Ruling Chamber 9

DECISION

In the administrative proceedings pursuant to section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) sentence 1 para 2, sentence 3 and sentence 4 EnWG in conjunction with Article 71(2) point (d) of Regulation (EU) 2024/1789 in conjunction with Article 10(3) sentence 1 of Regulation (EU) 2017/460

concerning the determination of an effective inter-transmission system operator compensation mechanism within the German market area ("AMELIE 2026")

Ruling Chamber 9 of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn,

represented by

the Chair	Dr Christian Schütte,
the Vice Chair	Roland Naas
and the Vice Chair	Stefan Tappe

decided on 14th May 2025:

1. Determination BK9-19/607 of 11 September 2020 ("AMELIE 2021") will no longer be in force after 31 December 2025.
2. In order to allow for the proper application of the same reference price methodology that will be regulated by determination BK9-23/610 ("REGENT 2026") as of 1 January 2026,

from this time the transmission services revenue obtained within the German market area will be reconciled in accordance with the following rules.

3. For the period starting 1 January 2026, the following applies:

   Before the start of a calendar year, for every transmission system operator, the likely transmission services revenue for the reference calendar year is to be established on the basis of the capacity bookings for the calendar year, the joint reference price and the reserve prices derived therefrom. The yearly compensation payment is derived from the difference between the likely transmission services revenue established for the reference calendar year and the allowed transmission services revenue for the reference calendar year to be validated by the transmission system operator. The monthly compensation payment corresponds to one twelfth of this difference.

4. Where a transmission system operator's monthly compensation payment is positive, it is to be paid not later than the fifteenth of the respective month on a pro rata basis to all the transmission system operators in the German market area with a negative difference.

5. Claims having arisen under 3 shall lapse as a result of the compensation payments under 4. A comparison against the actual revenue is not made. Divergences between allowed transmission services revenue and obtainable revenue will be reconciled individually for each enterprise via the respective regulatory account, with the compensation payments made and received being factored in.

6. If no revenue cap for the calendar year has yet been determined for a transmission system operator in accordance with section 4(1) of the Incentive Regulation Ordinance (ARegV), the network costs necessary for network operation used as a basis for the decision on the approval of network access tariffs in accordance with section 23a EnWG are classed as allowed revenue within the meaning of this decision.

7. No fees are payable for the decision.

Rationale

I.

1. Background to the proceedings

1 The background to these proceedings is the network code on harmonised transmission tariff structures for gas (Regulation (EU) 2017/460), which entered into force on 6 April 2017 and is directly applicable European law yet also requires several implementing acts from the national regulatory authority. One of these acts, given the application of the same reference price methodology by the transmission system operators within the German market area, is the determination of an effective compensation mechanism so as to reconcile divergences between obtained and allowed revenues.

2 The ruling chamber has opened new own-initiative proceedings for the determination of an effective inter-transmission system operator compensation mechanism in Germany. In accordance with Article 27(5) of Regulation (EU) 2017/460 another decision has to be taken on the reference price methodology and the other points set out in Article 26(1) of Regulation (EU) 2017/460 for all transmission system operators (determination proceedings BK9-23/610, “REGENT 2026”). In this context, a decision about the determination of an effective compensation mechanism also has to be made at the same time.

2. Course of proceedings

3 Notification of the opening of proceedings was given in Official Gazette 19/2024 of 2 October 2024 and simultaneously on the Bundesnetzagentur’s website.

4 The regulatory authorities of the federal states were informed of the opening of proceedings on 2 October 2024 in accordance with section 55(1) sentence 2 EnWG.

5 The draft decision in German was published on 13 December 2024 on the Bundesnetzagentur’s website. The length of the consultation was set at two months.

6 This publication, by analogy with section 73(1a) sentence 1 EnWG and section 28(2) para 4 of the Administrative Procedure Act (VwVfG), takes the place of the individual hearing required under section 67(1) EnWG for each person addressed. On 13 December 2024, the Bundesnetzagentur gave the regulatory authorities of the federal states and the Bundeskartellamt the opportunity to comment on the intended determination in accordance with section 58(1) sentence 2 EnWG. The Bundeskartellamt stated in an email of 12 February 2025 that it did not wish to submit any comments. On 20 February 2025 the Committee of representatives of the federal state regulatory authorities was also given the opportunity to comment in accordance with section 60a(2) EnWG.

7 For further details, reference is made to the content of the file.

3. Responses

8 During the consultation, three responses to the draft determination were received.

9 All the responses made it clear that the intended rules were to be welcomed. INES (Initiative Energien Speichern e.V.) suggested publishing hourly forecasted capacity booking data outside the scope of the determination. Furthermore, the same values should be used as the basis for both the compensation mechanism under AMELIE (forecasted bookings) and the calculation of the reference price methodology under REGENT (forecasted average bookings).

II.

10 The ruling chamber is setting requirements for the determination of an effective inter-transmission system operator compensation mechanism within a market area (entry-exit system) in accordance with Article 10(3) sentence 1 of Regulation (EU) 2017/460. The requirements of the decision are addressed to all gas transmission system operators as defined in section 3 para 5 EnWG.

11 The determination falls under the responsibility of the Bundesnetzagentur as provided for by section 29(1) EnWG in conjunction with section 56(1) sentence 1 para 2, sentence 3 and sentence 4 EnWG in conjunction with Article 71(2) point (d) of Regulation (EU) 2024/1789 in conjunction with Article 10(3) of Regulation (EU) 2017/460. The responsibility of the ruling chamber ensues from section 59(1) sentence 1 EnWG.

12 Pursuant to section 59(3) sentence 3 EnWG, the Grand Ruling Chamber issues nationally applicable determinations on the conditions and methodologies for network access and for determining the tariffs for network access in accordance with sections 20 to 23a, 24 to 24b and 28o(3) EnWG. Although the legal principles of Regulation (EU) 2017/460 cited are not mentioned directly in section 59(3) sentence 3 EnWG, they correspond to the issue of "determining the tariffs for network access" pursuant to section 21(3) sentence 4 para 2a EnWG (which is mentioned in section 59(3) sentence 3 EnWG), so the Grand Ruling Chamber is responsible for the nationally applicable determination. In an administrative order of 10 September 2024, the Grand Ruling Chamber transferred the AMELIE 2026 determination back to the ruling chamber in accordance with section 59(3) sentence 4 EnWG.

13 The requirements of this determination are issued on the basis of section 29(1) EnWG in conjunction with section 56(1) sentence 1 para 2, sentence 3 and sentence 4 EnWG in conjunction with Article 10(3) sentence 1 of Regulation (EU) 2017/460. While section 29(1) EnWG makes provision generally for the regulatory authority to take decisions in the cases stated in said law by means of determinations or approvals and section 56 EnWG lays down when the Bundesnetzagentur is to become active in enforcing European law, Article 10(3) sentence 1 of Regulation (EU) 2017/460 provides for the introduction of an effective inter-transmission system operator compensation mechanism in order to allow for the proper application of the same reference price methodology jointly. In doing so, Article 10(3) sentence 1 of Regulation (EU) 2017/460 refers to the requirement in Article 10(1) of Regulation (EU) 2017/460, according to which, in line with Article 6(3) of Regulation (EU) 2017/460, the same reference price methodology is to be applied jointly by all the transmission system operators of an entry-exit system within a Member State. Article 6(3) of Regulation (EU) 2017/460 provides greater specificity on this by making clear that the reference price methodology in an entry-exit system (market area) with more than one transmission system operator is to be applied in principle to all

entry and exit points in the entry-exit system and is to be applied in principle jointly by the transmission system operators.

14 The ruling chamber has not made use of the possible alternative of ordering separate application of the reference price methodology under Article 10(2) point (a) and (3) sentence 2 of Regulation (EU) 2017/460 and of determining a corresponding compensation mechanism in compliance with the conditions set out in Article 10(3) points (a) and (b) of Regulation (EU) 2017/460.

15 The requirement set out in Article 10(1) of Regulation (EU) 2017/460, requiring the transmission system operators to apply the same reference price methodology jointly, thus applies without the ruling chamber having to take a decision to this effect. However, in order to allow for the proper application of the same reference price methodology jointly, an effective compensation mechanism must be determined under Article 10(3) sentence 1 of Regulation (EU) 2017/460. Such a compensation mechanism is necessary because the revenue obtained from the reference price and the reserve prices derived therefrom does not reflect the transmission system operator's specific costs or allowed revenue. A transmission system operator whose specific tariff is less than the reference price applicable throughout the market area will, as a result of the uniform reference price or reserve prices derived therefrom, collect more than it should properly collect. A transmission system operator whose specific tariff is more than the reference price will not, as a result of the reference price or reserve prices, be able to obtain its allowed revenue. Thus the whole purpose of the compensation mechanism is to reconcile the transmission services revenue obtained in the German market area in such a way that every transmission system operator, in selling the volumes of gas on which the setting of tariffs is based, really does obtain its allowed transmission services revenue by means of inter-transmission system operator compensation payments.

16 Under the wording of the Regulation, the sole demand made of the compensation mechanism is that it be "effective". Effectiveness in this context means purely and simply that the compensation mechanism must be suitable to bring about the above objective of reconciling revenues in such a way that every transmission system operator really can obtain its allowed revenue. As the reference price is established on the basis of estimates in respect of sales volumes, additional revenue or shortfalls in revenue are probable throughout the market area even when the reference price methodology is applied jointly. These additions and shortfalls are to be reconciled in accordance with section 5 ARegV via the regulatory account.

17 In accordance with operative part 1, determination BK9-19/607 ("AMELIE 2021") will no longer be in force after 31 December 2025. It will be replaced by this determination on the same subject, which will apply as of 1 January 2026 in accordance with operative part 2, so there will be a "seamless" transfer from its predecessor. These orders are issued on the basis of section 29(1) EnWG in conjunction with section 56(1) sentence 1 para 2, sentence 3 and sentence 4 EnWG in

conjunction with Article 10(3) of Regulation (EU) 2017/460 in conjunction with Article 27(5) of Regulation (EU) 2017/460.

18 Operative part 3 sets out how the compensation payments from 2026 onwards are to be determined. The likely transmission services revenue for the reference calendar year is initially to be established for every transmission system operator in the German market area on the basis of the forecasted capacity bookings, the joint reference price and the reserve prices derived therefrom resulting from the REGENT 2026 determination (BK9-23/610).

19 Transmission services in this context and hereafter are, as defined in Article 3 sentence 2 point 12 of Regulation (EU) 2017/460, the regulated services that are provided by the transmission system operator within the entry-exit system for the purpose of transmission. These are to be distinguished from non-transmission services. Non-transmission services, under Article 3 sentence 2 point 15 of Regulation (EU) 2017/460, are the regulated services other than transmission services that are provided by the transmission system operator.

20 Forecasted capacity bookings are to be understood as the same capacities that are used for the calculation of the reference price. That means that the values to be applied in the forecasted capacity bookings must not deviate from the values upon which the calculation of the reference price and the reserve prices derived therefrom are based. Without this requirement, it would be possible for each transmission system operator to create its own obligation to pay compensation or its own claim to compensation. This would have the result that in the market area, compensation claims and compensation obligations would no longer be equal to each other under normal circumstances and the objective of the determination – to ensure that each transmission system operator really can obtain its allowed transmission services revenue – could not be attained.

21 Operative part 4 lays down and makes clear that the transmission system operators whose likely transmission services revenue is more than the validated allowed transmission services revenue must, in the reference calendar year, make monthly payments in equal instalments not later than the fifteenth of the respective month, on a pro rata basis to all the transmission system operators with a negative difference, that is to say to all transmission system operators whose likely revenue is less than their allowed transmission services revenue. This creates a claim to compensation or an obligation to pay compensation in relation to the other transmission system operators in the German market area.

22 The allowed operator-specific transmission services revenue that is subject to validation reflects the revenue cap determined, and adjusted if necessary, in accordance with section 29(1) EnWG in conjunction with sections 32(1), 4(1) and (2) ARegV (hereinafter referred to as “revenue cap”) for the particular year of the regulatory period, minus that part of the revenue cap accounted for by non-transmission services.

23 Under operative part 5, the claims having arisen under the earlier operative parts lapse through fulfilment as a result of the compensation payments actually made in the reference year. A

comparison against the actual revenue is not made. Divergences between allowed transmission services revenue and obtainable revenue (additional revenue or shortfalls in revenue) will be reconciled individually for each enterprise via the regulatory account of each network operator, with the compensation payments made or received being factored in. This means that additional revenue obtained or shortfalls in revenue incurred in the German market area is/are not evenly distributed via the transmission system operators in the German market area, which would have necessitated a further compensation mechanism based on actually obtained revenues. The individual operators thus continue to bear the risk involved in forecasting their particular volumes.

24 Operative part 6 lays down the rules for system operators for whom no revenue cap has yet been determined in accordance with section 4(1) ARegV. This applies in particular to energy supply networks that have been newly established or have become known for the first time to the regulatory authority. For these transmission system operators, the network costs necessary for network operation used as a basis for the decision on the approval of network access tariffs in accordance with section 23a EnWG are classed as allowed revenue within the meaning of this decision.

25 With the rules set out above, the ruling chamber has made use in correct manner of the discretion granted under Article 10(3) sentence 1 of Regulation (EU) 2017/460 in respect of the design of the compensation mechanism. It has exercised its discretion in line with the purpose of empowerment and has observed the legal limits of discretion. The purpose of legal empowerment is to determine a compensation mechanism, as is necessary when the reference price methodology is applied jointly, to ensure that each transmission system operator really can obtain its allowed transmission services revenue, aside from the usual fluctuations resulting from additional revenue or shortfalls in revenue. Hence only the design of the compensation mechanism is a discretionary matter for the regulatory authority or ruling chamber; the determination of a compensation mechanism in itself is obligatory. The requirements of this determination are suitable to achieve the objective set by legal empowerment. The requirements ensure that the transmission system operators will be able to obtain their allowed transmission services revenue, the compensation payments being factored in.

26 Moreover, the requirements are both necessary and proportionate. A more lenient means is not obvious. In accordance with section 91(1) sentence 3 EnWG, no fees are payable for decisions served by public notification in accordance with section 73(1a) EnWG (operative part 7). Since the determination is issued in relation to all transmission system operators within the meaning of section 3 para 5 EnWG, the ruling chamber is giving public notification of the determination in place of service pursuant to section 73(1) sentence 1 EnWG in accordance with section 73(1a) sentence 1 EnWG. Public notification is brought about under section 73(1a) sentence 2 EnWG by publication of the operative part of the determination, the notification of appellate remedies and a brief statement that the decision in full has been published on the regulatory authority's website and in the Bundesnetzagentur's Official Gazette. In accordance with section 73(1a) sentence 3

EnWG the determination is considered to have been served on the day on which two weeks have elapsed since the date of public notification in the regulatory authority's Official Gazette.

Information on legal remedies

Appeals against this decision may be brought within one month of its service. The appeal must be submitted to the Higher Regional Court of Düsseldorf (address: Cecilienallee 3, 40474 Düsseldorf).

The appeal must be accompanied by a written statement setting out the grounds for appeal. The written statement must be provided within one month. The one-month period begins with the filing of the appeal; this deadline may be extended by the court of appeal's presiding judge upon request. The appeal and the grounds for appeal must be signed by a lawyer.

The appeal does not have suspensory effect (section 76(1) EnWG).

Chair	Vice Chair	Vice Chair
Dr Christian Schütte	Roland Naas	Stefan Tappe