



# Press release

Bonn, 13 September 2019

## **Bundesnetzagentur orders immediate implementation of OPAL judgment of European Court**

The Bundesnetzagentur has today issued supervisory measures with respect to OPAL Gastransport and Gazprom with the aim of immediately implementing the judgment of the General Court of the European Union that annuls the Commission decision on the modified usage conditions for the OPAL gas pipeline.

### **Affected capacity may neither be marketed nor used**

The Bundesnetzagentur takes the view that, as of the court judgment, OPAL Gastransport is not permitted to conduct further auctions of the affected interconnection capacity on the OPAL. This applies in particular to the auction for the month of October, which had been planned for 16 September 2019. Moreover, it is prohibited to undertake transports on the basis of the affected interconnection capacity. The relevant partially regulated, decoupled interconnection capacity has a volume of 15.86 million kWh/h.

Following the judgment, Gazprom is now prohibited from transporting gas on the basis of the relevant booked interconnection capacity. The Bundesnetzagentur considers that Gazprom may make use of alternative transport routes and points of supply to continue to meet its supply obligations in the European Union.

Should the companies continue to breach the provisions in place since the judgment, or should they breach them in future, the Bundesnetzagentur can and will impose fines.

### **2009 exemption approval**

In 2009 the Bundesnetzagentur granted an exemption from the rules on third-party access, for a limited period and with various conditions, for OPAL Gastransport capacity. This capacity has an entry point in Germany and an exit point in the Czech Republic.

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The European Commission approved this exemption subject to conditions. Pursuant to these, a dominant undertaking, such as Gazprom, was restricted in its ability to book capacity at the exit point of the OPAL pipeline in the Czech Republic unless it offered a volume of gas from the pipeline in a "gas release programme". As no such programme was ever introduced, the booking restrictions led to less use of the OPAL pipeline capacity.

### **2016 settlement**

In 2016, OPAL Gastransport, Gazprom, Gazprom Export and the Bundesnetzagentur entered into a settlement agreement governed by public law to improve third-party access to this capacity and utilisation of the OPAL capacity.

The European Commission approved the agreement subject to certain changes.

The agreement modified the booking restrictions of the original OPAL exemption decision. It allowed both Gazprom and third parties to book capacity outside the restriction in regular award proceedings.

On 10 September 2019, the European Court annulled the Commission's approval of this settlement agreement. According to the court's rules of procedure, a judgment is binding from the day of its delivery and legal remedies have no suspensory effect. Consequently, the provisions of the settlement agreement governed by public law are no longer applicable and the provisions of the exemption decision from 2009 must be applied.

### **OPAL background**

The OPAL pipeline (Ostsee-Pipeline-Anbindungsleitung) links the Baltic Sea pipeline in Lubmin with the German-Czech border at Olbernhau/Brandov. OPAL is one of two pipelines connecting the Baltic Sea pipeline to the European gas transmission system, with the other being the North European Natural Gas Pipeline (NEL) running westwards.

OPAL is linked to the GASPOOL market area at the Groß Körös exit point. It is capable of transporting around 40 million kWh/h. OPAL Gastransport is responsible for 80% of this capacity and Lubmin-Brandov Gastransport for 20%. Technical operations are



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carried out by OPAL Gastransport. The settlement agreement refers solely to the capacity of OPAL Gastransport. The European Gas Pipeline Link (EUGAL) is planned to run largely parallel to OPAL. As no application for exemption from third-party access has been made for this pipeline, it is in no way affected by the judgment of the European Court.

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The Bundesnetzagentur is an authority under the responsibility of the Federal Ministry for Economic Affairs and Energy. Its core tasks include supervising the energy, telecommunications, postal and railway markets.

As part of its mandate, the Bundesnetzagentur ensures that as many undertakings as possible can use the infrastructure in these sectors so that consumers benefit from competition and favourable prices.

The authority employs over 2,900 people at its headquarters in Bonn and Mainz and its 46 regional offices.