Draft Bill

of the Federal Government

Ordinance recasting the thirty-seventh Ordinance implementing the Federal Pollution Control Act

(Ordinance on the offsetting of electricity-based fuels and co-processed biogenic oils against the greenhouse gas reduction quota – 37th BImSchV)

A. Problem and objective

On 10 July 2023, the delegated acts entered into force that were adopted on the basis of the seventh subparagraph of Article 27(3) and Article 28(5) in conjunction with Article 25(2) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82); L 311, 25.9.2020, p. 11; L 041, 22.2.2022, p. 37), as supplemented by Delegated Regulation (EU) 2022/759 (OJ L 139, 18.5.2022, p. 1) (Renewable Energy Directive – RED II). As a result there are, among other things, new European requirements for the production of renewable liquid and gaseous transport fuels of non-biological origin and for the methodology for assessing greenhouse gas emission reductions from these fuels. In particular, requirements have been laid down concerning the electricity obtained and used for the production of renewable liquid and gaseous transport fuels of non-biological origin, and concerning the methodology for assessing the greenhouse gas emission reductions from these fuels compared to fossil fuels.

National law is therefore to be adapted so as to transpose the provisions contained in the two delegated acts mentioned above. National law also needs to be amended so as to introduce a scheme by means of which economic operators can demonstrate compliance with the requirements for the production and supply of renewable liquid and gaseous fuels of non-biological origin. In addition, national law is also to be amended so that it shall also be possible in the future to offset biogenic hydrogen against the greenhouse gas reduction quota, in addition to renewable liquid or gaseous fuels of non-biological origin and biogenic oils which have been hydrogenated in a refinery process together with petroleum-based oils.

B. Solution

The requirements laid down in the delegated acts must be integrated by readopting the thirty-seventh Ordinance implementing the Federal Pollution Control Act. In doing so, the European requirements are being transposed 1:1. In addition, the recast Ordinance introduces a scheme for demonstrating compliance with requirements for the production and supply of renewable liquid or gaseous fuels of non-biological origin. This takes the form of certification for producers and suppliers of renewable liquid or gaseous fuels of non-biological origin and is modelled on the existing scheme under the Biofuel Sustainability Ordinance of 2 December 2021 (Federal Law Gazette (BGBl.) I, p. 5126, 5143). In accordance with the requirements of § 37b(8) third sentence of the Federal Pollution Control Act, the recast thirty-seventh Ordinance implementing the Federal Pollution Control Act includes biogenic hydrogen as a fuel that can be offset against the greenhouse gas reduction quota.

C. Alternatives

None.

D. Budgetary expenditure exclusive of compliance costs

No budgetary expenditure exclusive of compliance costs is expected at federal level, State level or for the municipalities.

E. Compliance costs

E.1 Compliance costs for individuals

There are no compliance costs for individuals.

E.2 Compliance costs for businesses

For businesses, annual compliance costs will fall by EUR 1.1 billion. Overall, there are one-off compliance costs in the category ‘One-off obligation to provide information’ of around EUR 98 000.

Of which administrative costs arising from obligations to provide information

Of the annual compliance costs, EUR 788 000 are administrative costs arising from obligations to provide information.

E.3 Compliance costs for the authorities

For the federal authorities, annual compliance costs will rise by around EUR 1.1 million. One-off compliance costs amount to around EUR 1.8 million. There is no change to compliance costs for the Land authorities.

F. Other costs

Costs arising from greenhouse gas emissions savings in fuels result from the requirements of the Federal Pollution Control Act.

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(Ordinance on the offsetting of electricity-based fuels and co-processed biogenic oils against the greenhouse gas reduction quota – 37th BImSchV)

Dated …

By virtue of § 37d(2) first sentence subparagraph 1 points a and c, subparagraph 13, subparagraph 15 point d and subparagraph 19 in conjunction with § 37d(2) second to fourth sentences of the Federal Pollution Control Act, of which § 37d(2) first sentence subparagraph 1 point a and § 37d(2) first sentence subparagraph 15 point d were reworded by Article 1 subparagraph 7 point b of the Act of 20 November 2014 (BGBl. I p. 1740), § 37d(2) first sentence subparagraph 19 was inserted by Article 1 subparagraph 5 point a double point kk of the Act of 24 September 2021 (BGBl. I p. 4458) and § 37d(2) second sentence was inserted by Article 3 subparagraph 2 point b of the Act of 18 July 2017 (BGBl. I p. 2771) and § 37d(2) first sentence subparagraph 1 point c was last amended by Article 1 subparagraph 5 point a double point aa triple point aaa, § 37d(2) first sentence subparagraph 13 was last amended by Article 1 subparagraph 5 point a double point ii and § 37d(2) fourth sentence was last amended by Article 1 subparagraph 1 point b of the Act of 24 September 2021 (BGBl. I p. 4458), the Federal Government, having consulted the parties concerned and with the assent of the German Bundestag, issues the following Ordinance:

Table of contents

1)This Ordinance is intended to transpose Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin (OJ L 157, 20.6.2023, p. 11) and to transpose Commission Delegated Regulation (EU) 2023/1185 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid or gaseous transport fuels of non-biological origin and from recycled carbon fuels (OJ L 157, 20.6.2023, p. 20).

2)Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

Part 6

Data processing, reporting obligations, official procedure

Part 1

General part

§ 1

Scope

This Ordinance lays down:

1. the offsetting of electricity-based fuels, co-processed biogenic oils and biogenic hydrogen against fulfilment of the statutory obligation to reduce greenhouse gas emissions pursuant to § 37a(1) first and second sentences in conjunction with paragraph (4) of the Federal Pollution Control Act; and

2. the offsetting of jet fuel from renewable energy sources of non-biological origin against fulfilment of the statutory obligation pursuant to § 37a(2) in conjunction with paragraph (4a) of the Federal Pollution Control Act.

§ 2

Definition of Terms

(1) Renewable energy sources of non-biological origin, for the purposes of this Ordinance, are renewable energy sources as defined in § 3 subparagraph 21 points a to d of the Renewable Energy Act of 21 July 2014 (BGBl. I, p. 1066), as last amended by Article 4 of the Act of 26 July 2023 (BGBl. 2023 I No 202).

(2) Electricity-based fuels, for the purposes of this Ordinance, are renewable fuels of non-biological origin as referred to in paragraph (3).

(3) Renewable fuels of non-biological origin, for the purposes of this Ordinance, are electricity-based liquid or gaseous fuels, the energy content of which comes from renewable energy sources of non-biological origin.

(4) Grid, for the purposes of this Ordinance, is the grid referred to in § 3 subparagraph 35 of the Renewable Energy Act.

(5) Biofuel quota body, for the purposes of this Ordinance, is the competent body pursuant to § 8 of the Ordinance implementing the biofuel quota provisions of 29 January 2007 (BGBl. I p. 60), as last amended by Article 2 of the Ordinance of 12 November 2021 (BGBl. I p. 4932), in the version in force.

(6) Repowering, for the purposes of this Ordinance, is the renewing of an installation for generating electricity from renewable energy sources, including the full or partial replacement of installations or operation systems and equipment in order to replace capacity or increase the efficiency or capacity of the installation which incurs more than 30 per cent of the investment costs that would be necessary for the construction of a similar new installation.

(7) Becoming operational, for the purposes of this Ordinance means

1. becoming operational as defined in § 3(30) of the Renewable Energy Act,

2. the start of electricity production after repowering, or

3. the start of production of renewable fuels of non-biological origin.

An installation does not become operational within the meaning of the first sentence if the production of electricity or renewable fuels of non-biological origin has been started for test purposes.

(8) Bidding zone, for the purposes of this Ordinance, is, for EU Member States, the zone referred to in Article 2(65) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54), as amended by Regulation (EU) 2022/869 (OJ L 152, 3.6.2022, p. 45), or an equivalent concept for third countries. This may be an area where similar market rules exist, the physical characteristics of the electricity grid are the same, in particular the interconnection level, or, in the absence of those conditions, the country itself.

(9) Persons required to provide evidence, for the purposes of this Ordinance, are

1. persons obligated under § 37a(1) first sentence or § 37a(2) first sentence of the Federal Pollution Control Act, or

2. third parties pursuant to § 37a(6) first sentence of the Federal Pollution Control Act.

(10) Interfaces, for the purposes of this Ordinance, are operations, including permanent operations, that produce renewable fuels of non-biological origin.

(11) Upstream interfaces, for the purposes of this Ordinance, are operations, including permanent operations, that produce renewable fuels of non-biological origin without the necessary quality level for use in transport being reached.

(12) Final interfaces, for the purposes of this Ordinance, are operations, including permanent operations, that produce renewable fuels of non-biological origin at the necessary quality level for use in transport.

(13) Recognised certification schemes, for the purposes of this Ordinance, are certification schemes which:

1. are recognised by the European Commission on the basis of Article 30(4) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82); L 311, 25.9.2020, p. 11; L 041, 22.2.2022, p. 37), as amended by Delegated Regulation (EU) 2022/759 (OJ L 139, 18.5.2022, p. 1); and

2. are published as such on the European Commission's transparency platform.

(14) Certificates, for the purposes of this Ordinance, are certificates of conformity confirming that interfaces or suppliers, including all operations engaged by them directly or indirectly in the production, storage or transport and distribution of renewable fuels of non-biological origin, comply with the requirements laid down in this Ordinance.

(15) Certification bodies, for the purposes of this Ordinance, are independent natural or legal persons who, under a recognised certification scheme, issue

1. certificates for interfaces and suppliers if they meet the requirements of this Ordinance, and

2. check that interfaces and suppliers are complying with the requirements of this Ordinance.

(16) Redispatching, for the purposes of this Ordinance, means redispatching as defined in Article 2 subparagraph 26 of Regulation (EU) 2019/943, namely a measure, including curtailment, that is activated by one or more transmission system operators or distribution system operators by altering the generation pattern, load pattern or both, in order to change the physical flows in the electricity system and reduce physical congestion or otherwise ensure system security.

(17) Imbalance settlement period, for the purposes of this Ordinance, is an imbalance settlement period as defined in Article 2 subparagraph 15 of Regulation (EU) 2019/943 within the European Union or an equivalent concept for third countries.

(18) Gross electricity generation from all energy sources, for the purposes of this Ordinance, is the gross electricity generation from all energy sources under Annex B to Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ L 304, 14.11.2008, p. 1); L 041, 12.2.2009, p. 34), as last amended by Regulation (EU) 2022/132 of 28 January 2022 (OJ L 20, 31.01.2022, p.208), with the exception of electricity generation from pumped storage power plants, plus electricity imports minus electricity exports.

Part 2

Requirements for renewable fuels of non-biological origin

§ 3

Ability to offset renewable fuels of non-biological origin

(1) Renewable fuels of non-biological origin shall be offset against fulfilment of the obligations under § 37a(1) first and second sentences in conjunction with § 37a(4) of the Federal Pollution Control Act or under § 37a(2) in conjunction with § 37a(4a) of the Federal Pollution Control Act, if

1. the electricity used to produce the renewable fuels of non-biological origin

   a) is obtained from direct connection to electricity generation installations in accordance with § 4, or

   b) is taken from the grid in accordance with § 5 to § 9, and

2. t renewable fuel of non-biological meets the minimum requirements for greenhouse gas emissions reductions in accordance with § 10, and

3. the renewable fuel of non-biological origin was placed on the market for use as a fulfilment option pursuant to § 37a(5) first sentence subparagraphs 6 to 8 of the Federal Pollution Control Act.

§ 37a(6) and (7) of the Federal Pollution Control Act shall apply, mutatis mutandis.

(2) With respect to the placing on the market as referred to in paragraph (1) first sentence subparagraph 3, § 37a(1) second sentence and § 37a(2) second sentence of the Federal Pollution Control Act shall apply, mutatis mutandis. Renewable fuels of non-biological origin are considered to have been placed on the market within the meaning of § 37a(1) first and second sentences of the Federal Pollution Control Act when supplied to the final consumer for use in transport if these fuels are not energy products within the meaning of § 1(2) and (3) of the Energy Tax Act.

(3) With respect to obligated entities or third parties under paragraph (1) second sentence, § 37a(3) of the Federal Pollution Control Act shall apply, mutatis mutandis. In the case of paragraph (2) second sentence, renewable fuels of non-biological origin are placed on the market by the operator of the filling station. The operator of the filling station is the entity who has ultimate economic power of disposal over the technical operation of the filling station.

(4) If renewable fuels of non-biological origin are used as a fulfilment option under § 37a(5) first sentence subparagraph 7 of the Federal Pollution Control Act, use as an intermediate product for producing conventional fuels is equivalent to placing on the market if the use takes place in the German tax jurisdiction.

(5) In order to calculate the reference value pursuant to § 37a(4) third sentence of the Federal Pollution Control Act, the energy quantity of the respective renewable fuel of non-biological origin under paragraph (1) is multiplied by the factor 3.

(6) The greenhouse gas emissions from renewable fuels of non-biological origin under paragraph (1) are calculated by multiplying the energy quantity of the renewable fuel of non-biological origin

1. by the factor 3 and

2. by the greenhouse gas emissions from the renewable fuels of non-biological origin indicated in the recognised evidence pursuant to § 14 in grams of carbon dioxide equivalent per megajoule, and

3. by the adjustment factor for propulsion efficiency pursuant to the Annex, if the renewable fuel of non-biological origin is verifiably used in road or rail vehicles.

(7) Unless specified otherwise in the following provisions, paragraph (1) shall apply to

1. renewable fuels of non-biological origin produced in the European Union, and

2. renewable fuels of non-biological origin imported from non-member states of the European Union (third countries).

(8) If renewable fuels of non-biological origin are used as a fulfilment option under § 37a(5) first sentence 1 subparagraph 7 of the Federal Pollution Control Act, the person required to provide evidence shall notify the competent authority of the energy quantity of all products produced during the year that originate from the production process in which the renewable fuels of non-biological origin were used as intermediate products. The competent authority shall provide details on the content and format in the Federal Gazette.

§ 4

Recognition of electricity obtained from direct connection to electricity generation installations

(1) Electricity for producing renewable fuels of non-biological origin obtained from direct connection to installations for generating electricity from renewable energy sources of non-biological origin can be counted as fully renewable. Direct connection pursuant to the first sentence exists if the installations for generating electricity from renewable energy sources of non-biological origin

1. are connected to the installation for producing renewable fuels of non-biological origin by a direct power line or electricity generation and production of renewable fuels of non-biological origin takes place in the same installation,

2. have no connection to the grid, or have a connection to the grid, but it is demonstrated via an intelligent metering system pursuant to § 21 of the Act on Metering Point Operation of 29 August 2016 (BGBl. I p. 2034), as last amended by Article 2 of the Act of 22 May 2023 (BGBl. 2023 I No 133) that no electricity was taken from the grid in order to produce renewable fuels of non-biological origin, and

3. are put into operation no earlier than 36 months before the installation for producing the renewable fuels of non-biological origin; if an installation for producing renewable fuels of non-biological origin is extended after becoming operational in order to include additional generation capacity, the additional generation capacity shall be considered part of the installation, provided that the expansion of the generation capacity takes place at the same site and no later than 36 months after the initial installation becomes operational.

(2) If, during the production of renewable fuels of non-biological origin, electricity from the grid is used in addition to electricity obtained from direct connection within the meaning of paragraph (1) second sentence, the electricity taken from the grid may be counted as fully renewable if the requirements of § 5 are met.

§ 5

Recognition of electricity from the grid

Electricity for producing renewable fuels of non-biological origin taken from the grid may be counted as fully renewable if

1. the following conditions are met:

   a) the condition of additional electricity generation from renewable sources of non-biological origin under § 6,

   b) the condition of temporal correlation between the production of the renewable fuels of non-biological origin and electricity generation from renewable sources of non-biological origin under § 7, and

   c) the condition of geographical correlation between the location of the installation for producing renewable fuels of non-biological origin and the location of the installation for generating electricity from renewable sources of non-biological origin under § 8, or

2. the requirements for recognising electricity from the grid in special cases under § 9 are met.

§ 6

Additional electricity generation

(1) The condition of additional electricity generation from renewable sources of non-biological origin is met if an interface

1. itself generates a quantity of electricity from renewable sources of non-biological origin at least to the level that is declared as fully renewable for the production of renewable fuels of non-biological origin, and

   a) the installations for generating electricity from renewable energy sources of non-biological origin were put into operation no earlier than 36 months before the installation for producing renewable fuels of non-biological origin, and

   b) the installations for generating electricity from renewable energy sources of non-biological origin have not received and are not receiving at the time of electricity generation any investment aid or operating aid, or

2. has directly or via intermediaries entered into at least one electricity purchase contract with operators of one or more installations for generating electricity from renewable energy sources of non-biological origin for a quantity of electricity from renewable energy sources of non-biological origin which is at least equal to the quantity of electricity that is declared by the interface as fully renewable and the declared electricity is actually generated in this installation or these installations, and

a) the installations for generating electricity from renewable energy sources of non-biological origin were put into operation no earlier than 36 months before the installation for producing renewable fuels of non-biological origin, and

b) the installations for generating electricity from renewable energy sources of non-biological origin have not received any investment aid or operating aid or do not receive any investment aid or operating aid at the time of electricity generation.

(2) For installations for generating electricity from renewable energy sources of non-biological origin for which an electricity purchase contract has been concluded in accordance with paragraph (1) subparagraph 2 and for which a new electricity purchase contract has been concluded after the termination of this electricity purchase contract in accordance with paragraph (1) subparagraph 2 with another interface, the time of becoming operational is deemed to be the time at which the installation for producing renewable fuels of non-biological origin, for which this interface has entered into the new electricity purchase contract in accordance with paragraph (1) subparagraph 2, becomes operational.

(3) The condition laid down in paragraph (1) subparagraph 1 point b and in paragraph (1) subparagraph 2 point b is also met if the installations for generating electricity from renewable energy sources of non-biological origin are receiving or have received investment aid or operating aid and the following requirements are met:

1. the aid granted has been fully repaid;

2. the aid was granted for the acquisition of land or for grid connections;

3. the aid granted consists of aid for installations for generating electricity from renewable sources of non-biological origin which provide electricity to installations for producing renewable fuels of non-biological origin that are operated for research, testing or demonstration purposes;

4. the installations for generating electricity from renewable sources of non-biological origin received the aid granted prior to their repowering; or

5. the interface can, with respect to funding granted,

   a) demonstrate in an ex ante assessment that net funding will be unlikely for the commissioned installations for generating electricity from renewable sources of non-biological origin; and

   b) set out in an ex post report that the commissioned installations for generating electricity from renewable sources of non-biological origin did not receive any net funding.

(4) If the installation for producing renewable fuels of non-biological origin is extended after becoming operational in order to include additional generation capacity, the additional generation capacity shall be considered to be put into operation at the same time as the initial installation, provided that the extension of the generation capacity takes place at the same location and no later than 36 months after the initial installation becomes operational.

(5) With respect to installations for producing renewable fuels of non-biological origin that are put into operation before 1 January 2028, interfaces are exempted, up to and including 31 December 2037, from fulfilment of the conditions set out in paragraph (1) subparagraph 1 and paragraph (1) subparagraph 2 in order to meet the condition of additional electricity generation from renewable energy sources of non-biological origin.

(6) Paragraph (5) shall not apply to generation capacity added to an installation for producing renewable fuels of non-biological origin after 1 January 2028.

§ 7

Temporal correlation

(1) The condition of temporal correlation between the production of renewable fuels of non-biological origin and the generation of electricity from renewable energy sources of non-biological origin is met, if an interface

1. produces the renewable fuels of non-biological origin in the same calendar month in which the electricity that is purchased by the interface under the electricity purchase contract referred to in § 6(1) subparagraph 2 is generated from renewable energy sources, or

2. produces the renewable fuels of non-biological origin using electricity from an electricity storage facility which

   a) was put into operation no earlier than 36 months before the installation for producing renewable fuels of non-biological origin,

   b) is located behind the same grid connection point as the installation for producing renewable fuels of non-biological origin or as the installation for generating electricity from renewable energy sources of non-biological origin, and

   c) is charged in the same calendar month in which the electricity that is purchased by the interface under the electricity purchase contract referred to in § 6(1) subparagraph 2 is generated from renewable energy sources of non-biological origin.

(2) As of 1 January 2030, the condition of temporal correlation between the production of renewable fuels of non-biological origin and the generation of electricity from renewable energy sources of non-biological origin is only met if an interface

1. produces the renewable fuels of non-biological origin in the same full one-hour period in which the electricity that is purchased by the interface under the electricity purchase contract referred to in § 6(1) subparagraph 2 is generated from renewable energy sources, or

2. produces the renewable fuels of non-biological origin using electricity from an electricity storage facility which

   a) was put into operation no earlier than 36 months before the installation for producing renewable fuels of non-biological origin,

   b) is located behind the same grid connection point as the installation for producing renewable fuels of non-biological origin or as the installation for generating electricity from renewable energy sources of non-biological origin, and

   c) is charged in the same full one-hour period in which the electricity that is purchased by the interface under the electricity purchase contract referred to in § 6(1) subparagraph 2 is generated from renewable energy sources of non-biological origin.

(3) By way of derogation from the requirements laid down in paragraphs (1) and (2), the condition of temporal correlation between the production of renewable fuels of non-bi-

ological origin and the generation of electricity from renewable energy sources of non-biological origin is met if an interface produces the renewable fuels of non-biological origin during a one-hour period in which the day-ahead clearing price for electricity as referred to in Article 39(2)(a) of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24), as last amended by Implementing Regulation (EU) 2021/280, (OJ L 62, 23.2.2021, p. 24)

1. is no higher than EUR 20 per megawatt hour, or

2. under the requirements of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32); OJ L 140, 14.5.2014, p. 177), as last amended by Directive (EU) 2023/959 (OJ L 130, 16.5.2023, p. 134), amounts to less than 0.36 times the price of an emission certificate for the emission of one tonne of carbon dioxide equivalent during the period concerned.

§ 8

Geographical correlation

the condition of geographical correlation between the location of the installation for producing renewable fuels of non-biological origin and the location of the installation for generating electricity from renewable energy sources of non-biological origin is met if

1. the installation for generating electricity from renewable energy sources of non-biological origin, with respect to which an electricity purchase contract as referred to in § 6(1) subparagraph 2 has been entered into,

   a) is located in the same bidding zone as the installation for producing renewable fuels of non-biological origin,

   b) at the time of becoming operational was located in the same bidding zone as the installation for producing renewable fuels from non-biological origin, or

   c) is located in a bidding zone for wind turbines at sea pursuant to § 3(11) of the Wind Energy At Sea Act of 13 October 2016 (BGBl. I p. 2258, 2310), as last amended by Article 14 of the Act of 22 March 2023 (BGBl. 2023 I) No 88) which is connected to the bidding zone in which the installation for producing renewable fuels of non-biological origin is located, or

2. the installation for generating electricity from renewable energy sources of non-biological origin, with respect to which an electricity purchase contract as referred to in § 6(1) subparagraph 2 has been entered into and the installation for producing renewable fuels of non-biological origin are located in connected bidding zones and the single day-ahead clearing price for electricity as referred to in Article 39(2)(a) of Regulation (EU) 2015/1222 in the bidding zone in which the installation for generating electricity from renewable energy sources of non-biological origin is located is at least as high as in the bidding zone in which the installation for producing renewable fuels of non-biological origin is located.

§ 9

Recognition of electricity from the grid in special cases

(1) Electricity for producing renewable fuels of non-biological origin which is taken from the grid may, in addition to electricity from the grid that meets the conditions laid down § 6 to § 8, be counted as fully renewable if:

1. the interface is located within a bidding zone in which the quotient obtained by dividing gross final energy consumption of renewable electricity, determined in accordance with Article 7(2) of Directive (EU) 2018/2001, by gross electricity generation from all energy sources as referred to in § 2(18) in the previous calendar year was at least 90 per cent, and the production of renewable fuels of non-biological origin did not exceed a maximum number of hours, calculated by multiplying the total number of hours in the calendar year by the quotient obtained by dividing gross final energy consumption of renewable electricity, determined in accordance with Article 7(2) of Directive (EU) 2018/2001, by gross electricity generation from all energy sources as referred to in paragraph (2) subparagraph 8 within the bidding zone in the previous calendar year; or

2. the interface is located in a bidding zone in which the greenhouse gas emissions intensity of electricity from the grid, calculated in accordance with Part C of the Annex to Commission Delegated Regulation (EU) 2023/1185 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid or gaseous transport fuels of non-biological origin and from recycled carbon fuels (OJ L 157, 20.06.2023, p. 20), is less than 18 grams of carbon dioxide equivalent per megajoule on the basis of the latest available data; and

    a) the interface has, directly or via intermediaries, entered into at least one electricity purchase contract as referred to in § 6(1) subparagraph 2with operators of installations for generating electricity from renewable energy sources of non-biological origin for a quantity of electricity from renewable energy sources of non-biological origin which is at least equivalent to the quantity of electricity declared by the interface as fully renewable and which is actually generated in the installations for generating electricity from renewable energy sources of non-biological origin of these operators;

    b) the condition of temporal correlation between the production of the renewable fuels of non-biological origin and electricity generation from renewable energy sources of non-biological origin under § 7 is met; and

    c) the condition of geographical correlation between the location of the installation for producing renewable fuels of non-biological origin and the location of the installation for generating electricity from renewable sources of non-biological origin under § 8 is met; or

3. the electricity is consumed during an imbalance settlement period for which the interface can demonstrate, on the basis of evidence from the national transmission system operators that

    a) installations for generating electricity from renewable energy sources of non-biological origin were redispatched downwards in accordance with Article 13 of Regulation (EU) 2019/943 or would have been redispatched downwards had the need for this redispatching not been reduced in accordance with point b, and

b) the electricity that was consumed reduced the need for this redispatching by a corresponding amount.

(2) The conditions laid down in paragraph (1) subparagraph 3 are considered to be met if the electricity consumption of the installation for generating electricity from renewable energy source of non-biological origin is in accordance with § 13(6) or § 13k of the Energy Industry Act.

(3) As soon as the quotient obtained by dividing gross final energy consumption of renewable electricity by gross electricity generation from all energy sources in accordance with paragraph (1) subparagraph 1 exceeds 90 per cent in one calendar year, it is assumed that it will continue to exceed 90 per cent in the following five calendar years.

(4) As soon as the greenhouse gas emissions intensity of the electricity from the grid as referred to in paragraph (1) subparagraph 2 is below 18 grams of carbon dioxide equivalent per megajoule in one calendar year, it is assumed that it will continue to be below 18 grams of carbon dioxide equivalent per megajoule in the following five calendar years.

(5) The competent authority shall publish the following in the Federal Gazette by the end of 31 October each year:

1. the quotient obtained by dividing gross final energy consumption of renewable electricity by gross electricity generation from all energy sources as referred to in paragraph (1) subparagraph 1 in the previous calendar year, if this is more than 90 per cent, and

2. the greenhouse gas emissions intensity of the electricity from the grid as referred to in paragraph (1) subparagraph 2 in the previous calendar year, if this is less than 18 grams of carbon dioxide equivalent per megajoule.

(6) Electricity that is taken from the grid to produce renewable fuels of non-biological origin and cannot be counted as fully renewable in accordance with Article 27(3) of Directive (EU) 2018/2001 shall be assigned a greenhouse gas emissions intensity determined in accordance with Part C of the Annex to Delegated Regulation (EU) 2023/1185, on the basis of the latest available data.

(7) If electricity as referred to in paragraph (6) is used for producing renewable fuels of non-biological origin, the share of renewable fuels of non-biological origin in the total quantity of fuels produced in accordance with the first subparagraph of Article 27(3) of Directive (EU) 2018/2001 shall be equal to the average share of renewable electricity in the country of production two calendar years prior to the calendar year in which the electricity was supplied for the production of the fuels.

§ 10

Greenhouse gas emissions savings

(1) The greenhouse gas emissions savings brought about by the use of renewable fuels of non-biological origin must be at least 70 per cent with respect to the fossil fuel comparator of 94 grams of carbon dioxide equivalent per megajoule.

(2) The greenhouse gas emissions savings brought about by the use of renewable fuels of non-biological origin shall be calculated in accordance with Part A of the Annex to Delegated Regulation (EU) 2023/1185.

(3) The competent authority may publish parameters that are defined in Part A of the Annex to Delegated Regulation (EU) 2023/1185, as well as clarifications and specifications for calculating these parameters in the Federal Gazette.

§ 11

Co-processing of renewable fuels of non-biological origin

(1) With respect to renewable fuels of non-biological origin for use as a fulfilment option pursuant to § 37a(5) first sentence subparagraph 8, which are processed in a refinery process together with petroleum-based oils, and in this process replace a conventional input only partially, a proportional distinction is made between the following parts of the process in accordance with point 1 of Part A of the Annex to Delegated Regulation 2023/1185 when calculating the greenhouse gas emissions of the resulting fuels in grams of carbon dioxide equivalent per megajoule on the basis of the energy content of the inputs:

1. the part of the process that is based on the conventional input; and

2. the part of the process that is based on renewable fuels of non-biological origin, assuming that the other parts of the process are otherwise identical.

(2) In accordance with Part A point 3 of the Annex to Delegated Regulation (EU) 2023/1185, the respective share of renewable fuels of non-biological origin in the total production of a process as referred to in paragraph (1) is determined by dividing the relevant supply of renewable energy sources of non-biological origin in the process by the whole relevant energy supply of the process.

Part 3

Requirements for co-processed biogenic oils and biogenic hydrogen

§ 12

Ability to offset co-processed biogenic oils

(1) By way of derogation from § 37b(5) first sentence of the Federal Pollution Control Act, hydrogenated biogenic oils as of 2024 are also biofuels if they have been hydrogenated in a refinery process together with petroleum-based oils. § 37b(5) second sentence of the Federal Pollution Control Act shall apply, mutatis mutandis.

(2) By way of derogation from § 37b(8) first sentence subparagraph 1 of the Federal Pollution Control Act, biogenic oils that have been hydrogenated in a refinery process together with petroleum-based oils can be offset against fulfilment of the obligations under § 37a(1) first and second sentences in conjunction with paragraph (4) of the Federal Pollution Control Act, if the agricultural raw materials, waste or residues used in the production of the biogenic oils are raw materials in accordance with Part A of Annex IX to Directive (EU) 2018/2001 and have been sustainably produced. Only the proportion of biogenic oils placed on the market as a fuel component can be offset.

(3) The provisions of the Biofuel Sustainability Ordinance of 2 December 2021 (BGBl. I, p. 5126, 5143) and the provisions of § 14 of the Ordinance laying down further provisions on greenhouse gas reduction in fuels of 8 December 2017 (BGBl. I p. 3892), as last amended by Article 1 of the Ordinance of 13 July 2023 (BGBl. 2023 I No 200) remain unaffected by the rules set out in paragraph (2).

(4) The proportion of biogenic oils in the fuel must be determined by economic operators that hydrogenate biogenic oils as referred to in paragraph (1) together with petroleum-based oils using a main testing method permitted under with Article 1(1) of Commission Delegated Regulation (EU) 2023/1640 of 5 June 2023 on the methodology to determine the share of biofuel and biogas for transport which are produced from biomass being processed with fossil fuels in a common process (OJ L 205, 18.8.2023, p. 1). Methods permitted for carrying out radiocarbon testing (^{14}C) both as a main testing method and as a second testing method for verifying the results of another main testing method used are the accelerator mass spectrometry and liquid scintillation counting methods laid down in DIN EN 16640, August 2017 edition.

(5) § 37b(8) first sentence subparagraph 3 of the Federal Pollution Control Act in conjunction with § 9 of the Ordinance implementing the provisions of the biofuel quota remains unaffected.

§ 13

Ability to offset biogenic hydrogen

(1) Biogenic hydrogen used in road vehicles is, in addition to the biofuels referred to in § 37b(1) first sentence of the Federal Pollution Control Act, a biofuel and as of 1 July 2023 can be offset against fulfilment of the obligation laid down in § 37a(1) first and second sentences in conjunction with paragraph (4) of the Federal Pollution Control Act, if the biogenic hydrogen

1. has been produced from raw materials listed in Annex 1 to the Ordinance laying down further provisions on greenhouse gas reduction in fuels, and

2. complies with the requirements for biofuels under the Biofuel Sustainability Ordinance.

(2) Energy products produced in part from biogenic hydrogen as referred to in paragraph (1) shall be considered biofuels to the extent of that part. In this respect, the provisions of Article 5 of Delegated Regulation (EU) 2023/1640 shall apply.

(3) The provisions of the Biofuel Sustainability Ordinance and the provisions of § 14(1) second to fourth sentences of the Ordinance laying down further provisions on greenhouse gas reduction in fuels remain unaffected by the provisions in paragraphs (1) and (2).

Part 4

Evidence

Section 1

General provisions

§ 14

Recognised evidence

The following are recognised as evidence of compliance with the requirements for renewable fuels of non-biological origin laid down in §3(1) in conjunction with § 4 to § 10:

1. evidence that has been issued in accordance with § 16 or § 22, and

2. evidence in accordance with § 21.

§ 15

Submission of evidence

The person required to provide evidence must submit the evidence to the biofuel quota body together with the notification pursuant to § 37c(1) of the Federal Pollution Control Act.

Section 2

Evidence of ability to offset renewable fuels of non-biological origin

§ 16

Issuing of evidence

(1) Only final interfaces as defined in § 2(12) and upstream interfaces as defined in § 2(11) are authorised to issue evidence under the conditions set out in paragraph (5).

(2) A final interface can issue evidence for renewable fuels of non-biological origin which it has produced if:

1. it holds a valid recognised certificate in accordance with § 24,

2. its upstream interfaces

   a) each submit to it a copy of their recognised certificates in accordance with § 24, which were valid at the time of the production, processing or other work step carried out in the interface,

b) confirm that during the production of the renewable fuels of non-biological origin the requirements laid down in § 4 to § 9 were met,

c) notify the greenhouse gas emissions that were caused during the production and supply of renewable fuels of non-biological origin by them and by all operations engaged directly or indirectly in the production and supply of renewable fuels of non-biological origin on their behalf, to the extent that these greenhouse gas emissions have to be taken into account when calculating greenhouse gas emissions savings under § 10; greenhouse gas emissions shall be indicated in grams of carbon dioxide equivalent per megajoule of renewable fuels of non-biological origin, and

d) confirm that, for the electricity used in the production of renewable fuels of non-biological origin in accordance with § 5 and § 9(1) either no guarantees of electricity origin pursuant to § 12 of the Implementing Ordinance on guarantees of origin and region of 8 November 2018 (BGBl. I p. 1853), as last amended by Article 15 of the Act of 20 July 2022 (BGBl. I p. 1237), were issued or, in accordance with the purpose of use, were validated.

3. in the production of the renewable fuels of non-biological origin the requirements laid down in § 4 to § 9 were met,

4. the renewable fuel of non-biological meets the minimum requirements for greenhouse gas emissions savings in accordance with § 10, and

5. it confirms that, for the electricity used in the production of the renewable fuels of non-biological origin in accordance with § 5 and § 9(1), either no guarantees of electricity origin pursuant to § 12 of the Implementing Ordinance on guarantees of origin and region were issued or, in accordance with the purpose of use, were validated.

(3) The accuracy of the information provided under paragraph (2) subparagraph 2 points b, c, d, subparagraphs 3, 4 and 5 is checked by the recognised certification bodies.

(4) If a renewable fuel of non-biological origin for which evidence has been issued is used for purposes for which such evidence is not required, that evidence shall no longer be used for fulfilment of the obligation under § 3(1). In this case, the evidence shall be returned to the competent authority.

(5) Upstream interfaces as defined in § 2(11) are authorised to issue evidence if they produce renewable fuels of non-biological origin that are used as a fulfilment option in accordance with § 37a(5) first sentence subparagraph 7 of the Federal Pollution Control Act.

(6) Evidence shall be issued in an electronic database of the competent authority. Until the operation is included in the electronic database, evidence may also be issued in written form. In this case, a copy of the evidence shall be sent to the competent authority.

(7) If guarantees of origin for the production of a supply of renewable gases pursuant to § 3 of the Guarantee of Origin Register Act of 4 January 2023 (BGBl. 2023 I No 9) have been issued, such guarantees of origin may only be traded separately at the time at which evidence in accordance with § 14 is issued for this supply of renewable gases in the electronic database of the competent authority if the evidence is not used according to its intended purpose and is deleted. Use of the evidence according to its intended purpose leads to the cancellation or validation of the guarantees of origin pursuant to the first sentence.

§ 17

Content and form of evidence

(1) Evidence must contain the following information:

1. The name and address of the issuing interface;

2. The date of issue,

3. an evidence number composed of at least

   a) the certificate number of the issuing interface and

   b) a number to be assigned uniquely by the issuing interface,

4. the name of the certification scheme under which the evidence was issued,

5. the quantity and type of renewable fuel of non-biological origin to which the evidence relates,

6. the following confirmations:

   a) confirmation that the renewable fuels of non-biological origin to which the evidence relates meet the requirements laid down in § 4 to § 9 by specifying the information required by Article 8 of Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid or gaseous transport fuels of non-biological origin (OJ L 157, 20.6.2023, p. 11),

   b) confirmation of the energy content of renewable fuels of non-biological origin in megajoules,

   c) confirmation of greenhouse gas emissions from the renewable fuels of non-biological origin in grams of carbon dioxide equivalent per megajoule calculated in accordance with point 1 of Part A of the Annex to Delegated Regulation (EU) 2023/1185,

   d) confirmation of the fossil fuel comparator used to calculate greenhouse gas emissions savings in accordance with point 2 of Part A of the Annex to Delegated Regulation (EU) 2023/1185, and

   e) confirmation of the States or regions in which the renewable fuels of non-biological origin may be used, without the greenhouse gas emissions caused by the production and supply being lower than the greenhouse gas emissions savings value prescribed in § 10(1),

7. the name and the address of the supplier to whom the renewable fuels of non-biological origin are transferred,

8. confirmation of the final supplier in accordance with § 18(5), and

9. whether the fuel is a renewable fuel of non-biological origin as referred to in § 37a(5) first sentence subparagraphs 6, 7 or 8 of the Federal Pollution Control Act.

(2) Evidence must be submitted to the biofuel quota body. It must be submitted in German.

(3) The accuracy of the information referred to in paragraph (1) shall be checked by the recognised certification bodies.

§ 18

Documentation of delivery in mass balance systems

(1) In order to demonstrate the origin of renewable fuels of non-biological origin from the interface that issued the evidence

1. the renewable fuels of non-biological origin may only be delivered from the final interface to the persons required to provide evidence by suppliers who document the delivery of the fuels in a mass balance system that meets the requirements of § 19(2), and

2. the checking of compliance with the requirement in subparagraph 1 must be ensured.

(2) The requirements referred to in paragraph (1) shall be considered to be met if

1. all suppliers

   a) have undertaken to meet the requirements of a recognised certification scheme, provided that this also contains requirements for the supply of renewable fuels of non-biological origin, or

   b) record their deliveries in a mass balance system which is subject to regular checks by the main customs offices to monitor compliance with the obligation pursuant to § 37a(1) first and second sentences in conjunction with § 37a(4) of the Federal Pollution Control Act and § 37a(2) in conjunction with §37a(4a) of the Federal Pollution Control Act, and

2. all suppliers document the following in the competent authority's electronic database:

   a) the receipt and transfer of renewable fuels of non-biological origin, including evidence details referred to in § 17(1) subparagraph 7 and

   b) the place and the date on which they received and transferred the renewable fuels of non-biological origin.

With regard to the documentation under the first sentence subparagraph 2, the legitimate interests of the interfaces and suppliers, in particular their business secrets, must be safeguarded.

(3) Until the operation is included in the electronic database of the competent authority, the information referred to in paragraph (2) first sentence subparagraph 2 can also be submitted in written form to the competent authority.

(4) The main customs offices shall inform the competent authority of any irregularities they find in the course of their checks referred to in paragraph (2) first sentence subparagraph 1 point b.

(5) Fulfilment of the requirements laid down in paragraph (1) shall be confirmed by the supplier who supplies the renewable fuel of non-biological origin to the person required to provide evidence.

§ 19

Requirements for mass balance systems

(1) In order to fully demonstrate the origin of renewable fuels of non-biological origin throughout the entire production and supply chain, interfaces and suppliers are required to truthfully provide the information in mass balance systems that is necessary to demonstrate compliance with the minimum requirements for greenhouse gas emissions savings under § 10(1). The information must relate to the entire production and supply chain. The mass balance systems must meet the requirements set out in paragraph (2).

(2) Interfaces and suppliers are required to use a mass balance system that

1. enables supplies of renewable fuels of non-biological origin with different properties in terms of greenhouse gas emissions savings to be mixed,

2. enables supplies of renewable fuels of non-biological origin with different energy content to be mixed for further processing, provided that the volume of supplies is adjusted according to their energy content,

3. stipulates that the mixture referred to in subparagraphs 1 and 2 continues to be assigned information on the properties relating to the greenhouse gas emissions savings and the respective volume of the supplies referred to in subparagraph 1, and

4. stipulates that the sum of all supplies taken from the mixture has the same properties in the same quantities as the sum of all supplies added to the mixture and that this balance is reached within a reasonable period of time.

(3) The competent authority may specify further requirements for mass balance systems and publish them in the Federal Gazette.

(4) Further requirements under certification schemes that exclude, in whole or in part, the mixing of renewable liquid or gaseous fuels of non-biological origin remain unaffected.

§ 20

Missing or insufficient information

If the fuel of non-biological origin is not placed on the market in the State or region indicated on the evidence, the person required to provide evidence shall demonstrate to the biofuel quota body that the renewable fuel of non-biological origin meets the minimum requirements for greenhouse gas emissions savings laid down in § 10(1) also in this State or in this region.

§ 21

Other recognised evidence

(1) The following evidence is deemed to be recognised: evidence that

1. is recognised as evidence of compliance with the requirements laid down in Article 25(2) and the fifth and sixth subparagraphs of Article 27(3) of Directive (EU) 2018/2001 under the law of the European Union or of another Member State of the European Union, and

2. was issued in another Member State of the European Union

   a) by the authority responsible for demonstrating compliance in that Member State of the European Union,

   b) by the body recognised for demonstrating compliance by the competent authority referred to in point a, or

   c) by any other body accredited for demonstrating compliance by the national accreditation body of that Member State of the European Union on the basis of general criteria for bodies certifying products.

   (2) § 20 and § 23(1) subparagraphs 2 and 3 and (2) shall apply, mutatis mutandis.

§ 22

Partial evidence

(1) The competent authority shall issue partial evidence for partial quantities of renewable fuels of non-biological origin for which evidence has already been issued, at the request of the holder of the evidence. The application must be submitted electronically. The partial evidence shall be issued electronically upon presentation of the evidence. Until the operation is included in the electronic database, applications can also be submitted in written form and partial evidence also issued in written form. § 19(1) shall apply, mutatis mutandis.

(2) Paragraph (1) shall apply, mutatis mutandis, to partial quantities of renewable fuels of non-biological origin for which partial evidence has already been issued.

(3) The provisions of this Section shall apply to the partial evidence issued under paragraphs (1) and (2), unless specified otherwise in paragraphs (1) and (2).

§ 23

Ineffectiveness of evidence

(1) Evidence is ineffective if

1. evidence issued under § 16 does not contain one or more pieces of the information referred to in § 17(1),

2. it has been falsified or

3. it contains incorrect information.

(2) If evidence is ineffective only in accordance with paragraph (1) subparagraph 2 or 3, the entitlement under § 3 to be able to offset the renewable fuel of non-biological origin only ceases to apply under the following conditions:

1. the person required to provide evidence knew of the reasons for the ineffectiveness of the evidence at the time the quantity of renewable fuel of non-biological origin to which the ineffective evidence relates was used or should have been aware of the ineffectiveness when applying customary care in business, or

2. the certificate of the issuing interface was invalid at the time the evidence was issued.

The first sentence applies, mutatis mutandis, to the partial quantity of renewable fuel of non-biological origin to which the ineffective evidence relates.

Section 3

Certificates for interfaces and suppliers of renewable fuels of non-biological origin

§ 24

Recognised certificates

Recognised certificates are:

1. Certificates that have been issued in accordance with § 25, and

2. certificates in accordance with § 29.

§ 25

Issuing of certificates

(1) Only recognised certification bodies which are recognised by the certification scheme in accordance with paragraph (2) subparagraph 1 are authorised to issue certificates. The certificates must be issued under this certification scheme.

(2) Interfaces and suppliers can be issued with a certificate upon request if

1. they have undertaken to comply with at least the requirements of a recognised certification scheme in the production of renewable fuel of non-biological origin within the scope of this Ordinance,

2. they have undertaken, in the case of interfaces authorised to issue evidence,

   a) to meet the requirements laid down in § 16 and § 17 when issuing evidence,

   b) to send copies of all evidence they have issued on the basis of this Ordinance without delay to the certification body that issued the certificate, and

   c) to retain any evidence they have issued on the basis of this Ordinance and all documents necessary for the issue for ten years from the date of issue of the relevant evidence and, after expiry of the retention period, to automatically delete them in the case of electronic storage,

3. they ensure that all operations engaged in the production, storage or transport and distribution of renewable fuels of non-biological origin on their behalf, which are not themselves interfaces, have undertaken, in the production of renewable fuels of non-biological origin within the scope of this Ordinance, to meet at least the requirements of a certification scheme recognised in accordance with this Ordinance, and they actually also meet those requirements,

4. they have undertaken to document the following:

a) compliance with the requirements of § 4, § 5 and § 10 by the interfaces and all operations directly or indirectly engaged in the production or supply of the renewable fuel of non-biological origin which are not themselves interfaces, under the certification system,

b) the quantity and type of renewable fuels of non-biological origin used in the production, and

c) the greenhouse gas emissions that were caused during the production and supply of renewable fuels of non-biological origin by the interfaces and all operations engaged directly or indirectly in the production and supply of renewable fuels of non-biological origin on their behalf, to the extent that these greenhouse gas emissions have to be taken into account when calculating greenhouse gas emissions savings § 10; the greenhouse gas emissions shall be reported in grams of carbon dioxide equivalent per megajoule of renewable fuel of non-biological origin, and

5. compliance with the requirements set out in subparagraphs 1 to 4 has been checked by the certification body.

(3) After the validity of a certificate expires, interfaces and suppliers can only be issued a new certificate upon request if

1. they met the requirements set out in paragraph (2) subparagraphs 1 to 4 during the period of validity of the expired certificate,

2. the documentation referred to in paragraph (2) subparagraph 4 is understandable, and

3. the checks carried out under § 38 have not produced any findings that prevent the issuing of a new certificate.

If an interface or supplier did not meet the requirements set out in paragraph (2) subparagraphs 1 to 4 during the period of validity of the previous certificate and the extent of the non-compliance is not significant, a new certificate can, by way of derogation from the first sentence subparagraph 1, also be issued if the interface and the supplier neither intentionally nor through gross negligence failed to meet the requirements and compliance with the requirements is ensured for the duration of the validity of the new certificate.

§ 26

Content of the certificates

Certificates shall contain the following information:

1. a certificate number composed of at least:

a) the registration number of the certification scheme,

b) the registration number of the certification body, and

c) a number to be assigned uniquely by the certification body,

2. the date of issue and the date of the start of the term and the end of the term,

3. the name of the certification scheme under which the certificate was issued,

4. in the case of an interface authorised to issue evidence

   a) the name and address of the interface authorised to issue evidence,

   b) the date the installation first became operational,

   c) the maximum generation capacity of the installation, and

   d) the annual production capacity of the installation,

5. the certified scopes and

6. the methodology for greenhouse gas calculation.

§ 27

Ineffectiveness of certificates

Certificates shall be ineffective if do not contain one or more of the pieces of information required under § 26, or do not do so correctly or completely.

§ 28

Validity of certificates

(1) Certificates are valid for a period of 12 months from the date of the start of the term under § 26(2).

(2) The rules on the validity of the term of certificates for small and micro-enterprises laid down by the certification schemes remain unaffected.

§ 29

Other recognised certificates

The following certificates are also deemed to be recognised: certificates that

1. are recognised as evidence that one or more interfaces comply with the requirements laid down in the fifth and sixth subparagraphs of Article 27(3) in conjunction with the seventh subparagraph of Article 27(3) of Directive (EU) 2018/2001 and Article 28(5) of Directive (EU) 2018/2001 under the law of the European Union or of another Member State of the European Union or of another State party to the Agreement on the European Economic Area, and

2. were issued in the other Member State of the European Union

   a) by the authority responsible for demonstrating compliance in that Member State of the European Union,

   b) by the body recognised for demonstrating compliance by the competent authority referred to in point a, or

c) by any other body accredited for providing evidence by the national accreditation body of that Member State of the European Union on the basis of general criteria for bodies certifying products.

Section 4

Certification Authorities

Subsection 1

Recognition of Certification Authorities

§ 30

Recognised certification bodies

Recognised certification bodies are:

1. certification bodies recognised under § 31(1) or § 43(1), and
2. certification bodies in accordance with § 36.

§ 31

Recognition of certification bodies

(1) Certification bodies shall be recognised by the competent authority on request if they

1. provide the following information:
   a) the names and addresses of the persons responsible; and
   b) the States in which they carry out the tasks laid down in this Ordinance;
2. evidence that they
   a) have the expertise, equipment and infrastructure necessary to carry out their tasks;
   b) have a sufficient number of qualified and experienced employees; and
   c) with a view to carrying out the tasks assigned to them, are independent of the certification systems, interfaces, operations and suppliers and are free of any conflict of interest;
3. they fulfil the requirements of DIN EN/ISO/IEC 17065, January 2013 edition, and their monitoring complies with the requirements of DIN EN ISO 19011, December 2018 edition,[3)]

[3])All the DIN, ISO/IEC and DIN EN ISO standards referred to here are to be obtained from Beuth-Verlag GmbH, Berlin, and recorded in archives at the German Patent and Trade Mark Office in Munich.

4. they undertake in writing,

   a) to meet the requirements of a recognised certification scheme;

   b) to tolerate checks and measures in accordance with § 42;

   c) for all places where they carry out activities under this Ordinance, even if those places are not within the territorial scope of this Ordinance, to grant the competent authority a possibility of control and entry in accordance with § 42; and

5. they have a serviceable address in a Member State of the European Union or in another State party to the Agreement on the European Economic Area.

(2) The evidence that the requirements set out in paragraph (1) are met shall be provided by submitting documents relating to the operational equipment of the respective certification body, its structure and its employees in accordance with the requirements of the competent authority. The competent authority may, in addition to the documents submitted, request further documentation and carry out on-the-spot checks in the context of the recognition procedure at the certification bodies to the extent necessary to decide on the application referred to in paragraph (1). An on-the-spot check in another Member State of the European Union or a third country is carried out only if the other State agrees to that check.

(3) Recognition may also be subject to ex post conditions if this is necessary for the proper conduct of the activities of a certification body.

(4) Recognition may be limited to:

1. individual types of renewable fuels of non-biological origin;

2. individual States, in particular because the consent required by paragraph (2) third sentence to the monitoring activities of the competent authority in accordance with § 42 has only been granted there; or

3. individual scopes.

§ 32

Recognition procedure

(1) The procedure for the recognition of Certification Authorities can be implemented through a single body in accordance with the provisions of the Administrative Procedures Act.

(2) If the competent authority has not decided within a period of six months from the date of application, recognition shall be deemed to have been granted.

(3) The recognition shall be published by the competent authority in the Federal Gazette.

§ 33

Content of the recognition

The recognition of a certification body shall include the following information:

1. the uniquely assigned registration number,

2. the date of recognition and

3. information on restrictions in accordance with § 31(4).

§ 34

Termination of recognition

(1) The recognition of a certification body is terminated if it is withdrawn, revoked, or otherwise cancelled or resolved by time or any other manner. It is also terminated if the certification body

1. has not commenced its activities within one year of the date of first recognition, or

2. has not carried out its activities for more than one year after they were commenced.

(2) The termination of recognition and the reason for the termination referred to in paragraph (1) shall be published by the competent authority in the Federal Gazette.

§ 35

Revocation of recognition

The recognition of a certification body shall be revoked where there is no longer any guarantee that the tasks under this Regulation will be properly carried out. Recognition shall be revoked in particular where:

1. a condition under § 31(1) is not or is no longer met; or

2. the certification body does not fulfil its obligations under § 37 to § 41, or does not do so correctly, completely, or in a timely manner.

Recognition may also be revoked if an on-the-spot check is not ensured. The provisions of the Administrative Procedures Act on the withdrawal and revocation of administrative acts remain unaffected.

§ 36

Other recognised certification bodies

(1) Certification bodies shall also be deemed to be recognised for as long as and to the extent that they are recognised as certification bodies by the European Commission or by another Member State of the European Union and also carry out tasks under this Ordinance in a recognised certification system.

(2) Subsections 2 and 3 of this Section shall only apply, mutatis mutandis, to the extent that this is compatible with the provisions of the European Commission.

Subsection 2

Tasks of certification bodies

§ 37

Maintaining of directories

Certification Authorities must keep a directory of all interfaces and suppliers for which they have issued, refused or withdrawn certificates. The list shall contain the name, address and registration number of the interfaces and suppliers. Certification Authorities must update the directory on an ongoing basis.

§ 38

Checks of interfaces and suppliers

(1) The certification bodies shall carry out a check as to whether the interfaces and suppliers continue to fulfil the requirements for issuing a certificate in accordance with § 25(2) no later than six months after the issue of the first certificate and, thereafter, at least once a year. The competent authority may, if there are reasonable grounds to suspect that the requirements set out in the first sentence are no longer met, in particular on the basis of the reports referred to in § 39 second sentence,

1. determine that an interface must be checked at shorter intervals, and

2. also carry out these checks itself.

The second sentence also applies in the cases referred to in § 25(3) second sentence.

(2) The employees of the certification bodies and of the competent authority, as well as the persons contracted by the competent authority, shall be authorised to enter land, business, operating and storage facilities, as well as means of transport of the interfaces and suppliers during business or operating hours, insofar as this is necessary for the checks referred to in paragraph (1). This power refers to all places within the scope of this Ordinance where interfaces and suppliers carry out activities related to the production or supply of renewable fuels of non-biological origin for which evidence is issued in accordance with this Ordinance.

(3) The interfaces and suppliers within the scope of this Ordinance are required to tolerate the checks referred to in paragraphs (1) and (2).

§ 39

Notifications and reports on checks

Certification bodies must inform the competent authority of each on-site inspection in sufficient time to allow the competent authority to also attend. At the end of each inspection, the certification bodies shall draw up a report containing in particular the outcome of the inspection. The report shall be submitted electronically to the competent authority.

§ 40

Other reports and notifications

(1) After their decision to issue a certificate as defined in § 2(15), but no later than by the start of the term of the certificate, certification bodies must send the following documents electronically to the competent authority:

1. the reports in accordance with § 39 second sentence and

2. the certificates issued under § 25.

(2) Certification bodies must electronically send to the competent authority, for each calendar year by the end of 28 February of the following calendar year and upon request, the following reports and information:

1. the extract from the directory referred to in § 37 and a list of all other operations and suppliers that they control, breaking down the interfaces, further operations and suppliers by certification scheme,

2. a list of all controls carried out in the calendar year on interfaces, establishments and suppliers by certification scheme; and

3. a report on their experience with the certification schemes they use; this report shall contain all the information that could be essential for assessing whether there are scheme compliance problems.

§ 41

Retaining, handling information

(1) Certification bodies must retain the reports referred to in § 39 second sentence for ten years from the date of their creation and copies of the certificates they issue under this Ordinance for ten years from the date of issue of the relevant certificate. The reports referred to in § 39 second sentence and the copies of the certificates shall, in the case of electronic retention, be deleted automatically without delay after the expiry of the retention period.

(2) Where certification bodies perform tasks under this Ordinance, they shall be regarded as bodies required to provide information pursuant to § 2(1) subparagraph 2 of the Environmental Information Act, as amended by the Notice of 27 October 2014 (BGBl. I p. 1643), as last amended by Article 2 of the Act of 25 February 2021 (BGBl. I p. 306), in the respective current version in force, within the scope of the Environmental Information Act.

Subsection 3

Monitoring of certification bodies

§ 42

Monitoring and measures

(1) The competent authority monitors the certification bodies recognised under this Ordinance.

(2) The employees and the representatives of the competent authority are authorised to enter land, business, operating and storage facilities and means of transport of the certification bodies during business or operating hours, to the extent necessary for monitoring. § 31(2) third sentence, § 38(2) second sentence and § 38(3) shall apply, mutatis mutandis.

(3) The competent authority may issue the orders to certification bodies that are necessary to remedy identified deficiencies and prevent future deficiencies. In particular, it may order that, due to lack of independence, expertise or reliability, employees of a certification body may no longer check whether the requirements of this Ordinance are met.

(4) The competent authority shall inform the relevant recognised certification scheme of the deficiencies identified and the orders made.

Subsection 4

Provisional recognition

§ 43

Provisional recognition of certification bodies

(1) The competent body may provisionally recognise certification bodies if the conditions set out in § 31(1) subparagraphs 1, 4 and 5 are met and a final examination of the requirements under § 31(1) subparagraphs 2 and 3 is not yet possible, but these conditions will be met with sufficient probability.

(2) Provisional recognition shall be limited to 12 months.

(3) There is no legal right to provisional recognition.

(4) Certification Authorities cannot derive legal claims from provisional recognition.

Part 5

Central register and electronic database

§ 44

Register of renewable fuels of non-biological origin

(1) The competent authority shall maintain a central register of all certification schemes, certification bodies, certificates, evidence, confirmations and reports related to demonstrating compliance under this Ordinance (register of renewable fuels of non-biological origin).

(2) The competent authority is authorised to collect, store and use the following personal data for the purpose of maintaining the register for renewable fuels of non-biological origin:

1. data relating to the certification schemes recognised in accordance with this Ordinance;

2. data referred to in § 31, § 33 to § 36 and § 43 on the certification bodies;

3. data referred to in § 26 and § 29 on the certificates of the interfaces;

4. data referred to in § 17 on the evidence in accordance with § 16;

5. data on the evidence in accordance with § 21;

6. data on the partial evidence in accordance with § 22;

7. data on confirmations for the provision of evidence under this Ordinance;

8. data on the reports referred to in § 39 second sentence and § 41(2);

9. data on the persons required to provide evidence upon submission of the evidence in accordance with § 15; and

10. data referred to in § 23 on the ineffectiveness of evidence.

(3) The competent authority may set up and maintain the central register referred to in paragraph (1) as a register together with the register of guarantees referred to in § 3(1) subparagraph 3 of the Guarantee of Origin Register Act in agreement with the competent body appointed under § 4(1) subparagraph 6 of the Guarantee of Origin Register Act, if it can be ensured in this respect that the guarantees of origin and the recognised evidence referred to in § 14 can be identified as separate evidence instruments.

(4) The competent authority shall, upon request, provide the biofuel quota body with the information necessary to monitor compliance with the obligations of the persons required to provide evidence pursuant to § 37a(1) first and second sentences in conjunction with § 37a(4) and § 37a(2) in conjunction with § 37a(4a) of the Federal Pollution Control Act.

§ 45

Data reconciliation

(1) To the extent necessary to ensure the accuracy of the data in the register of renewable fuels of non-biological origin, the competent authority shall reconcile this data with the data available to the biofuel quota body and the main customs offices, by means of inspection.

(2) In the case of evidence under § 21, the competent authority can, where necessary to ensure the accuracy of the data in the register of renewable fuels of non-biological origin, reconcile this data with the data available to the authority or body referred to in § 21(1) subparagraph 2 that issued this evidence. § 52 second sentence remains unaffected.

(3) In order to ensure compliance with § 16(7),the competent authority shall reconcile the data from the register of renewable fuels of non-biological origin, if necessary, with the guarantee of origin register for gaseous energy sources as referred to in § 3(1) subparagraph 3 of the Guarantee of Origin Register Act.

Part 6

Data processing, reporting obligations, official procedure

§ 46

Competent authority's right to information

The competent authority may request further information from persons required to provide evidence, certification bodies, interfaces, suppliers, main customs offices, the biofuel quota body and certification schemes where necessary to perform the following tasks:

1. the tasks assigned to the competent authority under this Ordinance;

2. to monitor compliance with the requirements of this Ordinance;

3. the Federal Government's reporting obligations vis-à-vis the German Bundestag and the Bundesrat, in particular pursuant to § 37g of the Federal Pollution Control Act; or

4. the Federal Republic of Germany's reporting obligations vis-à-vis the institutions of the European Union.

§ 47

Evaluation and grandfathering

(1) The competent authority shall evaluate this Ordinance regularly. It shall submit a progress report in non-personal form to the Federal Government for the first time by the end of the 31 December 2025 and then every year by the end of 31 December. The evaluation shall include developments relating to the ramp-up of hydrogen technologies, the availability of renewable liquid and gaseous fuels of non-biological origin in Germany and Europe, and the impact of the Ordinance on the electricity system, in particular grid

charges, transport requirements, system security and stability. The report shall contain contributions from the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways (Bundesnetzagentur).

(2) If the Ordinance is modified, the Federal Government will provide appropriate transitional periods as well as grandfathering clauses and derogations.

§ 48

Data transfer

Where necessary for the implementation of this Regulation or for the fulfilment of reporting obligations of the Federal Government, the competent authority may transmit information to one or more of the following addressees:

1. the following federal authorities:

   a) the Federal Ministry of Finance,

   b) the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection,

   c) the Federal Ministry for Economic Affairs and Climate Action,

   d) the Federal Ministry of Food and Agriculture, or

   e) the subordinate authorities of these federal ministries, in particular to the biofuel quota body, the Federal Network Agency and the main customs offices,

2. authorities of other Member States of the European Union and third countries and their bodies as referred to in § 21(1) subparagraph 2,

3. institutions of the European Union,

4. recognised certification schemes pursuant to § 2(13), or

5. recognised certification bodies pursuant to § 30.

§ 49

Competence

(1) The competent authority for the purposes of this Ordinance is the Federal Environment Agency. The competence of the Federal Office for Agriculture and Food to ensure compliance with the requirements for biofuels under § 12 and § 13 remains unaffected.

(2) The Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection shall exercise legal and functional supervision over the Federal Environment Agency. Legal and functional issues of fundamental importance shall be coordinated by the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection with the Federal Ministry of Finance, and, where appropriate, after agreement with the Federal Ministry of Food and Agriculture.

§ 50

Procedure before the competent authority

The official language is German. All applications submitted to the competent authority and all supporting documents, certificates, reports and other documents submitted to the competent authority must be written in German or translated into German. § 23(2) second to fourth sentences of the Administrative Procedures Act as amended by the Notice of 23 January 2003 (BGBl. I S. 102), as last amended by Article 24(3) of the Act of 25 June 2021 (BGBl. I S. 2154) shall apply, mutatis mutandis.

§ 51

Models and forms

(1) For the following documents, models and forms as well as a dataset format for electronic data transmission shall be used:

1. for the certificates referred to in § 26,

2. for the notifications and reports referred to in § 39 and § 40,

3. for the evidence referred to in § 17, and

4. for the partial evidence referred to in § 22.

(2) The competent authority shall make the documents referred to in paragraph (1) subparagraphs 1 and 2 available to the certification bodies. It shall also make these documents available to the recognised certification schemes upon request.

(3) The competent authority shall publish the models and forms referred to in paragraph (1) in the Federal Gazette and on its website. For evidence and partial evidence not issued in German, it may publish a translation of the models and forms referred to in paragraph (1) in the Federal Gazette and on its website.

§ 52

Exchange of information

The Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection is responsible for exchanging information with the competent ministries and authorities of other Member States of the European Union and third countries as well as with the institutions of the European Union. The Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection can delegate the information exchange referred to in the first sentence to the competent authority.

§ 53

Transitional provision

This Ordinance shall apply to renewable fuels of non-biological origin which are placed on the market from 1 July 2024. For renewable fuels of non-biological origin placed on the market until 30 June 2024 inclusive, the provisions of the Ordinance on the offsetting of electricity-based fuels and co-processed biogenic oils against the greenhouse gas

reduction quota (BGBl. I p. 1195) in the version applicable up to and including... [insert: date of the day before entry into force stipulated in § 54 of this Ordinance] shall apply.

§ 54

Entry into force, abrogation

This Ordinance shall enter into force on the day following its promulgation. At the same time, the Ordinance on the offsetting of electricity-based fuels and co-processed biogenic oils against the greenhouse gas reduction quota of 15 May 2017 (BGBl. I, p. 1195), as last amended by Article 20 of the Act of 21 December 2020 (BGBl. I, p. 3138) shall cease to apply.

Annex

(to § 3(6) subparagraph 3)

Adjustment factors for propulsion efficiency

The adjustment factors for propulsion efficiency are:

Predominant conversion technology	Efficiency factor
Combustion engine	1
Hydrogen fuel cell electric powertrain	0.4

Explanatory notes

A. General part

I. Objective of and need for the provisions

The forthcoming entry into force of delegated acts adopted on the basis of the seventh subparagraph of Article 27(3) and Article 28(5) in conjunction with Article 25(2) of Directive (EU) 2018/2001 (Renewable Energy Directive – RED II) will, inter alia, bring about new European requirements for the production of renewable liquid and gaseous transport fuels of non-biological origin and for the methodology for assessing greenhouse gas emissions savings for those fuels. In particular, requirements have been laid down concerning the electricity obtained and used for the production of renewable liquid and gaseous transport fuels of non-biological origin, and concerning the methodology for assessing the greenhouse gas emissions savings from these fuels compared to fossil fuels.

National law is therefore to be adapted so as to transpose the provisions contained in the two delegated acts mentioned above. National law also needs to be amended so as to introduce a scheme for demonstrating compliance with the requirements for the production of renewable liquid and gaseous fuels of non-biological origin. In addition, national law is also to be amended so that it shall also be possible in the future to offset biogenic hydrogen against the greenhouse gas reduction quota, in addition to renewable liquid or gaseous fuels of non-biological origin and biogenic oils which have been hydrogenated in a refinery process together with petroleum-based oils.

II. Main content of the draft

The requirements of the delegated acts adopted on the basis of the seventh subparagraph of Article 27(3) and Article 28(5) of Directive (EU) 2018/2001 are to be integrated by re-enacting the thirty-seventh Ordinance implementing the Federal Pollution Control Act as an umbrella ordinance. In doing so, the European requirements are being transposed on a one to one basis. In addition, the recast Ordinance introduces a scheme for demonstrating compliance with the requirements for the production and supply of renewable liquid or gaseous fuels of non-biological origin, expanding certification for the relevant economic operators, which is modelled on the existing system under the Biofuel Sustainability Ordinance of 2 December 2021 (BGBl. I, p. 5126, 5143). This scheme is intended to prevent abuse. In addition, the introduction of an electronic database provides the basis for enabling the competent authority to cope with its future enforcement tasks in the required quality, given the sharp increase in applications for offsetting renewable fuels of non-biological origin against the greenhouse gas quota that is expected in the medium term. In accordance with the requirements of § 37b(8) third sentence of the Federal Pollution Control Act, the recast 37th BImSchV includes biogenic hydrogen as a fuel that can be offset against the greenhouse gas reduction quota.

III. Alternatives

None.

IV. Regulatory competence

The recast of 37th BImSchV (Article 1) is issued by virtue of § 37d(2) first sentence subparagraph 1 points a and c, subparagraph 13, subparagraph 15 point d and subparagraph 19 in conjunction with § 37d(2) second to fourth sentences of the Federal Pollution Control Act as amended by the Notice of 17 May 2013 (BGBl. I, p. 1274; 2021 I p. 123), of which

§ 37d(2) first sentence subparagraph 1 point a was amended by Article 1 subparagraph 7 point b of the Act of 20 November 2014 (BGBl. I p. 1740), § 37d(2) first sentence subparagraph 15 point d was inserted by Article 1 subparagraph7 point b of the Act of 20 November 2014 (BGBl. I p. 1740), § 37d(2) first sentence subparagraph 1 point c was last amended Article 1 subparagraph 5 point a double point aa, § 37d(2) first sentence subparagraph 13 was last amended by Article 1 subparagraph 5 point a double point ii and § 37d(2) fourth sentence was last amended by Article 1 subparagraph 1 point b of the Act of 24 September 2021 (BGBl. I p. 4458) and § 37d(2) first sentence subparagraph 19 was inserted by Article 1 subparagraph 5 point a double point kk of the Act of 24 September 2021 (BGBl. I p. 4458) and § 37d(2) second sentence was inserted by Article 3 subparagraph 2 point b of the Act of 18 July 2017 (BGBl. I p. 2771).

V. Compatibility with European Union law and international treaties

The recast 37th BImSchV is intended to transpose Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin (OJ L 157, 20.6.2023, p. 11) and to transpose Commission Delegated Regulation (EU) 2023/1185 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid or gaseous transport fuels of non-biological origin and from recycled carbon fuels (OJ L 157, 20.6.2023, p. 20). by means of one-to-one transposition. The regulations are in line with European Union law and international treaties.

VI. Consequences of the legislation

The draft makes adjustments to requirements already laid down concerning the criteria and greenhouse gas emissions savings in the production of renewable fuels of non-biological origin.

1. Legal and administrative simplification

The recast 37th BImSchV also serves to structure the Ordinance more clearly and manageably. This will increase legal certainty and thus contribute to the simplification of administrative procedures.

2. Sustainability aspects

Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources aims to achieve a 14 per cent share of renewable energy sources in the transport sector within the EU by 2030. In order to be able to use renewable fuels of non-biological origin for achieving this target, it is necessary to comply with criteria that minimise the risk of negative impacts on the share of renewable energy sources in gross electricity generation, the electricity grid and greenhouse gas savings emissions, thus ensuring environmental sustainability. Accordingly, renewable fuels of non-biological origin are considered such only if they save a certain amount of greenhouse gases compared to fossil fuels, taking account of the entire production and supply chain. Furthermore, compliance with the requirements concerning the sourcing of electricity for the production of and concerning the supply of renewable fuels of non-biological origin must be demonstrated in accordance with the requirements set out in Delegated Regulations (EU) 2023/1184 and (EU) 2023/1185 through a certification procedure, which will reduce the possibility of abuse.

3. Budgetary expenditure exclusive of compliance costs

No budgetary expenditure exclusive of compliance costs is expected at federal level, State level or for the municipalities.

4. Compliance costs

The draft Ordinance recasts the 37th BImSchV. Firstly, it transposes European legislation on the production of renewable transport fuels of non-biological origin and on the methodology for assessing greenhouse gas emissions savings from these fuels into national law on a 1:1 basis. Secondly, for these fuels of non-biological origin, it introduces a new scheme for demonstrating compliance that is modelled on the existing biofuels scheme.

Compliance costs are mainly influenced by the first-mentioned regulatory area: In connection with the obligation to reduce greenhouse gas emissions in transport pursuant to § 37a of the Federal Pollution Control Act (BImSchG), it is being stipulated, in particular, that renewable fuels of non-biological origin can be offset to a greater degree than previously against the greenhouse gas reduction quota. This will allow entities that are subject to the quota to achieve the same CO2 savings with smaller quantities of what are known as fulfilment options (e.g. biofuel or renewable fuels of non-biological origin). As fulfilment options are more expensive compared to fossil fuels, this reduces compliance costs – depending on the behavioural adjustment of those addressed by the legislation – by EUR 870 million to EUR 1.3 billion.

The introduction of the new certification scheme has a significantly lower impact on compliance costs. For example, the annual compliance costs of businesses and the authorities will increase by around EUR 1 million in each case.

The draft Ordinance is intended to transpose EU law on a one-to-one basis, in particular the requirements of RED II. Insofar as further-reaching changes to national law are made, there are no ongoing compliance costs for businesses. Therefore, the ‘One in, one out’ rule (see Cabinet Decision of 25 March 2015) does not apply.

4.1 Compliance costs for individuals by requirement

For individuals, there is no change in compliance costs.

4.2 Compliance costs for businesses by requirement

The draft legislation includes several major legal changes that do not alter compliance costs:

First, the recast 37th BImSchV stipulates that co-processed biogenic oils and biogenic hydrogen may also (again) be offset against the obligation to reduce greenhouse gas emissions under § 37a BImSchG (see § 12, § 13 and §15 of the draft 37th BImSchV). For this purpose, entities obligated by the quota must provide evidence in accordance with § 2 of the 36th BImSchV as part of their annual quota declaration pursuant to § 37c of the BImSchG on the quantity of fuels placed on the market (see specification ID 2012050913553410, online database of compliance costs (OnDEA) of the Federal Statistical Office (StBA). Insofar as the fulfilment options introduced by the legal changes are used by entities obligated by the quota, resorting to one of the other fulfilment options can be avoided to the extent of the CO2 reduction achieved as a result. No evidence then needs to be provided in the annual quota declaration for the proportion that is omitted here. Elimination of the costs incurred for this purpose must be weighed up against the cost of submitting evidence for the offsetting of the newly added fulfilment options. Overall, this requirement is therefore likely to be cost-neutral.

By analogous reasoning, it can be assumed that the issuing of evidence pursuant to § 14 to §17 of the draft 37th BImSchV and applications for the issuing of partial evidence pursuant to § 22 of the draft 37th BImSchV will not cause any additional compliance costs. To be able to offset renewable fuels of non-biological origin against the greenhouse gas reduction ratio (GHG quota), compliance with the requirements under § 3 in conjunction with § 4 to § 10 of the draft 37th BImSchV must be demonstrated by means of evidence issued by final interfaces. To the extent that these fulfilment options are used and corresponding evidence is issued, other fulfilment options are not used elsewhere and less evidence is issued pursuant to § 9 of the Biofuel Sustainability Ordinance (Biokraft-NachV) (see specification ID 2011012610462303, OnDEA). Accordingly, it can also be assumed that, with regard to partial evidence, there will be a cost-neutral postponement of the application (see specification ID 2011012610462306 on § 16 Biokraft-NachV, OnDEA).

To be able to offset renewable fuels of non-biological origin, suppliers must document the origin of these fuels in a mass balance system (see § 18 of the draft 37th BImSchV). Such a balance system is already provided for by § 11 Biokraft-NachV for energy and transport biofuels (see specification ID 2011012610462304, OnDEA). If fulfilment options under the Biokraft-NachV are substituted by fulfilment options under the draft 37th BImSchV, a cost-neutral postponement of the documentation in the two balance systems can also be assumed.

The estimate of the compliance costs for businesses due to the individual requirements is set out below.

4.2.1 (Additional requirement): Obligation to reduce greenhouse gas emissions; § 37a(1) and (4) BImSchG in conjunction with § 3, § 11 and § 13 of the draft 37th BImSchV; ID 2016072210081901

Change in annual compliance costs: Depending on the behavioural adjustment of those addressed by the legislation, compliance costs are reduced by between EUR 870 million and EUR 1.3 billion – by EUR 1.1 billion on average.

The present draft legislation makes several legal changes related to the obligation to reduce greenhouse gas emissions in road transport pursuant to § 37a(1) and (4) of the BImSchG. The methodology for calculating the impact of these legal changes on compliance costs follows ex ante estimates for regulatory projects on the GHG quota from previous legislative periods (see, inter alia, Bundesrat document 152/21): Accordingly, the GHG quota generally results in compliance costs due to the fact that entities obligated by the quota to reduce greenhouse gas emissions instead of relatively cheap fossil fuels have to place more expensive fulfilment options on the market in accordance with § 37a(5) of the BImSchG, such as electricity in road transport or biofuels. The higher price per energy quantity unit (CO2 avoidance price), assessed using the necessary energy quantities of the fulfilment options placed on the market, gives the total compliance costs from the greenhouse gas reduction requirement if the additional costs are aggregated across all fulfilment options. In accordance with this approach, the compliance costs of legal changes are calculated by estimating the total compliance costs of the greenhouse gas emissions reduction requirement, taking into account legal changes, and the hypothetical compliance costs without legal changes (reference model). The difference in the compliance costs of the two forecast models corresponds to the compliance costs resulting from the legal changes.

The actual compliance costs arising from the draft legislation may differ from the value estimated here, as this depends, in particular, on the estimated CO2 avoidance prices, the specific emission values, the quantities of fuels placed on the market and the use of individual fulfilment options. An exact forecast of these variables is difficult because of the long-term nature of the estimate. However, based on existing developments, such as

electromobility, and plausible assumptions about the market behaviour of relevant operators, statements can be made about the approximate deployment and usage volumes.

General assumptions

Due to the gradual increase in the GHG quota to 25 per cent by 2030 (see § 37a(4) BImSchG), the reference year for the calculations is 2030. For the various forecast models, the following assumptions are made on the basis of an estimate by the Federal Ministry for Environment, Nature Conservation and Nuclear Safety regarding the energy quantities of fuels placed on the market and the use of individual fulfilment options in 2030:

- The GHG quota is fulfilled exactly – there is no over- or under-fulfilment.
- Total energy consumption in road transport: 1 879 petajoule (PJ).
- Ratio of conventional diesel to petrol use: 60 to 40.
- Energy quantity of biofuels from food and feed crops: Corresponds to the applicable statutory ceiling of 4.4 per cent (see § 13 of the 38th BImSchV).
- Energy quantity of waste-based biofuels: Corresponds to the applicable statutory ceiling of 1.9 per cent (see § 13 of the 38th BImSchV).
- Energy quantity of advanced biofuels: Energy minimum of 2.6 per cent is not breached. Double offsetting for additional quantities (see § 14 of the 38th BImSchV).
- Energy quantity of electricity in road transport: 88 PJ. Triple offsetting for electricity in road transport (see § 5 of the 38th BImSchV).
- Upstream emissions reductions are not taken into account: These can only be offset until 2026.
- Consumed energy quantity of renewable fuels of non-biological origin in transport (PtL): 6 PJ.

The fuel or fulfilment option-specific emission values to be applied (Table 1) are partly derived from legal requirements (i.e. base value, diesel and petrol) and are also based on data from the Federal Office for Agriculture and Food (see evaluation and progress reports on the Biomass Electricity Biofuel Sustainability Ordinance) as well as assumptions by the Federal Ministry for Environment, Nature Conservation and Nuclear Safety on the share of renewable energy sources in the total electricity generation of around 80 per cent in 2030.

Table 1: Specific emission values and avoidance prices

Fuel type or calculation variable	Emissions (kg CO2eq/GJ)	CO2 avoidance price/t CO2eq (in EUR)
Base value	94.10	
Diesel	95.10	
Petrol	93.30	
Biofuels from food and feed crops	20.03	400
Waste-based biofuels	6.87	400
Advanced biofuels	0.29	600
Electricity in road transport	6.60	450
PtL	0.00	900
Hydrogen	0.00	550

Source: § 3 and § 10 of the 38th BImSchG, Federal Office for Agriculture and Food (see evaluation and progress reports on Biomass Electricity and Biofuel Sustainability Ordinance), assumptions by the Federal Ministry for Environment, Nature Conservation and Nuclear Safety.

With regard to avoidance prices, it is assumed on the basis of observable prices today that these are between EUR 400 per tonne of CO2eq saved for waste-based biofuels and biofuels from food and feed crops and EUR 900 per tonne of CO2eq saved for PtL. The

assumptions on avoidance prices are uncertain due to the long-term nature of the estimate and the dependence on developments in commodity markets.

Compliance costs without the legal changes (reference model)

In the hypothetical case that the legal changes laid down in this draft are not in force in 2030, Table 2 contains the estimated quantities of fuel placed on the market in accordance with the above assumptions.

Actual total energy consumption in road transport is around 1 879 PJ. In addition, due to the ability to offset hydrogen of non-biological origin – which is not directly used in transport, but as an intermediate in refinery processes – and the multiple offsetting approach, a mathematical (fictitious) total energy consumption of around 2 177 PJ is reached.

Table 2: Quantities of fuel placed on the market in 2030 without the legal changes

(Estimate)

Fuel type or fulfilment option	Quantity in mill. MJ	
	absolute	relative
Diesel	953 755	0.508
Petrol	635 836	0.338
Biofuels from food and feed crops	83 000	0.044
Waste-based biofuels	35 710	0.019
Advanced biofuels (actual)	76 835	0.041
Advanced biofuels (multiple offsetting)	*27 977*	
Electricity in road transport (actual)	88 000	0.047
Electricity in road transport (multiple offsetting)	*176 000*	
PtL (actual)	6 000	0.003
PtL (multiple offsetting)	*6 000*	
Hydrogen (actual)	44 400	
Hydrogen (multiple offsetting)	44 400	
Energy consumption in road transport (actual)	1 879 136	1.000
Energy consumption incl. hydrogen (actual)	1 923 536	
Energy quantity (incl. multiple offsetting)	2 177 913	

Total energy consumption includes triple offsetting of electricity used in road transport (additional 176 PJ), double offsetting of the quantities of advanced fuel exceeding the minimum 2.6 per cent (additional 28 PJ), double offsetting for renewable fuels of non-biological origin (hydrogen at 44 PJ and PtL at 6 PJ) and the energy amount of hydrogen used (44 PJ).

Based on these fuel quantities, this results in a reference value of 205 million tonnes of CO2eq and a reduction quantity to be met of 51 million tonnes of CO2eq (see Table 3). The total cost of reducing greenhouse gas emissions is around EUR 14.3 billion for the estimated quantities of fuels placed on the market.

Table 3: Emissions reduction through fulfilment options and CO2 avoidance costs in 2030 without the legal changes (estimate)

Reference value and reduction quantities	Quantity	Avoidance costs (Mill. EUR)
Quantity required to fulfil the greenhouse gas reduction (t CO2eq)		

Reduction quantity (GHG quota 25 per cent)	51 235 399	
Reference value	204 941 594	
Achieved emissions reduction from the fulfilment options in question (t CO2eq)		
Diesel	-953 755	
Petrol	508 669	
Biofuels from food and feed crops	6 147 810	2 459
Waste-based biofuels	3 114 983	1 246
Advanced biofuels (minimum fulfilment)	7 207 868	4 325
Advanced biofuels (multiple offsetting)	2 624 542	
Electricity in road transport (actual)	7 700 000	3 465
Electricity in road transport (multiple offsetting)	*15 400 000*	
PtL (actual)	564 600	508
PtL (multiple offsetting)	*564 600*	
Hydrogen (actual)	4 178 040	2 298
Hydrogen (multiple offsetting)	*4 178 040*	
Total	51 235 399	**14 301**

Compliance costs with the legal changes

The following legal changes are relevant to fulfilment of the requirement:

a. recast requirements for electricity used in the production of renewable fuels of non-biological origin (§ 3(1) of the draft 37th BImSchV),
b. increase in the factor for offsetting renewable fuels of non-biological origin from 2 to 3 (see § 3(5) and (6) of the draft 37th BImSchV),
c. recast methodology for assessing the greenhouse gas emissions savings from these fuels (see § 3(6) and § 10 of the draft 37th BImSchV), and
d. (re-)introduction of the ability to offset co-processed biogenic oils and biogenic hydrogen against the GHG quota (see § 12 and § 13 of the draft 37th BImSchV).

The (re-)introduction of further fulfilment options does not have a significant impact on compliance costs, as these fuel types are not used to any noticeable extent. Similarly, the recasting of the requirements for electricity and the methodology for calculating fuel-specific emissions values will have no impact on compliance costs. As a result of these legal changes, no change in avoidance prices or emissions values are therefore expected.

Of the legal changes considered here, the increase in the multiple offsetting has the greatest impact on compliance costs (see point b). This makes it possible to achieve the same CO2 savings with smaller amounts of fulfilment options. As these are more expensive compared to fossil fuels, this reduces compliance costs – depending on the behavioural adjustment of those addressed by the legislation – by EUR 870 million to EUR 1.3 billion. This potential for a reduced cost burden arises because of the different quantity adjustments that those addressed by the legislation can make. For example, they might react to the legal changes by reducing the amount of hydrogen to be offset (see scenario 1) or by reducing the amounts of advanced fuel while simultaneously increasing the amounts of hydrogen of non-biological origin (see scenario 2).

Scenario 1

In the event that the legal changes laid down in this draft are in force in 2030 and those addressed by the legislation reduce the quantity of hydrogen, Table 4 contains the estimated quantities of fuel placed on the market in accordance with the above assumptions. As before, the total energy consumption used in road transport is around 1 879 PJ and the mathematical total energy consumption is around 2 178 PJ. Compared to the reference

model, significantly less hydrogen of non-biological origin is actually used (28 PJ). This actual reduction quantity is fully compensated by the more intense multiple offsetting for PTL and hydrogen.

Table 4: Quantities of fuel placed on the market in 2030 with the legal changes – Scenario 1 (estimate)

Fuel type or fulfilment option	Quantity in mill. MJ	
	absolute	relative
Diesel	953 755	0.508
Petrol	635 836	0.338
Biofuels from food and feed crops	83 000	0.044
Waste-based biofuels	35 710	0.019
Advanced biofuels (actual)	76 835	0.041
Advanced biofuels (multiple offsetting)	27 977	
Electricity in road transport (actual)	88 000	0.047
Electricity in road transport (multiple offsetting)	*176 000*	
PtL (actual)	6 000	0.003
PtL (multiple offsetting)	*12 000*	
Hydrogen (actual)	27 600	
Hydrogen (multiple offsetting)	*55 200*	
Energy consumption in road transport (actual)	1 879 136	1.000
Energy consumption incl. hydrogen (actual)	1 906 736	
Energy quantity (incl. multiple offsetting)	2 177 913	

The reference value for total energy consumption is around 205 million tonnes of CO2eq and the reduction quantity is around 51 million tonnes of CO2eq (see Table 5). The total cost of reducing greenhouse gas emissions is around EUR 13.4 billion for the estimated quantities of fulfilment options used in scenario 1.

Table 5: Emissions reduction through fulfilment options and CO2 avoidance costs in 2030 with the legal changes – scenario 1 (estimate)

Reference value and reduction quantities	Quantity	Avoidance costs (Mill. EUR)
Quantity required to fulfil the greenhouse gas reduction (t CO2eq)		
Reduction quantity (GHG quota 25 per cent)	51 235 399	
Reference value	204 941 594	
Achieved emissions reduction from the fulfilment options in question (t CO2eq)		
Diesel	-953 755	
Petrol	508 669	
Biofuels from food and feed crops	6 147 810	2 459
Waste-based biofuels	3 114 983	1 246
Advanced biofuels (minimum fulfilment)	7 207 868	4 325
Advanced biofuels (multiple offsetting)	2 624 542	
Electricity in road transport (actual)	7 700 000	3 465
Electricity in road transport (multiple offsetting)	*15 400 000*	
PtL (actual)	564 600	508
PtL (multiple offsetting)	*1 129 200*	

Hydrogen (actual)	2 597 160	1 428
Hydrogen (multiple offsetting)	*5 194 320*	
Total	51 235 398	**13 431**

If these total costs are compared to the total cost of the reference model, the legal changes in the draft reduce costs to businesses by around EUR 870 million.

Scenario 2

Taking greater account of renewable fuels of non-biological origin when offsetting against the GHG quota may also make the use of electricity-generated hydrogen more attractive. Scenario 2 therefore assumes that the use of this hydrogen increases compared to the reference model by around 10 per cent to around 49 PJ. In addition, it is assumed that due to the more favourable multiple offsetting, the entities obligated by the quota will reduce the amount of advanced fuel to the statutory minimum of 2.6 per cent (49 PJ).

Table 6: Quantities of fuel placed on the market in 2030 with the legal changes – scenario 2 (estimate)

Fuel type or fulfilment option	Quantity in mill. MJ	
	absolute	relative
Diesel	970 541	0.516
Petrol	647 027	0.344
Biofuels from food and feed crops	83 000	0.044
Waste-based biofuels	35 710	0.019
Advanced biofuels (actual)	48 858	0.026
Advanced biofuels (multiple offsetting)	0	
Electricity in road transport (actual)	88 000	0.047
Electricity in road transport (multiple offsetting)	176 000	
PtL (actual)	6 000	0.003
PtL (multiple offsetting)	12 000	
Hydrogen (actual)	49 320	
Hydrogen (multiple offsetting)	98 641	
Energy consumption in road transport (actual)	1 879 136	1.000
Energy consumption incl. hydrogen (actual)	1 928 456	
Energy quantity (incl. multiple offsetting)	2 215 097	

As before, the total energy consumption used in road transport is around 1 879 PJ; the total energy consumption is now around 2 215 PJ. The reference value for this total energy consumption is around 208 million tonnes of CO2eq and the reduction quantity is around 52 million tonnes of CO2eq (see Table 7). The total cost of reducing greenhouse gas emissions is around EUR 13 billion for the estimated quantities of fulfilment options used in scenario 2.

Table 7: Emissions reduction through fulfilment options and CO2 avoidance costs in 2030 with the legal changes – scenario 2 (estimate)

Reference value and reduction quantities	Quantity	Avoidance costs (Mill. EUR)
Reduction quantity (GHG quota 25 per cent)	52 110 162	
Reference value	208 440 647	

Diesel	-970 541	
Petrol	517 622	
Biofuels from food and feed crops	6 147 810	2 459
Waste-based biofuels	3 114 983	1 246
Advanced biofuels (minimum fulfilment)	4 583 325	2 750
Advanced biofuels (multiple offsetting)	0	
Electricity in road transport (actual)	7 700 000	3 465
Electricity in road transport (multiple offsetting)	15 400 000	
PtL (actual)	564 600	508
PtL (multiple offsetting)	1 129 200	
Hydrogen (actual)	4 641 054	2 553
Hydrogen (multiple offsetting)	9 282 108	
Total	52 110 161	**12 981**

If these total costs are compared to the total cost of the reference model, the legal changes in the draft reduce costs to businesses by around EUR 1.3 billion.

4.2.2 (Reporting obligation): Application for a certificate to be issued (interfaces and suppliers); § 25(2) of the draft 37th BImSchV

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
100	3 000	100.70	0	504	0
Change in compliance costs (in EUR thousands)				504	

One-off compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
100	0	0	250	0	25
Compliance costs (in EUR thousands)				25	

In order to be able to offset renewable fuels of non-biological origin, the interfaces and suppliers concerned must either be annually certified by a recognised certification body or have another recognised certificate (see § 25 to § 29 of the draft 37th BImSchV).

The Federal Environment Agency (UBA) assumes that around 100 interfaces and suppliers will be affected by the requirement. By comparison with this: according to the Federal Office for Agriculture and Food (BLE), around 700 interfaces and suppliers provide information in the reporting system for the Biofuel Sustainability Ordinance (see BLE, https://www.ble.de/SharedDocs/Downloads/DE/Klima-Energie/Nachhaltige-Biomasseherstellung/Evaluationsbericht_2021.pdf?__blob=publicationFile&v=3,p. 21 and 28).

For businesses, costs are incurred for the annual certification and the associated audit, which covers – where necessary – examination that the GHG limits are being complied with. In this respect, the admission fees of the certification bodies constitute one-off compliance costs, and the audit and the costs for necessary in-house procedures constitute annual compliance costs. As no information is available on these costs, information on compliance costs for the requirements of the Biomass Electricity Sustainability Ordinance

(BioSt-NachV) and the Biofuel Sustainability Ordinance (Biokraft-NachV) is used to provide assistance here (see OnDEA and National Regulatory Control Council (NKR) opinion, NKR No 5824). These ordinances, like the current regulatory draft on renewable fuels of non-biological origin, have recently been aligned with new sustainability and greenhouse gas saving requirements for biomass in accordance with Directive (EU) 2018/2001. The evidence and certification scheme of the draft 37th BImSchV is modelled on the existing schemes for the BioSt-NachV and Biokraft-NachV. Following this approach, one-off material costs of EUR 250 per case and case-related annual personnel costs of EUR 5 000 or 50 hours at a wage rate of EUR 100.70 per hour (see Federal Statistical Office, https://www.destatis.de/DE/Themen/Staat/Buerokratiekosten/Methoden/Downloads/lohnkostentabellen.pdf?__blob=publicationFile, 'Economic sector 'Coking and petroleum processing', high level of qualification) are assumed. As a result, the application results in one-off compliance costs in the category 'One-off obligation to provide information' of EUR 25 000 and annual compliance costs of EUR 504 000.

4.2.3 (Reporting obligation): Certification of interfaces and suppliers; § 25(2) in conjunction with § 39 of the draft 37th BImSchV

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
100	420	100.70	0	70	0
Change in compliance costs (in EUR thousands)				70	

In order to process 100 applications for the issuing of a certificate from interfaces and suppliers including the notification obligations pursuant to § 39 of the draft 37th BImSchV, case-related time expenditure incurred by the recognised certification bodies for the comparable requirement under § 21 BioSt-NachV of around seven hours is applied (see specification ID 2010051913302107, OnDEA), resulting in additional annual compliance costs of around EUR 70 000.

4.2.4 (Reporting obligation): Application for recognition as certification body; § 31 of the draft 37th BImSchV

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
30	3 000	100.70	0	151	0
Change in compliance costs (in EUR thousands)				151	

Certification bodies must be recognised upon request by the Federal Environment Agency (UBA) in order to carry out the tasks referred to in the draft 37th BImSchV (see § 30 to § 35); these recognitions are time-limited.

Under the BioSt-NachV and the Biokraft-NachV, around 30 certification schemes and certification bodies are recognised (see BLE, https://www.ble.de/SharedDocs/Downloads/DE/Klima-Energie/Nachhaltige-Biomasseherstellung/Anerkennung_de.html). Assuming that the same number of bodies per year will be certified under the 37th BImSchV, around 30 applications for recognition as a certification body will be submitted to the UBA annually. The case-related time expenditure for a comparable requirement under § 28 BioSt-NachV is around 50 hours (see specification ID 2010051913302110, OnDEA), so that annual compliance costs of around EUR 151 000 can be assumed.

4.2.5 (Reporting obligation): Maintaining a directory of interfaces and suppliers; § 36 of the draft 37th BImSchV

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
30	300	100.70	0	15	0
Change in compliance costs (in EUR thousands)				15	

The estimated 30 recognised certification bodies (see requirement 4.2.4) must maintain a directory of interfaces and suppliers in accordance with the requirements of § 36 of the draft 37th BImSchV. The annual time expenditure for a certification body from the comparable requirement under § 33 BioSt-NachV is around five hours per year (see specification ID 2010051913302111, OnDEA), so that annual compliance costs of around EUR 15 000 can be assumed.

4.2.6 (Additional specification): Checks of interfaces and suppliers; § 37 of the draft 37th BImSchV

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
110	1 080	100.70	0	199	0
Change in compliance costs (in EUR thousands)				199	

Recognised certification bodies must check once a year whether certified interfaces and suppliers continue to meet the requirements for issuing a certificate (see § 37 of the draft 37th BImSchV). Where it is suspected that the conditions are not met, the UBA may order more frequent checks.

It is assumed that a one-off check of the 100 interfaces and suppliers (see requirement 4.2.2) will be the norm and a total of ten additional checks per year will be carried out. The UBA – which can accompany and carry out inspections itself (see requirement 4.3.4) – puts the time required for a check including preparation and follow-up for all the inspectors involved at a total of around 20 hours. If it is assumed that about 10 per cent of this time is accounted for by preparation of an audit report (see § 38 of the draft 37th BImSchV, requirement 4.2.7), the time spent on pure checking activities is put at 18 hours. Given these assumptions, annual compliance costs are EUR 199 000.

4.2.7 (Reporting obligation): Notification and reporting obligations; § 38 and § 39 of the draft 37th BImSchV

Change in annual compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
110	130	100.70	0	24	0
30	480	100.70	0	24	
Change in compliance costs (in EUR thousands)				48	

One-off compliance costs:

Number of cases	Time expenditure per case (in minutes)	Hourly wage (in EUR)	Material costs per case (in EUR)	Staff costs (in thousands of EUR)	Material costs (in thousands of EUR)
30	1 440	100.70	0	73	0
Compliance costs (in EUR thousands)				73	

The checks (see requirement 4.2.6) are to be notified in advance to the UBA and a report must be drawn up and transmitted for each check (see § 38 of the draft 37th BImSchV). In addition, further information must be transmitted to the UBA under § 39 of the draft 37th BImSchV each year.

For each of the 110 checks, the time required is estimated at 130 minutes: for writing the inspection report, two hours, for each advance notification of a check 10 minutes.

With respect to the remaining notification obligations of the 30 certification bodies, it can be assumed that only one of these will be associated with any great cost, namely preparation of a report on experiences concerning the application of certification schemes. However, such costs will mainly arise when the first report is drafted and the time expenditure for this is put at three working days. In the following years, only adaptations to the first report in order to reflect new divergent experiences will be necessary. For these adjustments and the other notification obligations, annual time expenditure of one working day is estimated for each certification body.

Overall, the notification and reporting obligations result in annual administrative costs of EUR 48 000 and one-off compliance costs in the category of one-off obligations to provide information of EUR 73 000.

Table 8 provides an overview of the changes in compliance costs for businesses, brought about by the respective requirements.

Table 8: Change in compliance costs for businesses

Requirement	§; description of the requirement; type of requirement	Annual compliance costs (in EUR thousands)	One-off compliance costs (in EUR thousands)
4.2.1	§ 37a(1) and (4) BImSchG in conjunction with § 3, § 11 and § 13 of the draft 37th BImSchV; Obligation to reduce greenhouse gas emissions; other requirement	-1 094 776	0
4.2.2	§ 25 of the draft 37th BImSchV; Application for a certificate to be issued (interfaces and suppliers); Obligation to provide information	504	25
4.2.3	§ 25 of the draft 37th BImSchV; Certification of interfaces and suppliers; Obligation to provide information	70	0
4.2.4	§ 31 of the draft 37th BImSchV; Application for recognition as certification body; Obligation to provide information	151	0
4.2.5	§ 36 of the draft 37th BImSchV; Maintaining a directory of interfaces and suppliers; Obligation to provide information	15	0
4.2.6	§ 37 of the draft 37th BImSchV; Checks of interfaces and suppliers; other requirement	199	0
4.2.7	§ 38 and § 39 of the draft 37th BImSchV; Notifications and reports on checks; Obligation to provide information	48	73

Total (in EUR thousands)	-1 093 788	98
of which arising from obligations to provide information (in EUR thousands)	788	

4.3 Compliance costs for government agencies by specification

Below is a description of the compliance cost estimate for government agencies for each specification. The explanatory notes at the start of Section 4.2 apply analogously to the main legal changes that have no impact on compliance costs.

4.3.1 Notices in the Federal Gazette; § 3(9), § 9(5), § 10(3)of the draft 37th BImSchV

Change in annual compliance costs at federal level: EUR 41 000

One-off compliance costs at federal level: EUR 18 000

The provisions of the draft 37th BImSchV stipulate that the UBA shall regularly draw up and publish information in the Federal Gazette on the offsetting of renewable fuels of non-biological origin (§ 3(9)), recognition of electricity from the grid in special cases (§ 9(5)) and greenhouse gas emissions savings (§ 10(3)). In this respect, the UBA estimates staff costs of EUR 41 000 per year and one-off costs of EUR 18 000.

4.3.2 Operation of mass balance systems; § 18 and § 19 of the draft 37th BImSchV

Change in annual compliance costs at federal level: EUR 182 000

One-off compliance costs at federal level: EUR 14 000

In order to completely demonstrate the origin of renewable fuels of non-biological origin throughout the entire production and supply chain, suppliers are required to document deliveries in a mass balance system (see § 18 and § 19 of the draft 37th BImSchV). The UBA incurs one-off and annual costs in connection with the operation of mass balance systems: Until an operation is included in the electronic database, information may also be transmitted to suppliers in written form. The personnel costs for processing these transmissions are covered by one-off compliance costs and put by the UBA at EUR 14 000. For ongoing operation, it estimates total annual staff costs of EUR 182 000.

4.3.3 Certification bodies and certificates; § 29 to § 35, § 42 and § 43 of the draft 37th BImSchV

Change in annual compliance costs at federal level: EUR 325 000

One-off compliance costs at federal level: EUR 122 000

The UBA incurs costs as a result of various activities related to certificates and certification bodies (see § 29 to § 35, § 42 and § 43 of the draft 37th BImSchV). It must, among other things, process applications for certifications, publish recognitions or revoke recognitions if necessary. Overall, it estimates the associated annual personnel costs at EUR 325 000 and the one-off personnel costs at EUR 122 000.

4.3.4 Checks of interfaces and monitoring of certification bodies; § 37 to § 39 and § 41 of the draft 37th BImSchV

Change in annual compliance costs at federal level: EUR 275 000

One-off compliance costs at federal level: EUR 24 000

The UBA will incur costs from the activities related to checks or monitoring of interfaces and certification bodies (see § 37 to § 39 and § 41 of the draft 37th BImSchV). With regard to interfaces, it is informed about planned checks by certification bodies and receives results on these checks. It may accompany these checks and it may also carry out these checks itself. It also monitors the recognised certification bodies. Overall, it estimates the associated annual personnel costs at EUR 245 000 and the one-off personnel costs at EUR 24 000. In addition, it estimates EUR 30 000 per year for business trips.

4.3.5 Maintaining a central register of renewable fuels of non-biological origin; § 44 and § 45 of the draft 37th BImSchV

Change in annual compliance costs at federal level: EUR 281 000

One-off compliance costs at federal level: EUR 1.61 million

The UBA will maintain a central register of renewable fuels of non-biological origin in accordance with the requirements of § 44 and § 45 of the draft 37th BImSchV. It estimates one-off personnel costs at EUR 11 000 and annual personnel costs at EUR 231 000, and one-off material costs at EUR 1.6 million (i.e. purchase of the new IT infrastructure) and annual material costs at EUR 50 000 (i.e. maintenance and upkeep of the new IT infrastructure).

4.3.6 Other tasks arising from administrative enforcement of the draft 37th BImSchV; § 46 to § 48, § 51 and § 52 of the draft 37th BImSchV

Change in annual compliance costs at federal level: EUR 48 000

One-off compliance costs at federal level: EUR 17 000

The UBA estimates that costs will be incurred from other administrative enforcement tasks (see § 46 to § 48, § 51 and § 52 of the draft 37th BImSchV), including from obligations to report to the Federal Government or from requesting data from affected operators. These costs are estimated at one-off costs of EUR 17 000 and annual costs of EUR 48 000.

Table 9 provides an overview of the changes in compliance costs for the authorities, brought about by the respective requirements.

Table 9: Change in compliance costs for the authorities

Requirement	§; description of the requirement; level of government	Annual compliance costs (in EUR thousands)	One-off compliance costs (in EUR thousands)
4.3.1	§ 3(9), § 9(5), § 10(3) of the draft 37th BImSchV; Notices in the Federal Gazette; Federal	41	0
4.3.2	§ 18 and § 19 of the draft 37th BImSchV; Operation of mass balance systems; Federal	182	14
4.3.3	§ 29 and § 35 of the draft 37th BImSchV; Certification bodies and certificates; Federal	266	103
4.3.4	§ 37 to § 39 and § 41 of the draft 37th BImSchV; Checks of interfaces and monitoring of certification bodies; Federal	275	24
4.3.5	§ 44 and § 45 of the draft 37th BImSchV;	281	1 611

	Maintaining a central register of renewable fuels of non-biological origin; Federal		
4.3.6	§ 46 to § 48, § 51 and § 52 of the draft 37th BImSchV; Other tasks arising from administrative enforcement of the draft 37th BImSchV; Federal	48	17
	Total (in EUR thousands)	1 093	1 769
	of which incurred at federal level (in EUR thousands)	1 093	1 769
	of which incurred at Land level (in EUR thousands)	0	0

5. Other costs

Costs arising from greenhouse gas emissions savings for fuels result from the requirements of the Federal Pollution Control Act

6. Further consequences of the legislation

None. In particular, the umbrella ordinance has no gender-specific impact.

VII. Time limit; evaluation

Renewable fuels of non-biological origin are of central importance in the long term when it comes to climate protection in transport, and a time limit for their offsetting would therefore not be appropriate. With respect to the co-processing of biogenic oils and biogenic hydrogen too, no time limit is envisaged for the offsetting against the greenhouse gas reduction quota. The intention is to carry out an evaluation in about five years. The use of renewable fuels of non-biological origin, co-processed biogenic oils and biogenic hydrogen will be assessed in this respect. The evaluation shall be based on the progress reports that are to be prepared by the competent authority each year under § 47 of the recast 37th BImSchV.

B. Specific part

Part 1 (General part)

Part 1 contains the general provisions of the 37th BImSchV.

§ 1 (Scope)

§ 1 lays down the scope of the 37th BImSchV. This has been expanded to include biogenic hydrogen. In addition, compared to the version of the 37th BImSchV in force on 21 December 2020, the term ‘electricity-based fuels’ has been replaced by ‘renewable fuels of non-biological origin’.

§ 2 (Definitions)

§ 2 lays down the definitions that apply for the purposes of the Ordinance.

The definition of producer as per § 2(1) of the version of the 37th BImSchV in force on 21 December 2020 has been deleted and a definition of ‘interfaces’, ‘upstream interfaces’ and ‘final interfaces’ drawing on the provisions of § 2(32) and § 2(33) of the Biofuel Sustainability Ordinance have been introduced, with the aid of which a distinction is made between operations producing renewable fuels of non-biological origin that produce these fuels at the required quality level for use in transport and those that do not reach the re-

quired quality level. Whether a production operation for renewable fuels of non-biological origin is an upstream interface or a final interface determines in part whether the production operation may issue evidence for the fuels produced.

The reference to the Renewable Energy Act has been updated in the definition of renewable energy sources of non-biological origin in paragraph (1), compared to the version of the 37th BImSchV in force on 21 December 2020.

In addition, § 2 introduces new definitions for the terms ‘grid’ (paragraph (4)), ‘repowering’ (paragraph (6)), ‘become operational’ (paragraph (7)), ‘bidding zone’ (paragraph (8)), ‘repowering’ (paragraph (9)), ‘interfaces’ (paragraph (10)), ‘upstream interfaces’ (paragraph (11)), ‘final interfaces’ (paragraph (12)), ‘recognised certification schemes’ (paragraph (13)), ‘certificates’ (paragraph (14)), ‘certification bodies’ (paragraph (16)), ‘redispatching’ (paragraph (16)), ‘imbalance settlement period’ (paragraph (17)) and ‘gross electricity generation from all energy sources’ (paragraph (18)).

In paragraph (14), the definition of ‘certificates’ has been adopted, mutatis mutandis, from § 2(36) of the Biofuel Sustainability Ordinance for this Ordinance. This ensures a certification obligation for all operations throughout the entire production and supply chain.

Paragraph (15) adds to the definition of ‘certification bodies’. The definition has been adopted, mutatis mutandis, from § 2(37) of the Biofuel Sustainability Ordinance for this Ordinance.

Part 2 (Requirements for renewable fuels of non-biological origin)

Part 2 lays down the prerequisites for offsetting renewable fuels of non-biological origin against the statutory obligation to reduce greenhouse gas emissions under the Federal Pollution Control Act and sets out the requirements and specifications to be met for greenhouse gas emissions savings. The rules for recognition of renewable fuels of non-biological origin in § 3 to § 9 and the specifications for greenhouse gas emissions savings in § 10 result from the one-to-one transposition of European Union requirements (EU requirements).

§ 3 (Ability to offset renewable fuels of non-biological origin)

§ 3 specifies the prerequisites for offsetting renewable fuels of non-biological origin against fulfilment of the obligations pursuant to § 37a(1) first and second sentences in conjunction with § 37a(4) of the Federal Pollution Control Act and pursuant to § 37a(2) in conjunction with § 37a(4a) of the Federal Pollution Control Act.

In accordance with paragraph (1) subparagraphs 1 to 3, the prerequisites are deemed to have been met if the requirements for the electricity used in the production of renewable fuels of non-biological origin and the specifications for greenhouse gas emissions savings are met and the renewable fuels of non-biological origin used were placed on the market for use as a fulfilment option pursuant to § 37a(5) first sentence subparagraphs 6 to 8 of the Federal Pollution Control Act.

In contrast to § 37a(5) first sentence subparagraphs 1 to 3 of the Federal Pollution Control Act, § 37a(5) first sentence subparagraphs 1 to 3 of the Federal Pollution Control Act do not stipulate that fulfilment of the obligation under § 37a(1) first and seconds sentences in conjunction with § 37a(4) is linked to the placing on the market. This is not in line with the current approach for the greenhouse gas reduction quota for biofuels, even though this is to be applied equally to electricity-based fuels. Therefore, the placing on the market as a prerequisite for offsetting has been included in paragraph (1) subparagraph 3 and the related rules on the ‘GHG quota transfer’ have been included in the second sentence of paragraph (1).

Paragraph (2) details the placing on the market of renewable fuels of non-biological origin, including renewable fuels of non-biological origin that are not subject to energy tax. In particular, this provision is relevant for ‘green’ hydrogen for use in fuel cell vehicles.

The first sentence of paragraph (3) stipulates that, in the usual case where the renewable fuels of non-biological origin are energy products within the meaning of § 1(2) and (3) of the Energy Tax Act, only the person liable for taxation, in these cases the entity placing the renewable fuels of non-biological origin on the market, as the obligated entity or even as a third party (in this case a non-obligated entity) can generate and transfer a GHG quota that is capable of being offset. The second sentence of paragraph (3) defines the operator of the filling station to be the entity placing the fuel on the market for renewable fuels of non-biological origin that are not subject to energy tax. The operator of the filling station is further defined in the third sentence as the person who has ultimate economic power of disposal over the technical operation of the filling station. This rules out the possibility that fuel card companies can generate a GHG quota as a third party and ensures that operations that operate a non-public hydrogen refuelling station at their site can also generate a GHG quota.

Paragraph (4) stipulates that for renewable fuels of non-biological origin that are used as a fulfilment option under § 37a(5) first sentence subparagraph 7 of the Federal Pollution Control Act, use as an intermediate product for producing conventional fuels is equivalent to placing on the market if the use takes place in the German tax jurisdiction.

Paragraphs (5) and (6) stipulate how the reference value pursuant to § 37a(4) third sentence of the Federal Pollution Control Act and the greenhouse gas emissions from renewable fuels of non-biological origin pursuant to paragraph (1) shall be calculated. It is stipulated here that triple the energy content of renewable fuels of non-biological origin, which are used as a fulfilment option pursuant to § 37a(5) first sentence subparagraphs 6 to 8 of the Federal Pollution Control Act, is offset against fulfilment of the obligations laid down in § 37a(1) first and second sentences in conjunction with § 37a(4) of the Federal Pollution Control Act. Specification of this factor is based on a comprehensive analysis of the projected production costs of ‘green’ hydrogen and its derivatives. The objective in selecting this multiplier is to make the use of renewable fuels of non-biological origin as fulfilment options under § 37a(5) first sentence subparagraphs 6 to 8 of the Federal Pollution Control Act economically competitive, without causing over-subsidisation.

Paragraph (7) stipulates that the provisions in paragraph (1) also apply to renewable fuels of non-biological origin imported from an EU Member State and from third countries.

Paragraph (8) stipulates that persons required to provide evidence, i.e. the entity placing the fuel on the market under paragraph (4), must report to the competent authority the energy quantity of all products produced during in the year that originate from the production process in which renewable fuels of non-biological origin are used as a fulfilment option within the meaning of § 37a(5) first sentence 1 subparagraph 7 of the Federal Pollution Control Act. The reported data serves as the basis for the report by the Federal Republic of Germany to the European Commission demonstrating achievement of a 14 per cent minimum share of renewable energy in the final energy consumption of the transport sector by 2030 pursuant to Article 25(1) of Directive (EU) 2018/2001.

§ 4 (Recognition of electricity obtained from direct connection to electricity generation installations)

The first sentence of paragraph (1) stipulates that electricity for the production of renewable fuels of non-biological origin, which is obtained from direct connection to installations for generating electricity from renewable energy sources of non-biological origin, can be counted as fully renewable. The second sentence of paragraph (1) specifies the conditions that must be met in accordance with the requirements laid down in Delegated Regu-

lation (EU) 2023/1184 in order for electricity to be regarded as having been obtained from direct connection to installations for generating electricity from renewable energy sources of non-biological origin.

Paragraph (1) second sentence subparagraph 1 stipulates, as the first condition, that the connection between the installation for generating electricity from renewable energy sources of non-biological origin and the installation for producing renewable fuels of non-biological origin must be by means of a direct line or must be ensured by the integration of electricity generation and the production of renewable fuels of non-biological origin in one installation.

Paragraph (1) second sentence subparagraph 2 first clause stipulates, as the second condition, that installations for generating electricity from renewable energy sources of non-biological origin must not have a connection to the grid.

Paragraph (1) second sentence subparagraph 2 second clause specifies the third condition that, where the installation for generating electricity from renewable energy sources of non-biological origin is connected to the electricity grid, the condition for being able to offset the electricity as fully renewable can be fulfilled by means of the fact that it can be demonstrated, through an intelligent metering system pursuant to § 21 of the Metering Point Operation Act of 29 August 2016 (BGBl. I p. 2034), as last amended by Article 2 of the Act of 22 May 2023 (BGBl. 2023 I No 133), that no electricity has been taken from the grid to produce renewable fuels of non-biological origin.

Paragraph (1) second sentence subparagraph 3 first clause lays down the condition that installations for generating electricity from renewable energy sources of non-biological origin must not have been put into operation earlier than 36 months before the installation for producing renewable fuels of non-biological origin. The second clause stipulates that, within 36 months of the installation for producing renewable fuels of non-biological origin becoming operational, added production capacity shall be considered as part of the installation for producing renewable fuels of non-biological origin, provided that the production capacity was expanded at the same location.

Paragraph (2) clarifies that installations for producing renewable fuels of non-biological origin can be supplied both via a direct connection under § 4(1) second sentence and from the grid. The requirements specified in § 5 must be complied with for supply via the electricity supply grid.

§ 5 (Recognition of electricity from the grid)

§ 5 specifies the conditions that must be met for electricity obtained by interfaces from the public power grid to be counted as fully renewable. Grid electricity can be counted as fully renewable if either the conditions of additional electricity generation from renewable sources of non-biological origin, laid down in § 6, and the temporal and geographical correlation between the production or location of the production of renewable fuels of non-biological origin and the electricity generation or the location of electricity generation from renewable sources of non-biological origin, laid down in § 7 and § 8, are fulfilled or the requirements for the recognition of electricity from the grid in special cases laid down in § 9 are fulfilled.

§ 6 (Additional power generation)

§ 6 transposes on a one-to-one basis the requirements of Delegated Regulation (EU) 2023/1184 concerning the condition of additional electricity generation from renewable sources of non-biological origin.

Paragraph (1) subparagraph 1 stipulates that the condition of additional electricity generation from renewable energy sources of non-biological origin is met if the interface covers

at least the required electricity needs from its own installations for generating electricity from renewable energy sources of non-biological origin, the installations for generating electricity from renewable energy source of non-biological origin were put into operation no earlier than 36 months before the installation for producing renewable fuels of non-biological origin and no investment aid or operating aid has been received.

As an alternative to paragraph (1) subparagraph, paragraph (1) subparagraph 2 stipulates that interfaces can meet the condition of additional electricity generation from renewable energy sources of non-biological origin by purchasing, through an electricity purchase contract, the amount of electricity they have declared as fully renewable, directly or through intermediaries, from installations for generating electricity from renewable energy sources of non-biological origin and that amount of electricity was actually produced, the contracted installations for generating electricity from renewable sources of non-biological origin were put into operation no earlier than 36 months before the installation for producing renewable fuels of non-biological origin and no investment aid or operating aid has been received. All these conditions are intended to ensure that the production of renewable fuels of non-biological origin comes, in balance sheet terms, via electricity from newly built renewable energy installations and thus the hydrogen industry contributes to the expansion of renewable energies. According to the current definition of a renewable power purchase agreement in Article 2(17) of Directive (EU) 2018/2001, intermediaries cannot be a party to the electricity purchase contract. Direct reference to this definition in the regulatory text has been avoided, as it has not yet been conclusively clarified which role the above-mentioned intermediaries may play. It is important to avoid creating a provision in this Ordinance that goes beyond EU requirements. After the permissible role of intermediaries in electricity purchase contracts is clarified by the European Commission, the European Commission will submit the derived requirements for electricity purchase contracts under subparagraph 2 to the recognised certification schemes, making compliance with these requirements a prerequisite across the EU for certification for all economic operators.

Paragraph (2) stipulates the time at which installations generating electricity from renewable energy sources of non-biological origin, which had concluded an electricity purchase agreement with an interface and, after the termination thereof, conclude a new electricity purchase contract with another interface, become operational. This shall ensure that the above-mentioned installations for generating electricity from energy sources of non-biological origin continue to fulfil the condition of additional electricity generation from renewable energy sources of non-biological origin and are available for the production of renewable fuels of non-biological origin.

Paragraph (3) governs cases where aid paid to installations generating electricity from renewable energy sources of non-biological origin does not prevent fulfilment of the condition of additional electricity generation from renewable sources.

Paragraph (4) stipulates that, within 36 months of the installation for producing renewable fuels of non-biological origin becoming operational, added production capacity shall be considered as part of the installation for producing renewable fuels of non-biological origin, provided that the production capacity was expanded at the same location.

Paragraphs (5) and (6) stipulate that, with respect to installations for producing renewable fuels of non-biological origin that become operational before 1 January 2028, interfaces are exempted, up to and including 31 December 2037, from the obligation to fulfil the conditions laid down in paragraph (1) subparagraphs 1 and 2, but additional production capacity added to the installation after 1 January 2028 is excluded from this exemption.

§ 7 (Temporal correlation)

§ 7 transposes the requirements of Delegated Regulation (EU) 2023/1184 on the temporal correlation between the production of renewable fuels of non-biological origin and the generation of electricity from renewable energy sources of non-biological origin.

Paragraph (1) subparagraph 1 stipulates that the production of renewable fuels of non-biological origin and the generation of electricity from renewable energy sources of non-biological origin used for this purpose and purchased under the electricity purchase contract as referred to in § 6(1) subparagraph 2must have taken place in the same calendar month. Paragraph (1) subparagraph 2 stipulates that the electricity from an electricity storage facility may be used if this is located behind the same grid connection point as the installation for producing renewable fuels of non-biological origin or as the installations for generating electricity from renewable energy sources of non-biological origin and was charged in the same calendar month as the electricity from renewable sources of non-biological origin purchased under the electricity purchase contract as referred to in § 6(1) subparagraph 2. In addition, the requirement in Article 6(1) of Delegated Regulation (EU) 2023/1184 that electricity storage facilities must be 'new' is being transposed such that they are not allowed to have been put into operation any earlier than 36 months before the installation for producing renewable fuels of non-biological origin. This reflects the requirement for installations for generating electricity from renewable sources of non-biological origin and aims to prevent existing large storage facilities from being used for this purpose. Discussions with the European Commission and the EU partner countries are being sought on this point in order to advocate an EU-wide uniform definition of what constitutes a 'new' electricity storage facility.

Paragraph (2) stipulates that, as of 1 January 2030, the provisions in paragraph (1) on temporal correlation are only fulfilled if the production of the fuels and electricity purchase, or the electricity storage of electricity from renewable energy sources of non-biological origin purchased under the electricity purchase contract referred to in § 6(1) subparagraph 2 takes place in the same one-hour period.

Paragraph (3) stipulates that the condition for the temporal correlation between the production of renewable fuels of non-biological origin and the generation of electricity from renewable sources of non-biological origin is met if the electricity is obtained during a one-hour period, in which the day-ahead clearing price for electricity in the bidding zone is less than or equal to EUR 20 per megawatt hour or, under the requirements of Directive 2003/87/EC, is less than 0.36 times the price of an emissions allowance for emitting one tonne of carbon dioxide equivalent over the same period. Both price states are indicators of an extremely high share of electricity generation from renewable energy sources in the electricity grid and the aim should be that all electrolysers are allowed to run at these times.

§ 8 (Geographical correlation)

§ 8 transposes the requirements laid down in Article 7 of Delegated Regulation (EU) 2023/1184 on the geographical correlation between the location of the installation for producing renewable fuels of non-biological origin and the location of the installation for generating electricity from renewable energy sources of non-biological origin.

Subparagraph 1 stipulates that the locations of both mentioned installations must either be in the same bidding zone or must have been in the same bidding zone at the time they became operational, or that the installation for generating electricity from renewable energy sources of non-biological origin must be located in a bidding zone for wind turbines at sea pursuant to § 3(11) of the Wind Energy At Sea Act of 13 October 2016 (BGBl. I p. 2258, 2310), as last amended by Article 14 of the Act of 22 March 2023 (BGBl. 2023 I No 88)

that is connected to the bidding zone in which the installation for producing renewable fuels of non-biological origin is located.

Subparagraph 2 stipulates that the installation for generating electricity from renewable energy sources of non-biological origin, with respect to which an electricity purchase contract as referred to in § 6(1) subparagraph 2 has been entered into and the installation for producing renewable fuels of non-biological origin may be located in connected bidding zones if the single day-ahead clearing price for electricity as referred to in Article 39(2)(a) of Regulation (EU) 2015/1222 in the bidding zone in which the installation for generating electricity from renewable energy sources of non-biological origin is located is at least as high as in the bidding zone in which the installation for producing renewable fuels of non-biological origin is located.

These provisions aim to avoid sudden worsening of grid congestion or overloading interconnectors by electrolysers.

§ 9 (Recognition of electricity from the grid in special cases)

§ 9 transposes on a one-to-one basis the requirements set out in Delegated Regulation (EU) 2023/1184 on the special cases that enable interfaces to count grid electricity as fully renewable.

Paragraph (1) subparagraph 1 governs the special case where, in a bidding zone in which the quotient obtained by dividing gross final energy consumption of renewable electricity and gross electricity generation from all energy sources in the previous calendar year is at least 90 per cent and the production of renewable fuels of non-biological origin does not exceed a maximum number of hours determined in relation to the share of electricity from renewable energy sources in the bidding zone, grid electricity can be counted as fully renewable by interfaces. Thus, where the share of gross electricity generation from renewable energy sources in the total gross electricity generation in the previous calendar year is, for example, 95 per cent in the bidding zone in which interfaces are located, for 95 per cent of the annual hours, i.e. for 0.95 multiplied by 8 760 hours (no leap year) equals 8 322 hours a year, the interfaces can generate renewable fuels of non-biological origin.

Paragraph (1) subparagraph 2 governs the special case where grid electricity can be counted as fully renewable if, in a bidding zone in which the greenhouse gas emissions intensity of the grid electricity is less than 18 grams of carbon dioxide equivalent per megajoule, interfaces directly or via intermediaries have entered into at least one electricity purchase contract as referred to in § 6(1) subparagraph 2 for a quantity of electricity from renewable energy sources of non-biological origin with operators of installations for generating electricity from renewable energy sources of non-biological origin, which is at least equal to the amount of electricity declared by the interface as fully renewable and is actually produced in those installations for generating electricity from renewable energy sources of non-biological origin and the conditions of temporal and geographical correlation under § 7 and § 8 are met.

Paragraph (1) subparagraph 3 and paragraph (2) govern the special case where, in imbalance settlement periods with downward redispatching of installations for generating electricity from renewable energy sources of non-biological origin, electricity taken from the grid can be counted as fully renewable. This requirement is made operational through the regulations on switchable loads under § 13(6) or § 13k of the Energy Industry Act, where loads react to a network operator signal. As there is conceptually no option of assigning renewable energy regulations on a one-to-one basis to individual consumption decisions, recourse to the rules on switchable loads is useful and there is no alternative.

Paragraph (3) stipulates that as soon as the average share of electricity from renewable energy sources in a calendar year in accordance with paragraph (1) subparagraph 1 ex-

ceeds 90 per cent, it is assumed that it will continue to exceed 90 per cent in the following five calendar years.

Paragraph (4) stipulates that as soon as the greenhouse gas emissions intensity in accordance with paragraph (1) subparagraph 2 of the electricity from the grid in a calendar year is below 18 grams of carbon dioxide equivalent per megajoule it is assumed that it will remain below 18 grams of carbon dioxide equivalent per megajoule in the following five calendar years.

Paragraph (5) stipulates that, by the end of 31 October each year, the competent authority shall publish the information necessary for triggering the special cases under paragraph (1) subparagraphs 1 and 2, the share of gross electricity generation from renewable energy sources in the total gross electricity generation, and the greenhouse gas emissions intensity of the grid electricity for the previous year in the Federal Gazette, if the required limit values are exceeded or are not reached.

Paragraph (6) stipulates that electricity for producing renewable fuels of non-biological origin, which cannot be considered fully renewable in accordance with Article 27(3) of Directive (EU) 2018/2001, shall be allocated a greenhouse gas emissions intensity determined in accordance with Part C of the Annex to Delegated Regulation (EU) 2023/1185.

Paragraph (7) stipulates that the share of renewable fuels of non-biological origin in the total amount of fuel produced with electricity referred to in paragraph (6) shall be equal to the share of renewable electricity in the respective country of production, two years before the year in which the fuels were produced.

§ 10 (Greenhouse gas emissions savings)

§ 10 lays down the specifications for greenhouse gas emissions savings with respect to renewable fuels of non-biological origin.

Paragraph (1) specifies, on the basis of one-to-one transposition, the greenhouse gas emissions savings to be achieved in accordance with Article 25(2) of Directive (EU) 2018/2001 when using renewable fuels of non-biological origin.

Paragraph (2) governs the calculations of greenhouse gas emissions savings, by referring to the requirements set out in Part A of the Annex to Delegated Regulation (EU) 2023/1185.

Paragraph (3) stipulates that the competent authority may publish parameters that are defined in Part A of the Annex to Delegated Regulation (EU) 2023/1185, as well as clarifications and specifications for calculating these parameters in the Federal Gazette. This enables the competent authority to clarify any unclear points contained in Delegated Regulation (EU) 2023/1185.

§ 11 (Co-processing of renewable fuels of non-biological origin)

§ 11 lays down the requirements for assessing greenhouse gas emissions and the share of renewable fuels of non-biological origin in the total production of a refinery process or sub-process (omitted in the following two paragraphs for the sake of readability) in which renewable fuels of non-biological origin are processed together with petroleum-based oils.

Paragraph (1) stipulates that, when calculating the greenhouse gas emissions of the resulting fuels in a refinery process in which renewable fuels of non-biological origin are processed together with petroleum-based oils, a proportional distinction should be made, on the basis of the energy content of the inputs, between the part of the process in which the conventional input is used and the part of the process in which renewable fuels of non-biological origin are used, provided that the other parts of the process are otherwise identical.

Paragraph (2) stipulates that the share of renewable fuels of non-biological origin corresponds to the share, in the process, of the renewable energy sources of non-biological origin supplied in the whole relevant energy supply.

Part 3 (Requirements for co-processed biogenic oils and biogenic hydrogen)

§ 12 (Ability to offset co-processed biogenic oils)

§ 12 specifies the prerequisites for offsetting co-processed biogenic oils against fulfilment of the obligations pursuant to § 37a(1) first and second sentences in conjunction with § 37a(4) of the Federal Pollution Control Act.

§ 12 essentially adopts the provisions of § 10 of the version of the 37th BImSchV in force on 21 December 2020. Paragraph (2) also stipulates that co-processed biogenic oils that can be offset against the greenhouse gas quota must be produced from raw materials listed in Part A of Annex IX to Directive (EU) 2018/2001.

Paragraph (3) points out that the provisions on biofuels in the Biofuel Sustainability Ordinance and on advanced biofuels in § 14 of the Ordinance laying down further provisions on greenhouse gas reduction in fuels apply.

Paragraph (4) stipulates that economic operators who hydrogenate biogenic oils referred to in paragraph (1) at the same time as petroleum-based oils must determine the share of the co-processed biogenic oils in the fuel by means of a main testing method permitted by Article 1(1) of Commission Delegated Regulation (EU) 2023/1640 of 5 June 2023 on the methodology to determine the share of biofuel and biogas for transport, produced from biomass being processed with fossil fuels in a common process (OJ L 205, 18.8.2023, p. 1). The methods of accelerator mass spectrometry and liquid scintillation counting as laid down in DIN EN 16640, August 2017 edition are specified as permissible methods for carrying out radiocarbon testing (^{14}C). With regard to co-processed biogenic oils, the provisions of Delegated Regulation (EU) 2023/1640 are thus transposed into national law.

Since the Biofuel Sustainability Ordinance stipulates that evidence for biofuels to be offset against the GHG quota is to be issued in the electronic database ‘Nabisy’ by the producers of biofuels, or also the final interfaces, and only this evidence is to be submitted by the person required to provide evidence together with the notification pursuant to § 37c(1) of the Federal Pollution Control Act to the biofuel quota body, § 11 of the version of the 37th BImSchV in force on 21 December 2020 has been deleted. This avoids any unnecessary burden on businesses and the authorities.

For the upcoming national transposition of the adopted revision of Directive (EU) 2018/2001, it is currently also being examined what changes are needed with regard to co-processing. Among other things, it is being considered whether restricting the co-processing of biogenic oils in § 12 to the process of hydrogenation should be lifted and co-processing in other refinery processes should be allowed.

§ 13 (Ability to offset biogenic hydrogen)

§ 13(1) lays down the conditions for offsetting biogenic hydrogen against fulfilment of the obligations under § 37a (1) first and second sentences in conjunction with § 37a(4) of the Federal Pollution Control Act. The fact that it should be possible to offset biogenic hydrogen against the GHG quota from 1 July 2023 is stipulated in § 37b(8) third sentence of the Federal Pollution Control Act.

In order to be able to offset biogenic hydrogen, in addition to demonstrating its use in road vehicles and fulfilment of the requirements for biofuels under the Biofuel Sustainability Ordinance, it must be produced from raw materials listed in Part A of Annex IX to Directive

(EU) 2018/2001, which was transposed into national law as Annex 1 to the Ordinance laying down further provisions on greenhouse gas reduction in fuels.

Paragraph (2) stipulates that energy products produced in part from biogenic hydrogen as referred to in paragraph (1) shall be considered advanced biofuels in such part and that the requirements laid down in Article 5 of Delegated Regulation (EU) 2023/1640 shall apply.

Paragraph (3) stipulates that the provisions of the Biofuel Sustainability Ordinance and the provisions of § 14 of the Ordinance laying down further provisions on greenhouse gas reduction in fuels shall remain unaffected by the provisions in paragraphs (1) and (2).

Part 4 (Evidence)

Part 4 of this Ordinance lays down the requirements for proof of compliance with the requirements for the production and supply of renewable fuels of non-biological origin and for the greenhouse gas emissions savings of these fuels as a prerequisite for being able to offset these fuels against fulfilment of obligations pursuant to § 37a(1) first and second sentences in conjunction with § 37a(4) of the Federal Pollution Control Act and pursuant to § 37a(2) in conjunction with § 37a(4a) of the Federal Pollution Control Act. In addition, the recast Ordinance introduces a scheme for demonstrating compliance with the requirements for the production and supply of renewable liquid or gaseous fuels of non-biological origin, expanding certification for the relevant economic operators, which is modelled on the existing system under the Biofuel Sustainability Ordinance of 2 December 2021 (BGBl. I, p. 5126, 5143). The provisions in Part 4 are deliberately based as closely as possible on the provisions of the Biofuel Sustainability Ordinance in order to transfer, as far as possible, the scheme currently in place for demonstrating fulfilment of production requirements for biofuels to renewable fuels of non-biological origin.

Section 1 (General provisions)

Section 1 lays down the general provisions for demonstrating compliance with the requirements for the recognition of renewable fuels of non-biological origin and their transmission.

§ 14 (Recognised evidence)

§ 14 designates the evidence that is recognised under this Ordinance.

§ 15 (Submission of evidence)

§ 15 stipulates that the person required to provide evidence must submit the evidence to the biofuel quota body together with the notification pursuant to § 37c of the Federal Pollution Control Act.

Section 2 (Evidence of ability to offset renewable fuels of non-biological origin)

Section 2 sets out the requirements for the recognition of evidence and the requirements for issuing such evidence and specifies when evidence is ineffective.

§ 16 (Issuing of evidence)

§ 16 governs the issuing of evidence for renewable fuels of non-biological origin by final interfaces as defined in § 2(12) and upstream interfaces as defined in § 2(11). The regulations on issuing evidence for renewable fuels of non-biological origin have been modelled on the regulations for issuing evidence of biofuels under § 9 of the Biofuel Sustainability Ordinance.

Additions have been made to paragraph (2) subparagraph 2 point d and subparagraph 5. Herein it is stipulated that interfaces must confirm, as a condition for issuing evidence, that no guarantees of electricity origin were issued for the electricity obtained from the grid to produce the renewable fuels of non-biological origin or, depending on the purpose of use, the production of renewable fuels of non-biological origin, were validated. This requirement is intended to preclude double marketing of the green property of electricity.

Additions have also been made to paragraph (5) so as to stipulate that interfaces that produce renewable fuel of non-biological origin, which is used as an intermediate product for the production of conventional fuels in accordance with § 37a(5) first sentence subparagraph 7 of the Federal Pollution Control Act, may also issue evidence, notwithstanding the fact that they are not final interfaces. This ensures that evidence is also provided for renewable fuels of non-biological origin, which are used as a fulfilment option pursuant to § 37a(5) first sentence subparagraph 7 of the Federal Pollution Control Act, but do not have the required quality level for use in transport.

In addition, paragraph (6) stipulates that evidence shall be issued in the electronic database of the competent authority and that evidence may also be issued in writing until the operation is included in the electronic database. In this case, the interface shall provide the competent authority with a copy of the evidence.

Paragraph (7) stipulates that if a guarantee of origin pursuant to § 3 of the Act on Guarantees of Origin for Gas, Hydrogen, Heat or Cooling from Renewable Energy Sources and evidence under § 16 of this Ordinance have been issued for a supply, these may not be traded separately, so as to prevent a possible double marketing of the renewable property.

§ 17 (Content and form of evidence)

§ 17 governs the content and form of the evidence in order to ensure the required uniformity of the evidence. The corresponding provisions of § 12 of the Biofuel Sustainability Ordinance have basically been adopted, insofar as they are applicable to renewable fuels of non-biological origin.

§ 18 (Delivery documentation in mass balance systems)

The provisions in § 18 for delivery on the basis of mass balance systems, insofar as they are transferable to renewable fuels, have been adopted from § 11 of the Biofuel Sustainability Ordinance. Due to the fact that the electronic database of the competent authority is still to be set up, paragraph (3) allows, for the period before the competent authority's electronic database becomes operational, along the same lines as in § 16(6), the transmission of the information referred to in paragraph (2) first sentence subparagraph 1 in writing before the electronic database of the competent authority is put into operation.

§ 19 (Requirements for mass balance systems)

Paragraph (1), along the same lines as the provisions of § 10 of the Biofuel Sustainability Ordinance, stipulates that all operations engaged in the production and supply of renewable fuels of non-biological origin must record all information required to demonstrate compliance with the requirements laid down in § 10(1) in certain mass balance systems.

Paragraph (2) lays down the requirements for mass balance systems. All the requirements in this respect have been adopted from § 10 of the Biofuel Sustainability Ordinance, insofar as they are transferable to renewable fuels of non-biological origin.

Paragraph (3) stipulates that the competent authority may lay down further requirements for mass balance systems and publish them in the Federal Gazette in order to add to the requirements set out in paragraph (2) if necessary.

Paragraph (4) stipulates that further requirements under certification schemes which exclude, in whole or in part, the mixing of renewable liquid or gaseous fuels of non-biological origin shall not be affected by the rules laid down in this Ordinance.

§ 20 (Missing or insufficient information)

The provisions in § 20 regarding the consequences of missing or insufficient information on evidence of greenhouse gas emissions savings or the location where a renewable fuel of non-biological origin is placed on the market, have been adopted, mutatis mutandis, from § 13 of the Biofuel Sustainability Ordinance for renewable fuels of non-biological origin. All references have been adjusted accordingly.

§ 21 (Other accepted evidence)

The provisions in § 21 on other recognised evidence for renewable fuels of non-biological origin have been adopted, mutatis mutandis, from § 15 of the Biofuel Sustainability Ordinance. All references have been adjusted accordingly. Therefore, evidence that was recognised by another Member State as fulfilling the requirements set out in the fifth and sixth subparagraphs of Article 27(3) in conjunction with the seventh subparagraph of Article 27(3) of Directive (EU) 2018/2001 and Article 28(5) of Directive (EU) 2018/2001 shall also be considered to be recognised.

§ 22 (Partial evidence)

The provisions in § 22 on partial evidence for renewable fuels of non-biological origin have essentially been adopted, mutatis mutandis, from § 16 of the Biofuel Sustainability Ordinance. All references have been adjusted accordingly. Due to the fact that the electronic database of the competent authority is still to be set up, paragraph (1) fourth sentence allows, for the period before the competent authority's electronic database becomes operational, the transmission of the information referred to in paragraph (1) first sentence in writing before the electronic database of the competent authority is put into operation. In order to limit the workload of the competent authority in this case, partial evidence may only be issued for partial quantities of at least 1 800 gigajoules.

§ 23 (Ineffectiveness of evidence)

The provisions in § 23 on ineffectiveness of evidence for renewable fuels of non-biological origin have been adopted, mutatis mutandis, from § 17 of the Biofuel Sustainability Ordinance. All references have been adjusted accordingly.

Section 3 (Certificates for interfaces and suppliers of renewable fuels of non-biological origin)

Section 3 lays down the requirements for the issuing of certificates to interfaces and suppliers by recognised certification bodies. As in Section 2, the tried and tested approach from the Biofuel Sustainability Ordinance has been followed very closely.

§ 24 (Recognised certificates)

§ 24 specifies which certificates are recognised as a prerequisite for being able to issue evidence.

§ 25 (Issuing of certificates)

The provisions in § 25 regarding the conditions for issuing certificates, have been adopted from § 19 of the Biofuel Sustainability Ordinance, insofar as they are transferable to renewable fuels of non-biological origin. All references have been adjusted accordingly.

§ 26 (Content of certificates)

The provisions concerning the information required in certificates have been adopted from § 20 of the Biofuel Sustainability Ordinance.

Among other things, certificates for authorised interfaces must, in accordance with subparagraph 4, indicate the date that the installation for producing renewable fuels of non-biological origin became operational and provide information on the annual production capacity. The information shall facilitate plausibility checks in terms of a realistic estimation of the quantities for which evidence is issued and shall serve to prevent abuse. This will facilitate the work of the certification schemes, certification bodies and monitoring authorities. Subparagraph 5 makes it mandatory to specify in certificates the respective scopes along the production process or in storage and delivery. Specification of the scope of certificates is for clarification purposes. In accordance with subparagraph 6, the method of calculating greenhouse gases must also be recorded in the certificate. The extent to which greenhouse gas emissions calculations for renewable fuels of non-biological origin is carried out individually or using standard values remains to be seen. However, an obligation to provide this information is created here which, together with the other information, ensures that the certificates have the required quality to demonstrate conformity with the requirements of this Ordinance and to reduce the possibility of abuse.

§ 27 (Ineffectiveness of certificates)

§ 27 specifies the legal consequences of missing information. The absence of one of the pieces of information required under § 26 leads to the ineffectiveness of the certificate.

§ 28 (Validity of certificates)

The provision in § 28 on the validity of the certificates has been adopted from § 22 of the Biofuel Sustainability Ordinance and the reference adjusted accordingly.

§ 29 (Other recognised certificates)

The provisions in § 29 on other recognised certificates under this Ordinance have been adopted, mutatis mutandis, from § 24 of the Biofuel Sustainability Ordinance. § 29 specifies the recognition of certificates which are recognised by other Member States of the European Union or by another State that is party to the Agreement on the European Economic Area as evidence that interfaces have fulfilled the requirements set out in the fifth and sixth subparagraphs of Article 27(3) in conjunction with the seventh subparagraph of Article 27(3) of Directive (EU) 2018/2001 and Article 28(5) of Directive (EU) 2018/2001.

Section 4 (Certification bodies)

Section 4 lays down the conditions and procedure for the recognition of certification bodies and governs the revocation of recognition.

Subsection 1 (Recognition of certification bodies)

Subsection 1 lays down the requirements for certification bodies and the formal requirements of the recognition procedure. Also governed are the termination and revocation of the recognition of certification bodies.

§ 30 (Recognised certification bodies)

§ 30 stipulates which certification bodies are authorised to issue certificates to interfaces and to monitor the issuing of evidence by certified interfaces.

§ 31 (Recognition of certification bodies)

The provisions in § 31 on the recognition of certification bodies have basically been adopted from § 26 of the Biofuel Sustainability Ordinance and the references adjusted accordingly.

Paragraph (1) subparagraph 3 introduces the requirement for certification bodies to meet the requirements of DIN EN ISO 14065. This is based on the provisions in Commission Implementing Regulation (EU) 2022/996 of 14 June 2022 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria.

§ 32 (Recognition procedure)

§ 32 lays down the procedure for the recognition of a certification body and adopts the applicable provisions of § 27 of the Biofuel Sustainability Ordinance.

§ 33 (Content of recognition)

§ 33 lays down the necessary content of the recognition of a certification body and adopts the applicable provisions of § 28 of the Biofuel Sustainability Ordinance, adjusting the reference contained therein.

§ 34 (Termination of recognition)

§ 34 lays down the termination of the recognition of a certification body and adopts the applicable provisions of § 29 of the Biofuel Sustainability Ordinance.

§ 35 (Revocation of recognition)

§ 35 contains provisions on the revocation of the recognition of a certification body and adopts the applicable provisions of § 30 of the Biofuel Sustainability Ordinance, adjusting the references contained therein.

§ 36 (Other recognised certification bodies)

§ 36 is equivalent to § 40 of the Biofuel Sustainability Ordinance.

Subsection 2 (Tasks of certification bodies)

Recognised certification bodies shall ensure compliance with the requirements for renewable fuels of non-biological origin. Subsection 2 stipulates the tasks of the certification bodies.

§ 37 (Maintaining of directories)

§ 37 obligates certification bodies to maintain a register and adopts the provisions of § 31 of the Biofuel Sustainability Ordinance.

§ 38 (Checks of interfaces and suppliers)

§ 38 governs the checks of interfaces and suppliers by certification bodies and adopts the provisions of § 32 of the Biofuel Sustainability Ordinance. The references have been adjusted accordingly. Two insertions have also been made. Paragraph (1) second sentence authorises the competent authority to decide to carry out checks on an interface itself or to have such checks carried out by entrusted persons, where there is reasonable suspicion, in particular on the basis of the reports referred to in § 39 second sentence. This ability for the competent authority to carry out checks directly strengthens its role and is intended to

help ensure that an interface is checked as quickly as possible if there is reasonable suspicion. Paragraph (2) second sentence authorises employees of the competent authority to enter land, business, operating and storage facilities and means of transport of the interfaces and suppliers during business or operating hours, to the extent necessary for the checks.

§ 39 (Notifications and reports on checks)

§ 39 is equivalent to § 35 of the Biofuel Sustainability Ordinance.

§ 40 (Other reports and notifications)

§ 40 specifies which documents the certification bodies are required to transmit to the competent authority for the purpose of monitoring under this ordinance and adopts the provisions of § 36 of the Biofuel Sustainability Ordinance, adjusting the references accordingly.

§ 41 (Retaining, handling information)

§ 41 is equivalent to § 37 of the Biofuel Sustainability Ordinance.

Subsection 3 (Monitoring of certification bodies)

§ 42 (Monitoring and measures)

§ 42 stipulates that the competent authority is the monitoring authority. The provisions of § 38 of the Biofuel Sustainability Ordinance have been adopted and references contained therein adjusted accordingly.

§ 43 (Provisional recognition of certification bodies)

§ 43 enables the demonstration of compliance based on preliminary recognition for a transitional period and adopts the provisions of § 41 of the Biofuels Sustainability Ordinance.

Part 5 (Central register and electronic database)

Part 5 assigns the task to the competent authority of maintaining a central register of certification schemes, certification bodies, evidence, certifications and reports in relation to this Ordinance.

§ 44 (Register of renewable fuels of non-biological origin)

§ 44(1) stipulates that, in order to carry out the tasks under the Ordinance, the competent authority is obligated to maintain a register of renewable fuels of non-biological origin. § 44 essentially adopts the provisions of § 42 of the Biofuel Sustainability Ordinance, insofar as they are transferable to this Ordinance.

§ 44(3) makes it possible to set up and operate the central register referred to in paragraph (1) together with a guarantee of origin register as referred to in § 3 of the Guarantee of Origin Register Act. This is also in line with the requirements of § 4(1) subparagraph 11 of the Guarantee of Origin Register Act. Joint set-up and operation could, in particular, lead to synergies in connection with monitoring and compliance with the requirements set out in § 16(7). The aim here is to transpose future European legal requirements.

§ 45 (Data reconciliation)

§ 45 contains provisions on data reconciliation between the data in the register of renewable fuels of non-biological origin and the data available to the biofuel quota office at the

Frankfurt (Oder) Main Customs Office and available to the main customs offices and adopts the provisions of § 43 of the Biofuel Sustainability Ordinance insofar as they are transferable to this Ordinance. The references have been adjusted accordingly.

The requirement laid down in paragraph (3) enables the competent authority to check compliance with the requirements laid down in § 16(7) of this Ordinance in order to rule out double marketing of the green property where both a guarantee of origin pursuant to § 3 of the Act on Guarantees of Origin for Gas, Hydrogen, Heat or Cooling from Renewable Energy Sources and evidence pursuant to § 14 of this Ordinance have been issued for the same supply.

Part 6 (Data processing, reporting obligations, official procedure)

Part 6 governs data processing, reporting obligations and the official procedure before the competent authority.

§ 46 (Competent authority's right to information)

§ 46 authorises the competent authority to obtain further information and is equivalent to § 44 of the Biofuel Sustainability Ordinance.

§ 47 (Evaluation and grandfathering)

Paragraph (1)

§ 47 obligates the competent authority to draw up annual evaluation reports, with the first report having to be issued by the end of 31 December 2025. The evaluation shall include developments relating to the ramp-up of hydrogen technologies, the availability of renewable liquid and gaseous fuels of non-biological origin in Germany and Europe, as well as the impact of the Ordinance on the electricity system, in particular grid charges, transport requirements, system security and stability. The report shall also contain contributions from the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways (Bundesnetzagentur).

Paragraph (2)

In order to ensure investment security for already planned electrolyser plants, appropriate transitional periods and grandfathering clauses are necessary in future adjustments.

§ 48 (Data transfer)

§ 48 enables the competent authority to transfer information to different recipients for the purposes of implementing this Ordinance. The regulations have been largely adopted from § 46 of the Biofuel Sustainability Ordinance and only the Federal Ministry for Economic Affairs and Climate Action and its subordinate authorities have been added as possible recipients.

§ 49 (Competence)

§ 49 designates the Federal Environment Agency as the competent authority within the meaning of the Ordinance and basically adopts, mutatis mutandis, the provisions of § 47 of the Biofuel Sustainability Ordinance for this Ordinance. However, the insertion of 'and, where appropriate' in paragraph (2) takes account of the fact that the Federal Ministry of Food and Agriculture is not affected by the provisions on renewable fuels of non-biological origin in this Ordinance.

§ 50 (Procedure before the competent authority)

§ 50 specifies the procedure before the competent authority and adopts the provisions of § 48 of the Biofuel Sustainability Ordinance.

§ 51 (Models and forms)

§ 51 prescribes the use of models and forms for certain documents and adopts, mutatis mutandis, the provisions of § 49 of the Biofuel Sustainability Ordinance for this Ordinance.

§ 52 (Exchange of information)

§ 52 governs the exchange of information and adopts, mutatis mutandis, the provisions of § 50 of the Biofuel Sustainability Ordinance for this Ordinance.

§ 53 (Transitional provision)

§ 53 stipulates that this Ordinance applies to renewable fuels of non-biological origin which are placed on the market from 1 July 2024. For fuels of non-biological origin placed on the market until 30 June 2024 inclusive, the provisions of the version of the Ordinance on the offsetting of electricity-based fuels and co-processed biogenic oils against the greenhouse gas reduction quota in force on 21 December 2020 shall apply. This ensures that the offsetting of renewable fuels of non-biological origin is possible at any time.

§ 54 (Entry into force, abrogation)

§ 54 lays down the entry into force of the recast Ordinance on the offsetting of electricity-based fuels and co-processed biogenic oils against the greenhouse gas reduction quota and the abrogation of the version of the Ordinance on the offsetting of electricity-based fuels and co-processed biogenic oils against the greenhouse gas reduction quota in force on 21 December 2020.

Annex (Adjustment factors for propulsion efficiency)

The annex contains an overview of the propulsion efficiency adjustment factors for predominant conversion technologies and is equivalent to Annex 2 of the version of the 37th BImSchV in force on 21 December 2020.