



Press release

Bonn, 2 September 2021
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Response of the Bundesnetzagentur to the European Court of Justice judgment on energy matters

The Bundesnetzagentur has taken note of the ruling of the European Court of Justice (ECJ) on the independence and competence of the regulatory authorities and on the transposition of unbundling requirements in the energy sector. The ruling will make it necessary to introduce changes in the way the Bundesnetzagentur works.

"The reasons behind the ruling now have to be given careful consideration. The Bundesnetzagentur will support the federal government to evaluate the ruling as quickly as possible," said Bundesnetzagentur President Jochen Homann. "The Bundesnetzagentur will reduce legal uncertainties as much as possible during the transitional phase. We guarantee legal certainty for the investments that are essential to meet climate targets."

The ECJ has ruled that European energy directives had not been transposed correctly into German law. It has now called for measures to be taken to further strengthen the independence of the regulatory authorities and their decision-making powers in the field of energy regulation.

In addition, the ECJ has decided that the provisions of the European directives on the definition of virtually integrated energy supply undertakings, on waiting times for managers of transmission system operators and on the permissibility of employees' holding interest in vertically integrated energy supply undertakings had not been properly transposed into German law.

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The Bundesnetzagentur's intended administrative practice in the transitional phase

The provisions of European directives are only directly applicable in exceptional cases and such a case does not arise here.

The Bundesnetzagentur will continue to apply German law for a transitional period until the relevant energy legislation has been amended. On this basis, it will follow past decisions on energy issues made by the ruling chambers and the department, for example with respect to the Incentive Regulation Ordinance and the ordinances on network charges.

To do otherwise would lead to a situation that would be incompatible with the objectives of European law as it relates to energy regulation, which relies on a predictable and reliable framework. The Federal Court of Justice has also found that the partial or complete non-application of legislative provisions is not suitable for achieving a state that meets the directive's objectives (BGH, ruling of 8 October 2019 - EnVR 58/18, margin note 76).

A de facto termination without replacing national legal norms would furthermore lead to gaps in regulation that would cause considerable uncertainty for all market participants. For instance, the lack of legal clarity this would give rise to would be contrary to the investment certainty necessary. Therefore it makes more sense and would be more appropriate during the transition period to ensure stable and predictable conditions.

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.