

# **No. 180/2005 Coll.**

## **ACT**

of 31 March 2005

### **on the promotion of electricity production from renewable energy sources and amending certain acts (Act on Promotion of Use of Renewable Sources)**

The Parliament has adopted this Act of the Czech Republic:

## **PART ONE PROMOTION OF ELECTRICITY PRODUCTION FROM RENEWABLE ENERGY SOURCES**

### **TITLE I GENERAL PROVISIONS**

#### **Article 1 Object of regulation**

(1) This Act regulates, in accordance with the legislation of the European Communities<sup>1</sup>), the method of promoting the production of electricity from renewable energy sources and from mining gas from closed mines, the performance of state administration, and the rights and obligations of natural and legal persons connected therewith.

(2) The purpose of this Act is, in the interest of protection of the climate and protection of the environment, to

- (a) promote the use of renewable energy sources (hereinafter referred to as “renewable sources”);
- (b) ensure constant increase of the share of renewable sources in consumption of primary energy sources;
- (c) contribute to economical use of natural resources and sustainable development of society;
- (d) create conditions for fulfilment of the indicative target for the share of electricity from renewable sources in the gross consumption of electricity in the Czech Republic amounting to 8 % in 2010, and for further increase of this share after 2010.

#### **Article 2 Definitions**

(1) „Renewable sources“ shall mean renewable non-fossil natural energy sources, i.e. wind energy, solar energy, geothermal energy, water energy, soil energy, energy of the air, biomass energy, landfill gas energy, energy of sewage treatment plant gas and energy of biogases.

(2) For the purposes of this Act:

- (a) “biomass” shall mean the biodegradable fraction of products, waste and residues from operation of agriculture and forestry and related industries, agricultural products grown for energy-production purposes, as well as the biodegradable fraction of separated industrial and municipal waste;
- (b) “electricity from renewable sources” shall mean electricity produced by plants using only renewable sources, as well as the proportion of electricity produced from renewable sources in plants using also non-renewable energy sources;

- (c) “gross consumption of electricity” shall mean national electricity production, plus imports and minus exports of electricity;
- (d) “green bonus” shall mean the financial amount increasing the market price of electricity that is paid by the operator of the regional grid system or the operator of the transmission system to the producer of electricity from renewable sources, taking account of reduced damage to the environment resulting from use of a renewable source compared to combustion of fossil fuels, of the type and size of the production plant and of the quality of electricity supplied;
- (e) “operator of the regional grid system” shall mean the holder of a license for distribution of electricity, whose grid system is directly connected to the transmission system.

### Article 3

#### **Subject of promotion**

(1) Promotion pursuant to this Act (hereinafter referred to as “promotion”) shall apply to production of electricity from renewable sources produced in plants in the Czech Republic using renewable sources, excluding wind power plants located over an area of 1 km<sup>2</sup> with a total installed capacity exceeding 20 MWe. In case of production of electricity from the biomass, promotion shall apply to the types and methods of use of the biomass laid down in an implementing regulation from the viewpoint of environmental protection.

(2) Promotion of electricity production from renewable sources is stipulated differently regarding the type of the renewable sources and the magnitude of the installed capacity of the production plant and, in case of electricity produced from biomass, also according to the parameters of the biomass laid down in an implementing regulation.

(3) When determining promotion pursuant to Article 2 above, the Energy Regulatory Office (Energetický regulační úřad; hereinafter referred to as the “Office”) shall provide economic advantage, for the purposes of exclusive combustion of solid biomass, for the use of waste biomass from production of timber and industrial processing of timber and, in case of combined combustion of solid biomass and a non-renewable energy source, for purpose-grown energy biomass.

(4) The promotion shall also apply to production of electricity from mining gas from closed mines. The provisions of Titles II and III shall apply to this promotion *mutatis mutandis*; the provisions of Article 4(13), (14) and (18) shall not apply.

### Title II

#### PROMOTION OF ELECTRICITY PRODUCTION FROM RENEWABLE SOURCES

### Article 4

#### **Rights and obligations of the entities on the market in electricity from renewable sources**

(1) The operator of the transmission system or the operators of the grid systems shall be obliged, within the area delimited in their license<sup>2</sup>), to preferentially connect to the transmission system or to the grid systems plants according to Article 3 (hereinafter referred to as the “plants”) for the purpose of transmitting or distributing electricity from renewable sources, provided that the producer of electricity from renewable sources (hereinafter referred to as the “producer”) so requests and that the producer meets the conditions for connection and electricity transport laid down in a special regulation<sup>2</sup>).

(2) The obligation to connect the plant of a producer of electricity from renewable sources shall arise to the operator of the grid system where the connection costs are the lowest, excluding cases of demonstrable lack of capacity of the distribution plant or in case of jeopardising reliable operation of the grid system.

(3) Producers of electricity from renewable sources eligible for promotion shall have the right to choose whether to offer their electricity for purchase pursuant to Article 4 of this Act or whether to request a green bonus for this electricity. This choice must not be changed before expiry of one year after the producer has made a binding choice from these two options and started using the option

chosen. Change in the choice shall always be performed as of 1 January of the subsequent calendar year. The dates and details of choosing the method of promotion shall be stipulated in an implementing regulation.

(4) Operators of the regional grid systems and the operator of the transmission system shall be obliged to purchase all electricity from renewable sources eligible for promotion and to conclude a supply contract, if a producer has offered electricity from renewable sources, under the terms and conditions stipulated in Article 5 and for the prices stipulated in Article 6. This obligation includes also assumption of responsibility for deviation pursuant to special regulation<sup>3</sup>).

(5) Operators of the regional grid systems and the operator of the transmission system shall use electricity purchased pursuant to paragraph (4) above to cover losses. If the momentary output of obligatorily purchased electricity from renewable sources pursuant to paragraph (4) hereof exceeds the volume of electricity for coverage of losses, this excess shall be evaluated as a deviation of the relevant operator of the regional grid system or the operator of the transmission system.

(6) In case of combined production of electricity from a renewable source and a non-renewable source, the promotion shall be provided only by means of green bonuses.

(7) If a producer of electricity from renewable sources eligible for promotion has failed to offer this electricity for mandatory purchase pursuant to paragraph (4) above and has sold it on the electricity market, the operator of the relevant regional grid system or the operator of the transmission system shall be obliged to pay to the producer for this electricity a green bonus expressed in CZK/MWh.

(8) Any deviations in the output of the plant caused by the natural character of the renewable sources shall not be grounds for non-fulfilment of the obligations under paragraph (4) above.

(9) Pursuant to special regulation<sup>3</sup>), operators of the grid systems and the operator of the transmission system shall bear the responsibility for a deviation connected with covering losses in their systems, which they can transfer to a different accounting entity.

(10) The costs connected with a deviation of the producer of electricity from renewable sources purchased pursuant to paragraph (4) above shall constitute deductible costs of the operators of the grid systems and the operator of the transmission system for the purposes of calculation of regulated prices for distribution and transmission, and the accounting entity shall have the right to charge these costs to the operators of the grid systems or to the operator of the transmission system. The details shall be stipulated in an implementing regulation.

(11) A producer producing electricity from renewable sources together with electricity from non-renewable energy sources shall be obliged to provide for separate metering or calculation of the amount of electricity produced from renewable sources in a way stipulated in special regulation<sup>4</sup>).

(12) A producer producing electricity by means of combined combustion of biomass and a non-renewable energy source shall report the amount of electricity from renewable sources, the actually acquired amount of biomass and its quality, and the actual use of all the acquired biomass for the purposes of production of electricity in a way laid down in an implementing regulation.

(13) On the basis of a written request from a producer producing electricity from renewable sources, the electricity market operator shall issue a certificate of origin of electricity from renewable sources (hereinafter referred to as the “guarantee of origin”). The electricity market operator shall issue a guarantee of origin within 30 calendar days after having received the request. The form for a request for issuing a guarantee of origin and the form for a guarantee of origin shall be stipulated in an implementing regulation.

(14) The Ministry of Industry and Trade shall perform recognition of guarantees of origin issued in another Member States of the European Communities.

(15) A producer producing electricity from renewable sources and exercising the right to payment of green bonus in accordance with paragraph (7) above shall be obliged to conclude a contract for supply of electricity with another participant in the electricity market in accordance

with special regulation<sup>3</sup>). This obligation shall not apply to a producer who consumes all energy produced by him from renewable sources.

(16) The right to payment of green bonus shall also apply to producers producing electricity from renewable sources for their own consumption. The duty to pay green bonus to such producer shall arise to the operator of the regional grid system within whose delimited area the electricity production plant of the producer is located.

(17) A producer who has offered electricity for mandatory purchase must conclude a contract with the operator of the relevant regional grid system or the transmission system.

(18) Import of electricity from renewable sources from other Member States of the European Communities may be included in the share of electricity from renewable sources in the gross consumption of electricity in the Czech Republic only if the exporting country has a similar provision permitting inclusion of imports. The Member States of the European Communities can include electricity from renewable sources in the indicative targets for the share of electricity from renewable sources in the gross consumption of electricity only once. The details of records of import and export of electricity from renewable sources in the Czech Republic shall be stipulated in an implementing regulation.

#### Article 5

##### **Conditions for promotion, purchase and recording of electricity production from renewable sources**

(1) The basic time period for the purchase of electricity from renewable sources shall be 1 hour. For plants that are not equipped with continual metering, the operator of the regional grid system or the operator of the transmission system and the producer may agree on a different time period.

(2) The basic time period for evaluation of and accounting for purchase of electricity from renewable sources shall be 1 month, unless the operator of the regional grid system or the operator of the transmission system and the producer agree otherwise.

(3) If the producer of electricity from renewable sources intends to offer this electricity for purchase pursuant to Article 4(4), he shall notify the relevant operator of the regional grid system or the operator of the transmission system of this fact. The deadlines for notification of this fact shall be stipulated in an implementing regulation.

(4) Upon submission of data on the amount of electricity produced from renewable sources according to paragraph (6) hereof to the operator of the regional grid system or to the operator of the transmission system, the producer shall acquire the right to payment of green bonus determined according to Article 6.

(5) A producer producing electricity from renewable sources for his own needs shall be obliged to submit the measured or calculated data on the amount of electricity produced by him from renewable sources to the operator of the regional grid system or to the operator of the transmission system. Upon fulfilment of this duty, the producer shall acquire the right to payment of green bonus and issuance of the guarantee of origin according to Article 4(13).

(6) The producer shall submit the measured or calculated data on production and sale of electricity from renewable sources according to the individual types of renewable sources to the relevant operator of the regional grid system or to the operator of the transmission system pursuant to special regulation<sup>3</sup><sup>4</sup>).

#### Article 6

##### **Amount of prices for electricity from renewable sources and green bonuses**

(1) The Office shall always determine the purchase prices for electricity from renewable sources (hereinafter referred to as the “purchase prices”) for the subsequent calendar year in advance, separately for the individual types of renewable sources and green bonuses, so as to

a) create conditions for fulfilment of the indicative target for the share of electricity production from renewable sources in the gross consumption of electricity, which equals to 8 % in 2010, and so that,

b) for plants being put into operation

1. after the date of entry into force of this Act, fifteen-year period of recovery of investment is achieved with promotion by purchase prices, under the condition of compliance with the technical and economic parameters, including in particular the costs of an installed unit of capacity, efficiency of use of the primary energy contents in the renewable source and the period of use of the plant, which are stipulated in an implementing regulation;
2. after the date of entry into force of this Act, the level of revenues per unit of electricity from renewable sources is maintained, as a minimum, with promotion by purchase prices, for a period of 15 years from the year of putting the plant into operation, taking into account the price index of industrial products; completion of reconstruction of the technological part of an existing plant, a change of fuel or completion of modernisation, resulting in an increase in the technical and environmental level of the existing plant is also regarded as “putting a plant into operation”;
3. prior the date of entry into force of this Act, the minimum level of purchase prices stipulated for 2005 pursuant to the hitherto regulations is maintained for a period of 15 years, taking into account the price index of industrial products.

(2) When determining the level of green bonuses, the Office shall also take account of the increased rate of risk of placing electricity from renewable sources on the electricity market.

(3) When determining the purchase prices and green bonuses, the Office shall base its decision on the different costs of acquisition, connection and operation of the individual types of plants, including their development in time.

(4) The purchase prices set by the Office for the subsequent calendar year may not be lower than 95 % of the value of the purchase prices valid in the year during which a decision is made on the their new values. This provision shall apply for the first time to the prices stipulated in 2007.

#### Article 7

##### **Regular evaluation**

(1) As of June 30 of each year, the Office shall always publish in the Energy Regulatory Bulletin (Energetický regulační věstník)<sup>2)</sup> evaluation of the share of electricity produced from renewable sources in the gross consumption of electricity for the previous calendar year and the calculation of the projected effects of promotion on the overall price of electricity for end consumers in the coming calendar year.

(2) In co-operation with the Ministry of the Environment and the Office, the Ministry of Industry and Trade shall submit to the Government annually by September 30, for the first time in 2005, a report including analysis of the progress achieved in fulfilment of Article 1(2)(d).

#### Title III

##### JOINT PROVISIONS

#### Article 8

##### **Control**

The State Energy Inspection (Státní energetická inspekce, hereinafter referred to as the “Inspection”)<sup>2)</sup> shall perform control of compliance with this Act.

#### Article 9

##### **Administrative torts**

(1) A fine of up to CZK 5,000,000 shall be imposed on the operator of the regional grid system or the operator of the transmission system who fails to purchase electricity from renewable sources pursuant to Article 4(4) or fails to pay a green bonus pursuant to Article 4(7).

(2) A fine of up to CZK 5,000,000 shall be imposed on a producer who submits to the operator of the regional grid system or to the operator of the transmission system false measured or calculated data on the amount of electricity produced by him from renewable sources pursuant to Article 5(5) and (6).

(3) A fine of up to CZK 1,000,000 shall be imposed on a producer who fails to provide for separate metering of electricity from renewable sources pursuant to Article 4(11).

(4) A fine of up to CZK 1,000,000 shall be imposed on a producer who fails to report accurately the correct amount of electricity produced from renewable sources, the actual amount of acquired biomass and its quality, and the actual use of all the acquired biomass for the purposes of electricity production pursuant to Article 4(12).

(5) A fine of up to CZK 100,000 shall be imposed on a producer who fails to submit the measured or calculated data pursuant to Article 5(6).

(6) The Inspection may decide to suspend the right of a producer who repeatedly submits false measured or calculated data on the amount of electricity produced from renewable sources pursuant to Article 5(5) and (6) to the payment of the purchase prices or the green bonus for up to 2 years.

#### Article 10

(1) Fines shall be imposed, collected and exacted by the Inspection. The Code of Administrative Procedure (správní řád) shall apply to the proceedings on imposing a fine pursuant to this Article. The procedure of collecting and exacting the imposed fines shall be governed by a special regulation.

(2) The gravity of an administrative tort, and in particular the way in which it was committed, its consequences, and the circumstances under which it was committed, shall be taken into account in determining the amount of the fine.

(3) The liability of a legal person for an administrative tort shall expire if the territorial inspectorate fails to commence proceedings thereon within 1 year of the date when the inspectorate learnt of the tort and, at the latest, 3 years after the date when it was committed.

(4) The competent territorial inspectorate shall hear administrative torts pursuant to this Act in the first instance. The central inspectorate shall decide on an appeal against imposition of a fine.

(5) The provisions of Article 9 shall apply to the liability for any conduct occurred within business activities of a natural person or in direct relation thereto.

(6) Fines shall be an income of the state budget.

#### Article 11

##### **Transitional provision**

The right to choose green bonus pursuant to Article 4(3) and Article 4 (7) can be exercised from 1 January 2006.

#### Article 12

##### **Authorisation to issue implementing regulations**

(1) The Ministry of the Environment shall issue an implementing regulation to implement Articles 3(1) and 3(2).

(2) The Ministry of Industry and Trade shall issue an implementing regulation to implement Articles 4 (13) and 4 (18).

(3) The Office shall issue an implementing regulation to implement Articles 4(3), 4(10), 4(12), 5(3), and 6(1)(b)(1).

## **PART TWO AMENDMENT TO THE ACT ON ENERGY MANAGEMENT**

### Article 13

The Act No. [406/2000 Coll.](#) on energy management, as amended by the Act No. [359/2003 Coll.](#) and the Act No. [694/2004 Coll.](#), shall be amended as follows:

1. In Article 2, point (b) shall be repealed.  
Former points (c) to (f) shall be designated as points (b) to (e).

2. In Article 4(5)(c), a reference to footnote No. 1 shall be inserted after the word “energy” and footnote No. 1 shall read as follows:

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<sup>»1)</sup> Act No. [180/2005 Coll.](#), on the promotion of electricity production from renewable energy sources and amending certain acts (Act on Promotion of Use of Renewable Sources)”

Former footnote No. 1 shall be designated as footnote No. 1a, including the reference to the footnote.

## **PART THREE AMENDMENT TO THE ACT ON PROTECTION OF THE AIR**

### Article 14

The Act No. [86/2002 Coll.](#), on protection of the air and amending certain acts, as amended by the Act No. [521/2002 Coll.](#), Act No. [92/2004 Coll.](#), Act No. [186/2004 Coll.](#), and Act No. [695/2004 Coll.](#), shall be amended as follows:

1. In Article 2(1), the full stop after point (u) shall be replaced by a comma and points (v), (w) and (x) shall be added, which shall read, including footnotes Nos. 3c and 3d, as follows:

“(v)“set volume of biofuels” shall mean the minimum quantity of biofuels or other fuels from renewable sources according to their type, for which financial support for biofuels is provided for the relevant period to authorised producers of biofuels;

“(w)“authorised producer of biofuels” shall mean a person who produces biofuels under the conditions stipulated in a special regulation<sup>3c)</sup> and to whom a share in the set amount for the relevant period has been granted in a binding manner according to the principles approved by the Government;

“(x)” relevant period shall mean the period for which financial support for biofuels is provided<sup>3d)</sup>.

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<sup>3c)</sup> The Act No. [61/1997 Coll.](#), on spirits and amending and supplementing the Act No. [455/1991 Coll.](#), on business in trade (the Trade Act), as amended, and the Act of the Czech National Council No. [587/1992 Coll.](#), on excise duties, as amended - (the Act on Spirits), as amended.

<sup>3d)</sup> 3d) Article 16(5) of the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.”

2. Article 3(10) shall read as follows:

“(10) A person introducing petrol and diesel fuels to free tax circulation within the tax territory of the Czech Republic shall be obliged to ensure that the assortment of fuels introduced by him contains the set volume of biofuels, according to the type, stipulated in an implementing regulation. This implementing regulation shall also stipulate the period, to which the set volume applies.”

3. In Article 3, new paragraphs (11) to (13) shall be inserted following paragraph (10) and shall read, including footnotes Nos. 7a and 7b, as follows:

“(11) A person pursuant to paragraph (10) above shall be obliged, annually by January 31, to inform the General Directorate for Customs (Generální ředitelství cel) of the total amount of fuels for transport purposes introduced by the given person during the previous calendar year to free tax circulation within the tax territory of the Czech Republic and of the share of biofuels in this amount.

(12) A person pursuant to paragraph (10) above shall be obliged to purchase, within the set amount, from the authorised producers of biofuels, biofuels produced by these producers in an amount corresponding to its share in the market in these fuels for transport purposes in the territory of the Czech Republic, calculated according to their energy content, for the minimum purchase prices stipulated pursuant to special regulation<sup>7a)</sup> (hereinafter referred to as the “minimum purchase prices”), except for bioethanol for transport purposes (hereinafter referred to as “bioethanol”), directly, and bioethanol from the Administration of State Material Reserves (Správa státních hmotných rezerv)<sup>7b)</sup>. The Administration of State Material Reserves shall purchase bioethanol in the set volume from authorised producers, according to their share in the set volume, for the minimum purchase prices stipulated pursuant to special regulation<sup>7a)</sup>.

(13) If a person pursuant to paragraph (10) above fails to purchase the amount of bioethanol pursuant to paragraph (12) above from the Administration of State Material Reserves, it shall be obliged to pay to the Administration of State Material Reserves the price for which the Administration of State Material Reserves purchased the non-purchased amount, the costs related to the purchase and a penalty in an amount equal to the price pursuant to Article 45a for the non-purchased amount. The price level shall be stipulated as the average price in the calendar year, during which the obligation was violated.

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<sup>7a)</sup> Act No. 526/1990 Coll., on prices, as amended.

<sup>7b)</sup> Article 3 of the Act No. 97/1993 Coll., on the competence of the Administration of State Material Reserves, as amended.”.

Former paragraph (11) shall be designated as paragraph (14).

4. In Article 37, paragraphs (3) and (4) shall be added, which shall read as follows:

“(3) In co-operation with the General Directorate for Customs (Generální ředitelství cel), the Ministry of Industry and Trade, the Ministry and the Office, the Ministry of Agriculture shall annually, by 1 July, submit to the European Commission and to the Government information on

- a) the measures adopted to promote the use of biofuels or other fuels from renewable sources for transport purposes instead of diesel fuel or petrol;
- b) the national resources intended for production of biomass for other use than in transport; and
- c) the overall sales of fuels and the share of biofuels, both pure and mixed, and other fuels from renewable sources in the market during the previous year, possibly information on all exceptional situations in supplies of crude oil or oil products that affected the sales of biofuels and other fuels from renewable sources.

(4) The Ministry of Agriculture shall specify, in co-operation with the Ministry of Industry and Trade and the Ministry, in the first information for 2005, the national indicative target as of 31 December 2005 set by the Government, and in the information for 2006, the national indicative target as of 31 December 2010 set by the Government. Within this information, the Ministry of Agriculture shall justify, in co-operation with the Ministry of Industry and Trade and the Ministry, the difference between the set national target and the actual state. The national indicative targets shall be stipulated in an implementing regulation.”

5. In Article 40, new paragraphs (13) to (15) shall be inserted following paragraph (12) and shall read as follows:

“(13) The Czech Trade Inspection (Česká obchodní inspekce) shall impose a fine of up to CZK 100,000 on a person pursuant to Article 3(10) who fails to fulfil the information duty pursuant to Article 3(11).

(14) The Czech Trade Inspection shall impose a fine of up to CZK 5,000,000 for the non-purchased amount of biofuels on a person pursuant to Article 3(10) who fails to purchase the amount of biofuels within the scope of his share in the market in fuels.

(15) The Czech Trade Inspection shall impose a fine of up to CZK 5,000,000 on a person pursuant to Article 3(10) who fails to ensure that the assortment of fuels introduced by the given person on the market contains the minimum amount of biofuels.”

Former paragraphs (13) to (17) shall be designated as paragraphs (16) to (20).

6. New Article 45a shall be inserted after Article 45 and shall read, including footnote No. 21b, as follows:

“Article 45a

The prices pursuant to Article 3(12) shall be stipulated separately for the individual types for the maximum of 6 calendar months in advance in such amount, so that economic recovery of the usual costs for construction of plants for production of biofuels and plants for processing of biofuels into fuels and appropriate profit were guaranteed to the production plants put into operation after the date of entry into force of the Act on Promotion of Use of Renewable Sources<sup>21b)</sup>, and so as to create conditions for fulfilment of the indicative targets; completion of reconstruction of the technological part of an existing plant, a change of fuel or completion of modernisation, resulting in an increase in the technical and environmental level of the existing plant shall also be regarded as “putting into operation”. The technical and economic parameters of the plant, according to which the prices are set, shall be stipulated in an implementing regulation.

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<sup>21b)</sup> Article 2(2) of the Decree No. 580/1990 Coll., implementing the Act on Prices, as amended.”.

7. In Article 55(1), the words “Article 3(10),“ shall be inserted after the words “implementation”, the words “and Article 7(11)” shall be replaced by the words “, Articles 7(11), 37(4) and 45a” and, in paragraph (3), the words “Article 3(11)” shall be replaced by the words “Article 3(14)”.

## **PART FOUR LEGAL FORCE**

### Article 15

This Act shall enter into force on the first day of the third calendar month following the date of its publication.

**Zaorálek** o. h.  
Paroubek o. h.

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- <sup>1)</sup> Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market
  - <sup>2)</sup> The Act No. [458/2000 Coll.](#) on the conditions for operating business and on performance of state administration in the energy sectors and amending certain acts (the Energy Act), as amended
  - <sup>3)</sup> The Decree No. [373/2001 Coll.](#) stipulating the rules for organisation of the electricity market and the principles of determining the prices for activities of the market operator, as amended
  - <sup>4)</sup> The Decree No. [218/2001 Coll.](#) stipulating the details of measurement of electricity and submission of technical data, as amended