

Offshore Wind Energy Act (WindSeeG 2017)

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Table of contents

- Part 1 General provisions 1**
 - Section 1 Purpose and aim of the Act.....1
 - Section 2 Scope of application.....1
 - Section 3 Definitions1
- Part 2 Sectoral planning and preliminary investigation..... 3**
 - Division 1 Site development plan 3**
 - Section 4 Purpose of the site development plan3
 - Section 5 Subject of the site development plan.....3
 - Section 6 Responsibilities and procedures for the drawing up of the site development plan6
 - Section 7 Transition from the offshore federal sectoral plan and the offshore network development plan8
 - Section 8 Alterations and updates to the site development plan8
 - Division 2 Preliminary investigation of sites 9**
 - Section 9 The aim of the preliminary investigation of sites9
 - Section 10 Subject and scope of the preliminary investigation of sites..... 10
 - Section 11 Responsibility for the preliminary investigation of sites..... 11
 - Section 12 Procedure for the preliminary investigation of sites 11
 - Section 13 Construction and operation of offshore connection lines 13
- Part 3 Auctions14**
 - Division 1 General provisions.....14**
 - Section 14 Competition-based determination of the market premium 14
 - Section 15 General conditions for the auction..... 14
 - Division 2 Auctions for sites which have been subject to a preliminary investigation14**
 - Section 16 Subject of the auctions..... 14
 - Section 17 Volume of auctions..... 15
 - Section 18 Change in the volume of auctions 15
 - Section 19 Announcement of the auctions..... 16
 - Section 20 Requirements to be met by bids..... 17
 - Section 21 Security..... 17
 - Section 22 Maximum value 17

| | | |
|-------------------|---|-----------|
| Section 23 | Award procedure, value to be applied | 18 |
| Section 24 | Legal consequences of the funding award | 18 |
| Section 25 | Reimbursement of securities to bidders not awarded funding | 19 |
| Division 3 | Auctions for existing projects | 19 |
| Section 26 | Auctions for existing projects..... | 19 |
| Section 27 | Volume of auctions..... | 19 |
| Section 28 | Planning of the offshore connection lines | 20 |
| Section 29 | Announcement of the auctions..... | 20 |
| Section 30 | Requirements for participation in auctions for existing projects | 21 |
| Section 31 | Requirements to be met by bids..... | 22 |
| Section 32 | Security..... | 23 |
| Section 33 | Maximum value | 23 |
| Section 34 | Award procedure..... | 23 |
| Section 35 | Site reference of the funding award..... | 24 |
| Section 36 | Award value and value to be applied..... | 24 |
| Section 37 | Legal consequences of the funding award | 24 |
| Section 38 | Reimbursement of securities to bidders not awarded funding | 26 |
| Division 4 | Right of subrogation for existing projects | 26 |
| Section 39 | Right of subrogation for the owner of an existing project..... | 26 |
| Section 40 | Preconditions for and scope of the right of subrogation..... | 26 |
| Section 41 | Handing over of data and declaration of waiver..... | 27 |
| Section 42 | Exercise of the right of subrogation | 28 |
| Section 43 | Legal consequences of the right of subrogation | 29 |
| Part 4 | Approval, construction and operation of offshore wind energy installations and installations to transmit electricity | 29 |
| Section 44 | Scope of Part 4 | 29 |
| Division 1 | Approval of installations | 29 |
| Section 45 | Planning approval | 29 |
| Section 46 | Relationship of the planning approval to the auctions..... | 30 |
| Section 47 | Planning approval procedures..... | 30 |
| Section 48 | Planning approval decision, planning consent..... | 31 |
| Section 49 | Provisional order | 33 |
| Section 50 | Consensus requirement | 33 |

| | | |
|----------------------|--|-----------|
| Section 51 | Environmental impact assessment..... | 34 |
| Section 52 | Ban on alterations | 34 |
| Section 53 | Safety zones | 34 |
| Section 54 | Announcement of the facilities and their safety zones | 35 |
| Division 2 | Construction, operation and removal of facilities..... | 35 |
| Subdivision 1 | General provisions..... | 35 |
| Section 55 | Obligations of the responsible persons..... | 35 |
| Section 56 | Responsible persons..... | 35 |
| Section 57 | Monitoring of the facilities..... | 36 |
| Section 58 | Removal of the facilities, lodging of a security | 37 |
| Subdivision 2 | Special provisions for offshore wind energy installations | 38 |
| Section 59 | Implementation deadlines | 38 |
| Section 60 | Sanctions for non-compliance with implementation deadlines | 39 |
| Section 61 | Exception from the sanctions for non-compliance with implementation deadlines | 40 |
| Section 62 | Return of funding awards and planning approval decisions..... | 40 |
| Section 63 | Transfer of funding awards and planning approval decisions | 41 |
| Section 64 | Legal consequences of the invalidity of funding awards and planning approval decisions | 41 |
| Section 65 | Reimbursement of securities in the case of implementation or of payment of penalties | 42 |
| Section 66 | Follow-up use; declaration of commitment | 43 |
| Section 67 | Use of documents | 43 |
| Part 5 | Special provisions for pilot offshore wind energy installations..... | 44 |
| Section 68 | Determination of a pilot offshore wind energy installation..... | 44 |
| Section 69 | Entitlement to payment for electricity from pilot offshore wind energy installations..... | 44 |
| Section 70 | Grid connection capacity; approval, construction, operation and removal | 45 |
| Part 6 | Other provisions..... | 46 |
| Section 71 | Authorisation to issue ordinances..... | 46 |
| Section 72 | Legal protection in auctions for existing projects | 47 |
| Section 73 | Announcements and provision of information..... | 48 |
| Section 74 | Administrative Enforcement | 48 |

| | | |
|---|---|-----------|
| Section 75 | Provisions on fines..... | 48 |
| Section 76 | Fees and expenses..... | 49 |
| Section 77 | Transitional provision | 49 |
| Section 78 | Assumption of tasks by the Federal Network Agency..... | 50 |
| Section 79 | Material supervision of the Federal Maritime and Hydrographic Agency | 50 |
| Annex (to Section 58 subsection 3) | | 51 |
| Requirements for securities | | 51 |

Part 1

General provisions

Section 1

Purpose and aim of the Act

- (1) This purpose of this act to expand the use of offshore wind energy, particularly in the interest of protecting the climate and the environment.
- (2) The aim of this act is to increase the installed capacity of offshore wind energy installations to a total of 15 gigawatts between 2021 and 2030. This increase is to take place steadily, cost-efficiently and taking account of the grid capacities needed for the purchase, transmission and distribution of the electricity. The expansion of offshore wind energy installations and the expansion of the offshore connections needed to transmit the electricity generated in them are therefore to be coordinated, also taking into consideration the onshore grid connection points, and an alignment of the respective planning, approvals, construction and commissioning is to be achieved.

Section 2

Scope of application

- (1) This Act shall regulate
1. the sectoral planning in the exclusive economic zone and, to the extent that the following provisions provide for this, in the territorial sea and the preliminary investigation of sites for the generation of electricity from offshore wind energy installations,
 2. the auctions for the competitive determination of the market premium pursuant to Section 22 of the Renewable Energy Sources Act for offshore wind energy installations which are commissioned after 31 December 2020; the Renewable Energy Sources Act shall be applied unless otherwise stipulated by this Act, and
 3. the approval, construction, commissioning and operation of offshore wind energy installations and offshore connection lines, where these are commissioned after 31 December 2020.
- (2) This Act shall be applied in the area of the exclusive economic zone of the Federal Republic of Germany and, to the extent that the following provisions explicitly provide for this, in the territorial sea and on the high seas.

Section 3

Definitions

For the purposes of this Act

1. “clusters” shall mean the areas for offshore wind energy installations stipulated in the offshore federal sectoral plan pursuant to Section 17a of the Energy Industry Act,
2. “capacity shortage within a cluster” shall mean the exceeding of the capacity which is available for the existing projects on an existing offshore connection line or an offshore connection line envisaged in the confirmed offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act; a capacity shortage within a cluster shall also exist when, in the case of a multi-cluster connection which is envisaged in the unreservedly confirmed offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act, the capacity is exceeded by an existing project from another cluster which exceptionally can be connected via such a multi-cluster connection,
3. “areas” shall mean areas in the exclusive economic zone or territorial sea for the construction and operation of offshore wind energy installations,
4. “sites” shall mean sectors within areas in which offshore wind energy installations are to be constructed in a spatial relationship and for which a joint auction will therefore be held,
5. “offshore connection lines” shall mean offshore connection lines within the meaning of Section 2 subsection 3 of the Federal Requirements Plan Act,
6. “pilot offshore wind energy installation” shall mean the first three offshore wind energy installations of a type which is used to test a demonstrably significant innovation extending well beyond the best available technology; the innovation can particularly refer to the generator output, the rotor diameter, the hub height, the tower type or the foundation structure,
7. “offshore wind energy installation” shall mean every installation to generate electricity from wind energy which has been constructed at sea at a distance of at least three nautical miles measured seawards from the coastline of the Federal Republic of Germany; the coastline shall be taken to be the coastline depicted in Map Number 2920 German North Sea Coast and Adjacent Waters, 1994 edition, XII., and in Map Number 2921 German Baltic Coast and Adjacent Waters, 1994 edition, XII. of the Federal Maritime and Hydrographic Agency, scale of 1:375,000¹, and
8. “assigned grid connection capacity” shall mean the right to use a certain offshore connection line up to a certain capacity for the transmission of electricity energy from offshore wind energy installations.

Part 2

Sectoral planning and preliminary investigation

Division 1

Site development plan

Section 4

Purpose of the site development plan

(1) The site development plan makes sectoral planning stipulations for the exclusive economic zone. It can make sectoral planning stipulations for the territorial sea. In accordance with an administrative agreement between the Federation, represented by the Federal Maritime and Hydrographic Agency, and the respective *Land*, the individual stipulations for the territorial sea shall be determined in greater detail.

(2) The site development plan shall make stipulations for the expansion of offshore wind energy installations and the offshore connection lines necessary for this with the goal

1. of attaining the expansion target pursuant to Section 4 number 2 letter b of the Renewable Energy Sources Act,
2. of expanding electricity generation from offshore wind energy installations in a spatially orderly manner which uses little space, and
3. of ensuring an orderly and efficient use and utilisation of the offshore connection lines and of planning, constructing, commissioning and using offshore connection lines in alignment with the expansion of electricity generation from offshore wind energy installations.

Section 5

Subject of the site development plan

(1) The site development plan shall contain stipulations for the period from 2026 until at least 2030 for the exclusive economic zone and in line with the following provisions for the territorial sea regarding

1. areas; in the territorial sea, areas can only be stipulated if the relevant *Land* has concluded an administrative agreement on this pursuant to Section 4 subsection 1 sentence 3 with the Federal Maritime and Hydrographic Agency and has designated the areas as a possible subject of the site development plan,
2. sites in the areas stipulated pursuant to number 1,
3. the time sequence in which the stipulated sites are to be auctioned pursuant to Part 3 Division 2, including the naming of the respective calendar years,

4. the calendar years in which the offshore wind energy installations awarded funding and the corresponding offshore connection lines are to be commissioned on the stipulated sites,
5. the likely amount of capacity of offshore wind energy installations to be installed in the stipulated areas and on the stipulated sites,
6. sites of converter platforms, collector platforms and, as far as possible, substations,
7. routes or route corridors for offshore connection lines,
8. places where the offshore connection lines cross the border between the exclusive economic zone and the territorial sea,
9. routes or route corridors for cross-border powerlines,
10. routes or route corridors for possible links between the installations, routes or route corridors cited in numbers 1, 2, 6, 7 and 9, and
11. standardised technology and planning principles.

(2) The site development plan can, for the period from 2021 for areas in the exclusive economic zone and in the territorial sea, designate available grid connection capacities in existing offshore connection lines or offshore connection lines to be completed in the following years which can be assigned to pilot offshore wind energy installations pursuant to Section 70 subsection 2. The site development plan can impose spatial rules on the construction of pilot offshore wind energy installations in areas and nominate the technical characteristics of the offshore connection line and the resulting technical prerequisites for the grid connection of pilot offshore wind energy installations.

(3) Stipulations pursuant to subsection 1 number 1 and 2 and 6 to 11 shall not be admissible if outweighed by opposing public or private interests. In particular, these stipulations shall not be admissible if

1. they do not coincide with the requirements of spatial planning pursuant to Section 17 subsection 3 of the Spatial Planning Act,
2. they endanger the marine environment,
3. they impair the safety and efficiency of traffic,
4. they impair the security of the defence of the nation and the Alliance, or
5. in the case of a stipulation pursuant to subsection 1 number 1 or 2 the area or the site
 - a) is located in a protected area pursuant to Section 57 of the Federal Nature Conservation Act or
 - b) is located outside the Clusters 1 to 8 in the North Sea and Clusters 1 to 3 in the Baltic Sea stipulated by the offshore federal sectoral plan pursuant to Section 17a of the Energy Industry Act or outside the areas or sites in the territorial sea designated by a *Land*, unless it was not possible to stipulate sufficient areas and sites in these clusters and these areas and sites in the territorial sea in order to

attain the development target pursuant to Section 4 number 2 letter b of the Renewable Energy Sources Act.

To the extent that the area or the site is located in a cluster stipulated by the offshore federal sectoral plan pursuant to Section 17a of the Energy Industry Act or a priority, reservation or suitable area of a spatial plan pursuant to Section 17 subsection 3 sentence 1 of the Federal Spatial Planning Act, the admissibility of the stipulations pursuant to subsection 1 number 1 and 2 has only to be examined where additional or other significant aspects are apparent or the examination needs to be updated or undertaken in greater depth. Section 14f subsection 3 of the Act on the Assessment of Environmental Impacts shall be applied *mutatis mutandis* for the Strategic Environmental Assessment. For areas and sites designated by a *Land* in the territorial sea, the *Land* shall make available all the information and documents, including those necessary for the Strategic Environmental Assessment, which are required for the examination of whether the stipulation of these areas and sites is admissible.

(4) In the site development plan, individual sites pursuant to subsection 1 number 2, and on a cross-area basis the time sequence in which the sites are to come up for auction, shall be stipulated with the aim that from 2026 offshore wind energy installations shall be commissioned on these sites and at the same time the offshore connection lines needed to connect these sites shall be completed and existing offshore connection lines shall be efficiently used and utilised. Criteria for the stipulation of the sites and the time sequence of their auction shall in particular be

1. the efficient use and utilisation of the offshore connection lines which at the time of the production of the site development plan
 - a) already exist or
 - b) have been unreservedly confirmed in the offshore network development plan,
2. the orderly and efficient planning, construction, commissioning, use and utilisation of the offshore connection lines and onshore grid connection points still to be completed in 2026 and the following years; in this process, consideration shall also be given to the planning and actual expansion of onshore grids,
3. the spatial proximity to the coast,
4. conflicts of use on a site,
5. the actual likelihood that a site can be built on,
6. the capacity that is likely to be installed on a site and the related suitability of the site for cost-efficient electricity generation and
7. a balanced distribution of the auction volume to sites in the North Sea and the Baltic Sea, taking account of the total potential available.

(5) In the site development plan, the areas and the sites and the time sequence pursuant to subsection 1 number 3 and subsection 4 shall be stipulated such that offshore wind energy installations on sites where a capacity of 700 to 900 megawatts and on average of not more than 840 megawatts is likely to be installed

1. are put up for auction at each bid deadline pursuant to Section 17 and
2. are commissioned in each calendar year from 2026.

Between the calendar year of the auction pursuant to sentence 1 number 1 for a site and the calendar year of the commissioning of the offshore wind energy installations awarded funding pursuant to sentence 1 number 2 on this site, there must be at least enough months for it to be possible to meet the implementation deadlines pursuant to Section 59. To the extent that in the auctions pursuant to Part 3 Division 3 a funding award has been made pursuant to Section 34 for appreciably less than 3,100 megawatts, the stipulations pursuant to sentence 1 shall be made such that in derogation of sentence 1 the capacity of 700 to 900 megawatts and on average 840 megawatts which is likely to be installed is increased to the extent needed to attain the development target pursuant to Section 4 number 2 letter b of the Renewable Energy Sources Act.

Section 6
Responsibilities and procedures for
the drawing up of the site development plan

- (1) The Federal Maritime and Hydrographic Agency shall announce the launch and the likely date of the conclusion of the procedure to draw up the site development plan pursuant to Section 73 number 1.
- (2) The Federal Maritime and Hydrographic Agency shall produce a preliminary draft of the site development plan immediately after the announcement of the launch of the procedure. The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Federal Network Agency) shall call on the transmission system operators to submit joint written comments on the preliminary draft within an appropriate deadline. In their comments, the transmission system operators shall particularly give consideration to
 1. all the measures they regard as effective for the needs-oriented optimisation, strengthening and expansion of the offshore connection lines which are needed to attain the goals pursuant to Section 4 subsection 2 and for a secure and reliable operation of the offshore connection lines,
 2. the rules pursuant to Section 5 and the stipulations made in the offshore federal sectoral plan and the network development plans and
 3. the expected planning, approval and construction times and the construction capacities available on the market.

The Federal Network Agency shall examine the comments in coordination with the Federal Maritime and Hydrographic Agency.

(3) The Federal Maritime and Hydrographic Agency shall conduct a hearing. In the hearing, the subject and scope of the stipulations cited in Section 5 subsection 1 and the comments submitted by the transmission system operators pursuant to subsection 2 shall be discussed. In particular, discussions shall cover the extent to which and the degree of detail in which data are to be included in the environmental report pursuant to Section 14g of the Act on the Assessment of Environmental Impacts. The hearing shall also be the discussion within the meaning of Section 14f subsection 4 sentence 2 of the Act on the Assessment of Environmental Impacts. The authorities whose fields of responsibility are affected, those responsible for public interests, the transmission system operators and the environmental associations recognised pursuant to Section 3 of the Environmental Appeals Act shall be invited to the hearing by the Federal Maritime and Hydrographic Agency. The invitation can take place electronically. The hearing shall be public; the informing of the public about the date of the hearing shall take place in line with Section 73 number 1.

(4) The Federal Maritime and Hydrographic Agency shall exercise proper discretion in stipulating an investigation framework for the site development plan on the basis of the findings of the hearing. Taking account of the findings from the hearing, it shall produce a draft site development plan and an environmental report which must meet the requirements of Section 14g of the Act on the Assessment of Environmental Impacts. The operators of transmission systems and of offshore wind energy installations shall provide the Federal Maritime and Hydrographic Agency with the information needed for this.

(5) The Federal Maritime and Hydrographic Agency shall involve the authorities whose responsibilities are affected and the public in the drafting of the site development plan and the environmental report pursuant to the provisions of the Act on the Assessment of Environmental Impacts. The subject of this participation shall be the environmental impacts and the stipulation of the plan. A discussion shall be held.

(6) If there is no requirement to produce a Strategic Environmental Report, the Federal Maritime and Hydrographic Agency shall involve the authorities whose fields of responsibility are affected, those responsible for public interests, and the public in line with the procedure provided in subsections 3 to 5 and in Sections 14h to 14l of the Act on the Assessment of Environmental Impacts; it shall not be necessary to produce an environmental report for this.

(7) The Federal Maritime and Hydrographic Agency shall produce the site development plan in consensus with the Federal Network Agency and in coordination with the Federal Agency for Nature Conservation, the Federal Waterways and Shipping Agency and the coastal *Länder*.

(8) The Federal Maritime and Hydrographic Agency shall publish the site development plan pursuant to Section 73 number 1. The first site development plan must be published by 30 June 2019.

(9) The site development plan cannot be subject to a separate judicial review.

Section 7

Transition from the offshore federal sectoral plan and the offshore network development plan

For stipulations from 2026 onwards,

1. the stipulations previously made in the offshore federal sectoral plan pursuant to Section 17a of the Energy Industry Act shall be replaced by the stipulations made in the site development plan pursuant to Section 5 and
2. the stipulations previously made in the offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act shall be replaced partly by the stipulations made in the site development plan pursuant to Section 5 and partly by the stipulations made in the network development plan pursuant to Sections 12b and 12c of the Energy Industry Act.

Section 8

Alterations and updates to the site development plan

(1) At the proposal of the Federal Maritime and Hydrographic Agency or the Federal Network Agency, the site development plan can be altered or updated. The decision regarding the timing and scope of a procedure to alter or update the site development plan shall be taken in a consensus between the Federal Maritime and Hydrographic Agency and the Federal Network Agency.

(2) The site development plan shall be altered or updated in line with Section 5 if, in order to attain the goals pursuant to Section 4, it is necessary to stipulate other or further areas and sites or a change to the time sequence of the preliminary investigation of the sites is necessary or if the following provisions provide for this, but at least every four years. Pursuant to Section 5 subsection 1, the update can extend beyond the period up to 2030. To the extent that the total installed capacity of offshore wind energy installations on 31 December 2020 is substantially less than 7,700 megawatts, the site development plan shall be updated or altered such that in derogation of Section 5 subsection 5 sentence 1 the capacity of 700 to 900 megawatts and on average 840 megawatts which is likely to be installed is increased to the extent needed to attain the development target pursuant to Section 4 number 2 letter b of the Renewable Energy Sources Act. To the extent that pilot offshore wind energy installations with an installed capacity of at least 100 megawatts are constructed which have an assigned grid connection capacity pursuant to Section 70 subsection 2, the site development plan shall be updated or altered such that in derogation of Section 5 subsection 5 sentence 1 the capacity of 700 to 900 megawatts and on average 840 megawatts which is likely to be installed is reduced by the total of the installed capacity of these pilot offshore wind energy installations.

(3) In the case of updates to the site development plan reaching beyond 2030, stipulations can be made on a follow-up use and renewed auctions of sites which are already used for electricity generation from offshore wind energy installations. The renewed auction of a site for electricity generation from offshore wind energy installations shall be stipulated, taking into account the purpose of this Act pursuant to Section 1, if and to the extent that this is necessary to attain the respective development targets which apply pursuant to the Renewable Energy Sources Act.

(4) The Federal Maritime and Hydrographic Agency and the Federal Network Agency shall announce pursuant to Section 73 number 1 and 2 the launch of a procedure to alter or update the site development plan and the likely scope of this. Section 6 shall be applied *mutatis mutandis*. In the case of a minor alteration to the site development plan, the Federal Maritime and Hydrographic Agency can dispense with the implementation of individual procedural steps; in particular, the participation of the relevant authorities and the public can take place in writing or electronically; this shall be without prejudice to the provisions of the Act on the Assessment of Environmental Impacts.

Division 2

Preliminary investigation of sites

Section 9

The aim of the preliminary investigation of sites

(1) The preliminary investigation of the sites stipulated in the site development plan pursuant to Sections 10 to 12 shall take place in the sequence stipulated in the site development plan with the aim, for the auctions pursuant to Part 3 Division 2, of

1. providing the bidders with the information which makes possible a competition-based determination of the market premium pursuant to Section 22 of the Renewable Energy Sources Act, and
2. determining the suitability of the sites and examining individual subjects of the investigation in advance in order to accelerate the subsequent planning approval procedure pursuant to Part 4 in the exclusive economic zone or the approval procedure pursuant to the Federal Immission Control Act in the territorial sea for the construction and operation of offshore wind energy installations on these sites.

(2) A site shall have been subject to a preliminary investigation when the information on the site pursuant to Section 10 subsection 1 is available and the suitability of the site and the capacity to be installed on it pursuant to Section 12 subsection 5 has been determined.

(3) The preliminary investigation of sites shall be timed such that, prior to the announcement of the auction in a calendar year pursuant to Section 19, the preliminary investigation has been completed at least for those sites which pursuant to the site development plan are to be auctioned in this calendar year and in the following calendar year.

Section 10

Subject and scope of the preliminary investigation of sites

- (1) In order to provide the bidders with the information about the respective site,
1. the examinations of the marine environment shall be carried out and documented which are necessary for an environmental impact study in the planning approval procedure pursuant to Section 45 to construct offshore wind energy installations on this site and which can be carried out irrespective of the subsequent details of the project; this shall particularly include the description and assessment of the environment and its components by
 - a) a description of the current situation,
 - b) the presentation of the existing pollution and
 - c) an assessment of the current situation,
 2. a preliminary exploration of the subsoil shall be carried out and documented and
 3. reports shall be produced on the wind and oceanographic situation of the site to be subjected to the preliminary investigation.

The investigations pursuant to sentence 1 shall be carried out according to the best available technology. This shall be assumed to be the case

1. for the requirements pursuant to sentence 1 number 1 if the investigations of the marine environment have been carried out in compliance with the relevant “standard examination of the impact of offshore wind energy installations on the marine environment”¹,
2. for the requirements pursuant to sentence 1 number 2 if the preliminary exploration of the subsoil has been carried out in compliance with the relevant “standard exploration of the subsoil – minimum requirements for the exploration and examination of the subsoil for offshore wind energy installations, offshore stations and electricity cables”²; here, only a data collection in line with a preliminary exploration of the subsoil shall be necessary.

(2) In order to determine that the respective site is suitable for the auction pursuant to Part 3 Division 2, the examination shall verify whether the construction and the operation of offshore wind energy installations on this site is not opposed by

1. the criteria for the inadmissibility of the stipulation of a site in the site development plan pursuant to Section 5 subsection 3,
2. to the extent that it can be assessed irrespective of the subsequent details of the project,
 - a) in the case of sites in the exclusive economic zone the main interests pursuant to Section 48 subsection 4 sentence 1 for the planning approval and

- b) in the case of sites in the territorial sea the main criteria to be met for the approval pursuant to Section 6 subsection 1 of the Federal Immission Control Act.

In the suitability examination, consideration shall be given to the findings of the investigation and documents pursuant to subsection 1.

- (3) In order to determine the share of a site in the volume up for auction pursuant to Section 17, the capacity to be installed on the respective site shall be determined.

Section 11

Responsibility for the preliminary investigation of sites

(1) The Federal Network Agency shall be the responsible body for the preliminary investigation of sites. It shall have the preliminary investigation undertaken on its behalf in individual cases or cases of a similar nature on the basis of an administrative agreement

1. by the Federal Maritime and Hydrographic Agency in the case of sites in the exclusive economic zone,
2. by the authority responsible under *Land* law in the case of sites in the territorial sea.

In these cases, the authority pursuant to sentence 2 number 1 or number 2 shall assume the tasks of the body responsible for the preliminary investigation within the meaning of this Act. The Federal Network Agency shall announce pursuant to Section 73 number 2 the assumption of a task by an authority pursuant to sentence 2.

(2) The determination of the suitability of a site pursuant to Section 12 subsection 5 sentence 1 shall require the agreement of the Federal Waterways and Shipping Agency. This agreement may only be refused if the construction and operation of offshore wind energy installations on this site creates concerns of impediments to the safety and efficiency of traffic which, in the case of sites in the exclusive economic zone, cannot be prevented or offset by conditions in the planning approval decision pursuant to Section 48 subsection 1 or in the case of sites in the territorial sea by conditions in the approval pursuant to Section 4 subsection 1 of the Federal Immission Control Act.

Section 12

Procedure for the preliminary investigation of sites

(1) The body responsible for the preliminary investigation shall announce pursuant to Section 73 the launch of the procedure for a preliminary investigation of a site.

(2) The body responsible for the preliminary investigation shall hold a hearing immediately after the announcement of the launch of the procedure. At the hearing, the subject and scope of the measures for the preliminary investigation pursuant to Section 10 subsection 1 shall be discussed. In particular, discussions shall cover the extent to which and the degree of detail in which data are to be included in the environmental report pursuant to Section 14g of the Act on the Assessment of Environmental Impacts. The hearing shall also be the discussion within the meaning of Section 14f subsection 4 sentence 2 of the Act on the Assessment of Environmental Impacts. The authorities whose field of responsibility is affected, those responsible for public interests and the environmental associations recognised pursuant to Section 3 of the Environmental Appeals Act shall be invited to the hearing by the body responsible for the preliminary investigation. The invitation can take place electronically. The hearing shall be public; the informing of the public about the date of the hearing shall take place in line with Section 73. The hearing can take place together with the hearing pursuant to Section 6 subsection 3.

(3) The body responsible for the preliminary investigation shall exercise proper discretion in stipulating an investigation framework for the preliminary investigation of the site on the basis of the findings of the hearing. In order to provide information pursuant to Section 9 subsection 1 number 1, the body responsible for the preliminary investigation can particularly on the basis of the findings of the hearing stipulate further subjects for investigation if in the case of a preliminary investigation of a site it is exceptionally necessary to investigate further subjects in addition to those covered in Section 10 subsection 1.

(4) The body responsible for the preliminary investigation shall compile the information pursuant to Section 10 subsection 1 taking into consideration the findings from the hearing, shall examine the suitability pursuant to Section 10 subsection 2 and shall determine the capacity to be installed pursuant to Section 10 subsection 3.

(5) If the suitability examination shows that the site to be auctioned pursuant to Part 3 Division 2 is suitable, this finding and the volume of capacity to be installed on this site shall be determined in an ordinance as a basis for the subsequent auction by the Federal Network Agency. The determination of suitability pursuant to sentence 1 can include rules for the subsequent project, and particularly on the nature and scope of the construction on the site and its position on the site if otherwise there would be a concern that the construction and operation of offshore wind energy installations on this site would cause impairments to the criteria and interests pursuant to Section 10 subsection 2. The following shall be authorised to issue an ordinance pursuant to sentence 1:

1. the Federal Ministry for Economic Affairs and Energy without the approval of the Bundesrat in the case of sites in the exclusive economic zone and
2. the *Land* government of the *Land* in which the territorial sea is located in the case of sites in the territorial sea.

The Federal Ministry for Economic Affairs and Energy can transfer the authorisation to issue an ordinance pursuant to sentence 3 number 1 by ordinance without the approval of the Bundesrat to the body responsible for the preliminary investigation. The ordinances which are enacted by a higher federal authority on this basis shall not require the approval of the Bundesrat. Following the determination of suitability by means of an ordinance, the body responsible for the preliminary investigation shall make the information pursuant to Section 14l subsection 2 of the Act on the Assessment of Environmental Impacts available for viewing. It shall announce the place and time of the viewing pursuant to Section 73.

(6) If the suitability examination shows that the site to be auctioned pursuant to Part 3 Division 2 is unsuitable, the body responsible for the preliminary investigation shall announce this finding pursuant to Section 73. It shall transmit this finding in writing or electronically to the transmission system operator responsible for the connection. The site development plan shall be updated pursuant to Section 8.

(7) If the Federal Network Agency has the preliminary investigation pursuant to Section 11 subsection 1 undertaken on its behalf by another authority, following the conclusion of the procedure the latter shall transmit to the Federal Network Agency the findings of the investigation and the documents from the preliminary investigation and the capacity to be installed which has been determined pursuant to subsection 5 without delay following the announcement pursuant to subsection 5 to the extent that the suitability of the site has been determined. The transmission can take place electronically.

Section 13

Construction and operation of offshore connection lines

The construction and operation of the offshore connection lines which are needed to connect the sites which have been determined to be suitable shall not be the subject of a preliminary investigation; it shall be based on Section 17d of the Energy Industry Act.

Part 3

Auctions

Division 1

General provisions

Section 14

Competition-based determination of the market premium

(1) Operators of offshore wind energy installations which are commissioned after 31 December 2020 in the exclusive economic zone and in the territorial sea shall have an entitlement pursuant to Section 19 subsection 1 of the Renewable Energy Sources Act for the electricity generated in these installations only as long as and to the extent that a funding award issued by the Federal Network Agency pursuant to Section 23 or Section 34 is effective for the respective offshore wind energy installation.

(2) Pilot offshore wind energy installations can in derogation of subsection 1 have an entitlement to payment pursuant to Section 19 subsection 1 of the Renewable Energy Sources Act in line with Part 5.

Section 15

General conditions for the auction

The conditions for the auction pursuant to Sections 30 to 35a, 55 and 55a of the Renewable Energy Sources Act shall be applied to the extent that the following provisions do not state otherwise.

Division 2

Auctions for sites which have been subject to a preliminary investigation

Section 16

Subject of the auctions

For offshore wind energy installations which are commissioned from 1 January 2026 on sites which have been subject to a preliminary investigation, the Federal Network Agency shall from 2021 determine the entitled parties and the value to be applied for the electricity generated in these installations pursuant to Section 22 of the Renewable Energy Sources Act by auctions for sites that have been subject to a preliminary investigation.

Section 17

Volume of auctions

The Federal Network Agency shall from 2021 invite bids annually for a bid deadline of 1 September in line with the stipulations of the site development plan for a volume of 700 to 900 megawatts each year, whereby

1. on average no more than the average quantities stipulated in the site development plan may be auctioned,
2. the volume of the auction is distributed across the sites which have been subject to a preliminary investigation and which according to the site development plan are to be auctioned in the respective calendar year, and
3. the proportion of a site pursuant to number 2 in the volume of the auction shall be determined in line with the site development plan and the capacity to be installed on the sites as determined in the preliminary investigation.

Section 18

Change in the volume of auctions

(1) The Federal Network Agency can deviate from the site development plan in terms of the volume of the auction and the distribution of the volume of the auction across the sites on a bid deadline in coordination with the Federal Maritime and Hydrographic Agency only if and to the extent that

1. the preliminary investigation of the sites which according to the site development plan are to be auctioned in that calendar year has not been completed in time,
2. the suitability of a site which according to the site development plan is to be auctioned in that calendar year has not been determined or
3. by the time of the announcement of the auction, the preconditions exist to revoke funding awards which have already been issued pursuant to Section 60 subsection 3 or to withdraw grid connection capacities pursuant to Section 17d subsection 6 sentence 3 of the Energy Industry Act in the version in force before 1 January 2017; in this case, the Federal Network Agency may increase the volume of the auction only if and to the extent that the attainment of the goal pursuant to Section 4 number 2 letter b of the Renewable Energy Sources Act is endangered.

In the selection of the sites which pursuant to sentence 1 exceptionally come up for auction on this bid deadline in derogation of the site development plan, the Federal Network Agency shall observe the other stipulations in the site development plan and the criteria for the stipulation of sites and the time sequence pursuant to Section 5 subsection 4.

(2) The Federal Network Agency must reduce the volume of the auction in the case of a successful legal challenge pursuant to Section 83a of the Renewable Energy Sources Act following the holding of an award procedure pursuant to Section 34. The reduction shall correspond to the volume of the funding award to be issued pursuant to Section 83a subsection 1 of the Renewable Energy Sources Act and must be distributed across several bid deadlines if otherwise the volume of the auction in a year would have to be reduced to less than 400 megawatts.

(3) If the Federal Network Agency adapts the volume of an auction pursuant to subsections 1 and 2, the site development plan must be altered or updated pursuant to Section 8 if the adjustments would otherwise render it impossible to comply with it in the subsequent years.

Section 19

Announcement of the auctions

The Federal Network Agency shall announce the auctions at the latest six calendar months before the respective bid deadline pursuant to Section 73 number 2. The announcements must contain at least the following information:

1. the bid deadline,
2. the volume of the auction pursuant to Sections 17 and 18,
3. the designation of the sites up for auction,
4. the distribution of the volume of the auction across the respective sites where the volume of the auction is distributed across more than one site,
5. for each site the designation of the offshore connection line and the calendar year pursuant to Section 5 subsection 1 number 4 in which this is to be commissioned,
6. the earliest calendar year in which the deadline for the payment of the market premium pursuant to Section 24 subsection 1 number 2 second half-sentence shall begin,
7. the respective documents pursuant to Section 10 subsection 1 for the sites up for auction,
8. the maximum value pursuant to Section 22,
9. the information as to whether the preconditions for a right of subrogation pursuant to Section 40 subsection 1 number 1 to 5 exist for the site which is up for auction,
10. the format required by the Federal Network Agency for the submission of the bid pursuant to Section 30a subsection 1 of the Renewable Energy Sources Act,
11. the stipulations of the Federal Network Agency pursuant to Section 85 subsection 2 of the Renewable Energy Sources Act where they pertain to the respective bid submission and the respective award procedure, and
12. a reference to the undertaking required pursuant to Section 46 subsection 6 and Section 48 subsection 4 number 7.

Section 20

Requirements to be met by bids

(1) In addition to Section 30 of the Renewable Energy Sources Act, bids must meet the following requirements:

1. when submitting his bid, the bidder must state his agreement that documents may be used by the Federal Maritime and Hydrographic Agency and the Federal Network Agency pursuant to Section 67 subsection 1 and
2. the bid quantity must correspond to the share of the volume of the auction for the site for which the bid is submitted.

(2) In their bids, bidders must designate in addition to Section 30 of the Renewable Energy Sources Act the site which has been subject to a preliminary investigation for which the bid is submitted, to the extent that the Federal Network Agency has distributed the volume of the auction across more than one site which has been subject to a preliminary investigation.

Section 21

Security

The amount of the security pursuant to Section 31 of the Renewable Energy Sources Act shall be determined from the bid quantity multiplied by 200 euros per kilowatt of capacity to be installed.

Section 22

Maximum value

(1) The maximum value shall correspond to the lowest bid value on the bid deadline of 1 April 2018 for which a funding award has been issued in the award procedure pursuant to Section 34.

(2) The Federal Network Agency can determine by means of a stipulation pursuant to Section 29 of the Energy Industry Act a maximum value which deviates from subsection 1 taking into consideration the economic framework conditions existing at the time of the announcement for the construction and the operation of offshore wind energy installations and the expected advances in technology if there are indications that the maximum value is too high or too low taking into consideration Sections 1 and 2 subsection 4 of the Renewable Energy Sources Act. Here, the new maximum value may not deviate by more than 10 percent from the maximum value in force at the time of the new stipulation.

Section 23

Award procedure, value to be applied

- (1) The Federal Network Agency shall issue the funding award for each site up for auction to the bid with the lowest bid value subject to revocation pursuant to Section 60 subsection 3 and subject to a transition pursuant to Section 43 in the case of an effective exercise of a right of subrogation.
- (2) The value to be applied shall be the bid value of the bid awarded funding.

Section 24

Legal consequences of the funding award

- (1) When the funding is awarded pursuant to Section 23, the winning bidder has
 1. the exclusive right to implement a planning approval procedure pursuant to Part 4 Division 1 to construct and operate offshore wind energy installations on the respective site, whereby the information and determination of suitability of the preliminary investigation benefit the bidder awarded funding,
 2. entitlement to the market premium pursuant to Section 19 of the Renewable Energy Sources Act for electricity from offshore wind energy installations to the extent of the bid quantity awarded funding on the respective site as long as and to the extent that the other preconditions for the entitlement pursuant to Section 19 of the Renewable Energy Sources Act are met; this entitlement shall commence in derogation of Section 25 sentence 3 of the Renewable Energy Sources Act at the earliest in the calendar year announced pursuant to Section 19 sentence 2 number 6, and
 3. to the extent of the bid quantity awarded funding
 - a) entitlement to connection of the offshore wind energy installation on the respective site to the offshore connection line stipulated in the site development plan from the binding completion date pursuant to Section 17d subsection 2 sentence 9 of the Energy Industry Act and
 - b) assigned grid connection capacity on the offshore connection line stipulated in the site development plan from the binding completion date pursuant to Section 17d subsection 2 sentence 9 of the Energy Industry Act.
- (2) Subject to Section 48 subsection 7 and Section 17d subsection 5 sentence 1 of the Energy Industry Act, no rights shall be established by the funding award for the time following the end of the entitlement to the market premium pursuant to Section 25 sentence 1 of the Renewable Energy Sources Act. The site awarded funding can be re-auctioned in line with the site development plan pursuant to Section 8 subsection 3.

Section 25

Reimbursement of securities to bidders not awarded funding

The Federal Network Agency shall return without delay the securities lodged for a bid if the bidder has not received a funding award for this bid pursuant to Section 23.

Division 3

Auctions for existing projects

Section 26

Auctions for existing projects

(1) For offshore wind energy installations which are commissioned after 31 December 2020, the Federal Network Agency shall determine the entitled parties and the value to be applied for the electricity generated in these installations pursuant to Section 22 of the Renewable Energy Sources Act for the bid deadlines of 1 April 2017 and 1 April 2018 by auctions in which only existing projects can participate.

(2) Existing projects within the meaning of subsection 1 shall be projects to construct and operate offshore wind energy installations,

1. for which prior to 1 August 2016
 - a) a plan has been approved or an approval issued for the exclusive economic zone pursuant to Section 5 or Section 17 of the Offshore Installations Ordinance in the version in force before 1 January 2017,
 - b) an approval has been issued for the territorial sea pursuant to Section 4 subsection 1 of the Federal Immission Control Act or
 - c) a meeting has been held pursuant to Section 73 subsection 6 of the Administrative Procedure Act and
2. which are planned in the case of projects in the exclusive economic zone in
 - a) the North Sea in one of the Clusters 1 to 8 of the 2013/2014 offshore federal sectoral plan for the German exclusive economic zone of the North Sea of the Federal Maritime and Hydrographic Agency or
 - b) the Baltic Sea in one of the Clusters 1 to 3 of the 2013 offshore federal sectoral plan for the German exclusive economic zone of the Baltic Sea of the Federal Maritime and Hydrographic Agency.

Section 27

Volume of auctions

(1) The volume of the auction shall be 1,550 megawatts per bid deadline.

(2) On the bid deadline of 1 April 2018, the volume of the auction shall increase to the extent to which funding awards pursuant to Section 34 were issued for less than 1,550 megawatts on the 1 April 2017 bidding deadline.

(3) Of the total of 3,100 megawatts to be auctioned on the two bid deadlines, funding awards shall be issued for at least 500 megawatts for existing projects in the Baltic Sea. Section 34 subsection 2 provides further details.

(4) The volume of funding is to result in newbuild of

1. 500 megawatts in 2021, to take place exclusively in the Baltic Sea,
2. 500 megawatts in 2022,
3. 700 megawatts in 2023,
4. 700 megawatts in 2024 and
5. 700 megawatts in 2025.

This distribution of the newbuild shall be implemented by the minimum quantity for the Baltic Sea pursuant to subsection 3 and the corresponding distribution of the offshore connection lines in the offshore network development plan pursuant to Section 17b of the Energy Industry Act.

Section 28

Planning of the offshore connection lines

The construction and the operation of the offshore connection lines to the clusters in which existing projects are located which could potentially be awarded funding pursuant to Section 26 subsection 2 shall take place in line with Sections 17b and 17c of the Energy Industry Act.

Section 29

Announcement of the auctions

The Federal Network Agency shall announce the auctions at the latest eight calendar weeks before the respective bid deadline pursuant to Section 73 number 1. The announcements shall contain at least the following information:

1. the bid deadline,
2. the volume of the auction,
3. the maximum value pursuant to Section 33,
4. the volume of the grid connection capacities which are available in the clusters which are potentially eligible for a funding award pursuant to Section 26 subsection 2 number 2; the grid connection capacities available for each cluster shall be calculated
 - a) from the grid connection capacity of all the offshore connection lines which are potentially available to connect the existing projects pursuant to Section 26 subsection 2 and which are already in operation or under construction and

- confirmed in the offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act,
- b) minus the volume of the grid connection capacity already assigned on these offshore connection lines
 - aa) for offshore wind energy installations already in operation,
 - bb) due to unconditional agreements by the responsible transmission system operator to provide a grid connection pursuant to Section 118 subsection 12 of the Energy Industry Act in the version in force before 1 January 2017,
 - cc) due to capacity assignments pursuant to Section 17d subsection 3 of the Energy Industry Act in the version in force before 1 January 2017 or
 - dd) due to funding awards pursuant to Section 34 subsection 1 from the 1 April 2017 bid deadline.
5. in which cases multi-cluster grid connections are exceptionally provided for in the offshore federal sectoral plan and in the confirmed offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act and to what extent additional grid connection capacity is available as a result in the cluster which can be connected on a multi-cluster basis,
 6. the envisaged year of the planned completion of the offshore connection lines in the offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act,
 7. the format required by the Federal Network Agency for the submission of the bid pursuant to Section 30a subsection 1 of the Renewable Energy Sources Act,
 8. the stipulations of the Federal Network Agency pursuant to Section 85 subsection 2 of the Renewable Energy Sources Act where they pertain to the bid submission and the award procedure, and
 9. a reference to the undertaking required pursuant to Section 46 subsection 6 and Section 48 subsection 4 number 7.

Section 30

Requirements for participation in auctions for existing projects

- (1) Natural persons, partnerships with legal capacity and legal entities who or which are the owners of an existing project within the meaning of Section 26 subsection 2 may submit bids in the auctions.
- (2) For participation in an auction pursuant to Section 26,
 1. the plan or the approval in the case of existing projects pursuant to Section 26 subsection 2 number 1 letter a and b must be effective or

2. the planning approval procedure or the approval procedure in the case of existing projects pursuant to Section 26 subsection 2 number 1 letter c must not have been terminated by a negative decision.

Participation shall be admissible only if neither an unconditional grid connection commitment pursuant to Section 118 section 12 of the Energy Industry Act nor an assignment of connection capacities pursuant to Section 17d subsection 3 sentence 1 of the Energy Industry Act in the version in force before 1 January 2017 exists for the existing project when the auction is announced pursuant to Section 29.

- (3) Participation in the auction on the bid deadline of 1 April 2018 shall be admissible only to the extent that no funding was awarded to the existing project pursuant to Section 26 subsection 2 number 1 in the auction with the bidding deadline of 1 April 2017.

Section 31

Requirements to be met by bids

- (1) Bids must contain the following details in addition to Section 30 of the Renewable Energy Sources Act:

1. the file number of the planning approval, the approval or the ongoing administrative procedure for the existing project pursuant to Section 26 subsection 2 number 1,
2. in the case of existing projects
 - a) pursuant to Section 26 subsection 2 number 1 letter a and b a confirmation by the authority responsible for the approval of the plan or the issuance of the approval that the plan or the approval is valid,
 - b) pursuant to Section 26 subsection 2 number 1 letter c an assessment by the authority responsible for the approval of the plan or the issuance of the approval that as things stand the project will likely be eligible for approval, and
3. the offshore grid connection on which the bidder would need connection capacity for the project in the case of a funding award pursuant to Section 34.

Section 30 subsection 1 number 6 of the Renewable Energy Sources Act shall be applied with the proviso that the location of the offshore wind energy installations is cited using the coordinates cited in the planning approval or the approval or cited in the hearing.

- (2) The bidder can provide the following details in the bid as an alternative:

1. a minimum bid quantity to be awarded funding up to which the cited value of the bid applies (minimum bid quantity),
2. a further, higher bid value for the issuance of a funding award up to a designated quantity smaller than the minimum bid quantity (alternative bid).

If the bidder does not take advantage of the possibility pursuant to sentence 1 number 1, the bid quantity shall also be the minimum bid quantity.

Section 32

Security

The amount of the security pursuant to Section 31 of the Renewable Energy Sources Act shall be determined from the bid quantity pursuant to Section 30 subsection 1 number 4 of the Renewable Energy Sources Act multiplied by 100 euros per kilowatt of installed capacity. No additional security shall be lodged for the bid quantities cited pursuant to Section 31 subsection 2.

Section 33

Maximum value

The maximum value for electricity from offshore wind energy installations shall be 12 cents per kilowatt-hour.

Section 34

Award procedure

(1) The Federal Network Agency shall conduct the following award procedure for each auction. It

1. shall sort the bids including the alternative bids
 - a) in the case of different bid values, in ascending order by each bid and alternative bid value, beginning with the bid with the lowest bid value;
 - b) if the bid value is the same, in ascending order by each minimum bid quantity, beginning with the lowest minimum bid quantity; if the bid values and the minimum bid quantities of the bids are the same, the order shall be decided by lot, to the extent that the order affects the issuance of funding awards, and
2. shall examine each bid in the order pursuant to number 1 on the basis of the following procedure:
 - a) If the minimum bid quantity neither exceeds the volume of the auction nor triggers an capacity shortage within a cluster (award ceilings), a funding award shall be issued in line with letter b; otherwise, no funding shall be awarded to the bid.
 - b) The funding award shall be issued at the level of the bid quantity if as a consequence none of the award ceilings pursuant to letter a is exceeded; otherwise, the funding award shall be issued to the extent possible whilst complying with the award ceilings.

If the Federal Network Agency has issued a funding award to a bid pursuant to sentence 2, it may not issue a funding award to an alternative bid to that bid.

(2) In the case of the auction with the bid deadline of 1 April 2018, subsection 1 shall apply with the proviso that the Federal Network Agency shall initially issue funding awards to bids for existing projects in the Baltic Sea in the order pursuant to subsection 1 sentence 2 number 1 until the minimum quantity for the Baltic Sea is reached or is exceeded for the first time, whereby a funding award shall be issued only if this does not trigger a capacity shortage within a cluster. The minimum quantity for the Baltic Sea shall be 500 megawatts minus the amount of the funding awards which have been issued in the auction with the bid deadline of 1 April 2017 for existing projects in the Baltic Sea. Following this, the Federal Network Agency shall conduct the procedure pursuant to subsection 1 sentence 2 number 2 for the remaining bids.

(3) The Federal Network Agency shall issue the funding awards subject to revocation pursuant to Section 60 subsection 3.

(4) The Federal Network Agency can make more detailed provisions on the implementation of subsections 1 and 2 via a stipulation pursuant to Section 29 of the Energy Industry Act.

Section 35

Site reference of the funding award

The Federal Network Agency must issue the funding award with reference to the site which derives from the site data pursuant to Section 31 subsection 1 sentence 2.

Section 36

Award value and value to be applied

(1) The award value shall be the bid value cited in the bid awarded funding.

(2) The value to be applied shall be the award value.

Section 37

Legal consequences of the funding award

(1) When the funding is awarded pursuant to Section 34, the winning bidder shall have

1. an entitlement to the market premium pursuant to Section 19 of the Renewable Energy Sources Act for electricity from offshore wind energy installations to the extent of the bid quantity awarded funding on the site pursuant to Section 35 as long as and to the extent that the other preconditions for the entitlement pursuant to Section 19 of the Renewable Energy Sources Act are met; this entitlement shall commence in derogation of Section 25 sentence 3 of the Renewable Energy Sources Act at the earliest in the calendar year stipulated by the Federal Network Agency in the funding award; the Federal Network Agency shall normally stipulate the calendar year stipulated pursuant to Section 29 sentence 2 number 6; in order to attain the distribution of the newbuild in the transitional phase, the Federal Network Agency can stipulate wholly or partially deviating calendar years for the funding awards, in descending order of the calendar years pursuant to the third part of the sentence, within the same calendar year in descending order of the funding award values, and in this process it shall be necessary to make sure that the entitlement to the market premium commences in 2021 to 2023 for wind energy installations with an installed capacity of a maximum of 1,700 megawatts and in 2021 to 2024 for wind energy installations with an installed capacity of a maximum of 2,400 megawatts; in this case, it can stipulate on application from the winning bidder, and following a hearing of the transmission system operator required to provide a connection, implementation deadlines which wholly or partly deviate from Section 59; and

 2. to the extent of the bid quantity awarded funding
 - a) an entitlement to connection of the offshore wind energy installation on the site pursuant to Section 35 to the offshore connection line envisaged in the offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act from the time of the commencement of the binding completion date pursuant to pursuant to Section 17d subsection 2 sentence 9 of the Energy Industry Act and
 - b) assigned grid connection capacity on the offshore connection line envisaged in the offshore network development plan pursuant to Sections 17b and 17c of the Energy Industry Act from the binding completion date pursuant to Section 17d subsection 2 sentence 9 of the Energy Industry Act.
- (2) Subject to Section 48 subsection 7 and Section 17d subsection 5 sentence 1 of the Energy Industry Act, no rights shall be established for the time following the end of the entitlement to the market premium pursuant to Section 25 sentence 1 of the Renewable Energy Sources Act. The site awarded funding pursuant to Section 35 can be re-auctioned in line with the site development plan pursuant to Section 8 subsection 3.

Section 38

Reimbursement of securities to bidders not awarded funding

The Federal Network Agency shall return without delay the securities lodged for a specific bid if the bidder has not received a funding award for this bid pursuant to Section 34.

Division 4

Right of subrogation for existing projects

Section 39

Right of subrogation for the owner of an existing project

(1) The owner of an existing project pursuant to Section 26 subsection 2 has in line with this Division the right, in order to offset the handing over of the data collected by him during the development of his project in the auctions pursuant to Division 2, to subrogate a funding award issued pursuant to Section 23 until 31 December 2030 (right of subrogation).

(2) The owner of an existing project within the meaning of subsection 1 shall be

1. in the case of Section 26 subsection 2 number 1 letter a the owner of the plan or the approval pursuant to Section 5 or Section 17 of the Offshore Installations Ordinance in the version in force before 1 January 2017 for the exclusive economic zone on the day on which the approval or the plan becomes invalid,
2. in the case of Section 26 subsection 2 number 1 letter b the owner of the approval pursuant to Section 4 subsection 1 of the Federal Immission Control Act for the territorial sea on the day on which the approval becomes invalid,
3. in the case of Section 26 subsection 2 number 1 letter c the party responsible for the project on the day on which the procedure is terminated.

(3) The right of subrogation can be transferred to another natural or legal person. The transfer shall be effective only if it is notified in writing by the previously entitled party to the Federal Maritime and Hydrographic Agency. The right of subrogation can only be transferred until the day of the announcement of the auction pursuant to Section 19 for the site which has been subject to a preliminary investigation and for which the right of subrogation exists.

Section 40

Preconditions for and scope of the right of subrogation

(1) The owner of an existing project shall have a right of subrogation if

1. an auctioned site which has been subject to a preliminary investigation fully or predominantly overlaps with the site which was the subject of the existing project, to the extent that requests or applications to implement the planning approval procedure for the existing project were not held back pursuant to Section 3 of the Offshore Installations Ordinance in the version in force before 1 January 2017,

2. a bid has been submitted for the existing project for both bid deadlines pursuant to Section 26,
 3. he has not received a funding award wholly or partly for the existing project in an auction pursuant to Section 26,
 4. he has submitted a valid declaration of waiver pursuant to Section 41 subsection 1 number 2 within the deadline pursuant to Section 41 subsection 2,
 5. he has transmitted the documents pursuant to Section 41 subsection 1 number 1 within the deadline pursuant to Section 41 subsection 2 to the Federal Maritime and Hydrographic Agency or the responsible *Land* authority and
 6. he has submitted a bid in the auction pursuant to Division 2 for the site affected by the right of subrogation.
- (2) If the spatial extent of the existing project overlaps only partly, but predominantly, with the site which has been subject to a preliminary investigation, the right of subrogation shall exist for the entire site which has been subject to a preliminary investigation. If several existing projects overlap with the site which has been subject to a preliminary investigation, only that owner of the existing project shall have a right of subrogation where the spatial extent of this project overlaps with the predominant part of the site which has been subject to a preliminary investigation.

Section 41

Handing over of data and declaration of waiver

- (1) The right of subrogation presupposes that the owner of an existing project in the exclusive economic zone
1. hands over to the Federal Maritime and Hydrographic Agency
 - a) all documents submitted by the party responsible for the project in the context of the planning approval procedure or approval procedure pursuant to the Offshore Installations Ordinance in the version in force before 1 January 2017 and
 - b) all investigation findings and documents held by the party responsible for the project which correspond to those pursuant to Section 10 subsection 1, in each case including the raw data free of the rights of third parties which restrict or prevent the use by the Federal Maritime and Hydrographic Agency and other parties responsible for projects, and
 2. declares in writing to the Federal Maritime and Hydrographic Agency that he waives the right, free of conditions, time limits or other ancillary provisions,
 - a) to all rights granted to him in the planning approval or approval of the project pursuant to the Offshore Installations Ordinance in the version in force before 1 January 2017 and
 - b) to all rights to the investigation findings and documents pursuant to number 1.

(2) The waiver declaration pursuant to subsection 1 number 2 must be received by the Federal Maritime and Hydrographic Agency at the latest by the end of the calendar month following the announcement of the funding awards in the auction on the bid deadline of 1 April 2018 (substantive exclusion deadline). The data handover pursuant to subsection 1 number 1 must take place within the same deadline.

(3) The Federal Maritime and Hydrographic Agency can provide forms for the waiver declaration pursuant to subsection 1 number 2 and make their use mandatory. Submitted declarations which do not use these forms shall be invalid.

(4) For all the owners of existing projects who have submitted a waiver declaration and handed over data, the Federal Maritime and Hydrographic Agency shall stipulate by a declaratory administrative decision, following the expiry of the deadline pursuant to subsection 2, whether the waiver is valid and the data handed over are complete. The decision shall also stipulate the sites to which the waiver and the data handed over refer.

(5) In the case of existing projects in the territorial sea, subsections 1 and 2 shall be applied with the proviso that

1. the planning approval or approval and the planning approval procedure or the approval procedure pursuant to the Offshore Installations Ordinance in the version in force before 1 January 2017 shall be replaced by the approval and the approval procedure pursuant to the Federal Immission Control Act and
2. the responsible *Land* authority shall take the place of the Federal Maritime and Hydrographic Agency.

Section 42

Exercise of the right of subrogation

1. In order to exercise his right of subrogation, the party entitled to the right of subrogation must, at the latest by the end of the calendar month which follows the announcement of the funding awards in the auction pursuant to Division 2 for the site which has been subject to a preliminary investigation and is affected by the right of subrogation,

1. declare in writing or electronically to the Federal Network Agency that he is exercising his right of subrogation for his existing project, whereby the existing project must be cited in the declaration, and
2. lodge the required security pursuant to Section 21.

(2) The right of subrogation must be exercised in full. Partial exercise of the right shall be inadmissible.

Section 43

Legal consequences of the right of subrogation

Where the preconditions for the right of subrogation pursuant to Section 40 subsection 1 exist and the owner of the existing project has effectively exercised the right of subrogation pursuant to Section 42, the funding award issued to the bidder pursuant to Section 23 for the site which has been subject to a preliminary investigation and is affected by the right of subrogation shall be fully transferred to the owner of the existing project.

Part 4

Approval, construction and operation of offshore wind energy installations and installations to transmit electricity

Section 44

Scope of Part 4

(1) The provisions of this Part shall be applied to the construction, operation and alteration of offshore wind energy installations and installations to transmit electricity from offshore wind energy installations including the technical and structural ancillary facilities (facilities) required to construct and operate the installations if and to the extent that

1. they are located in the exclusive economic zone of the Federal Republic of Germany or
2. they are located on the high seas and if the company headquarters of the party responsible for the project is located in the federal territory.

(2) The provisions of Division 2 Subdivision 2 of this Part shall with the exception of Section 64 subsection 1 sentence 1 number 1 and Section 67 also be applied *mutatis mutandis* to offshore wind energy installations in the territorial sea.

Division 1

Approval of installations

Section 45

Planning approval

(1) The construction and the operation of facilities and the substantial alteration of such facilities or their operation shall be subject to planning approval.

(2) The responsible hearing and planning approval authority shall be the Federal Maritime and Hydrographic Agency; this shall also be the planning consent authority.

(3) Sections 72 to 78 of the Administrative Procedure Act shall be applied for the planning approval procedure, to the extent that this Act does not determine otherwise. Section 36 subsection 2 and 3 of the Administrative Procedure Act shall be applied.

Section 46

Relationship of the planning approval to the auctions

- (1) The application for the implementation of the planning approval procedure for the construction and operation of offshore wind energy installations can only be submitted by a party who has been awarded funding by the Federal Network Agency for the site to which the plan refers.
- (2) Without delay after 1 January 2017, the planning approval authority must
 1. extend deadlines until 15 July 2018 for all projects pursuant to Section 26 subsection 2 number 1 letter a where the fruitless expiry of these deadlines would otherwise result in the invalidity of the planning approval decision or the approval before the last bid deadline pursuant to Section 26 subsection 1, and
 2. suspend all planning approval procedures and approval procedures for existing projects pursuant to Section 26 subsection 2 number 1 letter c until the funding awards pursuant to Section 34 have been issued for the bid deadline of 1 April 2018.
- (3) On 1 January 2017, all ongoing planning approval procedures or approval procedures to construct and operate offshore wind energy installations shall end unless the projects fall within the scope of the auctions for existing projects pursuant to Section 26 subsection 2. On application from the party responsible for the project, the planning approval authority shall issue a confirmation of the termination of the procedure.
- (4) When the funding awards pursuant to Section 34 from the bid deadline of 1 April 2018 are issued, all ongoing planning approval procedures or approval procedures to construct and operate offshore wind energy installations without a valid funding award shall end.
- (5) For existing projects which have not received a funding award in an auction pursuant to Section 26 subsection 1, the planning approval authority may not extend deadlines which it has imposed with a view to a rapid construction and commissioning of the offshore wind energy installations. Sentence 1 shall be applied *mutatis mutandis* to deadline extensions pursuant to subsection 2 number 1.
- (6) Projects to construct and operate offshore wind energy installations which have been awarded funding pursuant to Section 23 or Section 34 may not commence the construction of the offshore wind energy installations and the related installations until the undertaking pursuant to Section 66 subsection 2 has been declared and taken effect.

Section 47

Planning approval procedures

- (1) In addition to the drawings and explanations pursuant to Section 73 subsection 1 sentence 2 of the Administrative Procedure Act, the plan shall also include
 1. the documentation of the issuance of a funding award for the relevant site if the plan refers to offshore wind energy installations,

2. a description of the safety and preventive measures,
3. a timetable and schedule of measures up to the commissioning as a basis for a decision pursuant to Section 48 subsection 3,
4. the documents pursuant to Section 6 of the Act on the Assessment of Environmental Impacts, whereby the documents pursuant to Section 10 subsection 1 can be used for this, and
5. on request from the planning approval authority, expertises from a recognised expert on the question as to whether the installation and its operation correspond to the best available technology and meet the safety requirements.

(2) If the details and documents are insufficient for the examination, the party responsible for the project must supplement these on demand from the planning approval authority by an appropriate deadline set by this body. If the party responsible for the project fails to do this, the planning approval authority can reject the application.

(3) Section 73 subsection 2, subsection 3 sentence 1, subsection 4 sentence 1 and subsection 5 sentence 1 and Section 74 subsection 4 sentence 2 of the Administrative Procedure Act shall be applied with the proviso that the planning approval authority replaces the municipality. A reference shall be made to the public display of documents pursuant to Section 73 number 1 and by means of publication in two supra-regional daily newspapers.

(4) In order to permit a rapid implementation of the planning approval procedure, following a hearing the planning approval authority can impose appropriate deadlines on the party responsible for the project. If the deadlines are not met, the planning approval authority can reject the application.

Section 48

Planning approval decision, planning consent

(1) Section 74 subsection 6 and 7 of the Administrative Procedure Act shall be applied only if, in addition to the preconditions cited there for the project, no environmental impact assessment needs to be carried out pursuant to the Act on the Assessment of Environmental Impacts.

(2) The planning approval authority can approve parts of the plan. It can approve individual measures to construct or commission an installation subject to a clearance to be issued when the documentation of the compliance with imposed conditions has been provided. On request from the planning approval authority, the documentation shall take the form of the presentation of an expertise by a recognised expert.

(3) The planning approval authority can stipulate measures in the planning approval decision to ensure a rapid construction and commissioning of the project, taking into consideration the timetable and schedule of measures presented by the party responsible for the project, and impose deadlines for their completion.

(4) The plan may only be approved if

1. the marine environment is not endangered, in particular
 - a) there are no concerns about pollution of the marine environment within the meaning of Article 1 paragraph 1 number 4 of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II p. 1799) and
 - b) no danger is posed to bird migration, and
2. the safety and efficiency of traffic is not impaired,
3. the security of the defence of the nation and the Alliance is not impaired,
4. it is compatible with priority activities under mining law,
5. it is compatible with existing and planned cables, offshore connections, pipelines and other lines,
6. it is compatible with existing and planned sites of converter platforms or transformers,
7. the undertaking pursuant to Section 66 subsection 2 has been declared effective if the plan refers to offshore wind energy installations, and
8. other requirements imposed by the Act and other public law provisions are met.

In the case of offshore wind energy installations, the plan may furthermore only be approved if the party responsible for the project possesses a funding award pursuant to Section 23 or Section 34 for the site to which the plan refers. If the party responsible for the project possesses a funding award pursuant to Section 23, interests pursuant to sentence 1 must only be examined to the extent that, compared with the preliminary investigation of the site, additional or other substantial aspects are apparent or it is necessary to update the examination which took place in the preliminary investigation or to undertake it in greater detail, in particular due to the design of the project on the site.

(5) The planning approval authority can wholly or partly revoke the planning approval decision if

1. facilities which are the subject of the planning approval decision have no longer been operated during a period of more than three years or
2. deadlines pursuant to subsection 3 have not been met.

The effective revocation of the planning approval decision shall be announced pursuant to Section 73 number 1. Section 75 subsection 4 of the Administrative Procedures Act shall not be applied.

(6) A planning consent can be issued in place of a planning approval decision if

1. on the relevant site a plan has previously already been approved which has become invalid pursuant to subsection 5, Section 46 subsection 5 or Section 64 subsection 1 sentence 1 number 1 second half-sentence, and the right to use the site has, following the invalidity of the planning approval decision, again been auctioned pursuant to Part 3 Division 2 and funding awarded or

2. the preconditions pursuant to 74 subsection 6 sentence 1 of the Administrative Procedure Act exist.

(7) A planning approval decision or a planning consent for an offshore wind energy installation shall be issued for a period limited to 25 years. A subsequent extension to the period by a maximum of five years shall be possible once if the site development plan does not provide for an immediate follow-up use pursuant to Section 8 subsection 3.

(8) Section 15 subsection 2 sentence 3 of the Federal Nature Conservation Act shall be applied with the proviso that an impairment is substituted if and as soon as the impaired functions of the ecosystem in the relevant physical region or, if this is not possible, in a neighbouring physical region have been restored in an equivalent fashion and the landscape has been redesigned in a manner appropriate to the landscape.

Section 49

Provisional order

Once the planning approval procedure has been launched, the planning approval authority can, with the agreement of the Federal Ministry for Economic Affairs and Energy, issue a provisional order in which partial measures to prepare the construction are stipulated, if reasons of the public good, and particularly of efficient grid use, require the work to commence as soon as possible and the interests to be considered pursuant to Section 74 subsection 2 of the Administrative Procedure Act and Section 48 subsection 4 are upheld. In the provisional order, the conditions to uphold these interests and the scope of the provisionally admissible construction work shall be stipulated. It shall be announced pursuant to Section 73 number 1. The provisional order shall expire if the work has not commenced within six months of its issuance. It shall not replace the planning approval. To the extent that the partial measures are declared inadmissible by the planning approval, the former status must be restored.

Section 50

Consensus requirement

The approval of the plan or the planning consent and a provisional order pursuant to Section 49 shall require the agreement of the Federal Waterways and Shipping Agency. Agreement may only be denied if there is concern about a potential impairment to the safety and efficiency of traffic which cannot be prevented or offset by the imposition of conditions.

Section 51

Environmental impact assessment

The assessment of the environmental impact of offshore wind energy installations pursuant to the Act on the Assessment of Environmental Impacts can be restricted to additional or other significant environmental impacts on the basis of a Strategic Environmental Assessment which has already been carried out pursuant to Sections 5 to 12 for the site development plan or the preliminary investigation. The same applies to the extent that an offshore wind energy installation is located in a cluster stipulated by the offshore federal sectoral plan pursuant to Section 17a of the Energy Industry Act or on a priority, reservation or suitable area of a spatial plan pursuant to Section 17 subsection 3 sentence 1 of the Federal Spatial Planning Act.

Section 52

Ban on alterations

(1) The planning approval authority can stipulate sea areas in the exclusive economic zone of the Federal Republic of Germany in which certain facilities can temporarily not be given planning approval or a planning consent (ban on alterations). These sea areas must be suitable for the construction of infrastructure for the transport of electricity pursuant to the stipulations of the offshore federal sectoral plan pursuant to Section 17a of the Energy Industry Act and the site development plan pursuant to Section 5. The ban on alterations may only cover those facilities which can impede the construction of infrastructure for the transport of electricity.

(2) The planning approval authority shall stipulate the duration of the ban on alterations. It shall last at most until the offshore federal sectoral plan pursuant to Section 17a of the Energy Industry Act and the site development plan pursuant to Section 5 have been confirmed in the context of spatial planning. The ban on alterations shall be published pursuant to Section 73 number 1 and in two supra-regional daily newspapers.

Section 53

Safety zones

(1) The planning approval authority can set up safety zones around the facilities in the exclusive economic zone where this is necessary to ensure the safety of shipping or the facilities. Where the setting up of the safety zones is needed to ensure the safety of shipping, this shall require the agreement of the Federal Waterways and Shipping Agency.

(2) Safety zones shall be areas of water which extend to a distance of up to 500 metres, measured from every point of the external edge, around the facilities. The width of a safety zone may exceed 500 metres if generally recognised international standards permit this or the relevant international organisation recommends this.

Section 54

Announcement of the facilities and their safety zones

The planning approval authority shall announce pursuant to Section 73 number 1 the facilities and the safety zones set up by it pursuant to Section 53 and enter them in the official nautical charts.

Division 2

Construction, operation and removal of facilities

Subdivision 1

General provisions

Section 55

Obligations of the responsible persons

The responsible persons within the meaning of Section 56 must ensure that, during construction and operation and following cessation of operation, the facilities do not cause

1. any dangers to the marine environment and
2. any impairments
 - a) to the safety and efficiency of traffic,
 - b) the security of the defence of the nation and the Alliance,
 - c) other overriding public interests or
 - d) private rights.

Any different situations must be reported without delay by the responsible persons to the Federal Maritime and Hydrographic Agency.

Section 56

Responsible persons

(1) The persons responsible for the fulfilment of obligations which derive from this part of the Act or from administrative decisions on construction, operation and cessation of operation of facilities shall be

1. the addressee of the planning approval decision or the planning consent, or in case of legal persons and commercial partnerships, the individuals appointed to represent them by statute, by-laws or articles of association,
2. the operator of the installation, or in case of legal persons and commercial partnerships, the individuals appointed to represent them by statute, by-laws or articles of association,

3. the individuals appointed to manage or supervise the operation or parts of the operation, within the scope of their responsibilities and powers.

(2) Only those individuals who are sufficiently reliable and have the technical knowledge and physical capability required to carry out their functions and powers may be deemed responsible persons within the meaning of subsection 1 number 3.

(3) A sufficient number of responsible persons within the meaning of subsection 1 number 3 shall be appointed as required for proper and safe operation of the installation. The functions and powers of the responsible persons shall be clearly and comprehensively defined and coordinated such that proper cooperation is possible.

(4) Appointment and dismissal of responsible persons shall be declared in writing or electronically. The appointment shall describe exactly the functions and powers; the powers must correspond to the functions. The names of the responsible persons shall be provided to the Federal Maritime and Hydrographic Agency without delay after appointment, along with information on their position in the company and their educational background. Any changes of their position in the company or departure of responsible persons shall be reported to the Federal Maritime and Hydrographic Agency without delay.

(5) The addressee of a planning approval procedure or a planning consent must inform the Federal Maritime and Hydrographic Agency without delay if the planning approval decision or the planning consent is transferred to another person. The same goes for the operator if the operation of the installation is transferred to another person.

Section 57

Monitoring of the facilities

(1) The facilities, their construction and operation shall be subject to monitoring by the Federal Maritime and Hydrographic Agency. The Federal Waterways and Shipping Agency shall be involved where this serves the monitoring of the safety and efficiency of traffic.

(2) The Federal Maritime and Hydrographic Agency can issue orders on a case-by-case basis as necessary to implement Part 4. In particular, it can issue requirements or prohibitions for the responsible persons to enforce the obligations cited in Section 55.

(3) If a facility, its construction or operation results in a danger for the marine environment or an impairment to the safety and efficiency of traffic or an impairment to the security of the national and Alliance defence or other overriding public interests, the Federal Maritime and Hydrographic Agency can wholly or partly prohibit the construction or operation until the orderly situation has been restored, where the impairment or danger cannot otherwise be averted or the cessation of the construction or operation is essential to clarify the causes of the impairment or the danger. If the impairment or danger cannot be averted in another manner, the planning approval authority can revoke a previously issued planning approval decision or the planning consent and order the removal of the installation.

(4) If a facility is constructed, operated or significantly altered without a necessary planning approval or planning consent, the Federal Maritime and Hydrographic Agency can temporarily or finally prohibit the continuation of the activity. It can order that an installation which is constructed, operated or significantly altered without the necessary planning approval or planning consent must be removed. It must order the removal if the marine environment, the safety and efficiency of traffic, the security of the national and Alliance defence or other overriding public interests or private rights cannot be adequately upheld in another way.

(5) The Federal Maritime and Hydrographic Agency can prohibit the further construction or the further operation of a facility by the operator or a person charged with the management of the operation if facts exist which show the lack of reliability of these persons with regard to compliance with regulations on the protection of the marine environment, the safety and efficiency of traffic, the security of the national and Alliance defence or other overriding public interests. On application, the operator of the facility must be granted permission to have the facility operated by a person who offers a guarantee of the orderly operation of the facility.

(6) This shall be without prejudice to the provisions on the withdrawal or revocation of an administrative decision.

Section 58

Removal of the facilities, lodging of a security

(1) If the planning approval decision or the planning consent becomes ineffective, the facilities must be removed to the extent required by the interests cited in Section 48 subsection 4 number 1 to 4.

(2) The generally recognised international standards on the removal must be observed as a minimum standard.

(3) The Federal Maritime and Hydrographic Agency can order the lodging of an appropriate security in the planning approval decision or the planning consent in line with the Annex to this Act in order to ensure the fulfilment of the obligation to remove the facilities cited in subsection 1.

(4) Where the planning approval authority has ordered the lodging of a security pursuant to subsection 3, when the planning approval decision or the planning consent is transferred to another party responsible for the project, the party previously responsible for the project shall remain responsible for the removal of the facilities until the other party responsible for the project has lodged a security and the planning approval authority has determined its suitability.

(5) Subsections 1 to 4 shall also be applied to facilities which do not require a planning approval pursuant to Section 48 subsection 6.

Subdivision 2

Special provisions for offshore wind energy installations

Section 59

Implementation deadlines

(1) The deadlines by which bidders who have been awarded funding must make their offshore wind energy installations technically ready for operation shall be determined depending on the time of the funding award and the completion dates for the offshore grid connection line. The completion dates shall be determined in line with the procedure stipulated in Section 17d subsection 2 of the Energy Industry Act.

(2) Bidders who have been awarded funding must

1. submit to the Federal Maritime and Hydrographic Agency the documents about the plan necessary to hold the hearing procedure pursuant to Section 73 subsection 1 of the Administrative Procedure Act within twelve months following the issuance of the funding awards pursuant to Section 23 or Section 34.
2. present to the Federal Network Agency the proof of the existence of financing for the construction of offshore wind energy installations on the scale of the bid quantity awarded funding at the latest 24 months before the binding completion deadline; binding contracts on the ordering of the wind energy installations, the foundations, the transformer installation envisaged for the wind energy installations and the cabling within the farm must be presented as proof of the existence of financing,
3. provide the Federal Network Agency with proof that work on constructing the offshore wind energy installations has commenced at the latest three months before the binding completion date,
4. provide the Federal Network Agency with proof that the technical operational readiness of at least one offshore wind energy installation has been achieved within six months after the binding completion date, and
5. provide the Federal Network Agency with proof that the technical operational readiness of all the offshore wind energy installations has been achieved within eighteen months after the binding completion date; this requirement shall be met if the installed capacity of the installations ready for operation corresponds to at least 95% of the bid quantity awarded funding,

subject to the exceptional stipulation of different implementation deadlines in the transitional phase pursuant to Section 37 subsection 1 number 1 fifth half-sentence.

(3) The Federal Maritime and Hydrographic Agency must on request inform the Federal Network Agency whether the documents necessary to hold the hearing procedure have been submitted. The information shall be binding for decisions on a revocation pursuant to Section 60 subsection 3 sentence 1 number 1.

Section 60

Sanctions for non-compliance with implementation deadlines

(1) Bidders awarded funding must pay a penalty to the responsible transmission system operator if they violate the deadlines pursuant to Section 59 subsection 2.

(2) The level of the penalty pursuant to Section 55 of the Renewable Energy Sources Act shall correspond

1. in the case of violations of the deadline pursuant to Section 59 subsection 2 number 1 to the security to be lodged pursuant to Section 21 or Section 32,
2. in the case of violations of the deadline pursuant to Section 59 subsection 2 number 2 to 30% of the security to be lodged pursuant to Section 21 or Section 32,
3. in the case of violations of the deadline pursuant to Section 59 subsection 2 number 3 to 70% of the security to be lodged pursuant to Section 21 or Section 32,
4. in the case of violations of the deadline pursuant to Section 59 subsection 2 number 4 to one-twelfth of the remaining security to be lodged pursuant to Section 21 or Section 32 for each calendar month in which the technical operational readiness of at least one offshore wind energy installation has not been attained, and
5. in the case of violations of the deadline pursuant to Section 59 subsection 2 number 5 to the value which derives from the total of the remaining security to be lodged pursuant to Section 21 or Section 32 multiplied by the quotients of the installed capacity of the wind energy installations which are not operationally ready and the bid quantity awarded funding.

(2a) Subsection 2 shall be applied in the case of violations of deadlines which have been stipulated pursuant to Section 37 subsection 1 number 1 fifth half-sentence, in line with this stipulation.

(3) Without prejudice to the penalty pursuant to subsections 1, 2 and 2a, the Federal Network Agency must revoke a funding award if the bidder awarded funding does not comply with one of the following deadlines:

1. the deadline pursuant to Section 59 subsection 2 number 1,
2. the deadline pursuant to Section 59 subsection 2 number 2 or
3. the deadline pursuant to Section 59 subsection 2 number 5.

In the cases pursuant to sentence 1 number 3, the revocation of a funding award shall take place to the extent that derives from the difference between the bid quantity awarded funding and the installed capacity of the offshore wind energy installations ready for operation.

Section 61

Exception from the sanctions for non-compliance with implementation deadlines

- (1) Penalties pursuant to Section 60 subsection 1, 2 and 2a shall not be paid and the Federal Network Agency may not revoke the funding award pursuant to Section 60 subsection 3 to the extent that
1. the bidder awarded funding was prevented by no fault of his own from complying with the respective deadline, whereby the fault of all persons contracted by him in connection with the construction of the offshore wind energy installations, including all subcontracted persons, shall be ascribed to him, and
 2. it is more than likely in view of the circumstances of the individual case that the bidder awarded funding is willing and economically and technically capable of constructing the offshore wind energy installations without delay once the impediment has been removed.
2. It shall be assumed that the failure to meet a deadline pursuant to Section 59 subsection 2 is due to a fault by the bidder awarded funding or the failure of persons contracted by him in connection with the construction of the offshore wind energy installations, including all subcontracted persons.
- (3) On application from the bidder, the Federal Network Agency must
1. determine the existence of the preconditions pursuant to subsection 1 and
 2. extend the relevant deadlines pursuant to Section 59 subsection 2 to the extent necessary.

Section 62

Return of funding awards and planning approval decisions

- (1) The bidder awarded funding may not return the funding award or the planning approval decision.
- (2) In derogation of subsection 1, the bidder awarded funding can return a funding award at the latest when the deadline expires to provide the proof of the existence of financing pursuant to Section 59 subsection 2 number 2 wholly or partly by an unconditional and written declaration of return to the Federal Network Agency without a penalty obligation if, in the planning approval procedure, in a procedure to obtain clearances pursuant to Section 48 subsection 2 sentence 2, or during the construction of the offshore wind energy installations, it transpires that
1. stipulations contained in the documents pursuant to Section 10 subsection 1 are erroneous and this substantially impairs the economic viability of the operation of the offshore wind energy installations or

2. the construction of the offshore wind energy installations is impeded by a legal or actual problem that had not been apparent until this time, which cannot be removed by adapting the planning, or the removal of which is unreasonable for the bidder in view of the costs of adapting the planning.

On application from the bidder, the existence of the preconditions pursuant to sentence 1 shall be determined

1. for preconditions pursuant to sentence 1 number 1 by the body responsible for the preliminary investigation,
2. for preconditions pursuant to sentence 1 number 2 by the Federal Maritime and Hydrographic Agency.

Section 63

Transfer of funding awards and planning approval decisions

- (1) Funding awards pursuant to Section 23 or Section 34 may not be transferred to installations on other sites.
- (2) Notwithstanding subsection 1, funding awards may be transferred to other persons. They shall apply for and against the legal successor to the bidder awarded funding. In this process, all the legal consequences of the funding award pursuant to Section 24 or Section 37 shall be jointly transferred. Where a planning approval decision or a planning consent has been issued to construct offshore wind energy installations on the site for which funding has been awarded, these shall be transferred with the funding.
- (3) When a planning approval decision or a planning consent for the construction and operation of offshore wind energy installations pursuant to Section 56 subsection 5 is transferred, the funding award for the site on which the installations are constructed and operated and all of its legal consequences shall also be transferred.
- (4) A transfer or a legal succession pursuant to subsections 2 or 3 must be notified without delay to the Federal Network Agency, the Federal Maritime and Hydrographic Agency and the transmission system operator which is obliged to provide the connection.
- (5) If the planning approval decision or the planning consent is altered after the issuance of the funding award, the funding award shall continue to refer to the altered planning approval decision or the altered planning consent; the size of the funding award shall not change.

Section 64

Legal consequences of the invalidity of funding awards and planning approval decisions

- (1) If a funding award becomes ineffective,

1. the exclusive right to hold a planning approval procedure pursuant to Section 24 subsection 1 number 1 shall expire; a planning approval decision which has been made for a site or an existing project awarded funding or a planning consent which has been issued shall become ineffective; if, at the time at which the funding award pursuant to Section 23 or Section 34 becomes ineffective the planning approval has yet to be given or the planning consent has yet to be issued, the planning approval procedure or the planning consent procedure shall be terminated,
2. the entitlement to the market premium pursuant to Section 19 of the Renewable Energy Sources Act shall expire, and
3. the entitlement to connection shall expire and the assigned grid connection capacity pursuant to Section 24 subsection 1 number 3 or Section 37 subsection 1 number 2 shall be revoked.

If a funding award becomes partly ineffective, the legal consequences pursuant to sentence 1 number 1 to 3 shall take effect to the corresponding extent.

(2) If, wholly or partly,

1. a planning approval procedure or a procedure for planning consent is terminated by a negative decision, or
2. a planning approval decision or a planning consent becomes ineffective,

a funding award issued for the relevant site shall become ineffective to the same extent.

(3) In the case of an ineffective funding award, the planning approval authority must announce pursuant to Section 73 number 1 the ineffectiveness of the planning approval decision or the planning consent or the termination of the planning approval procedure or of the planning consent procedure pursuant to subsection 1. In the case of subsection 2, the Federal Network Agency shall determine by an administrative decision the extent of the ineffectiveness of the funding award on application from the bidder or the transmission system operator obliged to provide the connection.

Section 65

Reimbursement of securities in the case of implementation or of payment of penalties

The Federal Network Agency shall return without delay the securities lodged for a specific bid if the bidder

1. has produced evidence of the attainment of technical operational readiness of the offshore wind energy installations pursuant to Section 59 subsection 2 number 5 or
2. has paid a penalty for this bid pursuant to Section 60 subsection 1 and 2 and the retention of the security is no longer required for the payment and securing of claims to further penalties.

Section 66

Follow-up use; declaration of commitment

(1) In derogation of Section 58, a statutory provision on the follow-up use of sites which are already being or have been used to generate electricity from offshore wind energy installations can provide that, for the follow-up use by a third party,

1. the ownership of the offshore wind energy installations and the related facilities must be transferred and released to that party without entitlement to compensation and
2. certain information and documents which were collected when the facilities were constructed and operated must be transferred and released to that party without entitlement to compensation.

(2) The party responsible for the project must declare in writing to the planning approval authority, free of conditions, deadlines or other ancillary clauses, that for the time after the planning approval decision or the planning consent become ineffective, it will, without claim to compensation, transfer the ownership of and release in the cases of subsection 1 number 1 the offshore wind energy installation and the related installations, and in the cases of subsection 1 number 2 the information and documents. Where a third party is or becomes the owner or possessor of the offshore wind energy installations or the related facilities, this party must submit an undertaking pursuant to sentence 1; in the case of subsequent acquisition, the undertaking must be submitted without delay following the acquisition of ownership or possession. Section 41 subsection 3 shall be applied *mutatis mutandis*.

Section 67

Use of documents

(1) In the case of ineffectiveness of planning approval decisions pursuant to Section 64 subsection 1 sentence 1 number 1, the termination of planning approval procedures or planning consent procedures pursuant to Section 64 subsection 1 sentence 1 number 1 or the revocation of planning approval decisions or planning consents pursuant to Section 48 subsection 5, the planning approval authority can use all the documents submitted by the party responsible for the project in order to update and supplement the documents pursuant to Section 10 subsection 1 and make them available to a new party responsible for a project in the case of a further planning approval procedure on the relevant site.

(2) The planning approval authority must transmit the updated and supplemented documents to the Federal Network Agency in order to carry out the auction on the relevant site pursuant to Section 16.

(3) Subsections 1 and 2 shall not be applied where the documents contain operational and commercial secrets of the party responsible for the projects.

Part 5

Special provisions for pilot offshore wind energy installations

Section 68

Determination of a pilot offshore wind energy installation

In agreement with the Federal Maritime and Hydrographic Agency, the Federal Network Agency shall on application determine whether an offshore wind energy installation in the exclusive economic zone and the territorial sea is a pilot offshore wind energy installation pursuant to Section 3 number 6. Appropriate documents must be submitted with the application which demonstrate that

1. it is one of the first three installations of a type of offshore wind energy installation and
2. the offshore wind energy installation represents a significant innovation extending well beyond the best available technology.

Section 69

Entitlement to payment for electricity from pilot offshore wind energy installations

(1) In line with subsections 3 and 4, an entitlement to payment pursuant to Section 19 subsection 1 of the Renewable Energy Sources Act shall exist for electricity from pilot offshore wind energy installations in the exclusive economic zone and in the territorial sea.

(2) The value to be applied for pilot offshore wind energy installations pursuant to subsection 1 shall correspond

1. to the maximum value pursuant to Section 33 for pilot offshore wind energy installations which are commissioned after 31 December 2020 and before 1 January 2026 and
2. to the maximum value pursuant to Section 22 for pilot offshore wind energy installations which are commissioned after 1 January 2026.

(3) If pilot onshore wind energy installations with an installed capacity totalling more than 50 megawatts have been notified to the register pursuant to Section 3 number 39 of the Renewable Energy Sources Act as being commissioned in a calendar year, the entitlement to payment pursuant to Section 19 subsection 1 of the Renewable Energy Sources Act shall not apply for all pilot onshore wind energy installations due to the commissioning of which the limit of 50 megawatts is exceeded. The Federal Network Agency shall inform the installation operators and the transmission system operators to whose grid system the installations are connected about this.

(4) The operators of offshore wind energy installations for whose electricity the entitlement pursuant to subsection 3 does not apply can claim their entitlement on a priority basis and in the temporal sequence of their notification to the register pursuant to Section 3 number 39 of the Renewable Energy Sources Act from the following calendar year as long as the limit of installed capacity of 50 megawatts is not exceeded. In this case the entitlement pursuant to Section 19 subsection 1 of the Renewable Energy Sources Act, in derogation of Section 25 sentence 3 of the Renewable Energy Sources Act, shall not commence until the installation operator is permitted to claim the entitlement.

(5) The documentation that an installation is a pilot wind energy installation pursuant to Section 3 number 6 shall be held by the installation operator in the form of a certificate from the Federal Network Agency. The Federal Network Agency can issue the certificate on application from the installation operator if the applicant submits appropriate documents demonstrating that the offshore wind energy installation in the exclusive economic zone or the territorial sea is a pilot wind energy installation.

Section 70

Grid connection capacity; approval, construction, operation and removal

(1) In order to connect a pilot offshore wind energy installation, the operator can use the assigned grid connection capacity that he

1. has on the basis of a funding award pursuant to Section 23 or Section 34 on an offshore connection line envisaged in the site development plan or on an offshore connection line pursuant to Section 31 subsection 1 sentence 1 number 3,
2. has on an existing offshore connection line on the basis of an unconditional grid connection commitment pursuant to Section 118 subsection 12 of the Energy Industry Act or an assignment pursuant to Section 17d subsection 3 sentence 1 of the Energy Industry Act in the version in force before 1 January 2017, or
3. has on the basis of an assignment pursuant to subsection 2.

(2) On application, which must be made together with the application for the determination of a pilot offshore wind energy installation pursuant to Section 68, the Federal Network Agency in agreement with the Federal Maritime and Hydrographic Agency shall issue a ruling assigning to the operator of a pilot offshore wind energy installation grid connection capacity on an offshore connection line which is designated as available in the site development plan pursuant to Section 5 subsection 2. Applications subsequently submitted by operators of pilot offshore wind energy installations for assignment of the same grid connection capacity shall be rejected due to the assignment pursuant to sentence 1. The assignment shall be made at most to the extent designated as available in the site development plan. The Federal Network Agency can

1. add ancillary provisions pursuant to Section 36 of the Administrative Procedure Act to the assignment of grid connection capacity for pilot offshore wind energy installations, or

2. impose further provisions about the assignment procedure via stipulations pursuant to Section 29 subsection 1 of the Energy Industry Act; this shall particularly include stipulations regarding the nature and design of the assignment procedure and the minimum preconditions for the assignment of grid connection capacity for offshore pilot wind energy installations.
- (3) Section 48 subsection 4 sentence 2 and subsection 6 shall be applied to pilot offshore wind energy installations in the exclusive economic zone with the proviso that the plan may be approved or the planning consent issued even without the existence of a funding award if the party responsible for the project disposes of grid connection capacity pursuant to subsection 1 number 2 or number 3 for the pilot offshore wind energy installations. Apart from this, Part 4 with the exception of Division 2 Subdivision 2 shall be applied *mutatis mutandis* to pilot offshore wind energy installations in the exclusive economic zone.

Part 6

Other provisions

Section 71

Authorisation to issue ordinances

The Federal Ministry for Economic Affairs and Energy shall be authorised to issue ordinances without the approval of the Bundesrat – in the case of number 4 in consensus with the Federal Ministry of Transport and Digital Infrastructure – to regulate

1. in the field of the preliminary investigation of sites pursuant to Part 2 Division 2
 - a) further subjects for the preliminary investigation in addition to those cited in Section 10 subsection 1 for the provision of information which contributes towards a competitive determination of the market premium pursuant to Section 22 of the Renewable Energy Sources Act,
 - b) more detailed requirements regarding the scope of the subjects of the investigation cited in Section 10 subsection 1, and particularly those that derive from updated technical standards for the investigations,
 - c) supplementary stipulations regarding Section 10 subsection 1 sentence 3 regarding the presumption of compliance with the best available technology when new technical standards exist for the cited investigations,
 - d) criteria which additionally need to be taken into consideration in the determination of the capacity to be installed pursuant to Section 10 subsection 3 and the examination of suitability pursuant to Section 10 subsection 2, and
 - e) individual procedural stages of the preliminary investigation pursuant to Section 12,

2. in the field of auctions for sites which have been subject to a preliminary investigation pursuant to Sections 16 to 25
 - a) further preconditions for participation in the auctions; in particular, these shall be
 - aa) minimum requirements on the suitability of the participants,
 - bb) requirements which deviate from or supplement Section 31 of the Renewable Energy Sources Act regarding the nature, the form and the content of securities and the corresponding rules on the partial or complete repayment of these securities,
 - cc) the stipulation of how participants in the auctions have to furnish proof of compliance with the requirements pursuant to double-letters aa and bb,
 - b) the stipulation of minimum bid values,
 - c) price formation which deviates from Section 23, and the course of the auctions,
 - d) the nature, the form, the procedure, the content of the funding award, the criteria for the issuing of the funding award and the stipulation of the value of the funding award, and
3. for the safeguarding of the construction of the offshore wind energy installations
 - a) an alteration of the deadlines pursuant to Section 59 or supplementary deadlines, particularly when the timetable of the planning approval procedure actually develops differently or the technical development results in a significant alteration of the underlying construction times for the offshore wind energy installations or the offshore connection lines,
 - b) provisions which deviate from or supplement Section 60 subsection 3 regarding the preconditions for a revocation of the funding award in line with an alteration or supplementation of deadlines pursuant to letter a, and
 - c) adaptations in the level of penalties pursuant to Section 60 subsection 1 and 2 in line with an alteration or supplementation of deadlines pursuant to letter a, and
4. which other authorities the body responsible for the preliminary investigation may call on for assistance in the fulfilment of its tasks in the field of the preliminary investigation of sites pursuant to Part 2 Division 2 and which the Federal Maritime and Hydrographic Agency may call on in the fulfilment of its tasks in the field of approving facilities pursuant to Sections 45 to 54.

Section 72

Legal protection in auctions for existing projects

Following the holding of an award procedure pursuant to Section 34, Section 83a of the Renewable Energy Sources Act shall be applied *mutatis mutandis* for legal challenges.

Section 73

Announcements and provision of information

The announcements and the provision of information required under this Act must be undertaken in the following media:

1. by the Federal Maritime and Hydrographic Agency on its website and in *Nachrichten für Seefahrer* (official publication for maritime shipping by the Federal Maritime and Hydrographic Agency),
2. by the Federal Network Agency on its website,
3. in the media stipulated by *Land* law where the preliminary investigation pursuant to Sections 9 to 12 is undertaken by a *Land* authority.

Section 74

Administrative Enforcement

The provisions of the second section of the Administrative Enforcement Act shall be applied for the enforcement of the arrangements made in the planning approval procedure or the planning consent pursuant to Section 48 with the proviso that a fine of up to €500,000 can be imposed.

Section 75

Provisions on fines

- (1) An administrative offence is committed by anyone who deliberately or negligently
 1. constructs, operates or alters a facility without a planning approval procedure or a planning consent pursuant to Section 45 subsection 1 or
 2. violates an enforceable order pursuant to Section 57 subsection 3 sentence 1 or subsection 4 sentence 2.
- (2) The administrative offence may be punished by a monetary fine of up to fifty thousand euros. Section 30 subsection 2 sentence 3 of the Act on Administrative Offences shall be applied.
- (3) The Federal Maritime and Hydrographic Agency shall be the administrative authority within the meaning of Section 36 subsection 1 number 1 of the Act on Administrative Offences.

Section 76

Fees and expenses

The imposition of fees for public services pursuant to this Act and the ordinances based on this Act which can individually attributed shall be undertaken on the basis of special fee ordinances pursuant to Section 22 subsection 4 of the Federal Fees Act, which shall be enacted for auctions pursuant to Part 3 of this Act by the Federal Ministry for Economic Affairs and Energy and for approvals pursuant to Part 4 Division 1 of this Act by the Federal Ministry of Transport and Digital Infrastructure.

Section 77

Transitional provision

- (1) With regard to facilities within the meaning of Section 44 subsection 1 which
1. pursuant to the provisions of the Offshore Installations Ordinance of 23 January 1997 (Federal Law Gazette I p. 57). most recently amended by Article 55 of the Ordinance of 2 June 2016 (Federal Law Gazette I p. 1257), have been constructed and commissioned before 1 January 2017, or
 2. are to be commissioned by the end of 31 December 2020 and in the case of offshore wind energy installations dispose of an unconditional grid connection commitment pursuant to Section 118 subsection 12 of the Energy Industry Act or an assignment of connection capacity pursuant to Section 17d subsection 3 sentence 1 of the Energy Industry Act in the version in force before 1 January 2017,

the previous provisions of the Offshore Installations Ordinance shall continue to be applied until an application for a planning approval is made due to a significant alteration to the facility. Part 4, with the exception of Section 46 and of Division 2 Subdivision 2, shall be applied to the plan alteration procedure following this application. From the submission of the application, Sections 74 to 76 shall be applied to the entire project. To the extent that the previous provisions of the Offshore Installations Ordinance are to continue to be applied pursuant to sentence 1, Section 48 subsection 1 sentence 1 number 4 of the Code of Administrative Court Procedure shall also continue to be applied in the version in force up to 31 December 2016.

- (2) A ban on alterations stipulated pursuant to Section 10 of the Offshore Installations Ordinance in the version in force before 1 January 2017 shall not apply to installations for which the public announcement pursuant to Section 2a of the Offshore Installation Ordinance in the version in force before 31 January 2012 has been made.

- (3) If the Federal Network Agency has announced an auction for existing projects pursuant to Section 29 of the Offshore Wind Act of 23 October 2016 before 29 December 2016, this auction procedure shall end on 29 December 2016 without funding awards being issued. The Federal Network Agency shall announce termination of the procedure pursuant to Section 73 number 1.

Section 78

Assumption of tasks by the Federal Network Agency

- (1) The provisions of Part 8 of the Energy Industry Act with the exception of Section 69 subsection 1 sentence 2 and subsection 10, of Section 71a, Section 91 and Sections 95 to 101 and of Division 6 shall be applied *mutatis mutandis* for the assumption of the tasks of the Federal Network Agency pursuant to this Act and to the ordinances issued on the basis of this Act.
- (2) The decisions by the Federal Network Agency pursuant to this Act shall be taken by the decision divisions.

Section 79

Material supervision of the Federal Maritime and Hydrographic Agency

Legal and material supervision of the Federal Maritime and Hydrographic Agency for the tasks pursuant to this Act shall rest

1. with the Federal Ministry for Economic Affairs and Energy where the assumption of the following tasks is involved:
 - a) pursuant to Sections 4 to 8,
 - b) pursuant to Sections 9 to 12 where the Federal Maritime and Hydrographic Agency undertakes the preliminary investigation, and
 - c) pursuant to Sections 45 to 58 with reference to installations to transmit electricity from offshore wind energy and
2. apart from this with the Federal Ministry of Transport and Digital Infrastructure.

These tasks of legal and material supervision shall be undertaken in agreement with the other respective federal ministry.

Annex
(to Section 58 subsection 3)

Requirements for securities

1. The planning approval authority shall decide on the type, scope and level of the security. The holder of the planning approval decision or the planning approval or the operator of the installation shall lodge the security stipulated in the planning approval decision or the planning consent before the commencement of the construction of the installation and shall provide proof of this to the Federal Maritime and Hydrographic Agency.
2. The type of the security is to be selected such that the purpose of the security is always fulfilled. This shall particularly apply to the case of the transfer of the planning approval decision or the planning consent to another holder and, to the extent that the holder of the planning approval decision or the planning consent or the operator of the installation is a legal person, to the case of the undertaking of changes to this legal person.
3. The planning approval authority can commission expertises from third parties regarding the type and scope of the security and its review. The holder of the approval shall bear the costs of this.
4. In place of the security payments determined in Section 232 of the Civil Code, in particular the provision of a guarantee from the company group, a guarantee or another promise of payment by a bank can be demanded or approved as an equivalent security. Company reserves can be approved to the extent that they are safeguarded against insolvency and are unreservedly available for the purpose of the security should the security be called.
5. The scope and the level of the security payment shall be measured such that sufficient funding shall be available for the dismantling of the installation in line with the planning approval decision or the planning consent.

6. The financial security shall be reviewed at least every four years by the planning approval authority with a view to the maintenance of the real value of the security; it shall be adjusted if the relationship between the security and the desired purpose of the security has substantially changed. Reserves formed in the course of the operating phase are to be attributed to the level of the necessary security to the extent that they are withdrawn, at the level necessary to safeguard the purpose of the security, from the power of disposal of the holder of the planning approval decision or the planning consent or the operator of the installation. If the review pursuant to sentence 1 shows that the security must be increased, the planning approval authority can give the business person a deadline of at most six months for the provision of the increased security. If the review pursuant to sentence 1 shows that the security must be reduced, the planning approval authority must release without delay the security which is no longer required.