**Convenience Translation for**

**Post-Market Entry Compliance Guide**

**Germany**

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| **Gas** |
| **PMECG-Reference to“** **Registration / reporting requirements imposed by tax regulation” (Row 9)** |
| § 39 Steueranmeldung, Fälligkeit *(Tax Registration, Due Date)* EnergieSteuerGesetz EnergieStG |
| 1. Der Steuerschuldner hat für Erdgas, für das in einem Monat (Veranlagungsmonat) die Steuer nach § 38 Abs. 1 entstanden ist, bis zum 15. Tag des folgenden Monats eine Steuererklärung abzugeben und darin die Steuer selbst zu berechnen (Steueranmeldung). Die Steuer, die in einem Monat entstanden ist, ist am 25. Tag des folgenden Monats fällig.

*The debtor of the energy tax shall self declare any tax as provided in § 38 (1) until the 15th day of the month following the supply month (Tax Calculation Month). The energy tax calculated in the self-declaration is due on the 25th days* *of the month following the supply month.*1. Abweichend von Absatz 1 kann der Steuerschuldner die Steuer auch jährlich anmelden. Das Wahlrecht kann nur für volle Kalenderjahre ausgeübt werden. Es ist durch eine schriftliche Erklärung auszuüben, die dem Hauptzollamt vor Beginn des Kalenderjahres, ab dem die Steuer jährlich angemeldet werden soll, vorliegen muss. Entsteht die Steuer in der Person eines Steuerschuldners erstmals innerhalb eines Kalenderjahres, hat dieser das Wahlrecht spätestens bis zum Ablauf des zweiten Kalendermonats auszuüben, der dem Monat folgt, in dem die Steuer erstmals entstanden ist. Das Wahlrecht kann nur vom Beginn eines Kalenderjahres an widerrufen werden. Der Widerruf ist vor Beginn des Kalenderjahres, für den er gelten soll, gegenüber dem Hauptzollamt schriftlich zu erklären.

*Deviating from paragraph 1, the tax debtor may declare the tax on an annual basis. This option is option is only enabled if the tax debtor uses a full calendar year. The declaration to use this option must be submitted to the Customs Office (Hauptzollamt) prior to the Calendar year for which the tax debtor is intending to make annual self declarations. In case that the tax arises during a calendar year, the tax debtor shall make this declaration at a maximum of 2 calendar month as of the start of the taxable business activity. This option may be revoked before end of the same calendar year, and prior to the Calendar year w\for which the option has been exercised.*  |
| § 39 Beförderung *(Transportation)* Energiesteuer-Durchführungsverordnung - EnergieStV |
| (1) Werden Energieerzeugnisse im Sinn des § 4 des Gesetzes in anderen als den in § 15 Absatz 4 des Gesetzes genannten Fällen aus dem steuerrechtlich freien Verkehr eines anderen Mitgliedstaats zu gewerblichen Zwecken in das Steuergebiet verbracht, hat der Beförderer während der Beförderung die zweite und dritte Ausfertigung des vereinfachten Begleitdokuments mitzuführen, das für die Energieerzeugnisse ordnungsgemäß ausgefertigt wurde. Dies gilt für Energieerzeugnisse der Unterpositionen 2710 11 21, 2710 11 25 und 2710 19 29 der Kombinierten Nomenklatur jedoch nur, soweit sie als lose Ware verbracht werden.*If energy products within the scope of Paragraph 4 of the Law are imported for commercial purposes into the tax territory from a different tax territory, in cases other than those referred to in Paragraph 15 (4) of the Law, the carrier must have the second and third copies of the simplified accompanying document duly completed for the energy products. However, this only applies to energy products of subheadings 2710 11 21, 2710 11 25 and 2710 19 29 of the Combined Nomenclature, provided they are transported as bulk goods only.*(2) Der Anzeigepflichtige im Sinn des § 15 Absatz 3 des Gesetzes hat dem Hauptzollamt mit der Steueranmeldung die mit seiner Empfangsbestätigung versehene zweite und dritte Ausfertigung des vereinfachten Begleitdokuments vorzulegen. Auf Antrag bestätigt das Hauptzollamt die Anmeldung oder Entrichtung der Steuer. Ist bei der Beförderung eine Empfangsbestätigung nach Artikel 4 Satz 4 der Verordnung (EWG) Nr. 3649/92 erforderlich, hat der Anzeigepflichtige die für den Lieferer bestimmte Ausfertigung des vereinfachten Begleitdokuments mit der vom Abgangsmitgliedstaat vorgesehenen Empfangsbestätigung unverzüglich an den Lieferer zurückzusenden.*The addressee under Paragraph 15 (3) of the Law must submit to the main Customs Office (Hauptzollamt) the second and third copies of the simplified accompanying document together with the tax return. Upon application, the main Customs Office (Hauptzollamt) confirms the customs declaration, or settlement of the tax. If an acknowledgment of receipt is required based on Article 4 (4) of Regulation (EEC) No 3649/92, the Notifier shall immediately return to the Supplier the copy of the simplified accompanying document intended for the Supplier with the acknowledgment of receipt provided by the Member State of origin.* |
| § 78 Anmeldung für Lieferer, Entnehmer und Bezieher von Erdgas (Energiesteuer-Durchführungsverordnung - EnergieStV) |
| (1) Die Anmeldung nach § 38 Absatz 3 des Gesetzes ist schriftlich bei dem für den Anmeldepflichtigen zuständigen Hauptzollamt abzugeben. (2) In der Anmeldung sind anzugeben: Name, Geschäfts- oder Wohnsitz, Rechtsform, bei jährlicher Steueranmeldung die voraussichtlich zu erwartende Jahressteuerschuld, die Steuernummer beim Finanzamt und - falls erteilt - die Umsatzsteuer-Identifikationsnummer (§ 27a des Umsatzsteuergesetzes). Der Anmeldung sind beizufügen:1. ein Verzeichnis der Betriebsstätten im Steuergebiet nach § 12 der Abgabenordnung,2. eine Darstellung der Mengenermittlung und -abrechnung,3. von Unternehmen, die in das Handels-, Genossenschafts- oder Vereinsregister eingetragen sind, ein Registerauszug nach dem neuesten Stand,4. gegebenenfalls eine Erklärung über die Bestellung eines Beauftragten nach § 214 der Abgabenordnung oder eines Betrieb*1.The Notification according to Section § 38 subsection 3 of this Act has to be submitted in writing to the competent customs office (Hauptzollamt).**2. The Notification shall provide for: Name, statutory residence of legal entity, category of legal entity [e.g. Plc or limited company], probable estimate of expected annual tax amount, and Tax Identification number according to Section (§ 27a of the VAT Act). Furthermore, following information needs to be enclosed:**1. Account of establishments within the German territory;* *2. Account on volume metering and volume invoicing**3. The latest excerpt of the company house excerpt (Commercial Register Excerpt) in case of limited companies, or equivalent for co-operative entities or associations.**4. Declaration concerning an appointment of an authorised person as provided by § 214 Abgabenordnung (General Act on Taxes and Levies), or the consent of a managing director of the point of exploitation, as provided in § 62 Abs. 1 of the Act.*(3) Der Anmeldepflichtige hat auf Verlangen des Hauptzollamts weitere Angaben zu machen, wenn sie zur Sicherung des Steueraufkommens oder für die Steueraufsicht erforderlich erscheinen. Das Hauptzollamt kann auf Angaben verzichten, soweit die Steuerbelange dadurch nicht beeinträchtigt werden.*Upon request of the Customs Office (Hauptzollamt), any person obliged to notify further information, if this information is required to enable the orderly taxation or tax supervision.*(4) Das Hauptzollamt erteilt Lieferern von Erdgas einen schriftlichen Nachweis über die erfolgte Anmeldung. *The Customs Office (Hauptzollamt) issues a written document evidencing an orderly notification of any natural gas supplier.* |
| **PMECG-Reference to“** **Application for renewal of licence for additional period” (Row 10)** |
| § 5 Anzeige der Energiebelieferung (notification of energy supply) (Energiewirtschaftsgesetz - EnWG) |
| Energieversorgungsunternehmen, die Haushaltskunden mit Energie beliefern, müssen die Aufnahme und Beendigung der Tätigkeit sowie Änderungen ihrer Firma bei der Regulierungsbehörde unverzüglich anzeigen; ausgenommen ist die Belieferung von Haushaltskunden ausschließlich innerhalb einer Kundenanlage oder eines geschlossenen Verteilernetzes sowie über nicht auf Dauer angelegte Leitungen. Eine Liste der angezeigten Unternehmen wird von der Regulierungsbehörde laufend auf ihrer Internetseite veröffentlicht; veröffentlicht werden die Firma und die Adresse des Sitzes der angezeigten Unternehmen. Mit der Anzeige der Aufnahme der Tätigkeit ist das Vorliegen der personellen, technischen und wirtschaftlichen Leistungsfähigkeit sowie der Zuverlässigkeit der Geschäftsleitung darzulegen. Die Regulierungsbehörde kann die Ausübung der Tätigkeit jederzeit ganz oder teilweise untersagen, wenn die personelle, technische oder wirtschaftliche Leistungsfähigkeit oder Zuverlässigkeit nicht gewährleistet ist. Die Sätze 3 und 4 gelten nicht für Energieversorgungsunternehmen mit Sitz in einem anderen Mitgliedstaat der Europäischen Union, wenn das Energieversorgungsunternehmen von der zuständigen Behörde des Herkunftsmitgliedstaats ordnungsgemäß zugelassen worden ist.*Utility companies, supplying energy to household customers, must immediately notify the Regulatory Authority of the commencement, termination and changes in their supply activity. Excluded is the supply of household customers exclusively within a customer installation or a closed distribution network as well as over non-permanent lines.**A list of the supply companies is published by the Federal Regulatory Authority’s website; the company name and the address of the registered companies are published. With the announcement of the start of the activity, the existence of the personal, technical and economic efficiency as well as the reliability of the management has to be documented. The Federal Regulatory Authority may at any time, in whole or in part, prohibit the performance of the activity if its personal, technical or economic capacity or reliability is not ensured.* *Sentences 3 and 4 shall not apply to energy suppliers established in another Member State of the European Union if the energy supplier has been duly authorized by the competent authority of its home Member State.* |
| **PMECG-Reference to“** **Registration / reporting requirements imposed by tax regulation” (Row 8)** |
| § 38 (3) EnergieSteuerGesetz – EnergieStG |
| Wer mit Sitz im Steuergebiet Erdgas liefern, selbst erzeugtes Erdgas zum Selbstverbrauch im Steuergebiet entnehmen oder Erdgas von einem nicht im Steuergebiet ansässigen Lieferer zum Verbrauch beziehen will, hat dies vorher beim Hauptzollamt anzumelden.*Any company, based in the tax area, which supplies natural gas, extracts natural gas for its own use, or imports natural gas from a non-resident supplier for its own use, should declare this to the Customs Office (Hauptzollamt)* *prior to delivery.* |
| **PMECG- Reference to****“Information about the concluded contracts, performance of import agreements in a given period (including type of transaction/agreement, import/export volumes, price, counterparties)“ (Row 36)** |
| Monitoring and Data Collection by the Market Transparency Unit (Markt Transparenzstelle) as provided by Section 47 the Act against Restraints of Competition (Competition Act – GWB) |
| § 47a (Establishment, Competencies, Organization)(1) In order to ensure that the formation of wholesale prices for electricity and gas complies with competition provisions, a Market Transparency Unit shall be set up at the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway [Bundesnetzagentur]. It shall continuously monitor the marketing of, and trading in, electricity and natural gas at the wholesale level.(2) The tasks of the Market Transparency Unit will be carried out by the Bundesnetzagentur and the Bundeskartellamt by mutual consent.(3) Details of the consensual cooperation will be governed by a cooperation agreement between the Bundeskartellamt and the Bundesnetzagentur requiring approval by the Federal Ministry of Economics and Technology. In particular, this agreement shall contain provisions governing:1. staffing and allocation of tasks and2. coordination of data collection and of the exchange of data and information.(4) The Federal Ministry of Economics and Technology is authorized to promulgate requirements regarding the terms and conditions of the cooperation agreement by means of an ordinance.(5) Decisions by the Market Transparency Unit shall be taken by the person heading the unit. § 51(5) shall apply mutatis mutandis to all members of staff of the Market Transparency Unit.§ 47b Tasks(1) The Market Transparency Unit shall continuously monitor electricity and natural gas wholesale trading, irrespective of whether it is aimed at physical or financial settlement, in order to detect irregularities in pricing that might be due to market dominance, inside information or market manipulation. For this purpose, the Market Transparency Unit shall also monitor the production of natural gas and the generation of electricity, the use of power plants and the marketing of electricity and natural gas by the producers, as well as the marketing of electricity and natural gas as balancing services. The Market Transparency Unit may take into account interdependencies between the wholesale markets for electricity and natural gas on the one hand and the emissions trading system on the other.(2) As a national market monitoring body pursuant to Article 7(2) subpara. 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326 of 8 December 2011, p. 1), the Market Transparency Unit shall monitor, together with the Bundesnetzagentur, electricity and natural gas wholesale trading. In this context, it shall cooperate with the Agency for the Cooperation of Energy Regulators pursuant to Article 7(2) and Article 10 of Regulation (EU) No 1227/2011.(3) The Market Transparency Unit shall collect the data and information it needs in order to fulfil its tasks. In this context, it shall take account of the reporting obligations of the persons required to report to the authorities and supervisory entities mentioned in § 47i and of the reporting obligations to be laid down by the European Commission in accordance with Article 8(2) and (6) of Regulation (EU) No 1227/2011. Where possible, existing sources and reporting systems are to be used.(4) The Bundesnetzagentur can instruct the Market Transparency Unit to collect and analyse data to the extent necessary for the fulfilment of its tasks under Regulation (EU) No 1227/2011.(5) Prior to issuing determinations under § 47g in conjunction with the ordinance to be issued under § 47f, the Market Transparency Unit shall give the authorities, stakeholders and market participants concerned the opportunity to comment within a specified period. In preparation of these consultations, the Market Transparency Unit shall, where necessary, prepare and amend a detailed list of all data and categories of data that must continuously be reported to it by the persons subject to the reporting obligation as specified in § 47e(1) pursuant to §§ 47e and 47g and based on the ordinance to be issued in accordance with § 47f, including the point in time when the data must be transmitted, the data format and the transmission channels to be complied with, as well as alternative reporting channels. The Market Transparency Unit is not bound by the comments.(6) The Market Transparency Unit shall continuously analyse the data and information received by it, in particular to determine whether there are any indications of a violation of §§ 1, 19, 20 or 29 of this Act, Article 101 or 102 of the Treaty on the Functioning of the European Union, the German Securities Trading Act, the German Stock Exchange Act or the prohibitions under Articles 3 and 5 of Regulation (EU) No 1227/2011.(7) If there is any indication that a natural or legal person is violating any of the legal provisions referred to in paragraph 6, the Market Transparency Unit must immediately inform the competent authorities and delegate the issue to them. In case of a suspected violation of §§ 1, 19, 20 or 29 of this Act or of Articles 101 and 102 of the Treaty on the Functioning of the European Union, the Market Transparency Unit will inform the competent decision division of the Bundeskartellamt. If more than one authority is potentially competent to conduct investigations, the Market Transparency Unit will inform each of these authorities of the suspected violation and of the other authorities that have been informed. The Market Transparency Unit shall transfer all information and data required or requested by these authorities to them without undue delay in accordance with § 47i.(8) Paragraphs 1 to 3 may also apply to production and marketing abroad as well as to trading activities performed abroad, to the extent that these affect the pricing of electricity and natural gas within the scope of application of this Act.§ 47c Use of Data(1) The Market Transparency Unit shall provide the data received pursuant to § 47b (3) also to the following entities:1. the Bundeskartellamt for the conduct of its monitoring activities pursuant to § 48(3);2. the Bundesnetzagentur for the conduct of its monitoring activities pursuant to § 35 of the German Energy Industry Act;3. the competent decision division of the Bundeskartellamt for the purpose of merger control proceedings under §§ 35 to 41 and for sector inquiries under § 32e; and4. the Bundesnetzagentur for the fulfilment of its further tasks under the German Energy Industry Act [Energiewirtschaftsgesetz], in particular for the purpose of monitoring compliance with transparency obligations in accordance with the annexes of the following regulations:a) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211 of 14 August 2009, p. 15);b) Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211 of 14 August 2009, p. 36); andc) Regulation (EC) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (OJ L 295 of 12 November 2010, p. 1).(2) The Market Transparency Unit shall further provide the data to the Federal Ministry of Economics and Technology and the Bundesnetzagentur for the fulfilment of their tasks under § 54a of the German Energy Industry Act.(3) The data may be provided to the Federal Statistical Office for the purpose of fulfilling its tasks under the German Energy Statistics Act and the Monopolies Commission for the purpose of fulfilling its tasks under this Act and under § 62 of the German Energy Industry Act.(4) The Market Transparency Unit may provide the data in anonymized form also to federal ministries for use in scientific studies conducted by them or on their behalf if the data is necessary to achieve these aims. Data that represents operating or business secrets may only be disclosed by the Market Transparency Unit if it is no longer possible to link it to any specific undertaking. The federal ministries may provide the data received from the Market Transparency Unit pursuant to sentence 1 also to third parties for the conduct of scientific studies on their behalf if the third parties have proven their professional skills to the ministries and have assured confidential treatment of the data.§ 47d Powers(1) In order to fulfil its tasks, the Market Transparency Unit has the powers conferred upon it pursuant to § 59 in relation to natural and legal persons. In accordance with § 47f, it may determine in respect of one, some or all of the persons and undertakings mentioned in § 47e (1) the category of data and the timing and form of transmission for the areas set out in § 47g. The Market Transparency Unit has the power, in accordance with § 47f, to change the determination, where required, to the extent that this is necessary for the fulfilment of its tasks. It may, in particular, stipulate that an online platform must be used to enter the required information and reports. In accordance with § 47f, the Market Transparency Unit may also stipulate that information and data be delivered to a third party assigned to collect data; however, the data will be analysed and used by the Market Transparency Unit only. §§ 48 and 49 of the German Administrative Procedure Act [Verwaltungsverfahrensgesetz] remain unaffected. §§ 50c, 54, 56, 57 and 61 to 67 as well as §§ 74 to 76, 83, 91 and 92 shall apply mutatis mutandis. In case of decisions made by the Market Transparency Unit by determination, delivery under § 61 may be replaced by publication in the Federal Gazette. § 55 of the German Code of Criminal Procedure applies mutatis mutandis to disclosure obligations under sentence 1 and reporting obligations under § 47e.(2) As a national market monitoring body pursuant to Article 7(2) subpara. 2 of Regulation (EU) 1227/2011, the Market Transparency Unit also has the rights set out in Article 7(2) subpara. 1, (3) subpara. 2 sentence 2, Article 4(2) sentence 2, Article 8(5) sentence 1 and Article 16 of Regulation (EU) No 1227/2011. Paragraph 1 applies mutatis mutandis.(3) The Market Transparency Unit may request information on the outcome of investigations from the authority to which it has delegated a suspected violation under § 47b(7) sentence 1.§ 47e Reporting Obligations(1) The following persons and undertakings are subject to the reporting obligation set out in paragraphs 2 to 5:1. wholesale customers within the meaning of § 3 no. 21 of the German Energy Industry Act,2. energy supply companies within the meaning of § 3 no. 18 of the German Energy Industry Act,3. operators of energy facilities within the meaning of § 3 no. 15 of the German Energy Industry Act except for operators of final consumer distribution facilities or, in case of gas supply, operators of ultimate shut-off devices in consumption systems,4. customers within the meaning of § 3 no. 24 of the German Energy Industry Act except for final consumers within the meaning of § 3 no. 25 of the German Energy Industry Act, and5. trading platforms.(2) Those subject to the reporting obligation must submit to the Market Transparency Unit the trading, transport, capacity, production/generation and consumption data, further specified in accordance with § 47f in conjunction with § 47g, for the markets on which they operate. This includes information1. on transactions in wholesale markets where electricity and natural gas are traded, including orders to trade, with precise details on the wholesale energy products bought and sold, the prices and quantities agreed, the dates and times of execution and the parties to and beneficiaries of the transactions,2. on the capacity and use of facilities and installations for the production/generation, storage, consumption or transmission of electricity or natural gas or on the capacity and use of facilities for liquefied natural gas (LNG facilities), including any planned and unplanned unavailability or any under-consumption,3. in the field of electricity generation that enables identification of individual generation units,4. on costs incurred in connection with the operation of the generation units that are subject to the reporting obligation, in particular on marginal costs, fuel costs, CO2 costs, opportunity costs and start-up costs,5. on technical information relevant for the operation of the generation units that are subject to the reporting obligation, in particular on minimum idle times, minimum run times and minimum production volumes,6. on any planned decommissioning of plants or cold reserves,7. on drawing rights agreements,8. on planned investment projects, and9. on import agreements and balancing services in natural gas trading.(3) The data must be submitted to the Market Transparency Unit in accordance with §§ 47f and 47g by way of remote data transmission and, if requested, on a continuous basis. If the Market Transparency Unit provides standard forms, the data must be transmitted electronically using such forms.(4) The relevant reporting obligation shall be deemed fulfilled if1. those subject to the reporting obligation pursuant to paragraph 1 have reported the information to be reported or requested in accordance with Article 8 of Regulation (EU) No 1227/2011 and prompt data access by the Market Transparency Unit is secured, or2. third parties have communicated the information to be reported or requested in the name of a person subject to reporting obligations pursuant to paragraph 1 also in conjunction with § 47f nos 3 and 4 and the Market Transparency Unit has been informed thereof, or3. those subject to the reporting obligation pursuant to paragraph 1 also in conjunction with § 47f nos 3 and 4 have communicated the information to be reported or requested to a third party appointed for this purpose pursuant to § 47d (1) sentence 5 in conjunction with § 47f no. 2, or4. those subject to the reporting obligation pursuant to paragraph 1 no. 3 in conjunction with § 47g (6) have reported the information to be reported or requested in accordance with the provisions of the German Renewable Energy Act [Erneuerbare Energien-Gesetz] or an ordinance based on that Act to the network operator, the Market Transparency Unit has been informed thereof and prompt access to the data by the Market Transparency Unit is secured.(5) The obligations set forth in paragraphs 1 to 4 shall apply also to undertakings with registered seat in another Member State of the European Union or another state party to the Agreement on the European Economic Area if they are admitted to trading on a German exchange or if their activities have an effect within the scope of application of this Act. If any such undertaking fails to communicate the information requested, the Market Transparency Unit may request the competent authority of the country of domicile to take appropriate measures to improve access to that information.§ 47f (Power to issue an Ordinance)The Federal Ministry for Economic Affairs and Energy shall be empowered to issue, by way of an ordinance not requiring the consent of the Bundesrat, in agreement with the Federal Ministry of Finance, taking into account the requirements imposed by implementing acts issued under Article 8(2) or (6) of Regulation (EU) No 1227/20111. detailed provisions on the type, content and scope of data and information that the Market Transparency Unit may request from those subject to the reporting obligation based on determinations made pursuant to § 47d(1) sentence 2, as well as on the timing and the form of transmission of this data,2. detailed provisions on the type, content and scope of data and information that are to be delivered pursuant to § 47d(1) sentence 5 to third parties appointed for this purpose, as well as on the timing and the form of transmission and the recipients of this data,3. provisions stipulating that the following entities shall transmit to the Market Transparency Unit records of the wholesale energy transactions on an ongoing basis:a) organised markets,b) systems for matching buy and sell orders or trade reporting systems,c) trading surveillance offices at exchanges on which electricity and gas are traded, as well asd) the authorities referred to in § 47i,4. provisions stipulating that an exchange or a suitable third party may transmit the information pursuant to § 47e(2) in conjunction with § 47g at the cost of those subject to the reporting obligation, and to specify the details thereof, and5. reasonable de minimis thresholds for reporting transactions and data, as well as transitional periods for the start of the reporting obligations.§ 47g (Areas for issuing Determinations)(1) The Market Transparency Unit shall decide, by making determinations for the areas referred to in paragraphs 2 to 12 and subject to § 47d(1) and § 47e as well as subject to the ordinance to be issued based on § 47f, which data and categories of data are to be transmitted and how.(2) The Market Transparency Unit may determine that operators of electricity generation units and of storage facilities with an installed generation or storage capacity of more than 10 megawatts must transmit information on the following data and categories of data for each unit:1. for each electricity generation unit, in particular, the name, location, control area, installed generation capacity and type of generation,2. for each individual generation unit, on an hourly basisa) net generation capacity,b) generation planned on the previous day,c) actual generation,d) marginal costs of generation, including information on the cost components, in particular fuel costs, CO2 costs, opportunity costs,e) planned and unplanned unavailability due to technical restrictions,f) unavailability due to grid restrictions,g) balancing services and operating reserves held available and supplied,h) unused available capacities,3. for each individual generation unita) start-up costs (warm starts and cold starts), minimum idle times, minimum run times and minimum production volumes,b) planned decommissioning of plants and cold reserves,4. drawing rights agreements,5. planned investment projects,6. for cross-border trading activities: volumes, trading venues used or trade partners, to be listed separately for each country in which trading took place, and7. information enabling the Market Transparency Unit to observe and assess the supply behaviour in trading.(3) The Market Transparency Unit may determine that operators of generation units with an installed generation capacity per unit of more than 1 megawatt and up to 10 megawatts must specify, on an annual basis, the aggregate total of the installed generation capacity of all generation units in each control area separately for each type of generation.(4) The Market Transparency Unit may determine that operators of electricity consumption units must transmit information on the following data and categories of data:1. the planned and unplanned under-consumption of consumption units with a maximum consumption capacity of more than 25 megawatts per unit, and2. balancing services that are held available and supplied.(5) The Market Transparency Unit may determine that transmission systems operators within the meaning of § 3 no. 10 of the German Energy Industry Act must transmit information on the following data and categories of data:1. the transmission capacity at cross-border interconnectors on an hourly basis,2. import and export data on an hourly basis,3. the forecast and actual feed-in of energy from facilities for which tariffs are governed by the German Renewable Energy Sources Act [Erneuerbare-Energien-Gesetz] on an hourly basis,4. the sales offers made based on the German Equalisation Scheme Ordinance [Ausgleichsmechanismusverordnung] on an hourly basis and5. the offers and results of auctions for balancing services.(6) The Market Transparency Unit may determine that operators of facilities generating electricity from renewable energy sources with an installed generation capacity of more than 10 megawatts must transmit information on the following data and categories of data:1. the volumes produced by type of facility and2. the selling method within the meaning of § 20(1) of the German Renewable Energy Sources Act chosen, and the volumes attributable to each selling method.(7) The Market Transparency Unit may determine that trading platforms for trading electricity and natural gas must transmit information on the following data and categories of data:1. the offers made on the platforms,2. trading results and3. all off-exchange non-standardised trading activities where the counterparties individually negotiate bilateral trades (OTC transactions) that are secured by cash or commodities clearing through the trading platform.(8) The Market Transparency Unit may determine that wholesalers within the meaning of § 3 no. 21 of the German Energy Industry Act that trade in electricity must transmit information on the transactions specified in § 47e(2) no. 1, to the extent that these transactions do not fall under the scope of paragraph 7. As regards the trading of electricity generated from renewable energy sources, the Market Transparency Unit may also determine that wholesalers within the meaning of sentence 1 must transmit information on the form of direct selling within the meaning of § 5 no. 9 of the German Renewable Energy Sources Act and on the quantities of electricity traded thereunder.(9) The Market Transparency Unit may determine that wholesalers within the meaning of § 3 no. 21 of the German Energy Industry Act that trade in natural gas must transmit information on the following data and categories of data:1. cross-border quantities and prices as well as data on import and export quantities,2. quantities of gas produced in Germany and the initial sales prices for these quantities,3. import agreements (cross-border agreements),4. delivery volumes for each distribution level in the distribution system,5. transactions concluded with wholesale customers, transmission systems operators and operators of storage and LNG facilities under gas supply contracts and energy derivatives within the meaning of § 3(15a) of the German Energy Industry Act that are based on gas, including the term, volume, date and time of execution, the stipulations on term, delivery and settlement, and transaction prices,6. offers and results of their own natural gas auctions,7. existing gas procurement and supply contracts and8. any other gas trading activities concluded as OTC transactions.(10) The Market Transparency Unit may determine that transmission system operators within the meaning of § 3 no. 5 of the German Energy Industry Act must transmit information on the following data and categories of data:1. existing capacity contracts,2. contractual agreements with third parties regarding flow commitments and 3. offers and results of invitations to tender for flow commitments.(11) The Market Transparency Unit may determine that market area managers within the meaning of § 2 no. 11 of the German Gas Grid Access Ordinance [Gasnetzzugangsverordnung] must transmit information on the following data and categories of data:1. existing contracts on balancing services,2. offers and results of auctions and invitations to tender for balancing services,3. transactions concluded via trading platforms and4. any other gas trading activities concluded as OTC transactions.(12) The Market Transparency Unit may determine that, for balancing services and biogas, information must be transmitted on the procurement of third-party balancing services, on results of invitations to tender and on the feeding-in and marketing of biogas.Footnote 2: Pursuant to Article 4(2) of the Act of 5 December 2012 (Federal Law Gazette I p. 2403), § 47g(2) will cease to be in force on 31 December 2015. [Translators note: Pursuant to Articles 2 to 4 of the Act of 21 April 2015 (Federal Law Gazette I p. 582) the date on which § 47g(2) will cease to be in force has been postponed to 31 December 2018.]§ 47h (Reporting Duties, Publications)(1) The Market Transparency Unit shall inform the Federal Ministry of Economics and Technology of the transmission of information pursuant to § 47b(7) sentence 1.(2) The Market Transparency Unit shall prepare a report on its activities every two years. Where wholesale trading in electricity and natural gas is concerned, it shall prepare such report in agreement with the Bundesnetzagentur. Business secrets of which the Market Transparency Unit has obtained knowledge in performing its tasks will be removed from the report. The report will be published on the website of the Market Transparency Unit. The report may be issued at the same time as the report to be issued by the Bundeskartellamt pursuant to § 53(3) and combined with it.(3) The Market Transparency Unit shall publish the lists prepared pursuant to § 47b (5), including the drafts thereof, on its website.(4) To increase wholesale transparency, the Market Transparency Unit may publish, in agreement with the Bundesnetzagentur, the generation and consumption data currently published on the transparency platform operated by European Energy Exchange AG and the transmission system operators as soon as that publication is discontinued. The publication requirements imposed on the market participants under the German Energy Industry Act and any ordinances promulgated thereunder as well as under European law in order to increase transparency on the electricity and gas markets remain unaffected.§ 47i (Cooperation with other Authorities and Supervisory Entities)(1) In carrying out the tasks of the Market Transparency Unit pursuant to § 47b, the Bundeskartellamt and the Bundesnetzagentur shall cooperate with the following authorities:1. the German Federal Financial Supervisory Authority [Bundesanstalt für Finanzdienstleistungsaufsicht],2. the exchange supervisory authorities and trading surveillance offices of the exchanges on which electricity and gas as well as energy derivatives within the meaning of § 3 no. 15a of the German Energy Industry Act are traded,3. the Agency for the Cooperation of Energy Regulators and the European Commission, to the extent that they perform tasks under Regulation (EU) No 1227/2011, and4. regulatory authorities of other Member States.Irrespective of the relevant procedure chosen in a given case, these entities may exchange information, including personal data as well as operating and business secrets, to the extent this is necessary for the performance of their respective tasks. They may use this information for their procedures. Prohibitions on the use of evidence shall remain unaffected. Provisions concerning legal assistance in criminal matters as well as agreements on administrative and legal assistance shall remain unaffected.(2) Subject to the consent of the Federal Ministry of Economics and Technology, the Market Transparency Unit may enter into cooperation agreements with the Federal Financial Supervisory Authority, the exchange supervisory authorities and trading surveillance offices of the exchanges on which electricity and gas as well as energy derivatives within the meaning of § 3 no. 15a of the German Energy Industry Act are traded, and with the Agency for the Cooperation of Energy Regulators.§ 47j (Confidential Information, Operational Reliability, Data Protection)(1) Information that the Market Transparency Unit has obtained or prepared in the ordinary course of business when fulfilling its duties must be kept confidential. The Market Transparency Unit's members of staff are subject to a duty of confidentiality regarding the confidential information referred to in sentence 1. Other persons who are to receive confidential information shall, prior to transmission thereof, be specifically committed to secrecy unless they hold a public office or are bound by special obligations in the public service. § 1(2), (3) and (4) no. 2 of the German Act on the Obligations of Public Servants [Verpflichtungsgesetz] shall apply mutatis mutandis.(2) Together with the Bundesnetzagentur, the Market Transparency Unit shall ensure the operational reliability of the data monitoring and the confidentiality, integrity and protection of the incoming information. In this regard, the Market Transparency Unit is bound to the same degree of confidentiality as the entity transmitting the information or the entity that collected the information. The Market Transparency Unit shall take all necessary measures to prevent any abuse of, and any unauthorised access to, the information managed in its systems. The Market Transparency Unit shall identify sources of operational risks and minimise these risks by developing adequate systems, controls and procedures.(3) Paragraph 1 applies mutatis mutandis to persons that are to receive data pursuant to § 47d(1) sentence 5 or that receive information pursuant to § 47c(4).(4) The Market Transparency Unit may store, edit and use personal data communicated to it for the purposes of fulfilling its tasks pursuant to § 47b only to the extent necessary for the fulfilment of the tasks within its scope of competence and for purposes of cooperation pursuant to Article 7(2) and Article 16 of Regulation (EU) No 1227/2011.(5) Access to files by persons whose personal rights are affected by the decisions taken by the Market Transparency Unit pursuant to "Translations"(5) and (7), § 47d(1) and (2), § 47e and § 47g as well as § 81(2) no. 2(c) and (d), and nos 5a, 5b and 6 shall be restricted to documents that are exclusively attributable to the legal relationship between the affected person and the Market Transparency Unit.III. Evaluation§ 47l (Evaluation of the Market Transparency Units)The Federal Ministry of Economics and Technology shall report to the legislative bodies on the results of the market transparency units' work and the experiences gained therefrom. The reporting for the wholesale trade in electricity and gas shall be carried out five years after the beginning of the notification duties pursuant to § 47e(2) to (5) in conjunction with the ordinance referred to in § 47f. The reporting for the trade in fuels shall be carried out three years after the beginning of the notification duty pursuant to § 47k(2) in conjunction with the ordinance referred to in § 47k(8) and should in particular include information on the development of prices and the situation of the small and medium-sized mineral oil industry. |