Bundesnetzagentur

- Ruling Chamber 7 -

-COURTESY TRANSLATION –
GERMAN VERSION PREVAILS-

Decision

File reference: BK7-24-01-008

In the administrative proceedings

concerning the amendment to the determination on gas balancing ("GaBi Gas 2.1")

Party to the proceedings:

1) EnBW Energie Baden-Württemberg AG, Durlacher Allee 93, 76131 Karlsruhe, legally represented by its Executive Board,

party summoned,

Ruling Chamber 7 of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn, legally represented by its President, Klaus Müller,

by its Chair	Anne Zeidler,
its Vice Chair	Dimitri Wenz
and its Vice Chair	Stephan Faßbender

decided on 12 September 2025:

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Elektrizität, Gas, Telekommunikation,
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1. Operative part 1 of the decision of 19 December 2014 (BK7-14-020) is amended as follows:

   a. The following sentences 1 to 3 are inserted prior to sentence 1:

      "The transmission system operators form a joint market area and appoint a market area manager for it. The market area manager assumes the following tasks in particular:

      operation of the virtual trading point;
      balancing group management, in particular contract management, data transmission and publication, and balancing group settlement; and the procurement and control of balancing energy use.

      Transmission system operators may commission the market area manager with the assumption of further network operation tasks if this is necessary to uphold efficient access to the gas network."

   b. The following sentence 3 is inserted after a) sentence 2:

      "The gas day starts at 6am and ends at 6am on the following day."

   c. The following sentence 5 is inserted after a) sentence 4:

      "The market area manager must carry out balancing for all shippers in a non-discriminatory manner."

   d. The following sentence 2 is inserted after b) sentence 1:

      "Allocation here means the allocation of gas quantities to a balancing group."

   e. The following subsection aaa) is inserted after b) cc) sentence 2:

      "Distribution system operators use simplified methods (standard load profiles) for the allocation of offtake quantities of final customers up to a maximum hourly offtake capacity of 500 kilowatt hours per hour and up to a maximum annual offtake of 1.5 million kilowatt hours. The input and offtake capacity is the maximum capacity in kilowatt hours per hour kept by the network operator for the shipper at an entry or exit point."

   f. The former b) cc) sentences 3 and 4 are moved to a newly inserted subsection bbb) as sentences 1 and 2.

   g. The following sentence 3 is inserted in b) cc) bbb):

      "Standard load profiles must be based on the typical consumption profile of various groups of final customers, in particular:

      1. business enterprises,

2. cooking gas customers,
3. fuel gas customers."

h. The following subsection ccc) is inserted in b) cc):

"When developing and applying standard load profiles, distribution system operators must ensure that the use of balancing energy is reduced as much as possible. The market area manager may in justified exceptional cases take additional measures for this purpose in collaboration with the distribution system operators and in consultation with the regulatory authority."

i. The following subsection ddd) is inserted in b) cc):

"The distribution system operators may also specify load profiles for final customers with higher maximum offtake capacities or higher annual offtakes than the limits set out in point 1 b) cc) aaa) sentence 1. Furthermore, the distribution system operators may, in derogation of subsection 1, also specify lower limits if reliable network operation cannot be guaranteed technically under the limits set out in point (1) b) cc) aaa) sentence 1 or the specification of lower limits is agreed with shippers in individual cases. The distribution system operator may also specify higher or lower limits only for individual groups of final customers. However, the limits must be applied consistently to all final customers within such a load profile group. If the distribution system operator specifies higher or lower limits, it must notify the regulatory authority of this without delay."

j. The following subsection eee) is inserted in b) cc):

"Distribution system operators are obliged to carry out a forecast of annual consumption for each SLP customer of the shipper that is normally based on the previous year's consumption. The shipper must be informed of the forecast and may object to implausible forecasts and submit its own forecast to the distribution system operator. If no agreement is reached, the distribution system operator forecasts the annual consumption. The forecast of annual consumption may also be jointly amended during the year by the shipper and the distribution system operator in justified exceptional cases."

k. The former b) cc) sentences 5 and 6 are moved to a newly inserted subsection fff).

l. The following sentences 2 to 4 are inserted in b) dd) after sentence 1:

"The balance responsible party is a natural or legal person responsible to the market area manager for managing the balancing group. The balance responsible party bears economic responsibility towards the market area manager for deviations between allocated input and offtake quantities of the

balancing group. The balance responsible party must take all reasonable measures to avoid predictable deviations."

m. The following subsection aaa) is inserted in b) dd):

"The market area manager must be notified of a balance responsible party for each balancing group. The balancing group serves to pool entry and exit points for the purpose of netting input and offtake quantities and facilitating trade settlement. A balancing group may be assigned to another balancing group as a subordinate balancing group. Multiple balance responsible parties may combine their balancing groups for the purpose of netting and consistent settlement."

n. The following subsection bbb) is inserted in b) dd):

"Shippers must clearly assign each entry and exit point they use to a balancing group."

o. The following subsection ccc) is inserted in b) dd):

"The virtual trading point is a point in the market area, but one which does not correspond to a physical entry or exit point in the market area, at which gas can be transferred between balancing groups without the need for a capacity booking. The virtual trading point is an integral part of each balancing group of the market area."

p. The following subsection ddd) is inserted in b) dd):

"Balance responsible parties are entitled, and required, to conclude a balancing group contract with the market area manager. Balance responsible parties must register with the market area manager unless they are already registered with a network operator as a shipper and the registration requirements for this correspond to those for registration with the market area manager for the conclusion of a balancing group contract. The market area manager can require disclosure of the address of the balance responsible party or a representative for registration. Market area managers must offer balance responsible parties standardised balancing group contracts. The balancing group contract governs the establishment of a balancing group and the recording, balancing and settlement of deviations between allocated gas quantities. Market area managers must base their balancing group contracts on general terms and conditions that must contain the following minimum information:

1. the processes to be applied for balancing;
2. the settlement of balancing groups, in particular the calculation of surcharges and deductions in accordance with point 1 b) ff) sentence 2 and the settlement of reconciliation quantities;

3. the exchange of data and information between network operators, market area managers and balance responsible parties, who also determine the formats and procedures for electronic data exchange;
4. the liability of the market area manager and balance responsible party;
5. the requirements for registration as a balance responsible party;
6. the termination of the contract by the market area manager or balance responsible party;
7. the handling of data transmitted by the balance responsible party within the scope of the contract;
8. contact persons at the market area manager for questions concerning the balancing group contract and their availability;
9. requirements for charging a security in justified cases."

q. The following subsection ff) is inserted in b):

"The balancing groups must be settled two months after the applicable settlement month at the latest. The market area manager may apply appropriate surcharges and deductions when calculating the imbalance charges if and to the extent that this is necessary and appropriate in order to ensure network stability or avoid any misuse of the balancing system."

r. The following subsection gg) is inserted in b):

"Network operators and market area managers must provide each other and the shippers and balance responsible parties without delay with all information required for avoiding, balancing and settling imbalances. The data are exchanged electronically between the market area manager, the network operator, the shipper and the balance responsible party for the initiation and management of network use and the management of balancing and reconciliation quantity settlement. Data exchange must take place in a standard nationwide format and in standard processes that permit the full automation of data exchange. The network operators are required to involve the shippers and balance responsible parties in an appropriate manner in development of the procedure and data formats. A data format is a standardised format specification for data communication containing the relevant parameters that is suitable for electronic processing or publication."

2. The following operative part 1a is inserted after operative part 1 of the decision of 19 December 2014 (BK7-14-020):

a. The following sentence is inserted:

"The shipper must notify the transmission system operator of its intention to utilise entry and exit capacity in kilowatt hours per hour (nomination)."

b. The following subsection a) is inserted:

"Exit nominations are only necessary in the following cases:

1. offtake for injection into a storage facility if the exit point in question has not been booked by the operator of the storage facility,
2. transport to an adjacent country, and
3. booking of transport capacity at the same exit point by multiple shippers if such exit point is assigned to different balancing groups.

Point 1a a) sentence 1 para 3 applies accordingly in the event that the shipper has entered the same exit point in different balancing groups."

c. The following subsection b) is inserted:

"Shippers may commission a third party with the nomination. The latter makes nominations with the transmission system operator on behalf of the commissioning shipper without prejudice to the contractual obligations between the shipper and the transmission system operator."

d. The following subsection c) is inserted:

"Transmission system operators must offer shippers an alternative nomination procedure in addition to the standard nomination procedure pursuant to point 1a a) as long as this is technically feasible and economically reasonable. The offer must be non-discriminatory. If the transmission system operator is unable to make such an offer because it is not technically feasible or economically reasonable, it must justify this conclusively."

3. Operative part 2 of the decision of 19 December 2014 (BK7-14-020) is amended as follows:

The following sentence 2 is inserted after a) sentence 1:

"Imbalance gas is the quantity of gas mathematically required for balancing all inputs and offtakes in a balancing group at the end of the balancing period."

4. The following operative part 3a is inserted after operative part 3 of the decision of 19 December 2014 (BK7-14-020):

"The reconciliation quantities from the application of standard load profiles that arise from deviations between allocated quantities and the actual offtake of the final customer (SLP reconciliation quantities) are deemed to be provided or received by the exit network operator, which accordingly settles up with the shippers. This settlement is carried out at least annually or at the end of the contract period on the basis of the offtakes allocated in the balancing group of the shipper and the quantities measured for final customers. If the exit network

operator receives positive reconciliation quantities or delivers negative reconciliation quantities within the applicable settlement period, it must remunerate or invoice the shipper a commodity price. The exit network operator settles expenses and revenues from the settlement of reconciliation quantities with the market area manager providing the balancing energy."

5. Operative part 6 of the decision of 19 December 2014 (BK7-14-020) is amended as follows:

   a. The following sentences 1 to 3 are inserted prior to sentence 1:

      "Balancing energy comprises the gas quantities used by the network operator to ensure network stability. Balancing energy is used to the extent required technically to balance fluctuations in the grid load with the aim of ensuring technically secure and efficient network operation in the market area. The market area manager controls the use of balancing energy required by the network operators in the market area."

   b. The following sentence 1 is inserted prior to a) sentence 1:

      "Fluctuations in the grid load are balanced by the following measures (internal balancing energy):

      1. use of the network's storage capability;
      2. use of the portion of facilities for storing gas that is reserved exclusively for operators of supply networks in the execution of their tasks (network storage facilities) and has been notified to the regulatory authority by the network operator;
      3. use of the storage capability of the networks adjoining the network concerned and network storage facilities in other networks within and outside the market area."

   c. The following sentences 1 to 3 are inserted prior to b) sentence 1:

      "The market area manager is entitled to specify minimum offers for the procurement of external balancing energy. Suppliers of external balancing energy are entitled to offer partial services based on time, area and quantity but which may not fall short of the respective minimum offer. Supplier consortia may be formed to meet the minimum offers."

6. Operative part 7 of the decision of 19 December 2014 (BK7-14-020) is amended as follows:

   The following subsection ee) is inserted in c):

   "The market area manager is entitled to require from balance responsible parties advance payments of neutrality and other charges to cover the costs of balancing energy."

7. The following operative part 8a is inserted after operative part 8 of the decision of 19 December 2014 (BK7-14-020):

   a. The following sentence is inserted:

      “The market area manager must offer extended balancing for the input and offtake of biogas.”

   b. The following subsection a) is inserted:

      “The market area manager must offer extended balancing for balancing group contracts to which the balance responsible party exclusively introduces biogas quantities (special biogas balancing group contract). The exchange of gas quantities between balancing groups and the offsetting of differences in quantities takes place between special biogas balancing group contracts. It is possible to transfer quantities to natural gas balancing groups but not to transfer quantities from natural gas balancing groups to biogas balancing groups.”

   c. The following subsection b) is inserted:

      “As well as 12-month balancing (balancing period), which comprises the calendar year, a special biogas balancing group contract contains a flexibility allowance of 25%. The flexibility allowance applies to the cumulative discrepancy of the input and offtake quantity within the balancing period. In derogation of sentence 1, the market area manager and balance responsible party may agree an initial balancing period of less than 12 months (short balancing period). Point 1 b) dd) aaa) sentences 1, 3 and 4 apply accordingly; the flexibility allowance pursuant to sentence 1 applies uniformly to connected biogas balancing groups.”

   d. The following subsection c) is inserted:

      “The balance responsible party must inform the market area manager prior to the start of each balancing period of the expected input and offtake quantities and their scheduled distribution during the balancing period.”

   e. The following subsection d) is inserted:

      “The balance responsible party must ensure that the input and offtake quantities remain within the flexibility allowance and are balanced at the end of the balancing period. The balance responsible party is not tied to the temporal forecast of input and offtake quantities provided in accordance with point 8a c).”

   f. The following subsection e) is inserted:

      “If the balancing group for biogas is continued for a subsequent balancing period, positive closing balances of a preceding balancing period can be

carried forward to the following one. The flexibility allowance of the special biogas balancing group contract must be upheld when doing so."

g. The following subsection f) is inserted:

"Following the expiry of a balancing period, the differences between the actual input and offtake quantities assigned to a balancing group of the special biogas balancing group that exceed the flexibility allowance must be balanced. A transparent and non-discriminatory procedure must be applied for this that is based on the actual efficient costs for the supply of imbalance gas. Only those costs may be invoiced pro rata that are necessary for balancing the differences in quantities remaining after the netting of all balancing groups managed under a market area manager."

h. The following subsection g) is inserted:

"Balance responsible parties of a special biogas balancing group contract must pay a charge for extended balancing to the market area manager of €0.001 per kilowatt hour for the use of the flexibility allowance actually utilised."

8. Operative part 10 of the decision of 19 December 2014 (BK7-14-020) is amended as follows:

The words "taking account of the information required in accordance with section 40(2) paras 1 and 2 GasNZV" are removed from subsection a) sentence 1.

9. The information in operative part 12 is amended as follows:

a. Subsection b) becomes subsection a).
b. The following subsection b) is inserted:

"To the extent within the framework of this determination that the term "gas" is used on its own or in connection with other terminology, it refers to natural gas within the meaning of Article 2 point 1 of Directive (EU) 2024/1788. Access to hydrogen networks is [/will be] governed by determinations BK7-24-01-014 (WasABi) and BK7-24-01-015 (WaKandA)."

10. Operative parts 1 to 9 apply as of 1 January 2026.

11. The right to order payment of costs is reserved.

Rationale

I.

1 The proceedings concern the amendment to the determination on gas balancing (implementation of the Network Code on Gas Balancing, GaBi Gas 2.0) of 19 December 2014 (BK7-14-020) that in particular governs the design of the system of imbalance and balancing services on the German market.

In its judgment of 2 September 2021 (C-718/18) concerning the fourth cause of action of the infringement proceedings against the Federal Republic of Germany, the Court of Justice of the European Union ruled that the normative regulation in Germany was incompatible with the provisions of the internal energy market directives (Directive 2009/72/EC and Directive 2009/73/EC, hereinafter referred to as the Electricity and Gas Directives). The advance structuring of regulatory decisions by the normative requirements of the ordinances having force in law adopted by the Federal Government on the basis of section 24 of the old version of the Energy Industry Act (EnWG old version), which include the Gas Network Access Ordinance (GasNZV), was deemed to violate the requirements contained in the Electricity and Gas Directives concerning the independence and exclusive competence of the national regulatory authority. The legislators took this judgment as an opportunity to adjust the national legal framework for energy regulation to the European legal requirements. Article 1 of the Act Amending Energy Industry Law to Take Account of Union Law and Amending Other Provisions of Energy Law (Federal Law Gazette I 2023, no 405), which entered into force on 29 December 2023, granted the Bundesnetzagentur far-reaching determination powers in the EnWG in terms of tariff and access regulation for electricity and gas networks. The legislators simultaneously earmarked 31 December 2025 in Article 15(6) of the aforementioned Act for the expiry of the GasNZV.

2 In this context, the Grand Ruling Chamber transferred competence for this determination to Ruling Chamber 7 on 19 April 2024. The Ruling Chamber officially opened proceedings on 8 May 2024. They are addressed at transmission system operators, distribution system operators, the market area manager, balance responsible parties, network users and shippers. The opening of proceedings was published on the website of the Bundesnetzagentur.

3 Upon opening the proceedings, the Ruling Chamber simultaneously began an initial public consultation and gave the addressees and all other market participants the opportunity to comment. As part of its notification of proceedings, the Ruling Chamber outlined the possible subjects of the determination, including the basis for drafting the balancing group contracts required for network access, the management of network access in the market area, the principles

of balancing and balancing group settlement, standard load profiles and settlement of reconciliation quantities, the provision of data, the use of balancing energy, the procurement of external balancing energy and balancing energy costs and revenues, costs and revenues for the balancing services and extended balancing for biogas. The following associations, stakeholders and individual undertakings submitted comments: Bundesverband der Energie- und Wasserwirtschaft e.V. (German Association of Energy and Water Industries – BDEW), Energy Traders Deutschland (EFET), EnBW Energie Baden-Württemberg AG (EnBW), E.ON SE (E.ON), Vereinigung der Fernleitungsnetzbetreiber Gas e.V. (association of gas transmission system operators – FNB Gas), Initiative Energien Speichern e.V. (INES), Trading Hub Europe GmbH (THE), Verband kommunaler Unternehmen e.V. (German Association of Local Utilities – VKU), VNG ANG AG (VNG). The introductory document and the nine comments received on it can be found on the website of the Bundesnetzagentur (www.bundesnetzagentur.de).

The party summoned requested the summons to join the proceedings in a letter dated 18 July 2024. The ruling chamber called in the party summoned to the proceedings in its decision of 7 October 2024 (BK7-24-01-008-B01).

4 Under consideration of the comments received, the Ruling Chamber drafted a concrete proposal for the operative part that it published for further consultation on 13 December 2024. The following associations, stakeholders and individual undertakings submitted comments: ARGE Impulse, Bundesverband der Energie- und Wasserwirtschaft e.V. (German Association of Energy and Water Industries – BDEW), German Biogas Association (Fachverband Biogas e.V.), Bonn-Netz GmbH, Energy Traders Deutschland (EFET), EGT Energie GmbH, EnBW Energie Baden-Württemberg AG (EnBW), , E.ON SE (E.ON), Vereinigung der Fernleitungsnetzbetreiber Gas e.V. (association of gas transmission system operators – FNB Gas), GEODE Deutschland e.V. (GEODE), Netzgesellschaft Gütersloh mbH, Städtische Betriebswerke Luckenwalde GmbH, Stadtwerke Parchim GmbH, Netzgesellschaft Potsdam GmbH (NG Potsdam), Trading Hub Europe GmbH (THE), UNIPER SE (UNIPER), Verband kommunaler Unternehmen e.V. (German Association of Local Utilities – VKU). The consultation document and the 17 comments received on it can be found on the website of the Bundesnetzagentur (www.bundesnetzagentur.de).

5 Owing to the large number of regulatory matters, the contents of the comments from both consultations are picked up on at the appropriate points of the rationale.

6 The federal state regulatory authorities, the Bundeskartellamt and the committee of representatives of the federal state regulatory authorities were informed about the opening of proceedings on 10 May 2024. The draft decision was sent to the committee of representatives of the federal state regulatory authorities for consultation purposes as well as to the Bundeskartellamt and federal state regulatory authorities on 4 and 5 August 2025 respectively. The committee of representatives of the federal state regulatory authorities was consulted.

7 For further details, reference is made to the content of the files.

II.

8 The amendment to the determination is formally and substantively lawful. The Ruling Chamber has particularly made use of its discretion to amend after due assessment of the circumstances.

9 Owing to the scope of the presentation, the reasons for the decision are preceded by a structural overview.

1. Legal basis 13
2. Formal lawfulness 14
2.1. Competence 14
2.2. Hearing and consultation 14
2.3. Involvement of other authorities 14
3. Substantive lawfulness 15
3.1. Addressees of the determination 15
3.2. Subsequent amendment of determined methods and conditions 17
3.3. Need to amend the determination 17
3.4. Discretion to amend 18
3.4.1. Discretion as to whether or not to take action 18
3.4.2. Discretion for deciding which action to take 20
3.4.2.1 Fundamental considerations 20
3.4.2.2 Considerations regarding operative part 1 (principles of balancing) 21
3.4.2.3 Considerations regarding operative part 2 (nomination) 36
3.4.2.4 Considerations regarding operative part 3 (imbalance gas) 38
3.4.2.5 Considerations regarding operative part 4 (SLP settlement of reconciliation quantities) 38
3.4.2.6 Considerations regarding operative part 5 (balancing energy) 39
3.4.2.7 Considerations regarding operative part 6 (tariffs and charges) 41
3.4.2.8 Considerations regarding operative part 7 (extended balancing for biogas) 41
3.4.2.9 Considerations regarding operative part 8 46
3.4.2.10 Considerations regarding operative part 9 46
3.4.2.11 Considerations regarding operative part 10 (period of validity) 47
3.5. Proviso of the order for payment of costs 47

1. Legal basis

10 The ruling chamber bases operative part 1 of the determination on section 29(2) EnWG in conjunction with section 20(4) paras 1, 2 and 6 EnWG; operative part 2 of the determination on section 29(1) and (2) EnWG in conjunction with section 20(4) para 2 EnWG; operative part 3 of the determination on section 29(2) EnWG in conjunction with section 20(4) para 6 EnWG;

operative part 4 of the determination on section 29(2) EnWG in conjunction with section 20(4) paras 1, 2 and 6 EnWG; operative part 5 of the determination on section 29(2) EnWG in conjunction with section 20(4) para 5 EnWG; operative part 6 of the determination on section 29(2) EnWG in conjunction with section 20(4) para 6 EnWG; operative part 7 of the determination on section 29(1) and (2) EnWG in conjunction with section 20(4) para 7 EnWG; and operative part 8 on section 29(2) EnWG.

11 Parallel or supplementary application of section 50 GasNZV is unnecessary. The Act Amending Energy Industry Law to Take Account of Union Law and Amending Other Provisions of Energy Law (Federal Law Gazette I 2023, no 405), which entered into force on 29 December 2023, granted the regulatory authority far-reaching powers for determining the conditions for access to the gas supply networks or the methods for determining these conditions in section 20(4) sentences 1 and 2 EnWG. These powers include the determination powers pursuant to section 50 GasNZV and transcend them in terms of their scope (see Bundestag printed paper no 20/7310, page 80).

2. Formal lawfulness

12 The formal requirements are met.

2.1. Competence

13 The competence of the Bundesnetzagentur for the decision is derived from section 54(3) sentence 3 EnWG. The competence of the Ruling Chamber is derived from section 59(3) sentence 4 EnWG as the Grand Ruling Chamber transferred the determination to it on 19 April 2024.

2.2. Hearing and consultation

14 The Ruling Chamber gave the parties concerned and the representatives of the economic sectors affected by the proceedings the opportunity to comment in accordance with section 67(1) and (2) EnWG.

15 To this end it held an initial consultation on 8 May 2024 at which it presented its fundamental considerations. Under consideration of the comments received, it published a concrete proposal for the operative part on 13 December 2024 that it presented for further consultation.

2.3. Involvement of other authorities

16 Other authorities were involved to the extent necessary. The federal state regulatory authorities were informed about the opening of the proceedings in accordance with section 55(1) sentence 2 EnWG on 10 May 2024, as were the Bundeskartellamt and the committee of representatives of the federal state regulatory authorities. The Bundeskartellamt and the federal state regulatory

authorities were formally involved pursuant to section 58(1) sentence 2 EnWG by being sent the draft decision on 5 August 2025 with the opportunity to comment.

The committee of representatives of the federal state regulatory authorities was consulted in accordance with section 54(3) sentence 4 EnWG. To this end the Ruling Chamber sent the committee of representatives of the federal state regulatory authorities the draft decision on 4 August 2025 in accordance with section 54(3) sentence 5 EnWG. The committee of representatives of the federal state regulatory authorities did not submit any substantive comment.

3. Substantive lawfulness

17 The amendment to the determination is also substantively lawful.

18 It may be legitimately addressed to operators of transmission systems within the meaning of section 3 para 5 EnWG, to distribution system operators within the meaning of section 3 para 8 EnWG, to balance responsible parties, to the market area manager within the meaning of section 3 para 26a EnWG and to shippers within the meaning of section 3 para 31f EnWG (section 3.1 below). The requirements of section 29(2) sentence 1 EnWG are met. The determination applies to the subsequent amendment of approved methods and conditions (3.2). The amendment was also necessary to ensure that it continues to meet the requirements for a determination (3.3). The Ruling Chamber also correctly exercised its discretion to amend (3.4).

3.1. Addressees of the determination

19 The determination is addressed to operators of gas transmission systems within the meaning of section 3 para 5 EnWG. According to section 20(4) sentence 1 EnWG, the regulatory authority may adopt determinations with respect to individual or multiple operators of gas supply networks in proceedings pursuant to section 29(1) EnWG. According to section 3 para 20 EnWG, gas supply networks also include gas transmission systems. Transmission system operators are therefore operators of gas supply networks within the meaning of section 3 para 7 EnWG. They constitute a group of network operators to whom the regulatory authority may address determination decisions in accordance with section 29(1) EnWG.

20 The determination is also addressed to distribution system operators within the meaning of section 3 para 8 EnWG. According to section 20(4) sentence 1 EnWG, the regulatory authority may adopt determinations with respect to individual or multiple operators of gas supply networks in proceedings pursuant to section 29(1) in conjunction with (2) EnWG. According to section 3 para 20 EnWG, gas supply networks also include gas distribution systems. Distribution system operators are therefore operators of gas supply networks within the meaning of section 3 para 8 EnWG. They constitute a group of network operators to whom the regulatory authority may address determination decisions in accordance with section 29(1) EnWG.

21 Balance responsible parties are also addressees of the determination. The fact that section 3 EnWG does not contain any definition concerning this market role is unproblematic as the market role is presupposed in the order of possible addressees of the determination derived from section 20(4) sentence 1 EnWG.

22 The determination is also addressed to the market area manager within the meaning of section 3 para 26a EnWG. According to section 20(4) sentence 1 EnWG, the regulatory authority may adopt determinations with respect to the market area manager in proceedings pursuant to section 29(1) in conjunction with (2) EnWG.

23 The determination is addressed to shippers within the meaning of section 3 para 31f EnWG. According to section 20(4) sentence 1 EnWG, the regulatory authority may adopt determinations with respect to network users in proceedings pursuant to section 29(1) in conjunction with (2) EnWG. According to section 3 para 28 EnWG, network users are natural or legal persons supplying energy to or being supplied with energy from an electricity or gas supply network. This also includes shippers within the meaning of section 3 para 31f EnWG.

24 The supplying or being supplied with energy within the meaning of section 3 para 28 EnWG is not tied to physical input and offtake. Instead, the network user's contractual usage relationship with the network operator is decisive for the energy supply perspective (cf. BeckOK EnWG/Peiffer, 10th ed, 1 March 2024, EnWG section 3 para 28, margin no 3). The network operator's contracting partner is the one paying for network use or entitled to assert claims towards the network operator due to network use restrictions (BeckOK EnWG/Peiffer, 10th ed, 1 March 2024, EnWG section 3 para 28, margin no 1). Such a contractual usage relationship exists between shippers and network operators. Shippers conclude entry and exit contracts with the entry and exit network operators that entitle them to make use of the network within the scope of the capacities they book (cf. section 20(1b) sentences 1 and 2 EnWG). Furthermore, the legislators have already created a market role with the term "customer", as distinct from "network user", that is characterised by the purchase of energy within the contractual relationship of the customer with the supplier (cf. Bourwieg/Hellermann/Hermes/Hellermann, 4th ed, 2023, EnWG section 3, margin no 74).

25 The same is also derived from a consideration of section 3 para 28 EnWG in the light of the legislative history of section 20(4) GasNZV. It was the express will of the legislators to grant the Bundesnetzagentur determination powers comprising all contents previously governed by the GasNZV (Bundestag printed paper no 20/7310, page 52). This is only possible if the group of addressees is no smaller than the group of market roles affected by the GasNZV. The fact that section 20(4) sentence 1 EnWG expressly designates the supplier as addressee of the determination although the latter is also already covered by the market role of the network user can be viewed as a harmless editorial error with regard to the term's understanding in this context.

3.2. Subsequent amendment of determined methods and conditions

26 The provisions specified in the operative part also constitute a subsequent amendment to a determination issued by the Ruling Chamber pursuant to section 29(1) EnWG. Determined conditions within the meaning of section 29(2) EnWG are specific access and connection conditions. In addition, determined methods facilitate the specific design of access conditions, with method and condition regulation not mutually exclusive (cf. Hermann in: Bourwieg/Hellermann/Hermes, fourth ed, 2023, EnWG section 29, margin no 9). The power of amendment pursuant to section 29(2) EnWG is intended to provide the competent authority with flexible regulatory instruments enabling it to carry out short-term adjustments to changed circumstances of fact or law for safeguarding and restoring regulatory efficiency (Vallone in BeckOK EnWG, Assmann/Peiffer, ninth ed, 1 September 2023, section 29 margin no 31). Section 29(2) EnWG authorises substantive amendments to the original regulatory decision. This means that the original decision must continue to prevail at least in its core. The regulatory authority's power of amendment therefore does not extend to enabling it to fully replace the substantive content of its decision on the basis of section 29(2) EnWG and issue a completely new (different) decision (Wahlhäuser in Kment, EnWG, second edition, 2019, section 29, margin no 43).

27 There is a substantive amendment of determined methods and conditions at hand. The provisions of the GaBi Gas 2.0 determination specify the conditions and methods of network access through the design of the balancing system. An amendment to these conditions and methods has resulted from the access conditions and methods added here, whose regulatory content is not immediately contained in GaBi Gas 2.0 but directly derived from the GasNZV. The core of the original decision also continues to prevail with the unchanged provisions of GaBi Gas 2.0 (BK7-14-020). These include in particular the provisions governing the principles of daily balancing in operative part 1, the provisions for the calculation and settlement of imbalance gas in operative part 2, the provisions for the procurement and use of balancing energy in operative part 6 and the provisions governing neutrality charge accounts for balancing in operative part 7 of the aforementioned GaBi Gas 2.0 determination (BK7-14-020).

3.3. Need to amend the determination

28 The subsequent amendment to the determination is also necessary within the meaning of section 29(2) sentence 1 EnWG to ensure that the requirements for a determination continue to be fulfilled.

29 Even if the wording is unclear, the spirit and purpose of the provision is unanimously considered to be to make a flexible instrument available to the regulatory authority that is required to adjust the decision made to a changed state of affairs or legal situation (Wahläuser, in Kment, second edition, 2019, EnWG, section 29, margin no 34f.). Such an amendment is only possible if, without

amending the determination, the decision would no longer fulfil the requirements of the determination. This may arise, among other things, due to a change in the legal situation (Hermes, in: Bourwieg/Hellermann/Hermes, fourth edition, 2023, EnWG, section 29, margin no 31).

30 This is the case here. The provisions for the design of the balancing system can be found in both the GaBi Gas 2.0 determination (BK7-14-020) and the GasNZV and complement each other. If the provisions were not transferred once the GasNZV were no longer in effect, gaps would arise despite provisions of the GasNZV having proven effective (see margin no 35). It is therefore necessary to transfer the provisions and integrate them into the GaBi Gas 2.0 determination (BK7-14-020) as an amendment in order to maintain a consistent regulatory framework for the balancing system.

31 This is due to the fact that in its judgment of 2 September 2021 (C-718/18) concerning the fourth cause of action of the infringement proceedings against the Federal Republic of Germany, the Court of Justice of the European Union ruled that the normative regulation in Germany was incompatible with the provisions of the internal energy market directives. The legislators took this judgment as an opportunity to adjust the national legal framework for energy regulation to the European legal requirements in such a manner that the provisions of the GasNZV will cease to be in effect on 31 December 2025 and be replaced by corresponding determination powers of the regulatory authority.

3.4. Discretion to amend

32 The Ruling Chamber has duly exercised its discretion to amend.

33 Whether and to what extent the regulatory authority amends the conditions and methods of the regulation within the meaning of section 29(2) EnWG fundamentally lies in its discretion. At the same time, the regulatory authority is limited in its discretionary decision to the extent that it is bound by the principle of proportionality (Wahläuser, in Kment, second edition, 2019, Energy Industry Act, section 29 margin no 42). However, owing to the existence of section 29(2) EnWG, confidence in the outcome of a decision is less protected and is limited by the fact that decisions by authorities must remain sufficiently reliable (Hermes in Bourwieg/Hellermann/Hermes, Energy Industry Act, fourth edition, 2023, section 29 margin no 34).

3.4.1. Discretion as to whether or not to take action

34 The Ruling Chamber has decided to open proceedings in a manner to which there is no objection under consideration of the aspects speaking in favour of and against opening proceedings. According to section 40 of the Administrative Procedure Act (VwVfG), an authority authorised to act according to its discretion must exercise its discretion in accordance with the purpose of the authorisation and comply with the legal limits of such discretion. No interests of the parties concerned prevented this. The fact that the GasNVZ will no longer be in force after

31 December 2025 particularly speaks in favour of amending the determination, see Article 15(6) of the Act Amending Energy Industry Law to Take Account of Union Law and Amending Other Provisions of Energy Law of 22 December 2023. The proceedings will serve to transfer the contents of the GasNZV on balancing to an official determination. This will ensure that the rules already set out on the balancing system can continue to prevail in a consistent regulatory framework following the expiry of the GasNZV in order to ensure as safe, cost-effective, consumer-friendly, efficient, environmentally sustainable and carbon neutral piped supply of the general public with gas as possible (see section 1(1) EnWG) as well as effective and undistorted competition (see section 1(2) EnWG).

35 The Ruling Chamber fundamentally intends to transfer the provisions of the GasNZV without change in the form of a determination. The Ruling Chamber believes that this is favoured by the fact that the provisions of the GasNZV and the determinations issued in the past on the basis of the GasNZV have contributed to a consistent, reliable and predictable regulatory framework in terms of access to the gas network in Germany. This regulatory framework substantively complies with the statutory requirements of European and national law. In its aforementioned judgment, the Court of Justice of the European Union ruled that the normative regulation was incompatible with the exclusive competence of the national regulatory authority pursuant to European law but did not criticise any infringements of the substantive requirements of European legislation by the applicable regulatory framework. The existing regulatory framework governing access to the gas supply networks has proven itself for many years in its basic structures and is firmly anchored – particularly via the Cooperation Agreement between the Operators of Gas Supply Networks in Germany (KoV Gas) – in the contractual relations of the various market players concerning the configuration and management of network access.

36 The Ruling Chamber does not wish to deny the fundamental sense of further developing the regulatory framework. At the same time, the most important objective of the determination, the avoidance of regulatory gaps due to the expiry of the GasNZV, called for swift execution of the determination proceedings. Further development of the regulatory framework beyond individual points would have jeopardised this objective. The Ruling Chamber has therefore only carried out selective content amendments where these were necessary or appropriate due to changed underlying conditions or for other reasons.

37 The omission of some provisions of the GasNZV is also compatible with the objective of transferring the provisions of the GasNZV without change as the Ruling Chamber does not intend any substantive change to these provisions through such omission. Where provisions are omitted, they are already covered by European law, national law or other determinations. The Ruling Chamber has also already taken into account here the legal framework created by the European gas and hydrogen market package approved on 21 May 2024 (Directive (EU) 2024/1788 and Regulation (EU) 2024/1789).

38 It may also already deviate from existing provisions in the aforementioned ordinances prior to their expiry or issue supplementary provisions (section 20(4) sentence 3 EnWG). Operative part 10 states that the requirements of this determination will apply with effect from 1 January 2026. This will ensure a seamless transition following the expiry on 31 December 2025 of the GasNZV based on Article 15(2) to (6) of the Act Amending Energy Industry Law to Take Account of Union Law and Amending Other Provisions of Energy Law (Federal Law Gazette I 2023, no 405), which entered into force on 29 December 2023. The Ruling Chamber is making no use of the power of the regulatory authority pursuant to section 20(4) sentence 3 EnWG to deviate from the provisions of an ordinance pursuant to section 24 in the version applicable up until 28 December 2023 or issue supplementary regulations. This makes sense in view of the fact that the transfer fundamentally without change of the provisions of the GasNZV would in any case not have entailed any significant deviation or supplement. Furthermore, application as of 1 January 2026 will ensure that all addressees of the determination and other market participants have sufficient time to adjust to the specific amendments to the regulatory framework.

3.4.2. Discretion for deciding which action to take

39 The Ruling Chamber has also correctly exercised its discretion for deciding which action to take. It has been guided by the purposes of authorisation and complied with the limits of discretion under consideration of the principle of proportionality, see section 40 VwVfG. By amending the determination, the Ruling Chamber aims to pursue the purposes and objectives set out in section 1(1) and (2) EnWG of maintaining a safe, cost-effective, consumer-friendly and efficient supply of the general public with gas and in particular effective and undistorted competition. The supplement to GaBi Gas 2.0 (BK7-14-020) brought about with the amendment to the determination regarding the substantive regulatory content of the applicable provisions on balancing of the GasNZV with selective adjustments takes these objectives into account. The determination accordingly also contributes to an efficient and non-discriminatory network access system within the meaning of section 20(1) EnWG and supports the objectives of safeguarding effective and undistorted competition for the supply of gas, ensuring that gas supply networks operate efficiently and reliably and enhancing the supply of gas from an overall economic perspective within the meaning of section 1(2) EnWG.

3.4.2.1 Fundamental considerations

40 The decision to issue the amendment to the determination is based on the following fundamental considerations.

41 With regard to the expiry of the GasNZV, the Ruling Chamber has decided against a framework determination that would cover all or some of the GasNZV provisions relating to several of the implementing determinations focusing on different topics, namely BK7-24-001-007, BK7-24-001-

008, BK7-24-001-009 and BK7-24-001-010. However, the Ruling Chamber is aware of the concerns expressed by some participants during the consultations that the omission of tried-and-tested provisions of the GasNZV fundamentally poses a risk that new provisions in individual topic-specific determinations could reduce the transparency and legal certainty of the regulatory framework. Nevertheless, the Ruling Chamber considers the integration of the provisions of the GasNZV into each individual determination to be more expedient as this will enable practitioners to obtain a topic-specific summary of the provisions applicable in future to the individual topics rather than creating a new regulatory level with a framework determination. Topic overlaps are marked with notes and references for the legal practitioner.

42 This applies in particular also to the incorporation of legal definitions from the GasNZV, although the Ruling Chamber has only included such overarching provisions in the relevant determination to which the underlying content reference of the provisions needs to be established. The Ruling Chamber considers that this will enable the duplications and inconsistencies between the different determinations feared in the comments to be sufficiently avoided.

43 Transferring the provisions of the GasNZV to a determination also does not pose any restriction to the options for legal redress of the determination's addressees. Notwithstanding the fact that the form of decision-making for the Ruling Chamber is set out in law in section 20(4) EnWG, it also serves to enhance transparency and clarity regarding effective judicial protection against the applicable provisions. While a review of the provisions of the GasNZV was normally only possible by means of an incidental judicial review, transferring the regulations to determinations offers the parties to the proceedings the opportunity to oppose the provisions directly by submitting an appeal pursuant to section 75 EnWG.

3.4.2.2 Considerations regarding operative part 1 (principles of balancing)

44 The individual subjects of the determination are based on the following considerations:

45 The Ruling Chamber is transferring the provisions of section 20(1) sentences 1 to 4 GasNZV concerning the joint market area and the market area manager largely word for word to operative part 1a. The Ruling Chamber accordingly considers it appropriate to continue to specify in more detail the obligation of transmission system operators rooted in section 20(1b) sentence 7 half-sentence 2 EnWG to form a joint market area. In view of this provision, there is no need to transfer the definition contained in section 2 para 10 GasNZV as called for in one of the comments (E.ON). The existing design of the model for access to the gas network by means of the two-contract model and a joint market area across networks as a balancing zone with a market area manager is considered by the Ruling Chamber to be indispensable due to its positive impact in terms of cost-effective and efficient energy supply, as it safeguards liquidity and competition on the gas markets. There are also no dissenting voices concerning this in the comments. Operation of the virtual trading point in the market area and balancing group management remain the proven core tasks

here of the market area manager, the uniform assumption of which by one body enables a market area across networks in the first place. In addition, operative part 1a sentence 3 continues to permit transmission system operators to transfer further tasks to the market area manager if this is necessary for ensuring efficient access to the gas network.

46 The provision concerning the start and end of the gas day in operative part 1b comprises a word-for-word transfer of section 23(1) sentence 2 GasNZV. This accordingly constitutes a tried-and-tested provision that is established in the market.

47 Operative part 1c essentially comprises a word-for-word transfer of the provision contained in section 22(1) sentence 3 GasNZV. It obliges the market area manager to carry out balancing for all shippers in a non-discriminatory manner. It is the view of the Ruling Chamber that this regulatory principle to which, according to section 20(1) EnWG, the network operators are fundamentally bound as part of the entitlement to access the network, also applies to the market area manager and must continue to do so, as the market area manager assumes subtasks of the network operators for the realisation of network access. No other standard can therefore apply to the market area manager.

48 The Ruling Chamber is transferring the definition of allocation contained in section 2 para 1 GasNZV to operative part 1d with identical content. Just like a large share of the comments (BDEW, E.ON, INES), the Ruling Chamber considers it appropriate to transfer the definition of terminology already presupposed pursuant to operative part 1b of the decision of 19 December 2014, BK7-14-020 (GaBi Gas 2.0) word for word. This will enable the allocation of gas quantities to a balancing group to continue to be described in a uniform manner in the balancing system.

49 The Ruling Chamber incorporated a supplement during the second consultation with the intention of explaining further the obligation contained in operative part 1b bb) sentence 1 of GaBi Gas 2.0 (BK7-14-020) to consider metered values of exit points with interval metering relevant for balancing (operative part 1e in the second consultation document of 13 December 2024). A provision was incorporated stipulating that these metered values are to be recorded hourly and made available to market participants on an hourly basis.

50 In view of the comments received (ARGE Impulse, BDEW, EnBW, FNB Gas, GEODE, THE, VKU), the Ruling Chamber has now decided to forego this supplement after considering the arguments presented. The majority of commenting parties rejected the proposed supplement to this determination as, in their view, an obligation to record metered values hourly and submit them to market participants on an hourly basis already arose clearly from the determination on business processes for change of gas supplier (GeLi Gas). On the one hand there was therefore no need for any additional explanation in this determination, while on the other hand the hourly data submission obligation between network operator and shipper or supplier pursuant to the GeLi Gas

determination could potentially be expanded by the proposed supplement to this determination to include balance responsible parties. No need for such content was perceived since the balance responsible parties already received these hourly metered values in their market role as suppliers. Should the Ruling Chamber also intend to require the allocation data to be submitted hourly to the balance responsible parties, instead of twice per day as has been the case so far, the majority of commenting parties would also call for this to be rejected because there was no recognisable need for it in terms of content, they maintained.

51 Although the intended objective of the supplement – to make clear that the obligation already in force under the existing determination on business processes for change of gas supplier (GeLi Gas) to provide market participants with hourly metered values on an hourly basis should not be seen to depend on or even contradict the submission requirements of the balancing regime – is welcomed in its intended meaning by one or two commenting parties (Uniper), the Ruling Chamber acknowledges the objections brought forward by the majority of commenting parties and is therefore foregoing the envisaged supplement in this determination. In contrast to previous market feedback, the Ruling Chamber has also clearly gained the impression from the argumentation in the comments that from today's perspective among market participants the obligation to submit hourly metered values on an hourly basis is no longer fundamentally called into question. It therefore considers the obligation already in force under the existing determination on business processes for change of gas supplier (GeLi Gas) to provide market participants with hourly metered values on an hourly basis to be entirely adequate and is consequently also able in this determination to forego an amended clarification explicitly excluding the non-intended expansion of the provision to cover balance responsible parties in favour of complete deletion.

52 Although the Ruling Chamber did not intend by way of the envisaged supplement either to make the hourly metered values separately available to balance responsible parties or, in doing so, to raise the submission frequency of allocation data to hourly submission, the comments have shown that there is certainly a need in the market for discussion, in particular with regard to the submission frequency of allocation data. The commenting parties have made clear that this is less about additionally submitting the hourly metered values to the balance responsible party on an hourly basis by pointing out that the balance responsible party already receives these metered values in its market role as supplier. Instead, one or two commenting parties (THE, Uniper) have drawn attention to the fact that the current frequency of twice a day for the submission of allocation data would very much benefit from a review, as more frequent submission during the day would enable the balancing group forecast of a balance responsible party to be improved, thereby facilitating a more targeted initiation of countermeasures in the event of recognisable balancing group discrepancies. To this end, some commenting parties (EFET, Uniper) actually suggested an hourly submission frequency.

53 The Ruling Chamber has received these viewpoints with interest and is fundamentally open to a revision of the submission requirements for balancing data in general and allocation data in particular. The Ruling Chamber shares the view expressed that a renewed assessment of the transmission of information with regard to further potential for improving data and forecasting quality would appear to make sense in view of the changes to the gas market that have arisen over time and advances in information technology. However, the thoughts concerning this presented in the comments will be the subject of a future procedure of the Ruling Chamber as the subject of these proceedings essentially comprises the transfer of the provisions of the GasNZV and any fundamental changes to these matters would also require an appropriate lead time for coordination with the whole market. The further thoughts presented in the comments on this issue, such as on conducting a cost-benefit analysis, will therefore initially not be included here and are potentially to be assessed in more detail in a future procedure.

54 The provision of section 24(1) GasNZV is transferred to operative part 1e. It obliges distribution system operators to use simplified methods (standard load profiles) for the allocation of offtake quantities of final customers as long as these do not exceed a maximum hourly offtake capacity of 500 kilowatt hours per hour and a maximum annual offtake of 1.5 million kilowatt hours. Transfer of the provision from the GasNZV without change is considered by the Ruling Chamber to be appropriate and necessary in order to ensure that the scope of application for standard load profiles can continue in future to be substantively configured through specification of the corresponding limits for hourly offtake capacity and annual offtake. At the same time, these specifications, including the supplements listed in operative part 1i, likewise constitute the limits from which the consumption of the exit points is no longer recorded in balancing with standard load profiles but in terms of interval metering based on daily metered offtakes. In addition, the statements are supplemented in operative part 1e sentence 2 by definitions of the input and offtake capacity. These have been transferred from the corresponding definitions of section 2 paras 3 and 9 GasNZV with identical content in a summarised form to the operative part of the determination and serve (including the antagonym) to define clearly the term “hourly offtake capacity” used in operative part 1e sentence 1 in the determination. The Ruling Chamber accordingly considers such transfer to be necessary in the interests of legal clarity.

55 Furthermore, operative part 1g sets out and incorporates into the determination specific requirements regarding the standard load profiles to be used by the distribution system operators through the transfer without amendment of section 24(3) paras 1 to 3 GasNZV. Standard load profiles must be based on the typical consumption profiles of various groups of final customer. These include business enterprises, cooking gas and fuel gas customers. The provision serves to ensure that the different offtake behaviours of the key consumption categories among final customers are sufficiently taken into account in the development and subsequent application of standard load profiles so that the daily offtake forecast of the exit points achieves an adequate

standard of quality. Transfer of the provision from the GasNZV without change is therefore likewise considered by the Ruling Chamber to be appropriate and necessary.

56 The provision of section 24(3) sentence 2 GasNZV is transferred to operative part 1h sentence 1 of the determination. It obliges the distribution system operators to ensure when developing and applying standard load profiles that the use of balancing energy is reduced as much as possible.

57 The Ruling Chamber considers it necessary to transfer this provision of the GasNZV to enable the principle described there of avoiding balancing energy in the development and operational application of standard load profiles by network operators to continue to apply in future in order to ensure that the differences in quantities inevitably arising between the forecast and the actual offtake of final customers that can potentially induce balancing energy are kept to a systemic minimum. Although this regulation has by and large paid off adequately, it had to be supplemented in operative part 1h sentence 2 with a new possibility of intervention by the market area manager allowing the latter in justified exceptional cases to take additional measures for this purpose with the collaboration of the distribution system operators and in consultation with the Bundesnetzagentur. This supplement aims to give the market area manager the option in case of exceptional market events of adjusting the allocation methods to be used by the distribution system operator for standard load profile customers by means of corresponding measures in order to safeguard the principle set out in sentence 1 of avoiding the need for balancing energy also for this specific period.

58 The Ruling Chamber already made clear in the second consultation that it was not planning any additional general improvement measure for the forecasting quality of the standard load profiles by giving the market area manager the opportunity to collaborate, but that this opportunity to collaborate was only to apply in justified exceptional cases. Such an exceptional case can arise, for instance, in the event of sudden changes in the consumption of final customers that cannot be reflected in the short term by the standard load profiles themselves or factors influencing them, such as a change in the annual consumption forecast, and therefore give rise to an increased need for balancing energy, such as may be the case in a gas crisis. The new possibility of intervention by the market area manager therefore only constitutes a potential possibility of intervention in the event and for the duration of the justified exceptional case, to be considered an exceptional market event. Furthermore, the opportunity for distribution system operators to collaborate and the envisaged consultation with the Bundesnetzagentur will ensure that these measures by the market area manager do not unduly burden market participants beyond that which is unavoidable in terms of either time or content.

59 The Ruling Chamber also made plain in the second consultation that it did not intend with this provision to rule out a future fundamental revision of the current standard load profile procedure but was actually open to this. It also made clear that separate determination proceedings would

be necessary for this, not least because a fundamental change to the system requires sufficient preparation time involving the market beforehand. However, the primary purpose of the present determination proceedings lies in transferring the regulations of the GasNZV in the form of a determination on time by 31 December 2025. Based on the positive feedback received during the second consultation, also with regard to the openness signalled by the Ruling Chamber to a fundamental revision of the current standard load profile procedure, the Ruling Chamber feels encouraged to consider such a revision for future determination proceedings.

60 No concerns were raised during the consultations regarding the incorporation of section 24(2) sentence 2 GasNZV into operative part 1h sentence 1, with individual commenting parties even expressly welcoming this (E.ON). The adoption additionally envisaged in operative part 1h sentence 2 of supplementary measures for the application of standard load profile procedures by the market area manager to avoid the use of balancing energy was also fundamentally welcomed by some commenting parties (EFET, INES, VKU). The proposal that this opportunity of the market area manager to collaborate should only apply in justified exceptional cases was likewise largely approved.

61 The Ruling Chamber does not share the view of some commenting parties (BDEW, EnBW, NG Potsdam, THE) that a conclusive definition of the scope of application of a justified exceptional case is absolutely essential here. In the opinion of the Ruling Chamber, it is not possible at the present time for potential scenarios of exceptional market events representing justified exceptional cases to be conclusively identified and substantively described. However, it can be assumed that there is always an unexpected, ongoing disruption to the usual market situation and/or to the behaviour of market participants underlying justified exceptional cases, particularly with regard to the expected use of external balancing energy, and that this cannot be addressed with conventional measures within the framework of the application of standard load profiles. In the opinion of the Ruling Chamber, as well as gas crises such as the one that arose in 2022 that severely impacted the forecasting quality of standard load profile applications as the savings behaviour of final customers could only be predicted with difficulty, exceptional situations exerting a sustainable impact on consumption forecasts and therefore on the need for balancing energy can also result from other unforeseen events such as a nationwide cyber attack or blackout with significant loss of SLP allocation data. While the exceptional character of the gas crisis may initially be most apparent to market participants, limiting the exceptional case to this, as called for by some commenting parties (EnBW, NG Potsdam), for example with reference to the alert or emergency level of a gas crisis situation envisaged for such cases as per the EU regulation, falls short of requirements and would dismiss or exclude from the outset further potential scenarios based on past experience so that the provision would not fulfil its intended purpose in other exceptional situations. It therefore appears to the Ruling Chamber to be more appropriate not to define such a conclusive limitation and instead to create a general catch-all provision for such cases. It is

likewise necessary to bear in mind here that the assessment of whether there is a justified exceptional situation at hand is carried out not just by the market area manager, but rather by all parties involved in the standard load profile procedure, including the Bundesnetzagentur. The joint assessment of the market area manager with the involvement of the distribution system operators and in consultation with the Bundesnetzagentur also serves to counter possible concerns that an exceptional case might not have an exceptional character across the market or that not all specific consequences of the additional measures for market participants are appreciated. The fact that the assessment of the exceptional character is to take place in a more targeted manner based on the specific situation has prompted the Ruling Chamber not to take up the call by some commenting parties (THE, VKU) for a concrete description of the additional measures to be taken by the market area manager in a justified exceptional case and their time limit. Instead, the substantive measures to be taken in such an exceptional case must be adjusted to the exceptional character of the specific situation and carried out until a normal market situation is restored. When this is the case in the specific situation at hand must in turn be agreed between the market area manager, distribution system operators and the Bundesnetzagentur based on corresponding parameters to be drawn upon for assessing the overall market situation. A time limit for the additional measures therefore already results inherently from their connection with the justified exceptional case as a consequence of the fact that the latter ceases to apply upon restoration of a normal market situation.

62 However, in the opinion of the Ruling Chamber, this also does not preclude the market participants from further developing the possible content of the measures to be taken in the event of an exceptional situation and the consequences arising from these for the distribution system operators for exceptional cases already known, such as a gas crisis comparable with that of 2022. These targeted action plans can be appropriately undertaken within the scope of the established self-regulatory processes of the Gas Cooperation Agreement (KoV Gas) with the collaboration of market participants and the involvement of the Bundesnetzagentur, thereby simultaneously also taking account of the participation requirement contained in the operative part. The Ruling Chamber is also aware that the impact of an adjustment of allocations for standard load profile customers by the market area manager is not insignificant for the individual distribution system operators, as some commenting parties have pointed out. Nevertheless, the Ruling Chamber believes that there is no need for any separate explanations in this determination concerning the appropriate assessment of the impact of the measure on market participants. These can be duly taken into account within the scope of the established self-regulatory processes of the KoV Gas, particularly since the distribution system operators concerned are directly involved in its design. They must in any case be reviewed, assessed and appropriately taken into account for the specific exceptional character and measures to be taken in the case of other exceptional cases that are not known.

Picking up on some of the comments (EnBW, E.ON, VKU), the Ruling Chamber wishes to make clear again at this point that it is well aware that the measures to be taken by the market area manager in these exceptional cases will involve changes for the period in question, in particular to the allocation of standard load profiles normally carried out by the distribution system operators and the further processing steps resulting from this. However, the Ruling Chamber considers the need to assess and take account of these implications appropriately already to result from the fact that when the additional measures are carried out by the market area manager, the consequences are removed from the scope of influence of the parties originally responsible for the allocations, the distribution system operators. It therefore makes logical sense to take account of this circumstance in an appropriate manner in terms of the additional resources selected, for instance with regard to the SLP incentive system existing with respect to forecasting quality. However, the implications of the additional measures for third parties such as suppliers and shippers must be differentiated from this as the impact of the additional measures precisely on these market roles is intended to stabilise the overall market situation. The possibility must naturally also be factored in when considering the additional measures that negative effects could potentially also arise for one or two of these market roles but that these will to a certain extent be unavoidable for achieving the goal of stabilising the market.

63 The provision of section 24(2) GasNZV is transferred without change to operative part 1i of the determination. The provision enables distribution system operators to specify load profiles also for final customers with higher or lower maximum offtake capacities or annual offtakes than the limits set out in operative part 1e sentence 1. Lower limits can only be determined here if reliable network operation under the limits defined in operative part 1e sentence 1 cannot be guaranteed technically or lower limits are agreed with shippers in individual cases. The distribution system operator may also define higher or lower limits for individual groups of final customers only, whereby the limits must be applied consistently to all final customers within such a load profile group. If a distribution system operator defines higher or lower limits, it must notify the Bundesnetzagentur of this without delay. The purpose of these exceptions to the limits set out in operative part 1e sentence 1 is to take account of consumption-related peculiarities of final customers required to use load profiles in a distribution system or with regard to distribution systems with operational restrictions that must be observed. The distribution system operator also has the option here of allowing for similar specific offtake behaviour by individual groups of final customers only. Requiring the limits for load profiles to be applied consistently within such groups serves equally to ensure both the non-discriminatory application of load profiles within a group with similar offtake behaviour and standardised processing overall. Only when defining lower limits is it possible to deviate from this on a case-by-case basis. The requirement for distribution system operators to notify the Bundesnetzagentur of deviating limits furthermore underlines the fundamental objective of standardisation and consistency in load profile application as a simplified

allocation method that must also be upheld when allowing for exceptions. The notification requirement enables the Bundesnetzagentur to review and assess the degree to which such exceptions are drawn on in order to derive from this any measures for future load profile application. The provisions have paid off in practice and guarantee a certain degree of flexibility to ensure that the scope of application of standard load profiles is always defined in line with practical requirements. The Ruling Chamber therefore considers transfer without change of these provisions from the GasNZV to be appropriate and necessary so that they continue to apply in future.

64 The provision of section 24(4) GasNZV is transferred to operative part 1j of the determination. It obliges distribution system operators to carry out a forecast of annual consumption for each SLP customer of the shipper that is normally based on the previous year's consumption. The shipper must be informed of this annual consumption forecast. It helps the shipper and supplier in particular to estimate the consumed quantities of a final customer with load profile application and also provides a benchmark for the quantity to be allocated by means of the standard load profile procedure. Owing to their fundamental importance for the procurement management of gas quantities, shippers are to be granted a right of objection and right to make their own proposal with respect to forecasts they consider implausible. If, however, the distribution system operator and the shipper are unable to agree on a joint forecast, the distribution system operator ultimately determines the forecast of annual consumption. Furthermore, the forecast of annual consumption may also be jointly amended during the year by the shipper and the distribution system operator in justified exceptional cases. The Ruling Chamber considers it necessary to transfer this provision of the GasNZV with identical content so that submission of the annual consumption forecast and its coordination mechanism continue to apply in future. The same applies in the exceptional case of an adjustment during the year. The provisions have duly paid off both overall and in terms of balancing the interests of distribution system operators and shippers, particularly with regard to the amount and period of application of forecasts of annual consumption. It must also be borne in mind at all times that greater forecasting accuracy makes an important contribution to avoiding balancing energy and thus to reducing balancing energy costs.

65 It must furthermore be noted that the aforementioned provisions, transferred from the GasNZV and partially supplemented, also duly supplement the relevance for balancing of exit points for which standard load profiles are to be applied as already set out in the GaBi Gas 2.0 determination (BK7-14-020) ("SLP exit points", operative part 1 b) cc) sentences 1 and 2 GaBi Gas 2.0), the provisions for the allocation of standard load profiles to exit points by the distribution system operators (see operative part 1f) and the provisions contained in operative part 1 b) cc) sentences 5 and 6 of GaBi Gas 2.0 concerning the information to be provided by the distribution system operator about the standard load profile procedure that is used (see operative part 1k). Moreover, the original provisions contained in operative parts 1f and k for improving the overall

substantive presentation of the standard load profile requirements have been transferred word for word to the new subsections bbb) and fff) respectively.

66 The Ruling Chamber is transferring the definition of the market role of the balance responsible party from section 2 para 5 GasNZV and the associated behavioural requirements for balancing group management from section 22(3) sentences 1 and 2 GasNZV to operative part 1l sentences 1 to 3 and considers that the comments largely support this (BDEW, E.ON, INES).

67 The market role of the balance responsible party serves to ensure a transparent assignment of rights and obligations under energy law within the framework of gas balancing. It is for this reason that the transfer of its definition was necessary. Assigning economic responsibility for keeping the balancing group in balance to one person serves to create a strong incentive for network users to keep the balancing group balanced. The smaller the difference between inputs and offtakes in the balancing groups, the less balancing energy also generally has to be provided by the market area manager for the system as a whole. The latter can pass on the costs incurred from the imbalance charges to the balance responsible parties whose balancing groups are not balanced, see operative part 2 of GaBi Gas 2.0 (BK7-14-020). However, it is possible, simply due to differences in terms of price-setting mechanisms and the system-related components regarding the need for balancing energy, that not all balancing energy costs may be offset by a corresponding imbalance charge. Problems can also arise in asserting such claims. The remaining balancing energy costs are then passed on to all market participants by way of neutrality charges for balancing pursuant to operative part 7 of GaBi Gas 2.0 (BK7-14-020), which means that a balancing system with a strong incentive to keep the individual balancing groups balanced is important for cost-effective energy supply.

68 The present market role model, which does not require the shipper and balance responsible party to be identical, also means that shippers can outsource balancing group management to service providers, thereby reducing market entry obstacles and increasing the number of market players.

69 On the other hand, the market role model places less of a burden on market participants. The obligation to keep the balancing group balanced already complies from the individual perspective of supply relationships with the principle that the party promising a service also has to ensure its fulfilment and take corresponding measures in this regard. If there is an element of uncertainty on the supply or demand side in a contractual relationship, this primarily concerns the players involved in delivery. On top of this, from a network-based overall perspective, as well as network operators, the network users and here, in particular, the balance responsible parties must also play their part in safeguarding system stability and therefore security of supply by ensuring their balancing groups remain balanced.

70 The above also applies with regard to the behavioural requirements from operative part 1l sentences 2 and 3 for avoiding foreseeable deviations and concerning the economic responsibility

borne by the balance responsible party. These specify high due diligence requirements incumbent on the balance responsible party in terms of ensuring the balancing group remains balanced and therefore also concern the system responsibility of the individual balance responsible parties. Here the balance responsible party must essentially forecast the offtake behaviour of the final customers of the exit points in their balancing group, which cannot be controlled physically. This is an independent duty of care that the balance responsible party is required to fulfil regardless of any imbalance charges to be paid due to a deviation. The balance responsible party is also the correct addressee of this duty of care requirement and the behavioural requirements as the party is able to assess the degree to which the balancing group is balanced better than the individual shippers, since unless the two market roles are held by one person, shippers have no overview of the balancing status of all entry and exit points contained in a balancing group. The balance responsible party can consequently gain a better idea of whether countermeasures are needed in order to keep the balancing group balanced or whether the balancing group altogether has a balanced status despite deviations between the inputs and offtakes of an individual shipper.

71 Operative part 1m contains a word-for-word transfer of the provisions of section 22(2) and section 2 para 4 GasNZV on balancing groups, which is fundamentally welcomed by several of the comments (BDEW, E.ON, INES). As set out previously in section 22(2) sentence 1 GasNZV, operative part 1m sentence 1 sets out word for word the requirement for each balancing group to appoint and notify the market area manager of a balance responsible party, which is an essential basic requirement for a balancing system based on balancing groups. The objective of the word-for-word transfer is to continue to ensure the necessary communication for the execution of balancing through the appointment of a central point of contact for each balancing group, efficient contractual processing and swift communication – regardless of the number of shippers whose portfolios are ultimately managed in the respective balancing group. As the market area manager assumes the central coordinating role in the balancing system, it is also appropriate for them to be notified of this appointment. This means that the marketing area manager can continue to make use of the existing expertise and market experience when reviewing registration requirements.

72 The same applies to the word-for-word transfer of the definition of the balancing group from section 2 para 4 GasNZV to operative part 1m sentence 2. The reasoning behind a balancing group serving the purpose of facilitating trade is for the transfer of gas quantities between the balancing groups to be facilitated via the virtual trading point that is part of each balancing group without any further declared allocations (see operative part 1o), so that the purpose of a balancing group is not limited to facilitating physical delivery. The increased market liquidity and lower market entry barriers hereby achieved due to the lack of any necessity for capacity bookings as required for physical delivery fosters an efficient and cost-effective gas supply.

73 By way of word-to-word transfer of section 22(2) sentences 2 and 3 GasNZV, operative part 1m sentences 2 and 3 enables the balance responsible party to assign their balancing group to another balancing group as a subordinate balancing group or to combine balancing groups for the purpose of netting and consistent settlement. The Ruling Chamber wishes this tried-and-tested form of balancing group management, which is widely used by the market, to remain in place. Netting and consistent settlement in this context is understood as meaning that the quantities in all combined (subordinate) balancing groups are included and any claims for imbalance charges are settled as overall claims.

74 This kind of configuration can offer advantages for balance responsible parties. The balance responsible party of a combined subordinate balancing group can benefit from synergies and portfolio effects due to such balancing group cooperation, as the impact of errors forecasting the input and offtakes of individual shippers is reduced where multiple subordinate balancing groups are combined, thereby also lowering the risk of imbalance charges for the balance responsible parties. Although these are addressed at the balance responsible party of the master balancing group, they are normally passed on to the balance responsible parties of the subordinate balancing groups on the basis of an internal relationship.

75 On the other hand, this kind of configuration also has consequences for the balance responsible parties involved. The fact that the balance responsible party of the master balancing group is the person responsible for balancing reduces the control of the balance responsible party of a subordinate balancing group over the outcome of netting and settlement, as despite the balanced nature of their own subordinate balancing group the imbalance of other connected balancing groups will impact the settlement.

76 It is therefore also appropriate that the balance responsible parties bear the economic risks associated with the choice of their cooperation partner. It makes sense for the market area manager to have only to contact the balance responsible party of the master balancing group. This is particularly justified by the fact that all market participants ultimately bear the risk of the individual balance responsible party failing to balance a discrepancy at the end of the balancing period of one year. The market area manager consequently cannot and does not have to take account of the contractual configuration of such a cooperation on the basis of an internal relationship for the netting and consistent settlement of the master balancing group (see also the corresponding statements on balancing group constructs for biogas balancing under margin no 121).

77 The clear allocation of entry and exit points to a balancing group prescribed in operative part 1n constitutes a word-for-word transfer of section 22(1) sentence 4 GasNZV. The Ruling Chamber continues to consider it necessary, in particular for settlement purposes, for entry and exit points to be clearly allocated to a balancing group by shippers as this enables the quantities to be settled to be clearly apportioned to the respective balancing groups.

78 Operative part 1o contains a word-for-word transfer of the provisions of section 2 para 15 GasNZV and section 22(1) sentence 5 GasNZV concerning the virtual trading point. In the view of the Ruling Chamber, the definition of the virtual trading point must continue to be understood as comprising a point in the market area, but one which does not correspond to a physical entry or exit point, at which gas can be transferred between balancing groups without the need for a capacity booking. It is the virtual trading point that makes the trading of gas actually possible, as the quantities are only transferred between the balancing groups in terms of balancing, without any physical delivery taking place.

79 The fact that the virtual trading point is an integral part of each balancing group of the market area is also a necessary prerequisite for the trading of gas quantities without physical delivery, as otherwise gas quantities could only be allocated to balancing groups via entry and exit points. Instead, the provisions concerning the virtual trading point will continue to ensure a high level of market transparency and improved price-setting and are conducive to an efficient gas supply. Altogether it can be concluded that the possibility of transferring gas quantities unhindered from one balancing group to another is essential for enabling gas to be traded. The inclusion of a virtual trading point in each balancing group represents an important component for this in order to increase liquidity and improve the competitive situation on the gas markets. Word-for-word transfer was therefore necessary.

80 Where attention is drawn in one comment (E.ON) to the fact that section 22(1) sentence 6 GasNZV governing use of the virtual trading point free of charge has not been transferred, this is due to the fact that the Ruling Chamber drew up provisions for this topic that derogate from section 22(1) sentence 6 GasNZV in a decision of 18 November 2011 (BK7-11-003) concluding the determination proceedings for the levying of charges for use of the virtual trading point. It was entitled to do this pursuant to section 50(1) para 10 GasNZV. These provisions will continue to apply following the expiry of the GasNZV.

81 The provisions concerning the balancing group contract from section 3(1), (2) and (5) GasNZV, section 4(2) sentence 1 GasNZV and section 6(2) GasNZV are transferred to the determination in operative part 1p.

82 The obligation and entitlement of the balance responsible parties to conclude a balancing group contract with the market area manager comprises a largely word-for-word transfer of section 3(1) sentence 3 GasNZV and is considered by the Ruling Chamber to remain necessary for managing network access alongside the entry and exit contract. Where an entry and exit contract is required for physical delivery, the balancing group contract serves as the equivalent on the balancing and commercial side of network use. Conclusion of a balancing group contract is a central requirement for network access. To the extent that the authorised and obligated parties of the provision are addressed, this provision includes the entitlement to non-discriminatory network access already

existing pursuant to section 20(1) and (1b) EnWG, which rules out any major intervention impact for the affected parties emanating from the present provision in addition to this already existing entitlement.

83 The registration requirement for balance responsible parties previously governed by section 6(2) sentence 1 GasNZV stipulates that balance responsible parties are required to register with the market area manager unless they are already registered with a network operator as a shipper.

84 The Ruling Chamber considers this registration to remain necessary in order to enable the predominantly electronic communication between the market area manager and balance responsible parties to run smoothly and, if necessary, ensure implementation of the customary processing steps in business transactions prior to the establishment of a business relationship. Registration also ensures that the point of contact at the other party is clearly recognisable for both the contracting parties. This includes providing the address of the balance responsible party or a representative. In addition, the specified details are to be upheld that the market area manager can at all events request from the balance responsible party. While refraining from expanding the admission requirements in the operative part, the Ruling Chamber draws attention to the fact that the existing provision that has now accordingly also been transferred does not prohibit the market area manager from placing further suitable and non-discriminatory admission requirements on balance responsible parties.

85 However, the Ruling Chamber, with the support of one comment (THE), considers it appropriate in order to avoid any evasion of the registration requirements only to deem registration with a network operator to be sufficient if such operator’s registration requirements correspond with those for registration for conclusion of a balancing group contract with the market area manager.

86 The security requirement of the market area manager is therefore particularly predominant and the financial interests of all market players are indirectly taken into account as the registration requirements are also intended to ensure the personal and financial reliability of balance responsible parties. By contrast, the market entry obstacle posed for balance responsible parties by the registration outlay is to be given less weighting.

87 The reason for this is that only a balance responsible party with a prudent approach to energy supply and acting with financial capability will be able to keep their own balancing group balanced and in so doing help to maintain system stability and avoid non-recoverable imbalance charges. This also serves indirectly to foster cost-effective gas supply as non-recoverable imbalance charges do not place a burden on the market area manager, who is in any case not profit-driven, but rather on the entire market via the neutrality charges borne by all network users pursuant to operative part 7 of GaBi Gas 2.0 (BK7-14-020). The market area manager can thus also be described pursuant to the provision as the “guardian of the balancing system”.

88 To the extent that one comment (VNG) calls for simplification of the registration process by means of a central registration site ("one-stop-shop" registration) for both shippers and balance responsible parties, the Ruling Chamber does not currently consider it necessary for such a process to be stipulated in a determination, particularly since the outlay for registration is only incurred once upon entry to the market. At the same time, the Ruling Chamber is open to such further simplification of the registration process by the market area manager and network operators outside determination proceedings as long as the registration requirements concerning the applicable market role are satisfied, as this kind of standardisation may reduce the market entry obstacles, which are in any case not to be weighted highly.

89 However, the Ruling Chamber is not following up the suggestion expressed in isolated comments (VNG) that the market area manager be required to publish the requirements for registration on its website. The market area manager is already publishing sufficient information about registration on a voluntary basis. The Ruling Chamber does not see any benefit to be gained from a formal obligation to do so.

90 The Ruling Chamber likewise continues to consider it appropriate to retain the rules governing the content of the balancing group contract, the requirement for standardised balancing group contracts and the minimum information in general terms and conditions pursuant to section 3(2) and section 3(5) in conjunction with section 4(2) sentence 1 GasNZV, particularly since the minimum information requirements as stipulated have paid off in the past. It therefore plans to continue in future to ensure that the standardised balancing group contract sets out the key obligations of each market role also within the contractual relationship, which will in turn serve to facilitate non-discriminatory access to the gas network and adequate risk distribution in such a way that the network-specific and energy-related features of the regulated access system and the system responsibility primarily affecting the market area manager are sufficiently taken into account.

91 Operative part 1q comprises a largely word-for-word transfer to the determination of the provision contained in section 23(2) sentence 5 GasNZV on the settlement of balancing groups and the provision contained in section 23(3) sentence 1 GasNZV on surcharges and deductions when calculating imbalance charges.

92 The Ruling Chamber considers it appropriate that the settlement of balancing groups by the balance responsible party continues to take place two months after the applicable settlement month at the latest in accordance with section 23(2) sentence 5 GasNZV. While some of the comments (EFET, VNG) call for balancing group settlement one month after the applicable settlement month (M+1M) at the latest, the Ruling Chamber considers such a reduction of the settlement period to be too far-reaching a measure due to the large number of further processing steps to be adjusted for the present determination, which is geared to the transfer of the provisions

of the GasNZV. However, it is open to such an amendment within the scope of the cooperation process of the network operators (KoV Gas).

93 It is furthermore appropriate for the market area manager to remain able to apply appropriate surcharges and deductions in accordance with section 23(3) sentence 1 GasNZV when calculating the imbalance charges if and to the extent that this is necessary and reasonable in order to ensure network stability or avoid any misuse of the balancing system. The market area manager is provided with a tool enabling them to respond to problematic market behaviour according to the specific situation. The aim is to provide shippers and balance responsible parties with sufficient incentives to keep their balancing group in a balanced condition. The configuration of surcharges and deductions calls for the appropriate resolution of conflicting goals: on the one hand the surcharges and deductions must be sufficiently high to boost the incentive for an even balance and prevent misuse of the system, while on the other hand the amount of the surcharges and deductions may not give rise to market entry barriers for new market participants.

94 The provisions concerning the provision of data from section 2 para 7a and section 26 GasNZV are transferred word for word to operative part 1r. This sets out the definition of data formats pursuant to section 2 para 7a GasNZV and the obligation of market players to provide each other with information for avoiding imbalance gas and for settlement in accordance with section 26 GasNZV. The Ruling Chamber is of the opinion that such a data submission obligation between network operators, market area managers, shippers and balance responsible parties remains essential for an effective balancing system. The electronic exchange of data between the market area manager, the network operator, the shipper and the balance responsible party for the initiation and processing of network use, the processing of balancing and the settlement of reconciliation quantities is also a feature of market communication that, owing to the standardisation and acceleration of data transfer resulting from it, is here to stay and would contradict efficient network access if omitted. The appropriate involvement of the shippers and balance responsible parties in developing the procedure and data formats also remains necessary as this is the only way of ensuring that the interests of the parties entitled to access the network are sufficiently taken into account.

3.4.2.3 Considerations regarding operative part 2 (nomination)

95 The definition of nomination is transferred word for word from section 15(1) sentence 1 GasNZV to operative part 2a. It is the opinion of the Ruling Chamber, in line with a further comment (E.ON), that it remains necessary for shippers to report the quantities to be fed in and out at the time of nomination and the relevant balancing group for a booking point in order to inform the transmission system operator of the expected flows. The nomination also entails a link between physical flows and balancing. The restriction for shippers induced by this is necessary in this respect for reasons of system stability. If re-nomination rights exist, these give shippers the opportunity to adjust their

nomination again after the “actual” time of nomination. Nomination by quantities of gas also continues to take account of the fact that the shipper will not know the relevant calorific value in the network that is required for disclosure in units of volume. Operative part 2b contains a largely word-for-word transfer of the provisions of section 15(1) sentences 2 and 3 GasNZV concerning exit nominations. The Ruling Chamber continues to consider it appropriate in future for exit nominations only to be necessary in the specified exceptional cases. They are not normally required for secure and efficient network operation as long as final customers do not display any unpredictable or strongly fluctuating offtake behaviour or are incentivised to such by contractual arrangements with their supplier. This will reduce the administrative outlay for all market participants. For reasons of network stability, an exit nomination is necessary in the specified exceptional cases as the premise of predictable offtake behaviour without strong fluctuations is not applicable here. Where section 15(1) para 1 GasNZV made mention of an offtake from a storage facility, the Ruling Chamber, as well as one of the comments (VNG), assumes an editorial error on the part of the issuer of the ordinance and does not intend any substantive change to the content of the provision by means of its present wording in terms of offtake for injection into a storage facility. The reference to section 13(3) sentence 3 GasNZV has been removed.

96 The provisions from section 15(2) sentences 2 and 3 GasNZV concerning the commissioning of third parties with nomination by the shipper are transferred with identical content to operative part 2c. This will serve to ensure that the market entry obstacles remain low as shippers can continue to draw on the expertise and structures of third parties. This provision corresponds with the option for shippers to create subordinate balancing groups, ie to commission a third party with fulfilment of the balance responsible party’s tasks for their balancing group. If this is possible, a third party must also remain capable for reasons of consistency of carrying out nomination vis-à-vis the transmission system operator on behalf of the shipper delegating.

97 Operative part 2d contains a word-for-word transfer of the requirements from section 15(3) GasNZV concerning an alternative nomination procedure. The Ruling Chamber continues to consider it appropriate for the transmission system operators to be obliged in cases in which the standard nomination procedure is not possible or feasible to offer an alternative nomination procedure to the extent that this is technically feasible and economically reasonable. Such procedures can enable shippers to submit measured offtake quantities of their balancing groups automatically to a network operator. The latter can then control the inputs from a supply source (eg storage or production facility) available to the shipper in accordance with the measured offtakes of the balancing group, thereby averting the risk of physical inputs lagging behind the nominations due to technical limitations and thus posing the threat of the balancing group becoming imbalanced. The additional requirements from the alternative nomination procedure for the transmission system operator contrast with the risk that without an alternative nomination procedure inputs and offtakes would not be carried out or the supply of gas would become more

expensive because the shippers would have to bear the risk of discrepancies or would pass this on in the supply chain. Instead, the specific input and offtake situations of the individual shippers can continue to be accommodated using remote reading technology in such a way as to enable network operation to be handled efficiently even in special constellations.

98 One of the comments (BDEW) in response to the consultation on the draft operative part recommends removing the obligation of network operators to offer an alternative nomination procedure on the grounds that operational balancing accounts (OBAs) at entry points prevail at cross-border interconnection points and gas storage facilities. However, it is not sufficiently clear to the Ruling Chamber from this that there are still constellations in which an alternative nomination procedure is necessary. The Ruling Chamber also knows from practice that transmission system operators actually offer such an alternative nomination procedure. However, the burden placed by this obligation on network operators is limited in particular by the fact that the obligation remains subject to technical feasibility and economic reasonableness.

3.4.2.4 Considerations regarding operative part 3 (imbalance gas)

99 The definition of imbalance gas is transferred word for word from section 2(2) GasNZV to operative part 3. The Ruling Chamber accordingly sees no need for change and considers this confirmed by a comment (E.ON), as imbalance gas is a concept that many established processes in the balancing system build on. For example, operative part 1a sentences 3 and 4 of GaBi Gas 2.0 (BK7-14-020) concerning the basic operating principle of imbalance gas and operative part 2 of GaBi Gas 2.0 (BK7-14-020) concerning the method for determining imbalance gas build on the concept. The definition furthermore remains necessary in order to make clear the substantive difference between imbalance gas and balancing energy. Unlike balancing energy, imbalance gas is the mathematically necessary quantity of gas required to net differences between inputs and offtakes.

3.4.2.5 Considerations regarding operative part 4 (SLP settlement of reconciliation quantities)

100 The provisions from section 25 GasNZV concerning the settlement of reconciliation quantities with respect to the application of standard load profiles are transferred with identical content to operative part 4. It is appropriate and necessary for the allocation of final customers with the help of standard load profiles that reconciliation quantities arising due to deviations between quantities allocated according to standard load profiles and the actual offtake of the final customer (SLP reconciliation quantities) continue to be allocated to exit network operators. This serves to ensure that the forecast-related deviations are correctly recorded and financially balanced. The present procedure for the SLP settlement of reconciliation quantities now complements the provisions already contained in operative part 3 of GaBi Gas 2.0 (BK7-14-020) concerning RLM reconciliation

quantities, which were likewise based on section 25 GasNZV, and creates an appropriate balance between the interests of the market players involved. The settlement mechanism has paid off in the past and offers shippers objective process handling that permits settlement of the differential quantities inevitably arising for the exit network operator due to the application of standard load profiles, albeit delayed due to factors inherent in the system. It is appropriate for the exit network operators to be included in this settlement process as the application of standard load profiles is prescribed in their network for defined final customers and the differential quantities arising from such application are incurred there, (may have to be balanced with balancing energy by the market area manager) and ultimately have to be settled with the shipper. The provisional allocation of forecast and allocated SLP exit quantities in a network is inherent in the system and is currently also already reflected accordingly vis-à-vis the market area manager via the network account system in accordance with operative part 8 of GaBi Gas 2.0 (BK7-14-020). The equal treatment of shippers and pricing transparency achieved through the settlement of reconciliation quantities with the shipper on the basis of a commodity price is appropriate as shippers are only able to influence the occurrence and scope of SLP reconciliation quantities to a limited extent.

101 The annual settlement of these quantities by the exit network operators with the shippers has also paid off. The Ruling Chamber is therefore not taking up the proposal from one of the comments (VNG) to increase settlement with the shipper to three times a year. Inasmuch as this proposal is based on the assumption that the ongoing installation of smart meter gateways offers potential for accelerating settlement processes, the Ruling Chamber considers these benefits not yet to be sufficiently tangible to justify an adjustment to the settlement cycle at the present time, although it does not wish to rule out the possibility that this may be the case during a future revision of the balancing regulatory framework. It must furthermore be pointed out that settlement has to take place “at least” annually. This does not rule out the option of an adjustment within the scope of the cooperation process of the network operators (KoV Gas) subject to corresponding consensus between the market participants.

3.4.2.6 Considerations regarding operative part 5 (balancing energy)

102 Operative part 5a contains a word-for-word transfer of the definition of balancing energy previously set out in section 2 para 12 GasNZV and the principles for the use of balancing energy from section 27(1) sentences 1 and 2 GasNZV.

103 As the counterpart to imbalance gas, balancing energy describes an actual impact on the gas quantities physically available in the network (eg due to offtake or additional inputs). Balancing energy is to be distinguished from the provision or offtake of gas for the application of capacity-increasing measures (flow commitments, market-based instruments), which do not fall under the concept of balancing energy as their purpose is to maximise freely allocable firm capacity and not to preserve system stability by maintaining stable pressure ratios within the technical limitations.

As the use of balancing energy can also depend on factors relating to more than one network, it makes sense for the market area manager to coordinate the use of balancing energy in the market area.

104 Operative part 5b comprises a largely word-for-word transfer from section 27(1) sentence 3 GasNZV of the definition of internal balancing energy and measures available within this framework. The Ruling Chamber is adhering to the use of the storage capability of the network, the use of network storage facilities and use of the storage capability of the networks adjoining the network concerned, as well as network storage facilities in other networks within and outside the market area. These are tried-and-tested instruments that are conducive to a cost-effective and efficient gas supply through the flexible use of a network infrastructure already existing and in operation from the sphere of network operators and the avoidance of external balancing energy. The Ruling Chamber does not consider a separate definition of external balancing energy, as proposed (BDEW, E.ON), to be necessary as the definition of balancing energy and internal balancing energy ensures sufficient delimitation and a separate definition of external balancing energy does not offer any additional clarity to the regulatory framework.

105 Arrangements for the offer and procurement of external balancing energy are transferred word-for-word from section 28(2) GasNZV and set out in operative part 5c. The content configuration for the procurement and use of external balancing energy within the framework of the four-level merit order list (MOL) is derived from operative part 6b of GaBi Gas 2.0 (BK7-14-020), which remains in force without change. Operative part 6a of GaBi Gas 2.0 (BK7-14-020) sets out the preferential use of internal balancing energy.

By way of word-for-word transfer of the general rules for the procurement of external balancing energy from section 28(2) sentence 1 GasNZV, operative part 5c sentences 1 and 2 permits the market area manager to determine minimum offers for the procurement of external balancing energy. Through transfer of section 28(2) sentences 2 and 3 GasNZV, it allows partial services and supplier consortia. This is on the one hand intended in particular to ensure with regard to the minimum offers that only those suppliers of balancing energy participate in a tender that are sufficiently capable economically of guaranteeing provision at the time when the market area manager actually needs the balancing energy. At the same time, the option of partial services and supplier consortia is intended to prevent individual suppliers of balancing energy from gaining a dominant market position and ensure that the balancing energy market continues to be organised on competitive terms. The prerequisites for viable competition on the balancing energy market are further improved by this approach, as supplier consortia also enable providers to take part in the tendering proceedings that might otherwise be unable to do so, for example due to insufficient possibilities of having available corresponding gas quantities or owing to the smaller scope of their economic capability.

106 The Ruling Chamber does not agree with one comment (FNB Gas) that considers an exclusion of supplier consortia to be essential for achieving the minimum offers in order to prevent the balancing system from being exploited. The Ruling Chamber is unable to deduce from the comment how supplier consortia should enable the balancing system to be exploited. The market area manager has already permitted supplier consortia for certain bilateral balancing energy products in the past without this resulting in exploitation of the balancing system. A prequalification and the conclusion of balancing energy product contracts with the market area manager is in any case necessary for participation in the bilateral (off-exchange) balancing energy market. The Ruling Chamber sees no indication that these entry obstacles for participation in the tender/procurement do not guarantee a sufficient degree of reliability on the part of balancing energy providers.

3.4.2.7 Considerations regarding operative part 6 (neutrality and other charges)

107 The entitlement of the market area manager to advance payments of neutrality and other charges to cover the costs of balancing energy pursuant to operative part 6 is based on a transfer with identical content of section 29 sentence 4 GasNZV. According to this, the market area manager is entitled to require appropriate advance payments of neutrality and other charges to cover the costs of balancing energy. The Ruling Chamber is of the view that this provision should be retained as it avoids the need for full advance financing of the procurement and use of balancing energy by the market area manager, thereby enabling the liquidity essential for the discharge of functions to be guaranteed. In addition, as long as the market area manager makes use of this entitlement, they do not have to bear the entire insolvency risk of the balance responsible parties in the case of an advance payment. This ensures an appropriate balance between the interests of shippers in the provision of balancing energy and those of the market area manager in cost recovery. The supplement “of neutrality and other charges” merely serves as clarification in accordance with the proposal of a commenting party (FNB Gas).

108 The Ruling Chamber does not consider it necessary to extend the provision beyond the costs of balancing energy as suggested in one of the comments, as the present determination only applies to the balancing system and not to any other possible cost-incurring tasks of the market area manager. Advance payments for such tasks are to be governed separately outside the balancing system or this has in some cases already been done (eg the entitlement to collect advance payments within the scope of the Gas Storage Act, see section 35e sentence 4 EnWG).

3.4.2.8 Considerations regarding operative part 7 (extended balancing for biogas)

109 Operative part 7 comprises the provisions concerning extended balancing for biogas adopted almost entirely word for word from section 35 GasNZV. The provisions oblige the market area manager to offer balance responsible parties the option of concluding a special biogas balancing

group contract for the input and offtake of biogas that gives balance responsible parties a privileged status with respect to gas balancing. The Ruling Chamber considers it necessary to transfer the provisions of section 35 GasNZV so that extended balancing for biogas continues to be applied in future as the balancing of biogas using a separate balancing system has paid off. It facilitates cost savings for the input of biogas compared with the input of natural gas, thereby promoting climate policy goals and strengthening security of supply through this improvement of the economic conditions.

110 The Ruling Chamber considers itself to be backed by numerous comments in this fundamental decision (BDEW, EFET, EnBW, GEODE, THE, UNIPER, VKU). The comments expressly welcomed the largely word-for-word transfer of the provisions of section 35 GasNZV during the consultation on the draft operative part and simultaneously spoke out against a revision of the biogas balancing system. The Ruling Chamber accordingly sees no reason at present to follow up further the amendments put forward for discussion in the consultation on the draft operative part (see below).

111 According to this proviso, the largely unchanged adoption of section 35(1) GasNZV in operative part 7a is appropriate. It sets out the fundamental obligation of the market area manager to offer extended balancing for 12 months for the input and offtake of biogas. It also is particularly appropriate to draw for this task on the market role of the market area manager that has been addressed until now. While one comment (INES) maintained that a reduction of the balancing period is to be expected due to the foreseeable increase in biogas as a share of the overall gas market, it is the Ruling Chamber's view that such a development is not yet sufficiently foreseeable to make a reduction of the balancing period necessary at present in order to preserve system stability. It sees itself confirmed in this by a comment (EFET) considering the share of biogas in the network to be currently too small to justify daily balancing.

112 The same applies to operative part 7b, which stipulates that the market area manager only offers extended balancing for balancing groups to which the balance responsible party exclusively introduces biogas quantities. To ensure that only the inputters and offtakers of biogas quantities benefit from the privileges of extended balancing, the exchange of biogas quantities between balancing groups and the offsetting of differences presupposes a biogas balancing group within the meaning of operative part 7c and it is only possible to transfer biogas quantities to natural gas balancing groups but not vice versa. Without this exclusion it would not be possible to continue to ensure a clear allocation and recording of biogas quantities when settling and compensating biogas quantities and to prevent misuse of the balancing system.

113 The Ruling Chamber is unable to take up the suggestion put forward by one or two commenting parties (THE, FNB Gas) with a view to possible balancing energy needs of revising the option previously set out in section 35(2) sentence 2 GasNZV of exchanging flexibilities between biogas

balancing groups. This is due to the lack of any further substantiated statements concerning the specific impact of this option on balancing energy needs during the consultation on the draft operative part. The fact that the transferability not only of flexibilities, but also of all other privileging provisions concerning extended balancing for biogas, can trigger higher balancing energy needs and thus in many cases prove detrimental to cost-effective gas supply therefore continues by itself in principle not to constitute a potential argument against such privileging. The reasoning behind this is that alongside the objectives of an environmentally sustainable and carbon-neutral energy supply set out in section 1(1) EnWG, the basis for the determination pursuant to section 20(4) para 7 EnWG also explicitly provides for the option of specific configuration of extended balancing for biogas by the regulatory authority. The Ruling Chamber is in any case unable to see how the cost-effective supply of gas could be disproportionately impaired by the transferability of flexibilities within the scope of biogas balancing, also for lack of any specific statements to this effect in the comments.

114 The Ruling Chamber is also unable to take up the suggestion in one comment (THE) to limit the transfer of biogas quantities to natural gas balancing groups. For one thing, the Ruling Chamber has doubts about the practical feasibility of the proposed change to monthly settlement on a daily basis. In addition, the feasibility of such a mechanism can also be determined within the scope of the processes for the Gas Cooperation Agreement (KoV) if such a mechanism is considered necessary for limiting the economic risk of the market area manager regarding non-recoverable imbalance charges.

115 Operative part 7c provides details of the 12-month balancing period previously set out in section 35(3) sentence 1 GasNZV, which includes a flexibility allowance of 25%. The flexibility allowance of 25% continues to apply to the difference of the cumulative input and offtake quantities in proportion to the annual quantity.

116 The objective pursued with the one-year balancing period and the flexibility allowance of the cost-effective input of biogas in order to promote climate policy goals outweighs the associated drawbacks for market participants in the form of potentially higher neutrality charges for balancing. The risks for the general public arising from the extended balancing for biogas balancing groups are considered by the Ruling Chamber to be adequately proportionate to the benefits of an extended balancing period.

117 The longer balancing period compared with natural gas facilitates a supply concept for inputters and offtakers that enables seasonal fluctuations of inputs and offtakes to be balanced over the year as a whole. A daily balancing period for biogas would currently pose an obstacle to the goals of an environmentally sustainable and carbon-neutral energy supply, as producers supplying heat-controlled offtakers would cease production in the summer despite production possibilities or have to accept imbalance charges due to the imbalance of a balancing group.

118 By contrast, the necessity due to the one-year balancing period and the flexibility allowance for the marketing area manager to balance an imbalance of the entire network throughout the year by providing balancing energy poses a less serious problem at present, as does the fact that the costs incurred through this are passed on to all market participants pursuant to operative part 7 of GaBi Gas 2.0 (BK7-14-020). At the same time, the Ruling Chamber is well aware of the increased risk of discrepancies due to the significantly longer balancing period compared with the natural gas system because, where for natural gas balancing the degree to which the balancing group is balanced can be assessed at the end of the gas day pursuant to operative part 1b (previously section 23(1) sentence 2 GasNZV), there is a possibility of significantly larger discrepancies in the case of a one-year balancing period. The market area manager and ultimately all market participants bear the risk of the individual balance responsible party failing to balance the discrepancy at the end of the balancing period of one year, for instance due to insolvency.

119 If, due to balancing group constructions by means of sub-balancing accounts and balancing group combinations, the quantities are concentrated on a small number of balance responsible parties, this risk will increase as the default of one of these balance responsible parties will entail high non-recoverable claims that ultimately also have to be borne by the market.

120 However, the Ruling Chamber does not see any necessity to restrict the general permissibility of such balancing group constructs for biogas balancing groups in the future or to shorten the balancing period. It is confirmed in this view by a large share of the comments (BDEW, EFET, THE, Uniper, VKU). For one thing, portfolio effects and the outsourcing of expertise by the balancing group management ensure that smaller producers, in particular, are able to gain market access at affordable conditions. In addition, the market area manager can terminate balancing group contracts for good cause if a balance responsible party is at risk of defaulting, thereby controlling the risk for those liable to pay the neutrality charge. Where risks for shippers, producers and balance responsible parties in balancing group cooperations arise from this constellation, these are risks that such market players consciously accept and must take into account when selecting a contracting partner and the contractual arrangements with the latter. Market participants must therefore assess individually whether these risks are manageable for them in proportion to the benefits such as less costly market access and portfolio effects.

121 In derogation of section 35(3) sentence 1 GasNZV, the Ruling Chamber is now standardising the balancing period to the calendar year in operative part 7c sentence 1. It is confirmed in this by several comments (FNB Gas, GEODE, THE, Uniper). A standardised balancing period in particular serves to facilitate the exchange of flexibilities at the end of the balancing period more effectively, as this now takes place at the same time for all biogas balancing groups. The calendar year was favoured as the balancing period in the majority of comments.

122 Operative part 7d obliges the balance responsible party to forecast the input and offtake quantities of the biogas facility as previously required under section 35(4) GasNZV and to inform the market area manager of this. This forecast has no binding effect. However, it is highly relevant for the market area manager's forecast of the degree to which the network is set to remain balanced.

123 The adoption without change in operative part 7e sentence 1 of the obligation of the balance responsible party to balance the input and offtake quantities within the flexibility allowance at the end of the balancing period pursuant to section 35(5) sentence 1 GasNZV is also appropriate. Operative part 7e sentence 1 makes clear that the duty of the balance responsible party to inform the market area manager comprises a non-binding forecast.

124 The degree to which a balancing group is balanced at the end of the balancing period corresponds to the basic system of gas balancing, which aims to ensure system stability with the lowest possible use of balancing energy and must therefore also be applied to the balancing of biogas. The balance responsible party is therefore also responsible regarding the biogas balancing system for ensuring that the input and offtake quantities nominally assigned to their balancing group are balanced at the end of the balancing period. This responsibility of the balance responsible parties for balancing, which is also financial due to the imbalance charge to be paid in the event of the balancing group's imbalance at the end of the balancing period, is intended to prevent misuse by shippers of the flexibilities granted in the balancing system and thus reduce the need for (physical) compensation and the balancing energy required for this in the market area, thereby contributing to a cost-effective and efficient energy supply.

125 The Ruling Chamber has likewise opted to retain in operative part 7f the obligation of the market area manager previously set out in section 35(6) GasNZV to enable balance responsible parties to carry forward positive closing balances of a preceding balancing period to the following one subject to the applicable flexibility allowance. This is a tried-and-tested privilege that is set to prove even more beneficial thanks to the standardisation of the balancing period.

126 The largely word-for-word transfer of section 35(7) GasNZV to operative part 7g is also based on the consideration that the Ruling Chamber continues to find the balancing of the difference between input and offtake quantities subject to the flexibility allowance following the expiry of the balancing period to be appropriate. In accordance with the regulatory principles, the costs incurred within this framework are to continue to be established in a non-discriminatory procedure according to the actual and efficient costs for the supply of imbalance gas. The Ruling Chamber considers it appropriate for the balance responsible parties to continue only to be invoiced pro rata for the costs necessary for balancing the differential quantities remaining after the netting of all balancing groups managed under a market area manager pursuant to section 35(7) sentence 3 GasNZV. In this respect, the decisive factor for the Ruling Chamber is that it has paid off both in natural gas in general and in biogas in particular to create an incentive for the balance responsible

parties to ensure that the balancing group is balanced without penalisation for the use of imbalance gas.

127 The charge defined in operative part 7h for the actual utilisation of flexibility pursuant to operative part 7c is intended, as also set out in section 35(8) GasNZV, to ensure that such utilisation of flexibility by the balance responsible parties does not result in any significant deterioration of the economic conditions for the input of biogas, while simultaneously maintaining an incentive for keeping this utilisation low. In this context, the Ruling Chamber, in deviation from the draft operative part, continues to consider it advisable pursuant to section 35(8) sentence 1 GasNZV and as called for by one of the comments (EnBW) to set a flat-rate charge of €0.001/kWh without leaving it to the market area manager to decide on the charge. The reasoning behind this is that the additional outlay of the market area manager resulting from the extended balancing can also be distributed cost-reflectively with a flat-rate charge without fully allocating the actual costs to the balance responsible parties. The incentive effect will continue to be reviewed on an ongoing basis as part of the report pursuant to section 36(7) para 7 EnWG.

128 By contrast, an adjustment mechanism would entail additional administrative outlay and difficulties determining the amount that would be disproportionate to the flexibility gained from it. In line with one of the comments (EnBW), the Ruling Chamber considers the loss in the consistency of trading and market conditions resulting from foregoing a flat-rate charge for extended balancing to be the decisive argument as opposed to the flexibility gained. The charge in any case accounts for a small share of the transaction price. However, it is not possible to forecast with certainty whether this share might change to an extent that causes a fundamental change in the trading and market conditions so that the input of biogas at economic conditions may no longer be possible to the same extent due to the changed calculation method. The Ruling Chamber therefore likewise does not consider the establishment of framework conditions for determining the charge as suggested in one of the comments (Fachverband Biogas e.V.) to be necessary.

3.4.2.9 Considerations regarding operative part 8

A reference to the expired GasNZV is removed in operative part 8. The adjustment was required without implying any change to the substantive regulatory content.

3.4.2.10 Considerations regarding operative part 9

Operative part 9 sentence 1 makes clear that use of the term gas on its own or in connection with other terminology within the framework of the present determination refers to natural gas within the meaning of Article 2 point 1 of Directive (EU) 2024/1788. Operative part 9 sentence 2 makes clear that access to hydrogen networks is governed by determinations BK7-24-01-014 (WasABi) and BK7-24-01-015 (WaKandA).

3.4.2.11 Considerations regarding operative part 10 (period of validity)

129 Operative part 10 governs the period of validity of the determination. This is intended on the one hand to ensure that market participants have adequate time to prepare for implementation of the determination and at the same time to avoid the risk of a regulatory gap following expiry of the GasNZV as of 1 January 2026. The Ruling Chamber is making no use of the power pursuant to section 20(4) sentence 3 EnWG to deviate from provisions of the GasNZV or issue supplementary regulations. It has also not been obliged to do so by European law. In its aforementioned judgment, the Court of Justice of the European Union ruled that the normative regulation was incompatible with the exclusive responsibility of the national regulatory authority pursuant to European law. However, it did not criticise any infringements of the substantive requirements of European legislation by the applicable regulatory framework.

3.5. Proviso of the order for payment of costs

130 A separate ruling pursuant to section 91 EnWG remains reserved with regard to the costs (fees and expenses).

Information on legal remedies

Appeals against this decision may be brought within one month of its service. The appeal must be submitted to the Higher Regional Court of Düsseldorf (address: Cecilienallee 3, 40474 Düsseldorf).

The appeal must be accompanied by a written statement setting out the grounds for appeal. The written statement must be provided within one month. The one-month period begins with the filing of the appeal; this deadline may be extended by the court of appeal's presiding judge upon request. The appeal and the grounds for appeal must be signed by a lawyer.

The appeal does not have suspensory effect (section 76(1) EnWG).

Anne Zeidler	Dimitri Wenz	Stephan Faßbender
Chair	Vice Chair	Vice Chair