

## **Renewable Energy Sources Act (EEG 2017)**

- Document reflects changes formally adopted until October 2016 -

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# **Part 1**

## **General provisions**

### **Section 1**

#### **Purpose and aim of the Act**

(1) The purpose of this Act is to enable the energy supply to develop in a sustainable manner in particular in the interest of mitigating climate change and protecting the environment, to reduce the costs of the energy supply to the economy not least by including long-term external effects, to conserve fossil energy resources and to promote the further development of technologies to generate electricity from renewable energy sources.

(2) The aim of this Act is to increase the proportion of electricity generated from renewable energy sources as a percentage of gross electricity consumption to

1. 40 to 45 percent by 2025,
2. 55 to 60 percent by 2035 and
3. at least 80 percent by 2050.

This development is to take place in a manner that is steady, cost-efficient and compatible with the grid system.

(3) The aim pursuant to subsection 2 sentence 1 also serves to increase the share of total gross final energy consumption covered by renewable energy sources to at least 18 percent by 2020.

### **Section 2**

#### **Principles of the Act**

(1) Electricity from renewable energy sources and from mine gas is to be integrated into the electricity supply system.

(2) In order to integrate it into the market, electricity from renewable energy sources and from mine gas is to be sold directly.

(3) The level of payments for electricity from renewable energy is to be determined by auctions. In this regard, stakeholder diversity is to be maintained for electricity generation from renewable energy sources.

(4) The costs of electricity from renewable energy sources and from mine gas are to be kept low and distributed appropriately in view of the user-pays principle and energy industry aspects.

### **Section 3**

#### **Definitions**

For the purposes of this Act

1. "installation" shall mean every facility to generate electricity from renewable energy sources or from mine gas, whereby in the case of solar installations each module shall be an independent solar installation; "installation" shall include facilities which receive energy which has been temporarily stored and which derives exclusively from renewable energy sources or mine gas and convert it into electrical energy,
2. "installation operator" shall mean the party who uses the installation to generate electricity from renewable energy sources or mine gas, irrespective of who owns the installation,
3. "value to be applied" shall mean the value which the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Federal Network Agency) determines in the context of an auction pursuant to Section 22 in conjunction with Sections 28 to 39j or which is determined by statute by Sections 40 to 49 and which is the basis for the calculation of the market premium or the feed-in tariff,
4. "auction" shall mean a transparent, non-discriminatory and competitive procedure to determine the entitled party and the value to be applied,
5. "auction volume" shall mean the total capacity to be installed for which the entitlement to payment of a market premium is auctioned on a bid deadline;
6. "rated capacity" shall mean the quotient of the total of the kilowatt-hours generated in the respective calendar-year and the total of the full hours of the respective calendar-year minus the full hours before the first generation of electricity from renewable energy sources or mine gas by the installation and following the final decommissioning of the installation,
7. "disadvantaged area" shall mean an area within the meaning of Council Directive 86/465/EEC of 14 July 1986 concerning the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC (OJ L 273 of 24 September 1986, p. 1), in the version of Decision 97/172/EC (OJ L 72 of 13 March 1997, p. 1),
8. "bid awarded funding" shall mean a bid that has been awarded funding and where in the case of an award to a solar installation a second security has been lodged,
9. "balancing group" shall mean a balancing group pursuant to Section 3 number 10a of the Energy Industry Act,
10. "balancing group contract" shall mean a contract pursuant to Section 26 subsection 1 of the Electricity Grid Access Ordinance,
11. "biogas" shall mean gas which is produced by the anaerobic fermentation of biomass,
12. "biomass installation" shall mean every installation to generate electricity from biomass,

13. "biomethane" shall mean biogas or other gaseous biomass which is processed and fed into the natural gas system,
14. "gross new-build" shall mean the total of the installed capacity of all installations of a form of energy which have been notified to the register as being commissioned in this period,
15. "citizens' energy company" shall mean every company
  - a) which consists of at least ten natural persons who are members eligible to vote or shareholders eligible to vote,
  - b) in which at least 51 percent of the voting rights are held by natural persons whose main residence has been registered pursuant to Section 21 or Section 22 of the Federal Registration Act for at least one year prior to submission of the bid in the urban or rural district in which the onshore wind energy installation is to be erected,
  - c) in which no member or shareholder of the undertaking holds more than 10 percent of the voting rights of the undertaking,

whereby in the case of an association of several legal persons or unincorporated firms to form an undertaking it is sufficient if each of the members of the undertaking fulfils the preconditions pursuant to letters a to c,

16. "direct selling" shall mean the sale of electricity from renewable energy sources or from mine gas to third parties unless the electricity is consumed in immediate proximity to the installation and is not fed through a grid system,
17. "direct seller" shall mean the party commissioned by the installation operator with the direct selling of electricity from renewable energy sources or from mine gas or who commercially purchases electricity from renewable energy sources or from mine gas without in this regard being the final consumer of this electricity or the grid system operator,
18. "energy or eco-management system" shall mean a system which corresponds to the requirements of DIN EN ISO 50 001, December 2011 edition<sup>1</sup>, or a system within the meaning of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342 of 22 December 2009, p. 1) in the version applicable at the time,
19. "self-supply" shall mean the consumption of electricity which a natural or legal person consumes himself in the immediate vicinity of the electricity-generating installation if the electricity is not fed through a grid system and this person operates the electricity-generating installation himself,
20. "electricity supplier" shall mean every natural or legal person supplying electricity to final consumers,

21. "renewable energy sources" shall mean
  - a) hydropower including wave, tidal, salinity gradient and marine current energy,
  - b) wind energy,
  - c) solar radiation energy,
  - d) geothermal energy,
  - e) energy from biomass including biogas, biomethane, landfill gas and sewage treatment gas and from the biologically degradable part of waste from households and industry,
22. "ground-mounted installation" shall mean every solar installation which is not on, affixed to or in a building or any other construction which has been erected primarily for purposes other than the generation of electricity from solar radiation energy,
23. "building" shall mean every independently usable roofed construction which can be entered by people and which is primarily designed to give shelter to people, animals or objects,
24. "bid quantity" shall mean is the capacity to be installed in kilowatts for which the bidder has tendered a bid;
25. "bid deadline" shall mean the calendar day on which the period for submitting bids for an auction expires;
26. "bid value" shall mean the value to be applied which the bidder has indicated in his bid;
27. "generator" shall mean every technical device which converts mechanical, chemical, thermal or electromagnetic energy directly into electrical energy,
28. "manure" shall mean every substance which is 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 (Regulation on Animal By-Products) (OJ L 300 of 14 November 2009, p. 1), amended by Regulation (EU) No 1385/2013 (OJ L 276 of 28 December 2013, p. 86),
29. "guarantee of origin" shall mean an electronic document which exclusively serves to furnish proof to a final consumer in the context of electricity labelling pursuant to Section 42 subsection 1 number 1 of the Energy Industry Act that a certain proportion or quantity of the electricity has been generated from renewable energy sources,
30. "commissioning" shall mean the first putting into operation of the installation following the establishment of its technical readiness for operation exclusively with renewable energy sources or mine gas; the technical readiness for operation presupposes that the installation has been installed firmly at the place envisaged for permanent operations and is permanently furnished with the necessary equipment for the generation of alternating current; the replacement of the generator or of other technical or structural parts following initial commissioning shall not alter the time of commissioning,

31. “installed capacity” shall mean the effective electrical power which an installation is technically capable of generating when operated as intended without time restrictions irrespective of minor short-term deviations,
32. “CHP installation” shall mean every CHP installation within the meaning of Section 2 subsection 14 of the Combined Heat and Power Act,
33. “final consumer” shall mean every natural or legal person consuming electricity,
34. “monthly market value” shall mean the average actual monthly value calculated retrospectively of the source-specific market value of electricity generated from renewable energy sources or from mine gas on the spot market of the European Power Exchange in Paris for the Germany price zone in cents per kilowatt-hour,
35. “grid system” shall mean the totality of the interlinked technical devices to purchase, transmit and distribute electricity for general supply,
36. “grid system operator” shall mean every operator of a grid system for the general supply of electricity, irrespective of the voltage level,
37. “pilot onshore wind energy installations” shall mean
  - a) the first two onshore wind energy installations of a type which are notified to the register as pilot wind energy installations which can be demonstrated
    - aa) not to exceed an installed capacity of 6 megawatts in each case,
    - bb) to have significant technical advances or innovations particularly in generator output, rotor diameter, hub height, tower type or foundation structure and
    - cc) to require a type examination or unit certification which has not yet been issued at the time of commissioning and which can only be issued following commissioning of an installation,
  - b) the onshore wind energy installations which are notified to the register as pilot wind energy installations,
    - aa) which are primarily erected for research and development purposes and
    - bb) which are used to test a significant innovation extending well beyond the best available technology; the innovation can particularly refer to generator output, rotor diameter, hub height, tower type, foundation structure or the operation of the installation,
38. “guarantee of regional origin” shall mean an electronic document which exclusively serves to furnish proof to a final consumer in the context of electricity labelling pursuant to Section 42 of the Energy Industry Act that a certain proportion or quantity of the consumed electricity generated from renewable energy sources has been generated in a certain region,

39. "register" shall mean the register of installations pursuant to Section 6 subsection 2 sentence 1 of this Act or from the calendar day pursuant to Section 6 subsection 2 sentence 3 of this Act the core market data register pursuant to Section 111e of the Energy Industry Act,
40. "railway undertakings" shall mean every undertaking which operates vehicles like railways, maglev trains, trams or similar rail transport in terms of construction and operation for the purpose of transporting people or freight or which operates infrastructure necessary for the operation of these vehicles,
41. "solar installation" shall mean every installation to generate electricity from solar radiation energy,
42. "storage gas" shall mean every gas which is not a renewable energy source but which is generated exclusively using electricity from renewable energy sources for the purpose of temporary storage of electricity from renewable energy sources,
43. "electricity from combined heat and power generation" shall mean CHP electricity within the meaning of Section 2 number 16 of the Combined Heat and Power Act,
44. "transmission system operator" shall mean the regular grid system operator of high and ultra-high voltage grid systems which serve the supra-regional transmission of electricity to subordinate grid systems,
45. "transformation" shall mean every transformation of undertakings pursuant to the Transformation Act or every transfer of economic assets of an undertaking or an independent part of an undertaking on the basis of a singular succession in which the economic or organisational unit of the undertaking or independent part of an undertaking remains almost fully in existence after the transfer,
46. "environmental auditor" shall mean every person or organisation which may act pursuant to the Environmental Audit Act in the version currently in force as an environmental auditor or an environmental auditors' organisation,
47. "undertaking" shall mean every entity which operates a business established in a commercial manner in terms of its nature and size on a sustainable basis with its own profit-making intention whilst participating in general commercial activity,
48. "onshore wind energy installation" shall mean every installation to generate electricity from wind energy which is not an offshore wind energy installation,
49. "offshore wind energy installation" shall mean every installation within the meaning of Section 3 number 7 of the Offshore Wind Energy Act,
50. "residential building" shall mean every building which is predominantly intended for residential purposes, including hostels, old-people's homes, nursing homes and similar buildings,
51. "value of award" shall mean the value to be applied at which an award is made in an auction; it shall correspond to the value of the bid unless the following provisions state otherwise.

## **Section 4**

### **Development corridor**

The aims pursuant to Section 1 subsection 2 sentence 1 are to be achieved by

1. an annual gross new-build of onshore wind energy installations with an installed capacity of
  - a) 2,800 megawatts in 2017 to 2019 and
  - b) 2,900 megawatts from 2020,
2. a rise in the installed capacity of the offshore wind energy installations to
  - a) 6,500 megawatts in 2020 and
  - b) 15,000 megawatts in 2030,
3. an annual gross new-build of solar installations with an installed capacity of 2,500 megawatts and
4. an annual gross new-build of biomass installations with an installed capacity of
  - a) 150 megawatts in 2017 to 2019 and
  - b) 200 megawatts in 2020 to 2022.

## **Section 5**

### **Development in Germany and abroad**

- (1) To the extent that this Act refers to installations, it shall be applied if and to the extent that the electricity is generated in the territory of the Federal Republic of Germany including the German exclusive economic zone (federal territory).
- (2) To the extent that payments for electricity from renewable energy sources are determined by auctions, 5 percent of the capacity to be installed each year can be awarded to bids for installations in the territory of one or several other Member States of the European Union. To this end, the auctions can, in line with an ordinance pursuant to Section 88a,
  1. be held jointly with one or more other Member States of the European Union or
  2. opened up to installations in the territory of one or more other Member States of the European Union.
- (3) Actions pursuant to subsection 2 sentence 2 shall be permitted only if

1. they have been agreed under international law with the relevant Member States of the European Union and this agreement under international law uses instruments of the cooperation measures within the meaning of Articles 5 to 8 or of Article 11 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 of 5 June 2009, p. 16), most recently amended by Directive (EU) 2015/1513 (OJ L 239 of 15 September 2015, p. 1)
  2. according to the principle of reciprocity they are
    - a) carried out as joint auctions or
    - b) opened up to installations in the territory of one or more other Member States of the European Union and the other Member States open up their auctions for installations in the federal territory to a comparable extent and
  3. the electricity is physically imported or has a comparable effect on the German electricity market.
- (4) By means of the agreement under international law pursuant to subsection 3 number 1, this Act can, in derogation of subsection 1, on the basis of an ordinance pursuant to Section 88a,
1. be declared to be wholly or partially applicable for installations erected outside the federal territory or
  2. be declared to be not applicable for installations erected within the federal territory.

Without a corresponding agreement under international law, no installations outside the federal territory are allowed to receive payments under this Act, and no installations within the federal territory are allowed to receive payments under the funding system of another Member State of the European Union.

(5) All installations pursuant to subsection 1 and the electricity generated in them shall be included in the calculations for the targets pursuant to Section 1 subsection 2 sentence 1 and the development corridor pursuant to Section 4. The electricity generated in installations pursuant to subsections 1 and 3 shall be included in the calculations for the national overall target pursuant to Article 3(2) of Directive 2009/28/EC; in the case of the installations pursuant to subsection 3 this shall only apply in line with the agreement under international law.

(6) Installations within the federal territory may only be included in the calculations for the targets of another Member State of the European Union to an amount of up to 5 percent of the annual capacity to be installed in Germany and in compliance with the requirements pursuant to subsection 3.



## **Section 6**

### **Registering the development**

(1) The Federal Network Agency shall record in the register data on installations to generate electricity from renewable energy sources and from mine gas. A record shall be made of the data required to

1. promote the integration of the electricity into the electricity supply system,
2. review the development corridor pursuant to Section 4,
3. apply the provisions on the payments envisaged in Part 3 and
4. facilitate the meeting of national, European and international reporting requirements on the development of renewable energy sources.

(2) Until the core market data register pursuant to Section 111e of the Energy Industry Act has been set up, the data shall be recorded in the register of installations pursuant to the Ordinance on the Register of Installations. The Federal Network Agency can continue the operation of the register of installations until the technical and organisational preconditions are in place for the fulfilment of the tasks pursuant to sentence 1 in the framework of the core market data register. The Federal Network Agency shall publish in the Federal Gazette the date from which the data pursuant to sentence 1 are recorded in the core market data register.

(3) Installation operators must transmit to the Federal Network Agency at least the data cited in Section 111f number 6 letter a to d of the Energy Industry Act and state whether they wish to claim financial support for the electricity generated in the installation.

(4) In order to make it easier to follow the development of renewable energy sources, the data of the registered installations pursuant to the Ordinance on Registered Installations or the ordinance pursuant to Section 111f of the Energy Industry Act shall be published on the website of the Federal Network Agency and updated at least monthly. Here, the data recorded which are required for the application of the provisions to the payments envisaged in Part 3 and the calculated values shall also be published.

(5) Further details regarding the register of installations including the transmission of further data, the forwarding of the data to grid system operators and third parties and the transfer to the core market data register pursuant to subsection 2 sentence 2 and 3 shall be regulated by the Ordinance on the Register of Installations.

## **Section 7**

### **Statutory obligations**

(1) Grid system operators may not make the fulfilment of their obligations pursuant to this Act dependent on the conclusion of a contract.

(2) Contractual arrangements which deviate from the provisions of this Act

1. must be clear and comprehensible,

2. must not inappropriately disadvantage any contracting party,
3. must not result in higher payments than those envisaged in Part 3 and
4. must be compatible with the essential principles of the statutory regulation from which they deviate.

## **Part 2**

### **Connection, purchase, transmission and distribution**

#### **Division 1**

#### **General provisions**

##### **Section 8**

##### **Connection**

(1) Grid system operators must connect installations to generate electricity from renewable energy sources and from mine gas without delay and as a priority to the place in their grid system which is appropriate in terms of the voltage level and which is the shortest linear distance to the site of the installation if this or a different grid system does not have a technically and economically more suitable connection point; when the question of which is the economically more suitable connection point is examined, consideration must be given to the costs deriving directly from the grid system connection. In the case of one or several installations with a total maximum installed capacity of 30 kilowatts which are located on a plot of land with an existing connection to the grid system, the point of connection of the plot of land with the grid system shall be deemed the most suitable connection point.

(2) Installation operators may select a different connection point of this or a different grid system which is appropriate in terms of the voltage level unless the additional costs resulting from this for the grid system operator are not inconsiderable.

(3) In derogation of subsections 1 and 2, the grid system operator may assign a different connection point to the installation unless the purchase of the electricity from the relevant installation pursuant to Section 11 subsection 1 would not be ensured at this connection point.

(4) The duty to provide a connection to the grid system still applies if the purchase of the electricity is only possible following optimisation, strengthening or expansion of the grid system pursuant to Section 12.

(5) Grid system operators must transmit to those wishing to feed in electricity a precise timetable for the processing of the request to connect to the grid system without delay following receipt of a request to connect to the grid system. This timetable must state

1. the procedural steps in which the request to connect to the grid system will be processed and

2. what information the parties wishing to feed in electricity must transmit from their field of responsibility to the grid system operators so that the grid system operators can determine the point of connection or can conduct their planning pursuant to Section 12.
- (6) Grid system operators must transmit the following to parties wishing to feed in electricity following receipt of the necessary information, but at the latest within eight weeks:
1. a timetable for the establishment without delay of the connection to the grid system containing all the necessary procedural steps,
  2. all the information needed by parties wishing to feed in electricity to test the connection point, and on application the grid system data required for a system compatibility check,
  3. a comprehensible and detailed advance estimate of the costs incurred by the installation operators due to the connection to the grid system; this cost estimate shall include only the costs resulting from the technical provision of the connection to the grid system, and in particular shall not include the costs of obtaining permission to use third-party real estate for the laying of the line to the connection to the grid system,
  4. the information required to meet the obligations pursuant to Section 9 subsections 1 and 2.

This shall still be without prejudice to the right of the installation operator pursuant to Section 10 subsection 1 if the grid system operator has transmitted the cost estimate pursuant to sentence 1 number 3.

## **Section 9**

### **Technical requirements**

(1) Installation operators and operators of CHP installations must equip their installations which have an installed capacity of more than 100 kilowatts with technical devices which the grid system operator can use at all times

1. to reduce the feed-in by remote control in the event of grid system overload and
2. to call up the current level of feed-in.

The obligation pursuant to sentence 1 shall also be deemed to be met if several installations which use the same type of renewable energy sources and which are connected to the grid system via the same connection point are equipped with a shared technical device which the grid system operator can use at all times

1. to reduce the entire feed-in by remote control in the event of grid system overload and
2. to call up the current level of total feed-in.

(2) Operators of solar installations

1. with an installed capacity of more than 30 kilowatts and a maximum of 100 kilowatts must meet the obligation pursuant to subsection 1 sentence 1 number 1 or subsection 1 sentence 2 number 1,

2. with a total maximum installed capacity of 30 kilowatts must
  - a) meet the obligation pursuant to subsection 1 sentence 1 number 1 or subsection 1 sentence 2 number 1 or
  - b) limit the maximum effective capacity fed in at the point of connection of their installation with the grid system to 70 percent of the installed capacity.

(3) Several solar installations shall, irrespective of the ownership situation and solely for the purpose of determining the installed capacity within the meaning of subsections 1 and 2, be regarded as one installation if

1. they are located on the same plot of land or building and
2. they have been commissioned within twelve consecutive calendar months.

If an obligation for an installation operator pursuant to subsection 1 or 2 arises only due to the additional construction of installations by another installation operator, it can require the latter to reimburse it for the costs incurred.

(4) As long as a grid system operator does not transmit the information pursuant to Section 8 subsection 6 sentence 1 number 4, the legal consequences cited in subsection 7 in the case of violations of subsection 1 or 2 shall not apply if

1. the installation operators or the operators of CHP installations have requested in writing or electronically the grid system operator to transmit the necessary information pursuant to Section 8 subsection 6 sentence 1 number 4 and
2. the installations are equipped with technical devices which are suited to switch the installations on and off and to process a communication signal of a reception device.

(5) Operators of installations to generate electricity from biogas must ensure that when the biogas is generated

1. a new digestate storage facility to be constructed at the site of biogas generation is gas-tight,
2. the hydraulic retention time in the gas-tight new system which is connected to a gas consumption device pursuant to number 1 amounts to at least 150 days and
3. additional gas consumption devices are used to avoid a release of biogas.

Sentence 1 number 1 and 2 shall not be applied if only manure is used to generate the biogas. Sentence 1 number 2 shall furthermore not be applied if the entitlement pursuant to Section 19 in conjunction with Section 43 is claimed.

(6) Operators of onshore wind energy installations which are commissioned before 1 July 2017 must ensure that the requirements of the System Services Ordinance are met at the point of connection of their installation with the grid system.

(7) This shall be without prejudice to the obligations and requirements pursuant the provisions of the Metering Point Operation Act regarding metering. The calling up of the actual feed-in and the remote-controlled curtailment pursuant to subsections 1 and 2 do not have to take place via a smart metering system.

## **Section 10**

### **Establishment and use of the connection**

(1) Installation operators may have the connection of the installations undertaken by the grid system operator or a qualified third party.

(2) The establishment of the connection and the other devices required for the safety of the grid system must correspond to the individually necessary technical requirements of the grid system operator and Section 49 of the Energy Industry Act.

(3) When electricity from renewable energy sources or mine gas is fed in, Section 18 subsection 2 of the Low Voltage Connection Ordinance shall be applied mutatis mutandis in favour of the installation operator.

## **Section 10a**

### **Operation of metering points**

The provisions of the Metering Point Operation Act shall be applied to the operation of metering points. In derogation of sentence 1 the installation operator can take on the operation of the metering points rather than commissioning a third party pursuant to Section 5 subsection 1 of the Metering Point Operation Act. All statutory requirements shall then apply to the installation operator which the Metering Point Operation Act imposes on a third party as the metering point operator.

## **Section 11**

### **Purchase, transmission and distribution**

(1) Subject to Section 14, grid system operators must purchase, transmit and distribute physically, without delay and as a priority, all electricity from renewable energy sources or from mine gas which is sold in a form of sale pursuant to Section 21b subsection 1. If the installation operator claims the entitlement pursuant to Section 19 in conjunction with Section 21, the obligation under sentence 1 shall also include the commercial purchase. The obligations pursuant to sentences 1 and 2 and the obligations pursuant to Section 3 subsection 1 of the CHP Act shall apply *pari passu*.

(2) To the extent that electricity from an installation which is connected to the grid system of the installation operator or a third party who is not a grid system operator is offered to a grid system for commercial and accounting purposes, subsection 1 shall be applied mutatis mutandis, and the electricity must be treated for the purposes of the Act as if it were fed into the grid system.

(3) The obligations pursuant to subsection 1 shall not pertain where the installation operators or direct sellers and grid system operators exceptionally agree by contract and without prejudice to Section 15 to deviate by way of exception from the priority purchase with a view to a better integration of the installation into the grid system. When contractual agreements pursuant to sentence 1 are applied, it must be ensured that appropriate consideration is given to the priority granted to electricity from renewable energy sources and that, overall, the largest possible quantity of electricity from renewable energy sources is purchased.

(4) The obligations pursuant to subsection 1 shall also not apply to the extent permitted by the Renewable Energy Sources Ordinance.

(5) In the relationship to the grid system operator purchasing the electricity which is not a transmission system operator, the obligations to purchase, transmit and distribute as a priority shall refer to

1. the upstream transmission system operator,
2. the nearest domestic transmission system operator if no domestic transmission system is operated in the system area of the grid system operator entitled to impose the levy, or
3. any other grid system operator, particularly in the case of delivery of the electricity pursuant to subsection 2.

## **Division 2**

### **Capacity expansion and feed-in management**

#### **Section 12**

##### **Expansion of grid system capacity**

(1) At the request of parties wishing to feed in electricity, grid system operators must optimise, strengthen and expand their grid systems without delay in accordance with the best available technology in order to ensure the purchase, transmission and distribution of the electricity from renewable energy sources or mine gas. This entitlement shall also pertain with regard to the operators of upstream grid systems of up to 110 kilovolts to which the installation is not directly connected if this is necessary in order to ensure the purchase, transmission and distribution of the electricity.

(2) The obligation shall cover all technical devices necessary for the operation of the grid system and the connection installations owned by the grid system operator or transferring to his ownership.

(3) The grid system operator shall not have to optimise, strengthen and expand his grid system to the extent that this is economically unreasonable. Section 11 subsection 2 of the Energy Industry Act shall be applied mutatis mutandis.

(4) This shall be without prejudice to the obligations pursuant to Section 3 subsection 1 of the CHP Act and pursuant to Section 12 subsection 3 of the Energy Industry Act.

### **Section 13 Compensation**

(1) If the grid system operator violates his obligation under Section 12 subsection 1, parties wishing to feed in electricity can demand compensation for the damage caused by this. The obligation to pay compensation shall not pertain if the grid system operator is not responsible for the violation of the obligation.

(2) If there are facts that substantiate the assumption that the grid system operator has failed to fulfil his obligation under Section 12 subsection 1, installation operators can demand information from the grid system operator about whether and the extent to which the grid system operator has optimised, strengthened and expanded the grid system.

### **Section 14 Feed-in management**

(1) Without prejudice to their obligation pursuant to Section 12, grid system operators may exceptionally curtail installations and CHP installations which are directly or indirectly connected to the grid system and which are equipped with a device for remotely controlled output reduction in the event of grid system overload within the meaning of Section 9 subsection 1 sentence 1 number 1, sentence 2 number 1 or subsection 2 number 1 or 2 letter a, to the extent that

1. otherwise there would be a grid system bottleneck in the respective grid system area including the upstream grid system,
2. priority for electricity from renewable energy sources, mine gas and CHP is maintained to the extent that other power generators do not have to remain on the grid system in order to ensure the security and reliability of the electricity supply system, and
3. they have called up the available data on the current level of feed-in in the respective grid system region.

When installations pursuant to sentence 1 are curtailed, installations within the meaning of Section 9 subsection 2 must be curtailed subordinately to the other installations. Apart from this, the grid system operators must ensure that overall the largest possible quantity of electricity from renewable energy sources and CHP is purchased.

(2) Grid system operators must inform operators of installations pursuant to Section 9 subsection 1 at the latest on the day before, otherwise without delay, of the expected point in time, scope and duration of the curtailment to the extent that the execution of the measure is predictable.

(3) Grid system operators must inform the parties affected by measures pursuant to subsection 1 without delay of the actual points in time, the scope, duration and the reasons for the curtailment and on request present within four weeks proof of the need for the measure. The proof must enable a qualified third party to fully understand the need for the measure without further information; to this end, in the case of a request pursuant to the last half-sentence of sentence 1, in particular the data collected pursuant to subsection 1 sentence 1 number 3 must be presented. In derogation of sentence 1, the grid system operators can inform operators of installations pursuant to Section 9 subsection 2 in conjunction with subsection 3 just once a year about the measures pursuant to subsection 1 as long as the total duration of these measures has not exceeded 15 hours per installation in the calendar year; this information must be provided by 31 January of the following year. This shall be without prejudice to Section 13j subsection 2 number 1 of the Energy Industry Act.

## **Section 15**

### **Hardship clause**

(1) If the feed-in of electricity from an installation to generate electricity from renewable energy sources, mine gas or CHP is reduced due to a grid system bottleneck within the meaning of Section 14 subsection 1, the grid system operator to whose grid system the installation is connected must compensate the operators affected by the measure in derogation of Section 13 subsection 4 of the Energy Industry Act for 95 percent of the lost revenues plus the additional expenses and minus the saved expenses. If the lost revenues pursuant to sentence 1 in a year exceed 1 percent of the revenues of that year, the operators affected by the curtailment are to be given 100 percent compensation from that point in time. The grid system operator in whose grid system the cause for the curtailment pursuant to Section 14 exists must reimburse the grid system operator to whose grid system the installation is connected with the costs of the compensation.

(2) The grid system operator can include the costs pursuant to subsection 1 when determining the grid system fees to the extent that the measure was necessary and the grid system operator was not responsible for causing it. The grid system operator shall be deemed responsible for causing it in particular if it has not exhausted all the possibilities to optimise, strengthen and expand the grid system.

(3) This shall be without prejudice to claims of installation operators for compensation.



## **Division 3**

### **Costs**

#### **Section 16**

##### **Grid system connection**

(1) The necessary costs of the connection of installations to generate electricity from renewable energy sources or from mine gas to the connection point pursuant to Section 8 subsection 1 or 2 and the necessary metering devices to record the electricity supplied and received shall be borne by the installation operator.

(2) If the grid system operator assigns a different connection point to the installations pursuant to Section 8 subsection 3, it must bear the resulting additional costs.

#### **Section 17**

##### **Capacity expansion**

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

#### **Section 18**

##### **Contractual agreement**

(1) As a consequence of the agreement pursuant to Section 11 subsection 3, grid system operators can factor incurred and proven costs into the determining of the grid system fee to the extent that the costs are economically reasonable in terms of Section 1 or Section 2 subsection 1.

(2) The costs shall be subject to an examination of efficiency by the regulatory authority in line with the provisions of the Energy Industry Act.

## **Part 3**

### **Payment of market premium and feed-in tariff**

#### **Division 1**

##### **Types of entitlement to payment**

#### **Section 19**

##### **Entitlement to payment**

(1) Operators of installations in which only renewable energy sources or mine gas are used have an entitlement to claim from the grid system operator for the electricity generated in these installations

1. the market premium pursuant to Section 20 or
  2. a feed-in tariff pursuant to Section 21.
- (2) The entitlement pursuant to subsection 1 shall exist only to the extent that
1. the installation operator does not claim an avoided grid system fee pursuant to Section 18 subsection 1 sentence 1 of the Electricity Grid Fee Ordinance and
  2. no tax concession pursuant to Section 9 subsection 1 number 1 or number 3 of the Electricity Duty Act is claimed for the electricity which is fed through a grid system.
- (3) The entitlement pursuant to subsection 1 shall remain in place if the electricity has been placed in temporary storage before being fed into a grid system. In this case, the entitlement shall refer to the quantity of electricity which is fed from the electricity storage system into the grid system. The level of the entitlement per fed-in kilowatt-hour shall be determined by the level of the entitlement which would have existed had the electricity been fed in without temporary storage. The entitlement pursuant to subsection 1 shall also apply in the case of mixed use with storage gases.

## **Section 20**

### **Market premium**

- (1) The entitlement to payment of the market premium pursuant to Section 19 subsection 1 number 1 shall exist only for calendar months in which
1. the installation operator or a third party sells the electricity directly,
  2. the installation operator grants the grid system operator the right to label this electricity as “electricity from renewable energy sources or from mine gas, financed from the EEG surcharge”,
  3. the electricity is generated in an installation which can be remotely controlled, and
  4. the electricity is balanced in a balancing or subbalancing group in which only the following electricity is balanced:
    - a) electricity from renewable energy sources or from mine gas which is sold directly in the form of sale of the market premium, or
    - b) electricity which is not covered by letter a and the inclusion of which in the balancing or subbalancing group is not the responsibility of the installation operator or the direct seller.

The precondition pursuant to sentence 1 number 3 does not have to be met before the commencement of the second calendar month following the commissioning of the installation.

- (2) Installations can be remotely controlled if the installation operators
1. maintain the technical devices required for a direct seller or another person to whom the electricity is sold to be able at all times

- a) to call up the current level of feed-in and
  - b) to curtail the feed-in by remote control, and
2. grant to the direct seller or the other person to whom the electricity is sold the authority at all times
- a) to call up the current level of feed-in and
  - b) to curtail the feed-in quantity by remote control to an extent which is necessary for a needs-based feed-in of the electricity and which is not proven to be excluded under the obligations imposed under licensing law.

The requirements pursuant to sentence 1 number 1 shall also be fulfilled if joint technical devices are maintained for several installations which are connected to the grid system via the same connection point, with which devices the direct seller or the other person can at any time call up the total current feed-in from the installations and curtail the total feed-in from the installations by remote control. If the electricity is sold directly by the installation operator to a final consumer or directly to an electricity exchange, sentences 1 and 2 shall be applied mutatis mutandis with the proviso that the installation operator shall assume the powers of the direct seller or the other person.

(3) The calling up of the actual feed-in and the remotely controlled curtailment of the feed-in quantity pursuant to subsection 2 must take place via a smart metering system in the case of the following installations if remote control technology which is compatible with the smart metering system and is secure, and which disposes of the functionalities required for direct selling, is available on the market in return for an appropriate fee:

1. in the case of installations in which a smart metering system is installed at the latest at the commencement of the second calendar month following the commissioning of the installation,
2. in the case of installations in which a smart metering system has been installed following the commencement of the second calendar month following the commissioning of the installation, at the latest five years after its installation, and
3. in the case of installations in which a metering system has been installed pursuant to Section 19 subsection 5 of the Metering Point Operation Act, when a smart metering system is installed if the installation takes place after the end of the deadline pursuant to number 2.

In the case of other installations, taking account of the relevant standards and recommendations of the Federal Office for Information Security transmission technologies and routes shall be admissible which are in accordance with the best available technology when the installation is commissioned.

(4) The use of the technical devices to call up the actual feed-in and to remotely control the curtailment of the feed-in volume and the power to use this must not restrict the right of the grid system operator to manage feed-in pursuant to Section 14.

## **Section 21**

### **Feed-in tariff**

(1) The entitlement to payment of the feed-in tariff pursuant to Section 19 subsection 1 number 2 shall exist only for calendar months in which installation operators feed electricity into a grid system and make it available to the grid system operator pursuant to Section 11 subsection 1, for

1. electricity from installations with an installed capacity of up to 100 kilowatts whose value to be applied has been determined by statute; in this case the entitlement shall be reduced in line with Section 53 sentence 1, or
2. electricity from installations with an installed capacity of more than 100 kilowatts for a period of two to three successive calendar months and up to a total of six calendar months per calendar year (shortfall remuneration); in this case the entitlement shall be reduced in line with Section 53 sentence 2 and, should one of the maximum periods pursuant to the first half-sentence be exceeded, in line with Section 52 subsection 2 sentence 1 number 3.

(2) Installation operators which claim the feed-in tariff

1. must make available to the grid system operator all of the electricity generated in this installation which
  - a) is not consumed in the immediate vicinity of the installation and
  - b) is fed through a grid system, and
2. may not participate in the balancing energy market with this installation.

## **Section 21a**

### **Other direct selling**

This shall be without prejudice to the right of the installation operators to sell the electricity generated in their installations directly without claiming the payment pursuant to Section 19 subsection 1 (other direct selling).

## **Section 21b**

### **Allocation to a form of sale, switching**

(1) Installation operators must allocate each installation to one of the following forms of sale:

1. the market premium pursuant to Section 20,
2. the feed-in tariff pursuant to Section 21, including in the form of the shortfall remuneration, or
3. other direct selling pursuant to Section 21a.

They may switch each installation between the forms of sale on the first calendar day of a month only.

(2) Installation operators may divide up the electricity generated in their installations into percentages for different forms of sale pursuant to subsection 1. In this case, they must furnish proof of the compliance with the percentages at all times. Sentence 1 shall not apply to the shortfall remuneration.

(3) The allocation of an installation or a percentage of the electricity generated by an installation to the form of sale of direct selling shall only be admissible if the entire actual feed-in from the installation is metered and balanced every quarter-hour.

(4) Without prejudice to subsection 1, installation operators can

1. switch their direct seller or
2. subject to Section 27a pass on the electricity fully or partially to third parties as long as the latter consume the electricity in the immediate vicinity of the installation and the electricity is not fed through a grid system.

### **Section 21c**

#### **Procedure for the switch**

(1) Installation operators must inform the grid system operator before the beginning of the preceding calendar month when they first sell electricity in a form of sale pursuant to Section 21b subsection 1 sentence 1 or when they switch between the forms of sale. In derogation of sentence 1, in the case of the shortfall remuneration, it is sufficient for the switch to or from the feed-in tariff to be communicated up to the fifth-last working day of the preceding month.

(2) In the case of the communications pursuant to subsection 1, the installation operators must also cite:

1. the form of sale pursuant to Section 21b subsection 1 sentence 1 to which the switch is taking place,
2. in the case of a switch to direct selling the balancing group to which the directly sold electricity is to be allocated, and
3. in the case of a percentage breakdown of the electricity between different forms of sale pursuant to Section 21b subsection 2 sentence 1 the percentages to which the electricity is allocated to the forms of sale.

(3) To the extent that the Federal Network Agency has made a stipulation pursuant to Section 85 subsection 2 number 3, grid system operators, direct sellers and installation operators must use the stipulated procedure and format for the undertaking of the allocation and the switch in the form of sale.

## **Division 2**

### **General provisions on payment**

#### **Section 22**

##### **Competition-based determination of the market premium**

(1) The Federal Network Agency shall determine by auctions pursuant to Sections 28 to 39j, also in conjunction with the ordinances pursuant to Sections 88 to 88d, and the Offshore Wind Energy Act, the entitled parties and the value to be applied for electricity from onshore wind energy installations, solar installations, biomass installations and offshore wind energy installations.

(2) In the case of onshore wind energy installations, the entitlement pursuant to Section 19 subsection 1 shall apply to the electricity generated in the installation only as long as and to the extent that an award issued by the Federal Network Agency to the installation is effective. The following onshore wind energy installations shall be exempted from this requirement:

1. installations with an installed capacity of up to and including 750 kilowatts,
2. installations commissioned before 1 January 2019 if
  - a) they were approved pursuant to the Federal Immission Control Act before 1 January 2017,
  - b) the approval pursuant to letter a) has been notified to the register before 1 February 2017 with all the necessary information and
  - c) the holder of the approval has not made a written declaration to the Federal Network Agency before 1 March 2017 referring to the notification pursuant to letter b), waiving the statutory entitlement to payment, and
3. pilot onshore wind energy installations with an installed capacity totalling up to 125 megawatts a year.

(3) In the case of solar installations, the entitlement pursuant to Section 19 subsection 1 shall apply to the electricity generated in the installation only as long as and to the extent that a payment authorisation issued by the Federal Network Agency to the installation is effective. Solar installations with an installed capacity of up to and including 750 kilowatts shall be exempted from this requirement.

(4) In the case of biomass installations, the entitlement pursuant to Section 19 subsection 1 shall apply only to the electricity generated in the installation from biomass within the meaning of the Biomass Ordinance in the version in force at the time of the announcement of the auction and only, as long as and to the extent that an award issued by the Federal Network Agency to the installation is effective. The following biomass installations shall be exempted from this requirement:

1. installations with an installed capacity of up to and including 150 kilowatts, unless they are an existing biomass installation pursuant to Section 39f,

2. installations commissioned before 1 January 2019 if they
  - a) require approval pursuant to the Federal Immission Control Act or require an approval for their operation pursuant to another provision of federal law or require an approval pursuant to construction legislation and
  - b) were approved before 1 January 2017.

This shall be without prejudice to the entitlement pursuant to Section 50 in conjunction with Section 50a.

(5) In the case of offshore wind energy installations, the entitlement pursuant to Section 19 subsection 1 shall apply to the electricity generated in the installation only as long as and to the extent that an award issued by the Federal Network Agency to the installation is effective. The following offshore wind energy installations shall be exempted from this requirement:

1. installations which
  - a) were given an unconditional grid connection confirmation before 1 January 2017 pursuant to Section 118 subsection 12 of the Energy Industry Act or connection capacities pursuant to Section 17d subsection 3 of the Energy Industry Act in the version in force on 31 December 2016 and
  - b) were commissioned before 1 January 2021, and
2. pilot offshore wind energy installations in line with the Offshore Wind Energy Act.

(6) For onshore wind energy installations, solar installations and biomass installations, whose entitlement to payment pursuant to Section 19 subsection 1 is not dependent on the successful participation in an auction pursuant to subsections 2 to 5, no consideration will be given to bids in an award procedure. For installations pursuant to sentence 1 and for installations to generate electricity from hydropower, landfill gas, sewage treatment gas, mine gas or geothermal energy, the level of the value to be applied shall be determined by statute via Sections 40 to 49.

## **Section 22a**

### **Pilot onshore wind energy installations**

(1) If pilot onshore wind energy installations with an installed capacity totalling more than 125 megawatts have been notified to the register as being commissioned in a calendar year, the entitlement to payment pursuant to Section 19 subsection 1 cannot be claimed in that calendar year for all pilot onshore wind energy installations due to the commissioning of which the limit of 125 megawatts is exceeded. The Federal Network Agency shall inform the installation operators and the grid system operators to whose grid system the installations are connected about this. The operators of installations for whose electricity the entitlement pursuant to sentence 1 does not apply can claim their entitlement on a priority basis and in the temporal sequence of their notification to the register from the following calendar year as long as the limit of installed capacity of 125 megawatts is not exceeded. In this case the entitlement pursuant to Section 19 subsection 1, in derogation of Section 25 sentence 3, shall not commence until the installation operator is permitted to claim the entitlement pursuant to Section 19 subsection 1.

(2) The proof that a pilot onshore wind energy installation complies with the requirements pursuant to Section 3 number 37 letter a double-letter bb and cc shall take the form of a confirmation by a certifier accredited pursuant to DIN EN ISO/IEC 17065:20132; apart from this, the existence of an onshore pilot wind energy facility pursuant to Section 3 number 37 letter a shall be documented by entry in the register.

(3) The documentation that an installation is a pilot wind energy installation pursuant to Section 3 number 37 letter b shall be held by the installation operator in the form of a certificate from the Federal Ministry for Economic Affairs and Energy. The Federal Ministry for Economic Affairs and Energy can issue the certificate on application from the installation operator if the applicant submits appropriate documents demonstrating that the requirements pursuant to Section 3 number 37 letter b are met.

## **Section 23**

### **General provisions on the level of the payment**

(1) The level of the entitlement pursuant to Section 19 subsection 1 shall be determined by the values to be used as a calculation basis for electricity from renewable energy sources or from mine gas.

(2) Turnover tax shall not be included in the values to be applied.

(3) The level of the entitlement pursuant to Section 19 subsection 1 shall be reduced giving consideration to Sections 23a to 26 in the following sequence, whereby the entitlement cannot assume a negative value:

1. in accordance with Section 39h subsection 2 sentence 1 or 44b subsection 1 sentence 2 for the proportion cited there of the quantity of electricity from biogas generated in a calendar year,
2. in accordance with Section 51 in the case of negative prices,



3. in accordance with Sections 52 and 44c subsection 3 and number I.5 of Annex 3 in the case of a violation of a provision of this Act,
4. in accordance with Section 53 in the case that a feed-in tariff is claimed,
5. in accordance with Section 53 in the case that the statutory entitlement pursuant to Section 19 subsection 1 is waived,
6. in accordance with Section 53 in the case of usage of a guarantee of regional origin and
7. for solar installations whose value to be applied is determined by auctions,
  - a) in accordance with Section 54 subsection 1 in the case of delayed commissioning of a solar installation and
  - b) in accordance with Section 54 subsection 2 in the case of transfer of the payment authorisation for a solar installation to another site.

### **Section 23a**

#### **Special provision on the level of the market premium**

The level of entitlement to the market premium pursuant to Section 19 subsection 1 number 1 shall be calculated for each calendar month. The calculation shall take place retrospectively on the basis of the values calculated for the respective calendar month pursuant to Annex 1.

### **Section 23b**

#### **Pro-rata payment**

If electricity enjoys an entitlement pursuant to Section 19 subsection 1 in line with the rated capacity or the installed capacity, this entitlement shall be determined

1. for solar installations or wind energy installations in each case on a pro-rata basis in line with the installed capacity of the installation in relation to the respective threshold value to be applied and
2. in all other cases on a pro-rata basis in line with the rated capacity of the installation.

### **Section 24**

#### **Payment entitlements for electricity from several installations**

(1) Several installations, irrespective of the ownership situation, for the purpose of determining the entitlement pursuant to Section 19 subsection 1 and determining the size of the installation pursuant to Section 21 or Section 22 for the most recently commissioned generator, shall be regarded as one installation if

1. they are located on the same plot of land, the same building, the same commercial site or are otherwise in immediate spatial proximity,

2. they generate electricity from the same type of renewable energy sources,
3. the entitlement pursuant to Section 19 subsection 1 exists for the electricity generated in them in line with the rated capacity or the installed capacity of the installation and
4. they have commenced operations within twelve consecutive calendar months.

In derogation of sentence 1, several installations, irrespective of the ownership situation, and solely for the purpose of determining the entitlement pursuant to Section 19 subsection 1 and determining the size of the installation pursuant to Section 21 or Section 22 for the most recently commissioned generator, shall be regarded as one installation if they generate electricity from biogas with the exception of biomethane and the biogas originates from the same biogas generation installation. In derogation of sentence 1, ground-mounted installations shall not be counted together with solar installations in or on buildings and noise protection walls.

(2) Without prejudice to subsection 1 sentence 1, several ground-mounted installations shall, irrespective of the ownership situation and solely for the purpose of determining the size of the installation pursuant to Section 38a subsection 1 number 5 and Section 48 subsection 2 for the most recently commissioned generator, be deemed equivalent to one installation if they

1. have been constructed within the same municipality that is or would have been responsible for issuance of a binding zoning plan and
2. have been commissioned within twenty-four consecutive calendar months, spaced up to a linear distance of two kilometres apart measured from the outside edge of the respective installation.

(3) Installation operators can invoice electricity from several installations which use the same type of renewable energy sources or mine gas via a joint metering device. In this case, the calculation of the feed-in tariff or market premium for several onshore wind energy installations shall be based on the allocation of the electricity quantities to the wind energy installations in relation to the respective reference yield pursuant to Annex 2 number 2; in the case of all other installations the allocation of the electricity volumes shall take place in relation to the installed capacity of the installations.

## **Section 25**

### **Start, duration and end of entitlement**

Market premiums or feed-in tariffs shall be paid for a period of 20 years. In the case of installations whose value to be applied is determined by statute, this period shall be extended until 31 December of the 20th year of payment. The commencement of the period pursuant to sentence 1 shall be the point in time of the commissioning of the installation unless this Act states otherwise.

## **Section 26**

### **Advance payments and settlement date**

(1) Appropriate advance payments are to be made towards the expected payments pursuant to Section 19 subsection 1 on the 15th calendar day of each month for the preceding month.

(2) The entitlement pursuant to Section 19 subsection 1 shall be due as soon as and to the extent that the installation operator has fulfilled its obligations to transmit data pursuant to Section 71. Sentence 1 shall not be applied to the entitlement to monthly advance payments pursuant to subsection 1 until March of the year following the commissioning of the installation.

## **Section 27**

### **Offsetting**

(1) The offsetting of entitlements of the installation operator pursuant to Section 19 against a claim by the grid system operator shall be permissible only to the extent that the claim is undisputed or has been determined in a final and binding judgement.

(2) The prohibition of offsetting contained in Section 23 subsection 3 of the Low Voltage Connection Ordinance shall not apply to the extent that entitlements deriving from this Act are offset.

## **Section 27a**

### **Payment entitlement and self-supply**

The operators of installations whose value to be applied has been determined by auctions may not use the electricity generated in their installation for self-supply throughout the entire period in which they claim payments pursuant to this Act. This shall not apply to the electricity consumed

1. by the installation or other installations which are connected to the grid system via the same connection point,
2. in the auxiliary and ancillary installations of the installation or other installations which are connected to the grid system via the same connection point,
3. to balance physically occasioned grid system losses,
4. in the hours in which the value of the hourly contracts for the price zone for Germany is negative on the spot market of the European Power Exchange in Paris in the day-ahead auction, or,
5. in the hours in which the feed-in quantity is reduced when the grid system is overloaded pursuant to Section 14 subsection 1.

## **Division 3**

### **Auctions**

#### **Subdivision 1**

#### **General auction provisions**

#### **Section 28**

#### **Volume of auctions**

- (1) In the case of onshore wind energy installations, the volume of auctions shall be
1. in 2017
    - a) on the bid deadline of 1 May 800 megawatts of capacity to be installed and
    - b) on each of the bid deadlines of 1 August and 1 November 1,000 megawatts of capacity to be installed,
  2. in 2018 and 2019, on each of the bid deadlines of 1 February, 1 May, 1 August and 1 November 700 megawatts of capacity to be installed and
  3. from 2020
    - a) on each annual bid deadline of 1 February 1,000 megawatts of capacity to be installed and
    - b) on each of the annual bid deadlines of 1 June and 1 October 950 megawatts of capacity to be installed.
- (1a) The volume to be auctioned pursuant to subsection 1 shall be reduced in each case from 2018 by the total of the installed capacity
1. of the onshore wind energy installations which have been awarded funding in an auction pursuant to Section 5 subsection 2 sentence 2 in the federal territory,
  2. of the onshore wind energy installations which have been awarded funding in an auction on the basis of an ordinance pursuant to Section 88c, and
  3. of the pilot onshore wind energy installations pursuant to Section 22a which were permitted to claim for the first time their entitlement pursuant to Section 19 subsection 1 in the preceding calendar year.

The volume to be auctioned pursuant to subsection 1 shall be increased from 2018 in each case by the volume to be auctioned for onshore wind energy installations for which no funding was awarded in the preceding calendar year. The Federal Network Agency shall determine the difference between the installed capacity pursuant to sentences 1 and 2 for the preceding calendar year by 28 February 2018 and annually thereafter and shall distribute this quantity by which the volume to be auctioned is increased or decreased equally over the next three auctions which have yet to be announced.

(2) In the case of solar installations, the volume to be auctioned on the annual bid deadlines of 1 February, 1 June and 1 October shall be 200 megawatts of capacity to be installed.

(2a) The volume to be auctioned pursuant to subsection 2 shall be reduced as of the bid deadline of 1 June 2017 by the total of the installed capacity of the bids awarded funding in 2016 pursuant to the Cross-Border Renewable Energy Sources Ordinance for ground-mounted installations planned in the federal territory. The volume to be auctioned pursuant to subsection 2 shall be reduced in each case from 2018 by the total of the installed capacity

1. of the solar installations which have been awarded funding in an auction pursuant to Section 5 subsection 2 sentence 2 in the federal territory,
2. of the solar installations which have been awarded funding in an auction on the basis of an ordinance pursuant to Section 88c, and
3. of the ground-mounted installations whose value to be applied has been determined by statute and which have been notified to the register as having been commissioned in the preceding calendar year.

The volume to be auctioned pursuant to subsection 1 shall be increased from 2018 in each case by the volume to be auctioned for solar installations for which no funding was awarded in the preceding calendar year or for which no second securities were deposited. The Federal Network Agency shall determine the difference between the installed capacity pursuant to sentences 2 and 3 for the preceding calendar year by 28 February 2018 and annually thereafter and shall distribute this quantity by which the volume to be auctioned is increased or decreased equally over the next three auctions which have yet to be announced.

(3) In the case of biomass installations, the volume to be auctioned on the annual bid deadline on 1 September shall be

1. in each of the years 2017 to 2019 150 megawatts of capacity to be installed and
2. in each of the years 2020 to 2022 200 megawatts of capacity to be installed.

The Federal Government shall present a proposal for the annual volume to be auctioned in the years from 2023 in good time.

(3a) The volume to be auctioned pursuant to subsection 3 shall be reduced from 2017 in each case by the total of the installed capacity of biomass installations whose value to be applied has been determined by statute and which have been notified to the register as having been commissioned in the preceding calendar year. The volume to be auctioned pursuant to subsection 3 shall be increased from 2018 in each case by the total volume to be auctioned for biomass installations for which no funding was awarded in the preceding calendar year.

(4) In the case of offshore wind energy installations, the Federal Network Agency shall determine the volume to be auctioned pursuant to the provisions of the Offshore Wind Energy Act.

(5) In the case of joint auctions for onshore wind energy installation and solar installations pursuant to Section 39i, the volume to be auctioned in the years 2018 to 2020 shall in each case be 400 megawatts per year in accordance with the ordinance pursuant to Section 88c.

(6) In the case of innovation pursuant to Section 39j, the volume to be auctioned in the years 2018 to 2020 shall in each case be 50 megawatts per year in accordance with the ordinance pursuant to Section 88d.

## **Section 29**

### **Announcement**

The Federal Network Agency shall announce the auctions on its website at the earliest eight weeks and at the latest five weeks before the respective bid deadline for the respective form of energy. The announcements must contain at least the following information:

1. the bid deadline;
2. the volume of the auction,
3. the maximum value,
4. the format requirements specified by the Federal Network Agency pursuant to Section 30a subsection 1 for the submission of the bid, and
5. the stipulations of the Federal Network Agency pursuant to Section 85 subsection 2 and Section 85a, where they pertain to the bid submission and the award procedure.

The Federal Network Agency shall publish a reference to these announcements once per calendar year in the Official Journal of the European Union.

(2) The announcements pursuant to subsection 1 shall take place solely in the public interest.

## **Section 30**

### **Requirements to be met by bids**

(1) The bids must each contain the following information:

1. the bidder's name, address, telephone number and email address; if the bidder is a partnership having legal personality or a legal person, the following shall also be indicated:
  - a) its registered office,
  - b) the name of a natural person who is authorised to communicate with the Federal Network Agency and to represent the legal person in all actions pursuant to this Act (authorised agent); and
  - c) if at least 25% of the voting rights or capital reside with other partnerships with legal capacity or legal entities, their name and registered office;
2. the form of energy for which the bid is submitted,

3. the bid deadline of the auction for which the bid is submitted,
4. the bid quantity in kilowatts expressed as a whole number without decimal places,
5. the bid value in cents per kilowatt-hour to two decimal places, whereby the bid for onshore wind energy installations must refer to the reference site pursuant to Annex 2 number 4,
6. the sites of the installations to which the bid refers, citing the Land, district, municipality, local sub-district and cadastral parcels; in the case of solar installations on, affixed to or in buildings the postal address of the building must also be cited where available, and
7. the transmission system operator.

(2) A bid must offer a bid quantity of at least 750 kilowatts. In derogation of sentence 1, a bid for biomass installations must offer a bid quantity of at least 150 kilowatts; in the case of existing biomass installations pursuant to Section 39f, there shall be no minimum size for the bid quantity.

(3) Bidders may submit several bids for different installations in one auction. In this case, they must number their bids and unambiguously mark which documents belong to which bid.

### **Section 30a**

#### **Auction procedure**

(1) The Federal Network Agency may impose formatting rules in the auction procedure; bids must correspond to these formatting rules.

(2) The bids must be received by the Federal Network Agency by no later than the bid deadline.

(3) Bids may be withdrawn up to the bid deadline; a declaration of withdrawal must be received by the Federal Network Agency by the bid deadline. The withdrawal must be effected through the bidder's unconditional, permanent declaration, which satisfies the written form requirement and can be unambiguously allocated to the corresponding bid.

(4) Bidders are bound by their bids submitted by the bid deadline and not withdrawn, until they have been informed by the Federal Network Agency that the bid has not been awarded funding.

(5) The auctions can be fully or partially switched to an electronic process by the Federal Network Agency; this can also derogate from requirement for the written form pursuant to subsection 3 sentence 2. In this case, the Federal Network Agency can in particular impose requirements for authentication in respect of secure data transmission. If the auction process is switched to an electronic procedure, the Federal Network Agency must make reference to the electronic process in the announcement pursuant to Section 29.

## **Section 31**

### **Securities**

- (1) Bidders must deposit a security with the Federal Network Agency by the respective bid deadline. The security safeguards the respective claims of the transmission system operators to penalties pursuant to Section 55.
- (2) When depositing the security, bidders must unambiguously identify the bid to which the security refers.
- (3) Anyone who is required to deposit a security can do this through
  1. the irrevocable, unconditional and permanent guarantee payable on first demand which has been issued by a bank or a credit insurer in favour of the transmission system operator and for which a declaration of surety has been transmitted to the Federal Network Agency or
  2. the payment of a sum of money to a custodial account of the Federal Network Agency set up pursuant to subsection 5.
- (4) The declaration of surety shall be submitted in writing in German, waiving the defence of failure to pursue remedies under Section 771 of the German Civil Code and waiving the defences of set-off and contestability under Section 770 of the German Civil Code. The sponsor who is standing surety must be licensed as a financial institution or credit insurer in the European Union or in a State that is a contracting party to the Agreement on the European Economic Area. When there is cause for concern about the suitability of the sponsor, the Federal Network Agency can in individual cases require the bidder to prove the suitability of the sponsor. The criterion of Section 239 (1) of the German Civil Code shall be used for proof of suitability in the individual case.
- (5) The Federal Network Agency shall hold the securities pursuant to subsection 3 number 2 on trust for the bidders and the transmission system operators. To this end, it shall set up a custodial account. The Federal Network Agency shall be authorised to retain the securities until the preconditions exist for their return or for the settlement of claims of the transmission system operators. No interest payments shall be made on the securities.

## **Section 32**

### **Award procedure**

- (1) The Federal Network Agency shall conduct the following award procedure for each auction for each form of energy. It shall open the bids submitted on time following the bid deadline. It shall sort the bids
  1. in the case of different bid values by the respective bid value in ascending order, starting with the bid with the lowest bid value,



2. if the bid value is the same, in ascending order by each bid quantity, beginning with the lowest bid quantity; if the bid values and the bid quantity of the bids are equal, the sequence shall be decided by lot, unless the sequence is of no import for the award of the funding.

The Federal Network Agency shall examine the admissibility of the bids pursuant to Sections 33 and 34 and shall award funding in each auction for the respective form of energy according to the sequence pursuant to sentence 3 to all admissible bids until the auction volume is first reached or exceeded by the award of funding to a bid (award threshold). Bids above the award threshold shall not be awarded funding.

- (2) For each bid awarded funding, the Federal Network Agency shall register the information and documents transmitted by the bidder and the award value.

### **Section 33**

#### **Disqualification of bids**

- (1) The Federal Network Agency shall disqualify bids from the award procedure if
  1. the requirements and format requirements for bids pursuant to Sections 30 and 30a were not fully met,
  2. the requirements for the respective form of energy pursuant to Sections 36 and 36d, Sections 37 and 37c or Sections 39 to 39h or the requirements set out in the ordinances pursuant to Sections 88 to 88d were not met,
  3. the fee pursuant to number 1 or 3 of the annex to the Ordinance on Auction Fees or the security has not been fully paid to the Federal Network Agency by the bid deadline,
  4. the bid value of the bid exceeds the maximum value set for the respective auction or the installation,
  5. the bid includes conditions, time limits or other side agreements, or
  6. the bid does not comply with the announced stipulations of the Federal Network Agency where these refer to the submission of bids.

The Federal Network Agency can disqualify bids from the award procedure if the security or the fee cannot be unambiguously allocated to the bid.

- (2) The Federal Network Agency can disqualify a bid if there is reason to suspect that the bidder is not planning any installation on the site indicated in his bid, and
  1. an installation has already been commissioned on the cadastral parcels cited in the bid or
  2. the cadastral parcels cited in the bid coincide, entirely or partially,
    - a) with the cadastral parcels indicated in another bid in the same auction or

- b) with the cadastral parcels indicated in another bid awarded funding in a previous auction, unless the award has been cancelled.

A disqualification of bids pursuant to sentence 1 number 1 or number 2 letter b shall not be permitted if further installations are to be added to an installation or an existing installation is to be replaced and bids are submitted for this.

### **Section 34**

#### **Disqualification of bidders**

The Federal Network Agency can disqualify bidders and their bids from the award procedure pursuant to Section 12 if

1. the bidder
  - a) has intentionally or through gross negligence submitted bids with false information or including false documents in this or a previous auction or
  - b) has colluded with other bidders on the bid values of the bids submitted in this or a previous auction,
2. the bid quantities of several bids awarded funding of a bidder from at least two previous auctions have been completely cancelled or
3. the bidder has not provided the Federal Network Agency with the second security pursuant to Section 37a sentence 2 number 2 within the deadline in the case of at least two bids following the award of funding for a solar installation.

### **Section 35**

#### **Announcement of the awards and value to be applied**

(1) The Federal Network Agency shall announce the funding awards on its website, providing the following information:

1. the bid deadline of the auction, the form of energy for which funding is awarded, and the quantities for which funding is awarded,
2. the names of the bidders who are awarded funding, with
  - a) the respective location of the installation cited in the bid,
  - b) the number of the bid if a bidder has submitted several bids, and
  - c) an unambiguous award number,
3. the lowest and highest bid values which have been awarded funding, and
4. the average award value weighted by quantity.

(2) The award shall be deemed to have been announced one week after the public announcement pursuant to subsection 1.

- (3) The Federal Network Agency shall inform the bidders who have been awarded funding without delay about the award and the value of the award.

**Section 35a**  
**Cancellation of awards**

- (1) The Federal Network Agency shall cancel an award
1. to the extent that the award expires following the deadline to realise the installation,
  2. if the bidder is permitted to return his award and to the extent that he has made use of this right,
  3. to the extent that the Federal Network Agency withdraws or revokes the award pursuant to the Administrative Procedure Act, or
  4. if the award loses effect due to the course of time or in another way.
- (2) If a payment authorisation is revoked retrospectively, the award on which it is based shall also be cancelled.

**Subdivision 2**  
**Auctions for onshore wind energy installations**

**Section 36**  
**Bids for onshore wind energy installations**

- (1) In addition to the requirements pursuant to Section 30 onshore wind energy installations for which bids are submitted must fulfil the following requirements:
1. the approval pursuant to the Federal Immission Control Act must have been issued three weeks before the bid deadline for all installations for which a bid is made, and
  2. the installations and the necessary data must have been notified to the register as approved three weeks before the bid deadline; this shall be without prejudice to the notification deadlines for the register.
- (2) In addition to the requirements pursuant to Section 30 bidders must provide the following data with their bids:
1. the numbers under which the installations covered by the approval pursuant to the Federal Immission Control Act have been notified to the register, or a copy of the notification to the register and

2. the file number of the approval pursuant to the Federal Immission Control Act under which the approval of the installations has been issued, and the approving authority and its address; if the bid only refers to part of the installations covered by the approval, the installations for which a bid is made must be named.
- (3) In addition to the requirements pursuant to Section 30 bidders must provide the following documents with their bids:
1. a self-declaration that the approval pursuant to the Federal Immission Control Act has been issued for himself, or the declaration of the holder of the relevant approval that the bidder is making the bid with the agreement of the approval holder, and
  2. a declaration by the holder of the approval pursuant to the Federal Immission Control Act that no valid award exists from previous auctions for installations for which the bid has been made.

### **Section 36a**

#### **Securities for onshore wind energy installations**

The amount of the security pursuant to Section 31 for onshore wind energy installations shall be determined from the bid quantity multiplied by 30 euros per kilowatt of capacity to be installed.

### **Section 36b**

#### **Maximum value for onshore wind energy installations**

- (1) For electricity from onshore wind energy installations, the maximum value in 2017 shall be 7.00 cents per kilowatt-hour for the reference site pursuant to Annex 2 number 4.
- (2) From 1 January 2018, the maximum value shall derive from the average of the bid values of the highest bids awarded funding from the last three bid deadlines, increased by 8 percent. The resulting value shall be rounded to two decimal places.

### **Section 36c**

#### **Special precondition for awards in the grid expansion area**

- (1) The future new-build of onshore wind energy installations shall be controlled in the area in which the transmission systems are particularly overloaded (grid expansion area).
- (2) The grid expansion area shall be stipulated in an ordinance pursuant to Section 88b. The ordinance shall first be issued by 1 March 2017 at the latest. The basis for the stipulation of the area shall be the data of the last completed system analysis pursuant to Section 3 subsection 2 of the Grid Reserve Ordinance and the data and analyses transmitted pursuant to Section 13 subsection 10 of the Energy Industry Act for the period in three to five years.

(3) When the grid expansion area is stipulated, the following criteria shall be taken into consideration:

1. the grid expansion area should cover spatially connected areas, but at most 20 percent of the federal territory,
2. the grid expansion area must be stipulated at the level of individual grid areas or rural districts,
3. further new-build of onshore wind energy installations in this area must result in a specially great burden on the transmission system or exacerbate the existing specially great burden; here, consideration can be given to
  - a) how great the burden on the affected parts of the transmission system is likely to be, and
  - b) how much electricity from onshore wind energy installations will probably have to be curtailed and how great the potential for the new-build of onshore wind energy installations is in this area.

(4) In an ordinance pursuant to Section 88b, a level of capacity to be installed for which awards may at most be issued will also be stipulated (upper limit). This upper limit shall be 58 percent of the installed capacity per year which was commissioned as an annual average in this area in 2013 to 2015. The bid quantity which is derived for a calendar year for the grid expansion area shall be distributed equally across all auctions announced in that calendar year; in this case, the Federal Network Agency shall refer to this in the announcement pursuant to Section 29.

(5) The Federal Network Agency shall limit the awards issued in each auction for onshore wind energy installations in the grid expansion area by giving consideration to the volume of bids for installations to be erected in this area only until the installed capacity stipulated for the grid expansion area is first attained or exceeded by an award for a bid. It shall not consider other bids for onshore wind energy installations which are to be erected in the grid expansion area.

(6) The Federal Network Agency shall evaluate the stipulation of the grid expansion area and the upper limit by 31 July 2019 and every two years thereafter. Changes to the ordinance can only enter into force from 1 January 2020 for the first time, and thereafter every two years on 1 January.

### **Section 36d**

#### **Disqualification of bids for onshore wind energy installations**

The Federal Network Agency shall exclude bids for onshore wind energy installations pursuant to Section 33 from the award procedure if it has already issued an award for a wind energy installation cited in the bid which has not been cancelled by the bid deadline.

## **Section 36e**

### **Expiry of awards for onshore wind energy installations**

- (1) The award shall expire in the case of bids for wind energy installations 30 months after the public announcement of the award to the extent that the installations have not been commissioned by this time.
- (2) On application submitted by the bidder prior to the end of the deadline pursuant to subsection 1, the Federal Network Agency shall make one extension to the deadline after which the award expires, if
  1. a legal remedy from a third party has been filed and is pending against the approval pursuant to the Federal Immission Control Act following the submission of the bid awarded funding and
  2. the immediate enforceability of the approval pursuant to number 1 in this context has been imposed by the competent authority or by a court.

The extension shall be granted at most for the duration of the validity of the approval.

## **Section 36f**

### **Alterations following the issuing of an award for onshore wind energy installations**

- (1) Awards shall be allocated on a binding and permanent basis to the onshore wind energy installations to which the approval cited in the bid applies. They may not be transferred to other installations or other approvals.
- (2) If the approval is altered following the granting of the award, the award shall continue to apply to the altered approval. The scope of the award shall not change as a result.

## **Section 36g**

### **Special auctioning rules for citizens' energy companies**

- (1) In derogation of Section 36 subsection 1, citizens' energy companies can submit bids for up to six onshore wind energy installations with a total capacity to be installed of not more than 18 megawatts before the granting of the approval pursuant to the Federal Immission Control Act if
  1. the bid contains an expertise on the expected electricity yield for the planned installations which corresponds to generally recognised best available technology,
  2. the number of installations planned at the site is cited in the bid in addition to the data pursuant to Section 30 and Section 36 subsection 2,
  3. the bid contains a self-declaration documenting the fact that
    - a) the company is a citizens' energy company at the time the application is submitted and

- b) the municipality in which the planned wind energy installation is to be erected, or an company in which this municipality is the sole shareholder, holds a 10 percent financial stake in the citizens' energy company, or the corresponding municipality or an company in which this municipality is the sole shareholder has been offered a financial stake of 10 percent of the citizens' energy company, and
- c) the company is the owner of the site on which the onshore wind energy installation is to be erected or is submitting the bid with the approval of the owner of the site.

Compliance with the generally recognised best available technology pursuant to sentence 1 number 1 shall be assumed if the Technical Guidelines for Wind Energy Installations, Part 5, of the FGW e.V. (Fördergesellschaft Windenergie und andere Erneuerbare Energien)<sup>3</sup> are adhered to and the expertise has been drawn up by an institution accredited for the application of these Guidelines pursuant to DIN EN ISO IEC 170254.

(2) In the case of bids pursuant to subsection 1, the security pursuant to Sections 31 and 36a shall be subdivided into

- 1. an initial security of €15 per kilowatt of capacity to be installed, to be paid when the bid is made, and
- 2. a second security to be paid in the case of an award within two months after the granting of the approval pursuant to the Federal Immission Control Act in addition to the initial security; this second security shall be determined by the capacity to be installed in the approved installations multiplied by €15 per kilowatt of capacity to be installed.

(3) The award granted to a bid pursuant to subsection 1 shall be tied to the rural district cited in the bid as the site, and the deadline pursuant to Section 36e subsection 1 shall be extended by 24 months for this award. Within two months following the issue of the approval pursuant to the Federal Immission Control Act (substantive exclusion deadline), the citizens' energy company must apply to the Federal Network Agency for the allocation of the award to the approved onshore wind energy installations. The award shall expire if the allocation has not been applied for within this period or if the application has been rejected. In response to the application pursuant to sentence 2, the Federal Network Agency shall allocate the award on a binding and permanent basis to up to six onshore wind energy installations with a total capacity to be installed of not more than 18 megawatts, but at most at the level of the quantity bid for in the bid awarded funding if

- 1. the application pursuant to sentence 2 contains the data pursuant to Section 36 subsection 2,
- 2. the wind energy installations are to be erected in the rural districted cited in the bid,
- 3. a self-declaration documents the fact that
  - a) the company is a citizens' energy company at the time the application is submitted and

- b) the municipality in which the planned wind energy installations are to be erected, or an company in which this municipality is the sole shareholder, holds a 10 percent financial stake in the citizens' energy company, or the corresponding municipality or an company in which this municipality is the sole shareholder has been offered a financial stake of 10 percent of the citizens' energy company, and
4. the second security pursuant to subsection 2 has been lodged.

An effective award within the meaning of Section 22 subsection 2 sentence 1 shall not exist until the allocation decision has been made. Section 36f shall be applied from the day of the allocation decision.

(4) On request, the citizens' energy company must present the Federal Network Agency with appropriate documentation for a review of the self-declarations pursuant to subsection 1 sentence 1 number 3 and subsection 3 sentence 4 number 3.

(5) In derogation of Section 3 number 51, the value of the award for all bids from citizens' energy company which are awarded funding shall be the value of the award of the highest bid awarded funding from the same bid deadline. If a citizens' energy company does not submit its bid pursuant to subsection 1, but only after the issue of the approval pursuant to the Federal Immission Control Act, sentence 1 shall be applied mutatis mutandis for the award value of this bid if the requirements pursuant to Section 36 and to subsection 1 sentence 1 number 3, subsection 3 sentence 4 number 3 letter b and subsection 4 have been met.

(6) The Länder can issue further rules on citizens' participation and in order to increase public acceptance of the construction of new installations as long as Section 80a is not affected.

## **Section 36h**

### **Value to be applied for onshore wind energy installations**

(1) The grid system operator shall calculate the value to be applied on the basis of the award value for the reference site pursuant to Annex 2 number 4 for electricity from onshore wind energy installations with the corrective factor of the quality factor which has been determined pursuant to Annex 2 number 2 and 7. The following interpolation values shall be applied:

For the determination of the corrective factors between the neighbouring interpolation values, a linear interpolation shall take place. The corrective factor shall be 1.29 below the quality factor of 70 percent and 0.79 above the quality factor of 150 percent. The quality factor shall be the ratio of the site yield of an installation pursuant to Annex 2 number 7 to the reference yield pursuant to Annex 2 number 2 in percent.



(2) The values to be applied shall be adapted with effect from the beginning of the sixth, eleventh and sixteenth year following the commissioning of the installation on the basis of the site yield of the installations pursuant to Annex 2 number 7 in the preceding five years. Overpayments or underpayments made in the period under review pursuant to Section 19 subsection 1 must be reimbursed if the quality factor on the basis of the site yield of the last five years under consideration deviates by more than 2 percentage points from the quality factor which was last calculated. Here, claims by the grid system operator to reimbursement shall be subject to interest at 1 percentage point above the Euro Interbank Offered Rate for twelve-month money from first addresses in the countries participating in the European Monetary Union. These may be offset against claims pursuant to Section 19 subsection 1.

(3) The entitlement pursuant to Section 19 subsection 1 in conjunction with subsection 1 shall exist only to the extent that the plant operator documents the quality factor to the grid system operator

1. prior to the commissioning of the installation and
2. for the adjustments pursuant to subsection 2 in each case at the latest two months after the end of the deadlines pursuant to subsection 2 sentence 1.

(4) The documentation pursuant to subsection 3 shall take the form of expertises which are based on the generally recognised best available technology and cover the respective periods pursuant to subsection 2 sentence 1. Section 36g subsection 1 sentence 2 shall apply mutatis mutandis.

## **Section 36i**

### **Duration of payment entitlement for onshore wind energy installations**

In derogation of Section 25 sentence 3, the period pursuant to Section 25 sentence 1 shall commence at the latest 30 months following the announcement of the award to the bidder or in the case of Section 36g following the announcement of the allocation decision pursuant to Section 36g subsection 3 sentence 4 even if the commissioning of the onshore wind energy installation takes place at a later time due to an extension of the deadline pursuant to Section 36e subsection 2.

## **Subdivision 3**

### **Auctions for solar installations**

## **Section 37**

### **Bids for solar installations**

(1) Bids for solar installations must, in addition to Section 30, contain the information as to whether the installations are to be erected

1. on, affixed to or in a building or a noise barrier,

2. on another construction which has been erected primarily for purposes other than the generation of electricity from solar radiation energy, or
3. on a site
  - a) which had already been sealed by the time when the decision to adopt or amend the zoning plan was taken,
  - b) which was being used as a conversion area used for commercial, transport, housing or military purposes at the time when the decision to adopt or amend the zoning plan was taken,
  - c) which ran alongside motorways/railway lines at the time when the decision to adopt or amend the zoning plan was taken, if the ground-mounted installation is to be constructed at a distance of up to 110 metres measured from the outer edge of the paved roadway/track,
  - d) which is located within an area covered by a zoning plan that was adopted pursuant to Section 30 of the Federal Building Code prior to 1 September 2013 and has not since been amended to allow for the erection of a solar installation,
  - e) which has been designated as a commercial or industrial area in a zoning plan that was adopted before 1 January 2010 within the meaning of Section 8 or Section 9 of the Federal Land Utilisation Ordinance, even if the designation was amended after 1 January 2010, also at least with the purpose of constructing a solar installation,
  - f) for which a procedure pursuant to Section 38 sentence 1 of the Federal Building Code has been carried out,
  - g) which was or is owned by the Federation or the Institute for Federal Real Estate and was managed by the Institute for Federal Real Estate after 31 December 2013 and has been published on its website as being available for the development of solar installations,
  - h) the cadastral parcels of which were used as farmland at the time when the decision to adopt or amend the zoning plan was taken and were located in a disadvantaged area and which are not covered by one of the areas cited in letter a to g or
  - i) the cadastral parcels of which were used as grassland at the time when the decision to adopt or amend the zoning plan was taken and were located in a disadvantaged area and which are not covered by one of the areas cited in letter a to g.

(2) The bids for ground-mounted installations must in addition to Section 30 be supplemented by a declaration by the bidder that he is the owner of the site on which the solar installation is to be erected or is submitting the bid with the approval of the owner of that site. The bids for ground-mounted installations must, and the bids for solar installations pursuant to subsection 1 number 2 may, also be accompanied by the following documentation:

1. copies of the following documents:
    - a) the decision on the establishment or amendment of the zoning plan pursuant to Section 2 of the Federal Building Code, which in the cases of subsection 1 number 3 has been adopted at least partly with the purpose of erecting solar installations,
    - b) the disclosure decision pursuant to Section 3 subsection 2 of the Federal Building Code, which in the cases of subsection 1 number 3 has been adopted at least partly with the purpose of erecting solar installations,
    - c) the adopted zoning plan within the meaning of Section 30 of the Federal Building Code, which in the cases of subsection 1 number 3 has been adopted at least partly with the purpose of erecting solar installations, or
    - d) where the ground-mounted installations are to be erected on a site for which a procedure pursuant to Section 38 sentence 1 has been carried out, to the extent that no documentation pursuant to letters a to c has been provided, a planning approval decision, a planning consent or a decision on a change to the plan, which has been adopted at least partly with the purpose of erecting solar installations, and
  2. a declaration by the bidder that the documentation submitted pursuant to number 1 refers to the site of the solar installations cited in the bid.
- (3) In addition to the requirements pursuant to Section 30, the bid quantity in the case of bids for ground-mounted installations may not exceed 10 megawatts of capacity to be installed per bid.

### **Section 37a**

#### **Securities for solar installations**

The amount of the security pursuant to Section 31 for solar installations shall be determined from the bid quantity multiplied by 50 euros per kilowatt of capacity to be installed. This security shall be subdivided into

1. an initial security of 5 euros per kilowatt of capacity to be installed, to be paid when the bid is made, and

2. a second security of 45 euros per kilowatt of capacity to be installed, which must be paid in the case of an award at the latest on the tenth working day following the public announcement of the award (substantive exclusion deadline) in addition to the initial security; this second security shall be reduced to 20 euros per kilowatt of capacity to be installed if the bid contains documentation pursuant to Section 37 subsection 2 sentence 2 number 1 letter c or letter d.

### **Section 37b**

#### **Maximum value for solar installations**

- (1) The maximum value for electricity from solar installations shall be 8.91 cents per kilowatt-hour.
- (2) The maximum value shall fall or rise from 1 February 2017 each month in accordance with Section 49 subsection 1 to 4.

### **Section 37c**

#### **Special precondition for awards for disadvantaged areas; power for the Länder to issue ordinances**

- (1) The Federal Network Agency may give consideration to bids for ground-mounted installations on sites pursuant to Section 37 subsection 1 number 3 letter h and i in the award procedure for solar installations only if and to the extent that the Land government has issued an ordinance pursuant to subsection 2 for bids on the corresponding sites.
- (2) The Land governments shall be authorised to regulate by ordinance that bids for ground-mounted installations on sites pursuant to Section 37 subsection 1 number 3 letter h and i can be awarded funding in the territory of their Land.
- (3) Bids which have received an award solely on the basis of an ordinance pursuant to subsection 2 must be marked correspondingly by the Federal Network Agency.

### **Section 37d**

#### **Return and expiry of awards for solar installations**

- (1) Bidders may reject awards for solar installations entirely or in part by giving the Federal Network Agency an unconditional declaration of rejection in a form that, until the introduction of an electronic procedure pursuant to Section 30a subsection 5, satisfies the written form requirement.
- (2) The award shall be cancelled in the case of bids for solar installations
  1. if the bidder has not fully paid the second security within the deadline pursuant to Section 37a sentence 2 number 2 or
  2. to the extent that the payment authorisation pursuant to Section 38 has not been applied for at the latest 24 months after the public announcement of the award (substantive exclusion deadline) or the application has been rejected.

(3) If the award is cancelled because the second security has not been deposited, the Federal Network Agency shall increase the volume of the auction by the amount of the cancelled bid for the next bid deadline which has not yet been announced.

### **Section 38**

#### **Payment authorisation for solar installations**

(1) On application from a bidder which has received at least one award, the Federal Network Agency shall issue a payment authorisation for solar installations.

(2) The application pursuant to subsection 1 must contain the following information:

1. the number under which the solar installations have been notified to the register, or a copy of the notification to the register,
2. the type of site, particularly whether the requirements pursuant to Section 38a subsection 1 number 3 have been met,
3. information about the extent to which the installations have not been erected on a building structure,
4. the extent of the bid quantity per bid awarded funding that is to be allocated to the solar installations, including the award numbers registered for the bids in each case, and
5. confirmation by the bidder that he is the operator of the solar installations.

### **Section 38a**

#### **Issuance of payment authorisations for solar installations**

(1) The payment authorisation for solar installations may be issued only

1. if the solar installations have been commissioned before submission of the application but after the granting of the award and the bidder is the installation operator at the time of submission of the application,
2. if all necessary data for the solar installations have been notified to the register or these data are being notified in the context of the application pursuant to Section 38 subsection 1,
3. to the extent that a corresponding bid quantity of bids awarded funding exists for the bidder which have not already been allocated to another payment authorisation; here, only the following bid quantities may be allocated:
  - a) the bid quantity of a bid awarded funding for which the site for the solar installations has been cited as a site pursuant to Section 37 subsection 1 number 1, 2, or number 3 letter a to g can only be allocated to solar installations which are located on one of these sites,
  - b) for ground-mounted installations on farmland in a disadvantaged area pursuant to Section 37 subsection 1 number 3 letter h, only bid quantities of an award can be allocated which relate to such a site, and

- c) the bid quantities of bids which have been awarded funding only on the basis of an ordinance pursuant to Section 37c subsection 2 may only be used for ground-mounted installations which have been erected on one of the site categories named in the bid awarded funding in the territory of the Land which has issued the ordinance,
  - 4. to the extent that the bid quantity to be allocated for the solar installations does not exceed the installed capacity of the solar installations,
  - 5. in the case of ground-mounted installations to the extent that
    - a) the installed capacity of 10 megawatts is not exceeded and
    - b) installations are not located on a site that received a legally binding designation as a nature conservation area within the meaning of Section 23 of the Federal Nature Conservation Act or as a national park within the meaning of Section 24 of the Federal Nature Conservation Act at the time of the adoption or amendment of the zoning plan,
  - 6. if the second security has been paid to the Federal Network Agency within the deadline pursuant to Section 37a sentence 2 number 2 and
  - 7. if by the bid deadline the fee pursuant to Annex number 2 to the Ordinance on Auction Fees has been paid to the Federal Network Agency.
- (2) Without delay following the issuance of the payment authorisation, the Federal Network Agency shall inform the grid system operator into whose grid the electricity generated in the solar installations is to be fed of the issuance of the payment authorisation including the numbers under which the installation is entered into the register. The entitlement pursuant to Section 19 subsection 1 shall exist retrospectively back to the day of commissioning if the payment authorisation is issued on the basis of an application which was made at the latest three weeks following commissioning of the installation.
- (3) The grid system operator must verify the fulfilment of the requirements pursuant to subsection 1 number 1 to 3 and 5 and Section 38 subsection 2 number 3. It can request the presentation of corresponding documentation for this. To the extent that the Federal Network Agency has made a stipulation pursuant to Section 85, the grid system operator must request appropriate documentation and present this to the Federal Network Agency on demand. The grid system operator must inform the Federal Network Agency of the outcome of the verification and the installed capacity of the solar installations within a month after the communication pursuant to subsection 2.
- (4) Payment authorisations that have been issued shall be bindingly and permanently allocated to the solar installations. They may not be transferred to other installations.

## **Section 38b**

### **Value to be applied for solar installations**

- (1) The level of the value to be applied shall correspond to the award value of the bid awarded funding whose bid quantity has been allocated to the solar installation.
- (2) Solar installations which due to technical defect, damage or theft replace solar installations at the same location shall, in derogation of Section 3 number 30, be regarded as having been commissioned at the time when the replaced installations were commissioned up to the level of the installed capacity of solar installations before the replacement at the same site. The payment authorisation shall lose its validity for the replaced installation at the time of the replacement and shall instead cover the installation replacing that installation.

## **Subdivision 4**

### **Auctions for biomass installations**

## **Section 39**

### **Bids for biomass installations**

- (1) In addition to the requirements pursuant to Section 30 biomass installations for which bids are submitted must fulfil the following requirements:
  1. the installation must not have been commissioned at the time of the award,
  2. the approval pursuant to the Federal Immission Control Act or another provision of federal law or the building permit must have been issued three weeks before the bid deadline for all installations for which a bid is made, and
  3. the installation and the necessary data must have been notified to the register as approved three weeks before the bid deadline; this shall be without prejudice to the notification deadlines for the register.
- (2) In addition to the requirements pursuant to Section 30 bidders must provide the following data with their bids:
  1. the number under which the installation covered by the approval pursuant to subsection 1 number 1 has been notified to the register, or a copy of the notification to the register and
  2. the file number of the approval pursuant to subsection 1 number 2 under which the approval of the installations has been issued, and the approving authority and its address.
- (3) In addition to the requirements pursuant to Section 30 bidders must provide the following documents with their bids:
  1. the self-declaration that the approval to subsection 1 number 2 has been issued for himself, or the declaration of the holder of the relevant approval that the bidder is making the bid with the agreement of the approval holder, and

2. a declaration by the holder of the approval pursuant subsection 1 number 2 that no valid award exists from a previous auction for the installation for which the bid has been made.

(4) In addition to the requirements pursuant to Section 30, installations for which a bid is made may not exceed 20 megawatts of capacity to be installed. Section 24 subsection 1 shall be applied mutatis mutandis.

### **Section 39a**

#### **Securities for biomass installations**

The amount of the security pursuant to Section 31 for biomass installations shall be determined from the bid quantity multiplied by 60 euros per kilowatt of capacity to be installed.

### **Section 39b**

#### **Maximum value for biomass installations**

(1) The maximum value for electricity from biomass installations shall be 14.88 cents per kilowatt-hour in 2017.

(2) The maximum value shall decrease from 1 January 2018 by 1 percent per year from the maximum value in force in the preceding calendar year and shall be rounded to two decimal places. For the calculation of the level of the maximum value due to a renewed adjustment pursuant to sentence 1, the non-rounded value shall be taken.

### **Section 39c**

#### **Disqualification of bids for biomass installations**

The Federal Network Agency shall exclude bids for biomass installations pursuant to Section 33 from the award procedure if it has already issued an award for a biomass installation cited in the bid which has not been cancelled on the bid deadline.

### **Section 39d**

#### **Expiry of awards for biomass installations**

(1) The award shall expire in the case of bids for biomass installations 24 months after the public announcement of the award to the extent that the installation has not been commissioned by this time.

(2) On application submitted by the bidder prior to the end of the deadline pursuant to subsection 1, the Federal Network Agency shall extend the deadline after which the award expires, if



1. a legal remedy from a third party has been filed and is pending against the approval pursuant to Section 39 subsection 1 number 2 cited in the bid awarded funding following the submission of the bid and
2. the immediate enforceability of the approval pursuant to number 1 in this context has been imposed by the competent authority or by a court.

The extension shall be granted at most for the duration of the validity of the approval.

### **Section 39e**

#### **Alterations following the issuing of an award for biomass installations**

(1) Awards shall be allocated on a binding and permanent basis to the biomass installations to which the approval cited in the bid applies. They may not be transferred to other installations or other approvals.

(2) If the approval is altered following the granting of the award, the award shall continue to apply to the altered approval. The scope of the award shall not change as a result.

### **Section 39f**

#### **Inclusion of existing biomass installations**

In derogation of Section 22 subsection 4 sentence 2 number 2 and of Section 39 subsection 1 number 1, bids can be made for electricity from biomass installations which were first commissioned prior to 1 January 2017 exclusively with biomass (existing biomass installations) if the previous payment entitlement for electricity from this installation pursuant to the Renewable Energy Sources Act in the version applicable to the installation exists only for at most another eight years at the time of the auction. In derogation of Section 22 subsection 4 sentence 2 number 1, existing biomass installations with an installed capacity of 150 kilowatts or less can make bids. In derogation of Section 3 number 51, the value of the award for all bids awarded funding from installations pursuant to sentence 2 shall be the value of the award of the highest bid awarded funding from the same bid deadline.

(2) If the Federal Network Agency issues an award to an existing biomass installation pursuant to subsection 1, the entitlement pursuant to Section 19 subsection 1 shall for the future replace all of the previous entitlements pursuant to the Renewable Energy Sources Act in the version applicable to the installation from the first day of a calendar month to be determined by the plant operator. The plant operator must communicate to the grid system operator a calendar month which is not before the thirteenth and not after the thirty-sixth calendar month following the public announcement of the award. The communication must take place before the beginning of the calendar month preceding the calendar month to be communicated pursuant to sentence 2. If the installation operator does not make a communication pursuant to sentence 2, the new entitlement shall commence on the first day of the thirty-seventh calendar month following the public announcement of the award, replacing the previous entitlements.

(3) The installation shall be regarded as newly commissioned from the day pursuant to subsection 2. From this day, all the rights and obligations shall be binding for these installations which apply to installations commissioned after 31 December 2016.

(4) The new entitlement pursuant to Section 19 subsection 1 in conjunction with subsection 2 shall exist only if an environmental auditor with a licence for the field of electricity generation from renewable energy sources has certified that the installation is technically suited for needs-oriented operation and the installation operator has presented this certificate to the grid system operator. The definition of needs-oriented operation shall be

1. for installations using biogas the requirements pursuant to Section 39h subsection 2 sentence 2 number 1 and
2. for installations using solid biomass the requirements pursuant to Section 39h subsection 2 sentence 2 number 2.

(5) Sections 39 to 39e shall be applied with the proviso that

1. the approval pursuant to Section 39 subsection 1 number 2 must have been issued for a period until at least the last day of the eleventh calendar year following the bid deadline,
2. the bidder must add self-declarations in addition to Section 39 subsection 3 stating that
  - a) he is the operator of the biomass installation and
  - b) the approval pursuant to Section 39 subsection 1 number 2 meets the requirement pursuant to number 1, and
3. the maximum value pursuant to Section 39b subsection 1 in 2017 is 16.9 cents per kilowatt-hour; this maximum value shall decrease by 1 percent a year from 1 January 2018, whereby Section 39b subsection 2 shall be applied mutatis mutandis, and
4. in addition to Section 39d subsection 1 the award shall be cancelled six months after the day pursuant to subsection 2 if the installation operator has not presented the grid system operator with the certificate from the environmental auditor pursuant to subsection 4 by this time.

(6) If an existing biomass installation receives an award, its value to be applied shall, irrespective of the award value, be limited to the average level of the value to be applied for the electricity generated in the respective installation in cents per kilowatt-hour pursuant to the Renewable Energy Sources Act in the version previously applicable to the installation, whereby the average of the three calendar years preceding the bid deadline shall be used. In order to determine the average, the quotient from all of the payments made for the installation for each of the three years and the total quantity of electricity remunerated in the respective year must be taken as a basis, and then the total of the values to be applied which were determined pursuant to the preceding half-sentence shall be divided by three.

## **Section 39g**

### **Duration of payment entitlement for biomass installations**

- (1) In derogation of Section 25 sentence 3, the period pursuant to Section 25 sentence 1 shall commence on the day pursuant to Section 39f subsection 2 for existing biomass installations pursuant to Section 39f subsection 1 and at the latest 24 months following the public announcement of the award for other biomass installations.
- (2) Subsection 1 shall also be applied if
  1. the commissioning of the biomass installation takes place at a later point in time solely due to an extension to the deadline pursuant to Section 39d subsection 2,
  2. the certificate pursuant to Section 39f subsection 4 for existing biomass installations is only presented after the day pursuant to Section 39f subsection 2.
- (3) In derogation of Section 25 sentence 2, the payment period for existing biomass installations shall be ten years. This period cannot be extended pursuant to Section 39f.

## **Section 39h**

### **Special payment provisions for biomass installations**

- (1) An entitlement pursuant to Section 19 subsection 1 acquired due to an award for electricity from biogas shall exist only if the proportion of cereal grain kernels or maize used to produce biogas
  1. amounts to a total of at most 50 percent by mass in each calendar year for installations which have received an award in 2017 or 2018,
  2. amounts to a total of at most 47 percent by mass in each calendar year for installations which have received an award in 2019 or 2020, and
  3. amounts to a total of at most 44 percent by mass in each calendar year for installations which have received an award in 2021 or 2022.

Whole crops, corn kernel-cob blend, grain maize and ground ear maize shall be regarded as maize within the meaning of sentence 1.

- (2) For electricity from biomass installations, the entitlement pursuant to Section 19 subsection 1 shall decrease for each kilowatt-hour which exceeds the maximum rated capacity of the installation in a calendar year, in the forms of sale of the market premium to zero and in the forms of sale of a feed-in tariff to the monthly market value. The maximum rated capacity within the meaning of sentence 1 shall be
  1. for installations using biogas the value reduced by 50 percent of the bid quantity awarded funding and
  2. for installations using solid biomass the value reduced by 20 percent of the bid quantity awarded funding.

If the award pursuant to Section 35a is partially cancelled, when the maximum rated capacity is determined pursuant to sentence 2, the bid quantity awarded funding shall be reduced accordingly.

(3) Where biogas is used in biomass installations which is mostly gained from anaerobic fermentation of biomass within the meaning of the Biomass Ordinance with a proportion of separately collected biowaste within the meaning of waste key number 20 2 01, 20 3 01 and 20 3 02 of number 1 of Annex 1 of the Biowaste Ordinance, irrespective of the value of the award, the level of the value to be applied shall be limited

1. to 14.88 cents per kilowatt-hour up to and including a rated capacity of 500 kilowatts and
2. to 13.05 cents per kilowatt-hour up to and including a rated capacity of 20 megawatts.

(4) Apart from this, Sections 44b and 44c shall be applied mutatis mutandis, whereby the fulfilment of the requirements pursuant to subsection 1 shall be documented annually by the presentation of a copy of a feedstock diary with Section 44c subsection 1 number 1 and subsection 2 being applied mutatis mutandis.

## **Subdivision 5**

### **Technology-neutral auctions**

#### **Section 39i**

##### **Joint auctions for onshore wind and solar installations**

(1) The Federal Network Agency shall hold joint auctions for onshore wind and solar installations in the years from 2018 to 2020.

(2) The details of the joint auctions shall be defined in greater detail in an ordinance pursuant to Section 88c. At the same time, it should be ensured that

1. there is sufficiently diversified new-build,
2. the expansion targets pursuant to Section 1 subsection 2 are not endangered,
3. cost-efficiency is ensured and
4. incentives for optimal grid system and system integration are provided.

The ordinance shall first be issued by 1 May 2018 at the latest.

(3) On the basis of the experience made with the joint auctions, the Federal Government shall present a proposal in good time as to whether and to what extent joint auctions shall also be carried out for the years after 2021.

## **Section 39j**

### **Innovation auctions**

(1) The Federal Network Agency shall hold innovation auctions for renewable energy sources in the years from 2018 to 2020. Participation in these auctions shall not be restricted to individual renewable energy sources. Also, bids for combinations or groupings of different renewable energy sources can be submitted.

(2) The details of the innovation auctions shall be defined in greater detail in an ordinance pursuant to Section 88d. Here, it shall be ensured that funding goes to solutions that particularly serve the needs of the grid system or the system and that prove themselves to be efficient in a technology-neutral competitive procedure. The ordinance shall first be issued by 1 May 2018 at the latest.

(3) On the basis of the experience made with the innovation auctions, the Federal Government shall present a proposal in good time as to whether and to what extent innovation auctions shall also be carried out for the years after 2021.

## **Division 4**

### **Statutory determination of the payment**

#### **Subdivision 1**

#### **Values to be applied**

#### **Section 40**

#### **Hydropower**

- (1) For electricity from hydropower, the value to be applied shall be
1. 12.40 cents per kilowatt-hour up to and including a rated capacity of 500 kilowatts,
  2. 8.17 cents per kilowatt-hour up to and including a rated capacity of 2 megawatts,
  3. 6.25 cents per kilowatt-hour up to and including a rated capacity of 5 megawatts,
  4. 5.48 cents per kilowatt-hour up to and including a rated capacity of 10 megawatts,
  5. 5.29 cents per kilowatt-hour up to and including a rated capacity of 20 megawatts,
  6. 4.24 cents per kilowatt-hour up to and including a rated capacity of 50 megawatts and
  7. 3.47 cents per kilowatt-hour above a rated capacity of 50 megawatts.

(2) The entitlement pursuant to Section 19 subsection 1 shall also exist for electricity from installations which were commissioned before 1 January 2009 if after 31 December 2016 an increase in the capacity of the installation was undertaken via an upgrading measure permitted under water law. Sentence 1 shall not be applied to upgrading measures requiring a permit if the capacity was increased by at least 10 percent. Installations pursuant to sentences 1 or 2 shall be regarded as newly commissioned when the upgrading measures have been completed.

(3) For electricity from hydropower which is generated in installations pursuant to subsection 2 with an installed capacity of more than 5 megawatts, an entitlement pursuant to Section 19 subsection 1 shall exist only for the electricity which is to be allocated to the increased capacity pursuant to subsection 2 sentence 1 or sentence 2. If the installation had an installed capacity of up to and including 5 megawatts before 1 January 2017, the electricity which corresponds to this part of the capacity shall be covered by the entitlement pursuant to the provision which has so far applied to the installation.

(4) The entitlement pursuant to Section 19 subsection 1 in conjunction with subsection 1 shall exist only if the installation has been erected

1. in a spatial relationship to a wholly or partially existing dam installation or a dam installation which is primarily to be constructed for purposes other than the generation of electricity from hydropower or
2. without a complete transversal structure.

(5) The values to be applied pursuant to subsection 1 shall decrease annually from 1 January 2018 for each of the installations commissioned or upgraded after this point in time by 0.5 percent from the values to be applied in the preceding calendar year and shall be rounded to two decimal places. For the calculation of the level of the values to be applied due to a renewed adjustment pursuant to sentence 1, the non-rounded values shall be taken.

## **Section 41**

### **Landfill, sewage treatment and mine gas**

(1) For electricity from landfill gas, the value to be applied shall be

1. 8.17 cents per kilowatt-hour up to and including a rated capacity of 500 kilowatts and
2. 5.66 cents per kilowatt-hour up to and including a rated capacity of 5 megawatts.

(2) For electricity from sewage treatment gas, the value to be applied shall be

1. 6.49 cents per kilowatt-hour up to and including a rated capacity of 500 kilowatts and
2. 5.66 cents per kilowatt-hour up to and including a rated capacity of 5 megawatts.

(3) For electricity from mine gas, the value to be applied shall be

1. 6.54 cents per kilowatt-hour up to and including a rated capacity of 1 megawatt,
2. 4.17 cents per kilowatt-hour up to and including a rated capacity of 5 megawatts and

3. 3.69 cents per kilowatt-hour above a rated capacity of 5 megawatts.

The entitlement pursuant to Section 19 subsection 1 in conjunction with sentence 1 shall exist only if the mine gas derives from workings of active or decommissioned mining.

(4) The values to be applied pursuant to subsections 1 to 3 shall decrease annually from 1 January 2018 for each of the installations commissioned or upgraded after this point in time by 1.5 percent from the values to be applied in the preceding calendar year and shall be rounded to two decimal places. For the calculation of the level of the values to be applied due to a renewed adjustment pursuant to sentence 1, the non-rounded values shall be taken.

## **Section 42**

### **Biomass**

For electricity from biomass within the meaning of the Biomass Ordinance for which the value to be applied is determined by statute pursuant to Section 22 subsection 6, this value shall be

1. 13.32 cents per kilowatt-hour up to and including a rated capacity of 150 kilowatts,
2. 11.49 cents per kilowatt-hour up to and including a rated capacity of 500 kilowatts,
3. 10.29 cents per kilowatt-hour up to and including a rated capacity of 5 megawatts and
4. 5.71 cents per kilowatt-hour up to and including a rated capacity of 20 megawatts.

## **Section 43**

### **Fermentation of biowaste**

(1) For electricity from installations using biogas which is gained from anaerobic fermentation of biomass within the meaning of the Biomass Ordinance with a proportion of separately collected biowaste within the meaning of waste key number 20 2 01, 20 3 01 and 20 3 02 of number 1 of Annex 1 of the Biowaste Ordinance in the respective calendar year of an average of at least 90 percent by mass, the value to be applied shall be, if it is determined by statute pursuant to Section 22 subsection 6,

1. 14.88 cents per kilowatt-hour up to and including a rated capacity of 500 kilowatts and
2. 13.05 cents per kilowatt-hour up to and including a rated capacity of 20 megawatts.

(2) The entitlement pursuant to Section 19 subsection 1 in conjunction with subsection 1 shall exist only if the devices for the anaerobic fermentation of the biowaste are directly connected to a device for the post-rotting of the solid fermentation residues and the material of the post-rotted fermentation residues is recycled.

## **Section 44**

### **Fermentation of manure**

For electricity from installations using biogas which is gained from anaerobic fermentation of biomass within the meaning of the Biomass Ordinance, the value to be applied shall be 23.14 cents per kilowatt-hour if

1. the electricity is generated on the biogas-generating installation site,
2. the installed capacity at the site of the biogas-generating installation totals at most 75 kilowatts and
3. an average share of manure with the exception of poultry dung and dry poultry manure of at least 80 percent by mass is used to generate the biogas in the respective calendar year.

## **Section 44a**

### **Reduction of values to be applied for electricity from biomass**

The values to be applied pursuant to Sections 42 to 44 shall be reduced starting from 1 April 2017 on each 1 April and 1 October of a year for the installations commissioned after this time by 0.5 percent compared with the values to be applied in the preceding six calendar months and shall be rounded to two decimal places. For the calculation of the level of the values to be applied due to a renewed adjustment pursuant to sentence 1, the non-rounded values shall be taken.

## **Section 44b**

### **Common provisions for electricity from gases**

(1) For electricity which is generated in installations with an installed capacity of more than 100 kilowatts, the entitlement pursuant to Section 19 subsection 1 for electricity from biogas shall exist only for that part of the quantity of electricity generated in a calendar year which corresponds to a rated capacity of the installation of 50 percent of the value of the installed capacity. For the share of the quantity of electricity generated in the calendar year which exceeds this, the entitlement pursuant to Section 19 subsection 1 shall be reduced to zero in the form of sale of the market premium and to the monthly market value in the forms of sale of a feed-in tariff.



(2) The entitlement pursuant to Section 19 subsection 1 for electricity from biomass pursuant to Section 42 or Section 43 shall furthermore exist in the case of installations in which biomethane is used only to the extent that the electricity is generated from CHP. For this entitlement it shall be necessary to furnish proof of the fulfilment of the preconditions pursuant to sentence 1 in accordance with the generally recognised best available technology from the first calendar year which follows the first commissioning annually by 28 February for the preceding calendar year. When the entitlement is first claimed, it shall also be necessary to furnish proof of the suitability of the installation to meet the preconditions within the meaning of sentence 2 by an expertise from an environmental auditor with a licence for the field of electricity generation from renewable energy sources or for the field of heat supply.

(3) Compliance with the recognised best available technology pursuant to subsection 2 sentence 2 shall be assumed to exist if the compliance with the requirements of Working Paper FW 308 published by the Energieeffizienzverband für Wärme, Kälte und KWK e. V. (AGFW) entitled "Certification of CHP installations - determining the CHP electricity" (Federal Gazette of 19 October 2015, non-official section, institutional publications) is documented. The documentation must take the form of the presentation of an expertise from an environmental auditor with a licence for the field of electricity generation from renewable energy sources or for the field of heat supply. Instead of documentation pursuant to sentence 1, for mass-produced CHP installations with an installed capacity of up to 2 megawatts appropriate documentation from the manufacturer can be presented which shows the thermal and electrical output and the electricity coefficient.

(4) The entitlement pursuant to Section 19 subsection 1 for electricity from biomass pursuant to Section 43 or Section 44 cannot be combined with the entitlement pursuant to Section 19 subsection 1 in conjunction with Section 39 or Section 42.

(5) Gas taken from a natural gas system shall be regarded respectively as landfill gas, sewage treatment gas, mine gas, biomethane or storage gas,

1. to the extent that the quantity of the gas taken corresponds to the heat equivalent at the end of a calendar year of the quantity of landfill gas, sewage treatment gas, mine gas, biomethane or storage gas which has been fed into the natural gas system at another place in the area of validity of this Act, and
2. if mass balance systems have been used for the entire transport and sale of the gas from its manufacture or extraction, its feed-in into the natural gas system and its transport in the natural gas system through to its removal from the natural gas system.

(6) The entitlement pursuant to Section 19 subsection 1 for electricity from biomethane pursuant to Section 42 or Section 43 shall remain in place if before its removal from the natural gas system the biomethane is divided in accounting terms into feedstock-related partial quantities on the basis of the energy yields of the feedstocks used to generate biomethane. The division in accounting terms into feedstock-related partial quantities including the allocation of the feedstock substances to the respective partial quantity shall be documented in the context of the mass balancing pursuant to subsection 5 number 2.

## **Section 44c**

### **Other common provisions for electricity from biomass**

- (1) Notwithstanding Section 44b, the entitlement pursuant to Section 19 subsection 1 for electricity from biomass shall exist only
  1. if the installation operator keeps proof in the form of a copy of the feedstock diary containing data and documentation of the type, quantity, unit and origin of the feedstock showing what biomass and to what extent storage gas or mine gas is deployed,
  2. if liquid biomass is used in installations, for the share of electricity from liquid biomass which is needed for start-up, ignition and support fire; liquid biomass shall be biomass which is liquid at the time of entry into the combustion or firing chamber; vegetable oil methyl ester shall be regarded as biomass to the extent that it is necessary for start-up, ignition and support fire.
- (2) For the entitlement pursuant to Section 19 subsection 1 for electricity from biomass pursuant to Section 42, Section 43 or Section 44, it shall be necessary to furnish proof of the proportion of electricity from liquid biomass pursuant to subsection 1 number 2 by presenting a copy of a feedstock diary annually from the first calendar year which follows the first commissioning by 28 February for the preceding calendar year.
- (3) The entitlement pursuant to Section 19 subsection 1 for electricity from biomass shall be reduced in the respective calendar year in total to the value "MWEPEX" pursuant to number 2.1 of Annex 1 if the documentation has not been kept in the manner prescribed pursuant to subsection 2 or Section 44b subsection 2 sentence 2 or 3.
- (4) To the extent that pursuant to subsections 1 or 2 the proof is to be kept in the form of a copy of a feedstock diary, the personal data not required for the proof in the feedstock diary must be redacted by the installation operator.

## **Section 45**

### **Geothermal energy**

- (1) For electricity from geothermal energy, the value to be applied shall be 25.20 cents per kilowatt-hour.
- (2) The values to be applied pursuant to subsection 1 shall decrease annually from 1 January 2021 for each of the installations commissioned after this time by 5 percent from the values to be applied in the preceding calendar year and shall be rounded to two decimal places. For the calculation of the level of the values to be applied due to a renewed adjustment pursuant to sentence 1, the non-rounded values shall be taken.

## **Section 46**

### **Onshore wind energy up to 2018**

- (1) For electricity from onshore wind energy installations which are commissioned before 1 January 2019 and whose value to be applied pursuant to Section 22 subsection 6 is determined by statute, the value to be applied shall be 4.66 cents per kilowatt-hour.
- (2) In derogation of subsection 1, the value to be applied in the first five years from the commissioning of the installation shall be 8.38 cents per kilowatt-hour. This period shall be extended by one month per 0.36 percent of the reference yield by which the yield of the installation falls below 130 percent of the reference yield. This period shall additionally be extended by one month per 0.48 percent of the reference yield by which the yield of the installation falls below 100 percent of the reference yield. The reference yield shall be the calculated yield of the reference installation in line with Annex 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016.
- (3) Ten years after the commissioning of an installation pursuant to subsection 1, but at the latest one year before the end of the deadline extended pursuant to subsection 2 sentence 2, the site yield shall be reviewed and the deadline pursuant to subsection 2 sentence 2 adjusted correspondingly. Section 36h subsection 2 sentence 2 to 4 shall be applied mutatis mutandis.
- (4) For installations with an installed capacity of up to and including 50 kilowatts, it shall be assumed for the calculation of the duration of the value to be applied that its yield is 70% of the reference yield.

## **Section 46a**

### **Reduction of values to be applied for electricity from onshore wind energy up to 2018**

- (1) The values to be applied pursuant to Section 46 subsection 1 and 2 shall decrease on 1 March, 1 April, 1 May, 1 June, 1 July and 1 August 2017 for the installations commissioned after this time by 1.05 percent compared with the values to be applied in the preceding calendar month. Subsequently they shall decrease on 1 October 2017, 1 January 2018, 1 April 2018, 1 July 2018 and 1 October 2018 for the installations commissioned after this time by 0.4 percent compared with the values to be applied in the preceding three calendar months.
- (2) The reduction of the values to be applied pursuant to subsection 1 sentence 2 shall rise if in the reference period the gross new-build exceeds the amount of 2,500 megawatts
  1. by up to 200 megawatts: to 0.5 percent,
  2. by more than 200 megawatts: to 0.6 percent,
  3. by more than 400 megawatts: to 0.8 percent,
  4. by more than 600 megawatts: to 1.0 percent,
  5. by more than 800 megawatts: to 1.2 percent,

6. by more than 1,000 megawatts: to 2.4 percent.

(3) The reduction of the values to be applied pursuant to subsection 1 sentence 2 shall decrease if in the reference period the gross new-build falls below the amount of 2,400 megawatts

1. by up to 200 megawatts: to 0.3 percent,

2. by more than 200 megawatts: to 0.2 percent or

3. by more than 400 megawatts: to zero.

(4) The reduction of the values to be applied pursuant to subsection 1 sentence 2 shall decrease to zero and the values to be applied pursuant to Section 46 shall increase over the values to be applied in the preceding quarter if in the reference period the gross new-build falls below the amount of 2,400 megawatts

1. by more than 600 megawatts: by 0.2 percent or

2. by more than 800 megawatts: by 0.4 percent.

(5) The reference period shall be the period following the last calendar day of the eighteenth month and before the first calendar day of the fifth month preceding a point in time pursuant to subsection 2.

(6) The values to be applied pursuant to subsections 1 to 4 shall be rounded to two decimal places. For the calculation of the level of the values to be applied due to a renewed adjustment pursuant to subsections 1 to 4, the non-rounded values shall be taken.

### **Section 46b**

#### **Onshore wind energy from 2019**

(1) For electricity from onshore wind energy installations which are commissioned after 31 January 2018 and whose value to be applied pursuant to Section 22 subsection 6 is determined by statute, the grid system operator shall calculate the value to be applied pursuant to Section 36h subsection 1, whereby the award value shall be replaced by the average of the bid values of the highest bid still awarded funding from the bid deadlines for onshore wind energy installations in the year before the preceding year. Section 36h subsection 2 sentence 2 to 4 shall be applied mutatis mutandis.

(2) The Federal Network Agency shall publish the average of the bid values for the highest bid still awarded funding from all auction rounds of a year by 31 January of the following calendar year.

(3) Section 46 subsection 4 shall be applied mutatis mutandis.

## **Section 47**

### **Offshore wind energy up to 2020**

(1) For electricity from offshore wind energy installations, the value to be applied shall be 3.90 cents per kilowatt-hour. The entitlement pursuant to Section 19 subsection 1 in conjunction with sentence 1 shall exist only for offshore wind energy installations which

1. have been given an unconditional grid connection confirmation before 1 January 2017 pursuant to Section 118 subsection 12 of the Energy Industry Act or connection capacities pursuant to Section 17d subsection 3 of the Energy Industry Act in the version in force on 31 December 2016 and
2. have been commissioned before 1 January 2021.

(2) In derogation of subsection 1 sentence 1, the value to be applied in the first twelve years from the commissioning of the offshore wind energy installation shall be 15.40 cents per kilowatt-hour (initial value). The period pursuant to sentence 1 shall be extended by 0.5 months for each full nautical mile extending beyond twelve nautical miles which the installation is further away from the coastline, and by 1.7 months for every full metre of water depth exceeding a depth of 20 metres. The coastline shall be taken to be the coastline depicted in Map Number 2920 German North Sea Coast and Adjacent Waters, 1994 edition, XII., and in Map Number 2921 German Baltic Coast and Adjacent Waters, 1994 edition, XII. of the Federal Maritime and Hydrographic Agency, scale of 1 : 375,000. The water depth shall be determined on the basis of the chart datum.

(3) In derogation of subsection 1 sentence 1, the value to be applied for offshore wind energy installations commissioned before 1 January 2020 shall be 19.40 cents per kilowatt-hour in the first eight years from the commissioning of the installation if the installation operator demands this from the grid system operator before the commissioning of the installation. In this case, the entitlement pursuant to subsection 2 sentence 1 shall be forfeited, whilst the entitlement to the payment pursuant to subsection 2 sentence 2 shall be applied *mutatis mutandis* with the proviso that the initial value shall amount to 15.40 cents per kilowatt-hour in the period of the extension.

(4) If the feed-in from an offshore wind energy installation is not possible for longer than seven consecutive days because the line pursuant to Section 17d subsection 1 sentence 1 of the Energy Industry Act has not been completed in time or is disrupted and this is not the fault of the grid system operator, the period for which the entitlement to payment of a market premium or a feed-in tariff pursuant to subsections 2 and 3 exists shall be extended starting on the eighth day of the disruption for the length of the disruption. Sentence 1 shall not be applied to the extent that the operator of the offshore wind energy installation makes use of the compensation pursuant to Section 17e subsection 1 or subsection 2 of the Energy Industry Act; in this case, the entitlement to payment of a market premium or feed-in tariff pursuant to subsections 2 and 3 shall be reduced by the length of the delay.

(5) The values to be applied pursuant to subsection 2 and subsection 3 sentence 2 shall decrease from the other values to be applied previously in force

1. by 0.5 cents per kilowatt-hour for installations which are commissioned in 2018 and 2019, and
  2. by 1.0 cents per kilowatt-hour for installations which are commissioned in 2020.
- (6) The value to be applied pursuant to subsection 3 sentence 1 shall decrease by 1.0 cents per kilowatt-hour for installations which are commissioned in 2018 and 2019.
- (7) For the application of subsections 1, 3, 5 and 6, instead of the time of the commissioning the time of the readiness for operation of the offshore wind energy installation pursuant to Section 17e subsection 2 sentence 1 and 4 of the Energy Industry Act shall pertain if the grid system connection has not been completed by the binding completion date pursuant to Section 17d subsection 2 sentence 9 of the Energy Industry Act.

## **Section 48**

### **Solar radiation energy**

- (1) For electricity from solar installations whose value to be applied pursuant to Section 22 subsection 6 is determined by statute, subject to the provisions of subsections 2 and 3 this value shall be 8.91 cents per kilowatt-hour if the installation
1. is affixed in, to or on a building or any other construction and the building or the other construction has primarily been erected primarily for purposes other than the generation of electricity from solar radiation energy,
  2. has been erected on an area for which a procedure pursuant to Section 38 sentence 1 of the Federal Building Code has been carried out or
  3. has been erected in the area of an adopted zoning plan within the meaning of Section 30 of the Federal Building Code and
    - a) the zoning plan was produced before 1 September 2003 and was not subsequently altered for the purpose of erecting an installation to generate electricity from solar radiation energy,
    - b) the zoning plan designated a commercial or industrial area within the meaning of Sections 8 and 9 of the Federal Land Utilisation Ordinance before 1 January 2010 for the area on which the installation has been erected, even if the stipulation after 1 January 2010 was altered at least partially for the purpose of erecting an installation to generate electricity from solar radiation energy, or
    - c) the zoning plan was produced or altered after 1 September 2003 at least partially for the purpose of erecting an installation to generate electricity from solar radiation energy and the installation
      - aa) is located on areas which are alongside motorways or railways and the installation has been erected at a distance of up to 110 metres measured from the further edge of the paved roadway/track,

- bb) is located on areas which were already sealed at the time of the decision on the establishment or alteration of the zoning plan, or
- cc) is located on conversion areas from commercial, transport, residential or military use and these areas had not been bindingly designated nature conservation areas within the meaning of Section 23 of the Federal Nature Conservation Act or as a national park within the meaning of Section 24 of the Federal Nature Conservation Act at the time of the establishment or alteration of the zoning plan.

(2) For electricity from solar installations which are exclusively affixed on, to or in a building or a noise protection wall, the value to be applied shall be

1. 12.70 cents per kilowatt-hour up to and including an installed capacity of 10 kilowatts,
2. 12.36 cents per kilowatt-hour up to and including an installed capacity of 40 kilowatts and
3. 11.09 cents per kilowatt-hour up to and including an installed capacity of 750 kilowatts.

(3) For solar installations which are exclusively affixed on, to or in a building which is not a residential building and which was erected on white land pursuant to Section 35 of the Federal Building Code, subsection 2 shall only be applied if

1. it is proven that, before 1 April 2012,
  - a) the building application or the application for approval was made or the start of construction was notified,
  - b) in the case of a construction which is not subject to approval and of which the relevant authority must be informed under the building regulations, the necessary information was provided for the building to the authority, or
  - c) in the case of another construction which does not require authorisation, and particularly a construction which is not subject to authorisation, notification or procedure, the execution of the building work had commenced,
2. the building is related spatially and functionally to a farmstead of an agricultural or forestry operation built after 31 March 2012 or
3. the building serves the permanent stabling of animals and has been authorised by the relevant building authority.

Apart from this, subsection 1 number 1 shall be applied.

Section 38b subsection 2 sentence 1 shall apply mutatis mutandis. The entitlement pursuant to Section 19 subsection 1 shall be irrevocably cancelled for the replaced installations.

## Section 49

### Reduction of the values to be applied for electricity from solar radiation energy

(1) The values to be applied pursuant to Section 48 shall be reduced from 1 February 2017 each month on the first calendar day of a month by 0.5 percent compared with the values to be applied in the preceding calendar month. The monthly reduction pursuant to sentence 1 shall be adjusted on each 1 January, 1 April, 1 July and 1 October of a year in line with subsections 2 and 3 in line with the gross new-build, whereby the registered gross new-build in the six-month reference period pursuant to Section 4 shall be extrapolated to one year (annualised gross new-build).

(2) The monthly reduction of the values to be applied pursuant to subsection 1 sentence 2 shall rise if the annualised gross new-build of solar installations exceeds the amount of 2,500 megawatts

1. by up to 1,000 megawatts: to 1.00 percent,
2. by more than 1,000 megawatts: to 1.40 percent,
3. by more than 2,000 megawatts: to 1.80 percent,
4. by more than 3,000 megawatts: to 2.20 percent,
5. by more than 4,000 megawatts: to 2.50 percent or
6. by more than 5,000 megawatts: to 2.80 percent.

(3) The monthly reduction of the values to be applied pursuant to subsection 1 sentence 2 shall fall if the annualised gross new-build of solar installations falls below the amount of 2,500 megawatts

1. by more than 200 megawatts: to 0.25 percent,
2. by more than 400 megawatts: to zero,
3. by more than 800 megawatts, to zero; the values to be applied pursuant to Section 48 shall rise on a one-off basis by 1.50 percent on the first calendar day of the respective quarter, or
4. by more than 1,200 megawatts, to zero; the values to be applied pursuant to Section 48 shall rise on a one-off basis by 3.00 percent on the first calendar day of the respective quarter.

(4) The reference period shall be the period following the last calendar day of the eighth month and before the first calendar day of the last month preceding a point in time pursuant to subsection 1.



(5) When the total of the installed capacity of the solar installations which are entered into the register with the note that a payment pursuant to Section 19 is to be claimed for the electricity from these installations, and of solar installations which are regarded as supported according to the estimate pursuant to Section 31 subsection 6 of the Renewable Energy Sources Act in the version in force on 31 December 2016, exceeds the value of 52,000 megawatts, the values to be applied pursuant to Section 48 shall fall to zero on the first calendar day of the second calendar month following the exceeding of the value.

(6) The Federal Government shall present a proposal for the reshaping of the existing rules in good time before the attainment of the objective stipulated in subsection 5.

## **Subdivision 2**

### **Payments for flexibility**

#### **Section 50**

##### **Entitlement to payment for flexibility**

(1) Installation operators shall have a payment entitlement from the grid system operator in line with Section 50a or Section 50b for the provision of installed capacity if there is basically also an entitlement to payment under the Renewable Energy Sources Act in the version applicable to the installation for the electricity generated in the installation; this entitlement shall not be affected.

(2) Section 24 subsection 1, Section 26 and Section 27 shall be applied mutatis mutandis.

#### **Section 50a**

##### **Flexibility supplement for new installations**

(1) The entitlement pursuant to Section 50 for the provision of flexible installed capacity shall be €40 per kilowatt of installed capacity and year (flexibility supplement) in

1. installations to generate electricity from biogas with an installed capacity of more than 100 kilowatts whose value to be applied is determined by statute, and
2. installations to generate electricity from biogas whose value to be applied is determined by auction.

(2) The entitlement to the flexibility supplement shall exist only if the installation operator claims an entitlement pursuant to Section 19 subsection 1 in conjunction with Section 39, Section 42 or Section 43 for the share of the quantity of electricity generated in a calendar year stipulated in Section 44b subsection 1 and this entitlement is not reduced pursuant to Section 52.

(3) The flexibility supplement can be demanded for the entire duration of the entitlement pursuant to Section 19 subsection 1.

## **Section 50b**

### **Flexibility premium for existing installations**

Operators of installations to generate electricity from biogas which were commissioned before 1 August 2014 pursuant to the definition of commissioning in force on 31 July 2014 can, in addition to a sale of the electricity in the forms of sale of direct selling, demand from the grid system operator a premium for the provision of additionally installed capacity for needs-oriented electricity generation (flexibility premium). The entitlement pursuant to sentence 1 shall amount to €130 per kilowatt of flexibly provided additionally installed capacity and year if the preconditions pursuant to Annex 3 number I are met. The level of the flexibility premium shall be determined by Annex 3 Number II. For electricity from installations pursuant to Section 100 subsection 4, sentences 1 to 3 shall be applied mutatis mutandis retrospectively to 1 August 2014. If due to sentence 4 corrections of invoices for 2014 or 2015 are necessary, it is sufficient in addition to Section 62 if the installation operator presents a copy of the approval or licence pursuant to Section 100 subsection 4 and proof of the commissioning of the installation.

## **Division 5**

### **Legal consequences and penalties**

#### **Section 51**

##### **Reduction of the payment entitlement in the case of negative prices**

(1) If the value of the hourly contracts for the price zone for Germany on the spot market of the European Power Exchange in Paris is negative in at least six consecutive hours in the day-ahead auction, the value to be applied shall be reduced to zero for the entire period in which the hourly contracts are negative without interruption.

(2) If the electricity is sold with the shortfall remuneration pursuant to Section 38 in a calendar month in which the preconditions pursuant to subsection 1 are fulfilled at least once, the installation operator must inform the grid system operator of the quantity of electricity which it fed in in the period in which the hourly contracts were negative without interruption when transmitting the data pursuant to Section 71 number 1; otherwise the entitlement pursuant to Section 38 shall be reduced in this calendar month by 5 percent for each calendar day in which this period wholly or partly lies.

(3) Subsections 1 and 2 shall not be applied to

1. wind energy installations with an installed capacity of less than 3 megawatts,
2. other installations with an installed capacity of less than 500 kilowatts, whereby in each case Section 24 subsection 1 shall be applied mutatis mutandis,
3. pilot onshore wind energy installations and

4. pilot offshore wind energy installations pursuant to Section 3 number 6 of the Offshore Wind Energy Act.

## **Section 52**

### **Reduction of the payment entitlement in the case of violations of obligations**

- (1) The value to be applied shall be reduced to zero
  1. as long as installation operators have not transmitted the data required to the register to register the installation and the notification pursuant to Section 71 has not yet taken place,
  2. as long as and to the extent that operators of installations registered in the register have not transmitted the data required to the register to notify an increase in the installed capacity of the installation and the notification pursuant to Section 71 has not yet taken place,
  3. if installation operators violate Section 21b subsection 2 sentence 1 second half-sentence or subsection 3,
  4. if operators of installations whose value to be applied is determined by auctions violate Section 27a or
  5. as long as the proof pursuant to Section 100 subsection 3 sentence 3 has not been provided in the case of installations pursuant to Section 100 subsection 2 sentence 3.

Sentence 1 number 3 shall be applied until the end of the third calendar month following the end of the violation of Section 21b subsection 2 or subsection 3. Sentence 1 number 4 shall be applied to the entire calendar year of the violation.

- (2) The value to be applied shall be reduced to the monthly market value
  1. as long as installation operators violate Section 9 subsection 1, 2, 5 or 6,
  2. if installation operators have not transmitted to the grid system operator the allocation to or the switch between the different forms of sale pursuant to Section 21b subsection 1 in line with Section 21c,
  3. as long as installation operators which claim the shortfall remuneration exceed one of the maximum periods pursuant to Section 21 subsection 1 number 2 first half-sentence,
  4. as long as installation operators which claim a feed-in tariff violate Section 21 subsection 2, but at least for the duration of the entire calendar month in which such a violation has taken place, or
  5. if installation operators violate an obligation pursuant to Section 80.

In the case of sentence 1 number 2 the reduction shall be applied until the end of the calendar month which follows the cessation of the violation, in the case of sentence 1 number 3 for the duration of entire calendar month in which such a violation has taken place, and in the case of sentence 1 number 5 for the duration of the violation plus the following six calendar months.

(3) The value to be applied shall decrease by 20 percent each time, with the result being rounded to two decimal places,

1. as long as installation operators have not transmitted the data required to the register to register the installation, but the notification pursuant to Section 71 has taken place, or
2. as long as and to the extent that operators of an installation registered in the register have not transmitted an increase in the installed capacity of the installation in line with the ordinance pursuant to Section 93, but the notification pursuant to Section 71 has taken place.

(4) Installation operators which do not claim an entitlement pursuant to Section 19 subsection 1 shall forfeit, as long as they violate Section 9 subsection 1, 2, 5 or 6 or Section 21b subsection 3, the entitlement for decentralised feed-in pursuant to Section 18 of the Electricity Grid Fee Ordinance and the entitlement to priority purchase, transmission and distribution pursuant to Section 11; operators of CHP installations shall in this case forfeit their entitlement to a fee for decentralised feed-in pursuant to Section 18 of the Electricity Grid Fee Ordinance and their entitlement to payment of a supplement pursuant to Sections 6 to 13 of the CHP Act, where this entitlement exists, or else shall forfeit their entitlement to priority access to the grid system.

### **Section 53**

#### **Reduction of the feed-in tariff**

The level of the entitlement to the feed-in tariff shall be calculated from the values to be applied, whereby the following shall be deducted from the values to be applied:

1. 0.2 percent per kilowatt-hour for electricity from installations to generate electricity from hydropower, biomass, geothermal energy, landfill, sewage treatment or mine gas, or
2. 0.4 percent per kilowatt-hour for electricity from solar installations or from onshore or offshore wind energy installations.

In derogation of sentence 1, the value to be applied shall decrease by 20 percent, with the result being rounded to two decimal places, as long as the shortfall remuneration is claimed.

The value to be applied for electricity for which a regional certificate has been issued for the installation operator shall decrease by 0.1 cents per kilowatt-hour in the case of installations whose value to be applied is determined by statute.

## **Section 53a**

### **Reduction of the payment entitlement for onshore wind energy installations**

- (1) The statutorily determined value to be applied shall decrease to zero for onshore wind energy installations when the party wishing to feed electricity in pursuant to Section 22 subsection 2 sentence 2 number 2 letter c has waived the statutorily determined entitlement pursuant to Section 19 subsection 1. This shall be without prejudice to a payment pursuant to Section 19 subsection 1 determined by auction.
- (2) The Federal Network Agency shall inform the grid system operator to whose grid system the installation is to be connected about the waiving of the entitlement pursuant to Section 22 subsection 2 sentence 2 number 2 letter c.

## **Section 53b**

### **Reduction of the payment entitlement in the case of guarantees of regional origin**

The value to be applied for electricity for which a regional certificate has been issued for the installation operator shall decrease by 0.1 cents per kilowatt-hour in the case of installations whose value to be applied is determined by statute.

## **Section 54**

### **Reduction of the payment entitlement in the case of auctions for solar installations**

- (1) The value to be applied determined by auction shall decrease by 0.3 cents per kilowatt-hour in the case of solar installations to the extent that the issuance of the payment authorisation for the bid quantity that has been allocated to the solar installation has not been applied for until after the end of the eighteenth calendar month following the public announcement of the award. If a solar installation is allocated bid quantities from multiple bids awarded funding, sentence 1 shall be applicable only to the award value of the bids awarded funding whose allocation to the solar installation has not been applied for until after the end of the eighteenth calendar month.
- (2) If the location of the solar installation does not, at least in part, conform to the cadastral parcels indicated in the bid, the value to be applied pursuant to Section 38b shall also decrease by 0.3 cents per kilowatt-hour. If a solar installation is allocated bid quantities from several bids awarded funding, the award value of the bids awarded funding in each case for which no conformity exists pursuant to sentence 1 shall decrease by 0.3 cents per kilowatt-hour.

## **Section 55**

### **Penalties**

- (1) In the case of bids for onshore wind energy installations pursuant to Section 36, bidders must pay a penalty to the regular transmission system operator

1. to the extent that more than 5 percent of the bid quantity of a bid awarded funding for an onshore wind energy installation is cancelled pursuant to Section 35a or
2. if the onshore wind energy installation has been commissioned more than 24 months after the public announcement of the award.

The level of the penalty pursuant to sentence 1 number 1 and 2 shall be calculated from the bid quantity of the bid awarded funding

1. minus the capacity of the installation commissioned before the end of the 24th month following the public announcement of the award multiplied by €10 per kilowatt,
2. minus the capacity of the installation commissioned before the end of the 26th month following the public announcement of the award multiplied by €20 per kilowatt or
3. minus the capacity of the installation commissioned before the end of the 28th month following the public announcement of the award multiplied by €30 per kilowatt.

(2) In the case of bids for onshore wind energy installations pursuant to Section 36g subsection 1, bidders must in derogation of subsection 1 pay a penalty to the responsible transmission system operator

1. to the extent that more than 5 percent of the bid quantity of a bid awarded funding for an onshore wind energy installation is cancelled pursuant to Section 35a or
2. if the onshore wind energy installation has been commissioned more than 48 months after the public announcement of the award.

If and to the extent that an award issued to a bid pursuant to Section 36g subsection 1 is cancelled pursuant to Section 35a because the citizens' energy company has not applied for the allocation of the award within the period pursuant to Section 36g subsection 3 sentence 2 to the Federal Network Agency, the level of the penalty pursuant to sentence 1 number 1 shall be calculated from the cancelled bid quantity multiplied by €15 per kilowatt. Apart from this, the level of the penalty pursuant to sentence 1 shall be calculated from the bid quantity of the bid awarded funding

1. minus the capacity of the installation commissioned before the end of the 48th month following the public announcement of the award multiplied by €10 per kilowatt.
2. minus the capacity of the installation commissioned before the end of the 50th month following the public announcement of the award multiplied by €20 per kilowatt.
3. minus the capacity of the installation commissioned before the end of the 52nd month following the public announcement of the award multiplied by €30 per kilowatt.

(3) In the case of bids for solar installations, bidders must pay a penalty to the regular transmission system operator

1. if an award for a solar installation expires pursuant to Section 37d subsection 2 number 1 because the second security has not been paid in time and in full, or
2. to the extent that more than 5 percent of the bid quantity of a bid awarded funding for a solar installation is cancelled pursuant to Section 35a.

The level of the penalty pursuant to sentence 1 number 1 shall correspond to the initial security to be lodged for the bid pursuant to Section 37a sentence 1 number 1. The level of the penalty pursuant to sentence 1 number 2 shall be calculated from the cancelled bid quantity multiplied by €50 per kilowatt. The penalty shall decrease to €25 per kilowatt for bidders whose second security is reduced pursuant to Section 37a sentence 2 number 2 second half-sentence.

(4) In the case of bids for biomass installations which are not existing biomass installations pursuant to Section 39f, bidders must pay a penalty to the responsible transmission system operator

1. to the extent that more than 5 percent of the bid quantity of a bid awarded funding for a biomass installation is cancelled pursuant to Section 35a or
2. if a biomass installation has been commissioned more than 18 months after the public announcement of the award.

The level of the penalty shall be calculated from the bid quantity of the bid awarded funding

1. minus the capacity of the installation commissioned before the end of the 18th month following the public announcement of the award multiplied by €20 per kilowatt,
2. minus the capacity of the installation commissioned before the end of the 20th month following the public announcement of the award multiplied by €40 per kilowatt or
3. minus the capacity of the installation commissioned before the end of the 22nd month following the public announcement of the award multiplied by €60 per kilowatt.

(5) In the case of bids for existing biomass installations pursuant to Section 39f, bidders must pay a penalty to the responsible transmission system operator

1. to the extent that more than 5 percent of the bid quantity of a bid awarded funding for a biomass installation is cancelled pursuant to Section 35a or
2. if the installation operator has not presented the grid system operator with the certificate from the environmental auditor pursuant to Section 39f subsection 4 by the day pursuant to Section 39f subsection 2.

The level of the penalty shall be calculated from the bid quantity of the bid awarded funding

1. multiplied by €20 per kilowatt if the installation operator has not presented the grid system operator with the certificate from the environmental auditor pursuant to Section 39f subsection 4 by the day pursuant to Section 39f subsection 2,
2. multiplied by €40 per kilowatt if the installation operator has not presented the grid system operator with the certificate from the environmental auditor pursuant to Section 39f subsection 4 at the latest two months after the day pursuant to Section 39f subsection 2, and

3. multiplied by €60 per kilowatt if the installation operator has not presented the grid system operator with the certificate from the environmental auditor pursuant to Section 39f subsection 4 more than four months after the day pursuant to Section 39f subsection 2.
- (6) The claim pursuant to subsections 1 to 5 must be met by transferring a corresponding amount of money to an account of the transmission system operator. In this case, the award number of the bid to which the penalty applies must be cited.
- (7) Regarding the receivables pursuant to subsections 1 to 5, the regular transmission system operator may use the respective security lodged for the bid for settlement if the bidder has not settled the receivable before the end of the second calendar month following the end of the second calendar month following the cancellation of the bid quantity.
- (8) The Federal Network Agency shall inform the transmission system operator without delay of the following information required for the claiming of the penalties:
  1. the details of the bid registered under Section 32 subsection 2,
  2. the point in time at which the awards and award values were announced for the bid,
  3. the amount of the security furnished by the bidder for the bid,
  4. the rejection of awards for the bid,
  5. the expiry of the award,
  6. the withdrawal and the revocation of the award and
  7. the withdrawal and the revocation of a payment authorisation, provided that bid quantities have been assigned to the solar installation and the location specified in the bid for the solar installation is in the transmission system operator's assigned control zone.

## **Section 55a**

### **Reimbursement of securities**

- (1) The Federal Network Agency shall return without delay the securities lodged for a specific bid if the bidder
  1. has withdrawn his bid in accordance with Section 30a subsection 3,
  2. has not been awarded funding for this bid in accordance with Section 32,
  3. has paid a penalty for this bid in accordance with Section 55.
- (2) The Federal Network Agency shall also return the securities lodged for a specific bid to the extent that the grid system operator
  1. has transmitted a confirmation pursuant to Section 38a subsection 3 to the Federal Network Agency for a solar installation or



2. has transmitted a confirmation for an onshore wind energy installation or a biomass installation pursuant to Section 7 subsection 3 of the Register of Facilities Ordinance or a corresponding confirmation in line with the ordinance pursuant to Section 111f of the Energy Industry Act.

If no more than 5 percent of the bid quantity of the bid awarded funding is cancelled, the Federal Network Agency shall return the full amount of the security.

## **Part 4**

### **Equalisation scheme**

#### **Division 1**

#### **Nationwide equalisation**

##### **Section 56**

##### **Delivery to the transmission system operator**

Grid system operators must deliver the following without delay to the upstream transmission system operator:

1. the electricity for which tariffs are paid pursuant to section 19 subsection 1 number 2 and
2. the right to label all the electricity for which they make payments to the installation operators as “electricity from renewable energy sources, financed from the EEG surcharge”.

##### **Section 57**

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

(1) Upstream transmission system operators must reimburse the grid system operators with the payments made pursuant to Section 19 or Section 50 minus the repayments pursuant to Section 36h subsection 2, Section 46 subsection 3 and Section 46b subsection 1 in line with Part 3.

(2) Transmission system operators must reimburse grid system operators with 50 percent of the necessary costs which accrue to them due to an efficient retrofitting of installations to generate electricity from solar radiation energy if the grid system operators are obliged to retrofit by the System Stability Ordinance. Section 11 subsection 5 shall be applied mutatis mutandis.

(3) In the case of installations which are commissioned before 1 January 2021, grid system operators must pay out avoided grid fees pursuant to Section 18 of the Electricity Grid Fee Ordinance which are not granted to installation operators pursuant to Section 18 subsection 1 sentence 3 number 1 of the Electricity Grid Fee Ordinance and determined pursuant to Section 18 subsection 2 and 3 of the Electricity Grid Fee Ordinance to the upstream transmission system operators. Section 11 subsection 5 number 2 must be applied mutatis mutandis.

(4) The payments pursuant to subsections 1 to 3 must be netted. Appropriate monthly advance payments shall be made towards the payments.

(5) If a transmission system operator pays the grid system operator more than prescribed in Part 3, it must demand the extra amount back. If the payment has been made in accordance with the outcome of a procedure by the clearing house pursuant to Section 81 subsection 4 or 5 and the repayment demand is based on the application of a ruling by a supreme court made in another case, the grid system operator shall be entitled to this extent to raise the objection that the calculation of the payment is in conformity with a decision by the clearing house until the legal relationship regarding this installation ends. The entitlement to repayment shall expire at the end of the second calendar year following the feed-in; the obligation pursuant to sentence 1 shall end at this point. Sentences 1 to 3 shall be applied mutatis mutandis in the relationship between the receiving grid system operator and the installation operator. Section 27 subsection 1 shall not be applied to entitlements pursuant to sentence 4.

## **Section 58**

### **Equalisation amongst the transmission system operators**

(1) The transmission system operators must

1. store the information about the different quantity and the timing of the quantities of electricity for which they make payments pursuant to Section 19 subsection 1, or repayments pursuant to Section 36h subsection 2, Section 46 subsection 3 and Section 46b subsection 1,
2. store the information about the payments pursuant to Section 19 or Section 50,
3. provisionally equalise the quantities of electricity pursuant to number 1 without delay amongst each other,
4. make appropriate monthly advance payments towards the payments pursuant to number 2 and
5. invoice the quantities of electricity pursuant to number 1 and the payments pursuant to number 2 in line with subsection 2.

When it comes to the storage and invoicing of the payments pursuant to sentence 1 number 2, 4 and 5, the netting on the basis of Section 57 subsection 4 shall be taken as a basis.

(2) The transmission system operators shall determine by 31 July each year the quantity of electricity which they purchased in the preceding calendar year pursuant to Section 11 or Section 56 and paid for pursuant to Section 19 subsection 1 or Section 57 and provisionally equalised pursuant to subsection 1 including the quantity of electricity for which they have received the right to label the electricity as “electricity from renewable energy sources or mine gas” and the share of this quantity of electricity in relation to the total quantity of electricity which electricity suppliers have supplied to final consumers in the area of the respective transmission system operator in the preceding calendar year.

(3) Transmission system operators which had to purchase larger quantities than correspond to this average share have an entitlement against the other transmission system operators that they purchase and pay a tariff pursuant to Sections 19 and 50 until these system operators also purchase a quantity of electricity which corresponds to this average value. Transmission system operators which, in relation to the total quantity of electricity supplied by electricity suppliers in the area of the respective transmission system operator in the preceding calendar year, have to pay tariffs for a higher share of the payment pursuant to Section 57 subsection 1 or to replace a higher share of the costs pursuant to Section 57 subsection 2 than corresponds to the average share of all transmission system operators, have an entitlement against the other transmission system operators to reimbursement of the financial support or costs until the burden of costs of all the transmission system operators corresponds to the average.

## **Section 59**

### **Selling by the transmission system operators**

The transmission system operators must, either themselves or jointly, sell the electricity for which tariffs are paid pursuant to Section 19 subsection 1 number 2 without discrimination, transparently and observing the provisions of the Renewable Energy Sources Ordinance.

## **Section 60**

### **EEG surcharge for electricity suppliers**

(1) The transmission system operators can demand the costs for the necessary expenses following deduction of the revenues attained and in line with the Renewable Energy Sources Ordinance from electricity suppliers which supply electricity to final consumers proportionate to the electricity supplied by the various electricity suppliers to their final consumers (EEG surcharge). The share shall be determined in such a manner that each electricity supplier bears the same costs for each kilowatt-hour of electricity supplied by it to a final consumer. Appropriate monthly advance payments shall be made towards the payments of the EEG surcharge. Subject to evidence to the contrary, it shall be assumed that quantities of electricity which are taken off from a balancing group managed by the transmission system operator at physical reception points have been supplied by an electricity supplier to final consumers. The owner of the relevant balancing group shall be jointly and severally liable for the EEG surcharge with the electricity suppliers.

(2) Objections to demands by the transmission system operators for payments of the EEG surcharge shall entitle a party to delay or refuse payment only to the extent that there is the serious possibility of a manifest error. Offsetting against claims to the EEG surcharge shall not be permitted. In the case of payment arrears of more than one advance payment, the transmission system operators may terminate the balancing group contract if the payment of the arrears has not been fully made despite a reminder and a threat of termination to the balance responsible party in whose balancing group the relevant quantities of electricity are managed three weeks after the threat of termination. The threat of termination can be linked to the reminder. Sentences 1, 3 and 4 shall be applied mutatis mutandis to the notification of the quantities of energy pursuant to Section 74 with the proviso that the deadline for the notification of the data shall be six weeks after the threat of termination.

(3) Electricity suppliers which have failed to fulfil their obligation to pay the EEG surcharge pursuant to subsection 1 in time must pay interest on this monetary debt pursuant to Section 352 subsection 2 of the Commercial Code once the money is due. Sentence 1 shall be applied mutatis mutandis if the debt could not fall due because the electricity supplier did not notify to the transmission system operator the quantities of electricity supplied by it contrary to Section 74 or did not do so in time; solely for the purpose of charging interest, in this case the monetary debt for the payment of the EEG surcharge for the quantity of electricity to be notified for a year pursuant to Section 74 shall be regarded as due at the latest on 1 January of the following year.

### **Section 60a**

#### **EEG surcharge for undertakings with intensive electricity costs and for railway undertakings**

For electricity which is supplied by an electricity supplier to a final consumer, the transmission system operators can in derogation of Section 60 subsection 1 sentence 1 demand the EEG surcharge from the final consumer if and to the extent that the final consumer consumes the electricity at a consumption point at which the EEG surcharge is limited pursuant to Section 63 or Section 103; the EEG surcharge can only be demanded in line with the decision on limitation. Apart from this, the provisions of this Act on the EEG surcharge for electricity suppliers shall be applied mutatis mutandis to final consumers which are required to make payments pursuant to sentence 1.

### **Section 61**

#### **EEG surcharge for final consumers and self-suppliers**

(1) The transmission system operators can demand from final consumers the following shares of the EEG surcharge for self-supply pursuant to Section 60 subsection 1:

1. 30 percent for electricity consumed after 31 July 2014 and before 1 January 2016,
2. 35 percent for electricity consumed after 31 December 2015 and before 1 January 2017, and

3. 40 percent for electricity consumed after 1 January 2017.

The value pursuant to sentence 1 shall rise to 100 percent of the EEG surcharge if

1. the electricity-generating installation is not an installation or a CHP installation which is highly efficient within the meaning of Section 53a subsection 1 sentence 3 of the Energy Tax Act and attains a monthly or annual utilisation rate of at least 70 percent pursuant to Section 53a subsection 1 sentence 2 number 2 of the Energy Tax Act, or
2. the self-supplier has not fulfilled its notification obligation pursuant to Section 74 by 31 May of the following year.

The transmission system operators can also demand pursuant to Section 60 subsection 1 from final consumers 100 percent of the EEG surcharge for other consumption of electricity which is not supplied by an electricity supplier. The provisions of this Act for electricity suppliers shall be applied mutatis mutandis to final consumers which are required to make payments pursuant to sentences 1 to 3.

(2) The entitlement pursuant to subsection 1 shall not apply to self-suppliers

1. to the extent that the electricity is consumed in the auxiliary and ancillary installations of an electricity-generating installation to generate electricity in the technical sense (electricity consumed by the power station itself),
2. if the self-supplier is not directly or indirectly connected to a grid system,
3. if the self-supplier fully supplies itself with electricity from renewable energy sources and does not claim any financial support pursuant to Section 19 subsection 1 or Section 50 for the electricity from his installation which it does not consume itself, or
4. if electricity is generated by electricity-generating installations with a total maximum installed capacity of 10 kilowatts, for a maximum of 10 megawatt-hours of self-consumed electricity per calendar year; this shall apply from the commissioning of the electricity-generating installation for the duration of 20 calendar years plus the year of commissioning; Section 24 subsection 1 sentence 1 shall be applied mutatis mutandis.

(3) The entitlement pursuant to subsection 1 shall also not apply to existing installations

1. if the final consumer operates the electricity-generating installation as a self-producer,
2. to the extent that the final consumer consumes the electricity itself and
3. to the extent that the electricity is not conducted through a grid system unless the electricity is consumed in the spatial context of the electricity-generating installation.

An existing installation shall be every electricity-generating installation

1. which the final consumer operated before 1 August 2014 as a self-producer in compliance with the requirements of sentence 1,

2. which was authorised before 23 January 2014 pursuant to the Federal Immission Control Act or permitted pursuant to another provision of federal law, generated electricity for the first time after 1 August 2014 and was used before 1 January 2015 in compliance with the requirements of sentence 1 or
3. which modernises, expands or replaces an electricity-generating installation pursuant to numbers 1 or 2 at the same site unless the installed capacity is raised by more than 30 percent as a result of the modernisation, expansion or replacement.

(4) For existing installations which were commissioned before 1 September 2011 subsection 3 shall be applied with the provisos that

1. subsection 3 sentence 1 number 3 shall not be applied and
2. subsection 3 sentence 2 number 3 shall only be applied if
  - a) the requirements of subsection 3 sentence 1 number 3 are met or
  - b) the entire electricity-generating installation was owned even before 1 January 2011 by the final consumer who takes advantage of the privilege pursuant to subsection 3 and the electricity-generating installation was erected on the commercial property of the final consumer.

(5) For the scrutiny of the obligation of self-suppliers to pay the EEG surcharge, the transmission system operators can have the following data transmitted to them as far as this is necessary:

1. from the main customs offices data on the self-producers and self-suppliers if and to the extent that this is permitted in the Electricity Tax Act or in an ordinance issued on the basis of the Electricity Tax Act,
2. from the Federal Office for Economic Affairs and Export Control the data on the self-suppliers pursuant to Section 15 subsection 1, 2 and 3 of the CHP Act in the version in force and
3. from the operators of downstream grid systems the contact data for the self-suppliers and further data on the self-supply including the electricity consumption of self-suppliers connected to their grid system.

The transmission system operators can undertake an automated comparison of the data pursuant to sentence 1 number 2 and 3 with the data pursuant to Section 74 sentence 3. The data collected pursuant to sentence 1 may only be used in a way that excludes their unauthorised disclosure. Following the conclusion of the scrutiny pursuant to sentence 1 number 1 or of the comparison pursuant to sentence 2 they must be immediately deleted.

(6) Electricity for which the transmission system operators can demand the payment of the EEG surcharge pursuant to subsection 1 must be registered by the final consumer by calibrated metering devices.

(7) In the calculation of the self-produced and self-consumed quantities of electricity pursuant to sections 1 to 6, electricity may only be included up to the level of the aggregated self-consumption in terms of each 15-minute interval (simultaneity). A measurement of the current feed-in shall be necessary only if it has not already been technically ensured that generation and consumption of the electricity take place simultaneously. This shall be without prejudice to other provisions which require a measurement of the current feed-in.

## **Section 61a**

### **Exemptions from the obligation to pay the EEG surcharge**

(1) For electricity which is supplied or conducted for the purpose of temporary storage to an electrical, chemical, mechanical or physical electricity storage installation, the obligation to pay the EEG surcharge shall not apply if

1. energy is removed from the electricity storage installation solely to feed electricity into the grid system or
2. for all the electricity removed from the storage installation the EEG surcharge pursuant to Section 60 subsection 1 or Section 61 subsection 1 is paid.

(2) The entitlement to payment of the EEG surcharge shall also not apply to electricity which is used to generate storage gas which is fed into the natural gas system if the storage gas is used to generate electricity taking into account the requirements pursuant to Section 44b subsection 5 number 1 and 2 and the EEG surcharge is paid for the electricity pursuant to Section 60 subsection 1 or Section 61 subsection 1.

(3) The entitlement of the transmission system operators to payment of the EEG surcharge shall also not apply to electricity which is supplied to grid system operators to equalise losses in the grid system due to physical causes as loss energy pursuant to Section 10 of the Electricity Grid Fee Ordinance.

## **Section 62**

### **Retrospective corrections**

(1) At the next invoicing, changes in the quantity of electricity to be invoiced or in the payment entitlements shall be taken into account which occur for the following reasons:

1. demands for repayment on the basis of section 57 subsection 5,
2. a legally binding court ruling in the main proceedings,
3. the transmission and comparison of data pursuant to section 61 subsection 5,
4. a procedure conducted by the parties to the procedure at the clearing house pursuant to Section 81 subsection 4 sentence 1 number 1,
5. a decision by the Federal Network Agency pursuant to Section 85,
6. an enforceable title which has only been issued following the invoicing pursuant to Section 58 subsection 1, or

7. from a payment pursuant to Section 26 subsection 2 which has fallen due at a later time.

(2) If the invoicing of consumption by the electricity suppliers to final consumers contain deviations from the quantities of electricity on which a final invoicing pursuant to Section 74 is based, these changes shall be taken into account in the next invoice. Section 75 shall be applied mutatis mutandis.

### **Section 63**

#### **Principle**

On application, the Federal Office for Economic Affairs and Export Control shall limit, for specific consumption points,

1. in line with Section 64 the EEG surcharge for electricity which is used by undertakings with intensive electricity costs themselves in order to keep the contribution of these undertakings to the EEG surcharge at a level which is compatible with their international competitive situation and to prevent their relocation abroad, and
2. in line with Section 65 the EEG surcharge for electricity which is used by railways themselves in order to maintain the intermodal competitiveness of the railways,

to the extent that this does not imperil the objectives of the Act and the limitation is compatible with the interest of the totality of the electricity consumers.

### **Section 64**

#### **Undertakings with intensive electricity costs**

(1) In the case of an undertaking which is to be allocated to a sector pursuant to Annex 4, the limitation shall be undertaken only to the extent that it furnishes proof that and to the extent that

1. in the last completed financial year the quantity of electricity which pursuant to Section 60 subsection 1 or Section 61 is liable to the surcharge and is consumed by the undertaking itself at a consumption point which is to be allocated to the undertaking of a sector pursuant to Annex 4 amounted to more than 1 gigawatt-hour,
2. the intensity of the electricity costs
  - a) in the case of an undertaking which is allocated to a sector pursuant to List 1 of Annex 4 amounted to at least 14 percent and
  - b) in the case of an undertaking which is allocated to a sector pursuant to List 2 of Annex 4 amounted to at least 20 percent and



3. the undertaking operates a certified energy or environmental management system or, to the extent that the undertaking consumed less than 5 gigawatt-hours of electricity in the last completed financial year, an alternative system to improve energy efficiency pursuant to Section 3 of the Peak Equalisation Efficiency System Ordinance in the version in force at the time of the last completed financial year.
- (2) The EEG surcharge shall be limited as follows at the consumption points to be allocated to the undertaking of a sector pursuant to Annex 4 for the electricity which is used there by the undertaking itself in the limitation period:
1. the EEG surcharge shall not be limited for the share of electricity up to and including 1 gigawatt-hour (the deductible). This deductible must be paid first in the year of limitation.
  2. for the share of electricity above 1 gigawatt-hour, the EEG surcharge shall be limited to
    - a) 15 percent of the EEG surcharge determined pursuant to Section 60 subsection 1 for undertakings which
      - aa) are allocated to a sector pursuant to List 1 of Annex 4 as long as the electricity cost intensity has amounted to at least 17 percent, or
      - bb) are allocated to a sector pursuant to List 2 of Annex 4 as long as the electricity cost intensity has amounted to at least 20 percent, or
    - b) 20 percent of the EEG surcharge determined pursuant to Section 60 subsection 1 in the case of undertakings which are allocated to a sector pursuant to List 1 of Annex 4 as long as the electricity cost intensity has amounted to at least 14 percent and less than 17 percent.
  3. The level of the EEG surcharge to be paid pursuant to number 2 letter a shall be limited in the total of all the undertaking's limited consumption points to at most the following share of the gross value added which the undertaking has attained in the arithmetic mean of the last three completed financial years:
    - a) 0.5 percent of the gross value added as long as the intensity of the electricity costs of the undertaking amounted to at least 20 per cent, or
    - b) 4.0 percent of the gross value added as long as the intensity of the electricity costs of the undertaking amounted to less than 20 per cent.
  4. The limitation pursuant to numbers 2 and 3 shall only be undertaken to the extent that the EEG surcharge to be paid by the undertaking for the share of electricity above 1 gigawatt-hour does not fall below the following value:
    - a) 0.05 cents per kilowatt-hour at consumption points at which the undertaking is allocated to a sector with the serial number 130, 131 or 132 pursuant to Annex 4, or
    - b) 0.1 cents per kilowatt-hour at other consumption points; this shall be without prejudice to the deductible pursuant to number 1.

(3) Proof shall be furnished of the fulfilment of the preconditions pursuant to subsection 1 and the gross value added which must form the basis for the decision on the limitation pursuant to subsection 2 number 3 (basis of the limitation) as follows:

1. for the preconditions pursuant to subsection 1 number 1 and 2 and the basis of the limitation pursuant to subsection 2 by
  - a) the electricity supply contracts and electricity invoices for the last completed financial year,
  - b) the details of the quantities of electricity supplied by an electricity supplier or self-produced and self-consumed as well as of forwarded electricity in each of the last three completed financial years and
  - c) the certificate by an auditor, a company of auditors, a certified accountant or an accountancy company on the basis of the audited annual accounts in line with the provisions of the Commercial Code for the last three completed financial years; the certificate must contain the following information:
    - aa) details of the commercial purpose and the commercial activities of the undertaking,
    - bb) details of the quantities of electricity of the undertaking which were supplied by electricity suppliers or self-produced and self-consumed including the details of the amount of EEG surcharge which would have had to be paid without a limitation for these quantities of electricity, and
    - cc) all components of the gross value added; Section 319 subsection 2 to 4, Section 319b subsection 1, Section 320 subsection 2 and Section 323 of the Commercial Code shall be applied mutatis mutandis to the certificate; the certificate shall state that the data contained in it are free of substantial erroneous details and deviations to a sufficiently certain degree; in the auditing of the gross value added, a materiality threshold of 5 percent shall suffice,
  - d) proof of the classification of the undertaking by the statistical offices of the Länder using the classification of the branches of industry and commerce of the Federal Statistical Office, 2008 edition<sup>3</sup>, and the agreement of the undertaking that the Federal Office for Economic Affairs and Export Control can have the statistical offices of the Länder transmit to it the classification of the undertaking registered with them and of its permanent establishments,
2. for the preconditions pursuant to subsection 1 number 3 by a valid DIN EN ISO 50001 certificate, a valid notification of entry or extension from the EMAS registration body regarding the entry in the EMAS register or valid proof of the operation of an alternative system to improve energy efficiency; Section 4 subsection 1 to 3 of the Peak Equalisation Efficiency System Ordinance in the version in force at the end of the last completed financial year shall be applied mutatis mutandis.

(4) Undertakings which were newly established after 30 June of the preceding year can in derogation of subsection 3 number 1 transmit data on a rump financial year in the first year following the new establishment, in the second year following the new establishment data for the first completed financial year and in the third year following the new establishment data for the first and second completed financial years. For the first year following the new establishment the decision on the limitation shall be subject to revocation. Following the end of the first completed financial year there shall be a retrospective review of the preconditions governing the application and the scope of the limitation by the Federal Office for Economic Affairs and Export Control on the basis of the data of the completed financial year. Apart from this, subsection 3 shall be applied *mutatis mutandis*.

(5) Subsections 1 to 4 shall be applied *mutatis mutandis* to independent parts of an undertaking which is to be allocated to a sector pursuant to List 1 of Annex 4. An independent part of an undertaking shall exist only if it is a partial operation on its own site or an operation separated from the rest of the undertaking with the main functions of an undertaking, the part of the undertaking could manage its business as a legally independent undertaking at any time, its revenues mainly come from external third parties and it has a consumption point of its own. Separate accounts and a separate profit-and-loss calculation shall be kept for the independent part of the undertaking on the basis, *mutatis mutandis*, of the rules of the Commercial Code applying to all merchants. The accounts and the profit-and-loss calculation pursuant to sentence 3 shall be audited applying *mutatis mutandis* Sections 317 to 323 of the Commercial Code.

(6) For the purposes of this Section

1. "consumption point" shall mean the total of all the spatially and physically related electrical devices including the self-supply installations of an undertaking which are located on a discrete corporate site and are linked to the grid system via one or several withdrawal points; they must be equipped with their own electricity meters at all withdrawal points and at all self-supply installations,
2. "gross value added" shall mean the gross value added of the undertaking at factor costs pursuant to the definition of the Federal Statistical Office, Fachserie 4, Reihe 4.3, Wiesbaden 20074, without the deduction of the staff costs for temporary agency workers; the effects caused by previous decisions on limitations shall be disregarded in the calculation of the gross value added,
- 2a. "newly established undertaking" shall mean undertakings which engage in their activities with almost entirely new operating equipment; they must not have been created by transformation; new operating equipment exists if an undertaking without physical fixed assets acquires or creates new physical fixed assets; without the possibility of evidence to the contrary, it shall be assumed that the time of the new establishment is the time at which electricity is first used for production purposes, and

3. "intensity of electricity costs" shall mean the ratio of the relevant electricity costs including the electricity costs for self-consumed quantities of electricity subject to surcharge pursuant to Section 61 to the arithmetic mean of the gross value added in the undertaking's last three completed financial years; here, the relevant electricity costs shall be calculated by the multiplication of the arithmetic mean of the undertaking's electricity consumption in the last three completed financial years or the standardised electricity consumption which is determined in line with an ordinance pursuant to Section 94 number 1, with the average electricity price for undertakings with similar levels of electricity consumption, which shall be based on an ordinance pursuant to Section 94 number 2; the effects caused by previous decisions on limitations shall be disregarded when the intensity of electricity costs is calculated.
- (7) For the allocation of an undertaking to the sectors pursuant to Annex 4, the point in time of the end of the last completed financial year shall be decisive.

## **Section 65**

### **Railway undertakings**

- (1) In the case of railway undertakings, the limitation of the EEG surcharge shall take place only if the railway undertakings furnish proof that and to what extent in the last completed financial year the quantity of self-consumed electricity at the relevant consumption point was consumed directly for the railway transport operation and amounted to at least 2 gigawatt-hours excluding the energy fed back in.
- (2) For railway undertakings, the EEG surcharge shall be limited to 20 percent of the EEG surcharge determined pursuant to Section 60 subsection 1 for the total quantity of electricity which the undertaking uses itself directly for railway transport operations, excluding the energy fed back in at the relevant consumption point.
- (3) In derogation of subsection 1, railway undertakings, if and to the extent that they have participated or will participate in a tender procedure for local public railway transport services, can document the electricity consumption quantities forecast for the calendar year in which operations are commenced in the calendar year prior to the commencement of transport operations on the basis of the rules of the tender procedure; the limitation pursuant to subsection 2 shall apply only to the railway undertaking which has won the contract in the tender procedure. The railway undertaking which has won the contract can document
1. in the calendar year of the commencement of transport operations the forecast electricity consumption quantities for the following calendar year on the basis of the rules of the tender procedure and
  2. in the first calendar year following the commencement of transport operations the total of the actual electricity consumption quantities for the calendar year so far and the forecast electricity consumption quantities for the rest of the calendar year; the forecast must be made on the basis of the rules of the tender procedure and the actual electricity consumption so far.

(4) In derogation of subsection 1, railway undertakings which will provide for the first time long-distance passenger railway services or freight transport services can document

1. in the calendar year prior to the commencement of transport operations the forecast electricity consumption quantities for the calendar year in which the transport operation is commenced,
2. in the calendar year of the commencement of transport operations the forecast electricity consumption quantities for the following calendar year and
3. in the first calendar year following the commencement of transport operations the total of the actual electricity consumption quantities for the calendar year so far and the forecast electricity consumption quantities for the rest of the calendar year.

The decision on limitation shall be issued subject to re-examination. It can be revoked or altered on the basis of a re-examination. There shall be a retrospective review of the preconditions governing the application and the scope of the limitation following the end of the calendar year for which the limitation decision has effect by the Federal Office for Economic Affairs and Export Control on the basis of the data of the completed calendar year.

(5) Without prejudice to subsections 3 and 4, Section 64 subsection 4 shall be applied mutatis mutandis. Without the possibility of evidence to the contrary, it shall be assumed that the point in time of commencement of transport operations is the point in time of the new establishment.

(6) Section 64 subsection 3 number 1 letter a to c shall be applied mutatis mutandis.

(7) For the purposes of this Section

1. "consumption point" shall be the totality of the consumption points for the undertaking's railway transport operations and
2. "commencement of transport operations" shall be the first consumption of electricity for the purpose of transport operations.

## **Section 66**

### **Submission of applications and effect of decisions**

(1) The application pursuant to Section 63 in conjunction with Section 64 including the certificates pursuant to Section 64 subsection 3 number 1 letter c and number 2 shall be submitted by 30 June of a year (substantive exclusion deadline) for the following calendar year. Sentence 1 shall be applied mutatis mutandis to applications pursuant to Section 63 in conjunction with Section 65 including the certificates pursuant to Section 64 subsection 3 number 1 letter c. The other documents cited in Sections 64 or 65 must be supplied with an application pursuant to sentences 1 and 2.

(2) For applications submitted from 2015, the application must be made electronically via the portal set up by the Federal Office for Economic Affairs and Export Control. The Federal Office for Economic Affairs and Export Control shall be authorised to bindingly stipulate exceptions from the obligation to submit applications electronically pursuant to sentence 1 by a general instruction to be published in the Federal Gazette.

(3) In derogation of subsection 1 sentence 1, applications by newly established undertakings within the meaning of Section 64 subsection 4 and applications from railway undertakings pursuant to Section 65 subsection 3 to 5 can be submitted up to 30 September of a year for the following calendar year.

(4) The decision shall be taken with effect for the party submitting the application, the electricity supplier and the regular transmission system operator. It shall apply in each case for the calendar year following the year of application.

(5) The entitlement of the regular transmission system operator at the respective consumption point to payment of the EEG surcharge by the relevant electricity supplier shall be limited in line with the decision by the Federal Office for Economic Affairs and Export Control. The transmission system operators must take account of this limitation in the equalisation pursuant to Section 58. If during the period of validity of the decision there is a change in the regular transmission system operator at the respective consumption point or in the electricity supplier, the beneficiary must inform the transmission system operator or the electricity supplier and the Federal Office for Economic Affairs and Export Control without delay.

## **Section 67**

### **Transformation of undertakings**

(1) If the applicant undertaking has transformed in its last three completed financial years before the application or in the subsequent period before the end of the substantive exclusion deadline, the applicant undertaking can have recourse to the data of the undertaking before its transformation only in order to furnish proof of the preconditions for entitlement if the economic and organisational unity of this undertaking has been virtually entirely retained in the applicant undertaking following transformation. Otherwise, Section 64 subsection 4 sentence 1 to 4 shall be applied *mutatis mutandis*.

(2) If the form of the applicant or beneficiary undertaking is transformed, it must inform the Federal Office for Economic Affairs and Export Control of this in writing or in electronic form without delay.

(3) If the transformation of a beneficiary undertaking results in its economic and organisational unity being virtually entirely transferred to another undertaking, the Federal Office for Economic Affairs and Export Control shall transfer the decision on limitation to the other undertaking on application from the latter. The obligation of the applicant undertaking to pay the EEG surcharge determined pursuant to Section 60 subsection 1 shall exist only if the Federal Office for Economic Affairs and Export Control rejects the application to transfer the limitation decision. In this case, the obligation to pay the EEG surcharge determined pursuant to Section 60 subsection 1 shall commence when the transformation takes effect.

(4) Subsections 1 and 3 shall be applied mutatis mutandis to independent parts of undertakings and to railway undertakings.

## **Section 68**

### **Withdrawal of the decision, information, right of access**

(1) The decision pursuant to Section 63 shall be withdrawn, also for the past, if it becomes known that the preconditions pursuant to Sections 64 or 65 were not met when it was issued.

(2) For the purpose of examining the statutory preconditions, the officials of the Federal Office for Economic Affairs and Export Control and their agents shall be authorised to demand the information required for the examination from the natural persons acting for the beneficiaries, to view the business documents during the normal business hours, and to access operational and business premises and the related real estate of the beneficiaries during normal business hours. The natural persons acting on behalf of the beneficiaries must provide the required information and present the documents for scrutiny. Parties obliged to furnish information can refuse to provide information on questions the answer to which would make themselves or a relative, as specified in Section 383 subsection 1 numbers 1 to 3 of the Code of Civil Procedure, liable to criminal prosecution or to proceedings under the Administrative Offences Act.

## **Section 69**

### **Obligation to cooperate and to provide information**

(1) Undertakings and railway undertakings which apply for or have received a decision pursuant to Section 63 must cooperate on the evaluation and revision of Sections 63 to 68 by the Federal Ministry for Economic Affairs and Energy, the Federal Office for Economic Affairs and Export Control or their agents. On demand, they must provide

1. information about all the quantities of electricity consumed by them themselves, including those not covered by the limitation decision, in order to establish a basis of the development of efficiency requirements,
2. information about possible and implemented efficiency-enhancing measures, and particularly measures which are highlighted by the operation of the energy or environmental management system or an alternative system to improve energy efficiency,

3. information about all the components of the undertaking's electricity costs, as far as this is necessary for the determining of average electricity prices for undertakings with similar levels of electricity consumption, and
4. further information necessary to evaluate and revise Sections 63 to 68.

The Federal Office for Economic Affairs and Export Control can specify the nature of provision of information pursuant to sentence 2 in greater detail.

(2) The Federal Office for Economic Affairs and Export Control shall be entitled to transmit the data collected for the processing of the application and the data collected pursuant to subsection 1 sentence 2 to the Federal Ministry for Economic Affairs and Energy for the purposes of legal and material supervision and for the purposes of evaluating and revising Sections 63 to 68. The Federal Ministry for Economic Affairs and Energy may transmit the data obtained pursuant to sentence 1 to contracted third parties for the purpose of evaluation pursuant to Section 97. Data which represent operating and commercial secrets may only be transmitted to contracted third parties if it is no longer possible to establish a reference to the undertaking. The Federal Office for Economic Affairs and Export Control shall be entitled to publish the name, the sector, the postcode and the place of the beneficiary undertaking and the beneficiary consumption point.

#### **Section 69a**

##### **Obligation of customs administration authorities to provide information**

The authorities of the customs administration shall be obliged to inform the Federal Office for Economic Affairs and Export Control on request of the data required to calculate the gross value added, including personal data.

### **Part 5**

## **Transparency**

### **Division 1**

#### **Obligations to communicate and publish information**

#### **Section 70**

##### **Principle**

Installation operators, grid system operators and electricity suppliers must provide to one another without delay the data required for the nationwide equalisation pursuant to Sections 56 to 62, and particularly the data cited in Sections 71 to 74. Section 62 shall be applied mutatis mutandis.



## **Section 71**

### **Installation operators**

Installation operators must provide the grid system operator with

1. all the necessary data for the final invoicing of the preceding calendar year by 28 February of a year for each installation,
2. information as to whether and to what extent, for the electricity generated in the installation,
  - a) a tax concession is claimed pursuant to Section 9 subsection 1 number 1 or number 3 of the Electricity Duty Act, and inform it about relevant changes,
  - b) certificates of regional origin are issued if the value to be applied for the installation is determined by statute, and
3. in the case of biomass installations details of the nature and quantity of the feedstocks and details of heat usages and technologies deployed pursuant to Section 39h, Section 43 subsection 2 or Section 44b subsection 2 sentence 1 or of the share of manure used pursuant to Section 44 number 3 in the manner stipulated for the record-keeping pursuant to Section 39h subsection 2, Section 44b and Section 44c.

## **Section 72**

### **Grid system operators**

(1) Grid system operators which are not transmission system operators must provide their upstream transmission system operator with

1. the following information in summarised form without delay once it is available:
  - a) the payments actually made for electricity from renewable energy sources and mine gas pursuant to Section 19 subsection 1 and the provision of installed capacity pursuant to Section 50 in the version of the Renewable Energy Sources Act applicable to the respective installation,
  - b) the notifications received from the installation operators pursuant to Section 21c subsection 1, in each case separately for the various forms of sale pursuant to Section 21b subsection 1,
  - c) in the case of a switch to the shortfall remuneration, additionally to the information pursuant to letter b the form of energy from which the electricity is generated in the respective installation, the installed capacity of the installation and the length of time for which the respective installation has been using this form of sale,
  - d) the costs of the retrofitting pursuant to Section 57 subsection 2 in conjunction with the System Stability Ordinance, the number of retrofitted installations and the other information required for the nationwide equalisation,
  - e) the other information required for the nationwide equalisation,

2. by 31 May of a year by means of forms provided by the transmission system operator on its website, the final invoicing for the preceding year in electronic form both for each individual installation and in summarised form; Section 24 subsection 3 shall be applied mutatis mutandis; up to 31 May of a year the upstream transmission system operator shall be presented with proof of the costs to be reimbursed pursuant to Section 57 subsection 2 sentence 1; subsequent changes to the estimates must be transmitted to the transmission system operator without delay and included in the next invoice.
- (2) For the determining of the quantities of energy and payments pursuant to subsection 1, the following information is necessary in particular:
1. the voltage level at which the installation is connected,
  2. the level of the avoided grid fees pursuant to Section 57 subsection 3,
  3. the extent to which the grid system operator has purchased the quantities of energy from a downstream grid system, and
  4. the extent to which the grid system operator has passed on the quantities of energy pursuant to number 3 to final consumers, grid system operators or electricity suppliers or has consumed them itself.

### **Section 73**

#### **Transmission system operators**

- (1) Section 72 shall be applied mutatis mutandis for transmission system operators with the proviso that the information and the final invoicing pursuant to Section 72 subsection 1 must be published on their website for installations which are directly or indirectly connected to their grid system pursuant to Section 11 subsection 2, without prejudice to Section 77 subsection 4.
- (2) Transmission system operators must also present the electricity suppliers for which they are regularly responsible with the final invoicing for the EEG surcharge of the preceding year by 31 July of a year. Section 72 subsection 2 shall be applied mutatis mutandis.
- (3) The transmission system operators must continue to publish the data for the calculation of the market premium in line with Annex 1 number 3 of this Act in non-personal form and the actual annual average of the market value of electricity from solar radiation energy ("MWSolar(a)").
- (4) Transmission system operators which make use of their right pursuant to Section 60 subsection 2 sentence 3 must inform all grid system operators in whose grid system the balancing group has physical delivery points about the termination of the balancing group contract.

## **Section 74**

### **Electricity suppliers**

Electricity suppliers must inform by electronic means their regular transmission system operator without delay of the quantity of electricity supplied to final consumers and present the final invoice for the preceding year by 31 May. To the extent that the supply takes place via balancing groups, the details of the quantities of electricity have to be transmitted for each balancing group. Sentence 1 shall be applied to self-suppliers mutatis mutandis; this shall not apply to electricity from existing installations for which no surcharge obligation exists pursuant to Section 61 subsection 3 and 4, and to electricity from electricity-generating installations within the meaning of Section 61 subsection 2 number 4 if the installed capacity of the self-producing installation does not exceed 10 kilowatts and the self-consumed quantity of electricity does not exceed 10 megawatt-hours per calendar year. The transmission system operators must provide uniform nationwide procedures without delay, but at the latest from 1 January 2016, for the fully automated electronic transmission of the data pursuant to sentence 2.

## **Section 75**

### **Auditing**

The summarised final invoices of the grid system operators pursuant to Section 72 subsection 1 number 2 must be audited by an auditor, a company of auditors, a certified accountant or an accountancy company. Apart from this, the grid system operators and electricity suppliers can require that when the final invoices pursuant to Sections 73 and 74 are presented, they are audited by an auditor, a company of auditors, a certified accountant or an accountancy company. The audits must give consideration to:

1. the rulings by the supreme courts,
2. the decisions by the Federal Network Agency pursuant to Section 85 and
3. the decisions of the clearing house pursuant to Section 81 subsection 4 sentence 1 number 1 or subsection 5.

Section 319 subsection 2 to 4, Section 319b subsection 1, Section 320 subsection 2 and Section 323 of the Commercial Code shall be applied mutatis mutandis to the audits pursuant to sentences 1 and 2.

## **Section 76**

### **Information to be provided to the Federal Network Agency**

(1) Grid system operators must present to the Federal Network Agency in electronic form the information which they receive pursuant to Section 71 from the installation operators, the information pursuant to Section 72 subsection 2 number 1 and the final invoices pursuant to Section 72 subsection 1 number 2 and Section 73 subsection 2 including the data necessary for their review at the expiry of the respective deadlines; the first half-sentence shall be applied mutatis mutandis regarding the information pursuant to Section 74 for electricity suppliers and self-suppliers.

(2) To the extent that the Federal Network Agency provides forms, grid system operators, electricity suppliers and installation operators must transmit the data in this format. The data pursuant to subsection 1 with the exception of the costs of purchasing the electricity shall be provided to the Federal Ministry for Economic Affairs and Energy by the Federal Network Agency for statistical purposes, the evaluation of the Act and the reporting pursuant to Sections 97 and 98.

## **Section 77**

### **Information to be provided to the public**

(1) Transmission system operators must publish on their websites:

1. the information pursuant to Sections 70 to 74 immediately following their transmission and
2. a report on the determining of the data transmitted by them pursuant to Sections 70 to 74 without delay after 30 September of a year.

Only the post code and the municipal code shall be cited for the location of installations with a maximum installed capacity of 30 kilowatts. They must retain the information and the report until the end of the following year. This shall be without prejudice to Section 73 subsection 1.

(2) The transmission system operators must publish the payments pursuant to Section 57 subsection 1 and sold quantities of electricity pursuant to Section 59 and the information pursuant to Section 72 subsection 1 number 1 letter c in line with the Renewable Energy Sources Ordinance on a joint website in non-personal form.

(3) The information and the report must enable a qualified third party to fully understand the payments and the commercially purchased quantities of electricity without further information.

(4) Information which is published online in the register does not have to be published by the grid system operators.

## **Division 2**

### **Electricity labelling and prohibition of multiple sale**

#### **Section 78**

##### **Electricity labelling in accordance with the EEG surcharge**

(1) In return for the payment of the EEG surcharge, pursuant to Section 60 subsection 1 electricity suppliers shall gain the right to label electricity as “renewable energy sources, financed from the EEG surcharge”. The feature of the electricity shall be identified to final consumers in the context of electricity labelling in line with subsections 2 to 4 and of Section 42 of the Energy Industry Act.

(2) The share identified to final consumers pursuant to subsection 1 shall be calculated in percent, whereby the EEG surcharge which the electricity supplier actually paid for the quantity of electricity supplied to its final consumers in a year

1. is multiplied with the EEG quotients pursuant to subsection 3,
2. is then divided by the total quantity of electricity supplied to its final consumer in that year and
3. is then multiplied by a hundred.

The share identified pursuant to subsection 1 shall be a direct component of the quantity of electricity supplied and cannot be identified separately or sold further.

(3) The EEG quotient shall be the relationship between the total quantity of electricity for which a payment pursuant to Section 19 subsection 1 was made in the last calendar year and the total revenues received by the transmission system operators from the EEG surcharge for the quantities of electricity supplied by the electricity suppliers to final consumers in the last calendar year. The transmission system operators shall publish on a joint internet platform in a uniform format the EEG quotients in non-personal form each year by 31 July for the preceding calendar year.

(4) The shares of the energy sources to be cited pursuant to Section 42 subsection 1 number 1 and subsection 3 of the Energy Industry Act shall be reduced by the percentage to be identified pursuant to subsection 1 pro rata for the respective final consumer with the exception of the share for “electricity from renewable energy sources, financed from the EEG surcharge”.

(5) Electricity suppliers shall also identify, in addition to the total energy source mix, to final consumers whose obligation to pay the EEG surcharge is limited pursuant to Sections 63 to 68, a separate “energy sources mix for undertakings privileged pursuant to the Renewable Energy Sources Act” to be calculated pursuant to sentences 3 and 4. This energy sources mix shall identify the shares pursuant to Section 42 subsection 1 number 1 of the Energy Industry Act. The share in percent of “renewable energy sources, financed from the EEG surcharge” shall be calculated in derogation of subsection 2 whereby the EEG surcharge which the electricity supplier has actually paid for the quantity of electricity supplied to its final consumers in a year

1. is multiplied with the EEG quotients pursuant to subsection 3,
2. is then divided by the total quantity of electricity supplied to the respective final consumer and
3. is then multiplied by a hundred.

The shares of the other energy sources to be cited pursuant to Section 42 subsection 1 number 1 of the Energy Industry Act shall be reduced by the percentage calculated pursuant to subsection 3 pro rata for the respective final consumer.

(6) For self-suppliers which have to pay the EEG surcharge pursuant to Section 61, subsections 1 to 5 shall be applied with the proviso that their own electricity shall pro rata be regarded as “electricity from renewable energy sources, financed from the EEG surcharge”.

## **Section 79**

### **Guarantees of origin**

(1) The Federal Environment Agency

1. shall on application issue guarantees of origin to installation operators for electricity from renewable energy sources for which no payment pursuant to Section 19 or Section 50 is claimed,
2. shall on application transfer guarantees of origin and
3. shall cancel guarantees of origin.

(2) The issuing, transmission and cancellation shall take place electronically and in line with the Ordinance on Guarantees of Origin and Guarantees of Regional Origin for Electricity from Renewable Energy Sources. The Federal Environment Agency shall take suitable measures to protect the guarantees of origin from misuse.

(3) For electricity from renewable energy sources which is generated outside the federal territory, the Federal Environment Agency shall give recognition to foreign guarantees of origin on application and in line with the Ordinance on Guarantees of Origin and Guarantees of Regional Origin for Electricity from Renewable Energy Sources. Foreign guarantees of origin can only be recognised if they fulfil at least the requirements of Article 15(6) and (9) of Directive 2009/28/EC. To this extent, the Federal Environment Agency shall also be responsible for correspondence with the competent ministries and agencies of other Member States of the European Union and of third countries and of bodies of the European Union. Electricity for which a guarantee of origin has been recognised pursuant to sentence 1 shall be regarded as electricity which is sold directly in a different manner pursuant to Section 21a.

(4) The Federal Environment Agency shall set up an electronic database in which the issuing, recognition, transfer and cancellation of guarantees of origin is registered (register of guarantees of origin).

(5) Guarantees of origin shall be issued for a quantity of electricity of a megawatt-hour both as generated and as delivered to final consumers. For each megawatt-hour of electricity generated and delivered to final consumers, no more than one guarantee of origin shall be issued.

(6) The Federal Environment Agency can require in particular the transmission of the following information to the register of guarantees of origin from persons using the register of guarantees of origin:

1. details of the person and contact details,
2. the VAT identification number, where it exists,
3. the location, the type, the installed capacity, the time of commissioning and, where it exists, the installation's EEG installation code,
4. the energy source used to generate the electricity,
5. the information as to whether, in what form and in what amount
  - a) investment aid was paid for the installation in which the electricity was generated,
  - b) the installation operator has claimed a payment pursuant to Section 19 or Section 50 for the quantity of electricity, and
6. the number of the metering device or the metering point at the point of connection and the designation and the location of the metering points via which the electricity generated in the installation is measured when it is fed into the grid system.

(7) Guarantees of origin shall not be financial instruments within the meaning of Section 1 subsection 11 of the Banking Act or of Section 2 subsection 2b of the Securities Trading Act.

## **Section 79a**

### **Guarantees of regional origin**

(1) The Federal Environment Agency

1. shall issue guarantees of regional origin on application for directly sold electricity from renewable energy sources,
  2. shall transfer guarantees of regional origin on application and
  3. shall cancel guarantees of regional origin.
- (2) The issuing, transmission and cancellation shall take place electronically and in line with the Ordinance on Guarantees of Origin and Guarantees of Regional Origin for Electricity from Renewable Energy Sources. The Federal Environment Agency shall take suitable measures to protect the guarantees of regional origin from misuse.
- (3) For electricity from installations outside the federal territory which have received an award in an auction pursuant to Section 5 subsection 2 sentence 2, the Federal Environment Agency can issue guarantees of regional origin pursuant to subsection 1 number 1 to the extent that the electricity is delivered to a final consumer in the federal territory.
- (4) The Federal Environment Agency shall set up an electronic database in which the issuing, transfer and cancellation of guarantees of regional origin is registered (register of guarantees of regional origin). The Federal Environment Agency may operate the register of guarantees of regional origin together with the register of guarantees of origin in an electronic database.
- (5) Guarantees of regional origin shall be issued for a quantity of electricity of a kilowatt-hour both as generated and as delivered to final consumers. For each kilowatt-hour of electricity generated and delivered to final consumers, no more than one guarantee of regional origin shall be issued. Guarantees of regional origin may only be transferred along the contractual supply chain of the electricity for which they have been issued.
- (6) On application the Federal Environment Agency shall cancel a guarantee of regional origin if it has been issued for electricity from an installation which is located in the region of the final consumer supplied with the electricity. The region of the final consumer supplied with the electricity shall embrace all the post code areas which are wholly or partially located within 50 kilometres of the post code area in which the final consumer consumes the electricity. For each post code area in which electricity is consumed, the Federal Environment Agency shall determine and publish which additional post code areas belong to the region. Here, in derogation of sentence 2, the Federal Environment Agency shall take the entire municipality in which the final consumer consumes the electricity if the municipality consists of several post code areas.
- (7) For each region for which it wishes to use guarantees of regional origin, an electricity supplier shall notify the following to the Federal Environment Agency by 28 February of a year for the preceding calendar year:
1. the quantity of electricity which the electricity supplier has delivered to its final consumers in this region and must label as "renewable energy, financed from the EEG surcharge" in the electricity labelling pursuant to Section 78, and
  2. the guarantees of regional origin which it wishes to cancel for this region.



(8) To the extent to which an electricity supplier has guarantees of regional origin cancelled pursuant to subsection 7 number 2, it may inform the final consumers in the electricity labelling pursuant to Section 42 of the Energy Industry Act of the shares of the electricity which the undertaking must label as “renewable energy, financed from the EEG surcharge” pursuant to Section 78 subsection 1 which have been generated in a regional connection with the electricity consumption. If an electricity supplier has more guarantees of regional origin cancelled than correspond to the quantity of electricity from “renewable energy, financed from the EEG surcharge” which it delivered to final consumers in the relevant region, it cannot use the excess guarantees of regional origin to label electricity.

(9) Section 79 subsection 6 shall be applied mutatis mutandis. In addition to sentence 1,

1. the Federal Environment Agency can demand information from persons using the register of guarantees of regional origin about the contractual supply chain for electricity for which guarantees of regional origin are to be issued, and particularly about the persons involved in the supply chain and the relevant quantity of electricity,
2. the grid system operator can demand information from the Federal Environment Agency as to whether and to what extent guarantees of regional origin have been issued to an installation operator.

(10) Section 79 subsection 7 shall be applied mutatis mutandis.

## **Section 80**

### **Prohibition of multiple sale**

(1) Electricity from renewable energy sources and from mine gas, and landfill or sewage treatment gas fed into a gas system and gas from biomass, may not be sold several times, transferred to other parties or sold to a third party in violation of Section 56. In particular, electricity from renewable energy sources and from mine gas may not be sold in several forms of sale pursuant to Section 21b subsection 1 or several times in the same form pursuant to Section 21b subsection 1. As long as installation operators sell electricity from their installation in a form of sale pursuant to Section 21b subsection 1, there shall be no entitlements from a different form of sale pursuant to Section 21b subsection 1. In the context of direct selling, the selling as balancing energy shall not be regarded as multiple sale or other transfer of electricity.

(2) Installation operators which receive a payment pursuant to Section 19 or Section 50 for electricity from renewable energy sources or from mine gas may not pass on guarantees of origin or other proof demonstrating the origin of the electricity for this electricity. If an installation operator passes on a guarantee of origin or other proof which demonstrates the origin of the electricity for electricity from renewable energy sources or from mine gas, no payment pursuant to Section 19 or Section 50 may be claimed for this electricity. Sentences 1 and 2 shall not be applied to guarantees of regional origin pursuant to Section 79a.

(3) As long as emission reduction units can be generated in the context of joint project implementation pursuant to the Project Mechanisms Act for the emissions reductions of the installation, the entitlement pursuant to Section 19 may not be claimed for the electricity from the respective installation.

### **Section 80a**

#### **Prohibition of cumulation**

Investment grants from the Federation, the Land or a bank in which the Federation or the Land is a shareholder may be granted in addition to a payment pursuant to this Act only to the extent that the cumulated payments plus the revenues from the sale of the energy generated in the installation do not exceed the costs of generation of this energy.

## **Part 6**

### **Legal protection and official procedures**

#### **Section 81**

##### **Clearing house**

(1) A clearing house shall be established for this Act. The operation shall take place on behalf of the Federal Ministry for Economic Affairs and Energy by a legal person under private law.

(2) The clearing house shall be responsible for questions and disputes

1. on the application of Sections 3, 7 to 55a, 70, 71, 80, 100 and 101 and the ordinances enacted on the basis of this Act,
2. on the application of the provisions which corresponded to the provisions cited in number 1 in a version of this Act in force before 1 August 2014,
3. on the application of Section 61 to the extent that installations are affected, and
4. on the measuring of the electricity supplied or consumed for the operation of an installation or generated by an installation, including questions and disputes pursuant to the Metering Point Operation Act to the extent that the Federal Office for Information Security or the Federal Network Agency is not competent.

(3) The tasks of the clearing house shall be:

1. the avoidance of disputes and
2. the settlement of disputes.

In the handling of these tasks, the rules on the protection of personal data and of operational and business secrets and decisions by the Federal Network Agency pursuant to Section 85 must be observed. Furthermore, the principles of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165 of 18.6.2013, p. 63) must be taken into account and applied *mutatis mutandis*.

(4) In order to avoid or settle disputes between parties to the procedure, the clearing house can

1. implement procedures between the parties to the procedure in response to their joint application; Section 204 subsection 1 number 11 of the Civil Code shall be applied *mutatis mutandis*; the procedures can also be carried out as arbitration procedures within the meaning of the Tenth Book of the Code of Civil Procedure if the parties have agreed to arbitration, or
2. issue comments for ordinary courts at which these disputes are pending at their request.

To the extent that a dispute affects provisions other than those cited in subsection 2, the clearing house can on application from the parties to the procedure comprehensively avoid or settle the dispute if a dispute is primarily to be avoided or settled pursuant to subsection 2; in particular, the clearing house can comprehensively settle disputes about payment claims between parties to the procedure. Parties to the procedure can be installation operators, direct sellers, grid system operators and metering point operators. This shall be without prejudice to their right to recourse to ordinary courts subject to the provisions of the tenth book of the Code of Civil Procedure.

(5) The clearing house can in order to avoid disputes also implement procedures to clarify issues beyond individual cases as long as this is applied for by at least one installation operator, one direct seller, one grid system operator, one metering point operator or one association and there is a public interest in clarifying these issues. Associations whose field of responsibilities according to their statutes is affected by the issue must be involved.

(6) The carrying out of the tasks pursuant to subsections 3 to 5 shall take place in line with the rules of procedure given to the clearing house by itself. The rules of procedure must also contain provisions on how an arbitration procedure is carried out by the clearing house. The issuing and amendment of the rules of procedure require the prior approval of the Federal Ministry for Economic Affairs and Energy. The carrying out of the tasks pursuant to subsections 3 to 5 shall in each case be subject to the reservation of the prior approval of the rules of procedure by the parties to the procedure.

(7) The clearing house must implement the tasks pursuant to subsections 3 to 5 on a priority and expedited basis. It can set deadlines for the parties to the procedure and discontinue procedures if the parties to the procedure do not participate adequately.

(8) The carrying out of the tasks pursuant to subsections 3 to 5 shall not be a legal service within the meaning of Section 2 subsection 1 of the Legal Services Act. The possibility of liability of the management of the clearing house for damages to assets caused by its carrying out of its tasks is excluded; this shall not apply in the case of intention.

(9) The clearing house must publish on its website an annual report on its carrying out of the tasks pursuant to subsections 3 to 5 in non-personal form.

(10) The clearing house can levy fees on the parties to the procedure in line with its rules of procedure to cover the cost of actions pursuant to subsection 4. Procedures pursuant to subsection 5 shall be conducted free of charge. The clearing house can levy fees to cover costs of other actions related to the tasks pursuant to subsections 3 to 5.

## **Section 82**

### **Consumer protection**

Sections 8 to 14 of the Unfair Competition Act shall apply mutatis mutandis to violations of Sections 19 to 55a.

## **Section 83**

### **Temporary legal protection**

(1) On application from the installation operator, the court responsible for the main proceedings can issue a temporary injunction, even before the construction of the installation and taking the individual circumstances into account, stipulating that the debtor of the entitlements described in Sections 8, 11, 12, 19 and 50 must provide information, provisionally connect the installation, optimise, strengthen or expand its grid system without delay, purchase the electricity and make a contribution regarded as fair and just as an advance payment towards the entitlement pursuant to Section 19 subsection 1 or Section 50.

(2) The temporary injunction can be issued even if the preconditions described in Sections 935 and 940 of the Code of Civil Procedure do not exist.

## **Section 83a**

### **Legal protection in the case of auctions**

(1) Judicial remedies which are directed directly against an auction or directly against an issued award shall be admissible only with a view to obliging the Federal Network Agency to issue an award. Remedies pursuant to sentence 1 shall be justified to the extent that the complainant in the award procedure pursuant to Section 32 would have received an award had it not been for the violation of the law. In the case of an appeal pursuant to sentence 1, the Federal Network Agency must award funding for more than the auction volume determined pursuant to this Act, to the extent that the claim brought by the appellant is successful and once the judicial decision formally becomes effective. Apart from this, this shall be without prejudice to legal protection.

(2) The issuing of an award or issuing of a payment authorisation shall remain valid, irrespective of a redress procedure by third parties pursuant to subsection 1. Third parties may not contest awards or payment authorisations.

## **Section 84**

### **Use of maritime shipping lanes**

As long as installation operators receive a payment pursuant to Section 19, they can use the German exclusive economic zone or the coastal sea for the operation of the installations without charge.

## **Section 85**

### **Tasks of the Federal Network Agency**

(1) The Federal Network Agency shall be tasked, subject to further tasks transferred to it by ordinances issued on the basis of this Act, with

1. carrying out the auctions pursuant to Sections 28 to 39h,
2. ensuring that the transparency obligations with regard to payments to installations are fulfilled,
3. monitoring
  - a) that the grid system operators only curtail installations pursuant to Section 14 which they are entitled to curtail,
  - b) that the transmission system operators sell pursuant to Section 59 the electricity which is remunerated pursuant to Sections 19 subsection 1 and Section 57, comply with the provisions of the Renewable Energy Sources Ordinance, determine, stipulate, publish, levy and receive the EEG surcharge in an orderly manner, that the grid system operators levy and pass on the EEG surcharge in an orderly manner, and that only the payments pursuant to Sections 19 to 55a are made and that the netting pursuant to Section 57 subsection 4 has been taken into account,
  - c) that the data are transmitted pursuant to Section 76 and published pursuant to Section 77,
  - d) that the labelling of the electricity takes place in line with Section 78.

(2) Taking account of the purpose and aim pursuant to Section 1, the Federal Network Agency can make stipulations pursuant to Section 29 subsection 1 of the Energy Industry Act

1. regarding the technical devices pursuant to Section 9 subsection 1 and 2, particularly on the data formats,
2. within the scope of application of Section 14 regarding
  - a) the sequence in which curtailment of the various installations and CHP installations affected by a measure pursuant to Section 14 takes place,

- b) the criteria which the grid system operator must use to decide on this sequence,
  - c) which electricity-generating installations pursuant to Section 14 subsection 1 sentence 1 number 2 must remain on the grid system even when feed-in management is being applied in order to ensure the security and reliability of the electricity supply system,
3. to handle allocations and switches pursuant to Sections 21b and 21c, particularly regarding procedures, deadlines and data formats,
  4. in derogation of Section 30, on the requirements imposed on bids and bidders, in order to ensure the seriousness and binding nature of the bids, and in derogation of Section 37 subsection 2 sentence 2 number 1, that only an adopted zoning plan is recognised as proof,
  5. on proof to be provided by the bidder in order to document that the site on which the ground-mounted installation is planned pursuant to Section 37 subsection 1 number 3 letter h and erected pursuant to Section 38a subsection 1 number 3 actually was in use as farmland at the time of the decision on the establishment or alteration of the zoning plan,
  6. in addition to the grounds for exclusion pursuant to Section 33 subsection 2 to provide for a ground for exclusion for bids on sites to the extent that a bid for this site has received an award in a previous auction and the award has expired,
  7. on information that must be submitted, in addition to the bidder's application for issuance of the payment authorisation, to the Federal Network Agency,
  8. on requirements for proof that must be sought by the grid system operator pursuant to Section 30, Section 36, Section 37, Section 38, Section 38a or Section 39 from the installation operator to prove the existence of the eligibility requirements,
  9. in derogation of Section 3 number 51 to determine the award value, and particularly to convert to a uniform pricing procedure,
  10. in derogation of Section 37a and Section 55 subsection 3 to increase the second security and penalty to up to €100 per kilowatt of the bid quantity,
  11. in derogation of Section 37d subsection 2 number 2 to shorten the application deadline for payment authorisation to up to 12 months to the extent that use has been made of the power to make stipulations pursuant to number 4 as proof,
  12. to furnish proof of remote controllability pursuant to Section 20 subsection 2, particularly regarding procedures, deadlines and data formats, and
  13. to take account of electricity from solar radiation energy which is self-consumed in the publication obligations pursuant to Section 73 and in the calculation of the monthly market value of electricity from solar radiation energy pursuant to Annex 1 number 2.2.4 to this Act, in each case in particular regarding the calculation or estimation of the quantities of electricity.

(3) The provisions of Part 8 of the Energy Industry Act with the exception of Section 69 subsection 1 sentence 2 and subsection 10, of Sections 91, 91 and 95 to 101 and of Division 6 shall be applied mutatis mutandis for the assumption of the tasks of the Federal Network Agency pursuant to this Act and to the ordinances issued on the basis of this Act. In the case of substantiated suspicion, controls can also be carried out at installation operators which are not undertakings in order to fulfil tasks pursuant to subsection 1 number 2.

(4) The decisions by the Federal Network Agency pursuant to Section 3 shall be taken by the decision divisions. Sentence 1 shall not apply to decisions related to the determination of the beneficiary and the value to be applied by auctions pursuant to Section 22 and to stipulations regarding the maximum values pursuant to Section 85a and the ordinance issued on the basis of Section 88 or Section 88a. Section 59 subsection 1 sentence 2 and 3, subsection 2 and 3 and Section 60 of the Energy Industry Act shall be applied mutatis mutandis.

### **Section 85a**

#### **Stipulation of maximum values for auctions**

(1) The Federal Network Agency can reset the maximum value pursuant to Section 36b, Section 37b or Section 39b for the auctions with a bid deadline in the following calendar year by means of a stipulation pursuant to Section 29 of the Energy Industry Act if in the last three auctions held prior to the launching of the stipulation procedure there are indications in all or any of them that the maximum value is too high or too low, taking into consideration Sections 1 and 2 subsection 4. Here, the new maximum value may not deviate by more than 10 percent from the maximum value in force at the time of the resetting.

(2) A maximum value should be reduced pursuant to subsection 1 if the average generation costs are well below the maximum value. A maximum value should be increased pursuant to subsection 1 if in the last three auctions the admissible bids failed to cover the volume of the auction and the average generation costs are above the maximum value. If the volume to be auctioned for solar installations was not covered on a bid deadline, the maximum value for the subsequent bid deadline should be increased.

(3) Prior to its decision pursuant to subsection 1, the Federal Network Agency should refrain from obtaining comments pursuant to Section 67 subsection 2 of the Energy Industry Act; no oral proceedings shall take place. The Federal Network Agency shall publish decisions pursuant to subsection 1 citing the main grounds in its official journal and on its website.

## **Section 85b**

### **Right of information and data transmission**

(1) If grounds exist to suspect false statements by a bidder in an auction procedure, and for the purpose of random checks of the correctness of information provided by bidders in an auction procedure, the Federal Network Agency shall be authorised to demand information from the authorities responsible for the authorisation procedure under immissions legislation under the file number cited in the bid

1. as to whether and at what time an authorisation has been issued under the file number and who the holder of the authorisation is,
2. to what site, what number of installations and what installed capacity the authorisation refers,
3. what deadlines have been set pursuant to Section 18 number 1 sentence 1 of the Federal Immission Control Act for the commencement of the erection or operation of the installations and whether these have subsequently been extended,
4. whether the authorisation has become wholly or partially binding or whether legal remedies from third parties are pending against this or parts of this authorisation,
5. whether and to what extent the immediate enforcement has been ordered by the competent authority or courts regarding the respective authorisation and whether and to what extent the competent courts have confirmed or revoked an order of immediate enforcement and
6. when the authorisation expires and the installation must be dismantled.

(2) The competent authorities for the authorisation procedure under immissions legislation shall be obliged to provide the information within the meaning of subsection 1. The office charged pursuant to Section 28 of the Environmental Audit Act with the tasks of the licensing office for environmental auditors may transmit to the grid system operator, the installation operator and the Federal Network Agency information about licensing and supervisory measures which it has taken against an environmental auditor and which might affect the suitability of expertises, confirmations or certificates issued pursuant to this Act.

## **Section 86**

### **Provisions on fines**

- (1) An administrative offence shall be committed by anyone who deliberately or negligently
1. contrary to Section 80 subsection 1 sentence 1 sells or otherwise transfers electricity or gas,
  2. acts contrary to an enforceable order under Section 69 subsection 2,
  3. contravenes an enforceable order pursuant to Section 85 subsection 3 in conjunction with Section 65 subsection 1 or subsection 2 or Section 69 subsection 7 sentence 1 or subsection 8 sentence 1 of the Energy Industry Act or



4. contravenes an ordinance
  - a) pursuant to Section 90 number 3,
  - b) pursuant to Section 92 number 1,
  - c) pursuant to Section 92 number 3 or number 4,
  - d) pursuant to Section 93 number 1, 4 or number 9 or an enforceable order on the basis of such an ordinance to the extent that the ordinance refers to this provision on fines for a certain offence.

(2) The administrative offence can in the cases of subsection 1 number 4 letter a, c and d be punished by a fine of up to fifty thousand euros and in the other cases by a fine of up to two hundred thousand euros.

(3) Within the meaning of Section 36 subsection 1 number 1 of the Act on Administrative Offences, the administrative authority shall be

1. the Federal Network Agency in the cases of subsection 1 number 1, 3 or number 4 letter d,
2. the Federal Office for Economic Affairs and Export Control in the cases of subsection 1 number 2,
3. the Federal Office for Agriculture and Food in the cases of subsection 1 number 4 letter a and
4. the Federal Environment Agency in the cases of subsection 1 number 4 letter b or letter c.

## **Section 87**

### **Fees and expenses**

(1) Fees and expenses shall be levied for official acts pursuant to this Act and the ordinances based on this Act and for the use of the register of guarantees of origin, the register of guarantees of regional origin and the register of installations; here, consideration can also be given to the amount of administration which accrues in each case at the supervisory authority. With regard to the imposition of fees for official acts pursuant to sentence 1, the Administrative Costs Act of 23 June 1970 (Federal Law Gazette I p. 821) in the version in force on 14 August 2013 shall be applied. The provisions of Divisions 2 and 3 of the Administrative Costs Act in the version in force on 14 August 2013 shall be applied mutatis mutandis for the use of the register of guarantees of origin and the register of installations.

(2) The cases for which fees shall be levied and the rates of fees shall be determined by ordinance without approval from the Bundesrat. Here, fixed fees, also in the form of time fees, or framework fees can be stipulated, and the reimbursement of expenses can also be regulated in derogation of the Administrative Costs Act. The Federal Ministry for Economic Affairs and Energy shall be authorised to issue the ordinances. It can transfer this authorisation by ordinance without the approval of the Bundesrat to a higher federal authority to the extent that the latter assumes tasks on the basis of this Act or of an ordinance pursuant to Sections 88, 90, 92 or Section 93. In derogation of sentence 3, the Federal Ministry of Food and Agriculture in consensus with the Federal Ministry of Finance, the Federal Ministry for Economic Affairs and Energy and the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety shall be authorised to issue the ordinance for official acts of the Federal Office for Agriculture and Food in relation to the recognition of systems or the recognition and supervision of an independent control body pursuant to the Biomass Electricity Sustainability Ordinance.

## **Part 7**

### **Authorisations to issue ordinances, reports, transitional provisions**

#### **Division 1**

#### **Authorisation to issue ordinances**

##### **Section 88**

##### **Authorisation to issue ordinances on auctions for biomass**

(1) The Federal Government shall be authorised to provide rules for biomass installations in the form of an ordinance without the approval of the Bundesrat in derogation of Sections 3, 22, 24, 25, 27a to 30, 39 to 39h, 44b, 44c, 50, 50a, 52 and 55

1. regarding the procedure and content of the auctions, in particular
  - a) on the breakdown of the auction volume into smaller quantities and the exclusion of individual subsegments from the auction, whereby a distinction can particularly be made
    - aa) depending on the date of commissioning of the installations or
    - bb) between solid and gaseous biomass,
  - b) on the determination of minimum and maximum volumes of partial lots,
  - c) on the stipulation of maximum values for the entitlement pursuant to Section 19 subsection 1 or Section 50,
  - d) on the formation of prices and the course of the auctions,
2. regarding further preconditions, in particular

- a) to limit the rated or installed capacity of the installation and to provide for a reduction in or removal of the financial support if the limit is exceeded,
  - b) to control the composition of installations in derogation of Section 24 subsection 1,
  - c) to stipulate or exclude requirements and payment entitlements or which serve to flexibilise the installations, also in derogation of Sections 39h, 44b and 50a,
  - d) in derogation of Section 27a to control whether and to what extent the power generated may be used by the installation operator itself and whether and to what extent self-generated electricity and consumed electricity can be included in the ascertainment of the rated capacity,
  - e) to make deviating rules on
    - aa) the concept of installation pursuant to Section 3 number 1,
    - bb) the concept of commissioning pursuant to Section 3 number 30,
    - cc) the commencement and duration of the entitlement pursuant to Section 19 subsection 1 and
    - dd) the maximum rated capacity pursuant to Section 101 subsection 1,
  - f) to stipulate the transition period following the issue of the award pursuant to Section 39f subsection 2,
3. regarding the requirements for participation in the auctions, in particular
- a) to impose minimum requirements on the suitability of the participants,
  - b) to impose requirements on the state of planning and authorisation of the projects,
  - c) to impose requirements regarding the nature, the form and the content of securities to be provided by all participants in the auctions or only in the case of being awarded funding in order to ensure the commissioning and operation of the installation, and the corresponding rules on the partial or complete repayment of these securities,
  - d) to stipulate how participants in the auctions have to furnish proof of the compliance with the requirements pursuant to letters a to c,
4. regarding the nature, the form and the content of the award of funding in the context of an auction and regarding the criteria for the award,
5. regarding requirements which are intended to ensure the operation of the installations, in particular if an installation is not commissioned or is commissioned late or is not operated to a sufficient degree,
- a) to stipulate a lower limit for the rated capacity,
  - b) to provide for a reduction in or removal of the financial support if the lower limit pursuant to letter a is not reached,

- c) to provide for an obligation to pay money and to regulate the level and the preconditions for the obligation to pay,
  - d) to stipulate criteria for an exclusion of bidders from future auctions, and
  - e) to provide for the possibility to withdraw or to alter and then reissue the awards issued in the context of the auctions after a certain period, or to alter the duration or level of the entitlement pursuant to Section 19 subsection 1 after the expiry of a certain period,
6. regarding the nature, the form and the content of the publications of the announcement of auctions, the outcome of the auctions and the necessary communications to the grid system operators,
  7. regarding rights to information for the Federal Network Agency from other authorities where this is necessary for the auctions,
  8. regarding the information to be transmitted pursuant to numbers 1 to 7,
  9. to authorise, taking account of the purpose and aim pursuant to Section 1, the Federal Network Agency to make stipulations pursuant to Section 29 subsection 1 of the Energy Industry Act regarding the auctions including the details of the regulations pursuant to numbers 1 to 8.

## **Section 88a**

### **Authorisation to issue ordinances on cross-border auctions**

(1) The Federal Government shall be authorised to issue an ordinance without the approval of the Bundesrat under the preconditions cited in Section 5 creating rules on auctions which are open to installations within the federal territory and in one or several other Member States of the European Union, and particularly

1. to regulate that an entitlement to payment pursuant to this Act also exists for installations which have been erected in another Member State of the European Union if
  - a) the installation operator holds an award or a payment authorisation which has been issued in the context of an award in an auction, and
  - b) the other preconditions for the payment entitlement pursuant to this Act are met, to the extent that no different rules have been provided in the ordinance on the basis of the following numbers,
2. in derogation of Sections 23 to 55a rules on the procedure and content of the auctions, in particular
  - a) regarding the total installed capacity in a calendar year to be auctioned in megawatts, whereby the annual volume of the auctions shall not exceed 5 percent of the annual capacity to be installed,

- b) regarding the number of auctions per year and the breakdown of the annual auction volume amongst the auctions in a year,
  - c) regarding the stipulation of maximum values,
  - d) to limit the entitlement pursuant to Section 19 subsection 1 to installations on certain sites,
  - e) to limit the size of the installations and in derogation of Section 24 subsection 1 and 2 to control the composition of installations,
  - f) to impose requirements which serve the grid system or system integration of the installations,
3. in derogation of Sections 30, 31, 33, 34, 36d, 37, 37c and 39 to 39h to regulate requirements for participation in the auctions, in particular
- a) to impose minimum requirements on the suitability of the participants,
  - b) to stipulate minimum or maximum limits for bids or partial lots,
  - c) to impose requirements on the state of planning or authorisation of the installations,
  - d) to impose financial requirements on participation in the auction,
  - e) to impose requirements regarding the nature, the form and the content of securities to be provided by all participants or only in the case of being awarded funding in order to ensure the commissioning and operation of the installation, and the corresponding rules on the partial or complete repayment of these securities,
  - f) to stipulate how participants have to furnish proof of compliance with the requirements pursuant to letters a to e,
4. the nature, the form, the procedure, the content of the award, the criteria for the issuing of the award and the stipulation of the value of the award,
5. to regulate the nature, the form and the content of the payment entitlements provided by an award, and particularly to regulate
- a) that the payments for electrical output per kilowatt-hour are to be made, including in derogation of the provisions in Sections 19 to 55a and Annex 1 and 3,
  - b) under what preconditions the payments are made; here, it is particularly possible to make
    - aa) stipulations deviating from Section 27a,
    - bb) stipulations to prevent double payments by two states and
    - cc) stipulations deviating from Section 80 subsection 2 on the issuance of guarantees of origin,
  - c) how the level and duration of the payments is calculated and

- d) how the site conditions influence the level of the payments,
6. to make rules to ensure the erection, commissioning and operation of the installations, in particular if an installation is not commissioned or is commissioned late or is not operated to a sufficient degree,
    - a) to provide for an obligation to pay money and to regulate the level and the preconditions for the obligation to pay,
    - b) to stipulate criteria for an exclusion of bidders from future auctions, and
    - c) to provide for the possibility to withdraw or to alter and then reissue the awards or payment authorisation issued in the context of the auctions after a certain period, or to alter the duration or level of the entitlement to support after the expiry of a certain period,
  7. regarding the nature, the form and the content of the publications of the auctions, the outcome of the auctions and the necessary communications to the grid system operators,
  8. regarding the transferability of awards or payment authorisation to support before the commissioning of the installation and their binding allocation to an installation, in particular
    - a) regarding the deadlines, formal requirements and communication obligations to be observed,
    - b) regarding the group of entitled persons and the requirements to be imposed on them,
  9. to regulate that in derogation of Section 5 the electricity does not have to be generated in the federal territory or fed into a grid system in the federal territory,
  10. regarding the affected party challenging the entitlement who is obliged to make the payments, regarding the reimbursement of the corresponding costs and regarding the preconditions for the entitlement to payment in derogation of Sections 19 to 27, 51 to 54,
  11. regarding the scope of the payments and the pro-rata payments for the electricity generated on the basis of this Act by another Member State of the European Union,
  12. regarding the information to be transmitted pursuant to numbers 1 to 11 and the protection of the personal data transmitted in this context,
  13. in derogation of Section 6 subsection 2, Section 35, Sections 70 to 72 and 75 to 77, of the ordinance pursuant to Section 93 and of the ordinance pursuant to Section 111f of the Energy Industry Act to regulate communication and publication obligations,
  14. in derogation of Sections 8 to 18 to make rules on the grid system and system integration,

15. in derogation of Sections 56 to 61a and the ordinance pursuant to Section 91 to make rules regarding the obligations to bear costs and the nationwide equalisation of the costs of the financial support for the installations,
16. in derogation of Section 81 to make rules on the avoidance or settlement of disputes by the clearing house and to provide rules which derogate from Section 85 regarding the powers of the Federal Network Agency,
17. to regulate which law and which place of jurisdiction is to be applied in the case of disputes about the payments or the auction.

(2) The Federal Government shall be authorised to issue an ordinance without the approval of the Bundesrat for operators of installations to generate electricity from renewable energy sources which have been erected within Germany and which have an entitlement to payment under a support system of another Member State of the European Union,

1. in derogation of Sections 19 to 87 to regulate the level of the financial support or the removal of the entitlement pursuant to Sections 19 and 50 if there is an entitlement to support from another Member State,
2. to regulate the extension of the prohibition of multiple sale pursuant to Section 80 to these installations and
3. in derogation of Section 15 to regulate the compensation.

(3) The Federal Government shall be authorised to provide rules in the form of an ordinance without the approval of the Bundesrat

1. to authorise, taking account of the purpose and aim pursuant to Section 1, the Federal Network Agency to make stipulations pursuant to Section 29 subsection 1 of the Energy Industry Act regarding the auctions including the details of the regulations pursuant to subsections 1 to 2 and
2. to authorise the Federal Ministry for Economic Affairs and Energy, in the context of agreements under international law with the other Member States of the European Union giving consideration to the purpose and aim pursuant to Section 1 and the provisions of Section 5
  - a) to make rules with other Member States of the European Union on the auctions, including the shaping of the rules pursuant to subsections 1 and 2,
  - b) to regulate the preconditions for the admissibility of the payments to operators of installations in the federal territory under the funding system of the other Member State of the European Union and
  - c) to transfer the tasks of the auctioning body pursuant to subsection 1 or 2 to a public or private body in the Federal Republic of Germany or in another Member State of the European Union and to stipulate who must make the payments to the installation operators.

(4) The Federal Government shall be authorised to regulate different variations in the ordinance pursuant to subsections 1 and 2 and, in the context of agreements under international law with other Member States of the European Union

1. to decide which of the regulations made in the ordinance pursuant to subsections 1 and 2 should be applied in the context of the auction with the respective Member State of the European Union and
2. to regulate which public or private body in the Federal Republic of Germany or in another Member State of the European shall be the auctioning body pursuant to subsections 1 and 2 and who must make the payments to the installation operators.

### **Section 88b**

#### **Authorisation to issue ordinances on grid expansion areas**

The Federal Ministry for Economic Affairs and Energy shall be authorised to issue ordinances without the approval of the Bundesrat to establish and design a grid expansion area giving consideration to Section 36c and regulating

1. which geographical area is covered by the grid expansion area,
2. from which point in time and for which period the grid expansion area is stipulated and
3. how high the maximum share of installed capacity of onshore wind energy installations may be in the grid expansion area in the awards in a calendar year or an auction round and how this installed capacity shall be distributed amongst the auctions in the calendar year.

### **Section 88c**

#### **Authorisation to issue ordinances on joint auctions for onshore wind and solar installations**

The Federal Ministry for Economic Affairs and Energy shall be authorised, in the form of an ordinance without the approval of the Bundesrat on the trialling of joint auctions pursuant to Section 39i

1. to regulate that for an auction volume of 400 megawatts per year auctions shall be carried out in which onshore wind energy installations and solar installations can participate, including the number of auctions per year and the bid deadlines and the distribution of the auction volumes amongst the bid deadlines,
2. to regulate which solar installations and onshore wind energy installations can participate in this auction, also in derogation of Section 22,
3. also in derogation of Section 22 and Sections 28 to 38b, whereby the requirements for onshore wind energy installations and solar installations can be stipulated differently, to regulate



- a) that in derogation of Section 22 onshore wind energy installations shall have an entitlement to a payment pursuant to Section 19 only after the issuance of a payment authorisation and that in derogation of Section 22 solar installations shall have an entitlement to a payment pursuant to Section 19 purely on the basis of the award,
  - b) the maximum values, whereby differentiated maximum values may be introduced in order to avoid overfunding and to take account of grid system and system integration costs,
  - c) maximum and minimum limits for the size of installations which can participate in the auction,
  - d) maximum and minimum limits for the size of the bid,
  - e) minimum requirements on the suitability of the participants,
  - f) minimum requirements on the state of planning or authorisation of the installations,
  - g) financial requirements for participation in the auction,
  - h) the nature and form of financial securities for the realisation of the installations,
  - i) the nature, the form, the procedure and the content of the award,
  - j) the preconditions for the issuance of funding entitlements,
  - k) the transferability of awards prior to the commissioning of the installation and the transferability of funding entitlements prior to the binding allocation to an installation including
    - aa) the formal requirements, deadlines and communication obligations to be observed and
    - bb) the group of entitled persons and installations and the requirements to be imposed on them,
  - l) what documentation has to be presented for letters a to k,
4. also in derogation of Sections 5 to 55a
- a) to regulate that certain types of sites or regions are excluded from being sites for installations or to limit quantities of a technology or of all technologies which receive awards in certain regions or on certain categories of sites,
  - b) to impose requirements which serve the grid system and system integration of the installations,
  - c) to provide for additions or deductions from the award price which reflect the costs of the integration of the installation into the electricity system; here, the level of the additions and deductions can in particular take account of
    - aa) the region in which the installations is connected,

- bb) the influence it has on the grid system load,
  - cc) the feed-in profile of the installation,
  - dd) the grid system level at which the installations is connected,
  - ee) how many installations with a comparable feed-in profile have already been installed in the respective region and
  - ff) what further costs are caused by the system integration of the installation,
- d) to regulate the criteria for the issuance of the award particularly with a view to permitting the criteria pursuant to letter c to be used in the ranking of the bids,
  - e) to regulate the procedure for the determination of the award value,
  - f) to regulate the calculation of the duration and level of the payment pursuant to Section 19,
  - g) to provide for one-off payments by the installations to the grid system operator for the connection of the installation to the grid system, which
    - aa) reflect possible grid system expansion costs for individual cases or for standardised case groups and
    - bb) which are forwarded to the transmission system operators and relieve their EEG account,
  - h) necessary documentation,
5. to make rules, also in derogation of Sections 36, 36a, 37, 37a, 55 and 55a, to ensure the erection, commissioning and operation of the installations and in particular
- a) to stipulate an obligation for a monetary payment and its level which accrues in the case of a violation of the obligation to erect an installation on schedule or in the case of inadequate operation of the installation,
  - b) criteria for an exclusion of bidders or installation sites from future auctions,
  - c) regarding the possibility to withdraw awards and funding entitlements following the expiry of the realisation deadlines and
  - d) the restriction of the duration or level of the remuneration entitlement for installations which have violated the obligations to erect on schedule or to operate adequately.

### **Section 88d**

#### **Authorisation to issue ordinances on innovation auctions**

The Federal Government shall be authorised to provide rules in the form of an ordinance without the approval of the Bundesrat introducing innovation auctions for installations that particularly serve the needs of the grid system or the system pursuant to Section 39j; to this end, it can make rules

1. regarding the procedure and content of the auctions, in particular
  - a) on the breakdown of the volume of the pilot innovation auction into smaller quantities and the exclusion of installations, whereby a distinction can particularly be made
    - aa) between regions and grid system levels,
    - bb) based on provisions from the point of view of the grid system and system,
  - b) regarding the determination of minimum and maximum volumes of partial lots,
  - c) regarding the stipulation of maximum values and
  - d) regarding the formation of prices and the course of the auctions,
2. in derogation of Sections 19 to 35a regarding the nature, form and content of the payment entitlements to be issued by an award
  - a) for electrical output per kilowatt-hour,
  - b) for the provision of installed or provided capacity to serve the system in euros per kilowatt,
  - c) for the provision of a system service as a payment for the output and the service provided,
3. regarding special award and payment requirements which establish the innovative nature, and particularly regarding
  - a) innovative approaches to the construction and operation of installations designed to serve the system,
  - b) innovative contributions by installations to optimised grid system operation with high shares of renewable energy sources,
  - c) innovative approaches to enhancing flexibility,
  - d) innovative contributions by installations to grid system stability or security,
  - e) an increased use of installations for system services,
  - f) innovative approaches to reducing the curtailment of installations and
  - g) the documentation of the existence of the preconditions for award and payment,
4. regarding the requirements for participation in the auctions, in particular
  - a) to impose minimum requirements on the suitability of the participants,
  - b) to impose requirements on the state of planning and authorisation of the projects,
  - c) to impose requirements regarding the nature, the form and the content of securities to be provided by all participants in the auctions or only in the case of being awarded funding in order to ensure the commissioning and operation of the installation, and the corresponding rules on the partial or complete repayment of these securities,

- d) to stipulate how participants in the auctions have to furnish proof of compliance with the requirements pursuant to letters a to c,
5. regarding the nature, the form and the content of the award of funding in the context of an auction and regarding the criteria for the award, in particular if the award is not to be issued solely on the basis of the lowest-cost bid,
    - a) assessment criteria for the evaluation of the innovative nature and its influence on the likelihood of an award and
    - b) assessment criteria for the evaluation of the contribution to service to the grid system and the system and its influence on the likelihood of an award,
  6. regarding requirements which are intended to ensure the operation of the installations, in particular if an installation is not commissioned or is commissioned late or is not operated to a sufficient degree,
    - a) a lower limit for the service auctioned and awarded funding in the form of output or service,
    - b) to provide for a reduction in or removal of the financial support if the lower limit pursuant to letter a is not reached,
    - c) to provide for an obligation to pay money and to regulate the level and the preconditions for the obligation to pay,
    - d) to stipulate criteria for an exclusion of bidders from future auctions, and
    - e) to provide for the possibility to withdraw or to alter and then reissue the awards issued in the context of the auctions after a certain period, or to alter the duration or level of the entitlement pursuant to Section 19 subsection 1 after the expiry of a certain period,
  7. regarding the nature, the form and the content of the publications of the announcement of auctions, the outcome of the auctions and the necessary communications to the grid system operators,
  8. regarding rights to information for the Federal Network Agency from the grid system operators and other authorities where this is necessary for the auctions,
  9. regarding the information to be transmitted pursuant to numbers 1 to 7,
  10. to authorise, taking account of the purpose and aim pursuant to Section 1, the Federal Network Agency to make stipulations regarding the auctions including the details of the regulations pursuant to numbers 1 to 8.

## **Section 89**

### **Authorisation to issue ordinances on the generation of electricity from biomass**

- (1) The Federal Government shall be authorised to provide rules in the form of an ordinance without the approval of the Bundesrat within the scope of application of Sections 42 to 44 to regulate

1. what substances are regarded as biomass and
2. what technical procedures may be applied to generate electricity.

(2) The Federal Government shall further be authorised to provide rules in the form of an ordinance without the approval of the Bundesrat within the scope of application of Section 44b subsection 5 number 2 regarding requirements for a mass balance system to trace back gas taken from a natural gas system.

## **Section 90**

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

The Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety shall be authorised to issue an ordinance without the approval of the Bundesrat in consensus with the Federal Ministry for Economic Affairs and Energy and the Federal Ministry of Food and Agriculture

1. to regulate that the entitlement to payment pursuant to Section 19 subsection 1 and Section 50 for electricity from solid, liquid or gaseous biomass shall exist only if the biomass used to generate electricity meets the following requirements:
  - a) certain ecological and other requirements in terms of sustainable cultivation and the areas used for cultivation, particularly for the protection of natural habitats, of grassland with high biodiversity value within the meaning of Directive 2009/28/EC and of areas with high carbon stocks,
  - b) certain ecological and social requirements in terms of sustainable production,
  - c) a certain greenhouse-gas reduction potential which must at least be attained in the electricity generation,
2. to regulate the requirements pursuant to number 1 including the rules to determine the greenhouse-gas reduction potential pursuant to number 1 letter c,
3. to stipulate how installation operators must furnish proof of compliance with the requirements pursuant to numbers 1 and 2; this shall include rules
  - a) on the content, the form and the duration of validity of this proof including rules to recognise documents which have been recognised pursuant to the law of the European Union or another state as proof of the compliance with the requirements pursuant to number 1,
  - b) on the inclusion of systems and independent control bodies in the keeping of the proof and
  - c) on the requirements to be met by the recognition of systems and independent control bodies and on the measures to monitor this including necessary rights to obtain information, access and test samples and to issue instructions and the right of the competent authority or independent control bodies to enter land, business, operating and storage rooms during normal business or operating

hours and means of transport to the extent necessary for the monitoring or control,

4. to entrust the Federal Office for Agriculture and Food with tasks which ensure compliance with the requirements regulated in the ordinance pursuant to numbers 1 to 3, particularly with the more detailed provisions of the requirements regulated in the ordinance on the basis of numbers 1 and 2 and with the assumption of tasks pursuant to number 3.

## **Section 91**

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

In order to further develop the nationwide equalisation scheme, the Federal Government shall be authorised to regulate by ordinance without the approval of the Bundesrat

1. that rules can be imposed on the selling of the electricity purchased commercially pursuant to this Act, including
  - a) the possibility to offset tariff payments and transaction costs via financial incentives or to involve transmission system operators in the profits and losses made in the selling,
  - b) the monitoring of the selling,
  - c) requirements imposed on the selling, payment and determining of the EEG surcharge including publication and transparency obligations, deadlines and transitional arrangements for financial equalisation,
2. that the transmission system operators can be authorised to do the following, and the preconditions under which this can take place:
  - a) to conclude contractual agreements with installation operators which, giving appropriate consideration to the priority feed-in, serve to optimise the selling of the electricity; this shall include the consideration of the costs arising from such agreements in the context of the equalisation scheme, to the extent that they are economically reasonable,
  - b) to curtail the feed-in from installations which are commissioned after 31 December 2015 in the event of lasting negative prices,
3. that the transmission system operators can be obliged to maintain a joint, transparent EEG account, particularly for the offsetting of the revenues from sales, the necessary transaction costs and the tariff payments,
4. that the transmission system operators can be obliged jointly, on the basis of the forecast quantities of electricity from renewable energy sources and mine gas, to determine the likely costs and revenues including a liquidity reserve for the following calendar year and, netting the balance of the EEG account for the following calendar year, a uniform nationwide EEG surcharge for the following calendar year, and to publish them in a non-personal form,

5. that the tasks of the transmission system operators can be wholly or partially transferred to third parties which have been determined by means of a competitive, objective, transparent and non-discriminatory procedure; this shall include rules for the procedure to be carried out for this including the competitive procedure for the services provided by the transmission system operators in the context of the nationwide equalisation or the quantities of EEG electricity and the possibility to regulate the assumption of tasks by third parties in a different way from that of the transmission system operators,
6. the necessary adaptations to the rules of direct selling and the necessary adaptations of the special equalisation scheme for electro-intensive undertakings and railway undertakings, of the regulation of the possibility for retrospective correction, of the powers of the Federal Network Agency, of the obligations to transmit and publish information, and of the EEG surcharge to the further developments in the special equalisation scheme,
7. that in the case of Section 61 the EEG surcharge for electricity from installations or other electricity-generating installations must in derogation of Sections 60 and 61 be paid to the grid system operator to whose grid system the installation is connected, and this grid system operator shall pass on the payment to the transmission system operator; here, entitlements to payment of the EEG surcharge can be netted, also in derogation of Section 27, against entitlements to payment pursuant to Section 19 subsection 1 or Section 50, and it can be regulated
  - a) when payments or advance payments must be made towards the EEG surcharge and
  - b) how the obligations to communicate and publish shall be adapted, also in derogation of Sections 70 to 76.

## **Section 92**

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

The Federal Ministry for Economic Affairs and Energy shall be authorised, in consensus with the Federal Ministry of Justice and Consumer Protection, to issue ordinances without the approval of the Bundesrat

1. to regulate the requirements for
  - a) the issuing, transfer and cancellation of guarantees of origin pursuant to Section 79 subsection 1 and of guarantees of regional origin pursuant to Section 79a subsection 1 and
  - b) the recognition of guarantees of origin pursuant to Section 79 subsection 3,
2. to stipulate the content, form and length of validity of the guarantees of origin and of the guarantees of regional origin,

3. to regulate the procedure for the issuing, recognition, transfer and cancellation of guarantees of origin and for the issuing, recognition, transfer and cancellation of guarantees of regional origin and to stipulate how applicants have to furnish proof of compliance with the requirements pursuant to number 1,
4. to regulate the design of the register of guarantees of origin pursuant to Section 79 subsection 4 and of the register of guarantees of regional origin pursuant to Section 79a subsection 4 and to stipulate what data must be transmitted to these registers and who is obliged to transmit the data and to what extent grid system operators can demand information about the issuing, transfer and cancellation of guarantees of regional origin; this shall include rules on the protection of personal data, in which the nature, scope and purpose of the storage and deletion deadlines must be stipulated,
5. in derogation of Section 79 subsection 7 and of Section 79a subsection 10 to regulate that guarantees of origin or guarantees of regional origin shall be financial instruments within the meaning of Section 1 subsection 11 of the Banking Act or of Section 2 subsection 2b of the Securities Trading Act,
6. in derogation of Section 78 to regulate the designation of electricity in the context of electricity labelling for which a payment is claimed pursuant to Section 19; here, in particular in derogation of Section 79 subsection 1, the issuing of guarantees of origin for this electricity to the transmission system operators can be regulated,
7. within the scope of Section 79b subsection 6 to regulate and to publish which post code areas form one or several post code areas in which electricity is consumed for the regional labelling of green electricity,
8. for electricity from installations outside the federal territory which have received an award in an auction pursuant to Section 5 subsection 2 sentence 2:
  - a) to define which areas are covered by the respective region in the relevant states for the regional labelling of green electricity pursuant to Section 79a subsection 6, and to regulate the publication of these areas,
  - b) to regulate requirements regarding the issuing, transfer and cancellation of guarantees of regional origin from installations in areas pursuant to letter a,
9. to stipulate in derogation of Section 53b the amount by which the value to be applied for installations with values determined by statute is reduced,
10. within the scope of Section 79a subsection 5 sentence 3 to make rules regarding the documentation that the guarantees of regional origin have only been transferred along the contractual supply chain,
11. to regulate the specific design of the designation of the regional origin pursuant to Section 79a in the electricity labelling, and particularly the wording and graphic design.



## **Section 93**

### **Authorisation to issue ordinances on the register of installations**

In order to design the register of installations pursuant to Section 6 subsection 2, the Federal Ministry for Economic Affairs and Energy shall be authorised to issue ordinances without the approval of the Bundesrat to regulate:

1. the data pursuant to Section 6 subsection 2 and other data which must be transmitted to the register of installations, including the requirements in terms of the type, the format, the scope and the preparation; the other data shall in particular include data about:
  - a) the self-supply from the installation,
  - b) the date of commissioning of the installation,
  - c) technical characteristics of the installation,
  - d) the grid system to which the installation is connected,
2. who must transmit the other data pursuant to number 1, in particular whether the installation operator, grid system operator, public bodies or other persons are obliged to transmit the data,
3. the procedure to register the installations including the deadlines and the rule that the registration by installation operators must in derogation of Section 6 subsection 2 be made by a third party who shall be obliged to transfer the data to the register of installations,
4. the review of the data stored in the register of installations including obligations of installation operators and grid system operators to cooperate,
5. that changes in the form of sale in derogation of Section 21c subsection 1 must be notified to the register of installations, including the deadlines for the data transmission and stipulations of format and procedure,
6. that the data shall be compared with the data of the register of guarantees of origin pursuant to Section 79 subsection 3 or with other registers and data sets to be set up or compiled
  - a) on the basis of this Act or an ordinance enacted on its basis,
  - b) on the basis of the Energy Industry Act or an ordinance or stipulation enacted on its basis or
  - c) on the basis of the Act against Restraints of Competition or an ordinance or stipulation enacted on its basis, to the extent that the provisions governing these registers and data sets do not prevent a comparison,
7. that data of the installation operators on installations requiring authorisation shall be compared with data of the competent authorising authority,

8. what registered data shall be published in the internet; here, giving appropriate consideration to data protection, a high degree of transparency shall be aimed at; this shall also include provisions on the necessary publications to review the construction of additional installations to generate electricity from biomass, onshore wind energy installations and solar installations and the respective values to be applied pursuant to Sections 44a, 46 and 49,
9. the obligation of the grid system operators to call up the current feed-in of installations registered in the register of installations and equipped with technical devices within the meaning of Section 9 subsection 1 number 2 and to transmit these data to the register of installations, including the deadlines and the demands in terms of the type, the formats, the scope and the preparation of the data to be transmitted,
10. the relationship to the obligations to transmit and publish information pursuant to Sections 70 to 73; here, it shall particularly be possible to regulate the extent to which data contained and published in the register of installations no longer have to be transmitted and published pursuant to Sections 70 to 73 from the point in time of their publication,
11. the nature and scope of the forwarding of the data to
  - a) grid system operators to fulfil their tasks pursuant to this Act and the Energy Industry Act,
  - b) public bodies to fulfil their tasks relating to the development of renewable energies,
  - c) third parties to the extent necessary for them to fulfil their tasks pursuant to letter b or to the extent that there is a justified interest in the data for which publication pursuant to number 8 is not sufficient; contact data of installation operators may not be forwarded to third parties,
12. the authorisation of the Federal Network Agency to regulate, by stipulation pursuant to Section 29 of the Energy Industry Act:
  - a) further data to be transmitted by installation operators or grid system operators to the extent necessary pursuant to Section 6 subsection 1 sentence 2,
  - b) that in derogation of an ordinance pursuant to number 1 certain data no longer have to be transmitted if they are no longer required pursuant to Section 6 subsection 1 sentence 2; the contact data of the installation operators shall be excepted from this,
  - c) the type and scope of an extended access to data in the register of installations for certain groups of people to improve market and grid system integration,
13. rules to protect personal data related to the data to be transmitted pursuant to numbers 1 to 11, in particular obligations to explain, provide and delete information,

14. the transfer of the register of installations into the core market data register pursuant to Section 6 subsection 1 sentence 3 and 4 including the transition deadlines and rules on the transfer of the already registered data.

## **Section 94**

### **Authorisations to issue ordinances on the special equalisation scheme**

The Federal Ministry for Economic Affairs and Energy shall be authorised to issue ordinances without the approval of the Bundesrat

1. to regulate provisions to stipulate efficiency requirements which are to be applied in the calculation of the standardised electricity consumption in the context of the calculation of the electricity cost intensity pursuant to Section 64 subsection 6 number 3, in particular to stipulate electricity efficiency reference values which correspond to the status of advanced electricity-efficient production technologies, or other efficiency requirements, so that not the actual electricity consumption but the standardised electricity consumption can be used to calculate the electricity costs; here, it shall be possible
  - a) to take account of prior improvements made by undertakings by investing in advanced production technologies, or
  - b) to draw on findings from the information on the operation of energy or environmental management systems or alternative systems to improve energy efficiency by the undertakings pursuant to Section 69 sentence 2 number 1 and 2,
2. to stipulate what average electricity prices pursuant to Section 64 subsection 6 number 3 have to be taken as a basis for the calculation of the electricity cost intensity of an undertaking and how these electricity prices are calculated; here, in particular,
  - a) electricity prices can be formed for various groups of undertakings with similar electricity consumption or patterns of electricity consumption which reflect the realities of the electricity market, and
  - b) available statistical surveys of electricity prices in industry can be taken into consideration,
3. to include sectors in or remove them from Annex 4 as soon as and to the extent that this is necessary for an alignment with decisions by the European Commission.

## **Section 95**

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

The Federal Government shall also be authorised to provide rules in the form of an ordinance without the approval of the Bundesrat

1. to regulate the calculation procedure for the compensation pursuant to Section 15 subsection 1, in particular a generalised procedure to determine the lost revenues and saved expenses, and a procedure to furnish proof for the calculation of the individual case,
2. in order to promote tenants' electricity models, to regulate that operators of solar installations must pay a reduced EEG surcharge for electricity from their solar installation if
  - a) the solar installation is installed on, affixed to or in a building and
  - b) the electricity is supplied to a third party for use within the building on, affixed to or in which the installation is installed; here, a distinction can be made between different sizes of installation or user groups,
3. to regulate for the calculation of the market premium pursuant to number 1.2 of Annex 1 to this Act for electricity from installations which were commissioned before 1 August 2014 pursuant to the definition of commissioning in force on 31 July 2014 the level of the increase in the "AW" value to be applied in each case in derogation of Section 100 subsection 2 number 8 for electricity which is directly sold following the entry into force of this Act, including from installations which first claimed the market premium before the entry into force of this Act; here, different values can be stipulated for different sources of energy or for selling on different markets and negative values can also be stipulated,
4. in addition to Annex 2 to regulate stipulations to determine and apply the reference yield,
5. to regulate requirements for wind energy installations to improve grid system integration (system services), in particular
  - a) for onshore wind energy installations requirements
    - aa) in terms of the behaviour of the installations in the event of error,
    - bb) in terms of the voltage stability and provision of reactive power,
    - cc) in terms of the frequency stability,
    - dd) in terms of the procedure to furnish proof,
    - ee) in terms of the rebuilding of supply and
    - ff) in terms of the expansion of existing wind farms and
  - b) for onshore wind installations which were commissioned before 1 January 2012, requirements
    - aa) in terms of the behaviour of the installations in the event of error,
    - bb) in terms of the frequency stability,
    - cc) in terms of the procedure to furnish proof,
    - dd) in terms of the rebuilding of supply and

ee) in terms of the retrofitting of existing installations in existing wind farms.

## **Section 96**

### **Common provisions**

- (1) The ordinances enacted on the basis of Sections 88, 88c, 88d, 89, 91, 92 and 95 number 2 shall require the approval of the Bundestag.
- (2) If ordinances require the approval of the Bundestag pursuant to subsection 1, this approval can be made dependent on the inclusion of its desired changes. If the authority issuing the ordinance includes the changes, the Bundestag shall not need to reconsider the adoption of the ordinance. If the Bundestag has not considered the ordinance following the expiry of six weeks of session following the receipt of the ordinance, its approval of the unchanged ordinance shall be deemed to have been given.
- (3) The authorisation to issue ordinances on the basis of Sections 88b, 91 can be transferred to a higher federal authority by ordinance without the approval of the Bundesrat and in the case of Sections 91 and 92 with the approval of the Bundestag. The ordinances which are enacted by the higher federal authority on this basis shall not require the approval of the Bundesrat or the Bundestag.

## **Division 2**

### **Reports**

#### **Section 97**

##### **Progress report**

- (1) The Federal Government shall evaluate this Act and the Offshore Wind Energy Act and shall present a progress report to the Bundestag by 30 June 2018 and every four years thereafter. In the report, it shall report in particular on
  1. the state of the development of renewable energy sources and the attainment of the objectives pursuant to Section 1 subsection 2 and the quantity of oil and gas saved and the amount of greenhouse gases reduced as a result,
  - 2, the experience with auctions pursuant to Section 2 subsection 3, also in the light of the aim of maintaining stakeholder diversity; this shall also include experience with cross-border and technology-neutral auctions, and
  3. the development and appropriate distribution of the costs pursuant to Section 2 subsection 4, also in the light of the development of the special equalisation scheme and self-supply.
- (2) In the progress report, the Federal Government shall present necessary recommendations for action for the future development of this Act and of the Offshore Wind Energy Act, particularly with a view to Sections 1 and 2 of this Act and Section 1 of the Offshore Wind Energy Act.

(3) The Federal Network Agency, the Federal Office for Economic Affairs and Export Control and the Federal Environment Agency shall support the Federal Ministry for Economic Affairs and Energy as it drafts the progress report. In particular, the Federal Network Agency shall report to it by 31 October 2017 and annually thereafter on the use of sites for ground-mounted installations, and particularly the use of farmland. In order to obtain support in the drafting of the progress report, the Federal Ministry for Economic Affairs and Energy shall also commission scientific studies.

## **Section 98**

### **Monitoring report**

The Federal Government shall report to the Bundestag annually in its monitoring report pursuant to Section 63 subsection 1 of the Energy Industry Act about the state of the expansion of renewable energy sources.

## **Section 99 (repealed)**

## **Division 3**

### **Transitional provisions**

## **Section 100**

### **General transitional provisions**

(1) The provisions of the Renewable Energy Sources Act in the version in force on 31 December 2016 and of the Ground-mounted PV Auction Ordinance in the version in force on 31 December 2016 shall

1. be applied for electricity from installations which were commissioned before 1 January 2017 instead of Sections 7, 21, 22, 22a, 23 subsection 3 number 1, 3, 5 and 7, Sections 27a to 39e, 39g and 39h, 40 to 49, 50a, 52 subsection 2 sentence 1 number 3, Sections 53 and 53a, Sections 54 to 55a and Annex 2,
2. for electricity from ground-mounted installations which were allocated an award which was issued before 1 January 2017 pursuant to the Ground-mounted PV Auction Ordinance,
  - a) be applied instead of Sections 22, 22a, 27a to 39h and Sections 54 to 55a,
  - b) be applied instead of Section 24 if the ground-mounted installation was commissioned before 1 January 2017; for ground-mounted installations which were commissioned after 31 December 2016, Section 24 shall be applied instead of Section 2 number 5 second half-sentence of the Ground-mounted PV Auction Ordinance.

Section 3 number 1 shall be applied to installations which were commissioned before 1 January 2017 for the first time in the annual accounts for 2016. Section 46 subsection 3 shall also be applied to installations which were commissioned after 1 January 2012. For electricity from installations which were commissioned before 1 January 2016, Section 51 shall not be applied. Section 52 subsection 3 shall only be applied for payments for electricity which is fed in after 31 December 2015; until this time, the corresponding provision of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied. Section 80a shall not be applied to installations which were commissioned before 1 January 2012.

(2) For electricity from installations and CHP installations which were commissioned before 1 August 2014 pursuant to the definition of commissioning in force on 31 July 2014, the provisions of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied with the proviso that

1. instead of Section 5 number 21 of the Renewable Energy Sources Act in the version in force on 31 December 2016, Section 3 number 5 of the Renewable Energy Sources Act in the version in force on 31 July 2014 shall be applied,
2. instead of Section 9 subsection 3 and 7 of the Renewable Energy Sources Act in the version in force on 31 December 2016, Section 6 subsection 3 and 6 of the Renewable Energy Sources Act in the version in force on 31 July 2014 shall be applied,
3. Section 25 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied with the following provisos:
  - a) the entitlement to tariff payments of the Renewable Energy Sources Act in the version applicable to the respective installation shall apply in place of the value to be applied pursuant to Section 23 subsection 1 sentence 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016 and
  - b) for operators of installations to generate electricity from solar radiation energy which were commissioned after 31 December 2011, Section 25 subsection 1 sentence 1 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied as long as the installation operator has not registered the installation pursuant to Section 17 subsection 2 number 1 letter a of the Renewable Energy Sources Act in the version in force on 31 July 2014 as a supported installation within the meaning of Section 20a subsection 5 of the Renewable Energy Sources Act in the version in force on 31 July 2014 and has not transmitted the location and the installed capacity of the installation to the Federal Network Agency by means of the forms provided by it;

4. instead of Sections 26 to 31, Section 40 subsection 1, Sections 41 to 51, 53 and 55, 71 number 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016: Sections 20 to 20b, 23 to 33, 46 number 2 and Annexes 1 and 2 of the Renewable Energy Sources Act in the version in force on 31 July 2014 shall be applied, whereby Section 33c subsection 3 of the Renewable Energy Sources Act in the version in force on 31 July 2014 shall be applied mutatis mutandis; in derogation of this, Section 47 subsection 7 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied mutatis mutandis exclusively for installations which were commissioned after 31 December 2011 pursuant to the definition of commissioning in force on 31 July 2014,
5. Section 35 sentence 1 number 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied from 1 April 2015,
6. Section 37 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied mutatis mutandis with the exception of Section 37 subsection 2 and 3 second half-sentence of the Renewable Energy Sources Act in the version in force on 31 July 2016,
7. for electricity from installations to generate electricity from hydropower which were commissioned before 1 January 2009, Section 23 of the Renewable Energy Sources Act in the version in force on 31 July 2014 shall be applied instead of Section 40 subsection 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016 if the measure pursuant to Section 23 subsection 2 sentence 1 of the Renewable Energy Sources Act in the version in force on 31 July 2014 was completed before 1 August 2014,
8. Annex 1 number 1.2 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied with the proviso that the value "AW" to be applied in each case shall, for electricity generated after 31 December 2014
  - a) from wind energy and solar radiation energy be increased by 0.40 cents per kilowatt-hour; in derogation of the first half-sentence, the value to be applied for electricity which was generated after 31 December 2014 and before 1 April 2015 shall be raised only by 0.30 cents per kilowatt-hour if the installation cannot be remotely controlled within the meaning of Section 36 of the Renewable Energy Sources Act in the version in force on 31 December 2016, or
  - b) from hydropower, landfill gas, sewage treatment gas, mine gas, biomass and geothermal energy be increased by 0.20 cents per kilowatt-hour,
9. Section 66 subsection 2 number 1, subsection 4, 5, 6, 11, 18, 18a, 19 and 20 of the Renewable Energy Sources Act shall be applied in the version in force on 31 July 2014,



10. for electricity from installations which were commissioned before 1 January 2012 pursuant to the definition of commissioning in force on 31 December 2011, in derogation of this and without prejudice to numbers 3, 5, 6, 7 and 8, Section 66 subsection 1 number 1 to 13, subsection 2, 3, 4, 14, 17 and 21 of the Renewable Energy Sources Act in the version in force on 31 July 2014 shall be applied, whereby the general application of the provisions of the Renewable Energy Sources Act in the version in force on 31 December 2011 as required by Section 66 subsection 1 first half-sentence shall not be applied, and the following provisos shall apply:
- a) instead of Section 5 number 4 of the Renewable Energy Sources Act in the version in force on 31 December 2016, Section 18 subsection 2 of the of the Renewable Energy Sources Act in the version in force on 31 December 2011 shall be applied mutatis mutandis and instead of Section 5 number 21 of the Renewable Energy Sources Act in the version in force on 31 December 2016 Section 3 number 5 of the Renewable Energy Sources Act shall be applied in the version in force on 31 December 2011; in derogation of this Section 3 subsection 4 of the Renewable Energy Sources Act in the version in force on 31 December 2008 shall be applied to installations which were renewed before 1 January 2009 pursuant to Section 3 subsection 4 second half-sentence of the Renewable Energy Sources Act in the version in force on 31 December 2008 exclusively for this renewal,
  - b) instead of Section 9 of the Renewable Energy Sources Act in the version in force on 31 December 2016, Section 6 of the Renewable Energy Sources Act in the version in force on 31 December 2014 shall be applied without prejudice to Section 66 subsection 1 number 1 to 3 of the Renewable Energy Sources Act in the version in force on 31 July 2014 with the following provisos:
    - aa) Section 9 subsection 1 sentence 2 and subsection 4 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied mutatis mutandis and
    - bb) in the case of violations, Section 16 subsection 6 of the Renewable Energy Sources Act in the version in force on 31 December 2011 shall be applied mutatis mutandis,
  - c) instead of Sections 26 to 29, 32, 40 subsection 1, Sections 41 to 51, 53 and 55, 71 number 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016: Sections 19, 20, 23 to 33 and 66 and Annexes 1 to 4 of the Renewable Energy Sources Act in the version in force on 31 December 2011 shall be applied,
  - d) instead of Section 66 subsection 1 number 10 sentence 1 and 2 of the Renewable Energy Sources Act in the version in force on 31 July 2014, Sections 20, 21, 34 to 36 and Annex 1 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied with the proviso that in derogation of Section 20 subsection 1 number 3 and 4 of the Renewable Energy

Sources Act in the version in force on 31 December 2016 the feed-in tariff pursuant to the provisions of the Renewable Energy Sources Act in the version applicable to the respective installation shall apply and that in the calculation of the market premium pursuant to Section 34 of the Renewable Energy Sources Act in the version in force on 31 December 2016 the value to be applied shall be the level of tariff in cents per kilowatt-hour which could actually be claimed for the directly sold electricity at the specific installation in the case of a tariff pursuant to the provisions on tariffs of the Renewable Energy Sources Act in the version applicable to the respective installation,

- e) instead of Section 66 subsection 1 number 11 of the Renewable Energy Sources Act in the version in force on 31 July 2014, Sections 52 and 54 and Annex 3 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied.

- 11. for installations which were commissioned before 1 January 2012, the duration of the entitlement to payment shall apply which is stipulated in the version of the Renewable Energy Sources Act which was to be applied at the time the installation was commissioned.

Subsection 1 sentence 3 to 6 shall also be applied to installations pursuant to sentence 1.

(3) For electricity from installations which

- 1. were commissioned before 1 August 2014 pursuant to the definition of commissioning in force on 31 July 2014 and
- 2. did not generate electricity exclusively from renewable energy sources or mine gas at any time before 1 August 2014,

Section 5 number 21 first half-sentence of the Renewable Energy Sources Act in the version in force on 31 July 2016 shall be applied. In derogation of sentence 1, the definition of commissioning in force on 31 July 2014 shall apply for installations pursuant to sentence 1 which exclusively use biomethane if the biomethane used to generate electricity from 1 August 2014 derives exclusively from gas processing installations which first fed biomethane into the natural gas system before 23 January 2014. For the entitlement to financial support for electricity from an installation pursuant to sentence 2 it shall be necessary to furnish proof that before its first operation exclusively with biomethane another installation was registered as finally decommissioned with all the information required in the register, which

- 1. was operated exclusively with biomethane before 1 August 2014 and
- 2. has at least the same installed capacity as the installation pursuant to sentence 2.

Decommissioning documentation pursuant to sentence 3 can also be used jointly for an installation pursuant to sentence 2 or divided up to cover several installations pursuant to sentence 2. For this purpose, the Federal Network Agency shall publish the data of the installations notified to the register which before they are finally decommissioned have generated electricity exclusively from biomethane, to the extent that the installation operator has not objected to this publication and as long as the decommissioned output is not being used by other installations. Sentence 2 shall be applied mutatis mutandis to installations which exclusively use biomethane which derives from a gas processing plant which is subject to approval pursuant to the Federal Immission Control Act and was approved before 23 January 2014 and which fed biomethane into the natural gas system for the first time before 1 January 2015 if the installation was not operated before 1 January 2015 with biomethane from another gas processing installation; if the installation is exclusively operated with biomethane for the first time after 31 December 2014, sentences 3 to 5 shall be applied mutatis mutandis.

(4) For electricity from installations which were commissioned after 31 July 2014 and before 1 January 2015, subsection 2 shall be applied if the installations are subject to approval pursuant to the Federal Immission Control Act and require a licence for their operation pursuant to another provision of federal law and were approved or licensed before 23 January 2014. Sentence 1 shall be applied mutatis mutandis to biomass installations with the proviso that a building permit must exist. Sentence 2 shall be applied retrospectively to 1 August 2014. If due to sentence 2 corrections of invoices for 2014 or 2015 are necessary, it shall be sufficient in addition to Section 62 for the installation operator to present a copy of the building permit and proof of the commissioning of the installation.

(5) For electricity from installations which were commissioned before 1 January 2012 pursuant to the definition of commissioning in force on 31 December 2011, there shall be a reduction for each calendar month in which installation operators have wholly or partially failed to meet obligations relating to retrofitting to ensure system stability on the basis of an ordinance pursuant to Sections 12 subsection 3a and 49 subsection 4 of the Energy Industry Act following the deadline set in the ordinance or the deadline set by the grid system operators in line with the ordinance,

1. in the entitlement to the market premium or the feed-in tariff for installations which are equipped with a technical device pursuant to Section 9 subsection 1 sentence 1 number 2 or sentence 2 number 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016 to zero or
2. in the entitlement arising in a calendar year to a feed-in tariff for installations which are not equipped with a technical device pursuant to Section 9 subsection 1 sentence 1 number 2 or sentence 2 number 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016 by one-twelfth.

(6) Number 3.1 sentence 2 of Annex 1 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall not be applied before 1 January 2015.

## Section 101

### Transitional provisions for electricity from biogas

(1) For electricity from installations to generate electricity from biogas which were commissioned before 1 August 2014 pursuant to the definition of commissioning in force on 31 July 2014, the entitlement to tariff payments shall be reduced to the monthly market value from 1 August 2014 pursuant to the provisions of the Renewable Energy Sources Act in the version applicable to the installation for each kilowatt-hour of electricity by which the maximum rated capacity of the installation reached before 1 August 2014 is exceeded; for installations to generate electricity from biogas which were commissioned before 1 January 2009, the entitlement to tariff payments shall be reduced mutatis mutandis pursuant to Section 8 subsection 1 of the Renewable Energy Sources Act of 21 July 2004 (Federal Law Gazette I p. 1918) in the version in force on 31 December 2008 with the proviso of the first half-sentence. The maximum rated capacity within the meaning of sentence 1 shall be the highest rated capacity of the installation in a calendar year since the point in time of its commissioning and before 1 January 2014. In derogation of sentence 2, the 5 percent reduced value of the installed capacity of the installation on 31 July 2014 shall be regarded as the maximum rated capacity if the value determined in this manner is higher than the actual maximum rated capacity pursuant to sentence 2. For electricity from installations pursuant to Section 100 subsection 4, sentences 1 to 3 shall be applied mutatis mutandis with the following provisos from 1 January 2017:

1. the remuneration entitlement shall decrease from 1 January 2017 to the extent that the maximum rated capacity is exceeded before 1 January 2017,
2. the highest rated capacity of the installation is in 2016,
3. in derogation of number 2, the 5 percent reduced value of the installed capacity of the installation on 31 December 2016 shall be regarded as the maximum rated capacity if the value determined in this manner is higher than the actual maximum rated capacity pursuant to number 2.

(2) For electricity from installations which were commissioned before 1 January 2012 pursuant to the definition of commissioning in force on 31 December 2011,

1. the entitlement to increase the bonus for electricity from regenerative raw materials pursuant to Section 27 subsection 4 number 2 in conjunction with Annex 2 number VI.2.c to the Renewable Energy Sources Act in the version in force on 31 December 2011 shall exist from 1 August 2014 only if material from landscape management including landscape management grass within the meaning of Annex 3 number 5 to the Biomass Ordinance in the version in force on 31 July 2014 is predominantly used to generate electricity,
2. Section 44c subsection 4 number 2 shall be applied for electricity which has been generated after 31 July 2014.

(3) For installations which were commissioned after 31 December 2011 and before 1 August 2014, the Biomass Ordinance in its version in force on 31 July 2014 shall continue to be applied after 31 July 2014.

## **Section 102 (repealed)**

### **Section 103**

#### **Transitional and hardship provisions for the special equalisation scheme**

(1) For applications for the year of limitation 2015, Sections 63 to 69 shall be applied with the following provisos:

1. Section 64 subsection 1 number 3 shall not be applied for undertakings with an electricity consumption of less than 10 gigawatt-hours in the last completed financial year if the undertaking demonstrates to the Federal Office for Economic Affairs and Export Control that it was not in a position to acquire a valid certificate pursuant to Section 64 subsection 3 number 2 within the application period.
2. Section 64 subsection 2 and 3 number 1 shall be applied with the proviso that instead of the arithmetic mean of the gross value added of the last three completed financial years it is also possible to take as a basis only the gross value added pursuant to Section 64 subsection 6 number 2 of the undertaking's last completed financial year.
3. Section 64 subsection 6 number 1 last half-sentence shall not be applied.
4. Section 64 subsection 6 number 3 shall be applied with the proviso that the electricity cost intensity shall be the ratio of the actual electricity costs to be borne by the undertaking in the last completed financial year including the electricity costs for self-consumed quantities of electricity which are subject to the surcharge pursuant to Section 61 to the gross value added at factor costs of the undertaking pursuant to number 2; electricity costs for self-consumed quantities of electricity which are not subject to the surcharge pursuant to Section 61 can be considered to the extent that these were permanently replaced in the last completed financial year by quantities of electricity subject to the surcharge pursuant to Section 60 subsection 1 or pursuant to Section 61; the certificate pursuant to Section 64 subsection 3 number 1 letter c must cover all the elements of the electricity costs borne by the undertaking.
5. In derogation of Section 66 subsection 1 sentence 1 and 2 an application can be made once by 30 September 2014 (substantive exclusion deadline).
6. Apart from this, Sections 63 to 69 shall be applied unless applications for the year of limitation of 2015 were finally and bindingly decided by the end of 31 July 2014.

(2) For applications for the year of limitation 2016, Sections 63 to 69 shall be applied with the following provisos:

1. Section 64 subsection 2 and 3 number 1 shall be applied with the proviso that instead of the arithmetic mean of the gross value added of the last three completed financial years it is also possible to apply the arithmetic mean of the gross value added pursuant to Section 64 subsection 6 number 2 of the undertaking's last two completed financial years.
2. Section 64 subsection 6 number 3 shall be applied with the proviso that the electricity cost intensity shall be the ratio of the actual electricity costs to be borne by the undertaking in the last completed financial year including the electricity costs for self-consumed quantities of electricity which are subject to the surcharge pursuant to Section 61 to the gross value added at factor costs of the undertaking pursuant to number 1; electricity costs for self-consumed quantities of electricity which are not subject to the surcharge pursuant to Section 61 can be considered to the extent that these were permanently replaced in the last completed financial year by quantities of electricity subject to the surcharge pursuant to Section 60 subsection 1 or pursuant to Section 61; the certificate pursuant to Section 64 subsection 3 number 1 letter c must cover all the elements of the electricity costs borne by the undertaking.
3. Apart from this, Sections 63 to 69 shall be applied.
  - (3) For undertakings or independent parts of undertakings which as undertakings of the manufacturing sector pursuant to Section 3 number 14 of the Renewable Energy Sources Act in the version in force on 31 July 2014 dispose of a final and binding decision on limitation pursuant to Sections 40 to 44 of the Renewable Energy Sources Act in the version in force on 31 July 2014 for the year of limitation of 2014 for a consumption point, the Federal Office for Economic Affairs and Export Control shall limit the EEG surcharge for the years of 2015 to 2018 pursuant to Sections 63 to 69 in such a way that the EEG surcharge shall not amount to more than twice the amount in cents per kilowatt-hour for an undertaking in a year of limitation which was to be paid for the self-consumed electricity at the limited consumption point of the undertaking in the financial year preceding the year of application in line with the decision on limitation in force for that year. Sentence 1 shall apply mutatis mutandis for undertakings or independent parts of undertakings which have a final and binding decision on limitation for a consumption point for the year of limitation of 2014 and which do not fulfil the preconditions pursuant to Section 64 because they are allocated to a sector pursuant to List 1 of Annex 4 but their electricity cost intensity amounts to less than 16 percent for the year of limitation of 2015 or less than 17 percent from the year of limitation of 2016 if and to the extent that the undertaking or the independent part of the undertaking furnishes proof that its electricity cost intensity within the meaning of Section 64 subsection 6 number 3 in conjunction with subsection 1 and 2 of this Section amounted to at least 14 percent; apart from this Sections 64, 66, 68 and 69 shall be applied mutatis mutandis.
  - (4) For undertakings or independent parts of undertakings which

1. as undertakings of the manufacturing sector pursuant to Section 3 number 14 of the Renewable Energy Sources Act in the version in force on 31 July 2014 dispose of a final and binding decision on limitation pursuant to Sections 40 to 44 of the Renewable Energy Sources Act in the version in force on 31 July 2014 for the year of limitation of 2014 and
2. do not fulfil the preconditions pursuant to Section 64 of this Act because they
  - a) are not allocated to a sector pursuant to Annex 4 or
  - b) are allocated to a sector pursuant to List 2 of Annex 4, but their electricity cost intensity amounts to less than 20 percent,

the Federal Office for Economic Affairs and Export Control shall on application limit the EEG surcharge for the share of electricity exceeding 1 gigawatt-hour per limited consumption point to 20 percent of the EEG surcharge determined pursuant to Section 60 subsection 1 if and to the extent that the undertaking or the independent part of the undertaking furnishes proof that its electricity cost intensity within the meaning of Section 64 subsection 6 number 3 in conjunction with subsection 1 and 2 of this Section amounted to at least 14 percent. Sentence 1 shall also be applied to independent parts of undertakings which in derogation of sentence 1 number 2 letter a or b do not fulfil the preconditions pursuant to Section 64 of this Act because the undertaking is allocated to a sector pursuant to List 2 of Annex 4. Apart from this, subsection 3 and Sections 64, 66, 68 and 69 shall be applied *mutatis mutandis*.

(5) Undertakings which are not associations of persons with legal capacity or legal persons and for whose electricity the EEG surcharge could therefore not be limited through the effect of Section 64 subsection 2 because they were not covered by the definition of undertaking pursuant to Section 5 number 34 of the Renewable Energy Sources Act in the version in force on 31 December 2016, can submit an application for limitation of the EEG surcharge for the limitation years of 2015, 2016 and 2017 in derogation of Section 66 subsection 1 sentence 1 by 31 January 2017 (substantive exclusion deadline).

(6) (repealed)

(7) Limitation decisions pursuant to Sections 63 to 69 for undertakings which are allocated to a sector with the serial number 145 or 146 pursuant to Annex 4 shall be subject to the reservation that the European Commission approves the Second Act Amending the Renewable Energy Sources Act of 29 June 2015 (Federal Law Gazette I p. 1010) under state aid rules. The Federal Ministry for Economic Affairs and Energy shall announce the day of the approval under state aid rules in the Federal Gazette. With regard to the limitation for these undertakings, Sections 63 to 69 shall apply without prejudice to subsections 1 to 3 with the following provisos:

1. applications for the limitation years of 2015 and 2016 can in derogation of Section 66 subsection 1 sentence 1 be submitted until 2 August 2015 (substantive exclusion deadline);

2. payments which were made in a limitation year before the entry into force of the limitation decision shall be taken into consideration for payments of the deductible pursuant to Section 64 subsection 2 number 1 and for the attainment of upper limit amounts pursuant to Section 64 subsection 2 number 3. To the extent that the payments made exceed the upper limit amounts pursuant to Section 64 subsection 2 number 3, they shall not be affected by the limitation decision.

## **Section 104**

### **Further transitional provisions**

(1) For installations and CHP installations which were commissioned before 1 August 2014 and which needed to be equipped with a technical device pursuant to Section 6 subsection 1 or subsection 2 number 1 and 2 letter a of the Renewable Energy Sources Act in the version in force on 31 July 2014, Section 9 subsection 1 sentence 2 of the Renewable Energy Sources Act in the version in force on 31 December 2016 shall be applied retroactively from 1 January 2009. Cases in which a legal dispute between the installation operator and the grid system operator was pending or was finally and bindingly decided before 9 April 2014 shall be excluded from this.

(2) For self-supply installations which before 1 August 2014 exclusively generated electricity from blast furnace gas, converter gas or coke oven gas (by-product gases) which was produced in the course of the manufacture of steel, Section 61 subsection 7 shall not be applied and the quantities of electricity may, where they are covered by the exceptions pursuant to Section 61 subsection 2 to 4, be accounted annually with retroactive effect back to 1 January 2014. Natural gas shall be regarded as a by-product gas to the extent that it is necessary for start-up, ignition and support fire.

(3) For installations which were commissioned before 1 January 2017 and which use spent lye from cellulose manufacture, the Biomass Ordinance which was to be applied to the respective installation on 31 December 2016 shall continue to be applied after 1 January 2017. Installations pursuant to sentence 1 may not participate in auctions. The period pursuant to Section 25 sentence 1 shall be extended once by five years for installations pursuant to sentence 1. For the first time on the first day of the second year of the following period pursuant to sentence 3 and thereafter annually on 1 January, the value to be applied shall decrease by 20 percentage points from the value to be applied for the electricity generated in the respective installation pursuant to the Renewable Energy Sources Act in the version which has so far applied to the installation. The resulting value shall be rounded to two decimal places. For the calculation of the entitlement pursuant to Section 19 subsection 1, due to a renewed adjustment pursuant to sentence 4, the non-rounded values shall be taken. A follow-up remuneration pursuant to sentence 3 to 6 may be paid only following approval by the European Commission under state aid rules.

(4) (repealed)

(5) Section 19 subsection 1a, 24 subsection 1 sentence 2 and Section 25 subsection 1 sentence 1 number 3 shall be applied retrospectively as of 1 January 2016.





## **Annex 1 (to Section 23a)**

### **Level of the market premium**

#### 1. Calculation of the market premium

##### 1.1 Within the meaning of this Annex,

– “MP” shall be the level of the market premium pursuant to Section 34 subsection 2 in cents per kilowatt-hour,

– “AW” shall be the value to be applied pursuant to Sections 40 to 55 giving consideration to Sections 19 to 32 in cents per kilowatt-hour,

– “MW” shall be the respective monthly market value in cents per kilowatt-hour.

1.2 The level of the market premium pursuant to Section 34 subsection 2 (“MP”) in cents per kilowatt-hour of directly sold and actually fed-in electricity shall be calculated in line with the following formula:

$$MP = AW - MW$$

If the calculation produces a value below zero, in derogation of sentence 1 the value “MP” shall be set at zero.

#### 2. Calculation of the monthly market value “MW”

2.1 Monthly market value for electricity from hydropower, landfill gas, sewage treatment gas, mine gas, biomass and geothermal energy pursuant to Sections 40 to 48

In the case of directly sold electricity from hydropower, landfill gas, sewage treatment gas, mine gas, biomass and geothermal energy, the value “MWEPEX” shall be applied as the value “MW”. Here, “MWEPEX” shall be the actual average monthly value of the hourly contracts for the price zone for Germany on the spot market of the EPEX Spot SE power exchange in Paris in cents per kilowatt-hour.

2.2 Monthly market value for electricity from wind energy and solar radiation energy pursuant to Sections 49 to 51

##### 2.2.1 Energy-source-specific monthly market value

The following values shall be applied as the value “MW” in cents per kilowatt-hour for directly sold electricity from

– onshore wind energy installations: the value “MWWind an Land”,

– offshore wind energy installations: the value “MWWind auf See” and

– solar installations the value “MWSolar”.

##### 2.2.2 Onshore wind energy

“MWWind an Land” shall be the actual average monthly value of the market value of electricity from onshore wind energy installations on the spot market of the EPEX Spot SE power exchange in Paris for the price zone for Germany in cents per kilowatt-hour. This value shall be calculated as follows:

2.2.2.1 For each hour of a calendar month the average value of the hourly contracts on the spot market of the EPEX Spot SE power exchange in Paris for the price zone for Germany shall be multiplied by the quantity of the electricity from onshore wind energy installations generated in this hour according to the online extrapolation pursuant to number 3.1.

2.2.2.2 The results for all the hours of this calendar month shall be totalled.

2.2.2.3 This total shall be divided by the quantity of the electricity from onshore wind energy installations generated in the total calendar month according to the online extrapolation pursuant to number 3.1.

### 2.2.3 Offshore wind energy

“MWWind auf See” shall be the actual average monthly value of the market value of electricity from offshore wind energy installations on the spot market of the EPEX Spot SE power exchange in Paris for the price zone for Germany in cents per kilowatt-hour. For the calculation of “MWWind auf See”, numbers 2.2.2.1 to 2.2.2.3 shall be applied with the proviso that instead of the electricity generated from onshore wind energy installations according to the online extrapolation pursuant to number 3.1, the electricity generated from offshore wind energy installations according to the online extrapolation pursuant to number 3.1 shall be taken as a basis.

### 2.2.4 Solar radiation energy

“MWSolar” shall be the actual average monthly value of the market value of electricity from solar installations on the spot market of the EPEX Spot SE power exchange in Paris for the price zone for Germany in cents per kilowatt-hour. For the calculation of “MWSolar”, numbers 2.2.2.1 to 2.2.2.3 shall be applied with the proviso that instead of the electricity generated from onshore wind energy installations according to the online extrapolation pursuant to number 3.1, the electricity generated from solar installations according to the online extrapolation pursuant to number 3.1 shall be taken as a basis.

## 3. Publication of the calculation

3.1 The transmission system operators must publish, at all times, without delay, on a joint internet site and in a uniform format, the online extrapolation, produced on the basis of a representative number of metered reference installations, of the quantity of actually generated electricity from onshore wind energy installations, offshore wind energy installations and solar installations in their control zones broken down into at least hourly figures. When the online extrapolation is produced, reductions in the feed-in output of the installation by the grid system operator or in the context of direct selling shall be disregarded.

3.2. The transmission system operators must also publish the following data in non-personal form for each calendar month by the end of the tenth working day of the following month on a joint internet site, in a uniform format, and rounded to three decimal places:

- a) the value of the hourly contracts for the Germany/Austria price zone on the spot market of the EPEX Spot SE power exchange in Paris for each calendar-day in hourly figures,
- b) the value "MWEPEX" in line with number 2.1,
- c) the value "MWWind an Land" in line with number 2.2.2,
- d) the value "MWWind auf See" in line with number 2.2.3,
- e) the value "MWSolar" in line with number 2.2.4.

3.3 To the extent that the data pursuant to number 3.2 are not available by the end of the tenth working day of the following month, they must be published immediately in non-personal form as soon as they are available.

## **Annex 2 (ad Section 36h)**

### **Reference yield**

1. A reference installation shall be a wind energy installation of a certain type for which a yield equivalent to the reference yield is calculated at the reference site in line with its P-V curve measured by an institution authorised to do so.
2. The reference yield shall be the quantity of electricity determined for each type of a wind energy installation including the respective hub height which this type would arithmetically produce if erected at the reference site on the basis of a measured P-V curve in five years of operation. The reference yield shall be determined in line with the generally recognised best available technology; compliance with the generally recognised best available technology shall be assumed if the procedures, bases and methods of calculation are used which are contained in the Technical Guidelines for Wind Energy Installations, Part 5, of the FGW e.V. (Fördergesellschaft Windenergie und andere Erneuerbare Energien) in the version in force at the time of the determining of the reference yield.
3. The type of a wind energy installation shall be determined by the designation of the type, the swept rotor area, the nominal capacity and the hub height in line with the manufacturer's data.
4. The reference site shall be a site which is determined by a Rayleigh distribution with a mean annual wind speed of 6.45 meters per second at a height of 100 metres above ground and a hub profile which is to be determined using the power law with a Hellmann exponent  $\alpha$  at a value of 0.25 and a roughness length of 0.1 metres.
5. The P-V curve shall be the interrelationship between wind speed and power purchase irrespective of hub height determined for each type of wind energy installation. The P-V curve shall be determined in line with the generally recognised best available technology; compliance with the generally recognised best available technology shall be assumed if the procedures, bases and methods of calculation are used which are contained in the Technical Guidelines for Wind Energy Installations, Part 2, of the FGW2 in the version in force at the time of the determining of the reference yield. Where the P-V curve was determined using a comparable procedure before 1 January 2000, this can be used instead of the P-V curve determined pursuant to sentence 2 if no further erection of installations of the type to which it applies has been started in the area of validity of this law after 31 December 2001.
6. For the purposes of this Act, institutions shall be authorised to measure the P-V curves pursuant to number 5 and to calculate the reference yields of installation types at the reference site pursuant to number 2 which have been accredited for the application of the directives cited in these numbers pursuant to DIN EN ISO/IEC 170254.
7. When applying the reference yield to determine, take account of and review the level of the value to be applied pursuant to Section 36h subsection 2 from the beginning of the sixth, eleventh and sixteenth year following the commissioning of the installation, the site yield shall be related to the reference yield. The site yield shall be the quantity of electricity which the installation operator could actually have fed in at a certain site over a defined period.

7.1. The site yield prior to commissioning shall be ascertained from the gross electricity yield minus the loss factors. The gross electricity yield shall be the average expected electricity yield of an onshore wind energy installation, derived from the wind potential ascertained at the hub height with a specific output curve without deductions. Loss factors shall be lower electricity yields due to

- a) shadowing effects,
- b) a lack of technical availability of the installation up to a maximum of 2 percent of the gross electricity yield,
- c) electrical efficiency losses in the operation of the wind energy installation between the voltage connections of the respective wind energy installation and the wind farm's grid system connection point,
- d) permit-related conditions, e.g. on noise emissions, shadows, nature conservation or the protection of flight operations including radar.

7.2. For the ascertaining of the site yield of the first five, ten and 15 years following the commissioning of the installation, the quantity of electricity fed in during the reference period shall form the basis, to which the fictitious quantity of electricity shall be added which the installation operator could have fed in in the reference period. The fictitious quantity of electricity shall be the total of the following quantities of electricity:

- a) quantities of electricity due to a technical non-availability of more than 2 percent of the gross electricity yield,
- b) quantities of electricity which were not generated due to curtailment by the grid system operator pursuant to Section 14, and
- c) quantities of electricity which were not fed in due to other switch-offs or reductions in output, e.g. for the optimised marketing of the electricity, self-supply or direct deliveries of electricity to third parties.

7.3 The calculation of the site yield shall be based on the best available technology. Compliance with the best available technology shall be assumed if the Technical Guidelines of the FGW e.V. (Fördergesellschaft Windenergie und andere Erneuerbare Energien), and particularly the Technical Guidelines for Wind Energy Installations, Part 6, are complied with. The calculation of the fictitious quantities of electricity shall be undertaken on the basis of the specific installation data for the corresponding years of operation. For this purpose, the operator of the installation shall be obliged to organise data recording which can be used by authorised third parties to read the necessary operating statuses of the installation and which cannot be subsequently altered.

## **Annex 3 (to Section 50b)**

### **Preconditions for and level of the flexibility premium**

#### I. Preconditions for the flexibility premium

1. Installation operators can demand the flexibility premium
  - a) if no feed-in tariff is claimed for any of the electricity generated in the installation and without prejudice to Section 27 subsection 3 and 4, Section 27a subsection 2 and Section 27c subsection 3 of the Renewable Energy Sources Act in the version in force on 31 July 2014 there shall basically be an entitlement to tariff payments for their electricity pursuant to Section 19 in conjunction with Section 100 subsection 2 which is not reduced pursuant to Section 52 in conjunction with Section 100 subsection 2,
  - b) if the rated capacity of the installation within the meaning of number II.1 first indent amounts to at least 0.2 times the installed capacity of the installation,
  - c) if the installation operator has transmitted the data required to the register to register the claim to the flexibility premium and
  - d) as soon as an environmental auditor with a licence for the field of electricity generation from renewable energy sources has certified that the installation is technically suited for the needs-oriented operation needed for the entitlement to the flexibility premium according to the generally recognised best available technology.
2. The level of the flexibility premium shall be calculated each calendar year. The calculation shall be made in each case for the additionally provided installed capacity in line with number II. Appropriate monthly advance payments shall be made towards the expected payments.
3. Installation operators must inform the grid system operator in advance about the first time the flexibility premium is claimed.
4. The flexibility premium shall be paid for a period of ten years. The commencement of the period shall be the first day of the second calendar month following the notification pursuant to I.3.
5. The entitlement to the flexibility premium shall not apply to additionally installed capacity which is transmitted as an increase in the installed capacity of the installation after 31 July 2014 to the register from the first day of the second calendar month following the calendar month in which the aggregated addition of the additionally installed capacity published by the Federal Network Agency in line with Section 44a subsection 3 number 2 first exceeds the value of 1,350 megawatts after 31 July 2014.

#### II. Level of the flexibility premium

##### 1. Definitions

Within the meaning of this Annex,

- “PBem” shall be the rated capacity in kilowatts; in the first and in the tenth calendar year of the claiming of the flexibility premium, the rated capacity shall be calculated with the proviso that account shall be taken only of the kilowatt-hours generated in the calendar months of the claiming of the flexibility premium and only of the full hours of time of these calendar months; this shall only apply for the purpose of calculating the level of the flexibility premium,
- “Pinst” shall be the installed capacity in kilowatts,
- “PZusatz” shall be the additionally provided installed capacity for the needs-oriented generation of electricity in kilowatts and in the respective calendar year,
- “fKor” shall be the correction factor for the degree of utilisation of the plant,
- “KK” shall be the capacity component for the provision of the additionally installed capacity in euros and kilowatts,
- “FP” shall be the flexibility premium pursuant to Section 50b in cents per kilowatt-hour.

## 2. Calculation

2.1 The level of the flexibility premium pursuant to Section 54 (“FP”) in cents per kilowatt-hour of directly sold and actually fed-in electricity shall be calculated in line with the following formula:

2.2 “PZusatz” shall be calculated in line with the following formula:

$$PZusatz = Pinst - (fKor \times PBem)$$

Here, “fKor” shall amount to

- for biomethane: 1.6 and
- for biogas that is not biomethane: 1.1.

In derogation of sentence 1, the value “PZusatz” shall be set

- at the value of zero if the rated capacity falls below 0.2 times the installed capacity,
- at 0.5 times the value of the installed capacity “Pinst” if the calculation shows that it is greater than 0.5 times the value of the installed capacity.

2.3 “KK” shall amount to 130 euros per kilowatt.

2.4. If the calculation of the flexibility premium produces a value below zero, in derogation of number 2.1 the value “FP” shall be set at zero.



## Annex 4 (ad Sections 64, 103)

### Electricity-cost-intensive or trade-intensive sectors

| Serial number | WZ 2008 <sup>1</sup> Code | WZ 2008 – Name<br>(n.e.c. = not elsewhere classified)                          | List 1 | List 2 |
|---------------|---------------------------|--|--------|--------|
| 1.            | 510                       | Mining of hard coal  | X      |        |
| 2.            | 610                       | Extraction of crude petroleum  |        | X      |
| 3.            | 620                       | Extraction of natural gas  |        | X      |
| 4.            | 710                       | Mining of iron ores  |        | X      |
| 5.            | 729                       | Mining of other non-ferrous metal ores   | X      |        |
| 6.            | 811                       | Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate | X      |        |
| 7.            | 812                       | Operation of gravel and sand pits; mining of clays and kaolin                  |        | X      |
| 8.            | 891                       | Mining of chemical and fertiliser minerals                                     | X      |        |
| 9.            | 893                       | Extraction of salt   | X      |        |
| 10.           | 899                       | Other mining and quarrying n.e.c.  | X      |        |
| 11.           | 1011                      | Processing and preserving of meat (excluding poultry)                          |        | X      |
| 12.           | 1012                      | Processing and preserving of poultry meat                                      |        | X      |
| 13.           | 1013                      | Production of meat and poultry meat products                                   |        | X      |
| 14.           | 1020                      | Processing and preserving of fish, crustaceans and molluscs                    |        | X      |
| 15.           | 1031                      | Processing and preserving of potatoes  |        | X      |
| 16.           | 1032                      | Production of fruit and vegetable juices                                       | X      |        |
| 17.           | 1039                      | Other processing and preserving of fruit and vegetables                        | X      |        |

<sup>1</sup> Official note: Classification of Economic Activities, Federal Statistical Office, 2008 edition. Obtainable from Statistisches Bundesamt, Gustav-Stresemann-Ring 11, 65189 Wiesbaden; also obtainable via [www.destatis.de](http://www.destatis.de).

|     |      |  |   |   |
|-----|------|--|---|---|
| 18. | 1041 | Manufacture of oils and fats (excluding margarine and similar edible fats)         | X |   |
| 19. | 1042 | Manufacture of margarine and similar edible fats                                   |   | X |
| 20. | 1051 | Operation of dairies and cheese making   |   | X |
| 21. | 1061 | Manufacture of grain mill products   |   | X |
| 22. | 1062 | Manufacture of starches and starch products  | X |   |
| 23. | 1072 | Manufacture of rusks and biscuits; manufacture of preserved pastry goods and cakes |   | X |
| 24. | 1073 | Manufacture of macaroni, noodles, couscous and similar farinaceous products        |   | X |
| 25. | 1081 | Manufacture of sugar   |   | X |
| 26. | 1082 | Manufacture of cocoa, chocolate and sugar confectionery                            |   | X |
| 27. | 1083 | Processing of tea and coffee   |   | X |
| 28. | 1084 | Manufacture of condiments and seasonings   |   | X |
| 29. | 1085 | Manufacture of prepared meals and dishes   |   | X |
| 30. | 1086 | Manufacture of homogenised food preparations and dietetic food                     |   | X |
| 31. | 1089 | Manufacture of other food products n.e.c.  |   | X |
| 32. | 1091 | Manufacture of prepared feeds for farm animals                                     |   | X |
| 33. | 1092 | Manufacture of prepared pet foods  |   | X |
| 34. | 1101 | Distilling, rectifying and blending of spirits                                     |   | X |
| 35. | 1102 | Manufacture of wine from grape   |   | X |
| 36. | 1103 | Manufacture of cider and other fruit wines   |   | X |
| 37. | 1104 | Manufacture of other non-distilled fermented beverages                             | X |   |
| 38. | 1105 | Manufacture of beer  |   | X |
| 39. | 1106 | Manufacture of malt  | X |   |

|     |      |   |   |   |
|-----|------|---|---|---|
| 40. | 1107 | Manufacture of soft drinks; production of mineral waters and other bottled waters |   | X |
| 41. | 1200 | Manufacture of tobacco products   |   | X |
| 42. | 1310 | Preparation and spinning of textile fibres  | X |   |
| 43. | 1320 | Weaving of textiles   | X |   |
| 44. | 1391 | Manufacture of knitted and crocheted fabrics                                      |   | X |
| 45. | 1392 | Manufacture of made-up textile articles, except apparel                           |   | X |
| 46. | 1393 | Manufacture of carpets and rugs   |   | X |
| 47. | 1394 | Manufacture of cordage, rope, twine and netting                                   | X |   |
| 48. | 1395 | Manufacture of non-wovens and articles made from non-wovens, except apparel       | X |   |
| 49. | 1396 | Manufacture of other technical and industrial textiles                            |   | X |
| 50. | 1399 | Manufacture of other textiles n.e.c.  |   | X |
| 51. | 1411 | Manufacture of leather clothes  | X |   |
| 52. | 1412 | Manufacture of workwear   |   | X |
| 53. | 1413 | Manufacture of other outerwear  |   | X |
| 54. | 1414 | Manufacture of underwear  |   | X |
| 55. | 1419 | Manufacture of other wearing apparel and accessories                              |   | X |
| 56. | 1420 | Manufacture of articles of fur  |   | X |
| 57. | 1431 | Manufacture of knitted and crocheted hosiery                                      |   | X |
| 58. | 1439 | Manufacture of other woven and crocheted apparel                                  |   | X |
| 59. | 1511 | Tanning and dressing of leather; dressing and dyeing of fur                       |   | X |
| 60. | 1512 | Manufacture of luggage, handbags and the like, saddlery and harness               |   | X |
| 61. | 1520 | Manufacture of footwear   |   | X |
| 62. | 1610 | Sawmilling and planing of wood  | X |   |

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| 63. | 1621 | Manufacture of veneer sheets and wood-based panels   |   |   |
| 64. | 1622 | Manufacture of assembled parquet floors  |   | X |
| 65. | 1623 | Manufacture of other builders' carpentry and joinery   |   | X |
| 66. | 1624 | Manufacture of wooden containers   |   | X |
| 67. | 1629 | Manufacture of other products of wood n.e.c.; manufacture of articles of cork, straw and plaiting materials) |   | X |
| 68. | 1711 | Manufacture of pulp  | X |   |
| 69. | 1712 | Manufacture of paper and paperboard  | X |   |
| 70. | 1721 | Manufacture of corrugated paper and paperboard and of containers of paper and paperboard                     |   | X |
| 71. | 1722 | Manufacture of household and sanitary goods and of toilet requisites   | X |   |
| 72. | 1723 | Manufacture of paper stationery  |   | X |
| 73. | 1724 | Manufacture of wallpaper   |   | X |
| 74. | 1729 | Manufacture of other articles of paper and paperboard  |   | X |
| 75. | 1813 | Pre-press and pre-media services   |   | X |
| 76. | 1910 | Manufacture of coke oven products  |   | X |
| 77. | 1920 | Manufacture of refined petroleum products  | X |   |
| 78. | 2011 | Manufacture of industrial gases  | X |   |
| 79. | 2012 | Manufacture of dyes and pigments   | X |   |
| 80. | 2013 | Manufacture of other inorganic basic chemicals   | X |   |
| 81. | 2014 | Manufacture of other organic basic chemicals   | X |   |
| 82. | 2015 | Manufacture of fertilisers and nitrogen compounds  | X |   |
| 83. | 2016 | Manufacture of plastics in primary forms   | X |   |
| 84. | 2017 | Manufacture of synthetic rubber in primary forms   | X |   |
| 85. | 2020 | Manufacture of pesticides and other agrochemical products  |   | X |

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| 86.  | 2030 | Manufacture of paints, varnishes and similar coatings, printing ink and mastics  |   | X |
| 87.  | 2041 | Manufacture of soap and detergents, cleaning and polishing preparations          |   | X |
| 88.  | 2042 | Manufacture of perfumes and toilet preparations                                  |   | X |
| 89.  | 2051 | Manufacture of explosives  |   | X |
| 90.  | 2052 | Manufacture of glues   |   | X |
| 91.  | 2053 | Manufacture of essential oils  |   | X |
| 92.  | 2059 | Manufacture of other chemical products n.e.c.                                    |   | X |
| 93.  | 2060 | Manufacture of man-made fibres   | X |   |
| 94.  | 2110 | Manufacture of basic pharmaceutical products                                     | X |   |
| 95.  | 2120 | Manufacture of pharmaceutical preparations                                       |   | X |
| 96.  | 2211 | Manufacture of rubber tyres and tubes; retreading and rebuilding of rubber tyres |   | X |
| 97.  | 2219 | Manufacture of other rubber products   |   | X |
| 98.  | 2221 | Manufacture of plastic plates, sheets, tubes and profiles                        | X |   |
| 99.  | 2222 | Manufacture of plastic packing goods   | X |   |
| 100. | 2223 | Manufacture of builders' ware of plastic   |   | X |
| 101. | 2229 | Manufacture of other plastic products  |   | X |
| 102. | 2311 | Manufacture of flat glass  | X |   |
| 103. | 2312 | Shaping and processing of flat glass   | X |   |
| 104. | 2313 | Manufacture of hollow glass  | X |   |
| 105. | 2314 | Manufacture of glass fibres  | X |   |
| 106. | 2319 | Manufacture and processing of other glass, including technical glassware         | X |   |
| 107. | 2320 | Manufacture of refractory products   | X |   |

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| 108. | 2331 | Manufacture of ceramic tiles and flags                                      | X |   |
| 109. | 2332 | Manufacture of bricks, tiles and construction products, in baked clay       | X |   |
| 110. | 2341 | Manufacture of ceramic household and ornamental articles                    |   | X |
| 111. | 2342 | Manufacture of ceramic sanitary fixtures                                    | X |   |
| 112. | 2343 | Manufacture of ceramic insulators and insulating fittings                   | X |   |
| 113. | 2344 | Manufacture of other technical ceramic products                             |   | X |
| 114. | 2349 | Manufacture of other ceramic products                                       | X |   |
| 115. | 2351 | Manufacture of cement   | X |   |
| 116. | 2352 | Manufacture of lime and plaster   | X |   |
| 117. | 2362 | Manufacture of plaster products for construction purposes                   |   | X |
| 118. | 2365 | Manufacture of fibre cement   |   | X |
| 119. | 2369 | Manufacture of other articles of concrete, plaster and cement               |   | X |
| 120. | 2370 | Cutting, shaping and finishing of stone                                     |   | X |
| 121. | 2391 | Production of abrasive products   |   | X |
| 122. | 2399 | Manufacture of other non-metallic mineral products n.e.c.                   | X |   |
| 123. | 2410 | Manufacture of basic iron and steel and of ferro-alloys                     | X |   |
| 124. | 2420 | Manufacture of tubes, pipes, hollow profiles and related fittings, of steel | X |   |
| 125. | 2431 | Cold drawing of bars  | X |   |
| 126. | 2432 | Cold rolling of narrow strip  | X |   |
| 127. | 2433 | Cold forming or folding   |   | X |
| 128. | 2434 | Cold drawing of wire  | X |   |
| 129. | 2441 | Precious metals production  | X |   |
| 130. | 2442 | Aluminium production  | X |   |

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| 131. | 2443 | Lead, zinc and tin production   | X |   |
| 132. | 2444 | Copper production   | X |   |
| 133. | 2445 | Other non-ferrous metal production  | X |   |
| 134. | 2446 | Processing of nuclear fuel  | X |   |
| 135. | 2451 | Casting of iron   | X |   |
| 136. | 2452 | Casting of steel  | X |   |
| 137. | 2453 | Casting of light metals   | X |   |
| 138. | 2454 | Casting of other non-ferrous metals                                       | X |   |
| 139. | 2511 | Manufacture of metal structures and parts of structures                   |   | X |
| 140. | 2512 | Manufacture of doors and windows of metal                                 |   | X |
| 141. | 2521 | Manufacture of central heating radiators and boilers                      |   | X |
| 142. | 2529 | Manufacture of other tanks, reservoirs and containers of metal            |   | X |
| 143. | 2530 | Manufacture of steam generators, except central heating hot water boilers |   | X |
| 144. | 2540 | Manufacture of weapons and ammunition                                     |   | X |
| 145. | 2550 | Forging, pressing, stamping and roll-forming of metal; powder metallurgy  |   | X |
| 146. | 2561 | Treatment and coating of metals   |   | X |
| 147. | 2571 | Manufacture of cutlery  |   | X |
| 148. | 2572 | Manufacture of locks and hinges   |   | X |
| 149. | 2573 | Manufacture of tools  |   | X |
| 150. | 2591 | Manufacture of steel drums and similar containers                         |   | X |
| 151. | 2592 | Manufacture of wire products, chain and springs                           |   | X |
| 152. | 2593 | Manufacture of fasteners and screw machine products                       |   | X |
| 153. | 2594 | Manufacture of fasteners and screw machine products                       |   | X |

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| 154. | 2599 | Manufacture of other fabricated metal products n.e.c.                           |   | X |
| 155. | 2611 | Manufacture of electronic components  | X |   |
| 156. | 2612 | Manufacture of loaded electronic boards   |   | X |
| 157. | 2620 | Manufacture of computers and peripheral equipment                               |   | X |
| 158. | 2630 | Manufacture of communication equipment  |   | X |
| 159. | 2640 | Manufacture of consumer electronics   |   | X |
| 160. | 2651 | Manufacture of instruments and appliances for measuring, testing and navigation |   | X |
| 161. | 2652 | Manufacture of watches and clocks   |   | X |
| 162. | 2660 | Manufacture of irradiation, electromedical and electrotherapeutic equipment     |   | X |
| 163. | 2670 | Manufacture of optical instruments and photographic equipment                   |   | X |
| 164. | 2680 | Manufacture of magnetic and optical media                                       | X |   |
| 165. | 2711 | Manufacture of electric motors, generators and transformers                     |   | X |
| 166. | 2712 | Manufacture of electricity distribution and control apparatus                   |   | X |
| 167. | 2720 | Manufacture of batteries and accumulators                                       | X |   |
| 168. | 2731 | Manufacture of fibre optic cables   |   | X |
| 169. | 2732 | Manufacture of other electronic and electric wires and cables                   |   | X |
| 170. | 2733 | Manufacture of wiring devices   |   | X |
| 171. | 2740 | Manufacture of electric lighting equipment                                      |   | X |
| 172. | 2751 | Manufacture of electric domestic appliances                                     |   | X |
| 173. | 2752 | Manufacture of non-electric domestic appliances                                 |   | X |
| 174. | 2790 | Manufacture of other electrical equipment                                       |   | X |
| 175. | 2811 | Manufacture of engines and turbines, except aircraft, vehicle and cycle engines |   | X |



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| 176. | 2812 | Manufacture of fluid power equipment  | X |
| 177. | 2813 | Manufacture of other pumps and compressors  | X |
| 178. | 2814 | Manufacture of other taps and valves  | X |
| 179. | 2815 | Manufacture of bearings, gears, gearing and driving elements                              | X |
| 180. | 2821 | Manufacture of ovens, furnaces and furnace burners  | X |
| 181. | 2822 | Manufacture of lifting and handling equipment   | X |
| 182. | 2823 | Manufacture of office machinery and equipment (except computers and peripheral equipment) | X |
| 183. | 2824 | Manufacture of power-driven hand tools  | X |
| 184. | 2825 | Manufacture of non-domestic cooling and ventilation equipment                             | X |
| 185. | 2829 | Manufacture of other general-purpose machinery n.e.c.                                     | X |
| 186. | 2830 | Manufacture of agricultural and forestry machinery  | X |
| 187. | 2841 | Manufacture of metal forming machinery  | X |
| 188. | 2849 | Manufacture of other machine tools  | X |
| 189. | 2891 | Manufacture of machinery for metallurgy   | X |
| 190. | 2892 | Manufacture of machinery for mining, quarrying and construction                           | X |
| 191. | 2893 | Manufacture of machinery for food, beverage and tobacco processing                        | X |
| 192. | 2894 | Manufacture of machinery for textile, apparel and leather production                      | X |
| 193. | 2895 | Manufacture of machinery for paper and paperboard production                              | X |
| 194. | 2896 | Manufacture of plastics and rubber machinery  | X |
| 195. | 2899 | Manufacture of other special-purpose machinery n.e.c.                                     | X |

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| 196. | 2910 | Manufacture of motor vehicles  | X |
| 197. | 2920 | Manufacture of bodies (coachwork) for motor vehicles;<br>manufacture of trailers and semi-trailers | X |
| 198. | 2931 | Manufacture of electrical and electronic equipment for motor vehicles                              | X |
| 199. | 2932 | Manufacture of other parts and accessories for motor vehicles                                      | X |
| 200. | 3011 | Building of ships and floating structures  | X |
| 201. | 3012 | Building of pleasure and sporting boats  | X |
| 202. | 3020 | Manufacture of railway locomotives and rolling stock   | X |
| 203. | 3030 | Manufacture of air and spacecraft and related machinery  | X |
| 204. | 3040 | Manufacture of military fighting vehicles  | X |
| 205. | 3091 | Manufacture of motorcycles   | X |
| 206. | 3092 | Manufacture of bicycles and invalid carriages  | X |
| 207. | 3099 | Manufacture of other transport equipment n.e.c.  | X |
| 208. | 3101 | Manufacture of office and shop furniture   | X |
| 209. | 3102 | Manufacture of kitchen furniture   | X |
| 210. | 3103 | Manufacture of mattresses  | X |
| 211. | 3109 | Manufacture of other furniture   | X |
| 212. | 3211 | Striking of coins  | X |
| 213. | 3212 | Manufacture of jewellery and related articles  | X |
| 214. | 3213 | Manufacture of imitation jewellery and related articles  | X |
| 215. | 3220 | Manufacture of musical instruments   | X |
| 216. | 3230 | Manufacture of sports goods  | X |
| 217. | 3240 | Manufacture of games and toys  | X |

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| 218. | 3250 | Manufacture of medical and dental instruments and supplies |   | X |
| 219. | 3291 | Manufacture of brooms and brushes                          |   | X |
| 220. | 3299 | Other manufacturing n.e.c.                                 | X |   |
| 221. | 3832 | Recovery of sorted materials                               | X |   |