



Consultation document on future product "network reserve"

Basis for notifying the prolongation and changes to the Network Reserve to the European Commission in accordance with Art 108 para. 3 Treaty on the Functioning of the European Union

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Introduction

In 2020, the network reserve was incorporated into Austrian law in sections 23a to 23d of the Electricity Industry Organization Act¹ (*Elektrizitätswirtschaftsorganisationsgesetz* – “**EIWOG 2010**“)² as one of several instruments necessary to ensure security of supply and grid stability. The current approval under state aid law has been granted until 31 December 2025. However, there is a need for electricity generation facilities that are securely available for redispatch or consumption that can be reliably reduced beyond the year 2030. To achieve the necessary extension, a renewed approval under state aid law is required from the European Commission, in accordance with the criteria outlined in the Guidelines on State Aid for climate, environmental protection and energy („**CEEAG**“)³ published by the European Commission,

Part of the requirements for obtaining approval under state aid law is to carry out a public consultation.⁴ Over a period of six weeks, the following aspects are to be consulted:

- (i) eligibility;
 - See Sub-Sections 1.1 “Overview of the network reserve in its current form”
 - See proposed adjustments to the network reserve under Sub-Sections 0; 2.3; 2.7 and 2.9.
- (ii) proposed use and scope of competitive bidding processes and any proposed exceptions;
 - See Sub-Section 1.1 “Overview of the network reserve in its current form”
 - See proposed adjustments to the network reserve under Sub-Sections 2.3; 2.4; 2.5 and 2.6.
- (iii) main parameters for the aid allocation process including for enabling competition between different types of beneficiary;
 - See Sub-Section 1.1 “Overview of the network reserve in its current form”
 - See proposed adjustments to the network reserve under Sub-Sections 0; 2.2; 2.3; 2.5 and 2.8.
- (iv) the methodology for allocating the costs of the measure to consumers;
 - See Sub-Section 1.2 “Methodology for allocating the costs of the network reserve to consumers”
 - No proposed adjustments
- (v) if a competitive bidding process is not used, the assumptions and data informing the quantification used to demonstrate the proportionality of the aid, including costs, revenues, operating assumptions and lifetime, and WACC; and
 - See Sub-Section 1.1 “Overview of the network reserve in its current form”

¹ Elektrizitätswirtschafts- und -organisationsgesetz 2010 – EIWOG 2010, BGBl I Nr 110/2010 idF BGBl I Nr 145/2023. A non-binding English translation of the EIWOG can be found here: <https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2010_1_110/ERV_2010_1_110.pdf>

² The draft for a new version of the EIWOG 2010, the Electricity Industry Act (*Elektrizitätswirtschaftsgesetz* - „**EIWG**“) is currently undergoing a public consultation. The network reserve has been incorporated in this draft in sections 124 following EIWG. The draft for the EIWG can be found here: <https://www.parlament.gv.at/gegenstand/XXVII/ME/310>

³ *European Commission*, Guidelines on State aid for climate, environmental protection and energy, ABI C 80/1 <[https://eur-lex.europa.eu/legal-content/de/TXT/PDF/?uri=CELEX:52022XC0218\(03\)](https://eur-lex.europa.eu/legal-content/de/TXT/PDF/?uri=CELEX:52022XC0218(03))> (Accessed on 13 March 2024).

⁴ point 347 following CEEAG.

- See proposed adjustment to the network reserve under Sub-Section 2.4.
- (vi) where new investments in natural gas-based generation may be supported, proposed safeguards to ensure consistency with the Union's climate targets

The network reserve in its current form is tendered on a technology neutral way and as it has been the case under the current mechanism, no incentives will be provided for new investments in gas-fired generation units. This is due to the fact that – as a reinforcement of the regulations currently in force – it is proposed to oblige plants of >1 MW or more to submit a binding decommissioning notification. The notification of such a binding decommissioning notification forms a requirement for participating in the network reserve. Furthermore, section 23b para. 5 to 8 EIWOG 2010 / section 125 para. 5 to 8 EIWG draft define pricing boundaries and transparency obligations, under which above-average bids are basically excluded from the awarding process and only awardable under the close scrutiny of the NRA. Operators of generation facilities, who have not been selected must decommission/mothball their installations in accordance with their decommissioning notification.

The structure of this consultation document follows the outline provided by the CEEAG.

In addition to the mere extension of the state aid approval, the re-notification to the European Commission also presents an opportunity to implement modifications based on experiences and insights gained from the execution of tenders for the network reserve in recent years in the form of improvements to the network reserve mechanism. This was thoroughly analysed in the 2nd report on the situation in the Austrian electricity market regarding the provision of network reserve services pursuant to section 23b para. 10 EIWOG 2010⁵. In particular, a broader participation of various types of facilities, both domestic and foreign, is intended to enhance the liquidity of the network reserve through further improvements. With this document, APG as control area operator (“**CAO**”) (*Regelzonenführer*), on behalf of the Federal Ministry for Climate (“**BMK**”) and in close collaboration with the Austrian Regulatory Authority E-Control, aims to consult on the following adjustments to the product design of "Network Reserve" in accordance with the requirements set forth in point 348 CEEAG.

After the end of the consultation period, an evaluation of the consultation (“**report**”) will be published in accordance with point 350 CEEAG, in which the contributions received will be summarized and acknowledged. Any information contained in the comments received which has been highlighted as confidential will be blacked out in the report. In your comments, please clearly highlight any confidential information. Furthermore, please indicate whether you agree with being mentioned by name in the report. The participants in the consultation acknowledge that information highlighted as confidential may be shared by APG with BMK, the European Commission and E-Control for the purpose of the notification to state aid approval for the prolongation of the network reserve, while ensuring its confidentiality vis-a-vis third-parties. The report will be published on <https://markt.apg.at/netz/netzreserve/konsultation-netzreserve>.

Comments must be submitted per E-Mail in the form of a PDF to “netzreserve@apg.at”.

The deadline for submitting comments is from 26.04.2024 to 07.06.2024.

⁵ <<https://www.e-control.at/documents/1785851/0/Netzreservebericht+2023.pdf/cf96deb0-987c-c7ea-ea4f-781d6964ef67?t=1706701926756>> (Accessed on 12 March 2024).

1. Consultation Subject

Proposed amendments in order to improve the network reserve mechanism are described below.

Additionally, we invite to comment and bring statements not only on the proposed changes outlined in this document but also on the existing network reserve mechanism in general, which has been implemented by law in sections 23a-23d and 52 EIWOG 2010.⁶

In the following, an overview of the network reserve in its current form and of its financing mechanism will be provided.

1.1. Overview of the network reserve in its current form:

The current network reserve mechanism constitutes a mechanism for covering the need for redispatch capacity by means of an availability obligation. Under this availability obligation, participants in the network reserve must keep their contracted capacities (demand or generation) – apart from narrow exemptions – exclusively available for redispatch. Market participation is not allowed while being contracted in the network reserve.

The mechanism is designed in such a way that the need for the network reserve is determined by the CAO on an annual basis, through a detailed system analysis ("Systemanalyse"). The method and input data for conducting the system analysis are determined in coordination with the NRA (section 23a para 3 EIWOG 2010). The yearly system analysis is subject to continuous improvement.

The CAO procures the network reserve in a market-based, non-discriminatory and transparent bidding process. The following types of service providers may currently participate in the network reserve procedure: generators,⁷ consumers, aggregators and foreign generators⁸ with a minimum capacity of 1 MW and a minimum activation time of 6 hours.⁹ Participation of generators is generally subject to temporary, temporary seasonal or permanent decommissioning notification. Furthermore, participants in the network reserve may not emit more than 550g CO₂/kWh of electricity and may not produce radioactive waste.¹⁰ The CAO tenders blocks of 6 months, 12 months and 24 months.

The tender process is structured in two stages: (i) Call for Interest and (ii) Offer Phase. The Call for Interest is published until end of February of each year and lists the technical requirements for participating in the network reserve, for which period there is demand for network reserve, maximum reserve capacity (MW) and which products will be procured.¹¹ Any service provider, that is interested in participating in the network reserve must express their interest within four weeks.

After the Call for Interest is closed, the CAO verifies whether the interested parties comply with all necessary criteria. All compliant entities are invited to the offer phase and may submit their offers within four weeks.¹² The CAO selects the offers fulfilling the demand at the lowest cost. The selection

⁶ This applies to the consultation aspect "*the methodology for allocating the costs of the measure to consumers*" in accordance with point 348 (a)(iv) CEEAG. The costs are currently allocated by APG charging the consumers the grid usage fee prescribed in accordance with section 52 EIWOG 2010. A detailed description of the financing mechanism can be found in point 83 following of the European Commission's approval decision on the 2021 network reserve (SA.52263): <https://ec.europa.eu/competition/state_aid/cases1/202150/SA_52263_20E5807D-0000-C89B-B24B-584BCDD907C3_219_1.pdf> (Accessed on 04 March 2024).

⁷ Generators with a maximum capacity of more than 20 MW must submit a binding decommissioning notification

⁸ In so far, as the country in which they are located is galvanically connected to the Austrian Control Area.

⁹ section 23b para 1 EIWOG 2010.

¹⁰ section 23b para 4 EIWOG 2010.

¹¹ section 23b para 2 EIWOG 2010.

¹² section 23b para 3 EIWOG 2010.

of offers must be approved by E-Control. Following approval by E-Control, the CAO concludes network reserve contracts with the successful bidders. The CAO may conclude seasonal (summer- and winter), one-year and two-year contracts. The delivery period for summer seasonal contracts is 1st May to 30th September with a tolerance month at the beginning and the end, and for winter seasonal contracts from 1st October to 31st March.¹³ The contracting period for capacity reservation for a one-year and two-year contract runs from the 1st October of the same year. For the duration of the network reserve, market participation is prohibited and the participants must keep their capacity exclusively available for redispatch purposes.¹⁴ Participants who are not selected in the tender must decommission their installations if they handed in a decommissioning notification in accordance with section 23a para 1 EIWOG 2010.

If demand cannot be satisfied (or there are less than 3 bids in the tendering) by means of the market-based bidding process, sections 23b para 8 and 23c EIWOG 2010 foresees the possibility for E-Control to oblige installations, which submitted a decommissioning notification in accordance with section 23a para 1 EIWOG 2010 to keep their installations available for the purpose of redispatch.

While participating in the network reserve in accordance with sections 23b Abs 7 and 8, 23c EIWOG 2010, it is possible to exit the network reserve and return to the market under narrow exemptions in accordance with section 23d EIWOG 2010. It must be guaranteed that the installation stays available for redispatch as would have been the case under the network reserve and – besides costs accrued while participating in the network reserve – all remuneration received must be paid back to the CAO. Furthermore, installations which have not been selected for the network reserve to abstain from decommissioning their installations in accordance with the decommissioning notification if the reasons and circumstances originally decisive for the decommissioning have changed significantly.

1.2. Methodology for allocating the costs of the network reserve to consumers

The network reserve is financed via the network utilisation charge (*Netznutzungsentgelt*) in accordance with § 52 EIWOG. The network utilisation charge must be paid by all consumers (*Entnehmer*). The costs for network utilisation, including those for the network reserve, are cascaded to the downstream network levels based on the Electricity System Charges Ordinance¹⁵ done in a process called "cost cascading".

Due to cost cascading, consumers are proportionally assigned the costs of the grid level to which they are connected, as well as the proportionate costs of all upstream grid levels. This is accomplished using the so called gross (*Bruttomethode*) and net method (*Nettomethode*).

Gross Method: This method allocates costs based on the amount of energy withdrawn from the affected grid levels and all levels below, considering all directly and indirectly connected consumers. The result is a gross tariff applied to customers connected to the transmission network in each control area.

Net Method: This method allocates costs in relation to the amount of energy withdrawn from the concerned grid level to the amount of energy supplied to the level directly below. The results are net tariffs for each grid level and network areas, with higher costs for areas with a higher share of supply from the transmission network.

For costs that are cascaded according to the net method, consumers in (distribution) network areas with a higher share of supply from the transmission network contribute more to the financing of transmission costs than consumers in network areas with a high share of their own supply. Therefore,

¹³ section 7 para 61a EIWOG 2010.

¹⁴ section 23b para 7 EIWOG 2010.

¹⁵ Electricity System Charges Ordinance (Systemnutzungsentgelte-Verordnung 2018 – SNE-V), Federal Gazette II Nr 398/2017 as amended.



consumers in these regions have an indirect incentive to ensure grid-optimized consumption. This is why costs for the network reserve are only considered in the allocation following the net method.

The electricity system charges are published in an ordinance in accordance with section 52 para. 3 EIWOG 2010. Before the publication of the ordinance, a public consultation is underdone.

The financing mechanism has already been assessed previously by the European Commission in points 83 following of the approval decision of the network reserve in 2021.¹⁶

¹⁶ *European Commission, SA.52263 – Austria Network reserve, C(2021) 4540 final;*
<https://ec.europa.eu/competition/state_aid/cases1/202150/SA_52263_20E5807D-0000-C89B-B24B-584BCDD907C3_219_1.pdf>

2. Proposed Amendments

The following amendments are subject to public consultation in accordance with point 348 CEEAG on the appropriateness and effects on competition of the measures to be notified.

With reference to §1.1., the yearly system analysis is subject to continuous improvement.

2.1. Improved participation criteria to enable wider participation.¹⁷

Content: Reduction of the minimum activation duration

The participation criteria for the network reserve are designed in such a way that the participating plants must be available for congestion management throughout the entire product duration, in compliance with various technical criteria. These technical criteria must be met by either the single asset or a group of pooled assets providing the network reserve, whereby the pooling concept has to ensure that the technical criteria are fulfilled. Aggregation of resources is possible and activating them sequentially is sufficient as long as the offered amount of capacity can be provided at any given time when the redispatch is requested.

A broad reduction in the requirements for maintaining availability would, be associated with a reduction in security of supply in Austria and Europe. However, for the rarely occurring load peaks in congestion management, which are of short duration, a relaxation of the participation criteria for the product periods should be considered to an appropriate extent to incentivise participation and, hence, to access a larger group of bidders in order to strengthen competition and reduce the costs of the network reserve.

It is therefore proposed to segment the network reserve into two network reserve qualities and to allow participation with reduced criteria for a fixed share of the network reserve of up to 10 %. In the present adjustment, it is planned to reduce the minimum activation duration of network reserve for these up to 10 % from the previous 6 hours to 3 hours.

The proportion of contracts with a reduced minimum activation duration will be determined based on the historic duration of peak congestions and APG's operational experience in the activation of network reserve assets. Upon initial implementation, it is proposed to set a share of up to 10 % in order to gain the required operational experience. Subsequently, this percentage is to be evaluated annually under regulatory oversight and adjusted if necessary.

After evaluating the experience gained from the tender process, the share can be increased based on the proposal from APG and following coordination with E-Control, ensuring grid stability and security of supply.

Technical requirements:

To enable this segmentation, the CAO (*Regelzonenführer*) must develop adapted technical suitability criteria that reflect the above-proposed segmentation. The procurement process on the TSO side must be adapted to enable the calculation of the most cost-effective selection under this new set of mathematical constraints (e.g. the selection mechanism must now select the most cost-efficient combination under the constraint that only 10% of selected bids may be from bids of slower technical criteria).

Regulatory Requirements:

¹⁷ Consultation aspects "Eligibility" and "main parameters for the aid allocation process including for enabling competition between different types of beneficiary" in accordance with point 348 (a)(i) and (iii) CEEAG.

Currently, the network reserve products are restricted in terms of duration and characteristics by the legal framework. The eligible products are defined in section 23b para. 2 EIWOG 2010, and deviation is not possible.

Similarly, the minimum activation times for consumers are legally set at 6 hours in section 23b para. 1 num. 2 EIWOG 2010. To introduce a facilitation in the form of reducing the minimum deployment time to 3 hours, an adjustment of the legal framework is required. The proposed changes described above to reduce the minimum activation duration for part of the demand are to be reflected in law.

2.2. Flexibilize the participation (suspension of participation)¹⁸

Content: Extension for a possibility of temporarily suspension of participation in the network reserve

Changing energy market conditions, such as fluctuating electricity and primary energy prices over time, can lead to situations where facilities, secured for availability by the network reserve, may participate in the electricity market for specific periods, finance themselves from market revenues, and consequently do not require payments from the network reserve. Allowing these facilities, or those that are unavailable for defined periods due to other reasons (e.g. overhauls), to suspend participation in the network reserve for defined periods, e.g. in order to participate in other markets, reduces the need for network reserve and the associated costs during these periods. There is only the possibility to suspend the participation once for the given monthly time period, a possibility to return to the network reserve **for the suspended time period** is not foreseen.

(e.g. A market participant is contracted for a seasonal summer product from 1st April to 30th September and has the right to suspend the participation in the network reserve for one month at a time of the product, so for example in August. During August the participant can be active on the market and will not be compensated from the network reserve. This does not affect the rest of the contracted time, this means during September the market participant is once again in the network reserve as per its initial contract.)

Consistently the suspension of participation in the network reserve also results in the suspension of payments under the network reserve. Hence, participants who suspend participation in the network reserve must solely finance themselves via energy wholesale markets for the duration of the suspension. *Vice-versa*, market participants do not receive any remuneration from energy wholesale markets while they are participating in the network reserve as participation in wholesale energy markets is prohibited for the duration of participation in the network reserve.¹⁹

Furthermore, the binding nature of decommissioning notifications means that facilities are currently bound by their decommissioning notification once submitted. Even in the event of a changed market situation, the current law provides for a return option – apart from the use of the statutory tolerance months for seasonal network reserve contracts – only after approval by the regulatory authority. The allowance of “correction” of decommissioning notifications is a legal requirement for implementing an option for participants to temporarily suspend their participation in the network reserve.

Therefore, it is proposed to introduce the option for network reserve participants to temporarily suspend their participation in the network reserve based on monthly time slots. There is no return possibility foreseen for the suspended monthly period.

A lead time of 8 weeks before the contracted month must be operationally observed. Following a monthly notification of the withdrawal of a facility from the network reserve, the payment obligation linked to the corresponding capacity provision is suspended for the

¹⁸ Consultation aspect "main parameters for the aid allocation process including for enabling competition between different types of beneficiary" pursuant to point 348(a)(iii) CEEAG.

¹⁹ section 23b para. 7 EIWOG 2010.

corresponding month from the side the participant. Obligations for congestion management (redispatch) remain unaffected and continue to apply in full.

Related to further flexibilization, it is also proposed to create an option to adjust the submitted decommissioning notification according to section 23a para. 1 EIWOG 2010. Participants are particularly invited to express their opinion on the deadline for submitting decommissioning notifications.

Technical requirements:

The level of grid and supply security shall neither be affected by the possibility to suspend participation in the network reserve on a monthly basis nor by the possibility to adjust decommissioning notifications. The corresponding adjustment can, therefore, only take the form of a suspension of participation in the network reserve or a withdrawal from the decommissioning notification. Spontaneous closure or spontaneous entry into the network reserve is not permitted. Obligations for congestion management (redispatch) remain unaffected and continue to apply in full.

In case network reserve providers decide to suspend their participation in the network reserve they must ensure that availability for congestion management remains the same as if it would be the case if participation in the network reserve would not have been suspended, unless the generation capacities are already being used through participation in the energy market.

The obligation to submit temporary, temporary seasonal and final decommissioning notifications for the period from 01 October of the following calendar year to the control area operator (*Regelzonenführer*) remains unchanged. These decommissioning notifications is the basis for the system analysis and the dimensioning of the demand for network reserve pursuant to section 23a para. 2 EIWOG 2010.

Regulatory Requirements:

Currently, according to section 23d EIWOG 2010, it is only allowed to make use of a one-time reduction of the network reserve contracts. At this point, consideration should be given to an adjustment that allows the control area operator (*Regelzonenführer*) to define a process enabling multiple suspensions of participation in the network reserve on a monthly basis.

2.3. Monthly products for the network reserve²⁰

As alternative or in addition to the proposed amendment as described in Sub-Section 2.2, It should be possible to contract network reserve capacity on a monthly basis.

First, such an adjustment considers the fact that the network reserve need is not constant. Second, shorter products are potentially more attractive for industrial facilities (generation or loads) as it is easier to combine the operational constraints with the requirements of the partial market of the network reserve. Third, monthly products can be used to cover maintenance periods of seasonal and yearly contracted units, without exceeding the network reserve demand in the rest of the season or year.

²⁰ Consultation aspects "eligibility", "proposed use and scope of competitive bidding processes and any proposed exceptions" and "main parameters for the aid allocation process including for enabling competition between different types of beneficiary" pursuant to point 348(a)(i), (ii) and (iii) CEEAG.



Such monthly products can be procured in the same way than the existing product under in the annual process and can only be offered by power generation plants if a decommissioning has been notified for the corresponding period.

Technical requirements:

An adaptation of the product granularity also requires certain adjustments to the procurement mechanism and process. This is due to the fact that an auction considering monthly blocks increases the combinatorial complexity of the underlying optimization problem (each asset increasing the complexity by 2^{12}) and must consider additional constraints to rule out infeasible combinations. The process must also consider which data is needed to determine when to select individual months instead of seasonal and yearly offers. It may, therefore, require a lead time of 1 or 2 procurement period(s) after the entry into force of the modified network reserve following approval by the European Commission in order to implement the monthly products, .

Regulatory requirements:

Implementation of this adaptation into the legal framework.

2.4. Possibility to switch to cost-based procurement²¹

Content: Option to switch to cost-based compensation

Based on the second report on the competition with regards to the network reserve²² the experience of the first three grid reserve tenders shows that the aim of creating a well-functioning market that is as open as possible to stimulate alternative supply potentially has not yet been sufficiently successful. Intensification for inclusion of demand response and of cross border redispatching resources is to be further fostered, in the extent possible. On the other hand procuring the network reserve in a non-efficient market with pivotal market participants bears a high risk to consumers over-paying for the network reserve. Thus, if the competition intensity does not comply with common competitiveness indicators there shall be a fallback mechanism to be assessed during each procurement period.

In cases where competitive procurement of the network reserve is not or not reasonably possible, a cost-based procurement procedure is to be carried out in case the liquidity is identified as not sufficient on the "network reserve" sub-market based on predefined criteria.

The standard procurement procedure remains the competitive bidding process.

If during the procurement process, there is substantial indications of an illiquid market a cost-based procurement shall be assessed. Criteria for the substantial indications of an illiquid market is that the capacity of the potential suppliers based on the decommissioning notifications is lower than X% of the network reserve need, or there is at least one pivotal supplier to cover the network reserve needed. The cost-based procurement would follow the following principles:

- 1) Reduce the need for network reserve by the amount of network reserve to be procured via the new flexibility product (see sub-section 2.5)
- 2) All generation plants with decommissioning notifications are obliged to disclose their expected expenses and costs with regards to provide the network reserve needed

²¹ Consultation aspects "*proposed use and scope of competitive bidding processes and any proposed exceptions*" and "*if no tendering is carried out: the assumptions and data on which the quantification demonstrating the appropriateness of the aid is based, including costs, revenues, operating assumptions and lifetime and weighted average cost of capital (WACC)*" in accordance with point 348(a)(ii) and (v) CEEAG.

²² <https://www.e-control.at/documents/1785851/0/Netzreservebericht+2023.pdf/cf96deb0-987c-c7ea-ea4f-781d6964ef67?t=1706701926756>



- 3) the regulatory authority shall check the plausibility of these costs and rank the installations according to the cost information provided and the efficiency of the plant to release typical congestions.
- 4) The CAO shall then cover the network reserve demand by concluding grid reserve contracts at the lowest overall cost under consideration of and the efficiency of the plant to release typical congestions.
- 5) Settlement of the decommissioning costs shall be made retrospectively on the basis of the costs actually incurred by fulfilling the NR contract with the CAO, whereby these may not be higher than the costs specified as relevant for the ranking.

The basis for the cost audit is section 23c EIWOG 2010, with some minor adjustments, in particular:

The operators shall be compensated annually for the economic disadvantages and costs associated with the provision of the grid reserve in comparison to the costs associated with decommissioning. The following items are to be compensated:

1. operational expenses and costs required for the provision of operational power plants, whereby those expenses and costs that would be incurred in the shutdown or decommissioning scenario are to be deducted. The following components with a fixed cost character are included in any case:
 - Material costs,
 - personnel costs and
 - maintenance costs that are directly related to the provision of services;
2. any operating expenses and costs that are necessary to restore operational readiness from the state of decommissioning or preservation of the power plant;
3. demonstrably necessary replacement or maintenance investments for the provision of the service for the product period in question and guaranteeing operational readiness for the period of the decommissioning ban. Any resulting capital costs (pro rata financing costs and pro rata depreciation) shall only be taken into account pro rata for the period of the decommissioning ban and shall bear interest at an appropriate rate;
4. any consumption of value due to the aging and wear and tear of the power plant during the period of the decommissioning ban, based on the verifiable book values as of December 31 of the previous year.

The following cost components are not eligible for recognition:

1. expenses and costs that are compensated under a contract pursuant to section 23 para. 2 num. 5 EIWOG 2010 or section 121 EIWG second sentence;
2. financing and capital costs;
3. any proceeds from interest gains that the operator would have lost from the sale of the power plant's operating assets in the event of permanent decommissioning
4. opportunity costs of any kind;
5. operating expenses and expenses relating to other periods as well as extraordinary expenses;
6. expenses and costs culpably caused by the power plant operator;
7. any changes in book value that are attributable to past compensation for the provision of services.

In addition to the relevant provisions currently in force according to sections 23b para. 8 and 23c para. 1 EIWOG 2010, an amendment of the legal provisions is therefore foreseen, allowing a switch to a cost-based procurement in case of evidence of an illiquid market (e.g. the flexible capacity of the potential suppliers based on the decommissioning notifications is lower than

X% of the network reserve need²³, or there is a pivotal supplier without which the network reserve requirement cannot be covered). The decision to switch should take place before the start of the procurement procedure and the call for expressions of interest.

In case of a cost-based procurement, the regulatory authority is defined as the organ validating the submitted costs.

Technical requirements:

From a technical point of view, a cost-based provision of the network reserve has to ensure that the required network reserve capacity necessary for the secure grid operation and the congestion management can be reserved on a secure way.

In the process of the procurement of the network reserve, a structured procedure must be defined that defines the switch from the market-based procurement to the cost-based procurement. The transition to a cost-based approach should occur at a time that allows the control area operator (*Regelzonenführer*) and interested parties to know which type of procurement procedure has been chosen when preparing the procurement documents and in the preparation of the submission of the bids. This aims to provide a transparent process in order to avoid delays during the procurement of the network reserve.

When switching to cost-based procurement, the validation of the submitted costs from the side of the participants in the network reserve procurement process is carried out by the Austrian Regulatory Authority E-Control. The modality of the cost notification should follow the principles specified in section 23c para. 2 and 3 EIWOG 2010.

The publication of the decision on the remuneration mode is subject to the requirements set forth in point 49(b) CEEAG.

Regulatory Requirements:

The legal framework must incorporate the corresponding adjustments for the implementation of the "option to switch to cost-based compensation."

2.5. Network reserve through a new flexibility product²⁴

Content: Flexibilization for part of the network reserve

The significant growth of renewable energies requires the increased use of flexibility services across various short-term market segments. The incorporation of such flexibility services is envisaged as a fundamental principle of the European electricity market reform. To address the growing need for flexibility, and while the network reserve in its current form is offered on a technology neutral way, a new flexibility product could be an easier entry into the partial market of network reserve thus further enabling flexibilization of the energy system and the participation of technologies such as battery storage systems, small scale generation and demand side response in the network reserve.

²³ Determined annually by the Austrian Regulatory Authority E-Control on the basis of the decommissioning notifications and under consideration of the largest power plant unit, which submitted a decommissioning notification.

²⁴ Consultation aspects "*proposed use and scope of competitive bidding processes and any proposed exceptions*" and "*main parameters for the aid allocation process including for enabling competition between different types of beneficiary*" pursuant to point 348(a)(ii) and (iii) CEEAG.

The current network reserve mechanism enables the flexibility need to be met through product blocks of 6 months, 12 months, and 24 months.

To incentivize the deeper integration of flexibility potential into the network reserve, it is foreseen to provide the possibility of delivering a part of the network reserve through a newly established product. **Therefore, it is proposed to establish a monthly tender for a flexibility capacity market ("network reserve flexibility product").**

Technical requirements:

The establishment of the digital infrastructure (e.g. flexibility platform in accordance with the draft of the *Elektrizitätswirtschaftsgesetz*) for the procurement and control of congestion management by flexible units is a basic prerequisite for a development in this direction. The aspect of capacity provision can only be successfully included after a successful proof of concept, testing and scaling of a market-based congestion management energy product (see also the consultation draft for the *Network Code for Demand Response*, determination of products).

The key features of the "network reserve flexibility product" are proposed as follows:

- Open to all types of resource without decommissioning notification – generation, demand response and storage
- Monthly market-based capacity tenders²⁵ for up to [XX] MW in the defined geographical area Y to be determined at a later stage
- Activation of the secured capacities in the day-ahead process for the following day
- Offer prices limited to [XX] €/MWh, to be determined at a later stage
- Energy offers with a duration of 1 hour

Upon the initial introduction of the network reserve flexibility product, a capacity tender for the network reserve flexibility product fixed at 40 MW for a duration of one year is proposed. This value has been determined such that the new product is sufficiently large to affect the loading of 220kV and 380kV lines, yet small enough that problems during the starting phase can be mitigated. This value will be evaluated and adjusted annually. After due consideration, ensuring that grid stability and security of supply can be guaranteed at all times, the share of the network reserve flexibility product can be increased based on APG's proposal, following coordination with the Austrian Regulatory Authority E-Control.

The price limit is set by the Austrian Regulatory Authority E-Control or by the control area operator (*Regelzonenführer*) APG in coordination with E-Control. The tender date is set by APG in coordination with E-Control.

When determining the capacity to be tendered on a monthly basis under the network reserve flexibility product, particular attention must be paid to the security of supply, especially regarding the prescribed amount of the tendered capacity. Since the envisaged product duration (e.g. monthly) is significantly reduced compared to the reservation period of the existing product (seasonal, annual, or six-month), the procurement is performed with a shorter lead-time and without decommissioning notifications and the new product has from today's perspective not yet proven to deliver a secure continuous provision, (there is no experience with liquidity and bidder behaviour) the capacity to be tendered through the flexibility product should initially be kept low. It can potentially be gradually increased after analysing liquidity and bidder behaviour.

Regulatory Requirements:

²⁵ If there is sufficient liquidity on short-term markets (flexibility markets), long-term capacity tenders could also be partially or fully removed due to the guaranteed availability of sufficient potential. This would have to be then considered in the system analysis.



Section 23b para. 2 EIWOG 2010 defines the current product length admissible for the network reserve. **Amending the law is, therefore, necessary in order to implement the "network reserve flexibility product"**.

Due to the shorter monthly product length resolution and increased involvement of new flexible units, an adapted tendering occurrence on a monthly rolling basis is required. The procurement of these products should run parallel to the existing procurement yearly process, with the capacity to be reserved deducted from the total network reserve need.

2.6. Removal of the 24-month product²⁶

Content: Removal of the 24-month product

According to current legal requirements, products with duration of (i) 6 months, (ii) 12 months and (iii) 24 months can be considered as products in the network reserve tender.²⁷

From operational point of view, the product length is an essential component for satisfying network reserve demand. German TSOs contract network reserves for a length up to 72 months. The 12- or 24-month products in Austria approved by the European Commission for the current network reserve regime are significantly shorter, providing less predictability for the TSO. At the same time they provide more opportunity for the deployment of (non-fossil) flexible resources, provided that incentives for their development and market penetration are put in place. Also, the need for network reserve is highly correlated to the decommissioning decision which are a prerequisite for any network reserve contract for generation units >1 MW.

The 24-month product for network reserve has been introduced in the current network reserve design since 2021 for potential longer-term secure reservation. However, this option has not been actively used in the last two procurement years.

You are invited to express your opinion in favour or against retaining the 24-month product.

Participants in the consultation are also invited to comment on **whether the introduction of alternative product lengths** in addition to the currently implemented 6-/12-/24-month products in the existing annual procurement process (e.g. one-month product) would facilitate participation in the network reserve.

Regulatory requirements:

The corresponding adjustments to an abolition of the 24-month product and the introduction of additional product durations would have to be implemented within the legal framework.

2.7. Overly long maintenance works and/or other unavailabilities as obstacle to participation in the tender process²⁸

Content:

Past tendering processes have shown, that the current legislation can lead to fringe cases, where an optimal solution to the network reserve contracting was in question due to technical unavailability.

²⁶ Consultation aspect "*proposed use and scope of competitive bidding processes and any proposed exceptions*" pursuant to point 348(a)(ii) CEEAG.

²⁷ section 23b Abs 2 EIWOG 2010.

²⁸ Consultation aspect „*eligibility*“ in accordance with Point 348(a)(i) CEEAG.

In order to maximize participation in the tender process for the procurement of the network reserve, it is clarified that the duration of maintenance works and other non-availabilities does not exclude participation in the tender if the duration of the maintenance work and/or other non-availability does not exceed 50% of the respective maximum product duration.

In the case of units with a total availability below 50% of the desired product duration, the provider could potentially choose to make an offer for the monthly products in accordance with Sub-Section 2.3 for the Y-1 procurement or Sub-Section 2.5 for the flexibility procurement, if in this case the minimum availability criterion is fulfilled. Offers with low availability during the product duration can lead to increased costs as additional capacities might have to be procured to compensate for the duration of unavailability. Nonetheless, if it is the most cost-effective way of procuring the network reserve demand units with low availability can be procured.

If units with insufficient availability are disqualified, they can still be procured via a decommissioning ban by E-Control pursuant to section 23c para. 1 EIWOG 2010, if they are deemed necessary to cover the network reserve demand.

Regulatory Requirement:

Implementation of this clarification into the legal framework.

2.8. Publication of the need for network reserve²⁹

Content:

The timing of publication of the network reserve need may have a substantial influence on bidder behaviour and the bidding structure.

In order to prevent strategic bidding, the network reserve demand should be published once the tender process has been completed.

Regulatory requirements:

Inclusion of these changes in the legal framework.

2.9. Threshold for decommissioning notifications reduced to >1 MW³⁰

Content:

Increased installations of RES and a further flexibilization of the energy system require that the network reserve also addresses units of smaller installed capacity. In order to meet the future demand for network reserve and to foster a competitive environment for the procurement of network reserve the products shall be adapted to foster additional market participation. Those new market participants could be e.g. industry (demand response), storage or small-scale generation units. The current mechanism for generation units requires the notification of decommissioning decisions for units >20 MW in order to participate the network reserve tendering.

As it is expected that the number of smaller generation units may be rising this threshold of >20 MW is proposed be set to a new threshold of >1 MW

²⁹ Consultation aspect "main parameters for the aid allocation process including for enabling competition between different types of beneficiary" pursuant to point 348(a)(iii) CEEAG.

³⁰ Consultation aspects "Eligibility" and "main parameters for the aid allocation process including for enabling competition between different types of beneficiary" in accordance with point 348 (a)(i) and (iii) CEEAG.



Regulatory: requirements

Inclusion of these changes in the legal framework.