) The competent authority shall, upon application, recognise in accordance with any ordinance enacted pursuant to section 64d guarantees of origin issued by other countries for electricity generated from renewable energy sources. The foregoing shall only apply to guarantees of origin that, as a minimum, fulfil the requirements of Article 15(6) and (9) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16). Electricity for which a guarantee of origin has been recognised in accordance with the first sentence above shall be deemed electricity that is directly sold in accordance with section 33b no. 3.**

**(3) The competent authority shall establish an electronic database in which the issue, recognition, transfer and cancellation of guarantees of origin shall be recorded (Register of Guarantees of Origin).**

**(4) The competent authority within the meaning of subsections (1) to (3) above shall be the Federal Environment Agency (Umweltbundesamt).**

**(5) Guarantees of origin shall not be deemed financial instruments within the meaning of section 1(11) of the Banking Act (Kreditwesengesetz) or section 2(2b) of the Securities Trading Act (Wertpapierhandelsgesetz).**

Section 56  
Prohibition of multiple sale

(1) Electricity from **renewable** energy sources and from mine gas, as well as landfill gas or sewage treatment gas fed into a gas network must not be sold or otherwise transferred more than once or sold to a third party contrary to the provisions of section 34. **In particular, electricity generated from renewable energy sources or from mine gas may not be sold in several different forms as referred to in section 33b or sold more than once in the same form pursuant to section 33b. The sale as balancing energy shall not be deemed selling or otherwise transferring the electricity more than once in the context of direct selling.**

(2) Installation operators who claim tariffs **in accordance with section 16** for electricity from **renewable** energy sources or from mine gas **or directly sell this electricity in the forms set forth in section 33b no. 1** shall not be permitted to forward any **guarantees of origin for this electricity or other proof of its origin**. Where an installation operator forwards such a **guarantee of origin or other proof of origin** for electricity from **renewable** energy sources or from mine gas, **neither a tariff in accordance with section 16 nor a market premium in accordance with section 33g may be claimed** for this electricity.

(3) While emission reduction units for the reduction of emissions from the installation can be generated in the course of a joint project implementation in accordance with the Project Mechanisms Act (Projekt-Mechanismen-Gesetz), **neither a tariff in accordance with section 16 nor a premium in accordance with sections 33g or 33i** may be claimed for the electricity from the installation concerned.

(4) **Notwithstanding section 62(1) no. 1, the following shall apply in the case of contraventions of subsections (1) to (3) above:**

1. **the entitlement to tariff payment in accordance with section 16 shall be reduced in the event that the electricity is purchased by grid system operators to the actual monthly average of the market value of the specific energy source in accordance with no. 1.1 of Annex 4 to this Act ("MW"); the entitlement shall lapse in all other cases;**
2. **the entitlement to a market premium in accordance with section 33g shall lapse;**
3. **the electricity may not be credited for the purpose of calculating the quantities of electricity in accordance with section 39(1) no. 1 (a) and (b);**

**in each case for the duration of the contravention as well as for the next six months.**

Part 6  
Legal protection and official procedure

Section 57  
Clearing house

**(1) For the purpose of this Act, a clearing house shall be operated by a legal person incorporated under private law commissioned by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.**

**(2) The function of the clearing house is to clarify, in accordance with subsections (3) and (4) below, questions and disputes relating to the application of sections 3 to 33i, 45, 46, 56 and 66 as well as any ordinances enacted in relation to these provisions pursuant to this Act (questions of application). In the performance of these functions, provisions relating to the protection of personal information as well as decisions of the Federal Network Agency under section 61 must be complied with. Furthermore, Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJ L 115, 17.4.1998, p. 31), and Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109, 19.4.2001, p. 56) shall be taken into account. Where the clearing house has clarified questions of application and such clarification is not inconsistent with decisions of the Federal Network Agency under section 61, the legal consequences shall be governed by section 4(2), section 38 nos. 3 and 4 and section 50 second sentence; the legal consequences of clearing house decisions shall otherwise be governed by the contractual agreements between installation operators and grid system operators.**

**(3) For the purpose of clarifying questions of application between installation operators and grid system operators (parties), the clearing house may:**

- 1. on the joint application of the parties, conduct proceedings to clarify questions of application between the parties;**
- 2. on the joint application of the parties, issue opinions on questions of application for the parties; or**
- 3. on the request of ordinary courts of law before which questions of application are pending, issue opinions for the courts.**

**In cases involving the first sentence nos. 1 and 2 above, section 204(1) no. 11 of the Civil Code (Bürgerliches Gesetzbuch) shall apply mutatis mutandis. Furthermore, proceedings in accordance with the first sentence no. 1 above may, with the consent of the parties, be conducted as arbitration proceedings within the meaning of the Tenth Book of the Code of Civil Procedure. The right of the parties to invoke the ordinary courts of law shall remain unaffected.**

**(4) The clearing house may conduct proceedings in order to clarify questions of application having general significance beyond the individual case, provided an application to this effect has been made by at least one installation operator, one grid system operator or one association concerned, and there is a public interest in clarifying the questions of application. Concerned associations shall be invited to participate in the proceedings.**

**(5) The functions pursuant to subsections (2) to (4) above shall be performed in accordance with rules of procedure (Verfahrensordnung) established by the clearing house itself; the enactment and amendment of these rules of procedure shall be subject to the prior consent of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. The performance of these functions shall in each case be subject to the parties or other persons involved in the proceedings granting their prior consent to the rules of procedure. It shall not constitute a legal service within the meaning of section 2(1) of the Legal Services Act (Rechtsdienstleistungsgesetz). Liability on the part of the operator of the clearing house for pecuniary loss arising as a result of the performance of the above functions is excluded; the foregoing shall not apply if such loss was caused by the operator's wilful conduct.**

**(6) The clearing house must publish on its website each year in an anonymised form a report on its activities as referred to in subsections (2) to (4). Reporting requirements pursuant to other provisions shall remain unaffected.**

**(7) The clearing house may, in accordance with its rules of procedure, charge the parties fees to cover the cost of its activities referred to in subsection (3) above. Proceedings pursuant to subsection (4) above shall be conducted free of charge. The clearing house may charge fees to cover its expenses for other activities related to its functions referred to in subsections (2) to (4) above.**

#### Section 58

##### Consumer protection

Sections 8 to 14 of the Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb) shall apply mutatis mutandis to contraventions of sections 16 to 33.

#### Section 59

##### Temporary legal protection

(1) Upon request of the installation operator, the court responsible for the principal proceedings may, before an installation has even been erected and in consideration of the merits of the individual case, order the debtor of the claims referred to in sections 5, 8, 9 and 16, by way of a preliminary injunction, to provide information, to temporarily connect the installation, to immediately optimise, strengthen or expand his grid system, to purchase the electricity and to make an advance payment of an equitable and fair amount of money.



(2) The preliminary injunction may be issued even if the conditions set out in sections 935 and 940 of the Code of Civil Procedure are not met.

Section 60  
Use of maritime shipping lanes

While installation operators lay claim to payment of tariffs in accordance with section 16 **or directly sell electricity in the forms set forth in section 33b nos. 1 or 2**, they may utilise the German exclusive economic zone or the coastal waters free of charge for the operation of the installation.

Section 61  
Tasks of the Federal Network Agency

**(1) Aside from other functions delegated to it pursuant to ordinances enacted in accordance to this Act**, the Federal Network Agency shall have the task of monitoring that:

- 1. grid system operators only assume technical control over installations in accordance with section 11 over which they are authorised to assume technical control;**
- 2. transmission system operators sell the electricity for which tariffs are paid pursuant to sections 16 and 35 in accordance with the provisions of section 37(1) in conjunction with the Equalisation Scheme Ordinance, that they properly determine, set, publish and charge electricity suppliers for the EEG surcharge, and that, in particular, transmission system operators are only charged tariffs pursuant to sections 16 to 33 and premiums pursuant to sections 33g and 33i and, during this process, the netted payments referred to in section 35(3) have been taken into account, and that the EEG surcharge is only reduced for electricity suppliers that fulfil the requirements of section 39;**
3. the data are **transmitted** in accordance with section 51 and published in accordance with section 52;
4. third parties are only given notice of **the EEG surcharge** pursuant to **section 53 and the electricity promoted under this Act is only labelled in accordance with section 54.**

**(1a) For the purpose of exercising the tasks under subsection (1) no. 2 above, audits may be conducted of installation operators where legitimate suspicion exists. The right of installation operators or grid system operators to invoke the ordinary courts of law or initiate proceedings before the clearing house in accordance with section 57(3) shall remain unaffected.**

**(1b) The Federal Network Agency may, having regard to the purpose and aim under section 1, make determinations pursuant to section 29(1) of the Energy Industry Act relating to:**

- 1. the technical facilities referred to in section 6(1) and (2), particularly with regard to the data formats;**

2. **within the scope of section 11:**
  - a) **the order in which technical control is to be assumed over the various installations and CHP installations affected by a measure pursuant to section 11;**
  - b) **the criteria to be used by grid system operators when deciding this order;**
  - c) **which electricity-generating installations pursuant to section 11(1) first sentence no. 2 must remain connected to the grid system even in the event of feed-in management measures in order to ensure the security and reliability of the electricity supply system;**
3. **the transmission of data in accordance with section 17(2) no. 1 or section 33i(1) no. 3, the processing of switches pursuant to section 33d(2) and (3), in each case particularly with regard to procedures, deadlines and data formats;**
4. **the consideration of electricity generated from solar radiation used by the installation operator or third parties in accordance with section 33(2) for the purpose of the publication obligations under section 48 and in calculating the actual monthly average of the market value of electricity generated from solar radiation pursuant to no. 2.4.2.4 of Annex 4 to this Act, in each case particularly with regard to the calculation or estimate of the quantities of electricity.**

(2) The provisions set out in Part 8 of the Energy Industry Act shall apply mutatis mutandis to the exercising of tasks in accordance with **subsections (1) and (1b)** above, with the exception of section 69(1) second sentence, subsection (10), sections 91, 92 and 95 to 101, as well as Chapter 6.

(3) The decisions of the Federal Network Agency in accordance with subsection (2) above shall be taken by the ruling chambers; section 59(1) second and third sentences, subsections (2) and (3) and section 60 of the Energy Industry Act shall apply mutatis mutandis.

## Section 62

### Administrative fines provisions

- (1) An administrative offence shall be deemed to have been committed by any party who wilfully or negligently:
  1. contrary to section 56(1), sells or otherwise transfers electricity or gas more than once or sells it to a third party;
  2. contravenes an enforceable order in accordance with section 61(2) in conjunction with section 65(1) or (2) or section 69(7) first sentence or subsection (8) first sentence of the Energy Industry Act; or

3. contravenes an ordinance enacted pursuant to:

- a) **section 64b no. 3;**
- b) **section 64d no. 1;**
- c) **section 64d nos. 3 or 4;**
- d) **section 64e nos. 2, 3 or 4;**

**or an enforceable order issued pursuant to any such ordinance, provided the ordinance refers to this administrative fine provision for the specific offence.**

**(2) In cases involving subsection (1) no. 3 (c) above, the administrative offence may be punished by the imposition of an administrative fine of up to fifty thousand euros, and in the other cases by the imposition of an administrative fine of up to two hundred thousand euros.**

(3) The administrative authority within the meaning of section 36(1) no. 1 of the Administrative Offences Act (Gesetz über Ordnungswidrigkeiten) shall be:

- 1. the Federal Network Agency **in cases involving subsection (1) nos. 1 and 2 above;**
- 2. **the Federal Office for Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung) in cases involving subsection (1) no. 3 (a) above;**
- 3. **the Federal Environment Agency in cases involving subsection (1) no. 3 (b) and (c) above;**
- 4. **the authority referred to in section 64e no. 2 in cases involving subsection (1) no. 3 (d) above;**

Section 63  
Supervision

In the performance of tasks assigned to them by this Act, federal authorities shall be supervised by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. This shall not apply to the supervision of the Federal Network Agency.

**Section 63a**  
**Fees and expenses**

**(1) Fees and expenses shall be charged for official acts carried out pursuant to this Act and to the ordinances based hereon in order to cover administrative expenses. The matters for which fees are charged and the fee rates shall be stipulated by means of ordinances issued without the consent of the Bundesrat. Such ordinances may provide for fixed rates, including in the form of time-based rates or rate ranges, and may also govern the reimbursement of expenses in**

**derogation of the Administrative Expenses Act (Verwaltungskostengesetz).**

**(2) The following Ministries shall be authorised to issue ordinances within the meaning of subsection (1) second and third sentences above:**

- 1. the Federal Ministry of Economics and Technology shall be authorised to issue ordinances on official acts of the Federal Network Agency pursuant to section 61(2) or (3) in conjunction with section 65 of the Energy Industry Act;**
- 2. the Federal Ministry of Food, Agriculture and Consumer Protection (Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz), in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Ministry of Finance (Bundesministerium der Finanzen), shall be authorised to issue ordinances on official acts of the Federal Office for Agriculture and Food in connection with the recognition of systems or the recognition and monitoring of an independent monitoring authority in accordance with any ordinance enacted pursuant to section 64b;**
- 3. the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be authorised to issue ordinances on official acts of the competent authority in connection with the issue, recognition, transfer or cancellation of guarantees of origin in accordance with any ordinance enacted pursuant to section 64d. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, by means of an ordinance issued without the consent of the Bundesrat, delegate this authority to the Federal Environment Agency.**

#### Part 7

Authorisation to issue ordinances, progress report, transitional provisions

#### Section 64

Authorisation to issue ordinances **on system services**

**(1) The Federal Government shall be authorised to issue ordinances without the consent of the Bundesrat to regulate the requirements in accordance with section 6(5) and section 66(1) no. 8 for wind-powered installations to improve their grid integration and in regard to lighting (system services). The ordinance referred to in the first sentence above shall, in particular, contain the following requirements, where implementation is economically reasonable:**

- 1. for installations in accordance with sections 29 and 30, the requirements for:**
  - a) conduct on the part of the installations in the event of faults;**
  - b) maintaining voltages and providing reactive power;**
  - c) maintaining frequencies;**

- d) proof procedures;
  - e) re-establishing supply; and
  - f) enlarging existing wind parks;
2. for installations in accordance with section 66(1) no. 8, the requirements for:
- a) conduct on the part of the installations in the event of faults;
  - b) maintaining frequencies;
  - c) proof procedures;
  - d) re-establishing supply; and
  - e) retrofitting installations in existing wind parks.

#### **Section 64a**

##### **Authorisation to issue ordinances on electricity generated from biomass**

**(1) The Federal Government shall be authorised to issue ordinances without the consent of the Bundesrat to regulate, within the scope of application of sections 27 to 27b:**

1. which materials shall be classed as biomass;
2. the materials for which an additional substance-based tariff may be claimed, which energy reference figure is to be applied to calculate this tariff and how it shall be verified, and how the substance-based tariff is to be calculated;
3. which technical procedures may be applied to generate electricity and;
4. which environmental and nature conservation requirements must thereby be met.

**(2) The Federal Government shall further be authorised to issue ordinances without the consent of the Bundesrat to regulate, within the scope of application of section 27c(1) no. 2 the requirements for a mass balance system for tracing gas withdrawn from a natural gas network.**

#### **Section 64b**

##### **Authorisation to issue ordinances on sustainability requirements for biomass**

**(1) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be authorised, in agreement with the Federal Ministry of Food, Agriculture and Consumer Protection, to issue ordinances without the consent of the Bundesrat:**

1. to regulate that the entitlement to tariff payment for electricity generated from solid, liquid or gaseous biomass shall only exist where the biomass used to generate the electricity fulfils the following requirements:

- a) **specific ecological and other requirements with regard to sustainable cultivation and the land utilised for such cultivation, particularly relating to the protection of natural habitats, highly biodiverse grassland within the meaning of Directive 2009/28/EC, and land with high carbon stock;**
  - b) **specific ecological and social requirements with regard to sustainable production;**
  - c) **a certain minimum potential for reducing greenhouse gases that must be achieved when generating the electricity.**
2. **to regulate the requirements under no. 1 above, including the conditions for determining the potential for reducing greenhouse gases within the meaning of no. 1 (c) above;**
  3. **to stipulate how installation operators must prove compliance with the requirements under nos. 1 and 2 above; the foregoing includes provisions on:**
    - a) **the content, form and term of validity of such proof, including provisions on the recognition of proof recognised as proof of the fulfilment of the requirements set forth in no. 1 above under the laws of the European Union or another country;**
    - b) **the involvement of systems and independent monitoring authorities in the furnishing of proof;**
    - c) **the requirements for recognising systems and independent monitoring authorities, as well as measures for their supervision, including the necessary rights to request information, inspect documents, take samples and give instructions, as well as the right of the competent authorities or independent monitoring authorities to access land, business premises, plants and storage facilities during business or operating hours and means of transport to the extent necessary for supervision or monitoring purposes;**
  4. **to delegate functions to the Federal Office for Agriculture and Food to ensure compliance with the requirements set forth in the ordinance enacted pursuant to nos. 1 to 3 above, particularly the authority to issue more detailed provisions regarding the requirements set forth in the ordinance enacted pursuant to nos. 1 and 2 above and the authority to perform the functions referred to in no. 3 above; in the event of any such delegation, technical supervision of the Federal Office for Agriculture and Food shall, in derogation of section 63, remain the responsibility of the Federal Ministry of Food, Agriculture and Consumer Protection.**

## **Section 64c**

### **Authorisation to issue ordinances on the equalisation scheme**

**The Federal Government shall, for the purpose of further developing the nationwide equalisation scheme, be authorised to issue ordinances without the consent of the Bundesrat to regulate:**

- 1. that conditions may be imposed on selling the electricity promoted under this Act, including:
  - a) the possibility of compensating the tariff payments or transaction costs by means of financial incentives, or the possibility of transmission system operators participating in the profits and losses generated from selling electricity;**
  - b) the supervision of selling;**
  - c) requirements with regard to selling, accounting and determining the EEG surcharge, including publication and transparency obligations, deadlines and transitional provisions governing financial equalisation;****
- 2. that transmission system operators may be entitled to enter into contractual agreements with installation operators for the purpose of optimising the selling of electricity having reasonable regard to feed-in priority; the foregoing shall include taking the costs arising as a result of such agreements into account under the equalisation scheme insofar as they are economically reasonable;**
- 3. that transmission system operators may be obliged, in particular for the purpose of setting off revenues, the necessary transaction costs and tariff payments, to hold a joint, transparent account specifically for these transactions (EEG account);**
- 4. that transmission system operators may be obliged, together and on the basis of the forecast quantities of electricity from renewable energy sources and from mine gas, to determine and publish, in an anonymised form, the probable costs and revenues, including a liquidity reserve, for the following calendar year and, after setting off the balance on the EEG account, a nationwide, standardised EEG surcharge for the following calendar year;**
- 5. that the tasks of transmission system operators may be wholly or partially transferred to third parties; the foregoing includes provisions governing the procedure for this, including the invitation to tender for the services provided by the transmission system operators as part of the nationwide equalisation scheme or for the quantities of electricity covered by this Act, as well as the possibility of regulating the exercise of tasks by third parties differently from the regulation of transmission system operators;**
- 6. the adaptations necessary in regard to the rules governing direct selling as well as the necessary adaptations of the special equalisation scheme for electricity-intensive enter-**

prises and rail operators, the provision governing the possibility of making subsequent corrections, the authorisations of the Federal Network Agency, the notification and publication obligations, as well as the provision governing the EEG surcharge with regard to the advanced equalisation scheme.

#### **Section 64d**

##### **Authorisation to issue ordinances on guarantees of origin**

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be authorised, in agreement with the Federal Ministry of Economics and Technology, to issue ordinances without the consent of the Bundesrat:

1. to regulate the requirements for:
  - a) issuing, transferring and cancelling guarantees of origin within the meaning of section 55(1);
  - b) recognising, transferring and cancelling guarantees of origin issued prior to the establishment of the Register of Guarantees of Origin; and
  - c) recognising guarantees of origin within the meaning of section 55(2);
2. to stipulate the content, form and term of validity of guarantees of origin;
3. to regulate the procedure for issuing, recognising, transferring and cancelling guarantees of origin as well as to stipulate the means by which applicants must verify compliance with the requirements under no. 1 above;
4. to stipulate the form of the Register of Guarantees of Origin referred to in section 55(3), the information required to be transmitted to the Register of Guarantees of Origin, and who is obliged to transmit such information; the foregoing shall also include provisions regarding the protection of personal information;
5. to regulate, in derogation of section 55(5), that guarantees of origin shall constitute financial instruments within the meaning of section 1(11) of the Banking Act or section 2(2b) of the Securities Trading Act;
6. to regulate in the context of electricity labelling, in derogation of section 54, the disclosure of electricity for which a tariff is claimed pursuant to section 16 or which is directly sold in the form referred to in section 33b no. 1; in particular, such ordinances may also regulate, in derogation of section 55(1), the issue of guarantees of origin to transmission system operators for such electricity;
7. to delegate, in derogation of section 55(4), to a public-law legal person the functions referred to in section 55(1) to (3), in particular the functions of establishing and maintaining the Register of Guarantees of Origin and issuing, recognising, transferring



or cancelling guarantees of origin, including enforcing administrative decisions made in this regard, or to vest a legal person incorporated under private civil law with the same powers, and to regulate the particulars, including legal and technical supervision by the Federal Environment Agency.

#### **Section 64e**

##### **Authorisation to issue ordinances on the Register of Installations**

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be authorised, in agreement with the Federal Ministry of Economics and Technology, to issue ordinances without the consent of the Bundesrat to regulate:

- 1. the establishment and maintenance of a public register in which installations are to be registered (Register of Installations);**
- 2. the obligation of one or more legal persons incorporated under private civil law to maintain such Register of Installations, including supervision by the competent superior federal authority and the conditions for this, as well as provisions regarding the competent superior federal authority;**
- 3. the form of the Register of Installations; such ordinances may also stipulate:**
  - a) the information required to be transmitted to the Register of Installations, including deadlines and requirements regarding the nature, format, scope and processing of the data to be provided;**
  - b) who is obliged to transmit information;**
  - c) that installations must be registered with a third party, who is then obliged to transmit the data to the party responsible for maintaining the Register of Installations;**
  - d) that the information shall be compared with the data in the Register of Guarantees of Origin as referred to in section 55(3) or with other registers established on the basis of this Act or any ordinances enacted pursuant to this Act;**
  - e) that in the event that the Register of Installations is maintained by a legal person incorporated under private civil law:**
    - aa) the data must be transmitted to the Federal Network Agency and to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety in accordance with section 51(3) second sentence, as well as to the Federal Ministry of Economics and Technology to the extent necessary for the performance of their functions under this Act;**

- bb) fees may be charged, including stipulation, structure and basis for calculating such fees;
- 4. the obligation of grid system operators to call up the current electricity feed-in from installations registered in the Register of Installations and fitted with technical facilities within the meaning of section 6(1) no. 2 and to transmit such data to the Register of Installations, including deadlines and requirements regarding the nature, format, scope and processing of the data to be provided;
- 5. provisions on the protection of personal information in connection with the data to be transmitted pursuant to nos. 3 and 4 above;
- 6. the relationship to the notification and publication obligations under sections 45 to 51; such ordinances may also regulate:
  - a) the extent to which data recorded and published in the Register of Installations need not, from the date of their publication, be transmitted and published any more in accordance with sections 45 to 52;
  - b) the extent to which section 51(2) shall also apply to installation operators who directly sell electricity in the forms referred to in section 33b no. 1 or no. 3, or the conditions on which section 51(2) shall not apply to installation operators who directly sell electricity in the form referred to in section 33b no. 2

#### **Section 64f**

##### **Further authorisations to issue ordinances**

The Federal Government shall be further authorised to issue ordinances without the consent of the Bundesrat to regulate:

- 1. the procedure for calculating the compensation pursuant to section 12(1), in particular a general procedure for determining the lost income and expenses saved in each case, as well as a procedure for verifying the accounting in each case;
- 2. any increase or reduction in the tariff under section 16 for electricity fed in at certain times to be specified; the foregoing shall not apply to electricity generated from hydropower, wind energy or solar radiation; when determining the relevant times, times of the day or times of certain stock exchange prices may, in particular, be used as the basis;
- 2a. within the scope of application of the tariff paid for electricity from installations within the meaning of section 33(1) used by the installation operator or third parties in the immediate vicinity of the installation, and in derogation of section 33(2):

- a) the tariff's term of validity and the duration of tariff payment;
  - b) the amount of the tariff; the distinction based on the shares used by the installation operator or third party themselves may be varied or repealed, and different tariffs may be set for different rated average annual capacities or for installations with different installed capacities;
  - c) eligibility criteria for tariff payment, particularly technical requirements regarding the installations or metering devices, as well as other requirements relating to the generation, measurement, storage or use of electricity from such installations;
  - d) proof that the eligibility criteria under (c) have been fulfilled;
3. for the purpose of calculating the market premium under section 33g, the amount of the management premium (" $P_M$ ") in derogation of nos. 2.1.2, 2.2.3, 2.3.4 or 2.4.3 of Annex 4 to this Act for electricity that is directly sold after the relevant ordinance enters into force, including from installations that claimed the market premium for the first time prior to the relevant ordinance entering into force; different values may be set for different energy sources or for selling on different markets, including negative values, and it may be stipulated that the data published in accordance with section 48(3) no. 1 in conjunction with no. 3 of Annex 4 to this Act shall be taken into account;
4. for the purpose of the flexibility premium under section 33i or section 66(1) no. 11:
- a) the amount and calculation of the additional installed capacity provided to generate electricity from biogas on a demand basis (" $P_{Zusatz}$ "), including the correction factor (" $f_{Kor}$ "), in derogation of no. 2.2 of Annex 5 to this Act; different values may also be set for installations commissioned prior to 1 January 2012 or after 31 December 2011;
  - b) the amount of the capacity components (" $KK$ ") in derogation of no. 2.3 of Annex 5 to this Act; different values may also be set for different types of biomass or for installations commissioned prior to 1 January 2012 or after 31 December 2011;
  - c) claims for the flexibility premium by installation operators who:
    - aa) directly sell their electricity in derogation of section 33i(1) no. 1 in other forms referred to in section 33b, or claim payment of a tariff in accordance with section 16; or
    - bb) generate electricity from types of biomass other than biogas;
- in each case including the eligibility criteria, form and billing modalities that may differ from the terms of section 33i or Annex 5 to this Act;

5. **within the scope of application of section 39:**
  - a) **in derogation of section 39(1), the conditions for a reduction in the EEG surcharge, particularly in derogation of section 39(1) no. 1, the minimum percentages of electricity delivered by electricity suppliers to their final consumers that must be electricity within the meaning of sections 23 to 33 in order that a reduction in the EEG surcharge may be claimed; different percentages may be stipulated for the individual renewable energy sources and mine gas;**
  - b) **proof of fulfilment of the conditions under section 39(1) no. 1;**
6. **for the purpose of further improving the integration of electricity generated from renewable energy sources, in particular:**
  - a) **financial incentives for installation operators, electricity suppliers, grid system operators or third parties to whom the selling of quantities of electricity has been delegated pursuant to any ordinance enacted pursuant to section 11 no. 4 of the Equalisation Scheme Ordinance, for the better market, system or grid integration of electricity generated from renewable energy sources or mine gas, particularly a demand-based feed-in of electricity for which a tariff is paid in accordance with section 16 or which is directly sold in accordance with section 33a;**
  - b) **the eligibility criteria, form and billing modalities of the financial incentives under (a) above; the following may also be regulated:**
    - aa) **the conditions on which a tariff pursuant to section 16 or the market premium within the meaning of section 33g may be claimed in whole or in part for such electricity;**
    - bb) **the conditions on which the electricity may be directly sold;**
    - cc) **how the electricity is to be labelled, and in particular the extent to which guarantees of origin may be used in this respect;**
    - dd) **that the conditions for direct selling under Part 3a may be varied;**
7. **in addition to Annex 3, provisions for determining and applying the reference yield.**

#### **Section 64g**

##### **Common provisions regarding authorisations to issue ordinances**

**(1) The ordinances enacted pursuant to sections 64a, 64b, 64c, 64d and 64f shall require the consent of the Bundestag. In derogation of the first sentence above, amendments to the Biomass Electricity Sustainability Ordinance (Biomassestrom-Nachhaltigkeitsverordnung) enacted pursuant to section 64b shall not require the consent of the Bundestag if the amendments are for the purpose of implementing binding Commission decisions in accordance**

with the second sub-paragraph of Article 17(3), the third sub-paragraph of Article 18(3) and the first to fourth sub-paragraphs of Article 18(4), as well as Article 19(7) and (8) of Directive 2009/28/EC.

(2) Where ordinances within the meaning of subsection 1 above require the consent of the Bundestag, such consent may be made conditional upon the incorporation of amendments requested by the Bundestag. If the drafter of the ordinance incorporates the amendments, no new resolution of the Bundestag shall be necessary. If the Bundestag fails to consider the ordinance within six weeks of sitting since receipt of the ordinance, its consent shall, in the case of ordinances pursuant to sections 64a, 64b, 64c and 64f nos. 1, 2, 3 and 7, be deemed granted in respect of the ordinance without the incorporation of amendments.

(3) The authorisations to issue ordinances in accordance with sections 64c, 64d, 64e and 64f no. 6 may, subject to preservation of the agreement requirement in the case of ordinances pursuant to sections 64d and 64e, be delegated to a superior federal authority by means of an ordinance. Subsection (1) first sentence above shall apply *mutatis mutandis* to any such delegation.

#### Section 65 Progress report

The Federal Government shall evaluate this Act and submit a progress report to the German Bundestag by 31 December **2014** and subsequently every four years thereafter.

#### Section 65a Monitoring report

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall report to the Federal Government by 31 December 2012 and thereafter on an annual basis on the development of renewable energy sources, the attainment of the aims under section 1(2) and the challenges arising in this regard. The Federal Government shall report to the Bundestag and present necessary recommendations for action on the basis of the report referred to in the first sentence above and on the basis of the report by the Federal Ministry of Economics and Technology pursuant to section 63(1) first sentence of the Energy Industry Act.

#### Section 66 Transitional provisions

(1) **Notwithstanding section 23(2) to (4)**, in the case of electricity from installations commissioned prior to 1 January **2012**, the provisions of the Renewable Energy Sources Act of **25 October 2008 (Federal Law Gazette I p. 2074)** in the version applicable on **31 December 2011** shall apply, **subject** to the following provisos:

- 1. Installation operators of installations generating electricity from solar radiation with an installed capacity exceeding 100 kilowatts must meet the technical requirements set out in section 6(1) from 1 July 2012; section 6(3) shall apply.**
- 2. Installation operators of installations generating electricity from solar radiation with an installed capacity between 30 kilowatts and 100 kilowatts, which were commissioned after 31 December 2008, must meet the technical requirements set out in section 6(2) no. 1 from 1 January 2014; section 6(3) shall apply.**
- 3. Installation operators of installations generating electricity from biogas must meet the technical requirements set out in section 6(4) first sentence no. 2 from 1 January 2014; the foregoing shall not apply to installations that meet the criteria under no. I.4 of Annex 2 to the Renewable Energy Sources Act in the version applicable on 31 December 2011.**
- 4. Section 17(1) shall apply mutatis mutandis in the event of contraventions of nos. 1 to 3 above.**
- 5. Section 11 shall apply mutatis mutandis to installations commissioned prior to 1 January 2012:**
  - a) if an obligation exists under section 6 no. 1 (a) of the Renewable Energy Sources Act in the version applicable on 31 December 2011 to provide such installations with a technical or operational facility;**
  - b) as soon as they are provided with a technical facility to reduce output within the meaning of section 23(2) no. 2; or**
  - c) as soon as they are obliged pursuant to nos. 1 and 2 above to meet the requirements of section 6(1) or (2) no. 1.**

**Section 11(1) shall not apply where the assumption of technical control over a hydropower installation would be inconsistent with water law or other legal requirements.**

- 6. Section 16(1) second and third sentences and subsection (2) second to fourth sentences shall apply in addition to section 16(1) and (3) of the Renewable Energy Sources Act in the version applicable on 31 December 2011. Instead of section 16(2) first sentence of the Renewable Energy Sources Act in the version applicable on 31 December 2011, section 17(2) no. 2 shall apply, subject to the proviso that the entitlement to tariff payment under the Renewable Energy Sources Act in the version applicable to the respective installation shall apply instead of the entitlement to tariff payment under section 16.**

7. **In the case of electricity generated from landfill gas, sewage treatment gas or biomass, no. 1 (a) of Annex 1 to this Act shall apply from 1 May 2012 instead of no. I.1 (a) of Annex 1 to the Renewable Energy Sources Act in the version applicable on 31 December 2011.**
8. **The tariff paid for electricity from wind-powered installations commissioned after 31 December 2001 and prior to 1 January 2009 shall increase for a period of five years by 0.7 cents per kilowatt-hour (system services bonus) as soon as these installations first meet the requirements of the System Services Ordinance following a retrofitting carried out after 1 January 2012 and prior to 1 January 2016.**
9. **In the case of installations generating electricity from solar radiation attached to or on top of buildings or noise protection walls commissioned after 31 December 2008 and prior to 1 January 2012 and which meet the requirements of section 33(2) of the Renewable Energy Sources Act in the version applicable on the installation's commissioning date, an entitlement to tariff payment for the electricity used shall only exist where the installation operator or third party is using the electricity himself in the immediate vicinity of the installation, can furnish proof of that fact, and the electricity is not transmitted via a grid system.**
10. **Sections 33a to 33g shall apply, subject to the proviso that when calculating the market premium pursuant to section 33g, the expected value pursuant to section 33h shall be the tariff in cents per kilowatt-hour which could actually be claimed for the directly sold electricity generated in the specific installation under the tariff provisions of the Renewable Energy Sources Act in the version applicable to the respective installation. Section 17(3) shall apply, subject to the proviso that the entitlement to tariff payment under the Renewable Energy Sources Act in the version applicable to the respective installation shall apply instead of the entitlement to tariff payment under section 16. Section 16(5), sections 17 and 51(2) of the Renewable Energy Sources Act in the version applicable on 31 December 2011 shall no longer apply from 1 January 2012.**
11. **Unless otherwise provided in an ordinance enacted pursuant to section 64f no. 4, section 33i shall also apply to installations generating electricity from biogas commissioned prior to 1 January 2012. The first sentence above shall only apply if, notwithstanding section 33e first sentence, an entitlement to tariff payment exists on the merits for the entire electricity generated in the installation under the tariff provisions of the Renewable Energy Sources Act in the version applicable to the respective installation; section 33i and Annex 5 to this Act shall otherwise apply, subject to any ordinance enacted pursuant to section 64f no. 4.**
12. **Section 32(3) shall also apply to installations generating electricity from solar radiation commissioned prior to 1 January 2012.**

**13. Section 27a(1), (3), (4) and (5) shall apply mutatis mutandis to installations commissioned prior to 1 January 2012.**

**(2) In the case of electricity from biomass installations:**

- 1. commissioned prior to 1 January 2013 and utilising waste wood for electricity generation; or**
- 2. utilising vegetable oil methyl ester for electricity generation and commissioned prior to 27 June 2004 or, in the case of installations requiring approval pursuant to the provisions of the Federal Immission Control Act (Bundes-Immissionsschutzgesetz) whose erection and operation were approved pursuant to section 4 in conjunction with section 6 or section 16 of the Federal Immission Control Act prior to 27 June 2004;**

**the Biomass Ordinance in the version applicable on 31 December 2011 shall apply.**

**(3) In the case of electricity from biomass installations commissioned prior to 1 January 2012, no. I.1 (c) of Annex 2 to the Renewable Energy Sources Act in the version applicable on 31 December 2011 shall no longer apply from 1 January 2012.**

**(4) In the case of electricity from biomass installations utilising biogas for electricity generation, section 27(5) no. 1 shall not apply where the biogas originates from biogas generation installations that have already generated biogas prior to 1 January 2012.**

**(5) In the case of electricity from installations generating electricity from hydropower with an installed capacity between 500 kilowatts and 5 megawatts and whose use of hydropower was authorised pursuant to water law prior to 1 January 2012, and which are commissioned prior to 1 January 2014, the installation operator shall receive, in derogation of section 23(1) and (2), the tariff under section 23(1) and (2) of the Renewable Energy Sources Act in the version applicable on 31 December 2011, provided the installation operator makes a request to this effect before the grid system operator has paid a tariff for electricity from this installation for the first time.**

**(6) In the case of electricity from installations:**

- 1. generating electricity from solid biomass;**
- 2. requiring approval pursuant to the Federal Immission Control Act;**
- 3. approved prior to 1 January 2012 pursuant to the Federal Immission Control Act; and**
- 4. commissioned prior to 1 January 2013;**

**the installation operator shall receive, in derogation of section 27, the tariff under section 27 of the Renewable Energy Sources Act in the version applicable on 31 December 2011, provided the installation operator makes a request to this effect before the grid system operator has paid a tariff for electricity from this installation for the first time.**



**(7) For the purpose of section 11, grid system operators may not assume technical control over installations within the meaning of section 6(2) in conjunction with subsection (3) until an ordinance enacted pursuant to section 64f no. 1 has stipulated a general procedure for determining the lost income.**

**(8) Section 39 shall apply to electricity delivered by electricity suppliers to final consumers after 31 December 2011 and prior to 1 January 2013, subject to the proviso that, in derogation of section 39(1) no. 2, the electricity suppliers must have notified their regular transmission system operator of their claim for a reduction in the EEG surcharge by 29 February 2012.**

**(9) Until such time as the Federal Environment Agency or the legal person commissioned or vested in accordance with an ordinance enacted pursuant to section 64d no. 7 has established a Register of Guarantees of Origin as referred to in section 55(3), guarantees of origin shall be issued, recognised, transferred and cancelled in accordance with section 55 of the Renewable Energy Sources Act in the version applicable on 30 April 2011. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall announce in the electronic Federal Gazette the date on which the Register referred to in the first sentence above is established.**

**(10) Section 27c(1) no. 2 shall not apply in the case of electricity generated prior to 1 January 2013.**

**(11) The entitlement to tariff payment for electricity from installations generating electricity from solar radiation on land within the meaning of section 32(2) no. 2 shall also exist for installations on the land referred to in section 32(2) no. 2 (a) and (b), provided the other requirements of section 32(2) are met, the installations were commissioned prior to 1 January 2014, and the decision on drawing up or amending the local development plan was adopted prior to 30 June 2011.**

**(12) Section 57 shall also apply to questions relating to the application of the Renewable Energy Sources Act in the version applicable on 31 December 2011.**

**(13) Section 41 shall apply to applications made in 2012, subject to the following provisos:**

- 1. enterprises that apply with regard to certain delivery points for the first time in 2012 because they are obliged for the first time to pay the EEG surcharge pursuant to section 37(3) no. 2 shall be released from the requirements of section 41(1) no. 1 (c).**
- 2. in the case of enterprises whose electricity consumption is at least 10 gigawatt-hours, section 41(1) no. 4 in the version applicable on 31 December 2011 shall apply instead of section 41(1) no. 2.**

**(13a) Section 41(5) third and fourth sentences shall not apply to independent parts of an enterprise if the share of electricity within the meaning of section 41 of the Renewable Energy Sources Act in the version applicable on 31 December 2011 of the independent parts or their EEG surcharge pursuant to section 6 of the Ordinance on the Further Development of the**

**Nationwide Equalisation Scheme (Verordnung zur Weiterentwicklung des bundesweiten Ausgleichsmechanismus) in the version applicable on 31 December 2011 was already limited prior to 1 January 2012.**

**(14) In the case of electricity from installations generating electricity from hydropower commissioned prior to 1 August 2004, section 23(2) in conjunction with subsection (5) of the Renewable Energy Sources Act in the version applicable on 31 December 2011 shall apply instead of section 23(2) in conjunction with subsection (4) where the modernisation of the installation was completed prior to 1 January 2014 and the installation operator makes a request to this effect before the grid system operator has paid the tariff under section 23(2) in conjunction with subsection (1) for the first time.**

**(15) Where final consumers have already purchased their electricity not from a electricity supplier or a third party prior to 1 September 2011 and the electricity-generating installation was already commissioned prior to 1 September 2011, section 37(6) in the version applicable on 31 December 2011 shall apply to the electricity instead of section 37(3).**

**(16) Notwithstanding section 39, in the case of electricity suppliers whose obligation to pay a tariff was already reduced prior to 1 September pursuant to section 37(1) second sentence in conjunction with the first sentence of the Renewable Energy Sources Act in the version applicable on 31 December 2011, the EEG surcharge shall be reduced to zero in a given calendar month for electricity delivered to final consumers prior to 1 January 2014 where:**

- 1. at least 50 percent of the electricity delivered to all of their final consumers in that calendar month is electricity within the meaning of sections 23, 24, 25, 27 to 30, 32 and 33; for the purpose of calculating this quantity of electricity, only electricity generated from renewable energy sources may be credited if:**
  - a) an entitlement to tariff payment exists on the merits under section 16 notwithstanding section 33e first sentence, and such entitlement to tariff payment is not reduced pursuant to section 17;**
  - b) the electricity:**
    - aa) is used by final consumers in the immediate vicinity of the installation; or**
    - bb) is not transmitted via a grid system;**
  - c) the electricity:**
    - aa) is directly sold in accordance with section 33b no. 2; or**
    - bb) is sold to third parties in accordance with section 33a(2) and not actually purchased in accordance with section 8 or used in accordance with section 33(2); and**

**d) the respective installation operators do not contravene section 33c(1);**

**section 39(1) no. 1 second half-sentence shall otherwise apply mutatis mutandis when calculating the percentage;**

- 2. the electricity suppliers have notified their regular transmission system operator before the start of the previous calendar month that they are claiming a reduction in the EEG surcharge; and**
- 3. the requirements under section 39(1) no. 4 are met.**

**Annex 1**  
**Bonus for gas processing**

**1. Bonus criteria**

Entitlement to the bonus **for gas processing** in accordance with **section 27c(2)** shall apply to electricity generated in installations with a maximum **rated average annual capacity** of 5 megawatts, provided the **gas was fed in pursuant to section 27c(1) and was processed before being fed into the natural gas network**, and proof is furnished that the following criteria have been met:

- a) methane emissions into the atmosphere during processing **not exceeding 0.2** percent;
- b) electricity consumption during processing **not exceeding 0.5** kilowatt-hours per standard cubic metre of crude gas;
- c) supply of the process heat for the gas processing and generation of **landfill gas**, sewage treatment gas or biogas from **renewable** energy sources, from mine gas or from the waste heat from the gas processing or feed-in installation without the use of additional fossil energies; and
- d) **a rated gas output** of the gas processing installation **not exceeding 1,400** standard cubic metres of **processed landfill gas, sewage treatment gas or biogas** per hour.

**2. Amount of the bonus**

The bonus **for gas processing** shall amount to:

- a) **3.0** cents per kilowatt-hour for a gas processing installation with a maximum **rated gas output** of **700** standard cubic metres of processed **landfill gas, sewage treatment gas or biogas** per hour;
- b) **2.0** cents per kilowatt-hour for a gas processing installation with a maximum **rated gas output** of **1,000** standard cubic metres of processed **landfill gas, sewage treatment gas or biogas** per hour; **and**
- c) **1.0** cents per kilowatt-hour for a gas processing installation with a maximum **rated gas output** of **1,400** standard cubic metres of processed **landfill gas, sewage treatment gas or biogas** per hour.

Section 19(1) shall apply mutatis mutandis to gas processing installations.

**Annex 2**  
**Combined heat and power generation**

**1. Criteria for combined heat and power generation**

**Electricity shall be deemed electricity generated from combined heat and power generation within the meaning of section 27(4) no. 1 and subsection (5) no. 2 where:**

- a) the electricity is electricity **from combined heat and power generation**; and
- b) the heat is used within the meaning of **no. 3 below** (Positive List); or
- c) the heat use demonstrably replaces fossil energies with an energy equivalent comparable to the quantity of fossil heat used.

**2. Required proof**

**2.1** Proof that the criteria in accordance with **no. 1 (a) above have been met** shall be furnished to the grid system operator in accordance with the generally accepted rules of technology; the generally accepted rules of technology shall be assumed to have been complied with where the requirements of Worksheet FW 308 – *Zertifizierung von KWK-Anlagen – Ermittlung des KWK-Stromes* (Certification of CHP Installations – Determining the CHP Electricity) in the applicable version as published by the *Arbeitsgemeinschaft für Wärme und Heizkraftwirtschaft e.V.* (AGFW) are met. Such proof must be furnished each year **by presenting a technical expert opinion from** an environmental verifier who is accredited in the field of electricity generation from renewable energy sources. Instead of the proof in accordance with the first sentence above, CHP installations produced in series with a maximum capacity of 2 megawatts may present appropriate documentation from the manufacturer which indicates the thermal and electrical capacity and the electricity coefficient.

**2.2** Proof that the criteria in accordance with **no. 1 (b) and (c) above have been met** shall be furnished by presenting a technical expert opinion from an environmental verifier who is accredited in the field of electricity generation from renewable energy sources or in the field of heat supply.

**3. Positive List**

The following shall be categorised as the use of heat within the meaning of **no. 1 (b) above**:

- a) the heating, hot water supply or cooling of buildings within the meaning of section 1(1) **no. 1** of the Energy Saving Ordinance (Energieeinsparverordnung) up to a heat use of 200 kilowatt-hours per square metre of useable floor area per annum, **including where the heat use exceeds a total of 200 kilowatt-hours per square metre or useable floor area per annum**;
- b) the feeding of heat into a network of at least 400 metres in length; **when heat is fed into a network, average losses not exceeding 25 percent of the useful heat demand of heat customers shall be recognised every calendar year as losses due to heat distribution or transmission**;

- c) the use as process heat for:
  - aa) industrial processes within the meaning of nos. 2 to 6, 7.2 to 7.34, 10.1 to 10.10 and 10.20 to 10.23 of the Annex to the Fourth Ordinance Implementing the Federal Immission Control Act (Vierte Verordnung zur Durchführung des Bundes-Immissionsschutzgesetzes); **or**
  - bb) **the drying of wood for use as a material or as energy up to a heat use of 0.9 kilowatt-hours per kilogram of wood;**
- d) the heating of farm buildings in poultry rearing where the criteria in accordance with **no. 1 (c) above** are met;
- e) the heating of animal housing with the following upper limits **per calendar year**:
  - aa) poultry fattening: **5 kilowatt-hours per animal space;**
  - bb) sow keeping: **350 kilowatt-hours per animal space;**
  - cc) piglet husbandry: **75 kilowatt-hours per animal space;**
  - dd) pig fattening: **45 kilowatt-hours per animal space;**
- f) the heating of glasshouses for the rearing and reproduction of plants, where the criteria in accordance with **no. 1 (c) above** are met;
- g) **the use as process heat for the hygienisation or pasteurisation of fermentation residues requiring hygienisation or pasteurisation under applicable laws;**
- h) the use as process heat for the processing of fermentation residues in fertiliser production; **and**
- i) **the use of waste heat from biomass installations in order to generate electricity, in particular in Organic Rankine- and Kalina cycle processes.**

#### 4. Negative List

The following shall not be categorised as the use of heat within the meaning of **no. 1 (b) and (c) above**:

- a) the heating of buildings which, in accordance with section 1(2) of the Energy Saving Ordinance, are not governed by **that Ordinance**, with the exception of buildings covered by **no. 3 (d) to (f) above**;
- b) the use of heat from biomass installations which utilise fossil fuels, **particularly** to cover their own heat needs.

### **Annex 3**

#### Reference yield

1. A reference installation shall be a wind-powered installation of a specific type for which a yield at the level of the reference yield can be calculated on the basis of the P-V curve (power-wind speed curve) measured by an authorised institution at the reference site.

2. The reference yield shall be the quantity of electricity which each specific type of wind-powered installation, including its hub height, would, if calculated on the basis of measured P-V curves, yield during five years of operation if it were built at the reference site. The reference yield shall be calculated in accordance with the generally accepted rules of technology; the generally accepted rules of technology shall be assumed to have been complied with if the procedures, foundations and calculating methods set out in the Technische Richtlinien für Windenergieanlagen (Technical Guidelines for Wind-Powered Installations), Part 5, published by the Fördergesellschaft Windenergie e.V. (FGW), in the version applicable at the time of calculating the reference yield, have been used.

3. The type of a wind-powered installation shall be defined by the type designation, the swept rotor area, the rated power output and the hub height as specified by the manufacturer.

4. The reference site shall be a site determined by means of a Rayleigh distribution with a mean annual wind speed of 5.5 metres per second at a height of 30 metres above ground level, a logarithmic wind shear profile and a roughness length of 0.1 metres.

5. The P-V curve shall be the correlation between wind speed and power output (irrespective of hub height) determined for each type of wind-powered installation. P-V curves shall be determined in accordance with the generally accepted rules of technology; the generally accepted rules of technology shall be assumed to have been complied with if the procedures, foundations and calculating methods set out in the Technische Richtlinien für Windenergieanlagen (Technical Guidelines for Wind-Powered Installations), Part 2, published by the Fördergesellschaft Windenergie e.V. (FGW), in the version applicable at the time of calculating the P-V curves, have been used. P-V curves which were determined by means of a comparable procedure prior to 1 January 2000 can also be used instead of P-V curves as specified in the second sentence above, provided that no construction of wind-powered installations of the type to which these curves apply is commenced within the territorial application of this Act after 31 December 2001.

#### **6. (repealed)**

7. For the purposes of this Act, measurements of the P-V curves in accordance with no. 5 above and calculations of the reference yields of different types of wind-powered installations at reference sites in accordance with no. 2 above may be carried out by institutions which are properly accredited in accordance with the Allgemeine Anforderungen an die Kompetenz von Prüf- und Kalibrierlaboratorien (General Requirements for the Competence of Testing and Calibration Laboratories) (DIN EN ISO/IEC 17025) of April 2000 by an accreditation body which is officially recognised or has been evaluated with the involvement of public authorities.

8. When using the reference yield to determine the extended period in which the initial tariffs are to be paid, the **installed** capacity shall be taken into account, at most, however, the maximum capacity which the installation is permitted to generate for licensing reasons in accordance with the Federal Immission Control Act. Temporary capacity reductions, **particularly by virtue of an assumption of technical control over the installation within the meaning of section 11**, shall not be taken into account.



**Annex 4**  
**Amount of the market premium**

**1. Calculation of the market premium**

**1.1 For the purpose of this Annex:**

- **"MP"** shall be the amount of the market premium within the meaning of section 33g(2) in cents per kilowatt-hour;
- **"EV"** shall mean the reference tariff within the meaning of section 33h in cents per kilowatt-hours;
- **"MW"** shall mean the retrospectively calculated actual monthly average of the market value of the specific energy source in cents per kilowatt-hour;
- **"P<sub>M</sub>"** shall mean the premium charged for the necessary costs of stock exchange admission, the trading connection, the transactions for recording the current values and billing, for the IT infrastructure, for staff and services, for preparing forecasts and for variations of the actual feed-in compared to the forecast (management premium);
- **"RW"** shall mean the reference market value of the specific energy source calculated in accordance with no. 2 above in cents per kilowatt-hour.

**1.2** The amount of the market premium within the meaning of section 33g ("MP") in cents per kilowatt-hour for directly sold electricity that is actually fed into the grid system shall be calculated in accordance with the following formula:

$$MP = EV - RWV$$

If the calculation results in a value of less than zero, "MP" shall, in derogation of the first sentence above, be set at zero.

**2. Calculation of the reference market value ("RW") of the specific energy source**

**2.1** Reference market value in the case of electricity generated from hydropower, landfill gas, sewage treatment gas, mine gas, biomass and geothermal energy within the meaning of sections 23 to 28

**2.1.1** The reference market value of the specific energy source ("RW") in cents per kilowatt-hour for directly sold electricity generated from hydropower, landfill gas, sewage treatment gas, mine gas, biomass and geothermal energy shall be calculated in accordance with the following formula:

$$RW_{Assessable} = MW_{EPEX} - P_{M(Assessable)}$$

where " $MW_{EPEX}$ " shall mean the actual monthly average of hour contracts on the spot market of the EPEX Spot SE energy exchange in Leipzig in cents per kilowatt-hour.

2.1.2 Subject to any ordinance enacted pursuant to section 64f no. 3, " $P_{M(Assessable)}$ " shall amount to the following in the case of electricity generated:

- in 2012: 0.30 cents per kilowatt-hour;
- in 2013: 0.275 cents per kilowatt-hour;
- in 2014: 0.25 cents per kilowatt-hour;
- from the year 2015 onwards: 0.225 cents per kilowatt-hour.

2.2 Reference market value in the case of electricity generated from wind energy within the meaning of sections 29 and 30

2.2.1 The reference market value of the specific energy source (" $RW$ ") in cents per kilowatt-hour for directly sold electricity generated from wind energy within the meaning of sections 29 and 30 shall be calculated in accordance with the following formula:

$$RW_{Wind\ Onshore} = MW_{Wind\ Onshore} - P_{M(Wind\ Onshore)}$$

2.2.2 " $MW_{Wind\ Onshore}$ " shall mean the actual monthly average of the market value of electricity within the meaning of sections 29 and 30 on the spot market of the EPEX Spot SE energy exchange in Leipzig in cents per kilowatt-hour. This value shall be calculated as follows:

2.2.2.1 For each hour in a given calendar month, the average value of hour contracts on the sport market of the EPEX Spot SE energy exchange in Leipzig shall be multiplied by the quantity of electricity within the meaning of sections 29 and 30 actually generated in that hour.

2.2.2.2 The results for all hours in that calendar month shall be aggregated.

2.2.2.3 This total shall be divided by the quantity of electricity within the meaning of sections 29 and 30 generated in the entire calendar month.

2.2.2.4 Both the electricity for which a tariff is paid in accordance with section 16 and the electricity which is directly sold in the forms set forth in section 33b nos. 1 or 2 shall be taken into account in the calculations under nos. 2.2.2.1 and 2.2.2.3 above. In derogation of nos. 2.2.2.1 and 2.2.2.3 above, electricity within the meaning of section 31 shall also be included in the calculation until 31 December 2012.

**2.2.2.5** For the purposes of the calculation under nos. 2.2.2.1 and 2.2.2.3 above, where the quantity of actually generated electricity within the meaning of sections 29 and 30 is not available by 31 January of the following year, it shall be calculated having regard to the online projection referred to in no. 3.1 below .

**2.2.3** Subject to any ordinance enacted pursuant to section 64f no. 3, " $P_{M (Wind Onshore)}$ " shall amount to the following in the case of electricity generated:

- in 2012: 1.20 cents per kilowatt-hour;
- in 2013: 1.00 cents per kilowatt-hour;
- in 2014: 0.85 cents per kilowatt-hour;
- from the year 2015 onwards: 0.70 cents per kilowatt-hour.

**2.3** Reference market value in the case of electricity generated from wind energy within the meaning of section 31

**2.3.1** No. 2.2 above shall apply mutatis mutandis to electricity from offshore installations generated prior to 1 January 2013.

**2.3.2** In the case of electricity from offshore installations generated after 31 December 2012, the reference market value of the specific energy source (" $RW$ ") in cents per kilowatt-hour for directly sold electricity shall be calculated in accordance with the following formula:

$$RW_{Wind Offshore} = MW_{Wind Offshore} - P_{M (Wind Offshore)}$$

**2.3.3** " $MW_{Wind Offshore}$ " shall mean the actual monthly average of the market value of electricity from offshore installations on the spot market of the EPEX Spot SE energy exchange in Leipzig in cents per kilowatt-hour. This value shall be calculated as follows:

**2.3.3.1** For each hour in a given calendar month, the average value of hour contracts on the sport market of the EPEX Spot SE energy exchange in Leipzig shall be multiplied by the quantity of electricity actually generated from offshore installations in that hour.

**2.3.3.2** The results for all hours during that calendar month shall be aggregated.

**2.3.3.3** This total shall be divided by the quantity of electricity generated from offshore installations in the entire calendar month.

**2.3.3.4** Both the electricity for which a tariff is paid in accordance with section 16 and the electricity which is directly sold in the forms set forth in

section 33b nos. 1 or 2 shall be taken into account in the calculations under nos. 2.3.3.1 and 2.3.3.3 above.

2.3.3.5 For the purposes of the calculation under nos. 2.3.3.1 and 2.3.3.3 above, where the quantity of electricity actually generated from offshore installations is not available by 31 January of the following year, it shall be calculated having regard to the online projection referred to in no. 3.1 below .

2.3.4 Subject to any ordinance enacted pursuant to section 64f no. 3, " $P_M$  (Wind Offshore)" shall amount to the following in the case of electricity generated:

- in 2013: 1.00 cents per kilowatt-hour;
- in 2014: 0.85 cents per kilowatt-hour;
- from the year 2015 onwards: 0.70 cents per kilowatt-hour.

2.4 Reference market value in the case of electricity generated from solar radiation within the meaning of sections 32 and 33

2.4.1 The reference market value of the specific energy source (" $RW$ ") in cents per kilowatt-hour for directly sold electricity generated from solar radiation shall be calculated in accordance with the following formula:

$$RW_{Solar} = MW_{Solar} - PM_{(Solar)}$$

2.4.2 " $MW_{Solar}$ " shall mean the actual monthly average of the market value of electricity generated from solar radiation on the spot market of the EPEX Spot SE energy exchange in Leipzig in cents per kilowatt-hour. This value shall be calculated as follows:

2.4.2.1 For each hour in a given calendar month, the average value of hour contracts on the sport market of the EPEX Spot SE energy exchange in Leipzig shall be multiplied by the quantity of electricity actually generated from solar radiation in that hour.

2.4.2.2 The results for all hours during that calendar month shall be aggregated.

2.4.2.3 This total shall be divided by the quantity of electricity generated from solar radiation in the entire calendar month.

2.4.2.4 Both the electricity generated from solar radiation for which a tariff is paid in accordance with section 16 and the electricity generated from solar radiation which is directly sold in the forms set forth in section 33b nos. 1 or 2 shall be taken into account in the calculations under nos. 2.4.2.1 and 2.4.2.3 above.

**2.4.2.5** For the purposes of the calculation under nos. 2.4.2.1 and 2.4.2.3 above, where the quantity of electricity actually generated from solar radiation is not available by 31 January of the following year, it shall be calculated having regard to the online projection referred to in no. 3.1 below .

**2.4.3** Subject to any ordinance enacted pursuant to section 64f no. 3, " $P_{M(Solar)}$ " shall amount to the following in the case of electricity generated:

- in 2012: 1.20 cents per kilowatt-hour;
- in 2013: 1.00 cents per kilowatt-hour;
- in 2014: 0.85 cents per kilowatt-hour;
- from the year 2015 onwards: 0.70 cents per kilowatt-hour.

### **3. Publication of the calculation**

**3.1** Transmission system operators must, at all times without delay, in a standardised format, and at least at hourly intervals, publish an online projection, prepared based on a representative number of assessed reference installations, of the quantity of electricity actually generated from wind energy and from solar radiation in their control zones on a shared website.

**3.2** Transmission system operators must further publish, by the end of the tenth working day of the following month, the following data for each calendar month in a standardised format and in an anonymised form on a shared website:

- a) the value of hour contracts on the spot market of the EPEX Spot SE energy exchange in Leipzig:
  - aa) for each calendar day at hourly intervals; and
  - bb) expressed as the actual monthly average (" $MW_{EPEX}$ ");
- b) the quantity of electricity actually generated from wind energy in their control zones (aggregated) at hourly intervals;
- c) the quantity of electricity actually generated from solar radiation in their control zones (aggregated) at hourly intervals;
- d) the actual monthly average of the market value of electricity generated from wind energy (" $MW_{Wind Onshore}$ "; and from 1 January 2013 onwards also: " $MW_{Wind Offshore}$ ") based on a calculation in accordance with nos. 2.1.2 and 2.3.3 above;

- e) the actual monthly average of the market value of electricity generated from solar radiation (" $MW_{Solar}$ ") based on a calculation in accordance with no. 2.4.2 above; and
- f) the reference market value for the specific energy source (" $RW$ ") referred to in no. 2 above, in each case separately for the various energy sources:
  - aa) hydropower;
  - bb) landfill gas;
  - cc) sewage treatment gas;
  - dd) mine gas;
  - ee) biomass;
  - ff) geothermal energy;
  - gg) wind energy;
  - hh) solar radiation;

A common reference market value (" $RV_{Assessable}$ ") may be published as long as the reference market value for the energy sources referred to in (aa) to (ff) above is the same.

**3.3** The data referred to in nos. 3.1 and 3.2 (b) and (c) above must take into account the electricity purchased in accordance with section 8; furthermore, the electricity directly sold in the forms referred to in section 33b nos. 1 or 2 shall also be taken into account.

**3.4** The data for electricity generated from wind energy referred to in nos. 3.1 and 3.2 (b), (d) and (f) (gg) above shall, from 1 January 2013 onwards, distinguish between electricity within the meaning of sections 29 and 30 and electricity within the meaning of section 31.

**3.5** Where the data referred to in no. 3.2 above is not available by the end of the tenth working day of the following month, it shall be published without delay in an anonymised form as soon as it is available. Where this data is not available by 31 January of the following year, it shall be calculated taking into account the data referred to in no. 3.1 above and published in an anonymised form by such date.

**Annex 5**  
**Amount of the flexibility premium**

**1. Definitions**

For the purpose of this Annex:

- " $P_{Bem}$ " shall mean the rated average annual capacity within the meaning of section 3 no. 2a in kilowatts; in the first and in the tenth calendar year for which the flexibility premium is claimed, the rated average annual capacity within the meaning of section 3 no. 2a shall be calculated subject to the proviso that only the kilowatt-hours generated in the calendar months for which the flexibility premium is claimed and only the full hours in those calendar months shall be taken into account; the foregoing shall only apply for the purposes of calculating the amount of the flexibility premium;
- " $P_{inst}$ " shall mean the installed capacity within the meaning of section 3 no. 6 in kilowatts;
- " $P_{Zusatz}$ " shall mean the additional installed capacity provided to generate electricity on a demand-basis in kilowatts and in the respective calendar year;
- " $f_{Kor}$ " shall mean the correction factor for the utilisation of the installation's capacity;
- " $KK$ " shall mean the capacity components for the purposes of providing the additional installed capacity in euros and kilowatts;
- " $FP$ " shall mean the flexibility premium within the meaning of section 33i in cents per kilowatt-hour.

**2. Calculation**

2.1 The amount of the flexibility premium within the meaning of section 33i (" $FP$ ") in cents per kilowatt-hour for directly sold electricity which is actually fed into the grid system shall be calculated in accordance with the following formula:

$$FP = \frac{P_{Zusatz} \times KK \times 100 \frac{Cent}{Euro}}{P_{Bem} \times 8760h}$$

2.2 Subject to any ordinance enacted pursuant to section 64f no. 4 (a), " $P_{Add}$ " shall be calculated in accordance with the following formula:

$$P_{Zusatz} = P_{inst} - (f_{Kor} \times P_{Bem}),$$

where " $f_{Kor}$ " amounts to the following, subject to any ordinance enacted pursuant to section 64f no. 4 (a):

- **1.6 in the case of biomethane; and**
- **1.1 in the case of biogas other than biomethane.**

**In derogation of the first sentence above, " $P_{Zusatz}$ " shall be set at:**

- **zero where the rated average annual capacity is less than 0.2 times the installed capacity;**
- **0.5 times the installed capacity " $P_{inst}$ " where, according to the calculation, it is more than 0.5 times the installed capacity.**

**2.3 Subject to any ordinance enacted pursuant to section 64f no. 4 (b), " $KK$ " shall amount to 130 euros per kilowatt.**