

GAS REGULATION

Austria



Gas Regulation

Consulting editors

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Dentons

Quick reference guide enabling side-by-side comparison of local insights, including into the domestic gas market, government policy and regulatory authorities; regulation of natural gas and unconventional gas production; regulation of natural gas pipeline transportation and storage, distribution, sales and trading; LNG regulation; mergers and competition, including price restrictions; international considerations, including foreign participation, treaties and other multinational agreements, and cross-border sales and deliveries; transactions between affiliates; and recent trends.

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Table of contents

DOMESTIC SECTOR OVERVIEW

State of the market
Consumption
Government policy
Regulatory authorities

REGULATION OF NATURAL GAS PRODUCTION

Ownership and organisation
Regulatory framework
Unconventional gas production
Required security and guarantees

REGULATION OF NATURAL GAS PIPELINE TRANSPORTATION AND STORAGE

Ownership and infrastructure
Regulatory framework
Land rights
Access
Interconnection and expansion
Processing
Contracts

REGULATION OF NATURAL GAS DISTRIBUTION

Ownership
Regulatory framework
Access and pricing
System/service expansion and limitation
Contracts

REGULATION OF NATURAL GAS SALES AND TRADING

Ownership and organisation
Government oversight
Trading processes
Available services and products

REGULATION OF LNG

Ownership and organisation
Regulatory framework
Pricing

MERGERS AND COMPETITION

Competition authorities
Competition standards
Enforcement
Merger control
Price restrictions
Corporate governance regulations

INTERNATIONAL

Foreign participation
International agreements
Cross-border sales and deliveries

TRANSACTIONS BETWEEN AFFILIATES

Restrictions
Enforcement

UPDATE AND TRENDS

Gas sector-specific regulation
Other regulatory developments of particular relevance to the gas sector

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DOMESTIC SECTOR OVERVIEW

State of the market

Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

Compared with 2020, the natural gas supply to end users increased by 6.4 per cent to a total amount of 96.260 gigawatt-hours in 2021. Domestic production covers about 8 per cent of domestic use. Two companies, OMV Exploration & Production Austria GmbH and RAG Austria AG, are active in domestic gas production. The gas transportation system in Austria is divided into three market areas: East, Tyrol and Vorarlberg. The market areas of Tyrol and Vorarlberg are only connected upstream to the German gas transportation system, having no connection within Austria, and do not include any domestic production or storage sites. Within Market Area East, in addition to the domestic distribution system, major transit pipelines exist, connecting the Baumgarten import station at the Austrian–Slovakian border near Vienna with Italy (Trans Austria Gasline (TAG)), Germany (West Austria Gasline (WAG)), Hungary (Hungary–Austria Gasline) and Slovenia (Croatia) via the Trans Austria Gasline and the South East Gasline, which have the capacity to transport about 100 billion cubic metres a year of mainly Russian gas dedicated to other western and central European states. There are two transmission system operators (TSOs) in Austria: TAG, which is operated by Trans Austria Gasleitung GmbH, WAG, and the remaining transmission pipelines by Gas Connect Austria GmbH. Both Trans Austria Gasleitung GmbH and Gas Connect Austria GmbH have been certified as independent transmission system operators in accordance with Directive 2009/73/EC.

The domestic natural gas sector was fully opened to competition from 1 October 2002, even before Directive 2003/55/EC was passed. In November 2011, major changes to the Austrian Gas Act were enacted, implementing Directive 2009/73/EC and introducing the legal basis for the current market model in Austria, applicable as from 1 January 2013, which replaced the division between transit and domestic supply within the respective control areas by integrated market areas. Within the new entry or exit model, Market Area East forms a single entry or exit zone, and a virtual trading point (VTP) was established within this market area. The VTP is the central hub and marketplace for all gas flows in Market Area East. Settlement at the VTP is carried out by Central European Gas Hub GmbH.

This new market model led to a significant stimulation of competition in Austria. In 2017, the functions of the market area manager who was responsible for coordinating the smooth functioning of the transmission system and the function of the distribution area manager who administered capacity of the level one distribution pipelines and steered the gas flow therein for domestic consumption, giving instructions to the respective distribution system operators, were united. Both functions are now carried out by AGGM Austrian Gas Grid Management AG. The balance group coordinator (AGCS Clearing and Settlement AG) provides a settlement of balancing energy for domestic consumption.

On the market for the supply of end consumers, the price differentiation owing to alternative suppliers by the way of discount campaigns is maintained. Between January and September 2022, 38,091 customers, including 34,587 households changed their gas supplier. In 2021, the change rate for gas was 2.9 per cent and, thus, dropped significantly compared with the previous year. This is a result of the Russian-Ukrainian war. Since the start of this war, gas prices have increased dramatically and the competition on the related market has stopped. Consequently, several gas suppliers left the market, and the product range has become noticeably smaller. A change in this situation cannot be expected in the near future. The most important suppliers are OMV Gas Marketing GmbH, EnergieAllianz (a joint venture of various former gas utilities (EVN, Wien Energie and Energie Burgenland), other former gas utilities such as Energie Steiermark Kunden GmbH, Salzburg AG, KELAG (a joint venture between RWE, Austria and the province of Carinthia), Wingas, Montana and goldgas, a subsidiary of Verbundnetz Gas AG.

E-Control, the Austrian energy regulator, is quite active in the fields of public information and consumer protection, as well as with respect to tariff regulation. As of 1 January 2013, the tariff setting at the transmission level was changed

to comply with article 13 of Regulation (EC) No. 715/2009, changing from tariffs according to contract paths to an entry or exit model.

Regarding network access, capacity management and balancing detailed rules have been set by way of the Gas Market Model Ordinance 2012 (the GMMO-VO 2012).

LNG is not directly imported into Austria. Recently, a couple of LNG stations were opened for the supply of trucks and buses.

Law stated - 12 January 2023

Consumption

What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

Natural gas met about 22.7 per cent of Austria's total energy needs in 2021. Austria imports approximately 80 per cent of its gas from Russia. This dependency, which has grown over decades, cannot be changed either immediately or within a short period of time. Moreover, this situation is considered extremely critical, given that the gas flow from Russia has been significantly reduced since mid-2022 as a result of the Russian-Ukrainian war. Therefore, efforts have intensified to diversify the supply portfolio of gas and to secure gas in storage units for the cold winter period. This war-related circumstance and Austria's dependency on Russian gas prompted the Austrian parliament to pass the Gas Diversification Act 2022 as well as an amendment to the Austrian Gas Act 2011, introducing a strategic gas reserve.

Law stated - 12 January 2023

Government policy

What is the government's policy for the domestic natural gas sector and which bodies set it?

Government policy is set by the Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK) as regards the natural gas market, transport and storage, and the Ministry of Agriculture, Regions and Tourism (BMLRT) as regards the exploration and production of natural gas as well as the mining aspects of gas storage. Laws are passed by Parliament, and E-Control is very active in pursuing the goals of the regulator and monitoring the gas market. The government's policy is very much determined by EU legislation in this field.

On 22 November 2011, the Austrian Gas Act 2011 came into force, implementing the Third Energy Package into Austrian gas law. Regarding unbundling, all options possible under Directive 2009/73/EC were included. The Austrian market model was substantially changed following the introduction of an obligatory entry or exit model in accordance with article 13 of Regulation (EC) No. 715/2009 for the transmission system. This has been realised by the setting up of market areas, including the transmission and distribution grid, as from 1 January 2013.

No special legal framework for unconventional exploration has been introduced in Austria.

Law stated - 12 January 2023

Regulatory authorities

Which authorities make regulatory policies and decisions in respect of the production, transmission, distribution and supply of natural gas?

Regulatory policies and decisions regarding the exploration for and the production of natural gas are set by the BMLRT, the representative of the Republic of Austria that concludes exploration, production and storage agreements with undertakings as the owner of the mineral resources underground (hydrocarbons) and the authority responsible for granting licences for the exploration and production of natural gas and construction permits for production facilities.

E-Control, as the independent regulatory authority, takes decisions regarding regulatory policies in respect of the transmission, distribution and supply of natural gas within the framework of respective EU regulations and national laws.

Tariffs for the use of the pipeline system are set by E-Control. In addition, the general terms and conditions for shippers and end-users must be approved by E-Control. E-Control constantly monitors the entire gas market and has far-reaching enforcement powers. E-Control also handles the certification procedure of the TSOs.

In accordance with Directive 2009/73/EC, the independence of this regulatory authority is implemented by the E-Control Act (E-ControlG). Pursuant to section 5(2) of E-ControlG, the bodies of E-Control and their members are not bound by any instructions in the performance of their duties. Members of the executive board are appointed to a term of office of five years and can only be dismissed under special conditions.

E-Control undertakes investigations and provides expert opinions on the market and competition situation in the fields of electricity and gas. It executes the application and opinion rights bestowed on regulators by the Federal Act against cartels and other impediments to competition (Kartellgesetz 2005 (Cartel Act)), FLG I No. 61/2005. The authority complies with and implements any relevant legally binding decisions of the Agency and the European Commission. E-Control decides by decision and in the form of general regulations. E-Control is not authorised to impose administrative penalties.

Pursuant to section 7 of the Proceedings of Administrative Courts Act (VwGVG), decisions of E-Control may be appealed to the Federal Administrative Court.

Where disputes on certain matters arise between parties entitled to system access and system operators, by parties entitled to storage access and storage system operators or between suppliers, the decision lies with E-Control, except in cases within the jurisdiction of the cartel court. In all other disputes between the parties mentioned above or between customers and the operator of the VTP, the courts have jurisdiction.

Law stated - 12 January 2023

REGULATION OF NATURAL GAS PRODUCTION

Ownership and organisation

What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

The exploration and production of natural gas in Austria is undertaken by two companies. The first is OMV Austria Exploration & Production GmbH, which is indirectly owned by OMV AG. The shares of OMV AG itself are quoted on the Austrian stock exchange with two major shareholders (about 31.5 per cent are held by ÖBAG, the Austrian state-owned holding company, and about 25 per cent by MPPH, the state-owned holding company of Abu Dhabi). The second company is RAG Austria AG, an independent company.

Entities producing natural gas must pay royalties to the federal government, and earnings are subject to income or corporate tax.

Law stated - 12 January 2023

Regulatory framework

Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

Under the Mineral Resources Act, ownership of hydrocarbons not yet produced lies with the Republic of Austria. The Republic of Austria, represented by the Ministry of Finance (BMF), may conclude exploration, production and storage agreements with entities that have the technical and financial expertise for that kind of mining business, thereby transferring the right to the hydrocarbons produced in a given area to the entity. In exchange for the right, the entity must commit itself to a certain amount of agreed exploration activity, and the payment of lease rentals and royalties in the case of production. In addition to this contract under civil law, the entity undertaking these activities must obtain certain permits in advance for, among others, operation and construction from the mining authority (the BMF).

The BMF determines the regulatory policies governing the production of natural gas in accordance with and within the framework of the Mineral Resources Act. There is no separate regulatory agency established for the activities governed by the Mineral Resources Act, including the mining aspects of exploration for, and production and underground storage of, natural gas.

If the exploration of natural gas exceeds 500,000 cubic metres per day (m³/d) (reduced thresholds of 250,000 m³/d may apply to exploration fields located in specific 'protected areas'), an environmental impact assessment is required under the Environment Impact Act 2000 (UVP-G 2000). The competent authority for an environmental impact assessment is the respective provincial government.

Administrative decisions of the BMF may only be challenged before the Austrian Supreme Administrative Court or the Constitutional Court of Austria, or both. A decision regarding an environmental impact assessment issued by the provincial government can be appealed before the Federal Administrative Court. There is no difference between the unconventional and conventional sectors of natural gas exploration in Austria.

Law stated - 12 January 2023

Unconventional gas production

Are there different rules for, or any restrictions on, unconventional natural gas production (including fracking)?

No special legal framework for unconventional natural gas production (including fracking) has been introduced in Austria.

Law stated - 12 January 2023

Required security and guarantees

Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

The Mineral Resources Act only provides that the respective applicant must fulfil the technical and financial requirements to establish and operate the respective mining undertaking. Under the exploration, production and storage agreement to be concluded, the BMF may require the provision of securities or guarantees depending on the financial standing of the contract partner.

Law stated - 12 January 2023

REGULATION OF NATURAL GAS PIPELINE TRANSPORTATION AND STORAGE

Ownership and infrastructure

Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

In the Market Area East, Gas Connect Austria GmbH and Trans Austria Gasleitung GmbH are the owners and operators of the transmission lines used mainly for the transit of natural gas to other European states. In 2014, Gas Connect Austria GmbH became the 100 per cent shareholder of former project company Baumgarten-Oberkappel Gasleitungen GmbH for the operation of the West Austria Gasline running from Baumgarten at the Slovakian–Austrian border to the German–Austrian Border near Oberkappel, which was later merged into Gas Connect Austria GmbH. Also, in 2014, the ownership and operations of Trans Austria Gasleitung, the transmission line running from Baumgarten to the Austrian–Italian border near Arnoldstein, was transferred from Gas Connect Austria GmbH to Trans Austria Gasleitung GmbH. Three other companies (Netz Niederösterreich GmbH, Netz Oberösterreich GmbH and Energienetze Steiermark GmbH) own and operate level one distribution lines, used mainly for domestic consumption. In addition to these companies, there are about 20 distribution network operators. All transmission system operators (TSOs) and the major distribution system operators (DSOs) (with a threshold of 50,000 end-user connections) are legally unbundled. The TSOs must be certified as effective and efficient unbundled TSOs in accordance with the respective unbundling provisions (sections 108 et seqq of the Austrian Gas Act 2011). Both Gas Connect Austria GmbH and Trans Austria Gasleitung GmbH have been certified as independent transmission system operators (ITOs).

The level-one distribution lines used for domestic consumption, and transportation to and from storage and production sites, are administered by the distribution area manager, AGGM Austrian Gas Grid Management AG (third-party access and gas-flow management, as well as physical balancing). In addition, since 2017, AGGM Austrian Gas Grid Management AG has also acted as market area manager.

The entire storage infrastructure in Austria is owned by OMV AG and RAG, as well as by joint ventures between RAG and Astora, Gazprom Export LLC and Uniper Energy Storage GmbH. Owing to geological conditions, most of the storage facilities are pore storages, since depleted natural gas fields are used for gas storage.

The capacity of the storage infrastructure amounts to 7.4 billion standard cubic metres; therefore, Austria is able to store around its entire current natural gas consumption for one year.

The physical operation of gas storage in depleted gas fields is regulated in the Mineral Resources Act. Third-party access and legal unbundling of storage undertakings are regulated in the Austrian Gas Act 2011 in accordance with the requirements of the Third Energy Package. Austria chose to apply negotiated access to gas storage.

Law stated - 12 January 2023

Regulatory framework

Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

With the Austrian Gas Act 2011, Austria implemented all of the strict unbundling options of the Third Energy Package applicable to natural gas transmission lines, including the ITO option. The major goal of the legislation is to separate the supply from the transportation interests in the natural gas sector. By implementing the ITO option, member states can allow undertakings to ensure the independence of their transmission operators instead of selling the transmission lines.

For the construction and operation of natural gas transportation pipelines, permits primarily in accordance with the Austrian Gas Act 2011 are required. The permits under the Austrian Gas Act 2011 are issued by the Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK) as long as the respective pipeline does not require a permit under the Environmental Protection Act, under which the local province is the competent authority. The construction and operation of storage facilities require permits under the Mineral Resources Act. In addition, other permits under different administrative laws, such as the Water Rights Act, the Environmental Protection Acts of the provinces and the Environmental Assessment Act, may be necessary.

A licence issued by E-Control, the Austrian energy regulator, is required to act as a network operator. On 3 March 2011, E-Control was transformed into an institution under public law in accordance with the E-Control Act.

The three bodies of E-Control are the executive board, supervisory board and regulatory commission. The regulatory commission is established as a judicial body comprising five members, including a judge, who are appointed by the government for five-year terms. The main competence of the regulatory commission is tariff setting and decisions in connection with the refusal of third-party access. Some decisions must be issued in the form of individual official decisions, with some in the form of general regulations (ordinaries).

The main decision-making body within E-Control is the executive board, which must take most of the decisions of the regulatory authority. The executive board consists of two members appointed by the BMK for five-year terms. Normally, the decisions of the executive board are final and can only be challenged before the administrative courts or the Constitutional Court, while certain decisions may be challenged in front of the regulatory commission and some others in front of the BMK. Decisions of the regulatory commission in the form of individual official decrees may only be challenged before the administrative courts or the Constitutional Court of Austria. General regulations of the regulatory commission may only be challenged before the Constitutional Court on very limited grounds. Since tariffs are set by general regulation, the decisions by the regulatory commission are, in effect, not examined in a material way, but only on formal grounds. The costs of the network operators that form the basis of the tariff regulations are separately determined with individual decrees by the executive board of E-Control.

Section 159 et seq of the Austrian Gas Act 2011 stipulate several administrative penalties. In the event E-Control suspects misbehaviour, which could be subject to an administrative penalty, it must give notice to the general competent administrative authority to initiate a proceeding. In the event of possible discrimination against network users and other severe infringements of regulatory obligations, E-Control must give notice to the Cartel Court to start a procedure (see section 164 of the Austrian Gas Act 2011).

Law stated - 12 January 2023

Land rights

How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?

Generally, civil law contracts entailing the right of way or easement with the landowner are concluded. Subject to certain requirements, expropriation is allowed for if the project is in the public interest in relation to transmission or distribution lines under the Austrian Gas Act 2011, as well as production lines under the Mineral Resources Act.

Law stated - 12 January 2023

Access

How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

Transmission pipelines and storage facilities are only established within the Market Area East. Within the Market Areas of Tyrol and Vorarlberg, only distribution pipeline systems exist.

In accordance with the Austrian Gas Act 2011, storage entities must provide third-party access to gas storage on the basis of non-discriminatory published general terms and conditions. Storage entities are obliged to agree with third parties on storage charges that comply with the general terms and conditions and the principles of equal treatment. If necessary, the BMK would be entitled to implement regulated access by way of ordinance. If the storage charges published by storage entities exceed the storage charges of comparable services in EU member states by more than 20 per cent, E-Control is entitled to determine the cost basis that underlines the charges.

With the introduction of the new model for third-party access in Austria, as of 1 January 2013, independent requests for entry and exit capacities in and out of the Market Area East are possible. After entry into the Market Area East, all gas volumes have access to the virtual trading point (VTP) established on the transmission level. For distribution of gas to end consumers within the Market Area East, no additional separate booking of capacity into the distribution area with the distribution area manager is required. All shippers must register themselves as members of a balancing group with the market area manager in different categories for transit or supply to end consumers.

The Austrian Gas Act 2011 empowers E-Control to set the market rules applicable to the gas sector by way of an ordinance. Regarding Market Area East, this ordinance (the Gas Market Model Ordinance 2012 (GMMO-VO 2012)) includes regulations for access to the distribution network and the transmission network and rules for balance within Market Area East. Since the market areas of Tyrol and Vorarlberg have no direct interconnection to Market Area East, and only connect upstream to the German gas pipeline system, different rules were set for these market areas to enable easy access from the NetConnect (NCG) market area in Germany.

In accordance with section 6 of the GMMO-VO 2012, since 1 April 2013, the allocation of entry or exit capacities is conducted by auction. At the auctions, the TSOs must provide capacity products in accordance with the CAM Network Code. The two transmission system operators Gas Connect Austria GmbH and Trans Austria Gasleitung GmbH are shareholders of the European capacity platform, PRISMA, which opened on 1 April 2013 and offer their capacities over PRISMA.

The use-it-or-lose-it mechanism for day-ahead capacities came into force on 1 October 2013, while such mechanism came into force for long-term capacities on 1 January 2013. According to the respective provisions of the GMMO-VO 2012, network users shall offer unused capacities on the online platform as secondary capacity. If a network user does not provide its unused capacities on the online platform, the operator must revoke the unused capacities from the network user and provide this capacity as primary capacity. System users are entitled to sell their entry or exit capacity to other system users only through the Central European Gas Hub GmbH (CEGH), the operator of the VTP in Market Area East.

Entry capacities must be booked by suppliers and traders and entitle them to feed natural gas into the pipeline system of a market area and to transfer this natural gas to the VTP. Capacities at the exit point entitle the owner to transport from the VTP to the respective exit point and to feed out the respective amount of natural gas. The VTP itself is no physical entry or exit point but enables market participants to trade natural gas without booking transport capacity.

The Austrian Gas Act 2011 also obliges every market participant either to form its own balance group or to join an existing one. Therefore, the old system of balance groups, which previously had only applied to the distribution area, now applies to the whole market area, including the transit network. Registration of balance groups and the management of these balance groups are the responsibility of the market area manager. The balance group coordinator handles the management of energy balancing. Balance group representatives must nominate the gas

volumes to be transported within the scope of booked capacities.

While the market area manager is responsible for the ex ante balancing of the nominated gas volumes and informing balance group representatives about imbalances, balancing on distribution level (ex post balancing) lies with the clearing and settlement agent. Balancing energy shall be primarily purchased at the VTP. If the balance group representatives fail to renominate, gas will be purchased at the VTP on behalf and for the account of the balance group representatives. Extra charges must be paid for balancing energy purchased.

There is no difference between cross-border transports and domestic transports on the transmission level. Costs of distribution network operators are determined by the regulatory authority by way of a formal decision, which might be separately appealed. The same applies to the approval of calculation methods for transmission operators. Tariffs for transportation customers and end consumers are set by the regulatory authority on the basis of the approved costs and methods by a separate ordinance. As regards the tariffs set on transmission level (entry or exit tariffs in and out of the market area), the rules of the TAR network code must be applied. In Austria, natural gas from domestic production and import is high calorific gas within a certain quality range set out by the provisions of the GMMO-VO 2012. An adjustment to different gas qualities is generally not necessary.

Law stated - 12 January 2023

Interconnection and expansion

Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Under the Austrian Gas Act 2011 or the Mineral Resources Act, storage entities are not required to enlarge their facilities. Network operators have the responsibility to expand their system, if needed, as specified in any approved long-term plan (distribution level) or network development plan (transmission level).

In addition, DSOs have the duty to expand the distribution network to physically connect a customer to the pipeline network, if economically feasible. The costs are to be paid by the customer. For domestic transportation, one of the tasks of the distribution area manager is to undertake long-term planning and propose a suitable adaptation to level-one distribution pipelines to ensure that enough transportation capacity is available. Suppliers and customers can file an application for the expansion of transportation capacity if their respective initial application for third-party access has been denied because of capacity constraints. If no network operator makes the necessary expansions, the regulatory authority can initiate a tender procedure for the proposed measures. The cost of the expansion has to be included by the regulatory authority in the calculation of the transportation tariff. This means that the investor is entitled to reimbursement of the necessary costs plus a reasonable margin as determined by the regulatory authority.

For the transmission level, a similar system was established with the Austrian Gas Act 2011, tasking the market area manager with coordinating a ten-year network development plan with the TSOs and the distribution area manager.

In the event that network operators do not comply with the investment requirements set out in such plan, the regulatory authority will have several possibilities to ensure that the investments are realised.

Law stated - 12 January 2023

Processing

Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

Any user of a transportation system in Austria must ensure that the gas delivered to the system operator for transportation complies with certain quality specifications. The general terms and conditions for pipeline access either refer to the relevant provisions for gas quality in the GMMO-VO 2012 and the respective Austrian Association for Gas and Water Directive or contain their own provisions regarding gas quality that the user of the transportation system must comply with. This applies to domestic production, stored gas and imported gas. Therefore, the processing of gas lies outside of the transportation service of the network operator. Nevertheless, network operators have facilities, namely dehydration plants, for cases where off-specification gas is delivered. If off-specification gas is delivered, network operators have the right to refuse acceptance of this gas.

Law stated - 12 January 2023

Contracts

Describe the contractual regime for transportation and storage.

In accordance with the Austrian Gas Act 2011, storage entities must provide third-party access to gas storage on the basis of non-discriminatory published general terms and conditions. Storage entities are obliged to agree with third parties on storage charges that comply with the general terms and conditions and the principles of equal treatment. If necessary, the BMK would be entitled to implement regulated access by way of ordinance. If the storage charges published by storage entities exceed the storage charges of comparable services in EU member states by more than 20 per cent, E-Control is entitled to determine the cost basis that underlines the charges.

With the introduction of the new model for third-party access in Austria, as of 1 January 2013, independent requests for entry and exit capacities in and out of the Market Area East are possible. After entry into the Market Area East, all gas volumes have access to the VTP established on the transmission level. For distribution of gas to end consumers within the Market Area East, no additional separate booking of capacity into the distribution area with the distribution area manager is required. All shippers must register themselves as members of a balancing group with the market area manager in different categories for transit or supply to end consumers.

The Austrian Gas Act 2011 empowers E-Control to set the market rules applicable to the gas sector by way of an ordinance. Regarding Market Area East, this ordinance (GMMO-VO 2012) includes regulations for access to the distribution network and the transmission network and rules for balance within Market Area East. Since the market areas of Tyrol and Vorarlberg have no direct interconnection to Market Area East, and only connect upstream to the German gas pipeline system, different rules were set for these market areas to enable easy access from the NCG market area in Germany. The entry capacity at the border to Germany is booked by the distribution area manager, and the gas to be delivered to these market areas is transferred to the balance group of the distribution area manager by the traders and suppliers at the VTP of the market area net connect in Germany. Therefore, the suppliers need not book entry capacity at the German–Austrian border.

In accordance with section 6 of the GMMO-VO 2012, since 1 April 2013, the allocation of entry or exit capacities has been conducted by auction. At the auctions, the TSOs must provide capacity products in accordance with the CAM Network Code. The two transmission system operators Gas Connect Austria GmbH and Trans Austria Gasleitung GmbH are shareholders of the European capacity platform, PRISMA, which opened on 1 April 2013, and offer their capacities over PRISMA.

The use-it-or-lose-it mechanism for day-ahead capacities came into force on 1 October 2013, while such mechanism came into force for long-term capacities on 1 January 2013. According to the respective provisions of the GMMO-VO 2012, network users shall offer unused capacities on the online platform as secondary capacity. If a network user does not provide its unused capacities on the online platform, the operator must revoke the unused capacities from the network user and provide this capacity as primary capacity. System users are entitled to sell their entry or exit capacity to other system users only over CEGH, the operator of the VTP in Market Area East.

Entry capacities into the Market Area East must be booked by suppliers and traders and entitle them to feed natural gas into the pipeline system of the Market Area East and to transfer this natural gas to the VTP. Capacities at the exit point entitle the owner to transport from the VTP to the respective exit point and to feed out the respective amount of natural gas. The VTP itself is not a physical entry or exit point but enables market participants to trade natural gas without booking transport capacity.

The Austrian Gas Act 2011 also obliges every market participant either to form its own balance group or to join an existing one. Therefore, the old system of balance groups, which previously had only applied to the distribution area, now applies to the whole market area, including the transit network. Registration of balance groups and the management of these balance groups are the responsibility of the market area manager. The balance group coordinator handles the management of energy balancing. Balance group representatives must nominate the gas volumes to be transported within the scope of booked capacities.

While the market area manager is responsible for ex ante balancing of the nominated gas volumes and informing balance group representatives about imbalances, balancing on distribution level (ex post balancing) lies with the clearing and settlement agent. Balancing energy shall be primarily purchased at the VTP. If the balance group representatives fail to renominate, gas will be purchased at the VTP on behalf and for the account of the balance group representatives. Extra charges must be paid for balancing energy purchased.

There is no difference between cross-border transports and domestic transports on the transmission level. Costs of distribution network operators are determined by the regulatory authority by way of a formal decision, which might be separately appealed. The same applies to the approval of calculation methods for transmission operators. Tariffs for transportation customers and end consumers are set by the regulatory authority on the basis of the approved costs and methods by separate ordinances. As regards the tariffs set on transmission level (entry or exit tariffs in and out of the market area), the rules of the TAR network code must be applied. In Austria, natural gas from domestic and imported production is high calorific gas within a certain quality range set out by the provisions of the GMMO-VO 2012. An adjustment to different gas qualities is generally not necessary.

Law stated - 12 January 2023

REGULATION OF NATURAL GAS DISTRIBUTION

Ownership

Describe in general the ownership of natural gas distribution networks.

Gas distribution networks are operated by the utilities of municipalities and regional distribution operators covering a part of or a whole province. These distribution system operators (DSOs) must be legally and functionally unbundled if they supply more than 50,000 customers. Most of the DSOs are directly or indirectly under the control of the respective province or municipality. Some have, directly or indirectly, minority shareholdings of international gas companies (ie, RWE and EnBW) or financial investors (eg, Macquarie).

Law stated - 12 January 2023

Regulatory framework

Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

DSOs require a licence under the Austrian Gas Act 2011, which to date has always been granted for an indefinite period.

This licence is granted by E-Control, the Austrian energy regulator. DSOs are obliged to connect any customer to their system, if economically feasible. Further, DSOs are obliged to advise end-consumers connected to their grid on energy saving measures in general and, in particular, on the possibilities for saving and using gas efficiently.

Law stated - 12 January 2023

Access and pricing

How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

The provisions of the Austrian Gas Act 2011 oblige all users of the distribution system to either join a balance group or build their own balance group to gain access to the distribution system.

Since the market areas Tyrol and Vorarlberg are not connected to Market Area East, but only to the NetConnect (NCG) market area in Germany, there are different market rules for these two areas. The new Cross-Border Operating Strongly Integrated Market Area (COSIMA) became effective as of 1 November 2013. This regulatory framework was integrated into the Gas Market Model Ordinance to ensure the security of supply of the market areas of Tyrol and Vorarlberg through the German pipeline system. COSIMA provides a barrier-free interconnection between the market areas of Tyrol and Vorarlberg and the NCG. The delivery of natural gas for these market areas is conducted by nomination at the virtual trading point (VTP) in the market area of NCG. Capacities booked at the VTP NCG are taken over by the distribution area manager, ensuring the transfer of the natural gas into the market areas of Tyrol and Vorarlberg. Therefore, natural gas handed over at the VTP NCG is deemed to be delivered in the respective market area.

Besides the network connection agreement for the physical connection, the customer must also apply to the DSO for third-party access. The DSO checks if transportation is possible within its distribution network. If possible, network access is granted for the applied maximum hourly transportation capacity and the applied period of time. A similar procedure applies in the case of a change of supplier by the customer. The customer only has to conclude a contract with the DSO in accordance with the general terms and conditions of the DSO, which are subject to the approval of E-Control.

Prices for network distribution services are set by the regulatory commission in an ordinance (the GSNE). The general terms and conditions of the DSO are also subject to the approval of E-Control. There is very little room for individual agreements between the DSO and its customers. The GSNE is regularly renewed by E-Control. To date, this has been done nearly every year. If the income deriving from the regulated tariff no longer covers the costs of a DSO, the DSO can apply for a change to the GSNE (this also applies to any transmission system operator (TSO)). Requests for network access must be processed within 14 days. Changes of a supplier are to be processed by the network operators within three weeks.

The costs of the DSOs are determined separately by individual decree by the executive board of E-Control, and the ordinance setting the tariffs is to be based on these decrees.

Law stated - 12 January 2023

System/service expansion and limitation

May the regulator require a distributor to expand its system to accommodate new customers?
May the regulator require the distributor to limit service to existing customers so that new customers can be served?

Network operators are responsible to expand their system, if needed, as specified in any approved long-term plan

(distribution level) or network development plan (transmission level). These plans are jointly developed with and approved by the competent authority E-Control. In addition, DSOs have the duty to expand the distribution network to physically connect a customer to the pipeline network, if economically feasible. The costs are to be paid by the customer.

In accordance with the Austrian Gas Act 2011, third-party access must be granted primarily on a first-come, first-served basis. Therefore, the regulator does not have the possibility of limiting service to existing customers in favour of new customers.

Law stated - 12 January 2023

Contracts

Describe the contractual regime in relation to natural gas distribution.

DSOs are obliged to grant system users access to the distribution system based on the general terms and conditions and the Austrian Gas Act 2011.

The provisions of the Austrian Gas Act 2011 oblige all users of the distribution system to either join a balance group or build their own balance group to gain access to the distribution system.

Besides the network connection agreement for the physical connection, the customer must also apply to the DSO for third-party access. The DSO checks if transportation is possible within its distribution network. If possible, network access is granted for the applied maximum hourly transportation capacity and the applied period of time. A similar procedure applies in the case of a change of supplier by the customer. The customer must only conclude a contract with the DSO in accordance with the general terms and conditions of the DSO, which are subject to the approval of E-Control.

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The costs of the DSOs are determined separately by individual decree by the executive board of E-Control, and the ordinance setting the tariffs is to be based on these decrees.

Law stated - 12 January 2023

REGULATION OF NATURAL GAS SALES AND TRADING

Ownership and organisation

What is the ownership and organisational structure for the supply and trading of natural gas?

In the Austrian domestic market, all former integrated gas companies are active as suppliers to customers. Most former local utilities still have a substantial market share in their home market (province or municipality). There are also other suppliers active in the Austrian market, which are mostly subsidiaries of other European gas companies. The local suppliers active in the provinces of Tyrol and Vorarlberg receive natural gas from German wholesalers at the German–Austrian border. The suppliers active in Market Area East receive gas mainly from domestic production, Germany, Norway and Russia.

Since 2007, trading at the Central European Gas Hub (CEGH) increased substantially. As of 1 January 2013, trading

activities in Market Area East have been concentrated at the virtual trading point, replacing the physical trading points at cross-border flanges.

Law stated - 12 January 2023

Government oversight

To what extent are natural gas supply and trading activities subject to government oversight?
What authorisations are required to engage in wholesale trading of gas?

Gas traders and suppliers must give notice to E-Control, the Austrian energy regulator, before starting business activities in Austria. Gas wholesale traders who have a permanent establishment in Austria must apply for a trading licence in accordance with the Austrian Trade Act. E-Control has the power and duty to gather statistical data from traders and suppliers. Suppliers must notify E-Control of the conclusion of gas supply contracts with a term of more than one year and a volume of more than 250 million cubic metres. Gas traders and suppliers must notify E-Control of their general terms and conditions for the supply of customers whose consumption is allocated using load profiles. The Austrian Gas Act 2011 specifies the mandatory content of these general terms and conditions. E-Control can prohibit the use of the notified general terms and conditions if they are in contradiction with the law, especially consumer protection law.

In addition, E-Control may exercise market oversight and may itself instigate proceedings in accordance with competition law in front of the Cartel Court.

Wholesale trading activities are subject to Regulation (EU) No. 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (REMIT). Notification requirements included therein, must be adhered to. A specific Austrian regulation in this respect, the data storage ordinance of E-Control, obliges energy traders to keep data of their transactions for five years.

Gas traders must also comply with other applicable EU Regulations, such as the European Market Infrastructure Regulation No. 648/2012 of 4 July 2012 on over-the-counter (OTC) derivatives, central counterparties and trade repositories.

Law stated - 12 January 2023

Trading processes

How are physical and financial trades of natural gas typically completed?

Physical and financial trades of natural gas are typically concluded at the gas exchange (CEGH) or as OTC contracts (mostly based on the standard European Federation of Energy Traders agreement). Standard forms are used at CEGH, which are available on its website.

Law stated - 12 January 2023

Available services and products

Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

There is no institutional single provider of gas and transportation. As of 1 January 2013, capacities are offered as

decoupled entry or exit capacities at regulated tariffs.

Transportation from and to storage, and production as well as transit, can be booked separately. The entry and exit fees to and from storage and production sites are paid by the storage undertakings and production undertakings.

Law stated - 12 January 2023

REGULATION OF LNG

Ownership and organisation

What is the ownership and organisational structure for LNG, including liquefaction and export facilities, and receiving and regasification facilities?

LNG is not directly imported into Austria. Since Austria has no direct connection to the sea, Austria has not enacted any specific LNG rules. There are no receiving and regasification facilities in Austria. Notwithstanding this, there are a couple of LNG filling stations in operation in Austria for the supply of LNG vehicles. These LNG filling stations are operated by RAG Austria AG, OMV AG and the fuel supplier F. Leitner Mineralöle GmbH.

Law stated - 12 January 2023

Regulatory framework

Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

LNG filling stations for the supply of LNG vehicles must be commissioned under the Austrian Trade Act. For the operation of such stations, one needs a trading licence.

Law stated - 12 January 2023

Pricing

Describe any regulation of the prices and terms of service in the LNG sector.

LNG prices, as well as terms and conditions for the sale of LNG, are not subject to specific rules or regulations.

Law stated - 12 January 2023

MERGERS AND COMPETITION

Competition authorities

Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

The governmental body in charge of the general supervision of competition in the natural gas sector, in particular with regard to the principle of non-discriminatory treatment of market participants, is E-Control, the Austrian energy regulator. E-Control also cooperates with the Federal Competition Authority in prosecuting anticompetitive practices under the Cartel Act, such as abuse of market dominance and price-fixing. Also, since 2010, E-Control has the power to monitor the market. Fines under the Cartel Act may be imposed by the Cartel Court upon the request of E-Control or the Federal Competition Authority for anticompetitive conduct. Finally, the district administrative authorities are competent

to prosecute violations of administrative law as set out in the Austrian Gas Act 2011 at the request of E-Control.

Law stated - 12 January 2023

Competition standards

What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

The substantive standards are set out in section 5 of the Cartel Act, which includes a non-exhaustive list of conduct deemed to be abusive.

Law stated - 12 January 2023

Enforcement

What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

E-Control has investigative powers and can order market participants to comply with the regulatory framework. E-Control as the national regulatory authority has even more investigative powers in the scope of Regulation (EU) No. 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (REMIT). Further, fines of up to €150,000 can be imposed by the district administrative authority upon violation of the obligations under the Austrian Gas Act 2011, particularly violations against REMIT. Moreover, the Cartel Court may order the market participants involved to refrain from anticompetitive conduct and may also impose fines up to 10 per cent of the undertakings annual turnover pursuant to the Cartel Act in the case of discrimination by a system operator, storage undertaking or operator of the virtual trading point.

Law stated - 12 January 2023

Merger control

Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

Under the exploration, production and storage agreement, the federal government regularly reserves the right to cancel an agreement if mergers or other changes of control of the contracting party take place without the prior approval of the federal government. There is no formal approval procedure in place since this right derives from a contract under civil law. However, depending on the issue, the Ministry of Agriculture, Regions and Tourism has proven in the past that decisions can be obtained in a timely manner.

Besides this special contractual requirement, any merger (or other forms of concentration within the scope of the Austrian Cartel Act) is subject to the general pre-merger notification requirement – such notification must be filed at the Federal Competition Authority if the turnover thresholds under the Cartel Act (turnover in the year before the merger or concentration of undertakings involved exceeded €300 million on the worldwide market, €30 million on the Austrian market and, for at least two undertakings, €5 million on the worldwide market) are reached. The merger must not be implemented before the Federal Competition Authority and the Federal Cartel Prosecutor have abstained from initiating an in-depth investigation (within four weeks of notification) or – in the case of an in-depth investigation – the Cartel Court has approved the merger or concentration (the merger or concentration can only be disapproved within five

months of the beginning of the in-depth investigation procedure). A merger or concentration will not be approved if its implementation creates or strengthens a dominant market position. Dominance is presumed if the undertakings hold a combined market share of at least 30 per cent after the implementation of the merger.

Since 24 July 2020, foreign direct investments may also be subject to the Investment Control Act. The federal legislature has created a comprehensive legal basis to prohibit acquisitions or participation of foreign investors in Austrian companies or to make them subject to conditions and requirements if the acquisition might endanger the security or public order, including crisis management and services of general interest. Part 1 and Part 2 of the Annex to the Investment Control Act list economic sectors in which foreign direct investment – above certain quantitative or qualitative thresholds (co-ownership of the enterprise or acquisition of significant assets) – triggers a notification obligation, since these are economic sectors relevant to public security and order, including crisis management and services of general interest. The operation of critical energy infrastructure is listed among those particularly sensitive areas where the lower notification thresholds of section 4(1) of the Act apply (notification obligation is triggered by the acquisition of voting rights exceeding 10 per cent, 25 per cent and 50 per cent); further, 'energy' in general is listed among the critical infrastructures in Part 2 of the Annex (for these sectors, the notification requirement is triggered by the acquisition of voting rights exceeding 25 per cent and 50 per cent according to section 4(2) of the Act). The notification obligation generally rests with the acquirer pursuant to section 6(1) of the Act; the Austrian target company only has a subordinate obligation. The competent authority is the Federal Ministry for Digital and Economic Affairs (BMDW). Upon notification, the BMDW shall examine if there are any concerns against the acquisition owing to a reasonable suspicion of a threat to security or public order. If the authority identifies a possible threat during the approval process, the investment may be made subject to requirements and conditions, or if these are not sufficient to avert the possible threat, the authority may also prohibit the investment entirely.

Law stated - 12 January 2023

Price restrictions

In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

Since the network tariff must be set by the regulator on a cost-plus principle, there is no room for the inclusion of the purchase price of the company operating as a network operator in the tariff. With respect to the purchase of a supplier, there are no restrictions by law since the prices of commodity gas are not regulated.

Law stated - 12 January 2023

Corporate governance regulations

Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

Apart from the applicable merger control and investment control rules, there are no special restrictions on the acquisition of shares in gas utilities, other than the special certification requirement implemented in accordance with the third energy package in the case of acquisition of shares by a third party with its seat outside of the European Union and European Economic Area of transmission system operators. However, some gas businesses are part of companies who are active in the field of electricity generation and supply and of which, under federal or provincial law, at least the majority of the shares must remain in public ownership.

There are no corporate governance regulations or rules regarding the transfer of the assets of gas utilities. In the case of the transfer of the assets of a network operator, however, the new owner will have to apply for a new licence to

operate and will have to fulfil all the requirements to obtain such licence under the Austrian Gas Act 2011, including the requirement of a seat in Austria or another EU or EEA member state.

Law stated - 12 January 2023

INTERNATIONAL

Foreign participation

Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

Currently, there are no such requirements, with the exception of the Austrian merger control and investment control regime (which are non-specific to the gas sector). However, with the implementation of the third energy package in Austria, a third-country clause was introduced, stipulating that whenever a transmission system operator controlled by persons from a non-EU or EEA country requests a licence – which is obligatory in cases of transfer of the assets of a network operator – the operator will have to fulfil more requirements than an operator controlled by persons from an EU or EEA member state. The operator will have to demonstrate to the regulatory authority and the European Commission that granting certification to it as a transmission system operator will not put at risk the security of supply of the European Union. How the certification procedure will be implemented and carried out in practice remains to be seen.

If a non-EU or EEA citizen intends to directly acquire 25 per cent or more of the voting rights or material influence in another way over an Austrian energy company, a permit under section 25a of the External Trade Act may have to be obtained prior to the acquisition.

Law stated - 12 January 2023

International agreements

To what extent is regulatory policy affected by treaties or other multinational agreements?

Regulatory policy is mainly affected by EU law; namely, by directives and regulations.

Law stated - 12 January 2023

Cross-border sales and deliveries

What rules apply to cross-border sales or deliveries of natural gas?

Under the Austrian Gas Act 2011, access to the grid may be refused to a customer who would not be entitled to access in the country in which the gas supplier or a company controlling such supplier is domiciled and where E-Control obtains knowledge of such fact (reciprocity rule). There are no other special rules in place for cross-border sales or deliveries of natural gas.

Law stated - 12 January 2023

TRANSACTIONS BETWEEN AFFILIATES

Restrictions

What restrictions exist on transactions between a natural gas utility and its affiliates?

The Austrian merger control regime applies if the undertakings to the transactions surpass certain turnover thresholds

(see section 9 of the Cartel Act); further, the application of the Austrian investment control regime might be triggered in cases of foreign direct investment (see sections 2 to 4 of the Investment Control Act).

Besides that, network operators (transmission system operators, distribution system operators and all system administrators such as the market area manager, operator of the virtual trading point and the distribution area manager) must comply with the general non-discrimination and confidentiality rule. The annual accounts of natural gas undertakings shall indicate any transaction with affiliated undertakings exceeding a value of €1 million. Chartered accountants must monitor if the consideration is appropriate. Depending on the unbundling model chosen by any transmission system operator, additional stricter rules apply, in particular in the case of implementation of the independent transmission operator and independent system operator models.

Law stated - 12 January 2023

Enforcement

Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

The Austrian Competition Authority monitors compliance with the Austrian merger control regime. In cases of non-compliance (gun jumping), fines of up to 10 per cent of the annual group turnover may be imposed by the Cartel Court upon the request of the Federal Competition Authority.

The Federal Ministry for Digital and Economic Affairs (BMDW) is the competent authority to monitor compliance with the Investment Control Act. A transaction may not be closed prior to approval by the BMDW; non-compliance is a criminal offence punishable by imprisonment of up to one year (possibly up to three years in accordance with section 25 of the Investment Control Act). In addition, the underlying legal transaction is deemed invalid under civil law. By subsequent approval, the transaction may be 'restored'. Further, fines of up to €40,000 or a prison sentence of up to six weeks may be imposed where a company fails to comply with information disclosure duties (see section 26 of the Investment Control Act).

E-Control, the Austrian energy regulator, supervises the adherence to the unbundling rules.

Law stated - 12 January 2023

UPDATE AND TRENDS

Gas sector-specific regulation

Describe recent trends and developments in the regulation of the domestic natural gas sector.

E-Control, the Austrian energy regulator, has enacted a revised Market Model Ordinance 2020 (GMMO-VO 2020). Its objective is to realise integrated balancing of the entire market area without systematic separation between transmission level and distribution area and a model with reduced contractual and operational complexity. The legal requirements at a national level and the requirements of Regulation (EU) No. 312/2014 of 6 March 2014 establishing the Network Code for Gas Balancing (NC BAL) had to be taken into account. In particular, on the transmission level, due to the requirements of the NC BAL, the dominant ex ante balancing had to be replaced by an ex post balancing.

Originally, the GMMO-VO 2020 was scheduled to enter into force on 1 October 2021. The coming into force of this major amendment is, however, connected to the appointment of a new balance group coordinator (BKO) who should act as a balancing centre both for the transmission and the distribution level. Owing to the covid-19 pandemic in Austria, the new market model is scheduled to become effective on 1 October 2022. However, since the current BKO AGCS Gas Clearing and Settlement AG has filed an appeal against the decision regarding the appointment of a new BKO, this date might be postponed.

In July 2021, the Renewable Energy Expansion Act (Erneuerbaren-Ausbau-Gesetz) was enacted. This law sets out rules for a system of certificates of origin for 'green gases' and the establishment of a separate agency for the support of renewable gas projects. In addition, an amendment to the Austrian Gas Act 2011 allows the regulatory authority to establish specific transport tariffs for scientific or demonstrative projects of network operators having, for example, the objective to substitute fossil energy with renewable energy, thereby fostering the next steps of sector coupling and climate change.

One measure that arose due to the massive increase in energy prices and the accompanying public pressure on politicians is the 'electricity-cost-brake' (Stromkostenbremse). At the beginning of September 2022, the Council of Ministers (the body of all government members and state secretaries) passed this measure to curb the massive increase in costs for household customers and low-income households. The electricity-cost-brake relieves a household by an average of about €500 per year. The Austrian federal government provides around €3 to €4 billion, depending on the development of energy prices. The electricity-cost-brake is expected to take effect on 1 December 2022 and will remain in place until 30 June 2024. Up to a basic consumption of 2,900 kilowatt-hours (kWh) of electricity per year, the energy price is to be set at a maximum of €0.10/kWh (net), regardless of the number of household members. This means that households will only pay an energy price of about €0.10/kWh (net) for annual electricity consumption of up to 2,900kWh. The difference will be compensated as a subsidy. Electricity consumption exceeding 2,900kWh will be charged to households at the contractually agreed price and, thus, must be paid in full by the households.

In March 2022, the Austrian parliament passed an amendment to the Austrian Gas Act 2011 introducing a strategic gas reserve (strategische Gasreserve) aiming to secure gas in storage units for the cold winter period. The procurement and management of the strategic gas reserve have been entrusted to the Austrian Market Area and Distribution Area Manager AGGM. AGGM has founded a subsidiary (ie, ASGM Austrian Strategic Gas Storage Management GmbH) for the exclusive purpose of procuring the strategic gas reserve. The strategic gas reserve was procured via two tenders and has a volume of 20 terawatt-hours (TWh), since natural gas is still very popular in household heating and is also used to a considerable extent for district heating. Thermal power generation based on natural gas is also necessary as a backup for power shortages and the stabilisation of the network. As of 1 November 2022, the entire 20TWh of gas of the strategic gas reserve will be available.

In addition, a further amendment to the Austrian Gas Act 2011 (ie, section 104(4) Austrian Gas Act 2011) made it possible for gas storage undertakings to administer the storage users fully or partially systematically unused and booked gas storage capacities (use-it-or-lose-it principle). Subsequently, storage undertakings must market the withdrawn capacities. This amendment to the law aims to ensure that these capacities are used for security or supply reasons. Moreover, this amendment introduced the possibility that storage undertakings lose their rights as storage undertakings if they violate certain obligations provided for in section 104a(1) Austrian Gas Act 2011 (eg, if they do not withdraw the systematic unused and booked capacity from the storage user according to the process described above or do not market this withdrawn capacity immediately). For example, this was executed against storage undertakings of the gas storage facility Haidach (UGS Haidach), which is situated in Austria. UGS Haidach is one of the largest natural gas storage facilities in Central Europe and can store up to 2.9 billion cubic metres of natural gas. Furthermore, it is now prescribed that each storage facility located in Austria shall be connected to the Austrian gas grid until the end of 2022. This also applies to UGS Haidach, which has so far only been connected to the German gas grid.

Furthermore, in June 2022, the National Parliament passed the Austrian Gas Diversification Act 2022 (Gasdiversifizierungsgesetz 2022) with the objective of facilitating the phase-out of Russian natural gas. This law aims to ensure natural gas diversification and the retrofitting of plants to alternatives using other energy sources. Therefore, a total of €100 million will be made available each year from 2022 to 2025 as compensation for the additional costs incurred. According to the explanatory notes of this law, this solely concerns costs incurred by companies, for example, for pipeline rights when transporting natural gas of non-Russian origin to Austria or when non-Russian natural gas is used, unless climate-friendly, renewable energy sources or district heating are replaced. In addition, this law promotes the retrofitting of energy production plants in the industrial and energy sector that enables

alternative operations with energy sources other than natural gas. Details for the use of the funds and the procedure, etc, are to be laid out in guidelines yet to be issued.

Law stated - 12 January 2023

Other regulatory developments of particular relevance to the gas sector

Describe any other recent regulatory trends and developments of particular interest to those operating in the domestic natural gas sector.

Another recent development concerns the question of mandatory jurisdiction in energy disputes.

Section 132(2) of the Austrian Gas Act 2011 (Federal Law Gazette I 107/2011) sets out that, apart from the cases exhaustively enumerated in paragraph 1, the courts decide in dispute matters between parties entitled to system access and systems operators regarding the obligations arising from this relationship. Pursuant to the next sentence in section 132(2) of the Austrian Gas Act 2011, an action by a party entitled to system access can only be filed once the official decision of the regulatory authority on the conciliation procedure has been served within the time period set in section 12(4) of the E-Control Act. Pursuant to section 12(1) of the E-Control Act (as amended with Federal Law Gazette I 174/2013), E-Control's regulation commission is competent to issue official administrative decisions regarding settlements of other disputes within the scope of section 132(2) of the Austrian Gas Act 2011. In principle, the regulatory authority must issue the corresponding decision within two months after application, pursuant to section 12(3) of the E-Control Act. Section 12(4) of the E-Control Act gives a party that is not content with a decision handed down under section 12(1) the possibility to bring the matter before the competent ordinary court within four weeks of the official decision having been served. With the interplay of section 12(1) of the E-Control Act and section 132(2) of the Austrian Gas Act 2011, the Austrian legislator has created a successive competence. The Austrian Constitutional Court had been called upon by a system operator to (indirectly) rule whether this system of successive competence is of an obligatory nature. The Constitutional Court decided that the legislator had not intended for a mandatory preliminary proceeding in front of the regulation commission where there is a valid arbitration clause in place, effectively allowing parties to opt out of the state jurisdiction.

Law stated - 12 January 2023

Jurisdictions

	Angola	Vieira de Almeida & Associados
	Austria	Schima Mayer Starlinger
	Brazil	Campos Mello Advogados
	Colombia	Figueroa Sierra & Asociados Abogados
	Denmark	Bech-Bruun
	East Timor	Vieira de Almeida & Associados
	Faroe Islands	Bech-Bruun
	Germany	Luther Rechtsanwaltsgesellschaft
	Greenland	Bech-Bruun
	India	Clarus Law Associates
	Iraq	Al Hadeel Al Hasan Law
	Italy	CMS Italy
	Mexico	Galicia Abogados SC
	Mozambique	Vieira de Almeida & Associados
	Nigeria	ENR Advisory
	Norway	Kvale Advokatfirma
	Poland	Banasik Woźniak i Wspólnicy Kancelaria Radców Prawnych Sp. P.
	Thailand	Chandler MHM Limited
	Turkey	Kesikli Law Firm
	United Kingdom	Dentons
	USA	Step toe & Johnson LLP