

Residential Prosumers in the European Energy Union

EAHC/2013/CP/04

Mapping the legal and regulatory framework in the 28 Member States, Iceland and Norway

Austria



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National report on the regulatory framework for residential prosumers: Austria

General Description of the national legal and regulatory framework

General

The Republic of Austria is a federation, composed of nine independent federal states (*Bundesländer* or *Länder*).¹ The competences between the Federation and the *Länder* are split in accordance with the “federal principle” which stipulates that the Federation as well as the *Länder* each possess own powers in terms of legislation and execution.² Articles 10-15 lay out the different areas and degrees of competence. The main rule is that all matters which are not exclusively within the competence of the Federation reside with the *Länder* (Art 15 Abs. 1 of the Austrian Constitution or *Bundes-Verfassungsgesetz*, B-VG)³.

At the beginning of its liberalization in 2001, which happened due to developments on the European level and the passing of European Union law in this regard, the Austrian energy market showed a high degree of monopolistic and oligopolistic structures. In the year 2000, only 32% of the electricity market was liberalized. Based on Regulation 2003/54/EC and Regulation 2003/55/EC, both the electricity and gas market had to be opened to all final customers until 1 July 2007. Legal sources of importance in the field of electricity law in general as well with regard to renewable energies can thus be found in national law (of both the Federation and the *Länder*) and EU law⁴.

As one result of the energy market liberalization, the main source of energy law in Austria was passed which regulates the supply with electricity (Electricity Industry and Organisation Act, *Elektrizitätswirtschafts- und -organisationsgesetz*, *ElWOG*)⁵. The *ElWOG* contains fundamental rules of electricity law (e.g. on obtaining concessions) as well as several immediate norms of federal law (e.g. on the determination of fees for using the grids). The fundamental rules are not directly operative and formally become legally effective by passing a law in each *Land* (thus nine different laws) for their execution (*Landesausführungsgesetze*).⁶ Its main aim is the affordable

¹ Article 2, paragraphs 1 and 2 of the Austrian Constitution (B-VG). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>.

² The ordinary judiciary (thus matters of civil and criminal law) are a competence of the federation, whereas a major reform of the administrative judiciary led to a split competence: the nine Land Administrative Courts are in charge of decisions of first instance in matters of public law, all other aspects remain within the competence of the federation. (*Verwaltungsgerichtsbarkeits-Novelle 2012*, in force since 1 January 2014).

³ *Bundes-Verfassungsgesetz* (B-VG) idF BGBl. I Nr. 194/1999 (DFB), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>.

⁴ In particular Energy Efficiency Directive - [Richtlinie 2012/27/EU zur Energieeffizienz \(Energieeffizienz-Richtlinie\)](#); Renewable Energy Directive - [Richtlinie 2009/28/EG zur Förderung der Nutzung von Energie aus erneuerbaren Quellen](#); Combined Power and Heat Plants Directive - [Richtlinie 2004/8/EG zur Förderung einer am Nutzwärmebedarf orientierten KWK im Elektrizitätsbinnenmarkt](#); REMIT-Regulation - [Verordnung 2011/1227/EU über die Integrität und Transparenz des Energiegroßhandels](#); Directive to ensure Safety of the Electricity Supply and Infrastructure Investments - [Richtlinie 2005/89/EG über Maßnahmen zur Gewährleistung der Sicherheit der Elektrizitätsversorgung und von Infrastrukturinvestitionen](#).

⁵ *Bundesgesetz, mit dem die Organisation auf dem Gebiet der Elektrizitätswirtschaft neu geregelt wird (Elektrizitätswirtschafts- und -organisationsgesetz 2010, ElWOG 2010)*, BGBl. I Nr. 110 / 2010 idF Nr. 174 /2013, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007045>.

⁶ The laws are: *Burgenland Electricity Industry Act (Gesetz vom 28. September 2006 über die Regelung des Elektrizitätswesens im Burgenland (Burgenländisches Elektrizitätswesengesetz 2006 - Bgld. ElWG 2006)*, StF: LGBl. Nr. 59/2006), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20000597>; *Kärnten Electricity Industry and Organisation Act (Gesetz vom 16. Dezember 2011, über die Erzeugung, Übertragung und Verteilung von Elektrizität sowie die Organisation der Elektrizitätswirtschaft in Kärnten (Kärntner Elektrizitätswirtschafts- und -organisationsgesetz 2011 - K-ElWOG)*, StF: LGBl. Nr. 10/2012) <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=20000239>; *Niederösterreich Electricity Industry Act (NÖ Elektrizitätswesengesetz 2005 (NÖ ElWG 2005)*, StF: LGBl. 7800-0)

provision with electricity and gas to the public, the transposition of EU law and an increase in renewable energies (article 3 *EIWO*G) as well as setting up general duties for energy suppliers, including compensation rules (articles 3 and 4 *EIWO*G). Other matters regulated in the *EIWO*G are the operation of grids, rights and duties of operators; admission and organisation of access to the grid and conditions of acceding the grid; quality of grid services; regulation zones; grid development plan; issuance of permits for grids including rules on decentralisation; procedure for the determination of utilisation fees (fee for the delivery of network services); duties of suppliers and power traders; procedure for the change of suppliers; rules on basic supply; electricity labelling; intelligent meters; authorities' competences; sanctions.

Renewable energy:

Starting from a 23,3% share of renewable energies in 2005, Austria has been obliged to raise its share to 34% until 2020. This goal refers to the entire energy supply and not only to the supply of electricity. To meet this objective, a reduction of energy consumption of 13% as well as an increase in the volume of renewable energy (18% until 2020, compared to 2008) is necessary.⁷

Green Power Act 2012 (*Ökostromgesetz 2012, ÖSG*):⁸

In order to reach the 20-20-20-goal, the 2012 Green Power Act (*ÖSG*) stipulates new expansion targets for the energy carriers hydropower, wind energy, biomass/biogas, and solar photovoltaic, which shall be met by the use of subsidies in all subsidizing institutions in Austria. The Act aims at making green power plants ready for the market. In 2013 the provisions on subsidizing the electricity production in combined power and heat plants, which had originally been part of the Green Power Act 2012, were transferred into an own law and have since been regulated by the Combined-Power-and-Heat-Plants Act (*KWK-Gesetz*).⁹

Whereas the *EIWO*G, *E-Control*G (Act setting up the regulatory authority in matters of electricity),¹⁰ and *ÖSG* can be considered the core of Austria's electricity law, further acts are of importance for the installation and operation of electricity supply plants. Among them are in

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001013>; Oberösterreich Electricity Industry and organisation Act (*Landesgesetz, mit dem das Oö. Elektrizitätswirtschafts- und -organisationsgesetz 2006 erlassen wird* (Oö. *EIWO*G 2006), StF: LGBl.Nr. 1/2006)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=20000397>; Salzburg Electricity Industry Act (*Salzburger Landeselektrizitätsgesetz 1999 – LEG*, StF: LGBl Nr 75/1999 (WV))

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=20000005>; Steiermark Electricity Industry and Organisation Act (*Gesetz vom 19. April 2005, mit dem die Organisation auf dem Gebiet der Elektrizitätswirtschaft im Land Steiermark geregelt wird* (Steiermärkisches Elektrizitätswirtschafts- und -organisationsgesetz 2005 – *Stmk. EIWO*G 2005), *Stammfassung*: LGBl. Nr. 70/2005 (XIV. GPStLT RV EZ 2121/1 AB EZ 2121/3))

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000343>; Tirol Electricity Industry Act: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000491>; Vorarlberg Electricity Industry Act; Wien Electricity Industry Act (*Gesetz über die Neuregelung der Elektrizitätswirtschaft* (Wiener Elektrizitätswirtschaftsgesetz 2005 – *WiEWG* 2005), StF: LGBl. Nr. 46/2005)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000048>.

⁷ Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

[Richtlinie 2009/28/EG zur Förderung der Nutzung von Energie aus erneuerbaren Quellen.](#)

⁸ Bundesgesetz über die Förderung der Elektrizitätserzeugung aus erneuerbaren Energieträgern (*Ökostromgesetz 2012 – ÖSG* 2012), BGBl. 2012 I/75,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007386>.

⁹ Bundesgesetz, mit dem Bestimmungen auf dem Gebiet der Kraft-Wärme-Kopplung neu erlassen werden (*KWK-Gesetz*), StF: BGBl. I Nr. 111/2008,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005916&ShowPrintPreview=True>; see also: Law on ensuring the continuing operation of already existing combined heat and power plants, (*Bundesgesetz, mit dem der Betrieb von bestehenden hocheffizienten KWK-Anlagen über KWK-Punkte gesichert wird* (*KWK-Punkte-Gesetz – KPG*), StF: BGBl. I Nr. 72/2014)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008915>.

¹⁰ Regulatory authority E-Control (*Energie-Control für die Regulierung der Elektrizitäts- und Erdgaswirtschaft*); E-Control Act (*Bundesgesetz über die Regulierungsbehörde in der Elektrizitäts- und Erdgaswirtschaft* (*Energie-Control-Gesetz – E-ControlG*), StF: BGBl. I Nr. 110/2010, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007046>).

particular water law, air pollution control law, power line law, electrical engineering law, environmental protection law, and the emissions trade law.

Also, a number of regulations (decrees) are of relevance, in particular with regard to tariffs and subsidies.

With regards to gaps in the law, it has to be noted that there is no concrete definition of a prosumer in any of the laws as well as an absence of clear rights in the situation where prosumers co-own a large renewable energy installation. However, Article 5 paragraph 1 subparagraph 13 of the Green Energy Act contains a definition of self-consumption, as will be explained below in section 1.2.

1. What types of residential prosumers are there in your country on the basis of type of RES used and size of the installation?

Answer:

The types of renewable, non-fossil energy sources recognised by the Austrian Green Power Act are wind energy, solar power, wave power, hydropower, biomass/biogas, sewage gas, landfill gas, waste with a high biogenic amount, including carcass meal, waste lye, or sewage sludge.¹¹ Green energy is electrical energy gained from renewable energy sources.¹² Energy gained from renewable energy carriers is energy which is produced in green energy plants, as well as the share of electric energy produced in hybrid or mixed co-firing plants that corresponds to the share of renewable energy carriers; electrical energy which is the result of pumping with the aim of storing it in storing systems, is excluded.¹³

In 2014, the share of subsidized green power in Austria amounted to approximately 14–15 % (compare: 2011 approx. 9,9 %, 2012 approx. 11 %; 2013 approx. 12,5 %). This growth is in particular due to an increase in the areas of wind energy, but also small hydropower plants and solar photovoltaic. For 2015, a share of 15% of subsidized green power in the total production of electrical power were the intermediate goal.¹⁴

In 2015, the most used RES for the production of electricity in Austria generally were hydropower (62%) as well as wind energy, biomass, solar photovoltaic, and geothermic (together 15%). The use of fossil energy carriers amounted to 23%.¹⁵ The overall production of electricity based on RES thus exceeds 75%, which is more than in any other Member State of the European Union (EU average: 24%).¹⁶

2. What is the institutional framework & division of competences regarding residential prosumers in your country?

Answer:

The institutional framework in Austria is directly impacted by the split of competences between the Federation and the *Länder*. With regards to the present topic, the important areas of competence are as follows:

Art 10 B-VG: areas listed in this article are within the exclusive competence of the Federation both in terms of legislation (Austrian Parliament, *Nationalrat*) and execution (Austrian government, *Bundesregierung*). E.g.: power networks if the power line crosses the border, civil law, matters of

¹¹ ÖSG, article 5 paragraph 1 subparagraph 13.

¹² Ibid., subparagraph 22.

¹³ Ibid., subparagraph 28.

¹⁴ http://www.energieklima.at/fileadmin/content/publikationen/Investieren_in_Erneuerbare_Energien_2015.pdf p 14 et seq.

¹⁵ <http://oesterreichsenergie.at/daten-fakten/statistik/stromerzeugung.html> (including graph).

¹⁶ <http://oesterreichsenergie.at/daten-fakten/statistik/erneuerbare.html> (including graph).

professional regulation, mining, forests, water law, as well as plant approval procedures and electrical engineering law.

Art 11 B-VG: split competences – legislation is passed on the level of the Federation (Austrian Parliament), but execution lies with the government of each *Land* (*Landesregierung*). E.g.: environmental impact assessment.

Art 12 B-VG: the Federation has the competence to pass so-called Basic Acts (*Grundsatzgesetzgebung*) which explicitly have to be labelled as such, but passing implementing laws within the framework of a Basic Act and their execution lie with the *Länder* (*Landtag and Landesregierung*). If no Basic Acts have been passed in a particular area, the *Länder* are free to regulate the respective area. E.g.: electricity industry and organisation, power lines within the territory of a *Land*. This competence has been disrupted since the liberalisation of the Austrian electricity market required many areas to be transferred into the executive competence of the Federation (regulation authorities).

Art 15 B-VG: general provision according to which the *Länder* are competent to pass laws in all other fields which have not explicitly been transferred into the legislative power or execution of the Federation. E.g.: Construction law, regional development, environmental protection, communal law etc.

Specific Questions on the regulatory framework for residential prosumers

3. What is the regulatory framework for residential prosumers in your country?

As already explained above in sections 1 and 2, the competences between the Federation and the *Länder* are split. Thus both national and regional laws (*Länder* laws) are applicable for the acquisition of permits, the installation and the operation of a RES plant. Further, the applicable laws depend on the use of an RES installation (commercially used or non-commercially used plants) and on the type of plant involved in an RES project.

3.1. What is the existing legislative framework regulating Renewable Energy Projects in your country?

Answer:

a. Non-commercially used RES installations:

- Regional Planning law:

As stated above in section 2, regional planning falls within the competences of the *Länder*, both in passing legislation as well as in their execution. Thus, there are nine different Regional Planning Acts (*Raumordnungsgesetze*) regulating regional development in Austria. The site on which an RES plant is to be installed needs to have its particular use laid out in the (area) zoning plan. The plans themselves are within the competence of the municipalities.

- Construction law:

Construction law regulates various legal aspects dealing with construction, a.o. construction schedule or construction regulations, both of which are prerequisites for obtaining a construction permit. Such permit is needed if a plant impacts on or interferes with the overall appearance of the townscape. Construction law also falls within the exclusive competence of the *Länder* (Art 15 (1) B-VG, Austrian Constitution – see above). The execution of construction law, however, mainly falls within the competence of the municipalities (municipal building inspection department), thus within the competence of the mayors.

b. Commercially used plants:

- Waste management law (*Abfallwirtschaftsgesetz*)¹⁷:

A permit under this law is required for waste treatment plants (e.g. a biogas plant) and if the production falls within the immediate scope of an agricultural enterprise.

-Environmental impact assessment law (*Umweltverträglichkeitsprüfungsgesetz*)¹⁸: for certain environmentally relevant installations (world-scale plants), the law allows for a combined authorization process.

Further, laws re environmental protection and security issues may apply.

c. For both commercially and non-commercially used plants the following provisions apply:

- Provisions on operational plants in the Professional Regulation Act (*Gewerbeordnung, GewO*)¹⁹: permit needed. The provisions on operational plants provide for specific plants to be subject to approval: plants subject to the regular procedure of approval (so-called normal plants)²⁰ and plants subject to a simplified approval procedure (less damning plants, so-called bagatelle plants)²¹. Plants subject to a simplified procedure are machines, devices and equipment which are primarily used in private households. They are also subject to a simplified plant approval procedure.²² The district administrative authorities (*Bezirksverwaltungsbehörden*) are in charge of granting permits under this Act (one-stop-shop principle); permits under this Act need to be obtained for all plants.

- Electricity laws:

Plants for the production of electricity need a permit based on the electricity industry law of the respective *Land*, so there are again nine different laws on this issue. Exceptions, however exist for: 1. plants with a bottleneck capacity lower than what's set out in the respective state law (these capacities vary from state to state); 2. plants, for the installation and operation of which permits according to traffic law, mining law, or professional regulation law are required. Permits under this Act need to be obtained for all plants.

- **Green Power Act (*Ökostromgesetz, ÖSG*):**²³

According to article 7 paragraph 1 of the Green Power Act, plants used for the production of electricity which are exclusively based on RES, are to be officially recognized as green power plants. The operator thus has to file an application for recognition by decree of the governor of the *Land* (*Landeshauptmann*) in which the plant is located.

¹⁷ Bundesgesetz über eine nachhaltige Abfallwirtschaft (*Abfallwirtschaftsgesetz 2002 - AWG 2002*)

StF: BGBL. I Nr. 102/2002,
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002086>.

¹⁸ Bundesgesetz über die Prüfung der Umweltverträglichkeit (*Umweltverträglichkeitsprüfungsgesetz 2000 - UVP-G 2000*), StF: BGBL. Nr. 697/1993,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010767>.

¹⁹ Gewerbeordnung 1994 - GewO 1994, StF: BGBL. Nr. 194/1994,
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007517>.

²⁰ The regular procedure is made up of the following steps: application for a permit, investigations of the authorities, decision, legal standing and right to appeal.

²¹ GewO, Article 359b paragraph 1 subparagraph 1.

²² In this procedure, the district administrative authorities put up information on a planned project in its offices and in the houses in the immediate neighborhood of the planned plant. Up to four weeks, it additionally has to keep all documents on the project on display. Taking potential opinions of neighbors into account, the authorities decides on granting the permit and may order measures for the protection of interests of others concerned.

²³ Bundesgesetz über die Förderung der Elektrizitätserzeugung aus erneuerbaren Energieträgern (*Ökostromgesetz 2012 - ÖSG 2012*), StF: BGBL. I Nr. 75/2011,
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007386>.

- Combined Power and Heat Plants Act (*Kraft-Wärme-Kopplung-Gesetz*).²⁴
 - The Climate and Energy Funds Act (*Klima- und Energiefondsgesetz, KLI.EN FondsG*)²⁵: In order to ensure a sustainable energy supply and climate policy for Austria, the Climate and Energy Fund focuses on innovation and development, environment-friendly mobility and market penetration. As regards buildings, these measures are supported by the framework program *Gebäude als Kraftwerk* (building as powerhouse). Photovoltaic and solar energy are funded in particular.

Land level:

Residential building subsidies laws (*Wohnbauförderung*):

Whereas renewable energy measures for company and industrial buildings lie mainly with the Federation and are funded by the Environmental Funding Act (*Umweltförderungsgesetz*), the development of legal provisions and renewable energy measures for residential buildings falls within the competence of the *Länder*. Under their schemes, renewable energy measures in residential buildings are usually funded through a one-time, non-refundable subsidy for the investment, but the *Länder* governments also provide direct loans with low interest rates and other financial incentives.

3.2. Does the Renewables National Action Plan include any objectives for residential prosumers (if so, please specify)

Answer:

The Renewables National Action Plan refers to private households when describing its laws and initiatives (permits, subsidies, etc.) applicable to them. In particular, with regard to the *KLI.EN* Fund,²⁶ residential housing subsidies,²⁷ and renewable energy subsidies in the *Länder* both with regard to housing²⁸ and mobility.²⁹ As there is no definition of residential prosumers in the law, no reference to them in the Action Plan is made either. Also with regard to the term “self-consumption” (*Eigenverbrauch*), nothing can be found in terms of objectives.

3.3. Is there a definition (legal or regulatory) of residential prosumers (or self-consumption) in your country? If so, state it and describe the elements of this definition?

Answer:

There is no definition of residential prosumer in the law. However, the Green Power Act defines self-consumption (*Eigenverbrauch*) as the electric energy produced by a plant which is not fed into the public network.³⁰

²⁴ Bundesgesetz, mit dem Bestimmungen auf dem Gebiet der Kraft-Wärme-Kopplung neu erlassen werden (*KWK-Gesetz*), StF: BGBl. I Nr. 111/2008, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005916&ShowPrintPreview=True>.

²⁵ KLI.EN-FondsG, BGBl. I Nr. 40/2007.

²⁶ National Aktionsplan für erneuerbare Energie für Österreich 2010, available at: http://www.wifo.ac.at/jart/prj3/wifo/resources/person_dokument/person_dokument.jart?publikationsid=40224&mime_type=application/pdf, pp. 97 et seq.

²⁷ Ibid., pp. 108 et seq.

²⁸ Ibid., pp. 127-138.

²⁹ Ibid., pp. 161-172.

³⁰ Green Power Act 2012, article 5 paragraph 1 subparagraph 10.

4. What are the permitting requirements for each type of residential prosumer?

General

In general a distinction is made between commercially used and non-commercially used plants. As already mentioned above in section 1.1. and further elaborated below in section 4.1., this distinction also impacts the procedure to acquire a permit (regular procedure vs. simplified procedure under the provisions on operational plants in the Professional Regulation Act).

- 4.1 Does your country recognize certain forms of self-consumption and subject prosumers to certain
- requirements,
 - application fees and
 - one-off costs
- in order to give them a permit or licence to generate energy?

Answer:

Depending on the RES in question, different kinds of permits need to be obtained. Given the split of competences in the Austrian law, the competent authority/authorities depend(s) on the applicable acts in the particular case (e.g. water law, sewage law). They are usually on the level of the *Land* or municipality. Important to note, however, is the fact that all plants need 1. a permit in accordance with the rules on operational plants in the Professional Regulation Act, and 2. a permit in accordance with the electricity law of the respective *Land* in which the plant is to be installed.

As concerns the Professional Regulation Act, it depends on whether the machines, tools or equipment in each case are primarily destined to be used in private households. If this is the case, they are characterised as ‘*Bagatellanlagen*’ (bagatelle plants)” and as a consequence it is possible to obtain a permit in a simplified procedure.³¹ Unlike in cases falling within the requirements of the regular procedure,³² the authority in the simplified procedure merely announces a planned installation project via notice in the municipality and in the houses within the immediate neighbourhood. It further has to keep all documents generally accessible for a maximum of four weeks. Taking the neighbours’ concerns into consideration, the authorities finally issue a decision on the quality of a plant and if, necessary, impose conditions in order to protect the interests of third parties. The plant approval procedure falls within the competence of the district administration authority (*Bezirksverwaltungsbehörde*) which operates according to the one-stop-shop principle. Therefore, there is only one authority as contact point for the approval procedure needed. Competencies regarding the municipal and *Land*-level depend on the applicable law at issue (water law, waste law, etc.).

The fees for admission are determined by each *Land*.

- 4.2 Does the national legal/regulatory framework determine the contractual conditions under which prosumers are allowed to feed or sell their surplus back into the grid or to other consumers?

Answer:

The mechanism to obtain subsidies is set out in the Green Energy Act and works in a way that the Green Energy Handling Authority (*Abwicklungsstelle für Ökostrom, OeMAG*),³³ which has been

³¹ GewO, article 359b paragraph 1.

³² The regular procedure for commercially used plants contains the following steps: application for admission, investigation procedure by the authority, decision by the authority, and legal standing and possibility to appeal.

³³ OeMAG: <http://www.oem-ag.at/de/home/>.

established in 2006, is obliged to conclude offtake agreements and remuneration contracts concerning the offered green power which is fed into the public network by authorized green power plants (wind energy, solar photovoltaic, biomass/biogas, geothermal energy, certain small hydropower plants),³⁴ in accordance with the subsidies at its disposal.³⁵ The off-taking and remuneration of green power happens based on General Conditions approved by the regulation authorities³⁶ as well as based on a decree issued by the Federal Minister for Science, Innovation, and Economy (*Bundesminister für Wissenschaft, Forschung und Wirtschaft, BMWFW*)³⁷ predefining the feed-in tariffs. The energy it takes off is distributed among the various energy suppliers active in the Austrian territory (day ahead price at the stock exchange applies). The delivery and billing take place in accordance with the amounts of electric energy delivered to the final consumer (quota system).

The energy that's fed into the grid is being reimbursed by OeMAG with pre-determined tariffs for a guaranteed period of time (€ 250 million p.a., 13 to 15 years, minus the effects of an increase in energy prices). Since 2006, there is a limited amount of money for new ecological energy plants of currently approximately €21 million. The allocation of the delivery contracts between the producer of ecological energy and the OeMAG is based on the "first come, first serve" principle. The 2008 amendments to the law introduced an important change re photovoltaic plants: such plants below 5 kW_{el} are no longer subsidized via the *Ökostromgesetz* but via the means of the *Klima- und Energiefonds (KLI.EN)*³⁸, the Climate and Energy Fund.

2008 amendments reach up to 15% of subsidized ecological energy (delivery to end consumers in the public network, produced by new or extended ecological power plants with a contract with the OeMAG as well as hydropower plants up to 20 MW_{el} and waste lye plants, each of which receiving investment subsidies).

Also support for new plants which started to operate after the entry into force of the *Ökostromnovelle 2009*,³⁹ for technologies depending on raw material (solid and liquid biomass and biogas) for 15 years and for all other ecological energy technologies for 13 years.

The raising of subsidies takes place via Green Power Fixed-Rates (*Ökostrompauschalien*)⁴⁰ and Green Power Financial Contributions (*Ökostromförderbeiträgen*),⁴¹ depending on the actual consumption, which the grid operators collect from the customers. The amount of the Green Power Fixed-Rates is regulated by law, the amount of the Green Power Financial Contributions is determined by a decree issued by the BMWFW. There are exemptions for lower-income consumers.⁴²

³⁴ Articles 12 et seq. Green Power Act 2012.

³⁵ ÖSG, Part 5, articles 31 – 43.

³⁶ *Allgemeine Bedingungen der Ökostromabwicklungsstelle* (AB-ÖKO): http://www.oem-ag.at/fileadmin/user_upload/Dokumente/gesetze/2014_11_AB-OEKO.pdf.

³⁷ *Ökostrom-Einspeisetarifverordnung* 2016 (ÖSET-VO 2016), https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2015_II_459/BGBLA_2015_II_459.pdf.

³⁸ *Bundesgesetz über die Errichtung des Klima- und Energiefonds – Klima- und Energiefondsgesetz (KLI.EN-FondsG)*, StF: BGBl. I Nr. 40/2007, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005371>.

³⁹ *Ökostromnovelle 2009*, BGBl. I Nr. 104/2009.

⁴⁰ *Verordnung des Bundesministers für Wissenschaft, Forschung und Wirtschaft, mit der die Ökostrompauschale für die Kalenderjahre 2015 bis 2017 bestimmt wird (Ökostrompauschale-Verordnung 2015)* StF: BGBl. II Nr. 359/2014, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009047>.

⁴¹ Decree on Green Power Financial Contributions, (*Ökostromförderbeitragsverordnung 2017*), https://www.e-control.at/documents/20903/26393/BGBLA_2016_II_398_%C3%96kostrom%C3%B6rderbeitragsVO_2017.pdf/910f6663-bebb-759c-7508-e394bf3df362.

⁴² *Befreiungsverordnung Ökostrom* 2012, <https://www.e-control.at/documents/20903/-/6e4abe59-4d25-4773-b2f3-0f6505e9137d>.

5. What are the rules applicable to the access to the grid?

General

The relevant laws here are the Electricity Infrastructure and Organization Act (*Elektrizitätswirtschafts und – organisationsgesetz, ElWOG*) and the System Utilization Tariff Decree (*Systemnutzungsentgelte-Verordnung 2012, SNT Verordnung*), laying out the tariffs applicable to energy producers with regard to their access to the grid. The *ElWOG* ensures access to the grid for all energy producers, however, it provides that in case of insufficient interconnect capacitance for the delivery of energy across regulation zones, priority is given to the delivery of customers with electricity gained from renewable energy sources (Article 19 *ElWOG*). The Austrian Power Grid AG (*APG*) with its seat in Vienna is the operator of the transmission network in Austria.⁴³

5.1. What is the inter-connection configuration used for each type of residential prosumer?

Answer:

Electricity Infrastructure and Organization Act (*Elektrizitätswirtschafts und – organisationsgesetz, ElWOG*)⁴⁴ is the legal basis concerning grids. Grid operators have the duty to integrate and connect power plants into the network, taking into consideration the technical and organizational rules for operators and users of grids which are defined by the regulating authority for electricity and gas (*E-Control*). Under the *ElWOG* it is a legal duty of the grid operators to ensure the customers' supply. Smart meters for prompt measurements of the energy use shall help to enhance the planning and grid optimization.

For the RES wind and water, an enhanced expansion is foreseen with a priority access to the grid and reserved connection capacities. Article 19 *ElWOG* provides that in case of insufficient interconnect capacitance for the delivery of energy across regulation zones, priority is given to the delivery of customers with electricity gained from renewable energy sources.

There is no differentiation between earlier and later connected producers as regards sharing of upcoming costs. Network operators are obliged to offer new producers the connection of their plants to the public network, in accordance with the principle of optimum efficiency.

5.2. Does the competence to determine the inter-connection configuration lie at State level or at a regional/lander level?

Answer:

The Austrian Power Grid AG (*APG*) with its seat in Vienna is the operator of the transmission network in Austria.⁴⁵ It is part of the ENTSO-E (European Network of Transmission System Operators for Electricity) which is in charge of border-crossing questions of coordination. The Austrian Power Grid AG additionally maintains close ties with grid operators in Germany, Italy, Switzerland, Slovenia, Slovakia, Poland, the Czech Republic, Hungary and Croatia.

⁴³ <https://www.apg.at/>.

⁴⁴ *Elektrizitätswirtschafts und - organisationsgesetz (ElWOG, BGBl. I Nr. 143/1998 idF. BGBl. I Nr. 112/2008.*

⁴⁵ <https://www.apg.at/~media/70F4952BF1334C65A12DEC984DCFB423.pdf> (graph of the transmission network).

5.3. Are there any rules to ensure that prosumers are inter-connected to the distribution network/the grid?

Answer:

Plants that produce energy from RES and do not receive subsidies are to be fully integrated into the energy market and sell their products just as any other energy producer. For plants that produce energy from RES and do receive subsidies, there is a predetermined obligation to take delivery with subsidized tariffs since they cannot be operated profitably only by ordinary market prices. RES energy producers have to pay the same network fees as other energy producers.

5.4. What are the grid access and grid use principles and rules for the energy generated by each type of residential prosumer?

Answer:

Article 19 *ElWOG* provides that in case of insufficient interconnect capacitance for the delivery of energy across regulation zones, priority is given to the delivery of customers with electricity gained from renewable energy sources.

There is no differentiation between earlier and later connected producers as regards sharing of upcoming costs. Network operators are obliged to offer new producers the connection of their plants to the public network, in accordance with the principle of optimum efficiency.

5.5. What are the network costs and charges for each type of residential prosumer?

Answer:

A fee to access the grid has to be paid for using as well as for active feed of electricity into the grid. The fee has to correspond to the costs directly linked to the establishment of the connection; customers further have to pay a fee for the provision of the grid.⁴⁶ In accordance with article 2 System Utilization Tariff Decree (*SNT Verordnung*)⁴⁷, by paying a onetime payment to access the grid, all grid users reimburse the network operator all appropriate and market-based/current expenses in connection with the first establishment of a power connection.

6. What are the incentives (e.g through taxes or tariffs) for each type of residential prosumers?

General

The main legal source applicable in this context is the Green Power Act, but also the *KLI.EN* Fund Act and *UFG* play an important role. There are different types of tariffs and subsidies, depending on the RES at issue and also the size of the installation.

Also, the following acts are relevant:

- Decree on Green Power Feeding-In Tariffs (*Ökostrom-Einspeisetarifverordnung 2016, ÖSET-VO 2016*)⁴⁸: Decree of the Federal Minister for Science, Innovation and Economy, regulating the feeding-in tariffs for the purchase of green power produced in green power plants, based on contracts to the conclusion of which the Green Power Handling Authority is obliged from 1 January 2016 until the end of the year 2017.

⁴⁶ *Systemnutzungstarife-Verordnung* (E-Control, *SNT-VO 2010*).

⁴⁷ System Utilization Tariff Decree (*SNT Verordnung (Systemnutzungsentgelte-Verordnung 2012, SNE-VO 2012)*, StF: BGBl. II Nr. 440/2011, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007613>.

⁴⁸ http://www.oem-ag.at/fileadmin/user_upload/Dokumente/gesetze/OESET-VO_2016_konsolidierte_Fassung_.pdf.

- Promotion Guidelines 2015 (*Förderrichtlinien 2015*)⁴⁹ for the granting of investment subsidies in accordance with articles 24, 26, and 27 of the Green Power Act 2012 for the installation of small and medium-sized hydropower plants and article 7 of the Combined Power and Heat Plants Act for the installation and the renewal of combined power and heating plants.
- Decree of E-Control on Green Power Labelling 2017 (*Verordnung des Vorstandes der E-Control über den Preis von durch die Ökostromabwicklungsstelle zuzuweisenden Herkunftsnachweisen 2017, Herkunftsnachweispreis-Verordnung 2017, HKN-V 2017*)⁵⁰ – based on article 10 paragraph 12 Green Power Act 2012 – Article 1: For the year 2017, the price for the allocated labels of origin (in accordance with article 37 paragraph 1 subparagraph 3 Green Power Act) amount to 0,93 Euro/MWh.

Decree of the Federal Minister for Science, Innovation, and Economy determining the subsidies for green power for the year of 2017 (*Ökostromförderbeitragsverordnung 2017*)⁵¹ based on article 48 paragraph 2 of the Green Power Act 2012. 26.80% of the average network usage and network loss charge per network level are determined in accordance with the system usage tariff regulation (*Systemnutzungsentgelte-Verordnung 2012, SNE-VO 2012*).⁵²

Decree of the Federal Minister for Science, Innovation, and Economy on the green power lump sum subsidy for the years 2015 to 2017 (*Verordnung des Bundesministers für Wissenschaft, Forschung und Wirtschaft, mit der die Ökostromförderbeitragsverordnung 2015 und die Ökostrompauschale-Verordnung 2015 erlassen werden*)⁵³ – based on article 48 paragraph 2 of the Green Power Act 2012.

As regards taxation, the *Elektrizitätsabgabe* and *Energieabgabe* as well as *Energieabgabenvergütung*, explained below in section 6.2., come into play.

6.1. Does your country apply specific tariffs to prosumers

- to charge them for the electricity they draw from the grid for consumption?
- or to compensate them for the electricity they feed back into the grid?

Answer:

1. The most important instrument for the promotion of electricity gained through renewable energy in Austria are permanent feeding-in tariffs. The relevant provisions of the Green Power Act (*Ökostromgesetz*)⁵⁴ apply to solid, liquid, and gaseous biomass, wind energy, photovoltaic, landfill gas, sewage gas, geothermal energy, and small hydropower plants, excluded are power plants under 2. and 3 below. As already laid out above, for the electricity fed into the grid, producer receive a predetermined tariff (according to the time of application) from OeMAG for a guaranteed period of time, with annual adjustments of tariffs for new plants. If all permit requirements are met and a valid contract between the plant operator and the OeMAG exists, and with reservation to the annual subsidy contingents, a duty lies with OeMAG to compensate the fed-in amounts of electricity within the legally guaranteed duration (13 to 15 years).⁵⁵ There is no upper limit for the total volume of annual energy production; limits however do exist for new ecological energy plants (€21 million) and are distributed on a “first come, first serve” basis. OeMAG provides daily

⁴⁹ http://www.oem-ag.at/fileadmin/user_upload/Dokumente/gesetze/FoerderRL_2015.pdf.

⁵⁰ http://www.oem-ag.at/fileadmin/user_upload/Dokumente/gesetze/Herkunftsnachweispreis-VO_2017.pdf.

⁵¹ http://www.oem-ag.at/fileadmin/user_upload/Dokumente/gesetze/OekostromfoerderbeitragsVO_2017.pdf.

⁵² Verordnung der Regulierungskommission der E-Control, mit der die Entgelte für die Systemnutzung bestimmt werden, BGBl. II Nr. 440/2011, idF BGBl. II Nr. 428/2015.

⁵³ http://www.oem-ag.at/fileadmin/user_upload/Dokumente/gesetze/OekostromfoerderbeitragsVO_2015_und_OekostrompauschaleVO.pdf.

⁵⁴ ÖSG, articles 18-20.

⁵⁵ ÖSG, article 37: OeMAG's responsibilities comprise the compensation for green power, calculation of green power (quota to be attributed to the respective electricity trader), daily allocation of green power to the traders/producers based on the quota, management of the newly created subsidy contingents, and the handling of applications for subsidies.

information on the budget still available in the current year. There is no prior allocation of money to the various technologies, with the exception of solar photovoltaic plants for which 10% of the budget are reserved. Normally one can either receive subsidies under the ÖSG via feed-in tariffs or investment subsidies, with the exception of complementing subsidies in the area of heat production through combined power and heat plants.

The subsidies are determined in the *Ökostromverordnung*⁵⁶ and show differences between the various energy carriers and the plants' size. *Ökostromverordnung 2016* (valid until 31 December 2017) provides for feed-in tariffs for photovoltaic,⁵⁷ wind energy,⁵⁸ geothermal energy,⁵⁹ sewage gas and landfill gas plants⁶⁰, as well as new or revitalized hydropower plants⁶¹ are eligible for 13 years of receiving subsidies; solid and liquid biomass⁶² and biogas⁶³ for 15 years.⁶⁴

OeMAG guarantees the transparent and discrimination-free current administration of the future limited subsidy contingents. However, the regulation authority for the electricity and gas market energy control (*Regulierungsbehörde für den Elektrizitäts- und Gasmarkt Energie-Control GmbH (E-Control)*), has an encompassing duty to supervise, e.g. the annual evaluation of the compatibility of subsidy regulations and achievement of objectives.

2. As an alternative, for certain technologies, investment subsidies are granted, in particular for small and medium size hydropower plants⁶⁵ and plants based on waste lye (spent liquor, for paper manufacturing).⁶⁶ The amount of the subsidies are staggered, depending on the plants bottleneck capacity.⁶⁷

3. Photovoltaic plants below 5 kW_{el} are no longer funded within the framework of the Green Power Act (ÖSG) but receive investment subsidies through means of the climate and energy fund (*Klima- und Energiefonds*,⁶⁸ *KLI.EN*).⁶⁹ The prerequisites are that a plant is new (latest technological development status) and used in private households. The subsidies in 2010 were €1,300 per kW_{peak} for detached plants and those attached to the roof, and € 1,700 per kW_{peak} for plants integrated into a building. The overall budget's ceiling was €35 million in 2010; there is a scaled allocation according to states (*Länder*).⁷⁰ In 2016, the subsidies amounted to €275 per kW_p for roof-top or ground-mounted installations with a maximum capacity of 5 kW_p and €375 per kW_p for building integrated installations with a maximum capacity of 5 kW_p. The overall budget amounted up to € 8.5 million for 2016⁷¹.

⁵⁶ *Verordnung des Bundesministers für Wissenschaft, Forschung und Wirtschaft, mit der die Einspeisetarife für die Abnahme elektrischer Energie aus Ökostromanlagen auf Grund von Verträgen festgesetzt werden, zu deren Abschluss die Ökostromabwicklungsstelle ab 1. Jänner 2016 bis Ende des Jahres 2017 verpflichtet ist, (Ökostrom-Einspeisetarifverordnung 2016 – ÖSET-VO 2016)*, http://www.oem-ag.at/fileadmin/user_upload/Dokumente/gesetze/OESET-VO_2016_konsolidierte_Fassung.pdf.

⁵⁷ Ibid., article 5 paragraph 1 subparagraph 1: 7,91 Cent/kWh for new plants in 2017.

⁵⁸ Ibid., article 6: 8,95 Cent/kWh for new plants in 2017.

⁵⁹ Ibid., article 7: 7,36 Cent/kWh for new plants in 2017.

⁶⁰ Ibid., articles 11 paragraph 1: 5,71 Cent/kWh and 4,75 Cent/kWh, respectively, for new plants in 2017.

⁶¹ Ibid., article 12 paragraph 1 provides a detailed list for new plants in 2017.

⁶² Ibid., article 8 paragraph 1 subparagraph 2 and article 9 paragraph 1 subparagraph 2, respectively, provide for new plants in 2017.

⁶³ Ibid., article 10 paragraph 1 provides a detailed list for new plants in 2017.

⁶⁴ Ibid., article 3.

⁶⁵ ÖSG, articles 26 and 27.

⁶⁶ Ibid., article 25.

⁶⁷ Ibid., paragraph 3: 300 Euro/kW for bottleneck capacity up to 100MW; 180 Euro/kW for a bottleneck capacity of more than 100MW and less than 400MW; 120 Euro/kW for a bottleneck capacity of as of 400MW.

⁶⁸ <https://www.klimafonds.gv.at/foerderungen/aktuelle-foerderungen/>.

⁶⁹ *Bundesgesetz über die Errichtung des Klima- und Energiefonds – Klima- und Energiefondsgesetz (KLI.EN-FondsG)*, StF: BGBl. I Nr. 40/2007, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005371>.

⁷⁰ For the data used here, see Renewable Energies National Action Plan, p. 52.

⁷¹ ResLegal, Country Information Austria, Subsidy IV (Investment subsidy for small PV), <http://www.res-legal.eu/search-by-country/austria/single/s/res-e/t/promotion/aid/subsidy-iii-investment-subsidy-for-small-pv/lastp/94/>

4. Plants for self-provision with electricity (photovoltaic plants, small hydropower plants, wind power plants, electric energy storages) which are installed without the possibility to access them (e.g. mountain cabins) receive investment subsidies within the framework of the so-called (national) Environment Promotion Act (*Umweltförderungsgesetz; UFG*).⁷² Natural and legal persons with entrepreneurial activities as well as associations can claim subsidies of max. 30% of the environmentally relevant investment costs, including a 5% bonus for plants in high alpine or ecologically sensitive areas and for photovoltaic plants integrated into a building. The application has to be filed before the beginning of a project, the environmentally relevant investment costs have to be at least €10.000.

5. With regard to heating and cooling, there are a variety of subsidies available at the national and state level: investment subsidies, tax incentives, and feed-in tariffs. The most substantial form of subsidy is on the *Länder* level with regard to buildings and is used in particular with regard to investments subsidies in the areas of solar thermic, heat pumps and biomass heating plants. The Environment Promotion Act (*Umweltförderungsgesetz, UFG*) strengthens the financial support also on federal level for which the RES heating and cooling is divided in the various groups of technologies. Another option for subsidies/promotion is a standardized subsidy rate, which in many cases amounts to 25% of the environmentally relevant investment costs and can be increased to a maximum of 30% (sustainability subsidy, flue gas cleaning subsidy, etc.) There is no general upper limit with regard to the size of the system (plant), however, there are different promotion criteria depending on the size in cases of solar thermic, heat pumps or biomass plants. In general, it is possible to profit from only one subsidy, however there can be complementary subsidies under the *UFG*, deducting e.g. those parts of a plant subsidized by electricity-related tariffs. *UFG* provides a national subsidy. There are also alternatives at the *Land* level, in particular incentives in the area of residential building subsidies with regard to solar thermic, heat pumps or biomass heating systems, which contribute a substantial part to the increase in RES-based heating.

UFG support measures for RES for heating and cooling:

Heat distribution: heat distribution plants consisting in biomass local heat supply systems, geothermal systems, and combined power and heating plants. Eligible are in particular natural and legal persons who are entrepreneurially active and don't profit from other subsidies, in particular residential building or agricultural subsidies, denominational institutions and charitable associations as well as public institutions (*Betrieb mit marktbestimmter Tätigkeit*) can apply for this particular subsidy. The standard amount of subsidy is 25% of the environmentally relevant investment costs and can be increased to 30%. Prerequisites: application before the start of the project and environmentally relevant costs of at least €10.000. Co-financing of the respective *Land* in relation to the federal state: *Land* 60%:40% required and maximum of 20% grid loss allowed.

Connection to the district heating grid up to 400kW supply: investments within the boundaries of the property of the applicant (e.g. connection to the heating system) which are necessary for the connection to the grid and natural and legal persons who are entrepreneurially active and are not subsidized by other schemes, in particular the residential building subsidy programme, contractors, denominational institutions and charitable associations as well as charities and public institutions can apply for funding.

⁷² Bundesgesetz über die Förderung von Maßnahmen in den Bereichen der Wasserwirtschaft, der Umwelt, der Altlastensanierung, zum Schutz der Umwelt im Ausland und über das österreichische JI/CDM-Programm für den Klimaschutz (*Umweltförderungsgesetz - UFG*), StF: BGBl. Nr. 185/1993, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010755>.

The *UFG* in general regulates measures for the protection of the environment. Its main areas focus on the areas of support, the financial aspects, the competences, the handling of subsidies and procedural aspects. *UFG* is divided into different areas of promotion/subsidies; incentives to use renewable energy sources for heating and cooling within the area of application of the *UFG* – directed primarily at Austrian companies, although also private persons can apply for subsidies if a commercial activity is in accordance with a specific application. The *UFG* generally provides for financial support for investments.

Calculation of the subsidy: €56 for 0 to 100 kW and €32 per kW for every kW exceeding up to a maximum of 400 kW in the case of a district heating system based on RES; upper limit of the subsidy of a maximum of 30% of the environmentally relevant investment costs. This subsidy is a *de minimis* subsidy: an extra charge of €300 for external energy advice is possible. The main prerequisite is that the application is filed after the realization, but at the latest six months after billing.

6.2. Does your country

- tax prosumers in a specific way?
- allocate to them a certain part of the cost to upgrade the grid to accommodate the extra generation they feed into the grid?

Answer:

Every consumer of energy in Austria is obliged to pay a Green Energy Promotion Fee (*Ökostrompauschale und Ökostromförderbeitrag*) in order to help subsidise renewable energies. Exemptions are possible for low-income households.

The so-called *Energieabgabe* (energy tax) taxes electric energy and amounts to 1,5 Cent/ kWh. It includes the consumption of self-produced energy, however, electric energy produced for self-consumption up to 5,000 kWh per year are exempted.

Initial ideas to tax RES-energy production with 1,5 Cent per kWh as of a volume of self-consumption of 5,000 kWh were dropped in 2014. The Minister of Finance instead lifted the tax exemption threshold from 5,000 to 25,000 kWh to create an incentive for producers of renewable energy to also use it themselves and to relieve the public networks. Above that threshold, self-produced and self-consumed energy are liable to taxation.

Particular rules apply if the energy production happens within the framework of an agricultural enterprise.

Selling self-produced energy usually creates liability to VAT taxation. However, up to an annual income of € 30,000 net, there is no such liability (*Kleinunternehmerregelung*).⁷³

As already stated above, plants that produce energy from RES and do not receive subsidies are to be fully integrated into the energy market and sell their products just as any other energy producer. For plants that produce energy from RES and do receive subsidies, there is a predetermined obligation to take delivery with subsidized tariffs since they cannot be operated profitably only by ordinary market prices. RES energy producers have to pay the same network fees as other energy producers.

7. A. What are the conditions that may encourage residential prosumers (to entry into activity or during functioning)?

General

The relevant legal provisions are contained in the *EIWOOG* as regards metering (Art 83), the *KLIEN* Fund Act on programmes supporting energy independence and an avoidance of fossil energy, and the Cooperatives Act (*Genossenschaftsrecht*) with regard to setting up energy cooperatives. There are different incentives to promote the operation of renewable energy plants, depending on RES type and size. The most important instrument for the promotion of electricity gained through renewable energy in Austria are permanent feeding-in tariffs and subsidies for 13 and 15 years. Further subsidies are provided under the UFG for installations in isolated areas, as well as, since

⁷³ For solar photovoltaic plants, see exemption by the Minister of Finance: <https://findok.bmf.gv.at/findok?execution=e1s1>.

2008, under the KLI.EN Fund for private household solar photovoltaic plants.

B. What are the conditions that may act as barriers for residential prosumers (to entry into activity or during functioning)?

General

Whereas the conditions for the promotion of renewable energy plants are generally good, potential barriers exist, like e.g. the application of the “first come, first serve” principle for new plants with regard to the permanent feed-in tariffs. The total amount of money available for such tariffs each year is currently € 21 million.

- 7.1. What are the metering systems for each type of residential prosumer? Do these systems provide adequate conditions for prosumers integration in the market?

Answer:

Article 83 *EIWO*G allows for the introduction of intelligent metering systems via decree of the Minister for Economy, after consultation with the regulation authorities and consumer protection representatives. The individual consumer's opposition to receiving such a meter has to be respected. The smart meters operation has to be in accordance with the latest state of the art in order to avoid third parties access to them. Data protection and consumer protection authorities have to be involved in the process. In 2014, the Minister for Economy issued a decree for the introduction of smart meters,⁷⁴ which requires each network operator to connect 70% of all metering points by the end of 2017 and 95% by the end of 2019. These provisions apply to all consumers of energy in Austria.

- 7.2. What are the billing conditions for each type of residential prosumer?

Answer:

Plants that produce energy from RES and do not receive subsidies are to be fully integrated into the energy market and sell their products just as any other energy producer. For plants that produce energy from RES and do receive subsidies, there is a predetermined obligation to take delivery with subsidized tariffs since they cannot be operated profitably only by ordinary market prices.

The energy bills in general are composed of the respective kWh price and the effective energy consumption. The price/kWh varies depending on the energy provider and the location (*Bundesland*). The providers set the price for the energy, a basic lump sum of 2-5 €/month is added, depending on the provider. In addition, consumers have to pay a network compensation in order to support the networks' maintenance. Each local network operator together with the regulation authority E-Control defines the amount. The allocation of taxes is within the municipalities' autonomous competence, the average amount in Austria is approximately 6,6 Cent/kWh. The Federation receives the electricity tax of 1,5 Cent per kWh, taxes on network utilisation remain with the municipalities.⁷⁵

⁷⁴ Verordnung des Bundesministers für Wirtschaft, Familie und Jugend, mit der die Einführung intelligenter Messgeräte festgelegt wird (Intelligente Messgeräte-Einführungsverordnung – IME-VO), StF: BGBl. II Nr. 138/2012, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007808>

⁷⁵ <http://stromliste.at/strompreis/zusammensetzung>.

7.3. Are there measures to encourage the creation of energy communities at municipal level, or other schemes to encourage inclusive development of the market?

Answer:

There are several initiatives to encourage the creation of energy communities and to become energy-autonomous at municipal level. The Climate and Energy Fund, most importantly, initiated and supports a program called „Climate and Energy Modell Regions“ („Klima- und Energiemodellregionen“ *Regionen*),⁷⁶ which has the aim to become independent from fossil energy. At its heart is the use of regional resources, to cover the energy need with a mix of RES products, measures to reach energy efficiency. The regions have thus become a major instrument for the Austrian government to reach its goal of energy-autarcity by 2050. Already the development of the strategy itself was a stakeholder process and this continues to be the case throughout the programs, involving the regional economy, politics, and the public. More than 1,100 out of 2,354 municipalities in Austria are part of 106 *Klima- und Energiemodellregionen*. The regions are aided by a regional manager who helps them with the realization of the planned measures. Among them are very concrete steps such as installation of solar photovoltaic plants, thermal solar plants, or modern heating systems for public buildings.

A frequently quoted example of energy autarcity is the municipality *Güssing* in the *Burgenland* Land which serves as a role model.⁷⁷

7.4. Are there rules facilitating the creation of energy cooperatives to provide a legal entity to energy communities? Are there measures facilitating other type of schemes and if so which ones?

Answer:

Creating cooperatives (*Genossenschaften*),⁷⁸ which are legal persons in Austria, does not require the involvement of a notary public. Instead, there has to be a written statute, a positive economic prognosis and an admission to the *Revisionsverband* (revision association). In order to come into existence, it needs to be registered in the commercial registry. The minimum capital has to be € 2 and it is liable to corporation taxes. There have to be at least two founding members; its highest organ and the one taking decisions is the general assembly. It is open to membership; the board members are also members of the cooperative (self-administration).

7.5. What are the procedures/provisions for establishing cooperatives for prosumers? Are they more simple/less costly than those for other schemes?

Answer:

As explained in section 7.4., is more simple and less costly to establish cooperatives than other schemes.⁷⁹

⁷⁶ <http://www.klimaundenergiemodellregionen.at/start.asp?ID=242147&b=5121> (see graph of the regions participating).

⁷⁷ <https://www.staedtebund.gv.at/gemeindezeitung/oegz-beitraege/oegz-beitraege-details/artikel/die-energieautarke-stadt-das-modell-guessing.html>.

⁷⁸ Gesetz vom 9. April 1873, über Erwerbs- und Wirthschaftsgenossenschaften, StF: RGBl. Nr. 70/1873, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001680>.

⁷⁹ For a comparison of cooperatives and other entities: <http://koop.bjb.at/bilder/AnhangRechtsformvergleich.pdf>

8. Other questions on the regulatory framework

8.1. What are the provisions for establishing a complaint procedure? What are the complaint handling procedures for each type of residential prosumer?

Answer:

In case of disagreement with the decision or action of an energy supplier, the dispute has to be settled with the company itself. As an integral part of its service for customers, the regulatory authority E-Control has therefore established an arbitration board in 2002 to which customers could turn in cases of problems with their network operators or energy suppliers. Since 2016, this board has been upgraded and is now a notified Arbitration Board with the European Commission.⁸⁰

The first approach is to verify whether the board can directly reply to the applicant's questions, based on the documents submitted and on the legal framework. If this is possible, it does not set off a dispute settlement procedure but given an answer directly, without getting a statement from the electricity or gas undertaking. If the applicant is a consumer under article 1 *Konsumentenschutzgesetz* (Consumer Protection Act), they will be informed that they can start a settlement procedure if they are not satisfied with the answers provided by the dispute settlement service. To do so, a corresponding application must reach the board within two weeks; failing this, the assumption prevails that the dispute settlement application is withdrawn. To be eligible for dispute settlement, a customer must thus already have tried to find a solution with the company bilaterally. Once a formal procedure has been started, the dispute settlement service contacts the relevant company to verify the facts and to get a statement on the case from their side. This serves to check the substance of the application. E-Control's dispute settlement service is not a court and cannot conduct proceedings to collect evidence; instead, it must rely on the information provided by the parties. Likewise, it cannot hand down a verdict or take a binding decision. If it turns out that the applicant was right to complain and the service provided or bill issued was faulty, the dispute settlement service will try to find an amicable solution between the parties. Energy companies are obliged to cooperate in these procedures and to provide all necessary documents. A solution to the dispute can be proposed either by the company or by the dispute settlement service. It only becomes binding if both parties accept it. When this is the case and both parties have signed the proposed solution, this solution legally becomes an out-of-court settlement and parties can be held to it before court. If the dispute settlement service checks the documents and statements and finds that the company is not faulty, the procedure ends.⁸¹

With regard to the permission of installation of an RES plant, it depends on the authorities in charge and thus once again on the distribution of competences under the Austrian Constitution.⁸² In many cases under the laws listed above, the competence to decide was with the district administrative authorities (*Bezirksverwaltungsbehörde*), a regional governor (*Landeshauptmann*), a Land government (*Landesregierung*) or a municipal council (*Gemeinderat*). Against their decisions, respectively against decisions that are not within the competence of the Federal Administrative Court or the Federal Finance Court, an appeal can be filed with the respective Land Administrative Court (*Landesverwaltungsgericht*) which decides on the legality of the decision.

Under certain conditions, a revision at the Federal Administrative High Court (*Verwaltungsgerichtshof, VwGH*) is possible against decisions by a Land Administrative Court. These conditions include that the solving of a question of law of fundamental significance depends on the revision, in particular as there is no prior case law in the disputed matter, or the decision deviates from previous case law, or the current case law of the Administrative High Court with regards to the question of law at issue is not uniform.

The Constitutional Court (*Verfassungsgerichtshof, VfGH*) decides on appeals against the decision of a Land Administrative Court if the appellant claims a violation of their fundamental rights guaranteed in the Constitution or through the application of an illegal decree (etc.) claims a violation of their rights.

8.2. Are there any specific redress procedures available only to residential prosumers?

Answer:

There are no specific rules for residential prosumers.

⁸⁰ <https://www.e-control.at/schlichtungsstelle>.

⁸¹ <https://www.e-control.at/schlichtungsstelle/streitschlichtungsverfahren-im-detail>.

⁸² Bundesgesetz, mit dem das Bundes-Verfassungsgesetz, das Finanz-Verfassungsgesetz 1948, das Finanzstrafgesetz, das Bundesgesetz, mit dem das Invalideneinstellungsgesetz 1969 geändert wird, das Bundessozialamtsgesetz, das Umweltverträglichkeitsprüfungsgesetz 2000, das Bundesgesetzblattgesetz, das Verwaltungsgerichtshofgesetz 1985 und das Verfassungsgerichtshofgesetz 1953 geändert und einige Bundesverfassungsgesetze und in einfachen Bundesgesetzen enthaltene Verfassungsbestimmungen aufgehoben werden (Verwaltungsgerichtsbarkeits-Novelle 2012), https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_51/BGBLA_2012_I_51.html

Country fiche (Summary and ranking)

The **country fiche** below summarises the information from the report and ranks the **level of favourable impact** of measures in relation to its favourable impact to the take up of residential prosumers.

Country fiche	Ranking Low/Medium/High
General Description of the national regulatory framework - Types of residential prosumers: There is no explicit categorisation of residential prosumers but, instead, several types of RES are recognised, namely: wind energy, solar power, wave power, hydropower, biomass/biogas, sewage gas, landfill gas, waste with a high biogenic amount, including carcass meal, waste lye, or sewage sludge. Further differences exist with regards to the size of the installation. - Institutional framework: The institutional framework is split, depending on the competences provided for in the Constitution: for most permits <i>Länder</i> and municipalities are competent. - Applicable legislation, plans and objectives: The applicable legislation is EU law, national and regional laws. Of particular importance are the Electricity Industry and Organisation Act (<i>Elektrizitätswirtschafts- und -organisationsgesetz, ElWOG</i>), the Green Power Act, (<i>Ökostromgesetz 2012, ÖSG</i>), and the Act setting up the regulatory authority in matters of electricity (<i>E-Control Gesetz, E-ControlG</i>). As for the plans, the renewable energy national action plan 2010 applies and the general objective of such legislation and plans is to increase renewable energies share. - Definition of residential prosumers: There is no definition of residential prosumers in the law. However, the Green Power Act defines self-consumption (<i>Eigenverbrauch</i>), according to which as the electric energy produced by a plant which is not fed into the public network.	Medium
Specific Questions on the regulatory framework for residential prosumers Permitting requirements for each type of residential prosumer Various permits are needed, depending on the type of RES plant and the location. Different authorities are in charge as well. There is a simplified procedure under some laws for private households and the “one-stop-shop principle” applies, according to which all permits are issued by one and the same authority. Rules applicable to the access to the grid There is no differentiation between earlier and later connected producers as regards sharing of upcoming costs. Network operators are obliged to offer network connection to new producers, in accordance with the principle of optimum efficiency. Article 19 ElWOG provides that in case of insufficient interconnect capacitance for the delivery of energy across regulation zones, priority shall be given to the delivery of customers with electricity gained from renewable energy sources.	High High

Incentives (e.g taxes and tariffs) for each type of residential prosumers There are different incentives, depending on RES type and size. The most important instrument for the promotion of electricity gained through renewable energy in Austria are permanent feeding-in tariffs (first-come, first-serve principle for new plants, subsidies for 13 and 15 years), but there also subsidies under the UFG (for installations in isolated areas) and the KLI.EN Fund (private household solar photovoltaic plants).	Medium
Metering systems for each type of residential prosumer Smart meters have been introduced since 2015; 95% of coverage is envisaged by end of 2019.	High
Billing conditions for each type of residential prosumer Plants that produce energy from the RES and do not receive subsidies are to be fully integrated into the energy market and sell their products like any other energy producer. As regards plants that produce energy from RES and do receive subsidies, an obligation exists to take delivery with subsidised tariffs. The energy bill is generally composed of the respective kWh price and the effective energy consumption. In addition, consumers have to pay a network compensation.	High
Measures to encourage the creation of energy communities at municipal level Various programmes have been started and supported by the KLI.EN Fund in order to reach energy independence by 2050; over 1,100 out of 2,354 municipalities in Austria are currently part of the initiatives.	High
Rules facilitating the creation of energy cooperatives (simplicity/cost as compared to other schemes/Commonality of cooperatives as the legal status for energy communities) Energy cooperatives are governed by the rules of the <i>Genossenschaftsrecht</i> (Cooperatives Act). Setting up a cooperative is more simple and less costly than other schemes. Cooperatives are the most common legal status for energy communities.	High
Other questions on the regulatory framework • Complaint handling procedures for residential prosumer Settlement is done with the energy company through its Arbitration Board. Civil courts are an alternative. Administrative bodies, on the other hand, are in charge of matters concerning e.g. permits. • Redress procedures available only to residential prosumers No particular redress procedures are available only to residential prosumers.	High Low

Executive Summary

Since the complete liberalization of the energy market in Austria about ten years ago, a continuous increase in renewable energies has been envisaged, aiming at 34% until 2020. In order to achieve this goal, the 2012 Green Power Act sets forth new expansion targets for several energy carriers. However, the Austrian law **does not provide for an explicit categorization or a definition** of residential prosumers, but instead defines self-consumption and recognises several types of renewable energy sources. Legislation further makes a distinction between the size of plants and whether they are commercially used or not, with important impacts, for example, on the procedure to acquire a permit. Under some laws, there is a **simplified procedure for private households**, according to which all permits are issued by one and same authority. Austria has developed rules on cooperatives, which are the most common legal status for energy communities. Setting up a **cooperative is more simple and less costly** than other schemes.

In terms of promoting renewable energy in Austria, different instruments have been implemented, like permanent **feeding-in tariffs, subsidies, and the ‘KLI.EN Fund’** for private household solar photovoltaic plants. Various programmes have been started and supported by the latter in order to reach energy independence by 2050; over 1,100 out of 2,354 municipalities in Austria are currently part of such initiatives. Whereas plants that produce renewable energy and do not receive subsidies are to be fully integrated into the energy market and sell their products like any other energy producer, plants that receive subsidies have an **obligation to take delivery with subsidised tariffs**. In terms of compliant handling, settlements are done with the energy company through its Arbitration Board; civil courts are an alternative. No particular redress procedures are available only to residential prosumers.