Grand Ruling Chamber for Energy

GBK-24-02-2#1

Decision

In the administrative proceedings pursuant to section 29(1) in conjunction with section 21(3) first sentence, fourth sentence paras 1a) and 1f) and fifth sentence and section 21a(1) first sentence, (2) and (3) first sentence, third sentence paras 6, 11 and 12 and fourth sentence of the Energy Industry Act (EnWG)

concerning **determination proceedings for the adjustment of imputed useful lives and depreciation arrangements for natural gas pipeline infrastructure (KANU 2.0)**

the Grand Ruling Chamber for Energy of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn,

represented by

its Chair	President of the Bundesnetzagentur Klaus Müller,
its Vice Chair	Vice President of the Bundesnetzagentur Barbie Kornelia Haller,
its Vice Chair	Vice President of the Bundesnetzagentur Dr Daniela Brönstrup,
its Vice Chair	Dr Christian Schütte,
its Vice Chair	Anne Christine Zeidler,
and its Vice Chair	Dr Annegret Groebel

decided on 25 September 2024:

1. Addressees

This determination is addressed to all operators of gas distribution systems as defined in section 3 para 8 EnWG and operators of gas transmission systems as defined in section 3 para 5 EnWG (network operators within the meaning of this determination).

2. Useful lives

[1]In derogation of Annex 1 to the Gas Network Tariffs Ordinance (GasNEV) the shortest average useful life of fixed assets in gas supply that can be chosen for any asset group in connection with determining the depreciation periods in accordance with section 6(5) GasNEV is 2035 minus t years where t is the year of initial capitalisation.[1] [2]The first sentence does not apply where the shortest average useful life for an asset group as listed in Annex 1 GasNEV is shorter than the useful life in accordance with the first sentence.

3. Declining balance depreciation

[1]In addition to the straight-line method of depreciation referred to in section 6(2) first sentence and (4) GasNEV the imputed depreciation for existing assets in accordance with section 6(2) GasNEV and for new assets in accordance with section 6(4) GasNEV can be determined using the declining balance method of depreciation with a depreciation rate of 8% to 12%.[2] [2]In order to determine when to switch from the declining balance method of depreciation to the straight-line method of depreciation

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[1] A useful life end date before 2045 can generally only be applied where and as far as federal state requirements exist for a network operator's network area to reduce greenhouse gas emissions with the aim of net greenhouse gas neutrality as in section 3(2) of the Federal Climate Change Act (KSG), but for a date earlier than 2045, or corresponding requirements exist for a network operator as a result of a municipal decision or comparable exogenous framework conditions; see margin no 242 et seq for further details. Any change in useful lives still requires justification.

[2] Footnote 1 in respect of the requirement for justification applies accordingly to the choice and justification of declining balance depreciation, although a combination of a declining balance depreciation and a useful life end date of, for example, 2045 is generally possible. The rate of depreciation for declining balance depreciation must be reasonably proportionate to the remaining useful life. Key to the justification of the rate of depreciation for declining balance depreciation are in particular the exogenous framework conditions, for example in the form of a volume forecast.

towards the end of the depreciation period the end of the useful life must be determined as set out in point 2 once the declining balance method of depreciation is used. [3]The switch from the declining balance method of depreciation to the straight-line method of depreciation is made as soon as the straight-line depreciation calculated in accordance with the second sentence using the residual value of the previous year is larger than the declining balance depreciation determined in accordance with the first sentence.

4. Exempted asset groups

[1]Point 2 and point 3 do not apply to I.4 (administrative buildings), I.6 (fixtures and fittings (without IT, tools/devices) and telecommunications switching equipment), I.9 (IT equipment) or I.10 (vehicles) in Annex 1 GasNEV. [2]Point 2 and point 3 likewise do not apply to LNG connection assets within the meaning of operative part 2 of determination BK9-22/614 of 8 November 2022 (KANU 1.0).

5. Tangible fixed asset identification numbers

[1]In order to make it possible to identify the depreciation arrangements (depreciation methods and useful lives) under the GasNEV and points 2 and 3 of this determination, network operators must create tangible fixed asset identification numbers for all fixed assets as soon as they make use of the depreciation arrangements set out in point 2 and/or point 3. [2]An asset group of an acquisition year allocated a specific depreciation arrangement is initially assigned a unique identification number. [3]Once an identification number has been assigned, it is retained and is not reassigned. [4]A new identification number is therefore assigned if a different depreciation arrangement is used for part of an asset group already assigned an identification number. [5]Network operators are free to create network identification numbers to identify groups of different depreciation arrangements and/or different assets, for example for specific municipalities or network sections. [6]Details of how the fixed assets must be listed are set out in Annex A to this determination.

6. Period and scope of applicability of the depreciation arrangements

[1]The regulations in this determination apply to the revenue caps of the remaining years 2025 to 2027 in the fourth regulatory period. [2]The regulations do not affect the regulatory authority's determination of the base level and capex deduction in accordance with section 6 or setting of the revenue caps in accordance with section 32(1) para 1 of the Incentive Regulation Ordinance (ARegV), subject to the regulations in point 8 on determining the transformation element.

7. Capex markup

[1]The regulations set out in this point apply to operationally necessary tangible fixed assets that were or will be initially capitalised as completed assets on or after 1 January 2021. [2]The change in or first-time application of the depreciation arrangements for these fixed assets as from 1 January 2025 can be implemented through the capex markup in accordance with section 10a ARegV in conjunction with the adjustment of the revenue caps in accordance with section 4(4) first sentence para 1 ARegV. [3]The network operators are therefore not bound in this one instance to the depreciation arrangements underlying applications made for the 30 June 2024 deadline for capex markups for 2025; the deadline of 30 June 2024 in accordance with the first half of the second sentence of section 4(4) ARegV is extended in this one instance until 15 October 2024 in respect of a change in the depreciation arrangements relating to an application already made. [4]This does not affect the binding effect under point 10 of the notification in accordance with point 9 as regards the depreciation arrangement chosen. [5]Any adjustment of the depreciation arrangements for the years 2023 to 2024 is ruled out.

8. Transformation element

[1]The regulations set out in this point apply to operationally necessary tangible fixed assets that were capitalised as completed assets on or before 31 December 2020. [2]The change in the depreciation arrangements for these fixed assets can be implemented as from 1 January 2025 through a transformation element. [3]The transformation element represents an additive component supplementing the regulatory formula in Annex 1 relating to section 7 ARegV.

[4]The transformation element for a year t is the difference between:

- the revenue cap for the year t that was set in accordance with section 32(1) para 1 ARegV in conjunction with section 4(1) and (2) first sentence ARegV and adjusted in accordance with section 4(2) second sentence ARegV, taking into account the change in depreciation arrangements in accordance with the requirements of this determination as from 2025;[3] and

[3] Where no revenue caps have been set for the fourth regulatory period, the revenue cap for the year t must be estimated as best as possible. When estimating the revenue cap, the network operators must include all the findings from the ongoing proceedings on setting the calendar-year revenue caps for the fourth regulatory period and from other relevant proceedings; see, for example, the relevant annual

- the revenue cap for the year t that was originally set in accordance with section 32(1) para 1 ARegV in conjunction with section 4(1) and (2) first sentence ARegV and adjusted in accordance with section 4(2) second sentence ARegV.[4]

[5]The adjustment referred to in the fourth sentence and, if applicable, the estimate of the revenue cap for the relevant year t must be based on identical assumptions; account must also be taken of any network transfers that have taken place after the base year. [6]The difference results purely from a change in the capex deduction for the year t in the regulatory formula laid down in section 6(3) ARegV in conjunction with Annex 2a relating to section 6 ARegV applying the relevant depreciation arrangements; in derogation of the second half-sentence of point (1) of Annex 2a relating to section 6 ARegV the capex deduction based on the changed depreciation arrangements to determine the transformation element can be smaller than zero. [7]In the case of transmission system operators, the regulation in section 35(7) second sentence ARegV must not be applied in calculating the difference to determine the transformation element. [8]The procedure and calculations in accordance with section 34a ARegV are not affected by the provisions on the transformation element.

[9]Any adjustment of the depreciation arrangements for the period before 2025 is ruled out.

[10]The adjustment of the revenue cap of a year t with respect to the transformation element is made by the network operator. [11]It is not necessary for the revenue caps to be set again.

9. Notification procedure

[1]In good time before the publication of the tariffs for the following year in accordance with section 20(1) first sentence EnWG, but no later than 15 October of a calendar year, network operators planning to apply a transformation element as referred to in point 8

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information from Ruling Chamber 9 about adjustments to revenue caps and calculating network tariffs. In all other respects, point 10 applies for the settlement of any differences in the regulatory account.

[4] See footnote 3. In mathematical terms, the only factor ultimately determining the transformation element is the change in the amortised capital costs (KKt) and thus the change in the capex deduction and thus the following part of the revenue cap formula; see also the sixth sentence of point 8:

$$\left(KA_{vnb,t} + (1 - V_t) * KA_{b,t} + \frac{B_0}{T}\right) * \left(\frac{VPI_t}{VPI_0} - PF_t\right)$$

in the revenue cap in the following year must submit a notification to the competent regulatory authority.[5] [2]The notification must take the form of Annex A and must include all the imputed tangible fixed assets. [3]The notification must also specify the depreciation arrangements for all the fixed assets that were capitalised as completed assets on or after 1 January 2021.

10. Regulatory account and binding effect

[1]The transformation element is recorded in the regulatory account in accordance with section 5(1) first sentence ARegV as part of the revenue allowed under section 4 ARegV. [2]The calculation of the difference in accordance with section 5(1a) first sentence ARegV is still based solely on the capital costs actually incurred compared with the projected figures within the meaning of section 10a(6) first sentence para 2 ARegV. [3]The network operators are bound by the depreciation arrangements applied in the tariff calculation for all fixed assets. [4]Any retrospective adjustment of the depreciation arrangements is ruled out.

11. Partial revocation of KANU 1.0

Point 1 and the first sentence of point 3 of the operative part of determination BK9-22/614 of 8 November 2022 (KANU 1.0) will be revoked with effect from 1 January 2025.

12. Period of validity

This determination applies until 31 December 2027.

13. Procedural provisions

The procedural provisions in point 5, in the third and fourth sentences of point 7, in the tenth and eleventh sentences of point 8 and in point 9 do not affect the administrative proceedings of the federal state regulatory authorities and apply solely to network operators within the meaning of point 1 that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG.

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[5] For network operators within the meaning of point 1 that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG (see also point 13 on the procedural provisions): notifications must be marked "BK9_Anzeigeverfahren KANU 2.0" and submitted via the energy data portal (https://app.bundesnetzagentur.de/Energie/). Notifications for assets to be approved in the capex markup procedure must still be marked "BK9_Kapitalkostenaufschlag gem. § 10a ARegV".

14. Order for payment of costs

The right to order payment of costs is reserved.

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RATIONALE

I. Relevant facts

1. Opening of proceedings

1 On 6 March 2024 the Grand Ruling Chamber for Energy ("Ruling Chamber") opened ex officio determination proceedings for the adjustment of imputed useful lives and depreciation arrangements for natural gas pipeline infrastructure (KANU 2.0) (reference GBK-24-02-2#1) and published a key elements paper.

2 The proceedings were prompted by the climate targets set in the Federal Climate Change Act with the aim of net greenhouse gas neutrality to be achieved by 2045 (and in some cases earlier under federal state requirements) also in the gas sector and by the continual development of these processes.

3 Notification of the opening of the proceedings and the key elements paper was given on the Bundesnetzagentur's website on 6 March 2024. At the same time the regulatory authorities of the federal states were notified of the opening of proceedings in accordance with section 55(1) second sentence EnWG and were given the opportunity to comment on the key elements paper in accordance with section 58(1) second sentence EnWG. The Committee of representatives of the federal state regulatory authorities was given the opportunity to comment in accordance with section 60a(2) EnWG. Likewise, the Bundeskartellamt was given the opportunity to comment in accordance with section 58(1) second sentence EnWG.

2. Content of the key elements paper

4 The Bundesnetzagentur set out the following in the key elements paper:

2.1. Background

5 The Federal Climate Change Act requires a reduction in greenhouse gas emissions to the point of net greenhouse gas neutrality by 2045. The significance of natural gas will therefore diminish in many sectors already in the medium term. Parts of the natural gas network at transmission system level and at distribution system level will be used to transport hydrogen. A large part of the natural gas network will not be used beyond 2045 and will be decommissioned. The transition from natural gas associated with the target of climate neutrality by 2045 therefore has a severe impact on the future use of and basic demand for the gas network infrastructure.

6 Some of the decarbonisation targets within Germany are even more ambitious, with some federal states aiming to achieve climate neutrality by 2040 and some cities as early as 2035.

In addition, there are expected to be regional differences in municipal heat planning. What is clear is that there will be large differences in the demand for and use of the gas networks in the coming years. What is also clear is that there is likely to be a decline in gas consumption volumes in the 2030s.

7 By contrast, the current regulatory system is designed for the continuation of the gas networks and a generally stable, intensive use of the networks. This is reflected clearly in the provisions on depreciation arrangements in the GasNEV, which still apply.

8 With its determination on imputed useful lives of natural gas pipeline infrastructure (KANU 1.0) Ruling Chamber 9 at the Bundesnetzagentur took a first step in 2022 towards reflecting the transition from natural gas in network tariffs. The KANU 1.0 determination allows network operators to choose useful lives for new investments so that their assets are fully depreciated by 2045. The reason for this was and is that without more flexibility in the depreciation periods it would no longer be possible to take full account of investments for new assets in the calendar-year revenue caps and therefore refinance the assets through the network tariffs because it is likely that the networks will not continue to be operated for a sufficiently long period of time. However, in light of the above-mentioned decarbonisation targets, the problem of not being able to fully depreciate or guarantee refinancing for assets arises not only for new but also for existing assets.

9 The Bundesnetzagentur has therefore taken a second step and has proposed further changes to the regulatory framework to support the beginning of the transformation process in the gas sector. One particular aim is to adjust depreciation in line with the future decrease in sales and thus adequately reflect the economic utilisation of the gas infrastructure. This requires an adjustment of the depreciation arrangements.

10 The transformation of the gas networks is still at an early stage and is currently subject to numerous uncertainties. The aim of a determination should therefore be to give network operators flexible instruments. This should enable the operators to refinance their investments and secure their economic performance particularly for the transformation process. At the same time, more flexibility also means more responsibility for the network operators in making sure that the depreciation methods they choose actually enable them to refinance their investments in their networks areas.

11 The proposed measures therefore aim to adequately balance two objectives: network operators should largely be able to recoup their investments; at the same time, at the end of the transformation process network users should not be burdened with increases in tariffs that are excessive and could have been avoided with appropriate regulatory provisions.

2.2. Proposed depreciation arrangements

12 The key elements paper set out various proposals for the depreciation arrangements (the depreciation methods and the useful lives to be applied) and for the granularity of the accounting of the regulated assets.

13 The straight-line and declining balance methods of depreciation were considered to be suitable methods for future imputed depreciation. Based on this, two possible models were presented.

14 The first was an "options model" allowing network operators to choose between declining balance depreciation with a depreciation rate of 15% and straight-line depreciation. The straight-line depreciation method would allow for the useful lives listed in Annex 1 GasNEV or accelerated depreciation up to 2045. The proposed options model would analyse each individual asset.

15 The second model proposed as an alternative to the options model was a "corridor model". This model would analyse asset groups and acquisition years instead of each individual asset. It would set minimum and maximum depreciable amounts for each asset group and each acquisition year. The initial minimum amount would be determined as a linear depreciable amount based on the useful lives in the GasNEV and would correspond to the current depreciation amount. The initial maximum amount would be calculated by multiplying the imputed residual values as at, for example, 31 December 2024 and a depreciation rate of 10% (linear depreciation with a remaining useful life of 10 years).

16 As in the KANU 1.0 determination, both models should include an exemption for administrative buildings. The key elements paper raised the question of whether further exemptions should be granted for certain asset groups or for pipelines to be converted to hydrogen.

17 The key elements paper also raised the question of how the principle of consistency should be evaluated in this context and which information sources could be used for the decisions on adjusting the depreciation arrangements.

18 The KANU 2.0 determination is intended to replace the KANU 1.0 determination as from 2025 and apply to all assets, including existing assets. However, the regulations will only apply for the remaining years 2025 to 2027 in the fourth regulatory period because as from 2028 the whole framework of the provisions under the GasNEV and ARegV will be reworked on the basis of determinations in accordance with sections 21 and 21a EnWG.

2.3. Avoiding misplaced incentives

19 The key elements paper made the point that as far as possible the regulations should avoid the wrong kind of incentives. Both models would generally allow assets to be fully depreciated. However, high depreciation amounts correspond to a lower interest basis. Network operators

are therefore faced with a conflict of aims between quick refinancing – in other words minimising their risk – and retaining the interest basis – in other words maximising their profit. Assessing this conflict is essential for an appropriate decision-making process in each case. If there were no remaining risks whatsoever for a network operator, the operator would depreciate assets as slowly as possible in order to maximise profit. An excessive risk, by contrast, would be an incentive to depreciate assets more (and to that extent unnecessarily) quickly.

20 Theoretically there would still be the possibility that residual values would not be depreciated by 2045, for example if it had been assumed that assets would continue to be used but were not. The key elements paper therefore pointed out that against the background of the situation described it was not necessary to generally recognise special depreciation at the end of the useful life. Rather, a critical look should be taken in each case at whether or not this was necessary.

2.4. Implementing the depreciation arrangements

21 The key elements paper indicated that it could be made possible for network operators opting for the new depreciation arrangements to implement them starting in 2025. The arrangements could be implemented for new investments from 2021 through the capex markup procedure and for existing assets acquired in or before the base year 2020 through the proposed transformation element. Here, the paper proposed a notification procedure instead of an application procedure for network operators.

22 Retrospective adjustments of the revenue caps for previous years or retrospective effects from increases in depreciation were to be ruled out.

3. Responses to the key elements paper

23 Responses to the key elements paper could be submitted by 28 March 2024. A total of 89 responses were received from 11 associations, 71 network operators, one other company in the energy sector and seven federal state regulatory authorities.

3.1. General comments

24 Most of the respondents welcomed the fact that an adjustment of the depreciation arrangements was being considered and emphasised the need for flexible regulations. In light of the anticipated decrease in the use of the gas networks it was generally understandable that the depreciation arrangements for the gas networks needed to be reviewed and adjusted. The flexibility in depreciation arrangements envisaged in the determination in order to secure full refinancing of gas network investments in the future was seen as an important building block

in the successful transformation of the gas networks. This would accommodate the network operators' different needs with respect to the increasingly heterogeneous gas network infrastructure.

25 German and European climate targets and consumer protection had to be balanced. Respondents welcomed the Bundesnetzagentur's goal of avoiding misplaced incentives for network operators. In this context, the uncertainties about the actual transformation paths in the individual networks had to be acknowledged. Respondents also called for sufficient planning certainty for customers. The envisaged changes should therefore be designed so that they did not result in sudden changes in network tariffs.

26 Respondents also pointed out the need for a fair distribution of the burden. It was necessary to prevent costs being passed on to any remaining gas customers and avoid unreasonably large increases in network tariffs at the beginning or towards the end of the transformation process.

27 Some respondents stated that gas networks would be needed in the long term, for example to meet the residual load or for the use of biogas. Only very few respondents took the determination proceedings to be a definitive timetable for decommissioning the natural gas networks.

3.2. Applicability to existing and new assets

28 In view of the risk that a significant proportion of existing assets might not be fully refinanced, respondents welcomed the fact that the adjustment of the tariff regulations would also apply to existing assets. The KANU 1.0 determination should be replaced in full.

3.3. Flexibility of the regulations

29 The majority of respondents called for the gas network operators to be given a higher degree of flexibility and responsibility in light of the current uncertainties. To a large extent, neither the legal nor the factual framework conditions were currently in place for the discontinuation of gas supply at individual operating sites or for the possibility to continue using the gas network infrastructure to transport climate-neutral gas. The key parameters for determining the transformation path for the gas networks were not yet known and would not be worked out until municipal heat planning was developed in the next few years.

30 It should be remembered that the mere fact that it was technically possible to convert existing natural gas distribution facilities did not mean that such assets could actually be used for a different purpose at a later point in time. This would ultimately depend on the specific heat planning and on commercial and industrial customers' consumption behaviour, which is not yet foreseeable. The network operators therefore needed a determination with more far-

reaching flexibility as regards the depreciation arrangements. It was stated that the key elements paper presented did not yet accommodate this need.

31 Some respondents called for the possibility to change the depreciation arrangements without a detailed factual justification. The economic concept of matching the costs of transformation with the degree of use of the network was sufficient justification in itself. Regulatory supervision could be limited to ensuring that there was no depreciation to a value below zero. Flexibility was needed in terms of both time and space.

32 It had to be possible to change initial decisions. Some respondents argued that this had to be the case in the event of new or better findings (for example new findings from municipal heat planning).

33 Some respondents stated that it had to be possible to take decisions and make changes even without specific new findings. The legal and factual framework conditions for the transformation of the gas networks were not yet in place. Some respondents therefore called for the possibility to make changes at least in the event of improved findings. Respondents also stated that it had to be possible to change the depreciation arrangements more than once.

34 It should be remembered that municipal heat planning was not a one-off assessment but an iterative process that would be repeated every few years, which could and would result in the need for regular adjustments.

35 There should be flexibility for network operators as to when to apply the regulations for the first time. In addition, it should be possible to adapt the useful life in the event of new findings, for instance if it was possible to use the infrastructure for hydrogen after all.

36 However, there was also criticism that the far-reaching flexibility could create misplaced incentives to the detriment of network users and consumers. In particular, sufficient account was not yet taken of the probable decrease in consumption. The regulatory authorities were therefore called upon to examine the network operators' assumptions.

37 Here, some respondents stated that gas network operators should have to justify their choice of depreciation model from the outset. Such a justification and examination of the justification by the regulatory authority would take account of the network users' interests in network costs not increasing more than absolutely necessary.

38 There was, however, also criticism about such an examination, in particular a more detailed examination at a later time should consolidated findings, for example about municipal heat planning, be available. It was essential for network operators to be able to rely on it being possible to adjust the depreciation type and period in the light of new information. It was necessary for network operators to be allowed to adjust the depreciation model without having

to give a separate justification. One way of implementing this would be to allow such adjustments to be made at two set points in time in the future, for example in the course of cost examinations to take effect in the following regulatory period.

39 It was also stated that the flexibility could conflict with the network users' interest in stable network tariffs without any sharp increases. In addition, the network costs had to remain transparent. A generally applicable approach for accelerated depreciation should therefore be laid down for implementation. This approach could still include various options but should clearly set out when each option would be compulsory.

40 Mechanisms were needed to prevent the remaining network users from having too great a burden at a later point in time because of previous incorrect forecasts. In addition, it was necessary to avoid misplaced incentives with regard to expiring concession arrangements or upcoming network transfers.

41 It was also pointed out that the high degree of flexibility must not result in excessive bureaucracy.

42 In connection with the question of flexibility some respondents brought up other points relating to changes in consumption volumes. Network operators with mostly industrial customers had to be seen as special cases. These network operators supplied high volumes of gas to large industrial customers that would decide when to switch regardless of municipal heat planning. It should be possible for these operators to respond flexibly to such marked decreases in volume by adjusting the depreciation arrangement.

43 Finally, respondents stated that the regulations had to ensure that the capital costs incurred and the sales volumes developed similarly. However, it was still necessary to ensure refinancing of the gas network infrastructure even if unacceptable distortions from changes in costs and volumes were reflected in the future network costs.

3.4. Options model

44 Most of the respondents welcomed the basic design of the options model. The model enabled accelerated depreciation with the declining balance method as well, if acknowledged as necessary, and therefore generally allowed for a fair distribution of the costs over a period in which there were still as many connection users as possible. There was criticism about the restriction of extended straight-line depreciation to the year 2045 (see 3.4.1), the proposed design for declining balance depreciation (see 3.4.3) and asset-based analysis (see 3.7).

3.4.1. Useful lives in the case of straight-line depreciation

45 Respondents generally welcomed the proposed straight-line depreciation up to 2045 at the latest. However, there was a call to introduce a flexible useful life for straight-line depreciation that would allow network operators to choose an imputed useful life end date before 2045, depending on regional circumstances, for example because of differences in municipal heat planning. Only such a regulation would make it possible to fully refinance investments in the gas networks. As some federal states and municipalities are aiming to achieve decarbonisation before 2045, an option in the straight-line depreciation method for a useful life end date of 2035 similar to the corridor model was needed. It was stated that depreciation requirements largely depended on municipal heat planning, which the Heat Planning Act (WPG) required to be in place by 30 June 2026 for cities and by 30 June 2028 for towns. The planning itself largely depended on municipalities' individual objectives. It was already clear that many municipalities were aiming to transition from gas earlier. It was also stated that this aim was not affected by the option of declining balance depreciation.

46 It should likewise be possible to choose a useful life end date after 2045 (up to the relevant useful life end date listed in Annex 1 GasNEV) in order to take into account the regional differences in the decarbonisation process. It was conceivable that there would be cases where the expected useful life end date was after 2045 but before the end date listed in the GasNEV.

3.4.2. Declining balance methods of depreciation

47 Most of the respondents found the proposed new option of declining balance depreciation to be appropriate. Declining balance depreciation could be an appropriate solution to reflect the expected development in customer numbers and consumption volumes. Declining balance depreciation was a necessary option because a relatively large number of users would still be connected to the network at the beginning of the transformation process.

48 Some respondents stated that declining balance depreciation should generally be the preferred option for parts of the gas network that would not continue to be used.

49 The anticipated increases in tariffs were likely to be smaller at the beginning then towards the end of use in the case of straight-line depreciation. Declining balance depreciation reduced the risk that network tariffs would increase significantly as the number of network customers decreased towards the end of the depreciation period because a larger part of the depreciable amount would be brought forward. Based on the use of the gas network, this would enable the costs to be spread among a large number of users at the beginning.

50 Here, it was also stated that the later the transformation process began or was taken into account in the depreciation, the higher the depreciation rate would have to be at the start of declining balance depreciation (see 3.4.3 on the declining balance depreciation rate and 3.12 for the date of applicability of the regulations).

51 A few respondents viewed the proposed new option of declining balance depreciation critically. It would result in an increase in the network tariffs in the coming years. This could be an (additional) incentive for some customers to transition from gas, which in turn would reduce the number of users bearing the costs.

3.4.3. Declining balance depreciation rate

52 Respondents called for a range for the declining balance depreciation rate instead of the fixed rate of 15% proposed in the key elements paper. Such a range was the only way to accommodate the regional differences in transformation plans. A range would also make it possible to accommodate uncertainties in respect of long-term perspectives. A range would enable the networks operators, who best know their customer and asset structure and the local conditions for transformation, to choose an appropriate rate of depreciation. Some respondents viewed the fixed rate of 15% critically because it could result in tariff increases of up to 40% or 50% if applied nationwide by a network operator. This could impose an excessive burden on network users, especially small and medium-sized business users. A range would make it possible to apply declining balance depreciation but still avoid such effects.

53 A fixed depreciation rate was also criticised in that the high depreciable amounts, in particular in the first years of depreciation, would result in large evaluation differences between imputed and commercial-law depreciation (see also 3.15.8).

54 A range from 8% to 15% was mostly proposed. A range below 8% would not make the method sufficiently distinct from straight-line depreciation with a shorter depreciation period. The maximum rate of 15% would at least limit sharp increases in tariffs and at the same time enable a large part of the depreciation to be brought forward in line with the principles presented. A maximum of 15% was conceivable in light of existing uncertainties in respect of the long-term perspectives and significant economic effects.

55 Some respondents viewed the rate of 15% as an absolute maximum because this rate for declining balance depreciation would mean that the residual values present at the beginning of 2025 would more than halve within a few years. Other respondents argued that 15% was a balanced rate of depreciation because if it were applied, only about one third of the initial residual values would still exist at the beginning of the 2030s and the risk of "stranded" residual values would be considerably lower.

56 A few respondents put forward higher ranges of up to 20% or even 25%.

57 By contrast, some respondents stated that a declining balance depreciation rate of 15% was too high. Final customers and network users had to be protected from excessive increases in tariffs, which could arise if this depreciation rate were applied. Instead, the rate had to be coordinated with municipal heat planning and take into account any later repurposing.

58 Some respondents argued that a declining balance depreciation rate of 15% was not compatible with the aim of adequately reflecting economic utilisation. This high declining balance depreciation rate would result in a substantial part of the total amount being depreciated in the next few years, which would primarily increase the burden for existing customers and reduce the burden for future customers. However, a parallel decrease in consumption was not to be expected. Another way should therefore be found to plausibly estimate the expected decreases in consumption for each network operator, and ideally even each network area, and to take adequate account of these decreases in the depreciation.

3.4.4. Switch from declining balance to straight-line depreciation

59 There was criticism about the regulation proposed in the key elements paper for a switch from declining balance to straight-line depreciation for the end of the depreciation period. Straight-line depreciation up to 2045 was not appropriate (see also 3.4.1).

60 The proposal made was that for the switch network operators should determine the remaining useful life relevant to the subsequent straight-line depreciation and that a useful life end date of 2035 should also be possible.

3.5. Corridor model

61 A wide range of comments were received about the corridor model. Some respondents welcomed the flexibility the model provided. The depreciation rate of 10% was generally seen to be adequate.

62 The higher level of aggregation compared with the proposed options model was highlighted positively. However, there was a call for it to be possible for this aggregation to be broken down again through optional differentiation, for example using network identification numbers (see 3.7 on this aspect as a whole).

63 Some respondents highlighted that the model was appropriate for smaller and medium-sized network operators to reflect the transformation generally but that the fact that individual pipelines or network sections were not analysed was not compatible with any differentiated municipal heat planning.

64 The model also needed to address the issue of how assets could be depreciated in later stages if the foreseeable remaining useful life was less than 10 years. With respect to the end period for depreciation, it was stated that the corridor model also had to allow investments that were still necessary in, for example, 2041 for security of supply reasons to be fully depreciated by 2045. The KANU 2.0 determination must not result in disadvantages for future investments compared to the regulations in the KANU 1.0 determination.

65 It was also stated that it had to be possible to change earlier assumptions flexibly with a limited need for justification. Some respondents believed the corridor model would make such changes more difficult.

66 However, there was also criticism about the corridor model because of its blanket approaches. In later stages of the transformation process it would become necessary to differentiate between individual assets/asset groups.

67 Only some respondents positively highlighted the option of a mixed calculation in the corridor model. The defined corridor would enable the network operators to make a reasonable risk assessment in line with the local circumstances and the latest information available. Instead of analysing each individual asset network operators could carry out combined modelling and optimisation and mask any remaining gaps in information.

3.6. Proposed alternatives

68 The alternatives proposed by respondents mainly related to adjustments to the options model and the corridor model. Respondents proposed variants or combinations of the models, such as combining the corridor model with the alternative of declining balance depreciation. Some respondents suggested that overall the current asset groups were not relevant. Network sections could instead be combined and depreciated as such as a whole.

3.7. Level of detail

69 Varied responses were received to the question of whether an analysis of each individual asset (asset-based analysis) should be compulsory or optional.

70 Some respondents rejected a compulsory asset-based analysis and instead called for the option to carry out an analysis based on, for example, regional clusters. An analysis of each individual operating asset was not necessary in regulatory terms.

71 There was not yet sufficient clarity about future developments for example in respect of rollout, connection and coverage obligations or the conditions for rejecting or terminating network connection agreements. In addition, in particular municipal heat planning was not yet in place. There was also uncertainty about the ramp-up of the hydrogen sector and hydrogen

infrastructure. On account of the expiry of the Gas Network Access Ordinance (GasNZV) the future regulations for biogas injection were also undecided. The current imputed method based on asset groups and acquisition years should therefore generally be retained. A more detailed analysis using, for example, network identification numbers could be left optional for the network operators.

72 Another argument put forward was the large amount of work involved. An asset-based analysis was often not possible and the effort required for collecting and processing data was excessive. With respect to the amount of work involved, network operators quoted four, five and six-digit figures for the number of assets to be covered. An asset-based analysis therefore conflicted with the Bundesnetzagentur's ongoing considerations on simplifying regulation. In addition, there did not appear to be any added value. It should be possible for network operators to carry out a more detailed analysis if they considered it necessary and were in a position to do so.

73 The proposed network identification numbers would also be used in other procedures, for example to represent different useful lives within the ranges set in the GasNEV or to identify different concession areas. Although the number of data elements required would ultimately increase by a low single-digit factor, it would be much lower than the above-mentioned figures from an asset-based analysis.

74 However, some respondents were in favour of a detailed asset-based analysis. An asset-based analysis was necessary because the continued use of assets for biogas, the conversion of assets to hydrogen, for example, or the decommissioning of assets depended on the (regional) transport requirements and not solely on the asset groups as listed in the GasNEV. An asset-based analysis was the foundation for the planning of remaining useful lives, which would become more concrete and reliable with more information being available as the transformation process progressed.

75 However, some of these responses pointed to the same result, namely an aggregation using network identification numbers. This would allow sub-networks, for example, to be taken into account. The different transformation paths for each concession area, plot or even individual asset could vary and would be represented by using network identification numbers.

76 Some respondents argued from a consumer perspective and considered an asset-based analysis to be necessary. An asset-based analysis (in conjunction with the justification for the decision on the depreciation model) was essential to ensure that account was taken not only of the interest of the network operators in being able to refinance their assets as fully as possible but also of the general interest in affordable network costs. There was in fact scope here for network operators to increase profits, which needed to be kept to a minimum in the interests of the network users.

77 In this respect, it was also argued that an asset-based analysis would enable a more accurate representation of the economic utilisation and should be the preferred option for assessing the security of supply and green gas quota.

3.8. Exemptions on account of repurposing

78 The key elements paper raised the question of whether an exemption from the more flexible depreciation arrangements should be created for gas transmission system operators and (if applicable) distribution system operators with respect to pipeline infrastructure that could or was intended to be converted to hydrogen.

79 This idea was rejected by a large number of respondents. At present, there was a lack of sufficiently reliable findings to support creating such an exemption in a binding manner. In purely technical terms, a large part of the natural gas infrastructure could actually be converted to transport hydrogen. With regard to the question as to which natural gas infrastructure should be converted to hydrogen in the long term there was a high degree of uncertainty because this largely depended on external conditions. Municipal heat planning and regulations for the hydrogen core network were not yet in place. A general exemption should therefore not be granted, particularly in view of the differences in progress in the municipalities' heat planning and some considerably more ambitious decarbonisation targets in individual federal states. Instead, network operators should be given the flexibility to only take account of any reliable findings of relevance.

80 It was pointed out in this context that it would be necessary to build on the remaining residual value of an asset if the asset were to be repurposed. Some respondents called for the determination to be harmonised with the regulation in section 26(2a) ARegV.

81 Some respondents pointed out that if assets could be used beyond 2045 network operators would not be interested in depreciating the assets early and thus ruling out a further return on capital. There was therefore no need for creating an exemption.

82 Other respondents did see a general need for such a regulation. It had to be expected that the gas network assets converted to hydrogen would be transferred with their residual values to the regulatory framework for hydrogen networks. In light of this, it was not reasonable to apply the same high depreciation rates to assets earmarked for these purposes as to assets likely to be decommissioned. However, it was not yet possible to create such a regulation because the necessary relevant information, for example from municipal heat planning, was not yet available. The framework conditions first had to be created through municipal heat planning and the national regulatory framework for the hydrogen networks, in particular the hydrogen distribution networks. On the other hand, it was not possible to wait until the regulatory framework for hydrogen networks was in place before adjusting the depreciation methods. The

first signs of the upcoming transformation process were already visible in the natural gas networks, which is why a regulation was needed now. However, the network operators should be able to adjust the depreciation processes flexibly as the framework conditions became more concrete in the next few years.

83 Other respondents confirmed the general need for such an exemption. Assets that could subsequently be used in the hydrogen network had to be exempted from accelerated depreciation so as not to burden gas network users with the depreciation of these assets. They should instead be sold to the hydrogen network operators with the residual values at the time of their transfer. Accelerated depreciation was not appropriate in such cases. As it was not possible, however, to say with certainty which individual assets would continue to be used in the future, this posed an additional challenge for regulation. Assets for which accelerated depreciation had been applied but which ultimately continued to be used were particularly problematic. In this case it was hardly possible to compensate the consumers that had been burdened excessively before. Regulation was therefore called upon to examine the network operators' assumptions critically and on the basis of each individual asset.

84 Other respondents likewise saw a need for such a regulation. If new findings came to light in time suggesting that it was (no longer) possible to convert an asset to hydrogen, it should be possible for the decision to be adjusted to the new framework conditions.

85 Yet other respondents were critical of a conversion to hydrogen in itself. It should only be possible to repurpose natural gas networks as hydrogen networks based on sound and detailed justification and only as far as this would not conflict with the climate protection targets, the transition from fossil energy by 2045 at the latest and the requirements of the German Buildings Energy Act (GEG). When granting exemptions, the risk of possibly not fully depreciating assets that are ultimately decommissioned and not repurposed should lie solely with the network operator.

3.9. Exemptions for asset groups

86 Most of the respondents were in favour of retaining the regulation in the KANU 1.0 determination that would only exempt administrative buildings from the new depreciation arrangements.

87 A few respondents called for the new depreciation arrangements to apply to all asset groups. With respect to administrative buildings it was argued that in accordance with the standardised provisions regional sites (classified as administrative buildings) were required by operators with networks covering larger areas to resolve disruptions. In the case of such sites in rural and structurally weak regions you could not expect to find buyers for all the sites who would be willing to pay the imputed residual value when the gas networks were decommissioned.

88 Other respondents believed that it would generally be possible to sell or continue to use assets in asset group I (general assets) and therefore the more flexible arrangements should not apply to these general assets.

3.10. Interests of network users and final customers and avoiding misplaced incentives

89 Various respondents called for greater focus on the interests of the network users and final customers. In particular there was a call for the changes to be designed so as to prevent sharp increases in the network tariffs. This was important for planning certainty for final customers and network users (see 3.3 and 3.7 for aspects of an asset-based analysis and level of detail of the justification for the choice of depreciation arrangements).

90 There was also criticism in this context about the possibility of special depreciation. Some respondents rejected the general recognition of special depreciation at the end of the useful life. Such misplaced incentives had to be avoided. The regulations outlined would already enable network operators to depreciate the residual values by 2045 or earlier. It was therefore the responsibility of the network operators to prevent situations in which it was not possible to refinance assets by then because the assets were not going to be continued to be used in the future as planned. If the possibility of special depreciation were retained, even if only in individual cases, there would be no incentive to plan as realistically as possible with respect to decommissioning or continuing to use assets. Instead, operators would opt for slow depreciation in order to maximise profits. The risk of corresponding misestimations must not be passed on one-sidedly to the network users; this would happen, however, if special depreciation were allowed in individual cases.

91 However, other respondents argued that such special depreciation could become necessary because of municipal heat planning and possible unplanned decommissioning of assets as a result of this planning, in which case account would need to be taken of the imputed losses of these assets.

3.11. Information sources for the transformation of the gas networks

92 Various suggestions were made in response to the question in the key elements paper as to which findings, data sources or analyses could be used for a factual justification for the choice of depreciation model. The suggestions included: the results of municipal heat planning; gas network area transformation plans according to DVGW (Deutscher Verein des Gas- und Wasserfachs e. V.) rules; core network approvals and hydrogen core network connections; the results of integrated network development plans; network decommissioning plans pursuant to

Article 57 of Directive (EU) 2024/1788; and timetables for converting network infrastructure in accordance with section 71k of the Buildings Energy Act.

93 Other sources of information mentioned included studies on gas network transformation as well as the long-term scenarios for the transformation of the energy system in Germany commissioned by the Federal Ministry for Economic Affairs and Climate Action.

94 In addition, it was stated that the consumption figures available to the network operators should also be taken as a basis and that greater account should be taken of expected sales volumes when determining the depreciation methods. Contracts, simulations and developments relating to network tariffs were also mentioned in this context.

95 However, some respondents argued that there was no need for network operators to give a factual justification for the choice of depreciation model. Instead, the political framework conditions were generally seen as sufficient justification. It was the responsibility of the network operators themselves to ensure that they were able to refinance their assets within the scope provided.

3.12. Date of applicability of the new depreciation arrangements

96 Respondents welcomed the possibility of applying the new depreciation arrangements when adjusting the revenue caps and setting the tariffs for as early as 2025. It was necessary to enable adjustments as soon as possible. This meant that the determination proceedings needed to be completed in good time before publication of the tariffs in October 2024.

97 It was pointed out that the transmission system operators generally published their binding tariffs as early as June for the following year. There was therefore a call for accounting to be done via the regulatory account. However, it was also stated in this context that the cumulative effect in the following years could result in an excessive burden on the tariffs.

98 Some respondents argued that the period of time before publication was a challenge but that adjustments should nevertheless be enabled as soon as possible because this would allow for an additional year with still high volumes and a large number of connection users for an appropriate distribution of the costs. Here, it should be ensured that there is not an excessive rise in tariffs at the beginning.

99 It was argued in this context that swift implementation could lessen any burden on customers remaining connected to the network towards the end of the use of the gas networks. The later the implementation, the higher the rate for declining balance depreciation would have to be.

100 A few respondents called for some kind of grace period for 2025. The tariffs for this year should be calculated as before and the computational increases in the following years should be accounted for via the regulatory account.

101 The most far-reaching call was for the depreciation arrangements to be applied retrospectively to 2023 and 2024 as well and for the changes to be accounted for via the regulatory account.

102 Finally, there was a call for the application of the regulations not to be made compulsory for 2025.

103 Only very few respondents generally objected to an application of the rules for as early as the fourth regulatory period.

3.13. Substantive design of the transformation element

104 With respect to the substantive design of the transformation element, the question was raised about the relation between the transformation element and the efficiency requirements, productivity requirements and inflationary adjustment in the regulatory formula.

105 In addition, it should be made clear that the transformation element also applies to investment measures in accordance with section 23 ARegV.

3.14. Procedural provisions

106 There were various responses to the question about the design of the procedure for the transformation element.

107 A large number of respondents were in favour of the proposed notification procedure. This would enable swift and non-bureaucratic implementation of the new regulations. A regulatory framework for the transformation of the natural gas networks had to be created that enabled flexible action with little bureaucracy.

108 Some respondents stated that a notification should be valid until the end of the imputed remaining useful life of an asset, except when a new notification was made because of a change in the depreciation arrangements.

109 In the case of an application procedure as an alternative to the notification procedure, there was a call for approval of an application to be assumed once a certain period of time has elapsed since the application was made.

110 Some respondents were against a notification procedure and in favour of an application procedure with a requirement for network operators to provide justification. The specific implementation of the provisions, including the underlying assumptions about consumption and any continued use of the networks, should be examined in advance by the regulatory authority and coordinated with the municipalities' heat plans and the rollout plans for hydrogen infrastructure. This could only be done properly with the level of detail required in an application procedure.

111 Most of the respondents stated that it should be possible to change previous notifications or applications flexibly in an annual procedure (see 3.3 about flexibility). Some respondents were in favour of having a fixed decision for the entire regulatory period in order to avoid fluctuations in the network tariffs and increase planning certainty for network users and consumers.

3.15. Additional points

112 The following points were also raised in the consultation responses:

3.15.1. Biogas connections

113 The new depreciation arrangements should also apply to the connection of biogas injection facilities to the network in order to avoid distortions.

3.15.2. Construction cost and network connection cost contributions

114 Construction cost and network connection cost contributions should also be taken into account in the new depreciation arrangements in order to avoid distortions.

3.15.3. Requirement for faster depreciation

115 A few respondents took the key elements paper to lead to a requirement to depreciate the gas networks by 2045 at the latest. Any exceptions, such as the conversion of gas networks to hydrogen, would need to be supported by a verifiable justification from the network operators and subsequently examined and approved by the regulatory authority. This would have to be done in the context of municipal heat planning and in compliance with the requirements of the Buildings Energy Act.

3.15.4. Accounting for network transfers

116 Accounting for network transfers was not seen critically. Some respondents argued that the assets should continue to be accounted for in line with their characteristics. This meant that it would always be possible to determine the specific residual values that were to be carried over. Other respondents argued that information may not be available for each individual asset any longer in the case of a higher level of regulatory aggregation.

117 It was also stated that there would be no problems with network transfers if network identification numbers were used to represent different depreciation arrangements. Network transfers were never without discussion among the network operators concerned anyway. It was already possible to agree a network transfer on the basis of asset groups and the year of initial capitalisation. This would also work with more complex depreciation processes for each asset group provided they were shown transparently. However, it had to be possible for recipient network operators to adjust the depreciation arrangements in a non-bureaucratic way,

at their own discretion and on the basis of their own economic assessment after taking over the network.

3.15.5. Regulations for the period from 2028

118 In view of the fifth regulatory period starting in 2028, there was a call for the regulations of the interim model to be carried over in order to accommodate the principle of consistency and predictability.

3.15.6. Efficiency benchmarking

119 With respect to efficiency benchmarking carried out as part of incentive regulation, it was stated that network operators were no longer comparable in terms of their capital costs due to the more flexible depreciation arrangements. Under these circumstances, efficiency benchmarking would not be reasonably practicable and would therefore have to be done away with.

3.15.7. Equity return

120 A few respondents called for compensation for the lower return on equity that would result over time from the higher depreciation. A solution must be found to balance out this reduction in returns. The network operators had to be placed in the same position as they would be in without any intervention in the depreciation system. The financing should come from taxes.

121 Another call was for an adjustment to the rate of return on equity. The decarbonisation of the gas networks entailed a higher risk of losses compared with electricity networks because acquisitions could not be fully amortised. A higher risk premium was therefore necessary in the gas sector.

3.15.8. Trade and tax balance

122 Many respondents discussed the effects on the trade and tax balance of the flexible depreciation arrangements made possible by regulation Declining balance depreciation in particular could lead to an increase in the distribution of profits in the early years if it could not be reflected in the trade balance. Synchronisation between the imputed and the commercial-law evaluation was therefore necessary. In this case a holistic assessment was required.

123 Some respondents stated that the profit distribution would disadvantage smaller municipal network operators on account of the individual agreements. Larger network operators had comparably more freedom in how they used their funds. It had to be made possible for funds returned to investors to be able to be reinvested efficiently.

3.15.9. Evaluation of the regulations

It was stated that the depreciation arrangements provided for had to be reviewed each year to see whether the chosen variants still represented the development in the use of a gas network or whether adjustments needed to be made. Here, account also had to be taken in particular of developments resulting from progress in municipal heat planning and hydrogen infrastructure planning.

3.15.10. Increase in the data volume

124 It was pointed out that a considerable increase in the volume of regulatory data was expected, which could lead to additional costs for consultancy and IT services. A uniform nationwide regulatory application was therefore recommended in order to deal with these challenges.

4. Consultation on the draft determination

125 The business groups concerned were given the opportunity to comment on the planned determination through publication of the draft determination on the Bundesnetzagentur's website on 17 July 2024 and in the Bundesnetzagentur's Official Gazette on 24 July 2024. At the same time, the federal state regulatory authorities were given the opportunity to comment in accordance with section 58(1) second sentence EnWG. Likewise, the Bundeskartellamt was given the opportunity to comment in accordance with section 58(1) second sentence EnWG.

126 A total of 64 responses were received from seven associations, 49 network operators and groups of network operators, two other companies in the energy sector, five federal state regulatory authorities and the Bundeskartellamt.

4.1. Adjustment of the depreciation arrangements and flexibility

127 Respondents generally welcomed the flexibility of the depreciation arrangements provided for in the draft determination compared with the key elements paper. The swift introduction of the option of shorter useful lives for existing assets as well and more flexibility in the depreciation arrangements were necessary and appropriate in order to enable economically efficient network operation and reasonably spread the network costs. In view of the fact that part of the gas network infrastructure would have to be decommissioned, an adjustment of the imputed depreciation arrangements and flexibility in the design were necessary in order to guarantee the recovery of investments and to release financial resources for the conversion of the energy supply networks more quickly. This was true with respect both to more flexibility as regards possible useful life end dates and to the level of evaluation based on municipalities, network sections, asset groups or even individual assets, where necessary. Most of the respondents also welcomed a period of applicability starting in 2025.

128 There was a general call for the whole regulatory framework to be based on the transformation of the gas networks, for which the Bundesnetzagentur should provide expert support. It was pointed out in this context that it will be possible in the future for gas network operators to refuse access or connection to their networks and to disconnect existing network connections, in particular to achieve the climate targets. It was therefore to be expected that the decommissioning of pipeline sections would take place not only in individual cases before 2045. The potential optimisation of the transformation of the gas networks as a result of the discontinuation of coverage obligations should not be made more difficult by excessive justification requirements for (imputed) useful life end dates.

129 It was stated that the draft determination created an even balance between the interests of the gas users in stable gas network tariffs, the interests of the network operators in planning and investment certainty and the interests of society as a whole in decarbonising the energy supply.

130 However, some respondents stated that the draft did not yet take into account the interests of the network users and final customers. The draft did not provide for mechanisms to protect against unreasonably large increases in tariffs during the initial phase of the determination's application, such as a restriction on the year-on-year percentage increase in the network tariffs.

131 Other respondents welcomed the draft determination from a consumer perspective. Although it brought forward the absolute burden of costs, it also reduced the future burden on individual network users and final customers compared with the current regulation as their number would decrease significantly in the foreseeable future. However, additional measures were still required for the period from 2035, for example, in order to address increases in tariffs, for instance through state transfers. A special levy for users of the converted hydrogen network should also be examined because these networks would already have been largely financed by the natural gas users. The possibility of network operators having to contribute to these costs from their profits should also be examined.

132 Some respondents stated that there was potential for optimisation for network operators. Network operators could reduce the amount of capital procured through faster depreciation as a result of faster returns. On the other hand, higher consultancy and IT costs would lead to increases in costs, which was contrary to the aim of the regulation.

133 It should also be made clear that equal account could be taken of heat plans drawn up under federal state law. In addition, decommissioning dates before 2035 were also possible.

4.2. Useful lives in the case of straight-line depreciation

134 It was stated that the footnote to operative part 2 had to be reworded in order to make the exceptional nature of accelerated depreciation more binding. Respondents proposed a

wording with "can" instead of "should" or a regulation for a justification requirement in the form of a reference to provisions or decisions at federal state or municipality level or company decisions.

135 It should be made clear that legal, planning or factual reasons were required to choose a useful life end date before the end of 2044, while depreciation at the end of 2044 was not subject to conditions and was possible with solely a reference to the Federal Climate Change Act. It should also be made clear that it was possible to adjust the depreciation arrangements at any later point in time in the event of new findings.

136 Some respondents argued that the restrictions should cease to apply completely and that full refinancing of the gas networks by 2035 should be made possible. The risk of increases in tariffs when gas networks ceased to be used was to be seen as higher than the risk of increases at the beginning of the switch in depreciation arrangements.

137 It should also be made clear that, for example, a relevant choice of useful lives initially only for assets through the capex markup (with acquisition years from 2021) does not prevent a subsequent decision on the useful lives of assets with acquisition years up to 2020 from being based on the same considerations.

138 Some respondents called for the choice of straight-line depreciation with a shorter depreciation period to rule out switching to declining balance depreciation for the same asset.

139 In addition, it should be made clear in the wording that network operators were allowed to choose one useful life end date for each tangible fixed asset identification number. The wording "for all asset groups" could possibly be taken to mean that only one single useful life end date was allowed.

4.3. Declining balance depreciation

140 Some respondents considered the range for the declining balance depreciation rate of 8% to 12% to generally be appropriate. The proposed range already allowed a good amount of scope for adjusting depreciation in line with the political and economic framework conditions for a changing energy and gas market. However, the upper limit needed to be evaluated and increased, if appropriate, for instance when discussing the period starting in 2028.

141 Some respondents criticised the range. It was stated that the Ruling Chamber's considerations about the range were not accurate. For example, the reason given for the upper limit of 12% was that the limit had to be sufficiently distinct from straight-line depreciation in the case of a remaining useful life of 10 years. However, in this scenario a switch to straight-line depreciation would take place as early as the third year. In the case of a remaining useful life of 20 years

and a declining balance depreciation rate of 8%, the switch would not take place until the ninth year.

142 A depreciation rate of 16% (or at least 15% as in the key elements paper) was therefore required in order to achieve a sufficient distinction between declining balance and straight-line depreciation in the case of a remaining useful life of 10 years.

143 Other respondents generally welcomed the range but stated that the upper limit should be reviewed in discussions about the regulation to succeed KANU 2.0 as from 2028.

144 With respect to the range, the question was raised whether only whole numbers (8%, 9%, 10%, 11% or 12 %) could be used or whether numbers with decimal places were allowed.

145 As regards the necessary switch from declining balance to straight-line depreciation towards the end of the useful life, there was a call for clarification about whether a one-off calculation or an annual calculation should be made.

4.1. Exemptions for asset groups

146 Respondents generally followed the reasoning behind exempting certain asset groups from the depreciation arrangements. The regulation affected assets that could be used irrespective of the existence of the gas network as well as asset groups that had very short useful lives anyway. However, it was necessary to take due account of the subsequent transition to sectors that might also be regulated.

147 At the same time, the argument that assets could be used for another purpose irrespective of a gas network did not apply to certain asset groups. These were storage facilities (asset group I.8) and tools and devices (asset group I.7). Special devices were sometimes used in the natural gas network that would not be able to be used in a hydrogen or other network once the natural gas network was decommissioned and therefore would not be able to be sold for a reasonable price. The economic necessity of faster depreciation for these devices is also reinforced by Regulation (EU) 2024/1787 on the reduction of methane emissions in the energy sector because new devices would need to be acquired to comply with the Regulation. The minimum useful life of 14 years as listed in Annex 1 GasNEV was too short to guarantee recovery of the costs for the devices during the remaining useful life of the relevant gas networks. The useful life for the devices and their storage therefore also needed to be shortened.

148 It may also not be possible to recover the costs for administrative buildings, whose reusability or sale depended on their location.

149 The exemption of the assets could result in the need for imputed special depreciation at a later point in time.

150 It was also questionable whether the exemption for assets that had a relatively short minimum useful life of three to 14 years anyway was necessary and appropriate given the short period of applicability of the KANU 2.0 determination. In addition, the exemptions for certain asset groups should be discussed when determining the future regulations to succeed the KANU 2.0 determination.

4.2. Implementation deadline and accounting in the regulatory account

151 It was stated that the deadline period was too short and was disproportionate given that the regulation would affect revenues as early as 2025. To meet the deadline it would be necessary to submit a notification using Annex A for all assets by 15 October 2024. Although the tariffs were usually published at that time, the documentation was not submitted to the regulatory authority until 1 January of the following year.

152 In addition, this notification was binding in terms of the calculation of the depreciation arrangements and a retrospective adjustment was not possible. Network operators would therefore have to make a decision to apply or not to apply shortened useful lives for all of their tangible fixed assets as early as the beginning of October 2024. The Ruling Chamber's reference to the deliberations made earlier in the key elements paper was not expedient as the paper still considered other depreciation arrangements. In addition, network operators were currently faced with a challenging situation that had to be taken into account. First-time application in 2025 was a particular challenge because this was likely to be the new base year although the exact regulatory framework for the fifth regulatory period was still undecided.

153 In addition, as things stood friction about depreciation under commercial law was a further hurdle. The proposed imputed depreciation arrangements could therefore not be reflected under commercial law. The resulting complex issues could not be clarified within the short periods of time allowed.

154 There was therefore a call for a grace period until, for instance, the end of 2025. The decision to apply the new depreciation arrangements could also be accounted for retrospectively for the year 2025 via the regulatory account. This would also enable transmission system operators that had already published their binding tariffs to apply the new depreciation arrangements in 2025. This did not have a negative effect on the predictability for network users and final customers either because the future effect of the tariffs was delayed and spread over three years. In addition, network users were always informed about the publication requirements for the network tariffs.

155 However, some respondents also understood that increases in the revenue caps should be avoided after the end of the year in which revenue had been generated through network tariffs.

156 The deadline should at least be extended until 31 December 2024, when the final network tariffs had to be published.

157 There was also a call to be allowed to implement the KANU 2.0 determination in the period between 15 October 2024 and 31 December 2024, thus the provisional tariffs published on 15 October could still be updated. By contrast, other respondents argued that the network operators themselves had an interest in stabilising their network tariffs and avoiding the additional work involved in recalculating the tariffs.

158 There was a call for the data entry form to be published as early as possible, preferably in August 2024, so that the effects could be taken into account in the cascading process of calculating tariffs starting on 30 September 2024.

159 Only some respondents questioned whether there was even a need for the period from 2025 to 2027 or whether this was disproportionate to the administrative effort involved in calculating the transformation element.

4.3. Planning certainty for the period from 2028

160 The regulations for the depreciation arrangements from 2028 onwards were still unclear. Given the system, it was possible to follow the reasoning behind limiting the period of applicability of the regulations. Nevertheless, there was still the need for sufficient planning certainty for the period from 2028. The Bundesnetzagentur's key elements papers did not include any specific indications about this. It should be made clear what a regulation succeeding the KANU 2.0 determination would be like and whether an additive transformation element would still be applied. A consistent regulation over the entire depreciation period was required.

161 Here, it could at least be made clear that the key points of the determination or the basic elements would be incorporated into the future regulatory system but that individual aspects could be developed further if necessary.

162 Investors, auditors and network operators needed to have certainty that the useful lives and depreciation arrangements chosen under the KANU 2.0 determination would continue to apply and would not be revoked by a subsequent regulation. Otherwise, worse conditions were to be feared in obtaining borrowed capital and the acceptability of the synchronisation of imputed, commercial-law and tax-law depreciation would be made more difficult.

4.4. Implementation in the capex markup

163 With respect to the capex markup procedure, it should still be made clear up until when the applications for 2025, which generally had to be submitted by 30 June 2024, could still be amended. The tariffs for 2025 had to be published by 15 October 2024 (in the case of gas

distribution system operators with downstream networks as early as 6 October 2024). One proposal was for amendments to applications to be allowed until the end of the year. Another proposal was for amendments to be allowed until 15 October 2024, because this was the deadline for publishing network tariffs in accordance with section 20 EnWG.

164 In addition, it should be made clear how tangible fixed assets not yet included in the forecast should be dealt with in the regulatory account. Despite the delayed approach, flexibility had to be allowed in the depreciation arrangements in this case as well. It generally had to be possible to diverge from projected figures in the accounting using actual figures. In this respect, there could be no binding effect.

165 A simplification of the capex markup procedure in this context was also proposed. The adjustment could be made solely through the Annex A notification and a comparison in the regulatory account.

166 There was a call for clarification that it would be possible to continue to depreciate the assets from 2023 and 2024 as before (possibly up to 31 December 2044 in line with the KANU 1.0 determination) provided the network operator did not make any changes to the depreciation arrangements.

4.5. Design of the transformation element

167 In accordance with the draft determination, the calculation of the transformation element must take into account network transfers and exclude the assets starting in the year the network was transferred. It was stated that the explanations had to be clarified in that this regulation covered not only the residual values but also depreciation.

168 In this respect, it had to be made clear that the revenue caps actually to be transferred must not include any shortened useful lives because otherwise the transferring operator would transfer more revenue than would be available in the revenue caps. The transformation element must not be included in the revenue caps to be transferred and must not be added to the data entry form on the network transfers.

169 The recipient network operator therefore needed further information for the calculation of the transformation element, such as the equity ratio as referred to in section 6(2) GasNEV of the transferring operator to determine the replacement costs. However, the draft decision was based on the equity ratio as well as the efficiency score of the recipient network operator. These points required clarification.

170 Some respondents proposed that the calculation of the transformation element should not take into account network transfers. The transferring network operator should instead also calculate a transformation element, if appropriate, that could be split in the network transfer process.

171 As regards possible negative capex deductions, there was a call for it to be possible for the relevant (fictitious) capex deduction to be mathematically negative for the purposes of calculating the transformation element. Other respondents drew attention to the continued applicability of the current principles, according to which the capex deduction was not allowed to be negative.

172 There was a request for clarification about how the capex deduction should be calculated in the scenario under section 34a ARegV.

173 In addition, it was asked what exactly was meant when it said that the calculation of the transformation element did not take into account the "basic allowance" within the meaning of section 35(7) second sentence ARegV. In order to avoid misunderstandings it should be made clear that the basic allowance within the meaning of section 35(7) second sentence ARegV would continue to apply irrespective of any application of the KANU 2.0 determination.

4.6. Tangible fixed asset identification numbers and design of Annex A

174 The system with tangible fixed asset and network identification numbers was welcomed. It allowed, where necessary, a more accurate, voluntary assessment based on specific fixed assets to which different depreciation arrangements were to apply.

175 It should be made clear that the tangible fixed asset identification numbers were relevant for the implementation of the regulations and that the network identification numbers could only be used as a supplementary aid for allocation and aggregation. It therefore had to be possible to carry out or change the allocation of tangible fixed asset identification numbers to network identification numbers at a later point in time as well.

176 The fact that the draft determination did not make a distinction here between projected and actual figures was criticised. An asset-based analysis and the associated assignment of tangible fixed asset identification numbers was not possible until the actual figures for a full financial year were available. This was another reason why a definitive substantive implementation with the accounting using actual figures via the regulatory account should be allowed.

177 It was suggested that instead of a serial number as a tangible fixed asset identification number a code could be used comprising the asset group, acquisition year, useful life end date and depreciation arrangement.

178 Some respondents welcomed the level of detail in Annex A. It still had to be made clear what would happen to the old tangible fixed asset identification number should a new depreciation arrangement be applied and a new identification number be assigned. It had to be ensured that assets were not taken into account twice.

179 A column should be added to the data entry form to indicate that a new tangible fixed asset identification number is assigned (for example in the case of a partial change to the useful life of a tangible fixed asset) and to provide details of the old number.

180 It was also suggested that the notification of the transformation element should be restricted to the transformation element initially determined by the operators themselves as the result. How the transformation element was calculated could be explained without a particular form. Exact details of how the transformation element was calculated together with details of the tangible fixed assets could be provided in conjunction with accounting via the regulatory account.

181 Annex A had to be supplemented with the exact calculation of the transformation element. Annex A only calculated the depreciation and residual values but not the new values of, for example, the capex deduction and ultimately the transformation element. Calculating the capex deduction was a complex step for which no official calculation sheet was available as yet. In light of the tight deadlines, a largely automated calculation of the transformation element was required.

182 The meaning of some of the column headings was not clear, in particular the columns for other corrections were not necessary.

183 Some respondents stated that it should not be necessary to list the tangible fixed assets acquired in 2021 or later because these were accounted for in the capex markup procedure anyway.

184 Furthermore, it was argued that asset disposals and changes to classification keys should not be taken into account when determining the capex deductions or the transformation element.

185 If a transformation element is calculated and used for the first time in following years, the data entry form could not be based on the residual values of the previous year. It was necessary in this scenario to carry over the acquisition and production costs again.

4.7. Faster depreciation of contributions to construction costs

186 The call for an accelerated depreciation of construction cost and network connection cost contributions was repeated.

4.8. Biogas cost distribution

187 The application of the depreciation arrangements for the distribution of biogas costs as well was welcomed. However, the notification to the transmission system operators for the following year had to be made by as early as 30 August 2024. In this case, the data entry form needed

to be revised or the notification changed, otherwise it was necessary to allow account to be taken through the comparison between projected and actual figures in the following year.

4.9. Effects on the trade and tax balance

188 The fact was welcomed that the Bundesnetzagentur would support the expert dialogue on the effects on the useful lives under commercial law and tax law. Specifically when profit and loss transfer agreements existed, an adjustment needed to be made by adopting the depreciation arrangements or creating deferred income. However, the Bundesnetzagentur should actively work towards achieving the relevant consensus and decisions with the Federal Ministry for Economic Affairs and Climate Action, the Federal Ministry of Finance and the Institute of Public Auditors in Germany (IDW) in order to create legal, planning and investment certainty as swiftly as possible.

189 In commercial law terms, later deviations from a useful life chosen at the beginning of use were only possible in exceptions requiring justification. An arbitrary change of plan was not permissible. However, the aim of net greenhouse gas neutrality and the transition from natural gas had corresponding repercussions on the remaining use of the current natural gas infrastructure. Nevertheless, the KANU 2.0 decision as such did not provide a sufficient basis to convert the commercial-law useful lives as long as there were still various options for action such as a conversion to hydrogen. Rather, in commercial law terms it also depended on the circumstances of the individual company and the specific, reliable plans and decisions, such as municipal heat planning. A requirement to justify shortened imputed useful lives was assumed in the rationale of the decision but was not explicitly mentioned in the operative part. It could therefore not be ruled out that a network operator would apply shortened imputed useful lives despite a planned conversion of the network to hydrogen. In this scenario it would not be possible to account for the shorter useful lives under commercial law.

190 The flexibility provided by the regulations must not result in regular adjustments to the useful lives at short intervals. A change in the imputed useful lives would only affect depreciation under commercial law if it was based on circumstances that would have objectively understandable effects on the depreciation schedule in accordance with commercial-law principles.

4.10. Effects on concession procedures

191 There was the risk that accelerated depreciation would be carried out and that it would later emerge that substantial use of gas as an energy source remained inevitable after all. In these cases, there would be the risk that the economic basis for the concession competition provided for by law would no longer exist.

4.11. Investment measures

192 In addition, it had to be laid down that it was still possible to apply shortened useful lives for ongoing investment measures in accordance with section 23 ARegV.

4.12. Special network tariffs

193 The effects on special network tariffs of the regulations in the KANU 2.0 determination had to be discussed.

4.13. Special depreciation on account of municipal heat planning

194 There was a call for any special depreciation arising from the unplanned decommissioning of assets as a result of municipal heat planning to be recognised in the calculations.

4.14. Relation to the future hydrogen network

195 The network operators' choice of depreciation arrangements must not result in unreasonable network tariffs or unjustified competitive advantages over other infrastructure operators when setting up the future hydrogen network. The fact was therefore to be welcomed that the network operators' decisions on determining the imputed depreciation were generally subject to supervision by the competent regulatory authority in the relevant procedures and that, as before, a change in useful lives was only possible in justified cases.

196 Furthermore, account had to be taken of any possible interaction with the future design of network tariff regulation for the hydrogen network. It was important to take appropriate account of the effects of accelerated depreciation of the gas networks, for example with respect to the valuation of assets that might continue to be used after all.

4.15. Efficiency benchmarking

197 There was a call for a commitment from the authority to the effect that it was no longer possible to carry out benchmarking for the fifth regulatory period because of the more flexible depreciation arrangements.

4.16. Revocation of KANU 1.0

198 With respect to the revocation of the KANU 1.0 determination, it should be made clear that the KANU 1.0 determination would still apply in cases where a network operator continued to apply a depreciation arrangement chosen under the KANU 1.0 determination.

5. Next steps

199 Consultation with the Committee of representatives of the federal state regulatory authorities took place in accordance with section 54(3) fourth and fifth sentences EnWG on 12 September 2024.

200 With respect to the details of the proceedings, reference is made to the proceedings file.

II. Legal assessment

1. Amendment of energy industry law to take account of Union law

201 The entry into force of the Act amending energy industry law to take account of Union law and amending other provisions of energy law of 22 December 2023 (Federal Law Gazette I No 405) divided competences between the legislature and the regulatory authority in compliance with Union law. The determination is therefore based on a lawful application of national legislation also in light of the judgment of the European Court of Justice of 2 September 2021 (case C-718/18).

1.1. Judgment of the European Court of Justice

202 The European Court of Justice found in its judgment that the legislative framework in Germany was incompatible as a whole with the exclusive powers of the national regulatory authority as laid down in Article 37 of Directive 2009/72/EC (now Article 59 of Directive (EU) 2019/944 and Article 78 of Directive (EU) 2024/1788) and that, in that respect, the Federal Republic of Germany had failed to transpose the Directives correctly. In that regard, the European Court of Justice upheld the fourth complaint by which the European Commission claimed that Germany had infringed the exclusive powers of the national regulatory authority provided for in the Directives in so far as it conferred on the Federal Government and not on the national regulatory authority powers to determine the calculation methodologies or lay down the conditions for connection and access to the national networks, including the applicable tariffs.

1.2. Legislative reform and transitional provision

203 With the entry into force of the revised Energy Industry Act (EnWG) on 29 December 2023 the legislature has now implemented the judgment of the European Court of Justice of 2 September 2021 with respect to the fourth complaint and in particular brought the responsibilities for network access and network tariff regulation into line with Union law. By being conferred with the exclusive power to determine the calculation methodologies or lay down the conditions for connection and access to the national networks, the regulatory authority has acquired the independence required under Union law.

204 The power to issue ordinances under section 24 EnWG (old version) was revoked, as was section 21a EnWG (old version). Both sets of provisions were replaced by powers for the regulatory authority to issue determinations. The powers to issue determinations previously covered by the relevant ordinances were transferred to the EnWG and supplemented.

205 The ordinances issued on the basis of sections 21a and 24 EnWG (old version) will cease to have effect at the end of a transitional period (see Article 15(2) to (6) of the Act amending energy industry law to take account of Union law). The ordinances will cease to have effect on the same date as the fourth regulatory period ends (31 December 2027 in the gas sector and 31 December 2028 in the electricity sector).

206 During the transitional period the regulatory authority has been granted the right to deviate from the provisions of the ordinances by virtue of section 21(3) fifth sentence and section 21a(3) fourth sentence EnWG (old version), among others. At the same time, the transitional period makes it possible to generally continue the regulatory framework, which evolved gradually over a period of nearly 20 years, as well as the practice of applying and interpreting the framework at least until the provisions of the ordinances cease to have effect at the end of the fourth regulatory period. According to the legislature, the aim here is to guarantee the substantive stability of the regulatory framework, which is important for sufficient legal, planning and investment certainty, and to avoid disruptive developments in the application of the law (see Bundestag printed paper 20/7310, page 52).

1.3. Balancing of interests

207 In accordance with Article 15 of the Act amending energy industry law to take account of Union law, the ordinances issued on the basis of sections 21a and 24 EnWG (old version) will continue to have effect for a transitional period. The Bundesnetzagentur generally adheres to this set of provisions for tariff regulation with a view to maintaining a transparent, predictable and reliable regulatory framework.

208 However, in this case it is exercising its right to deviate from the provisions of the ordinances by virtue of section 21(3) fifth sentence and section 21a(3) fourth sentence EnWG. The European Court of Justice, in its judgment of 2 September 2021, did not find a fundamental substantive conflict between the regulations of the Incentive Regulation Ordinance (ARegV) and the Gas Network Tariffs Ordinance (GasNEV) and the relevant provisions of European legislation, nor does the Ruling Chamber.

209 A core element of the established national regulatory system are the five-year regulatory periods for incentive regulation and network tariff regulation. It is generally essential for the legislative framework to remain as stable as possible for the duration of a regulatory period that has already begun. Legislative changes during an ongoing regulatory period are

associated with discontinuity and legal uncertainty and should be an exception. In these circumstances, however, a need for adjustment has been recognised that will reach such a high level during the fourth regulatory period that it would ultimately not be appropriate to wait until the fifth regulatory period (see in particular the considerations under 12). This is where the balance provided for by the legislature for the transitional period comes into play: on the one hand sufficient legal certainty is provided by continuing the current legislative framework, and on the other hand the independent regulatory authority can make the necessary changes for the fourth regulatory period as well, given a recognised need for adjustment.

2. Responsibility

210 The decisions taken in this determination fall under the responsibility of the Bundesnetzagentur as provided for by section 54(3) third sentence first alternative EnWG. The determination is essentially a uniform, nationally applicable determination on regulations for the conditions and methodologies for determining the tariffs charged for network access. The responsibility of the Grand Ruling Chamber for Energy derives from section 59(3) third sentence first alternative EnWG. With respect to the procedural provisions (see operative part 13) the responsibility of the Bundesnetzagentur derives from section 54(1) and (2) EnWG. The responsibility of the Grand Ruling Chamber derives from section 59(1) first sentence in conjunction with (3) third sentence first alternative EnWG.

3. Addressees of the determination (operative part 1)

211 In accordance with operative part 1, the determination is essentially addressed to all operators of gas distribution systems as defined in section 3 para 8 EnWG and operators of gas transmission systems as defined in section 3 para 5 EnWG nationwide.

212 In accordance with operative part 13, the procedural provisions in operative part 5, in the third and fourth sentences of operative part 7, in the tenth and eleventh sentences of operative part 8 and in operative part 9 do not affect the administrative proceedings of the federal state regulatory authorities. Regulation of the procedural issues applies solely to network operators that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG. The determination is not a uniform, nationally applicable determination as regards the procedural issues. Nevertheless, the Ruling Chamber is regulating these associated issues at least for the network operators addressed in that regard. With respect to the network operators not addressed, corresponding or deviating procedural provisions can be laid down by the relevant competent federal state regulatory authorities. This does not affect the uniform, nationally applicable substantive regulations in the other operative parts.

4. Enabling provision

213 The provisions of the determination are being issued on the basis of section 29(1) in conjunction with section 21(3) first sentence, fourth sentence paras 1a) and 1f) and fifth sentence and section 21a(1) first sentence, (2) and (3) first sentence, third sentence paras 6, 11 and 12 and fourth sentence EnWG.

214 In accordance with section 29(1) EnWG the regulatory authority can issue a determination addressed to all network operators, in this case all gas distribution and transmission system operators.

215 In accordance with section 21(3) first sentence EnWG the regulatory authority can lay down for the operators of energy supply networks the methodologies for determining the tariffs for access to the energy supply networks. One example of a regulation is provided for in section 21(3) fourth sentence para 1a) EnWG, which enables regulations to be made in particular relating to the costs for determining network tariffs for access to the gas supply networks, especially for determining the costs necessary for network operation based on the activity reports in accordance with section 6b EnWG, for example as regards imputed depreciation.

216 Another example is provided for in section 21(3) fourth sentence para 1f) EnWG, which enables the regulatory authority to also make regulations relating to the documentation, reporting and retention requirements for operators of energy supply networks in connection with the costs for determining network tariffs for access to the gas supply networks.

217 In accordance with section 21(3) fifth sentence EnWG the regulatory authority can deviate from the provisions of the GasNEV in the version applicable until midnight on 28 December 2023 or make supplementary regulations.

218 In so far as regulations on imputed depreciation are made in operative parts 2, 3 and 4 in the form of depreciation methods and the useful lives to be applied for certain asset groups, the regulations are based on section 21(3) first sentence, fourth sentence para 1a) and fifth sentence EnWG. The regulations in operative part 5 relating to the creation of tangible fixed asset identification numbers are based on section 21(3) first sentence, fourth sentence para 1f) and fifth sentence EnWG.

219 In accordance with section 21a(1) first sentence EnWG tariffs for network access for operators of energy supply networks can, in addition to tariff setting under section 21 EnWG, also be determined using a methodology that sets incentives for efficient service provision (incentive regulation) based on determinations issued by the regulatory authority. In accordance with section 21a(2) EnWG the regulatory authority can, in line with the objective of the EnWG as set out in section 1(1) EnWG, in particular make decisions through determinations on the

development and design of a model for incentive regulation using state-of-the-art economic, econometric and regulatory methodologies. In accordance with section 21a(3) first sentence EnWG the Bundesnetzagentur can issue determinations on the detailed design of the model for incentive regulation and, in accordance with section 21a(3) third sentence paras 6, 11 and 12, in particular make regulations within the scope of its powers relating to:

220 a compensation mechanism that in particular must reflect the effects of annually fluctuating volumes as well as deviations between the costs actually incurred and the allowed revenue (regulatory account);

221 the collection by the regulatory authority of the data required to perform incentive regulation, including the scope, time and form, in particular the permissible data and transmission media; and

222 a markup on the revenue cap for capital costs incurred in the course of a regulatory period as a result of investments in current assets necessary for operation.

223 In addition, in accordance with section 21a(3) fourth sentence EnWG the regulatory authority can deviate from the provisions of the ARegV in the version applicable until midnight on 28 December 2023 or make supplementary regulations.

224 The regulations in operative parts 6 to 10 relating to the implementation of the depreciation arrangements provided for in operative parts 2 to 4 as regards incentive regulation for the fourth regulatory period through the use of the currrent capex markup and the introduction of a new transformation element are based on section 21a(1) first sentence, (2) and (3) first sentence EnWG.

225 In so far as the regulations in operative part 7 build on the capex markup, the example provided for in section 21a(3) third sentence para 12 EnWG applies. As regards the introduction of the transformation element as provided for in operative part 8 as an additive component supplementing the regulatory formula in the ARegV, there is no example of a specific regulation. The determination of the transformation element is based on section 21a(1) first sentence, (2) and (3) first sentence EnWG. The notification procedure provided for in operative part 9 is based on the example in section 21a(3) third sentence para 11 EnWG. The regulations in operative part 10 on accounting in the regulatory account are based in addition on the example in section 21a(3) third sentence para 6 EnWG.

226 The regulations in operative parts 6 to 10 are each also based on section 21a(3) fourth sentence EnWG as regards deviating from or supplementing the provisions of the ARegV.

5. European legislative framework

227 The European legislative framework that is currently applicable provides for the following substantive network tariff criteria, which are elaborated in various provisions of the relevant legal acts.

5.1. Transparency

228 The primary objective of this criterion is to ensure a tariff structure that is substantively clear, specific and, in the interest of the internal market, available across regions in order to enable the market participants concerned to predict the economic consequences of the tariff structure, see recital 9 and Article 17(1) first subparagraph of Regulation (EU) 2024/1789 and recital 109, Article 3(4) and Article 78(1) point (a) of Directive (EU) 2024/1788, according to which the task of the regulatory authorities is to fix or approve, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies, or both. In addition, (network) tariffs must be published before they enter into force (Article 78(8) of Directive (EU) 2024/1788).

5.2. Cost-reflectiveness

229 The criterion of cost-reflectiveness (recital 9 and Article 17(1) first subparagraph of Regulation (EU) 2024/1789, recital 119 of Directive (EU) 2024/1788) is a key criterion to ensure the appropriateness of the network tariffs. The wording ("reflect the actual costs incurred"/"cost-reflectiveness") already indicates that a full-cost or actual-cost criterion is not intended. In this connection, the costs must reflect the costs of an efficient and structurally comparable network operator and include an appropriate return on investments (see Article 17(1) first subparagraph of Regulation (EU) 2024/1789).

5.3. Providing incentives

230 The tariff methodologies are meant to create appropriate incentives, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities (see Article 78(9) of Directive (EU) 2024/1788). In addition, tariff methodologies are to offer incentives for the necessary investments in the networks to be carried out in a manner allowing those investments to ensure the viability of the networks (see Article 78(7) point (a) of Directive (EU) 2024/1788 and Article 17(1) third subparagraph of Regulation (EU) 2024/1789 as regards incentives for investments).

6. National legislative framework

231 In accordance with section 1 EnWG, the purpose of the EnWG is to ensure a network-based supply of gas for the general public that is as secure, low-priced, consumer-friendly, efficient,

environmentally compatible and greenhouse gas-neutral as possible and that is based increasingly on renewable energy. The objectives of regulation as set out in section 1(2) first sentence EnWG are to ensure effective and undistorted competition in the supply of gas, safeguard long-term efficient and reliable operation of energy supply networks and optimise energy supply for the economy as a whole.

232 In accordance with section 21(1) first sentence EnWG the conditions and tariffs for network access must above all be appropriate, non-discriminatory and transparent. In accordance with section 21(1) second sentence EnWG the tariffs are set on the basis of the costs of operation, which must reflect the costs of an efficient and structurally comparable network operator, taking into account incentives for efficient service provision and an appropriate, competitive and risk-adjusted return on capital employed. Costs and cost components that would not arise to the same extent in a competitive environment may not be taken into account (section 21(2) third sentence EnWG). In addition, the necessary investments in the networks must be able to be carried out in a manner allowing those investments to ensure the viability of the networks (section 21(2) fourth sentence EnWG).

233 In accordance with section 21a(1) first sentence EnWG the method for incentive regulation should create incentives for efficient service provision. As regards the design of the transformation element, the provision in section 21a(1) fifth sentence EnWG is also relevant; according to this provision the efficiency requirements should be designed and spread over the regulatory period in a manner allowing a network operator to achieve and exceed the requirements using the measures available and reasonable.

7. Shortening the useful lives (operative part 2)

7.1. Current regulations

234 Annex 1 GasNEV contains a list of standardised useful lives for various asset categories typical of networks. In some cases, a set useful life in years is listed, while in other cases a certain range is listed within which the network operators can choose the useful life of their assets themselves according to the individual circumstances within their company. The useful lives provide the basis both for determining the imputed depreciation in accordance with section 6 GasNEV and for the imputed residual values that are used to determine the imputed return on equity in accordance with section 7 GasNEV. They are therefore of considerable importance for the level of the calendar-year revenue caps and the network tariffs. The shorter the assumed useful life of an asset, the faster the guaranteed recovery of a network operator's investments and the higher the network tariff to be borne by the network customers. The same applies to the useful lives in the context of determining the capex markup in accordance with section 10a ARegV.

235 These useful lives are based on the operation of the gas supply networks for an unlimited period of time but do not take into account the planned phase-out of the use of fossil fuels in the next few decades in response to climate change. The regulatory system provided for by the ordinances is therefore designed for the continuation of the gas networks and a generally consistent, intensive use of the networks. This is reflected clearly in the provisions on depreciation arrangements in the GasNEV.

236 With its determination on imputed useful lives of natural gas pipeline infrastructure (KANU 1.0) Ruling Chamber 9 at the Bundesnetzagentur took a first step in 2022 towards reflecting the transition from natural gas in network tariffs (see the explanation in I.2.1).

7.2. Regulatory content of operative part 2

237 Operative part 2 sets out that in derogation of Annex 1 GasNEV the shortest average useful life of fixed assets in gas supply that can be chosen for any asset group in connection with determining the depreciation periods in accordance with section 6(5) GasNEV is 2035 minus t years where t is the year of initial capitalisation. This does not apply where the shortest average useful life for an asset group as listed in Annex 1 GasNEV is shorter than this useful life.

238 This may considerably reduce the shortest average useful life that can be chosen. As a result, the average useful life can end in the period between 2035 (midnight on 31 December 2034) and the upper limit of the range for the corresponding useful life as listed in Annex 1 GasNEV, including the years after 2045, for example. In comparison with the key elements paper, the regulations could be described as an extended options model because they ultimately allow straight-line depreciation in individual cases up to 2035 as well as declining balance depreciation as provided for in operative part 3.

239 If a fixed asset is capitalised in 2025, for example, the imputed minimum useful life will be 2035 – 2025 = 10 years. If a fixed asset is capitalised in 2027, which is the last year of application of this determination, the imputed minimum useful life will be 2035 – 2027 = 8 years. The fixed assets could each be fully depreciated by 31 December 2034. This applies to all asset groups that are listed in Annex 1 GasNEV as having a longer useful life than (in these examples) 10 or 8 years (with the exception of certain asset groups, see operative part 4). The new regulation does not result in any changes for asset groups that have a shorter useful life anyway; the useful lives listed in the ordinance are not extended. Moreover, it only supplements the useful lives that can be chosen by the network operator; it is therefore possible to continue to apply the useful lives listed in the GasNEV or useful lives in the range between those listed in the GasNEV and the lower limit as provided for by this decision. This decision opens up a range for asset groups for which Annex 1 GasNEV lists a set useful life

and not a range. For example, in the case of natural gas compressor units, for which the GasNEV specifies a set useful life of 25 years, it would be possible to choose a useful life of between 10 and 25 years for an asset capitalised in 2025.

240 The regulation supplements the regulation on useful lives in operative part 1 of the KANU 1.0 determination as regards both the length of time and the new, free choice of acquisition year for the fixed assets to be depreciated. The KANU 1.0 determination will be revoked in this respect as from 1 January 2025 (see operative part 11). This opens up the possibility of shortening the useful lives provided for in Annex 1 GasNEV or in the KANU 1.0 determination for all asset groups (see operative part 4 for exemptions). This also applies to fixed assets that are currently covered by the KANU 1.0 determination. In that regard, too, a reassessment is possible as from 2025 (see also 10 as regards the principle of consistency and exceptions to the principle).

241 The Ruling Chamber decided not to bring in regulations for special depreciation or any minimum useful lives for the transitional period from 2025 to 2027 (see 10.2).

7.2.1. Requirement for justification

242 These general descriptions do not imply that network operators would be free to decide to depreciate their fixed assets by 2035 or a later date in accordance with the regulation in operative part 2. Rather, a decision and any later changes to the decision must generally be based on the specific necessity for such accelerated depreciation (see the comments in 10 as a whole). These principles are also set out in footnote 1 to operative part 2. The wording in the consultation version has been changed to make this more binding. The footnote now states that a useful life end date before 2045 can (previously "should") generally only be applied where and as far as federal state requirements exist for a network operator's network area to reduce greenhouse gas emissions with the aim of net greenhouse gas neutrality as in section 3(2) of the Federal Climate Change Act (KSG), but for a date earlier than 2045, or corresponding requirements exist for a network operator as a result of a municipal decision or comparable external framework conditions. These may include, for instance, a decarbonisation process actually taking place in upstream networks or the transition from gas by connected customers. By contrast, a purely internal, business objective relating to general climate neutrality, for example, is not sufficient. Likewise, accelerated depreciation solely for the purpose of minimising a purely economic risk is not allowed. In addition, it was made clear that any change in useful lives requires justification. Respondents in the consultation correctly stated that legal, planning or factual reasons were required. The stricter justification requirement also addresses the question raised about the effects of the more flexible depreciation arrangements on future concession procedures (see the Federal Ministry for

Economic Affairs and Climate Action's Green Paper on the transformation of the gas/hydrogen distribution networks as regards the effects of the transformation of the gas networks on concession procedures).

243 The wording "still" makes it clear that this principle is not new but an aspect arising from the principle of consistency. The principle of consistency is also set out in section 6(5) second sentence GasNEV, according to which the average useful life chosen for an asset must remain unchanged for the remaining period of its imputed depreciation. The fact that an exception (requiring justification) can be made to the principle of consistency arises from section 6(6) third to fifth sentence GasNEV, which sets out the details for a change to a useful life not in line with the principle of consistency.

244 The wording of footnote 1 also makes it clear that the decision to apply or change a useful life must be justified and therefore supported by a factual basis. The call for network operators to be completely free when choosing useful life end dates must therefore be rejected. In response to the question about which aspects may play a role, attention is drawn to margin no 296.

245 Although choosing the end of 2044 as a useful life end date is easier in terms of the requirement for justification, it is not always possible to freely choose this date, for example when a business decision is made to repurpose a pipeline for hydrogen or in similar scenarios.

7.2.2. Clarifications

246 In this connection, it is being made clear that it is possible to adjust the depreciation arrangements at a later point in time in the event of new findings, but that the principle of consistency must still be complied with, meaning that any such adjustment must be justified. In addition, the initial choice of a shortened useful life for straight-line depreciation and then the choice of a useful life for declining balance depreciation at a later point in time based on new findings does not seem impossible. The Ruling Chamber also points out that the choice of and justification for shorter useful lives can initially be restricted to the assets acquired by an operator on or after 1 January 2021, in particular in the scenario of this transitional provision for the remainder of the fourth regulatory period. Based on the same considerations, it would also be possible to adjust the useful lives of the assets acquired on or before 31 December 2020 at a later point in time.

247 Finally, it is being made clear that the justified choice of a useful life naturally does not relate to all the fixed assets (which would mean that the same useful life would apply to all the fixed assets), but that individual assessments of at least the asset groups are required.

7.3. Adjustment of useful lives (discretion)

248 In derogation of the key elements paper, the Ruling Chamber considers it necessary and appropriate to allow depreciation by 2035 as an option for individual cases. As a rule, however, a useful life end date of 31 December 2044 in accordance with the Federal Climate Change Act or possibly 31 December 2039 in accordance with relevant federal state requirements will be appropriate (see comments on regulatory content above and under 10 as regards the justification requirements for the network operators).

249 Attention is drawn to the summary of the key elements paper in I.2.1 as regards these framework conditions, according to which targets exist other than those for 2045 in the Federal Climate Change Act. Section 3(2) first sentence of the Federal Climate Change Act sets the aim of greenhouse gas neutrality by 2045. This is essentially the basis for the end of the use of natural gas because the legislature's aim is to reduce or end the consumption of natural gas and therefore end (or contribute to ending) network operation (see Düsseldorf higher regional court decision of 6 March 2024, VI-3 Kart 17/23 [V], page 13). Given a process so far in the future, the Ruling Chamber is aware that it is not possible to accurately estimate when natural gas will actually cease to be used in accordance with the Federal Climate Change Act and other requirements (see below), especially because the target is not a binding one to be met by individual companies. Nevertheless, it will be essential to make such an estimate in individual cases as well in the short to medium term in order to be able to adjust any depreciation periods that have already begun.

250 Some federal states are aiming to achieve climate neutrality by 2040 and some cities as early as 2035. There will also likely be large regional differences in the requirements from municipal heat planning. The same applies to the transition scenarios for different commercial and industrial branches as well as individual high-volume consumers. There will in any case be large differences in the demand for and use of the gas networks in the coming years. What is also clear is that there is likely to be a decline in gas consumption volumes in the 2030s, and in some cases earlier.

251 The uncertainties arising now and in the future from the transformation of the gas networks are discussed in more detail in 10. The Ruling Chamber is placing a special focus on the interests of the network users and final customers with respect to the burdens from tariffs. Nevertheless, the Ruling Chamber considers it appropriate to make this broad regulation on account of current and emerging developments. Here, particular mention should be given to the anticipated municipal heat planning which is required to be in place in accordance with the Heat Planning Act by 30 June 2026 for cities and by 30 June 2028 for towns. In this connection, the Ruling Chamber would like to draw attention to the fact that municipal heat

plans drawn up under federal state law are subject to different timetables and must be given equal status. The municipal heat plans may also result in relevant transition road maps for the gas network infrastructure with target dates earlier than 2045 or 2040. A regulation providing for a corresponding useful life as an option is the only way to enable synchronisation of the imputed useful lives and the regional or even local differences in the road maps.

252 This fundamental need was acknowledged by the Ruling Chamber in the key elements paper and accommodated with the corridor model and the proposal for declining balance depreciation. However, it is also intended to enable a corresponding end date with straight-line depreciation. Such a regulation makes it possible to fully refinance investments in the gas networks even in the case of purely straight-line depreciation. The Ruling Chamber takes the view that a straight-line evaluation of, for example, changes in volumes and the depreciation process may also be appropriate, depending on regional and local circumstances. This broad regulation is, however, accompanied by a requirement for justification.

7.4. Residual values in the case of a change in useful life

As already explained, the principle of consistency (see 10) also allows for the possibility of changing a useful life in accordance with the regulation in operative part 2. This possibility is already created in section 6(6) third to fifth sentence GasNEV as an exception to the principle of consistency within the meaning of section 6(5) second sentence GasNEV. Any recalculation of imputed depreciation must be based on the residual value at the end of the previous year (section 6(6) fourth sentence GasNEV). Depreciation to a value below zero is ruled out (section 6(6) sixth sentence GasNEV).

7.5. No requirement for faster depreciation

253 A few respondents took the key elements paper to lead to a requirement to depreciate the gas networks by 2045 at the latest. The decision does not, however, include such a requirement. The Ruling Chamber would not be able to lay down such a requirement simply because it does not have the relevant authorisation. Rather, the determination reflects the effects of the general, political decarbonisation targets, which are increasingly evolving into specific targets and timetables such as municipal heat planning, on the basis for calculating the network tariffs for access to the gas supply networks. The decision is therefore merely intended to provide a reasonable regulatory framework for all concerned that accommodates the actual ongoing developments.

8. Introduction of declining balance depreciation (operative part 3)

8.1. Regulatory content of operative part 3

254 Up until now, only the straight-line depreciation method has been allowed for determining imputed depreciation in accordance with section 6(2) first sentence and (4) GasNEV. In addition, there has only been a power to issue a determination on appropriate asset groups and depreciation periods in deviation from Annex 1 GasNEV (under section 30(2) para 9 GasNEV), but not on depreciation methods.

255 Operative part 3 now allows the use of the declining balance method of depreciation to calculate imputed depreciation as an alternative to the straight-line method of depreciation. It allows a depreciation rate of between 8% and 12% of the previous year's residual value. Whole numbers (8%, 9%, 10%, 11% or 12%) are allowed. With respect to the residual value to be used in each case, there is no need for a specific regulation (see also 7.4). Reference is made to 8.3 for information on when the necessary switch to straight-line depreciation towards the end of the useful life should take place.

256 With respect to the choice of declining balance depreciation, it has now been made clear that a network operator's decision to apply such depreciation must also be justified (see footnote 2 and the relevant explanations in margin no 242 et seq).

8.2. Discretion

257 The straight-line depreciation method allowed up until now is plainly appropriate for a long-term, stable use of the gas network. It may also be appropriate if, for example, a linear development in costs and volumes can be assumed for the transformation of the gas networks. In a large number of cases, however, the development in volumes and costs will not be linear. It is generally expected that volumes will not initially decrease or will not decrease significantly in the coming years, although individual declines in volumes cannot be ruled out. In addition, there will be regional and local differences in the development in volumes later on. A plausible volume forecast is that sales will continue to be high until the start of the 2030s but will then rapidly fall in the course of the decade. The probability of this happening was confirmed in the consultation with reference to relevant studies. In that respect, such a forecast may be appropriate in individual cases. A declining balance method of depreciation could reflect this volume forecast best. This would mean that there would be sufficient volumes at the beginning to bear the costs. The declining balance method of depreciation would then lead to a reduction in costs, which would be in line with the increasingly declining volumes later on. In addition, an S-shaped development with volumes decreasing more strongly during the middle phase of the

transformation of the gas networks cannot be ruled out. This development in volumes could also be reflected appropriately with declining balance depreciation.

258 Other depreciation methods such as increasing balance depreciation or unit of production depreciation do not come into consideration for determining the imputed depreciation. These depreciation methods would not be compatible in particular with the expected transformation road map, which is essentially defined externally (see 7.3 on the principles).

259 While the key elements paper proposed a fixed declining balance depreciation rate of 15%, the Ruling Chamber decided to set a range of 8% to 12%.

260 The lower limit of the range should be 8%. This rate would be required assuming a remaining useful life of, for instance, 20 years (for example from 2025 to 2045) to make the method sufficiently distinct from straight-line depreciation over a 20-year period. It follows that a higher declining balance depreciation rate would be required to achieve the same effect for a shorter remaining useful life. For example, a depreciation rate of 12% would be required given a remaining useful life of 10 years to achieve a sufficient distinction between this method and straight-line depreciation over a 10-year period.

261 In view of the arguments presented, however, the Ruling Chamber does not consider there to be sufficient need to extend the range to up to 15%.

262 The consultation on the range of 8% to 12% did not produce any arguments justifying a higher range either.

263 A declining balance method of depreciation with a rate of 12% in conjunction with the remaining useful lives permitted under operative part 2 allows a significant reduction in the imputed residual values within a few years as soon as a network operator makes use of this option. This means that even extremely large developments, which would probably only occur in individual cases, up to about 2035 could be reflected appropriately in the cost calculations.

264 At the same time, a maximum declining balance depreciation rate of 12% would result in smaller increases in tariffs, which would occur given any switch to a declining balance depreciation method, compared with a depreciation rate of 15%. Tariff increases of 40%, for example, which were cited by some respondents, cannot be ruled out with a depreciation rate of 15%, but would only occur if individual operators applied a uniform declining balance depreciation rate of 15% to all their assets. It seems appropriate to limit the range to 12% to rule out such or even more marked developments in individual cases. If, for instance, a network operator would like to make an exception and depreciate individual assets or network sections as quickly as possible (see footnote 1 to operative part 2 and the explanations in margin no 242 for conceivable scenarios), the operator would have the option of applying a declining balance depreciation rate of 12% and a remaining useful life up to 2035. The wording of footnote 2 in

the consultation version has also been tightened. It now makes it clear that the declining balance depreciation rate must be reasonably proportionate to the remaining useful life. Key to the justification of the rate of depreciation for declining balance depreciation are in particular the external framework conditions, for example in the form of a volume forecast. This wording also counteracts the possibility of network operators applying a high declining balance depreciation rate solely with the aim of minimising their economic risk. In fact, not only the remaining useful life but also the rate for any declining balance depreciation must be based on external framework conditions. It is quite possible to choose a rate for declining balance depreciation that is noticeably higher than that for straight-line depreciation. For example, it may be reasonable to choose a rate of 8% given a remaining useful life of 20 years or a rate of 12% given a remaining useful life of 10 years in conjunction with a corresponding volume forecast. By contrast, a declining balance depreciation rate of 12% given a remaining useful life of 20 years, for example, only seems reasonable as an absolute exception, for instance if a huge decrease in volume within a few years is actually forecast for a network section and a small number of customers connected to this section would still need to be supplied during that time.

265 Here, account was taken of the large differences between the various conceivable arrangements for accelerated depreciation especially in the early years. Different scenarios will converge within a few years because of the opposing effects (decreasing network costs due to a lower interest basis). It is therefore expected that different calculation methods modelling the transformation of the gas networks will converge with respect to the development in tariffs at the start of the 2030s. Based on the general assumption that the declines in volumes will not become marked until then, it seems appropriate to limit the declining balance depreciation rate to 12%. The analysis of a tariff simulation carried out by Ruling Chamber 9 with a total of 42 network operators showed that such a depreciation rate is sufficient even for network operators with swifter decarbonisation plans and that the large increases in tariffs otherwise feared could still be effectively prevented. The analysis once again showed that depreciation rates higher than 12% would very quickly lead to a large reduction in the residual values. Even with a declining balance depreciation rate of 10%, the residual values could almost halve by 2033; in the case of a rate of 15%, the residual values would nearly halve as early as 2029, and in the case of a rate of 12%, the residual values would halve in 2031.

266 As regards the development of the residual values and the associated depreciation, however, there is no necessity for the residual values to halve by the end of the 2020s, for example. This necessity was not put forward in the consultation either. In addition, a declining balance depreciation rate of 12% would only delay the point when the residual values would halve by about two to three years. In the case of network operators planning to phase out gas by 2035,

declining balance depreciation with a rate of, for example, 12% also guarantees an appropriate gradual depreciation process in line with the possible developments in volume in this scenario given an early switch between depreciation arrangements (12% in the early years with a switch to straight-line depreciation relatively quickly due to the short remaining useful life).

267 In light of this, a rate of 12% enables a sufficient reduction in the residual values even given a swift decarbonisation process in individual cases and at the same time prevents inappropriate increases in tariffs. In the consultation there was also agreement that the proposed range already allowed a good amount of scope for adjusting depreciation in line with the political and economic framework conditions for a changing energy and gas market. As regards an evaluation for the period from 2028, attention is drawn to 12.

268 The Ruling Chamber took particular account of the interests of the network users and final customers in terms of protecting them from excessive increases in tariffs. Restricting the upper limit of the range to 12% will lessen large increases in tariffs in the first years of the regulation's application. The tariff increases (up to 40% or 50%, see I.3.4.3) cited in the consultation on the key elements paper given a declining balance depreciation rate of 15% would not be possible. At the same time, the regulations are sufficiently broad and flexible to avoid large tariff increases towards the end of network use. In this connection, it should be noted that a particular aim of the declining balance depreciation regulation is to avoid a massive increase in the tariffs towards any end of network use. The risk of such a massive tariff increase is by all means serious and barely predictable in individual cases and in terms of the size of the potential increase. By contrast, any tariff increases during the initial phase of declining balance depreciation are easy for the individual network operators to predict because of the short forecast period (in particular using information about the revenue caps for the next few years, the local sales volumes and their investment plans); at the same time, scope is given to keep developments in tariffs within acceptable limits but still reduce the residual value of fixed assets quickly and appropriately.

269 In addition, the aim is not to achieve a very clear distinction between declining balance depreciation and straight-line depreciation in every possible scenario. Rather, it is also necessary to take account of the large tariff increases that might otherwise occur. As discussed, allowing a remaining useful life of, for example, 10 years, corresponding to 10% of the residual values, provides significant flexibility as regards the depreciation arrangements. In this exception, a declining balance depreciation rate of 12% in the first few years could also take account of the development in volumes. By contrast, it is not necessary within the framework of the regulations to implement the principle cited that there must be a distinction between declining balance depreciation and straight-line depreciation for most of the remaining useful life. In any case, any such objective based on business interests cannot be viewed

separately from the other, comprehensive considerations, which include protecting final customers from increases in tariffs that could be avoided. As discussed, the range of 8% to 12% represents a reasonable balance of interests, especially because no specific business, network or regulatory necessity for a declining balance depreciation rate above 12% was presented.

270 In addition, the regulation at least lessens any difficulties in relation to commercial-law and tax-law depreciation (see 18.3).

271 See 10 on the overall exercise of discretion with respect to the regulations in operative parts 2 to 4.

8.3. Switch to straight-line depreciation towards the end of the depreciation period

272 The provisions in the second and third sentences of operative part 3 regulate the calculatively necessary switch from declining balance to straight-line depreciation towards the end of the depreciation period.

273 The end of the useful life must be determined as set out in operative part 2 once the declining balance method of depreciation is applied. The useful life end date in the case of declining balance depreciation can therefore be within the full range provided for in operative part 2. Attention is drawn to the explanations in 7.2 relating to the remaining useful life. In accordance with the third sentence of operative part 3, the switch from the declining balance method of depreciation to the straight-line method of depreciation is made as soon as the straight-line depreciation of the residual value of the previous year recalculated each year for the useful life end date exceeds the declining balance depreciation. This calculation can be carried out at the same time as declining balance depreciation is applied, immediately showing when it is necessary to switch methods.

9. Exemptions for certain asset groups (operative part 4)

9.1. Exemptions for asset groups in Annex 1 GasNEV and for LNG connection assets

274 The first sentence of operative part 4 restricts the applicability of the extended depreciation arrangements provided for in operative parts 2 and 3 with respect to certain asset groups. In addition to administrative buildings (I.4 of Annex 1 GasNEV), assets in I.6 (fixtures and fittings (without IT, tools/devices)) and telecommunications switching equipment), I.9 (IT equipment) and I.10 (vehicles) in Annex 1 GasNEV are exempt. Furthermore, operative part 2 of the KANU 1.0 determination exempts LNG connection assets from the extended depreciation arrangements.

275 The KANU 1.0 determination already ruled that a shortened useful life end date of 2045 did not apply to administrative buildings because the buildings can be used for purposes other than gas network operation and therefore could be used afterwards – possibly after having been sold on – even if network operation ceased completely. In the Ruling Chamber's view, this also generally applies to regional sites operated by operators with networks covering larger areas because the buildings are not (technical) operational buildings and could therefore potentially be used as administrative buildings, for example, in other sectors as well.

276 On account of the significant extension of shortened useful lives, it is now appropriate to exempt the above-mentioned asset groups as well because in principle these assets could also be sold on or used afterwards. These considerations are valid irrespective of the period of applicability of the KANU 2.0 determination, which will be succeeded by other regulations anyway.

277 By contrast, the other general assets, some of which are tied to specific locations (I in Annex 1 GasNEV), in particular operational buildings, cannot usually be used for a different purpose afterwards, thus the depreciation arrangements apply in full.

278 Compared with the consultation version, asset group I.7 (tools/devices) and the associated asset group I.8 (storage facilities) were removed from the exemption and made subject to the more flexible depreciation arrangements on account of the arguments presented (specialisation of devices for natural gas networks that could not be used in a hydrogen network, for example, and new requirements for the reduction of methane emissions).

279 Even though these exempted asset groups make up a relatively small proportion of the total assets, the Ruling Chamber still considers it appropriate to provide these exemptions in the interests of the network users and final customers.

280 LNG connection assets are being exempted because in accordance with operative part 2 third sentence of the KANU 1.0 determination their useful life is within a range of five years up to the expected operating life of the connected LNG facility anyway and is therefore already essentially compatible with the transformation of the gas networks.

281 The network operators should naturally refrain from excessively shortening the imputed useful lives of and applying declining balance depreciation to any assets that may be used afterwards. As regards the network tariff calculation methodology for the next few decades, the relevant transactions will in any case be reported transparently as book profits and book losses and evaluated in accordance with the calculative requirements applicable at the time.

282 If an asset to which a shortened imputed useful life or declining balance depreciation is applied is depreciated more quickly than it is actually used – for instance because of a subsequent change in network planning or subsequent, initially unplanned use for a regulated hydrogen

network – the asset can no longer generate capital costs after depreciation that could be taken into account in tariff regulation.

9.2. No binding exemption on account of repurposing for the time being

283 In this connection, the Ruling Chamber decided for the time being not to introduce a binding exemption from the extended depreciation arrangements on account of repurposing in particular for the hydrogen sector. As shown in the consultation (see I.3.8 for the arguments presented), there is a lack of sufficiently reliable information to support including such an exemption in the operative provisions and, in purely technical terms, the industry's increasing findings indicate that a large part of the natural gas infrastructure can probably be converted to transport hydrogen. In fact, the possibility of reusing or selling assets in the event of a potential conversion of the infrastructure to supply hydrogen is uncertain (see Düsseldorf higher regional court decision of 6 March 2024, VI-3 Kart 17/23 [V], page 13).

284 However, the possibility of such a regulation in a subsequent determination cannot be ruled out. By contrast, the KANU 2.0 determination is limited to the period from 2025 to 2027; in that respect, there is not yet a sufficient basis for such a regulation.

285 Nevertheless, this aspect is relevant for the fundamental assessment by network operators in individual cases and for the requirement to justify applying accelerated depreciation arrangements (see 10).

286 In this connection, the Ruling Chamber does not currently see a need for adjustment in line with the regulation for network transfers to the regulated hydrogen sector because under section 26(2a) second sentence in conjunction with (3) third sentence ARegV the capital costs and therefore the imputed residual values are taken as the basis anyway.

10. Discretion relating to the depreciation arrangements in operative parts 2 to 4

287 The Ruling Chamber properly exercised its discretion to make decisions. Carrying on from the KANU 1.0 determination, which only applied to new investments and only covered straight-line depreciation, a comprehensive basis has been in place since the end of 2023 enabling depreciation arrangements as a whole to be regulated in light of the transformation of the gas networks (see 1.2 and 4). Following the KANU 1.0 determination, the Heat Planning Act, which is one of the key factors for the transformation of the gas networks, entered into force just at the end of 2023 (Act on Heat Planning and the Decarbonisation of the Heating Networks of 20 December 2023). Lastly, the partially relevant European legislative provisions, for instance relating to network decommissioning plans for natural gas distribution system operators in accordance with Article 57 of Directive (EU) 2024/1788, were not adopted until after the start of these determination proceedings. The Ruling Chamber needed this sufficiently detailed

starting point for the transformation of the gas networks (which, however, does not yet include a definitive timetable) before it could develop the proposed regulations based on potential road maps for decommissioning or continuing to use part of the networks. In that respect, the Ruling Chamber exercised its discretion by deciding to make these regulations now even though the factors relating to the transformation of the gas networks are not all yet firmly in place (see 18 for other issues that could be regulated in other determination proceedings).

288 The Ruling Chamber decided on the substantive provisions for the depreciation arrangements as set out in operative parts 2 to 4 having exercised its due discretion and carefully weighed up the interests of all market participants. It took into consideration both the interests of the network operators, in particular in flexible depreciation arrangements accommodating the transformation of the gas networks, and the interests of the network users and final customers, in particular in reasonable tariffs for network access.

10.1. Interests of the network operators

289 The arguments put forward by the network operators made it clear that the regulations for the depreciation arrangements to accommodate the transformation of the gas networks should essentially be flexible. This applies not only in light of the fact that without more flexibility for the useful lives, in particular, it would not be possible to fully refinance a significant part of the gas network infrastructure investments. The aspect of flexibility also concerns "how" depreciation should be carried out. Depending on the specific circumstances and challenges for the network operators, which will primarily be shaped by varied, external factors, the depreciation methods should create a balance between the actual transformation of the gas networks and actual network use in the coming years on the one hand and modelling this in the calculations for depreciation, revenue caps and ultimately network tariffs on the other hand.

290 When designing the depreciation arrangements, it must be taken into account that the tariff methodologies should ultimately offer sufficient incentives for the necessary investments in the networks to be carried out in a manner allowing those investments to ensure the viability of the networks. This applies in particular with respect to replacement and new investments in the gas networks that are still necessary even though the networks as a whole may not continue to be used. The necessary investments in the networks must be able to be carried out in a manner allowing those investments to ensure the viability of the networks (section 21(2) fourth sentence EnWG). At the same time, the depreciation arrangements must be in line with the criterion of cost-reflectiveness.

291 In light of these facts, the Ruling Chamber considers more flexible depreciation arrangements for assets of all acquisition years to be appropriate. Likewise, the Ruling Chamber considers it necessary in calculative terms to significantly extend the lower limit for useful lives to 2035,

where this is appropriate in individual exceptions (see above on the possible volume forecast (in 8.2) in specific cases and on requirements and conditions relating to 2035). In addition, the Ruling Chamber is convinced that declining balance depreciation with a rate in the range from 8% to 12% is an appropriate calculation method to accommodate the decarbonisation process and the forecast development in volumes.

292 At the same time, the Ruling Chamber considers it necessary to have sufficient flexibility in the time frame because many of the actual timescales in the gas network transformation process are still unclear. Network operators should not be forced to model the transformation of the gas networks at a certain date, in particular because municipal heat plans will not be in place until 2026 and 2028. Likewise, network operators cannot be prevented from later altering earlier assumptions on account of better findings or (re)designing the depreciation arrangements in line with the transformation road map.

293 Despite all these aspects, the Ruling Chamber also sees the need to limit the flexibility. For instance, decisions to apply shortened useful lives should be based on the (technical) findings available at the time. A useful life end date before 2045 can generally only be applied where and as far as federal state requirements exist for a network operator's network area to reduce greenhouse gas emissions with the aim of net greenhouse gas neutrality in line with section 3(2) KSG, but for a date earlier than 2045, or corresponding requirements exist for a network operator as a result of a municipal decision or comparable external framework conditions; see margin no 242 for further details. Any change in useful lives still requires justification.

294 As explained above, the Ruling Chamber considers it appropriate to restrict the upper limit of the range for the declining balance depreciation rate to 12%. The Ruling Chamber took account of the possible scope of developments in volume in its considerations. Likewise, it was made clear that the declining balance depreciation rate must be reasonably proportionate to the remaining useful life. Accordingly, key to the justification of the rate of depreciation for declining balance depreciation are in particular the external framework conditions, for example in the form of a volume forecast.

295 Lastly, the flexibility of the regulations is essentially restricted by the principle of consistency. Any change in useful lives is still only possible in justified cases. However, an exception to the principle of consistency can be made when the gas network transformation is being modelled for the first time in the depreciation arrangements and when an adjustment to the depreciation arrangements is necessary due to specific new findings. However, the Ruling Chamber does not agree that the principle of consistency should no longer have any practical significance and the network operators should be free to make adjustments. Rather, the network operators

are required to base their decisions on all the information available and relevant for them and to justify their decisions.

296 These sources of information may include: the results of municipal heat planning, specifically the initial municipal heat plans (in place by 30 June 2026 or 30 June 2028 for municipalities with more than/up to 100,000 inhabitants (see section 4(2) first sentence WPG) as well as municipal heat plans under federal state law) and the regular updates of the municipal heat plans (section 25 WPG); network development plans (section 15a et seq EnWG); the core network approval (section 28q et seq EnWG); decommissioning plans for natural gas distribution system operators (Article 57 of Directive (EU) 2024/1788); hydrogen timetables (section 71k GEG); long-term scenarios commissioned by the Federal Ministry for Economic Affairs and Climate Action; and developments in and forecasts of local or regional gas consumption.

297 In this connection, the Ruling Chamber emphasises that all the network operators' decisions on determining the imputed depreciation are generally subject to supervision by the competent regulatory authority in the relevant procedures.

298 In practical terms, the Ruling Chamber also placed the largest possible restriction on the asset groups to which more flexible depreciation arrangements apply (see 9.1 for the exempted asset groups). By contrast, it was not possible to make a regulation with respect to possible repurposing. However, this aspect must naturally be taken into account in any decision made by the network operators on the design of the depreciation arrangements applicable in each case, based on the information available.

299 The Ruling Chamber took account of the comments on the corridor model and the proposed alternatives in its considerations and decision. The design of the extended options model now essentially provides the flexibility that was viewed as positive in the corridor model.

10.2. Interests of the network users and final customers

300 The Ruling Chamber also took into account the interests of the network users and final customers in reasonable tariffs for network access. In accordance with section 1 EnWG, one of the aims of the EnWG is to ensure a network-based supply of gas for the general public that is as low-priced, consumer-friendly, efficient, environmentally compatible and greenhouse gas-neutral as possible and that is based increasingly on renewable energy. In this connection, the criterion of transparency must also be considered.

301 The Ruling Chamber took particular account of how different depreciation arrangements would affect changes in the network tariffs in the course of time. Excessive increases in tariffs should be avoided as far as possible at every stage of the use and transformation of the gas networks.

This applies to the initial phase of the adjustment in the depreciation arrangements, when these changes would affect all the existing final customers using the gas networks, and equally to developments in tariffs towards the end of network use, when only a few final customers might still be connected to the network. These considerations relating to the use of the gas networks apply likewise to the transit of gas. Network users and final customers need sufficient planning certainty.

302 However, it should be made clear that it is not possible to completely avoid significant developments in the gas network tariffs over the course of the transformation of the gas networks. In order to limit these effects as far as possible but still allow the regulations necessary to model the transformation of the gas networks, the Ruling Chamber, as already explained, has provided a largely flexible regulation for the depreciation arrangements and at the same time placed the largest possible restrictions on these regulations to avoid large increases in tariffs.

303 For instance, the Ruling Chamber has provided a broad regulation allowing more flexibility for the useful lives but has made this regulation subject to a justified decision by the network operator that must also take into account the principle of consistency. The declining balance depreciation rate was also limited to 12% despite calls for a higher rate. In addition, the Ruling Chamber has exempted further assets groups from the application of the more flexible depreciation arrangements and has explained how a binding exemption with respect to assets to be repurposed could be formulated.

304 Moreover, the Ruling Chamber considers it to be fundamental that the network tariffs must be sufficiently predictable for network users and final customers. In this connection, the Ruling Chamber rejects the call for retrospective changes to the depreciation arrangements for periods that have ended. This applies even in cases where, from a regulatory perspective, the regulatory account balances have not been finalised. Rather, the regulations ensure that the network operators cannot make any retrospective changes to the depreciation arrangements. This rules out a cumulative effect from increases in network tariffs.

305 On account of the fact that the gas transmission system operators have already published their binding tariffs for 2025 in accordance with Article 12(3) of Regulation (EU) 2017/460 (TAR NC), there is no scope for adjustment. The criterion for the exception laid down in Article 12(3) point (a) TAR NC, which allows the reference price to be recalculated due to exceptional circumstances under which the non-adjustment of the tariff levels would jeopardise the operation of the transmission system operator, is not met by the KANU 2.0 determination.

306 As regards the required planning certainty, the Ruling Chamber draws attention to the information sources listed in margin no 296. These serve both as a guideline for the network

operators' decisions on depreciation arrangements and as a point of reference for network users and final customers on the question of how the process of transforming the gas networks will generally take place.

307 Furthermore, a balancing of interests is inherent in the system because the basic design of the regulations for the depreciation arrangements is essentially an incentive system. For example, any acceleration in depreciation is accompanied by an overall reduction in the return on equity. Depending on the design of the individual depreciation arrangements chosen by a network operator, the cost savings will increase within a few years to such an extent that the lower other capital costs will more than compensate for the increased depreciation due to the lower interest basis. This effect would be in line with the volume forecast, which would essentially be predictable but not firm in all aspects (see 8.2 on volume forecast). As a result, the flexibility provided makes it possible to protect the network users and final customers remaining after a significant decrease in volumes because these users and customers will only be burdened with a cost basis that will have been sufficiently reduced by then and any end to the use of the gas networks can be made acceptable. Otherwise, the network users remaining at the end could be burdened with network tariffs beyond acceptable levels.

308 At present, the Ruling Chamber has decided not to bring in binding requirements for minimum remaining useful lives and/or special depreciation towards a possible end of gas network use. In general, minimum remaining useful lives and special depreciation should only be permitted when operationally necessary in order to avoid misplaced incentives. However, the regulations in the KANU 2.0 determination only apply to the period from 2025 to 2027. During this period, the minimum useful life in the case of a useful life end date of 2035, which is permitted in individual, justified exceptions, is still eight to 10 years and therefore sufficiently long compared with a remaining useful life that may no longer be acceptable or special depreciation.

309 These issues will need to be clarified in more detail in particular when information about future developments is available. However, the Ruling Chamber draws attention to the fact that there may well be a practical need for short-term investments towards the end of the useful life of an individual gas network, otherwise the viability of the network would not be ensured towards the end and the network's customers could not be supplied with gas.

310 Lastly, the assessment was made that the risks of unacceptably large increases in tariffs towards the end of the network use were generally to be seen as higher than the risks and effects of potential rises in tariffs (which were limited by the defined depreciation arrangements anyway) (see margin no 265 et seq on the analysis of a tariff simulation and the possible effects). In this connection, the Ruling Chamber also decided not to put a general cap on tariff increases. The restriction on the upper limit of the range for the declining balance depreciation

rate to 12% and the stricter requirement for justification as regards both the remaining useful life and the choice of the rate for declining balance depreciation already address the concerns raised in this context and rule out the possibility of large increases in tariffs of, for example, 40% or 50% as forecast by some consultation respondents. In addition, assuming an actual need and convincing justification for such depreciation, and all other things being equal, such a cap would increase the risk of unacceptably large increases in tariffs towards the end of network use. Such a cap would also ignore the fact that it can generally be appropriate to bring forward the costs in line with a relevant volume forecast.

10.3. Overall assessment

311 Overall, the design of the depreciation arrangements represents a balanced, cost-reflective distribution of the costs. It is in line with the developments in volumes generally expected. For example, it is likely that the transformation of the gas networks will not be a sudden, but a slow and gradual process with a steady decrease in the number of customers. If the infrastructure costs were spread over too long a period of time, an excessive proportion of the costs would have to be borne by the group of last remaining customers. This would result in very high individual network tariffs. This excessive increase can be counteracted by the more flexible depreciation arrangements, although certain rises in tariffs will be inevitable in the coming years. A more consumer-friendly design that guarantees the refinancing of the networks and at the same time protects network customers from the associated costs is not available without third-party funding, which is not possible under the regulatory system.

11. Introduction of tangible fixed asset identification numbers (operative part 5)

312 Operative part 5 represents a procedural provision to maintain the more flexible depreciation arrangements. This procedural provision applies solely to network operators that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG.

313 The introduction of the depreciation arrangements will lead to an increase in the volume of data with respect to the regulated tangible fixed assets. While up until now standardised information was usually provided for each asset group and acquisition year, the amount of data required will increase given a higher level of detail. In order to be able to clearly identify the individual allocations and depreciation methods over a period of several years, tangible asset identification numbers are to be created and allocated in accordance with the provisions of operative part 5. Here, the Ruling Chamber decided on a clear, uniform approach requiring all network operators to allocate tangible fixed asset identification numbers for all asset groups and acquisition years as soon as they apply the depreciation arrangements set out in operative parts 2 and/or 3 for the first time, even if they are only applied to some of the fixed assets.

314 However, the Ruling Chamber decided not to make an asset-based analysis mandatory. Despite individual calls for a compulsory asset-based analysis in the consultation on the key elements paper, the Ruling Chamber is convinced that the informational benefit is not reasonably proportionate to the significant increase in the data volume, the work and the practical difficulties involved. However, the Ruling Chamber took up the suggestion to allow the voluntary use of network identification numbers to provide a clearer overview of the fixed asset data. This enables network operators to model their continually evolving transformation plan more simply within the regulatory system as well. One single network identification number could be used for a municipality or group of municipalities, a network section or group of network sections or even for different assets to which similar assumptions/forecasts apply. For clarity, attention is drawn to the fact that the tangible fixed asset identification numbers and network identification numbers are separate from each other and that tangible fixed asset identification numbers are compulsory for the implementation of the regulations while network identification numbers can be used voluntarily as a supplementary aid (and can be allocated or changed later as well).

315 The regulation in the fourth sentence of operative part 5 was reworded following the consultation. If a different depreciation arrangement is used for part of an asset group already assigned a tangible fixed asset identification number, a new identification number must be assigned to that part of the asset group. If a change affects the overall residual value within a tangible fixed asset identification number, the change can be made without updating this identification number. This reduces the volume of data while still ensuring sufficient transparency in the case of any changes.

316 The regulatory authority is still free to examine an individual operator's procedure irrespective of the terms of the procedural provisions. In any case, asset-based analysis is not a compulsory requirement.

317 Annex A to the determination sets out the detailed structure to model the fixed assets. Annex A also serves as the form for notification within the meaning of operative part 9.

12. Application to the fourth regulatory period and revocation of the KANU 1.0 determination (operative parts 6, 11 and 12)

318 The Ruling Chamber designed the regulations in the KANU 2.0 determination to enable adjustments to the revenue caps for the years 2025 to 2027 (first sentence of operative part 6). These are the years remaining in the fourth regulatory period for gas. The Ruling Chamber shares the view that the option of making more flexible depreciation arrangements available as early as possible is advantageous overall with regard to the upcoming transformation of the gas networks. In this connection, the Ruling Chamber took particular account of the fact that

the earlier the switch to different depreciation arrangements, the larger the sales volumes available, which would generally result in cost-reflective and reasonable tariffs during the switching phase as well. The earlier the switch, the more likely unreasonably large increases in tariffs can be avoided. This is why there is also the option of application as early as 2025.

319 The substantive changes to the depreciation arrangements can be implemented through the capex markup (see operative part 7) or the new transformation element (see operative part 8), depending on the relevant year of acquisition. However, according to the second sentence of operative part 6, the setting of the revenue caps for 2025 to 2027 for the first time, including the applicable capex deduction determined by the regulatory authority, remains subject to the current regulations for reasons of procedural economy. The necessary recalculations can therefore be implemented by the network operators through the transformation element without interfering in the procedures for setting the revenue caps that are still ongoing but nearing completion. The procedure and calculations in accordance with section 34a AREgV remain unaffected by the adjustments to the depreciation arrangements (see the eighth sentence of operative part 8 and the explanations in 14).

320 The KANU 2.0 determination makes the depreciation arrangements equally flexible for all acquisition years. In that respect, the KANU 1.0 determination is being partially revoked as set out in operative part 11 on the basis of section 29(2) first sentence EnWG. Operative part 1 and the first sentence of operative part 3 of the KANU 1.0 determination will be revoked. The remaining operative provisions of the KANU 1.0 determination will continue to apply, including specifically the regulations for LNG connection assets in operative part 2 and the second sentence of operative part 3.

321 Uniform provisions will subsequently be applicable as from 2028 in conjunction with the expiry of the GasNEV and AREgV and the then complete implementation of the judgment of the Court of Justice of the European Union (CJEU) of 2 September 2021 (C-718/18). Operative part 12 therefore limits the period of validity of the KANU 2.0 determination to 31 December 2027 (section 36(2) para 1 VwVfG). The Ruling Chamber makes it clear that the key points of the determination or the basic elements of the more flexible depreciation arrangements will be incorporated into the future regulatory system. However, practical implementation does not have to be through a transformation element as an additive component supplementing the regulatory formula. Another conceivable option would be to take account of the change in depreciation arrangements after a base year through an adjustment of capital expenditure (capex true-up). In addition, there was a call in the consultation for an evaluation of the depreciation arrangements, in particular with respect to the upper limit of the range for the declining balance depreciation rate.

322 In terms of time frames, the Ruling Chamber makes it clear that it will not be compulsory for network operators to apply the depreciation arrangements in 2025 and that it will be possible to apply the arrangements for the first time in a later year.

323 The determination of the capex markups, revenue caps and regulatory account balances up to 2024 is subject to the provisions of the KANU 1.0 determination since the revocation takes effect on 1 January 2025. With respect to 2023 and 2024, the definitive substantive regulation in the KANU 1.0 determination continues to apply, in accordance with which the capital costs of the assets acquired in 2023 and 2024 are to be determined in 2023 and 2024 as set out in operative part 1 and the first sentence of operative part 3 of the KANU 1.0 determination.

324 The determination of the regulatory account balances for 2025 to 2027 is subject to the provisions of the KANU 2.0 determination even though the determination only applies until 31 December 2027.

13. Implementation of changes in depreciation arrangements through the capex markup (operative part 7)

325 Operative part 7 allows the more flexible depreciation arrangements to be applied to operationally necessary tangible fixed assets that were or will be initially capitalised as completed assets for the first time on or after 1 January 2021. This makes it clear that the depreciation arrangements for these assets can be implemented on the basis of the current system under the ARegV through the capex markup in accordance with section 10a ARegV. The legal consequence of the adjustment to the revenue cap is derived from section 4(4) first sentence para 1 ARegV. The depreciation arrangements for these fixed assets are based on the network operator's application. It is up to the network operator to make a decision (to be justified) about which depreciation arrangements to apply to these assets. The possibility opened up by the KANU 1.0 determination for depreciation up to 31 December 2044 is also covered by operative part 2 of the KANU 2.0 determination.

326 The third and fourth sentences of operative part 7 constitute procedural provisions and apply solely to network operators that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG. The procedural provisions extend the deadline of 30 June 2024 for capex markup applications for 2025 that have not yet been decided on until 15 October 2024 in this one instance and only in respect of the depreciation arrangements under the KANU 2.0 determination. This date was proposed in the consultation and was taken up by the Ruling Chamber not only because it corresponds to the proposed deadline for the notification of the transformation element (see margin no 352 for the reasoning) and therefore synchronises the two, but also because the tariffs for the following year need to have been

published by then and therefore the decisions underlying the application will already have been made.

327 The fourth sentence of operative part 7 makes it clear, however, that the extension of the deadline does not affect the binding effect under operative part 10 of the notification in accordance with operative part 9. The Ruling Chamber makes it clear that an amended application will be necessary so that account is taken in the capex markup for 2025 and that it will not be possible for account to be taken through the comparison made between projected and actual figures for the approval of the regulatory account balance for 2025. In addition, it is being made clear that it is in the nature of the projected figures for a capex markup that they can be changed and are only finalised according to the existing regulations for the regulatory account. However, as already applies under the regulations of the KANU 1.0 determination, the principle is to apply that the choice of a certain depreciation arrangement does not constitute a projected figure and, in that respect, free changes to the calculation in the regulatory account are not possible (see also operative part 10 for the principle that the choice of a depreciation arrangement is to apply to the setting of tariffs for the following year).

328 With the exception of the regulation for the deadline in 2024, there are to be no short-term changes to the capex markup procedure for the remainder of the fourth regulatory period, especially as this would mean intervening in ongoing application procedures.

329 The fifth sentence of operative part 7 is a nationally binding substantive provision that rules out any adjustment of the depreciation arrangements for the capex markups for 2023 and 2024, the first two years of the fourth regulatory period. This restricts the substantive scope of applicability of the determination and rules out retrospective increases in the revenue caps through the corresponding capex markups.

330 In addition, the principle laid down in the third and fourth sentences of operative part 10 that the network operators are bound by the depreciation arrangements applied in the tariff calculation is a substantive and therefore nationally binding principle. Any retrospective adjustment of the depreciation arrangements is ruled out. This general principle applies irrespective of the year of the revenue cap or the acquisition year of the relevant fixed asset.

14. Implementation of changes in depreciation arrangements through the transformation element (operative part 8)

331 Operative part 8 allows the more flexible depreciation arrangements to be applied to operationally necessary tangible fixed assets that were capitalised as completed assets for the first time on or before 31 December 2020. Such a regulation is necessary because these assets are part of the revenue caps to be determined for the fourth regulatory period and separate from the capex markups. The regulation is (with the exception of the tenth and

eleventh sentences) a nationally applicable substantive regulation enabling the regulatory formula for 2025 to 2027 to be adjusted. The transformation element represents an additive component supplementing the regulatory formula (third sentence of operative part 8).

332 The fourth to seventh sentences of operative part 8 set out the calculation method for the transformation element. This method involves recalculating the revenue cap for a given year and comparing this with the revenue cap originally set for the year. According to the fifth sentence of operative part 8, the adjustment and, if applicable, the estimate of the revenue cap in accordance with section 4(2) second sentence ARegV must be based on identical assumptions (see footnote 4, according to which this applies in relation to the adjustment for the overall consumer price index to be used and in relation to the estimate of all not yet definitive values). In addition, footnote 3 explains that the calculation of the difference only relates to part of the regulatory formula.

14.1. Network transfers

333 The rule applies that any network transfers that have taken place after the base year must be taken into account in both components when determining the transformation element. The base level in the relevant regulatory formula remains unaffected, but account must be taken of the network transfers in the relevant capex deductions, for example for 2025, when determining the capital costs (KK_0) and the amortised capital costs (KK_t) in accordance with Annex 2a relating to section 6 ARegV. This means that the transferring network operator must deduct the base-year residual values and depreciation for the tangible fixed assets being transferred when calculating the relevant capex deductions and the recipient network operator must add exactly the same residual values. Deducting the residual values and depreciation has an effect on the overall capital costs. It must be done fictitiously with retrospective effect for the base year in order to adjust the capital costs accordingly (the base level and the capex deduction for the setting of the revenue caps by the regulatory authority remain unaffected by this and are therefore determined without taking retrospective account of network transfers). For the sake of simplicity, the other components of the balance are all to be adjusted uniformly in accordance with section 26(3) first sentence ARegV solely for the purpose of calculating the transformation element.

334 As regards network transfers, it is being made clear that the proportions of the revenue caps actually to be transferred are based on the revenue cap without the transformation element. The recipient network operator can calculate a separate transformation element for the parts of the network being transferred. For the sake of simplicity, the equity ratio and efficiency score of the recipient network operator are used.

335 As stated in the second sentence of operative part 6, the actual capex deduction calculated by the regulatory authority when setting the revenue caps remains unaffected.

336 The Ruling Chamber disregarded other options for accounting for network transfers. It would not be appropriate to generally exclude network operators with network transfers from the transformation element. Nor would it be appropriate for account to be taken or corrections to be made in the applications and decisions relating to the relevant network transfers because the depreciation arrangements for a network or part of a network would then be decided on by a network operator that no longer actually had the network (part). This would create significant misplaced incentives encouraging inappropriately accelerated depreciation. Furthermore, network transfers that had already been applied for and decided on would need to be amended in a complex manner.

14.2. Transformation elements for the following years

337 Taking account of the new depreciation arrangements may lead to higher depreciation and higher amortised capital costs within the meaning of Annex 2a relating to section 6 ARegV and, in turn, to a smaller capex deduction and a higher revenue cap. The result of this is a positive transformation element as a markup on the revenue cap. However, the interest basis will decrease from the beginning and in the course of time, which would have the opposite effect in the determination of the amortised capital costs. In calculative terms, this could result in a reduction in the revenue cap for the benefit of network users and final customers. This is why the transformation element, if used in 2025 for example, must also be used for 2026 and 2027. If the transformation element is used for the first time in 2026, it must also be used in 2027.

14.3. Clarification about a negative capex deduction

338 The sixth sentence of operative part 8 makes it clear that with the calculation of the difference there is merely a change in the capex deduction in the regulatory formula. The provisions in section 6(3) ARegV together with Annex 2a relating to section 6 ARegV remain unaffected. Only the new depreciation arrangements can be applied. However, in derogation of the second half-sentence of point (1) of Annex 2a relating to section 6 ARegV, the capex deduction based on the changed depreciation arrangements to determine the transformation element as an intermediate step in the calculations can be smaller than zero. This is necessary because only a calculative figure for higher capital costs is to be determined. Otherwise, the capital costs as from 2025 on the basis of the new depreciation arrangements would be restricted to the capital costs for the base year. The decisive factor is therefore the absolute difference between the old and the new (possibly negative) capex deduction (or between the old and new figures for the amortised capital costs, which are always positive). The Ruling Chamber makes it clear

that in a scenario where parts of a network are leased, the comparison of the overall capex deduction is the decisive factor for determining the transformation element. However, the principle that the capex deduction may not be smaller than zero remains applicable with respect to the determination of the revenue cap by the regulatory authority and the relevant capex deduction for the revenue cap.

14.4. Clarifications relating to section 34a and section 35(7) second sentence ARegV

339 The seventh sentence of operative part 8 makes it clear that in the case of transmission system operators, the regulation in section 35(7) second sentence ARegV must not be applied in calculating the fictitious revenue caps for the purposes of determining the transformation element. Transmission system operators therefore calculate the transformation element and the required figures for the amortised capital costs without the basic allowance under section 35(7) second sentence ARegV. In that respect, the capex deduction that is determined when the revenue cap is set and that includes this basic allowance is not used. This basic allowance and the capex deduction determined when the revenue cap is set by the regulatory authority in turn remain unaffected by the new depreciation arrangements. It is being made clear that the basic allowance provided for by section 35(7) second sentence ARegV is part of the budget under incentive regulation and, irrespective of this allowance or budget, the reduced residual values will be used in the subsequent course of the regulatory process.

340 According to the eighth sentence of operative part 8, the same applies to the procedure and calculations in accordance with section 34a ARegV: they are not affected by the provisions on the transformation element. Here, too, the revenue caps and the capex deduction for the revenue caps are determined by the regulatory authority without applying the new depreciation arrangements. Likewise, the procedure and calculations in accordance with section 34a ARegV are carried out without the new depreciation arrangements. The calculation of the difference to determine the transformation element is also based on the capex deduction within the meaning of section 6(3) ARegV in cases in which an application has been made in accordance with section 34a(1) ARegV. The regulation ensures a clear distinction between the regulations on hardship cases relating to the past and the transformation element relating to the future. In this respect, it should be made clear that the regulation in section 34a ARegV in turn plays no part in calculating the transformation element and recalculating the capex deductions needed to calculate the transformation element.

14.5. Other substantive regulations

341 In addition, the footnote to the fourth sentence of operative part 8 states what should happen if no revenue cap has initially been set for the relevant year. The explanations correspond to

the general comments about the adjustment to the revenue cap and, based on this, the regulatory authority's tariff calculation for the following year.

342 The design of the transformation element is such that the efficiency requirements, productivity requirements and inflationary adjustment also have an effect on the transformation element. This carries on the basic function and effect of the regulatory formula for a transitional period in that a relevant distinction is made between assets acquired in or before the base year and assets acquired after the base year. There are no corresponding effects in the capex markup in the case of assets acquired after the base year. The Ruling Chamber considers it appropriate in the transitional period to apply the above-mentioned effects in the regulatory formula when determining the transformation element as well, as is done for all relevant capital costs for acquisition years up to the base year, irrespective of any adjustment to depreciation arrangements.

343 In this connection, the Ruling Chamber makes it clear that the regulation also applies to former investment measures within the meaning of section 23 ARegV that are now part of the base level, thus to investment measures that are still ongoing. However, the binding effect laid down in the third and fourth sentences of operative part 10 also applies to these measures (see 14.6 below). A decisive factor for the depreciation arrangements for the investment measures in 2025, for example, are the transmission system operators' relevant assumptions and calculations when calculating the tariffs for 2025. As with the capex markup, any retrospective adjustment of the depreciation arrangements is ruled out.

344 The ninth sentence of operative part 8 reiterates that this regulation only applies as from 2025.

14.6. Procedural provisions and binding effect

345 The tenth and eleventh sentences of operative part 8 constitute procedural provisions and apply solely to network operators that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG. These procedural provisions are similar to those in section 4(3) first and second sentences ARegV and enable the network operators to adjust certain components of the substantive regulatory formula (without an application procedure). However, an additional notification procedure as set out in operative part 9 is being introduced for network operators that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG.

346 In addition, the principle laid down in the third and fourth sentences of operative part 10 that the network operators are bound by the depreciation arrangements applied in the tariff calculation is a substantive and therefore nationally binding principle. Any retrospective adjustment of the depreciation arrangements is ruled out. This general principle applies irrespective of the year of the revenue cap or the acquisition year of the relevant fixed asset.

15. Notification procedure for the transformation element (operative part 9)

347 Operative part 9 setting out the notification procedure for the transformation element basically constitutes a procedural provision and applies solely to network operators that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG.

348 In this respect, the Ruling Chamber took account of the responses to the key elements paper and decided not to introduce an additional application procedure. Despite a certain degree of complexity, the transformation element should instead, as with other components of the regulatory formula, generally be subject to adjustment by the network operators. However, notification is additionally required in order to enable the regulatory authority to promptly examine the network operators' related assumptions and results. The design of the notification procedure also serves to support the Bundesnetzagentur's ongoing efforts to simplify regulatory requirements.

349 The notification may be accompanied by administrative proceedings in accordance with section 30(2) or section 65 EnWG if necessary. In addition, a comparison in the regulatory account is made in accordance with the provisions in operative part 10 since the transformation element is a substantive part of the allowed revenue.

350 The deadline for the notification in accordance with the first sentence of operative part 9 was set by the Ruling Chamber to give the network operators essentially a sufficient period of time to decide on their depreciation arrangements for the following year. This is the date by which tariffs have to be published in accordance with section 20(1) sentence 2 EnWG and therefore by which time the network operators should have made the relevant considerations about the tariffs for the following year.

351 In 2024 the time given will actually be shorter than in the following years because of the determination proceedings, which will not be completed until some time during the year. However, detailed indications and foreseeable criteria were available at the latest when the key elements paper was published on 6 March 2024, enabling network operators wishing to change the depreciation arrangements as early as possible to prepare for 2025.

352 In spite of the comments received in the consultation on the draft determination, the Ruling Chamber decided to keep to the deadline of 15 October and has rejected the call to take account of the depreciation arrangements via the regulatory account in deviation from the tariff calculation. In systematic terms, it is not primarily a matter of the network users and final customers being able to rely on the tariffs published for 2025, which would actually remain unchanged. It is more a matter of these network users and final customers not being confronted with double burdens from several years in the following years. Although the effect would be lessened by spreading the regulatory account balance over several years, it would still exist.

In this connection, rather, the Ruling Chamber considers the flexibility given to be sufficient for network operators wishing to apply the new depreciation arrangements in whole or in part at a later date anyway. The Ruling Chamber is also convinced that all the network operators have sufficient time to prepare for the more flexible depreciation arrangements. There have essentially been calls for the flexibility that has now been provided since the consultation on the KANU 1.0 determination in July 2022, when an extension to cover all acquisition years and depreciation sooner than 2035 were already called for. The Ruling Chamber is also convinced that an extension of the deadline to 31 December 2024, for example, cannot be considered because it would then be completely impossible for the regulatory authority to examine the transformation element before the network tariffs were charged. Although settlement could be possible retrospectively via the regulatory account, the Ruling Chamber considers it necessary, in light of the flexibility largely given to the network operators and the requirement for justification for the choice of depreciation arrangements, to enable the regulatory authority to make an examination before the tariffs are applied.

353 Attention is drawn to Annex A as regards the form for notification. The form can be used for the annual identification of the tangible fixed assets in accordance with operative part 5 and also as the basis for the annual notification in accordance with operative part 9. The notification must always include all the imputed tangible fixed assets since the tangible fixed asset identification numbers are allocated to these assets in accordance with operative part 5 for the purpose of identification. Annex A is structured so that, as in the cost examinations to determine the base level for the revenue caps, separate data must be provided for network operators, lessors and sub-lessors using separate files.

354 If a network operator applies the depreciation arrangements set out in operative parts 2 to 4 to the capex deduction for the following year as well as to the transformation element, the notification must also include this data with all the tangible fixed assets. The notification must always cover all the tangible fixed assets and thus also include the data relating to the tangible fixed assets to which straight-line depreciation is applied in accordance with the provisions of only the GasNEV, irrespective of the acquisition year. This enables the prompt, uniform provision of data and avoids misunderstandings about which depreciation arrangements should apply to which fixed assets. This is important because the notification is to be binding (see the third sentence of operative part 10). By contrast, no notification is required if the depreciation arrangements are only to be adjusted for the capex markup in accordance with operative part 7 for assets acquired in or after 2021. Nevertheless, in this case the network operators must comply in the background with the provisions in operative part 5 on creating tangible fixed asset identification numbers.

355 As from 2028, it will be possible to simplify the procedure further, for example with a uniform regulation in relation to a capex true-up for operators of gas supply networks.

16. Implementation of the change in the depreciation arrangements in the regulatory account and binding effect for the network operators (operative part 10)

356 Operative part 10 provides substantive, nationally applicable regulations and clarification. The first sentence of operative part 10 makes it clear that the transformation element is recorded in the regulatory account in accordance with section 5(1) first sentence ARegV as a substantive part of the revenue allowed under section 4 ARegV. The second sentence of operative part 10 makes it clear that, as regards the capex markup, the calculation of the difference in accordance with section 5(1a) first sentence ARegV is still based solely on the capital costs actually incurred compared with the projected figures within the meaning of section 10a(6) first sentence para 2 ARegV. This means that the depreciation method is set according to the following principles in the case of projected figures as well, even if the basis for the depreciation constitutes a projected figure.

357 In fundamental terms, the third and fourth sentences of operative part 10 provide protection for network users and final customers against retrospective recalculations. Irrespective of whether or not the regulatory account for a certain year is still "open", the regulation rules out any scope whatsoever for network operators to make retrospective changes to the depreciation arrangements for periods that have ended. Rather, the fundamental principle applies that the depreciation arrangements are set at the latest when the tariffs for the following year are calculated.

358 In normal circumstances, the depreciation methods in the network operators' tariff calculations would naturally correspond to a previous application or decision relating to the capex markup or a notification for the transformation element or another procedural measure by the competent regulatory authority. The binding effect and the substantive ban on retrospective changes therefore apply irrespective of the procedural design of the depreciation arrangements.

17. Procedural provisions (operative part 13)

359 Operative part 13 provides an overview of the procedural provisions for the purpose of clarification. It states that the regulations in operative part 5, in the third and fourth sentences of operative part 7, in the tenth and eleventh sentences of operative part 8 and in operative part 9 constitute procedural provisions and, in accordance with section 54(3) seventh sentence EnWG, do not affect the administrative proceedings of the federal state regulatory

authorities. They apply solely to network operators that fall under the responsibility of the Bundesnetzagentur in accordance with section 54(1) and (2) EnWG.

360 The federal state regulatory authorities are free to create identical, comparable or deviating procedural regulations or to refer to the procedural regulations set out here. Irrespective of the specific framework of procedural regulations in individual cases, nationally applicable, substantively uniform depreciation arrangements can be laid down within the current incentive regulation system.

18. Other issues

18.1. Construction cost and network connection cost contributions

361 The Ruling Chamber decided not to create a regulation on construction cost and network connection contributions for 2025 to 2027 that may diverge from section 9(2) GasNEV and section 10a(6) ARegV. In principle, there may be a need for regulation here as the period of 20 years could be made more flexible in light of the transformation of the gas networks. However, it is intended to introduce regulations on the set of issues relating to construction cost and network connection cost contributions when the whole framework of the provisions under the GasNEV and ARegV are reworked in determinations issued under sections 21 and 21a EnWG with effect from 2028. In this context, it will be necessary to take account of correlations with the basic calculation of imputed capital costs. In addition, compared with other fixed assets with considerably longer useful lives of up to 55 years and more as listed in Annex 1 GasNEV, the problem in 2025 to 2027 relating to construction cost and network connection cost contributions is not so acute as to warrant a regulation for the transitional period. This may avoid the need for several changes in imputed depreciation within a few years.

18.2. Biogas connections

362 As regards the calculation of the biogas charge, it is confirmed that it is essentially possible to apply the more flexible depreciation arrangements for the distribution of biogas costs as well. In accordance with the principles discussed, they should only be applied if the fixed assets required for the injection of biogas may also be affected by future decommissioning at relevant times. The questionnaire for reporting biogas costs as at 31 August 2024 was based on the depreciation arrangements under the KANU 1.0 determination and did not cover more flexible depreciation arrangements since these proceedings were still ongoing. The Ruling Chamber does not consider this to be a problem because the accelerated decommissioning of biogas facilities is more likely to be an exception (in fact, longer operation of the parts of the network in line with the decarbonisation targets is being argued for specifically because the biogas

facilities already exist). Given the inclusion of these negligible additional costs or costs brought forward in the nationally applicable biogas charge, a corresponding comparison between projected and actual figures is possible by way of exception if the projected costs reported as of 31 August 2024 need to be corrected.

18.3. Trade balance and tax balance

363 The Ruling Chamber is aware that the more flexible imputed depreciation arrangements will have indirect effects on the network operators' trade and tax balance, although shorter useful lives under commercial law may well be possible, for example when the (accelerated) end of use of an economic asset is foreseeable. In this regard, the Ruling Chamber's considerations correspond to the responses to the draft determination because, in the case of both imputed depreciation and commercial-law depreciation, it is a matter of justified changes to the useful lives. Changes to a municipal heat plan, which are provided for in the Heat Planning Act in the form of updates to the plans, may also constitute a justified case requiring an adjustment to the depreciation arrangements.

364 The Bundesnetzagentur will actively support the required expert dialogue. However, it is not possible to regulate this aspect definitively with the means of a determination under the EnWG on the calculation of imputed depreciation. Nevertheless, the Ruling Chamber took account of the comments received when determining the depreciation arrangements, for instance the declining balance depreciation rate, which can be chosen from a range. The question of how profits are distributed or reinvested is, however, another aspect that could not be regulated in a determination by the Ruling Chamber.

18.4. Evaluation of the regulations, regulatory framework from 2028 and effects on efficiency benchmarking and equity return

365 As discussed, the KANU 2.0 determination will be succeeded by other regulations anyway when the whole framework of provisions under the GasNEV and ARegV is reworked in one or more determinations issued in accordance with sections 21 and 21a EnWG. An evaluation will therefore take place before long anyway. This evaluation will need to include the effects of the more flexible depreciation arrangements on, for example, the efficiency benchmarking for the fifth regulatory period.

366 As regards the return on equity, it is in any case outside the Ruling Chamber's area of responsibility to determine any compensation from taxes. Furthermore, such a solution would create an inappropriate incentive to apply useful lives that were too long and therefore not to depreciate the networks in time. Moreover, the financial resources released through

depreciation are available for reinvestment, for which a corresponding risk-adjusted return can be achieved.

III. Costs (section 91 EnWG)

367 Regarding costs, a separate notice will be issued as provided for by section 91 EnWG.

IV. Public notification (section 73(1a) first sentence EnWG)

368 Since the determination is addressed to all operators of gas distribution systems as defined in section 3 para 8 EnWG and operators of gas transmission systems as defined in section 3 para 5 EnWG, the Ruling Chamber, having exercised the discretion conferred upon it by section 73(1a) first sentence EnWG, is giving public notification of the determination in place of individual service. Public notification is brought about by publication in the Bundesnetzagentur's Official Gazette of the following: the operative part of the determination, the information on legal remedies, and a brief statement that the decision in full has been published on the Bundesnetzagentur's website (section 73(1a) second sentence EnWG). In accordance with section 73(1a) third sentence EnWG the determination is considered to have been served on the day on which two weeks have elapsed since the date of public notification in the Bundesnetzagentur's Official Gazette.

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).

Bonn, 25 September 2024

Chair	Vice Chair	Vice Chair
Klaus Müller	Barbie Kornelia Haller	Dr Daniela Brönstrup
Vice Chair	Vice Chair	Vice Chair
Dr Christian Schütte	Anne Christine Zeidler	Dr Annegret Groebel