

# **Terms of use for the Energy Identification Codes (hereinafter "EIC code(s)") for the German and European energy market issued and managed by Energie Codes und Services GmbH**

**With effect as of 1 January 2017, the Energie Codes und Services GmbH (hereinafter "GmbH") has taken over the issuing and management of EIC codes, including all existing contracts, from the German Association of Energy and Water Industries ("BDEW"). The following Terms of Use shall take effect from 1 January 2017 for the contractual allocation and use of an EIC code and the use of EIC codes which have already been issued. By using an EIC code after 1 January 2017, the EIC owner accepts these Terms of Use.**

**The issuing of EIC codes is exclusively for participation in the German and European energy market. Any use of data contained in the EIC database of the Energie Codes und Services GmbH and the code number database of the European Network of Transmission System Operators for Electricity (ENTSO-E) for other purposes (for example general letters to companies, advertising etc.) is prohibited.**

In addition to the statutory regulations (e. g. German Energy Industry Act (Energiewirtschaftsgesetz, EnWG), Renewable Energy Sources Act (Erneuerbare Energien Gesetz, EEG), Network Access Regulation (Strom-Netzzugangsverordnung, StromNZV)), the "[THE ENERGY IDENTIFICATION CODING SCHEME \(EIC\) REFERENCE MANUAL](#)" (hereinafter "ENTSO-E EIC Reference Manual") published by ENTSO-E, as amended, including implementation guide and documents as well as the BDEW EIC guidelines entitled "Rules for the issuing of EIC Energy Identification Codes in the German electricity market", as amended, (hereinafter "BDEW EIC Guidelines") also apply.

## **Section 1 Eligibility**

- (1) Any legal person based in Germany, who participates in the European energy market, or any legal person who requires an EIC code for their activities in the German energy market, which its own issuing body does not issue, is entitled to apply for an EIC code in accordance with the BDEW EIC Guidelines, if they do not already possess an EIC code for the activity applied for. The GmbH then issues the EIC code in accordance with the BDEW EIC Guidelines; the range of types of EIC code issued by the GmbH as well as who is entitled to request which type of EIC code is likewise determined according to the BDEW EIC Guidelines.
- (2) Changes or amendments to the EIC system for market participants will be introduced by ENTSO-E and additionally via the BDEW EIC Guidelines.
- (3) BDEW membership is not required prior to application for and use of an EIC code.
- (4) Applying for an EIC code for the purpose of transferring or selling it is prohibited.

## **Section 2 Application for a new EIC code to be issued**

(1) To apply for a new EIC code to be issued applicants must register at the website [www.bdew-codes.de](http://www.bdew-codes.de) and submit their application online. In sending the application, the applicant acknowledges these Terms of Use and the terms of use of ENTSO-E in the form of the ENTSO-E [EIC-Reference Manual](#), as amended, including amendments through the BDEW EIC Guidelines, as amended.

(2) The scope of technical/operational information required in the application is determined according to the ENTSO-E EIC Reference Manual, as amended, and is specified in the BDEW EIC Guidelines for an application to the BDEW.

Moreover, the following details are necessary for the application:

- Company of the future owner of the EIC code number as recorded in the Commercial Register
- Address as recorded in the Commercial Register (street, house number, postcode, city)
- Company website
- Email address
- Contact person including contact details (first name and surname, department/area, telephone number, email address<sup>1</sup>)
- Invoice recipient including contact details (first name and surname, department/area, telephone number, fax number, email address)

By submitting the application, the applicant warrants that the details contained in the application are accurate and that the applicant is entitled to apply for, and subsequently use, the EIC code, in particular that the registration and intended use of the EIC code neither infringes the rights of third parties nor violates any general laws.

(3) By submitting the application, the owner of the EIC code agrees to the publication of their allocated EIC code, including details of the applying company, by the GmbH and ENTSO-E. Personal details will not be published.

## **Section 3 Issuing of EIC codes by the GmbH**

(1) The examination of applications and the issuing of EIC codes will generally be performed on a first come first served basis. In the case of a correct and complete application, where all requirements are met, the EIC code will be issued by the GmbH by email. If an application is rejected, the applicant will also be notified by email, stating the grounds for the rejection.

(2) At the point an EIC code is issued, a contract is formed between the GmbH and the applicant on the basis of these Terms of Use as well as the ENTSO-E EIC-Reference Manual and the BDEW EIC Guidelines.

(3) The GmbH will disclose the personal data of the applicant or EIC owner only to third parties involved in the execution and implementation of the EIC code number contract and to ENTSO-E, and will not use or disclose such data for advertising purposes. Publication as per Section 2 (3) and disclosure as per Section 8 (10) shall remain unaffected hereby.

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<sup>1</sup> as far as possible no general information addresses

## **Section 4 Obligations of the GmbH**

(1) The GmbH will ensure that an EIC code will not be allocated more than once (avoidance of conflict).

(2) The GmbH is not obligated to assess whether the registration of an EIC code or its use by the EIC owner infringes the rights of third parties.

(3) The GmbH publishes the list of companies at [www.bdew-codes.de](http://www.bdew-codes.de), using the data on the owner and all allocated EIC codes as provided in the application.

(4) International EIC codes are also published on the ENTSO-E website:

<https://www.entsoe.eu/data/energy-identification-codes-eic/eic-code-lists/Pages/default.aspx>.

## **Section 5 Rights and obligations of the owner of the EIC code**

(1) The owner of the EIC code can use the allocated EIC code in legal transactions. The owner of the EIC code is obligated, immediately upon allocation of the code, to review the correct publication of the EIC code assigned to it and the associated information in the registers on the websites specified in Section 4, and to inform the GmbH immediately of any mistakes. Insofar as no such notification is sent by the owner of the EIC code within ten working days of the owner being informed of the allocation, the publication of their code number in the register shall be considered correct. Insofar as no such notification is sent by the owner of the EIC code within ten working days of the owner being notified of the allocation, and the GmbH and ENTSO-E shall no longer bear any liability in this respect.

(2) The owner of the EIC code undertakes to inform the GmbH immediately of any changes to its submitted data. The owner of the EIC code can amend its personal contact details itself. All other changes must be sent to the GmbH by email or through the channel specified by the GmbH.

(3) The EIC owner shall also immediately inform the GmbH, if the owner of the EIC code is ceasing their activities or is no longer participating in the German or European energy market. The owner's EIC codes will then be blocked accordingly.

(4) EIC codes may only be used for participation in and implementation of market communications in the German or European energy market by the owner of the EIC code. Misuse can lead to the blocking of an EIC code as per Section 6 of these Terms of Use and the termination without notice of the usage contract by the GmbH as well as claims for damages by the GmbH. Misuse is deemed to have occurred, in particular, when an EIC code is transferred to a third party without the written consent of the GmbH.

## **Section 6 Blocking of an EIC code or amendment of the data stored by the owner of the EIC code**

The owner of the EIC code can, at any time, request, by email or letter or through the channel specified by the GmbH, the blocking of the owner's EIC code or the amendment of the

data it has submitted pertaining to the EIC code allocated to it, where it cannot undertake such amendment itself as per Section 5 (2).

### **Section 7 Transfer of an EIC code**

(1) The owner of the EIC code can, in the event of legal succession, upon presentation of relevant evidence, transfer an EIC code to a legal successor, provided that the future owner also meets the requirements as per Section 1 and does not already have a corresponding EIC code. The latter does not apply in the case of the type of EIC code for which there is a provision, in accordance with the BDEW EIC Guidelines and the Reference Manual, that several EIC codes of the same type may be held at once. The owner of the EIC code shall inform the GmbH and provide relevant evidence at least six weeks prior to the legal succession coming into force.

The transfer of an EIC code can also occur upon a change to the regulatory framework conditions which enable or provide for such a transfer.

(2) In order to be valid, a transfer requires the registration of the future owner of the EIC code with the GmbH and the consent of the GmbH as inherently expressed through the registration.

(3) The GmbH will register the EIC code to the new owner provided the previous owner terminates the contract and the new owner submits a request to take over the EIC code, providing documentation identifying it as the respective legal successor.

(4) The transfer of the EIC code will be valid upon the successful completion of the registration of the new owner. The previous and the new owner are obligated to notify their contractual partners of the transfer of the EIC code.

### **Section 8 Legal entity as owner of an EIC code ceases to exist**

(1) In the event that a legal entity which is the owner of an EIC code ceases to exist (e. g. through merger) the EIC code can either be transferred to the legal successor according to Section 7 or be blocked by the GmbH at the point in time when the legal entity ceases to exist or at the latest at the point in time when the GmbH learns of the legal entity ceasing to exist.

(2) A legal successor, which already holds a corresponding EIC code (for example in the case of an X-EIC) in its name is obligated to notify the GmbH as to which of the two EIC codes they wish to retain. The other will then be blocked. In the absence of such a decision, the EIC code of the owner which has ceased to exist will be blocked.

(3) The GmbH should be notified of the merger and, where applicable, of the choice between two EIC codes by the legal successor without delay; otherwise, the GmbH reserves the right to block the EIC code of the owner which has ceased to exist.

## **Section 9 Blocking of an EIC code by the GmbH**

(1) An EIC code is issued for an indefinite period of time.

(2) The GmbH can for good cause block an EIC code with immediate effect either temporarily or permanently. Good cause is, for example, if

a) the owner of the EIC code has undertaken, in writing, without restriction and under penalty of law, not to use an EIC code or the owner has issued a final declaration to that effect in preliminary injunction proceedings, or a corresponding final and absolute judgment on the substance of the case has been handed down against the owner of the EIC code, or

b) the owner of the EIC code has violated material contractual obligations and continues to violate them despite written warnings and the setting of time limits, in particular by using an EIC code for purposes other than participation in the German or European energy market, or

c) the information provided by the owner of the EIC code to the GmbH is false, or

d) the GmbH no longer performs the issuing and management of the EIC codes, or

e) the EIC owner has ceased their activities or no longer participates in the German or European energy market, or

f) the owner of the EIC code does not comply with their obligation to pay fees despite a written warning, or

g) insolvency proceedings are instituted against the assets of the owner of the EIC code.

In the event of (2) b), c) and f) the GmbH will inform the owner of the EIC code in writing of the grounds for blocking and set the owner a time limit of thirty (30) calendar days to remedy the grounds. During this time, the GmbH is entitled to temporarily block the EIC code. If the grounds for the temporary block are eliminated, the GmbH will remove the block. In this event, the GmbH is released from any liability in relation to the block.

(3) The GmbH can, moreover, temporarily or permanently block the EIC code where an injunction or reasoned request is received from an authority or other public entity due to a rights infringement. In this event, the GmbH is released from any liability in relation to the block.

(4) Notwithstanding any further statutory rights, the GmbH can, upon dispatching the notification of the block to the owner of the EIC code, remove an EIC code from the publicly available EIC code list.

(5) Once the block has taken effect, the owner of the EIC code loses the right to continue to apply or use the EIC code. Insofar as is necessary for the due and proper termination of the contractual relationship of the owner of the EIC code, the owner is permitted, in deviation from S. 2, to use the EIC code for final transactions. In the case of continued use of the EIC code contrary to these provisions, the user is liable for any damage caused. In this event, the GmbH is also released from any liability in relation to the block.

(6) A permanently blocked EIC code shall be re-issued no sooner than ten years after the blocking.

## Section 10 Fees

(1) The owner of the EIC code undertakes to pay to the GmbH the fees set out in the published price list.

(2) For the purposes of the fee to be paid, all issued codes (BDEW code numbers, EIC code, electricity grid operator numbers) will be summarised at the relevant settlement date and billed together. The settlement date for ascertaining the annual fee to be billed is 1 January each year.

(3) The annual fee to be billed comprises one fee per code owner and one fee per code. The fees are to be understood as net prices based on a quantity scale. The basis for ascertaining the quantity scale is the total number of electricity grid operator numbers, BDEW code numbers and EIC codes valid as of the relevant settlement date.

(4) Owners of codes, who possess a valid code as of 1 January of a given year, ("existing customers") will be billed in advance in the first quarter for the annual fee for that calendar year. Codes which are added later will first be included in the calculation of the fee at the next settlement date.

(5) Companies which acquire a code (BDEW code number, EIC code, electricity grid operator numbers) for the first time during the year and are consequently entered into the data base for the first time ("new customers") will, in the case of such a commencement of contract during the year, be billed the annual fee on a pro rata basis for the remaining months.

(6) If an EIC code is transferred to a code owner who is already registered in the database, subsection (4) applies in respect of the payment of the fee.

If an EIC code is transferred to a code owner who is added to the database for the first time, subsection (5) applies in respect of the payment of the fee.

(7) A change to the number of codes or the owner during the year will not lead to any reimbursement of fees.

(8) The owner of the EIC code bears the costs of applicable bank fees or other fees.

(9) The GmbH is entitled to send bills via email to the owner of the EIC code or the administrative contact partner.

(10) The GmbH is entitled to amend the price list once a year, effective 1 January of a new calendar year, with a notice period of three months. The GmbH will only amend the price list where there are legitimate grounds to do so, e. g. in the case of increased issuing or management costs. The owner of the EIC code will be informed of the change by email, with accompanying reasoning.

If the owner of an EIC code does not wish to accept the new fees, the owner has right of extraordinary termination for a period of six weeks after the sending of the email by the GmbH containing the relevant notification.

(11) The GmbH is entitled to outsource the billing for the issuing and management of EIC codes to third parties. The owner of an EIC code hereby already expresses its agreement to the disclosure of the required information, including personal details, to the relevant compa-

ny. The GmbH will inform the owner of the EIC code as to which company will process the billing for the issuing and management of the EIC codes.

## **Section 11 Liability**

(1) The GmbH makes no guarantee as to the accuracy of the published data on the EIC codes and owners of EIC codes on its website and in its registers as well as those of EN-TSO-E where the data was already incorrect at the time of publication and the owner of the EIC code did not make the GmbH aware of this within the time limit set out in Section 5 (1).

(2) The GmbH and the EIC code owner are liable to each other for property damages and financial damages which arise from a culpable violation of material contractual obligations. In the case of culpability as a result of simple negligence, liability is limited to loss or damage which can typically be foreseen in relation to this type of contractual agreement.

(3) In the event of a violation of non-material contractual obligations, the parties to the contract are liable to one another only for intentional and grossly negligent acts, whereby the liability for property damage and financial losses caused by gross negligence is limited, to the extent permitted by law, to the loss or damage which can typically be foreseen in relation to this type of contractual agreement.

(4) Material contractual obligations are understood here to mean those obligations which must be fulfilled to enable the due and proper performance of the contract and the observance of which the respective other party to the contract will and may rely on. Losses and damage which can typically be foreseen in relation to this type of contract are those which the parties, at the time of entering into the contract, foresaw as a possible consequence of a contractual violation or, which the parties, taking into account the circumstances known or indisputably recognisable to them, should have foreseen when applying the degree of care customary in the course of trade.

(5) Subsections (1) to (4) apply also in respect of legal representatives, employees as well as the vicarious agents or performing agents of the parties to the contract.

## **Section 12 Changes to the basis of the contract, communication channels**

(1) Where it is necessary to alter or amend these Terms of Use - in particular due to a change to the ENTSO-E EIC Reference Manual by ENTSO-E, the BDEW Implementation Guide, a change in the legislative situation, recent court decisions of the highest court or a change in the market conditions - the GmbH is entitled to modify these Terms of Use accordingly. Owners of EIC codes will be notified of any alterations or amendments at least three months before they take effect, unless a different time limit has been set by ENTSO-E or by the legislator.

(2) The GmbH is entitled, as per Section 11 (1), to notify the owners of EIC codes or the administrative contact partners of any alterations or amendments by email.

(3) In the event that the owner of an EIC code does not accept an alteration or amendment to the Terms of Use, the owner has an extraordinary right of termination for a period of six

weeks after the sending of the email by the GmbH containing the relevant notification. If the owner of an EIC code does not exercise its right of termination despite the respective notification, the new Terms of Use shall be deemed as having been accepted. The owner of an EIC code will be informed of this consequence in the notification of alteration or amendment.

### **Section 13 Choice of law and place of jurisdiction**

The EIC Agreement is governed by German law. To the extent permitted, Berlin is the exclusive place of jurisdiction. The GmbH is also entitled to bring legal action in the general place of jurisdiction of the owner of the EIC code.

### **Section 14 Contact**

The GmbH is registered in the Commercial Register; its registered address is in Berlin (Local Court of Charlottenburg, Commercial Register B 179968 B).

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