TELECOMMUNICATIONS DISPUTE RESOLUTION PANEL

Activity report 2023

Bundesnetzagentur

Telecommunications dispute resolution panel

Activity report 2023

Report prepared in compliance with section 34(1) of the Act on Alternative Dispute Resolution in Consumer Matters (VSBG) and section 4 of the Ordinance on the Obligations to Furnish and Report Information as per the Consumer Alternative Dispute Resolution Act (VSBInfoV)

Reporting period: 1 January 2023 – 31 December 2023

Last revised January 2024

**Bundesnetzagentur für Elektrizität, Gas,
Telekommunikation, Post und Eisenbahnen**

Section 523

Tulpenfeld 4
53113 Bonn
Germany
Tel: +49 30 22480-590
Fax: +49 30 22480-518
Email: schlichtungsstelle-tk@bnetza.de

Foreword

Competition in the telecommunications sector not only enhances supplier and product diversity but also results in more complex markets, which can lead to a variety of challenges and irregularities in contractual relationships between end-users and telecommunications companies.

For nearly 25 years now, consumers have been able to turn to the telecommunications dispute resolution panel. As a sector-specific consumer conciliation body, it is an important part of the dispute resolution landscape in Germany. It is a competent, independent point of contact in the event of disputes concerning the customer protection provisions of the German Telecommunications Act (TKG).

Just over a year ago, the telecommunications and postal dispute resolution panels were brought together in a separate Consumer Protection Department, placing a particular emphasis on consumer protection through dispute resolution at the Bundesnetzagentur.

Consumers directed a large number of enquiries and complaints about telecommunications-related issues to the Bundesnetzagentur last year. Over 2,300 consumers also chose to request dispute resolution as they sought an individual, amicable solution in their specific case.

The participants in a dispute resolution procedure show that they are interested in reaching agreement. Where parties are in deadlock, dispute resolution gets them communicating with each other again. The dispute resolution panel moderates to help each side to see the other's perspective and proactively find a suitable solution. If they do not manage to do this during the consultation phase, the panel proposes a resolution. This structured process has enabled the panel to mediate in more than 1,000 disputes.

The revision of the TKG in December 2021 gave the telecommunications dispute resolution panel a greater ability to act, to the benefit of consumers. It can now conduct procedures on a wider range of issues.

The activity report of the telecommunications dispute resolution panel for 2023 shows that the free, easily accessible dispute resolution service is well-received.

Barbie Haller

Vice President of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen

Table of contents

Foreword 4
Table of contents 5
1 Telecommunications dispute resolution panel of the Bundesnetzagentur 6
2 The dispute resolution procedure 6
3 Evaluating the dispute resolution requests and procedures from 2023 8
3.1 Dispute resolution requests in 2023 8
3.2 Subjects of dispute resolution requests in 2023 8
3.3 Outcome of dispute resolution procedures in 2023 10
3.3.1 Proportion of dispute resolution procedures in which the parties reached agreement 10
3.3.2 Proportion of requests refused under section 14(1) and (2) VSBG 10
3.3.3 Proportion of procedures with no outcome 11
3.3.4 Average duration of procedures 12
3.3.5 Proportion of cases in which the parties kept to the outcome of the procedure 12
3.3.6 Proportion of cross-border disputes 12
4 Common problems 13
5 Recommendations for avoiding or resolving disputes 13
6 Structural barriers to resolving disputes 13
7 Cooperation with other consumer conciliation bodies in networks to resolve cross-border disputes 14
8 Outlook 14
List of figures 17
List of abbreviations 18
Annex: Dispute resolution rules 19

1 Telecommunications dispute resolution panel of the Bundesnetzagentur

The telecommunications dispute resolution panel of the Bundesnetzagentur is an official consumer conciliation body under the Act on Alternative Dispute Resolution in Consumer Matters (VSBG).

Founded in 1999, it has been mediating as a neutral body in disputes between telecommunications companies and their customers for 25 years. It acts in disputes arising from telecommunications contracts and related to the consumer protection provisions of the TKG. It aims to help parties reach a mutually acceptable solution so as to avoid a legal dispute before the courts.

The dispute resolution panel provides regular information about its work in the Bundesnetzagentur's annual reports and activity reports. In this activity report, it fulfils its legal obligation to provide information under section 34(1) VSBG in conjunction with section 4 of the Ordinance on the Obligations to Furnish and Report Information as per the Consumer Alternative Dispute Resolution Act (VSBInfoV) with regard to the reporting period 2023.

Further information on the telecommunications dispute resolution panel and the dispute resolution procedure, as well as the data that have to be provided under section 3 VSBInfoV, may be found (in German) at

https://www.bundesnetzagentur.de/DE/Vportal/Schlichtung/Schlichtung_TK/start.html

2 The dispute resolution procedure

The telecommunications dispute resolution panel of the Bundesnetzagentur mediates in disputes related to the provisions listed in section 68 TKG. These are the provisions governing customer protection: sections 51, 52, 54 to 67 TKG and the determinations made on the basis of those sections, section 156 TKG, an ordinance having the force of law issued by virtue of section 52(4) TKG, the current EU Roaming Regulation and Article 4(1), (2), (4) and Article (5a) of Regulation (EU) 2015/2120.

Dispute resolution procedures deal with issues like disagreements on the content and implementation of telecommunications contracts, faulty telecommunication connections, contested items on bills, reduced data transmission speeds and disputes over moving a telecommunications connection, switching provider or disconnecting a telephone line.

The telecommunications dispute resolution panel conducts the dispute resolution procedures in line with the provisions of the VSBG.

Further details of the procedure are also set out in the dispute resolution rules (SchliO) based on the VSBG. The SchliOhttps://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Verbraucher/Verbraucherschlichtung/Schlichtungsordnung_pdf.pdf?__blob=publicationFile&v=3 may be found in the annex and on the Bundesnetzagentur's websitehttps://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Verbraucher/Verbraucherschlichtung/Schlichtungsordnung_pdf.pdf?__blob=publicationFile&v=3.

Anyone classed as an "end-user" can request the commencement of a dispute resolution procedure at the telecommunications dispute resolution panel. End-users are users who neither operate public telecommunications networks nor provide publicly available telecommunications services. They can request dispute resolution in the event of a dispute between them and a provider of publicly available telecommunications services or an operator of public telecommunications networks related to the provisions given above. There generally needs to be a telecommunications service contract between the two parties.[1]

The applicant also needs to show that they have already raised the disputed claim with the telecommunications company and tried unsuccessfully to reach agreement.

The dispute must not be pending in court or already have been the subject of a dispute resolution procedure.

If the dispute resolution request is admissible, the panel starts the dispute resolution procedure by sending the documents submitted by the applicant to the respondent. It asks both parties about the matter and gives them the opportunity to put forward their individual points of view on the dispute.

If the parties do not come to an agreement during the procedure, the dispute resolution panel proposes an amicable agreement. The proposal is an individual solution tailored to the situation of the two sides. The parties may accept the proposal of the panel but do not have to do so. Either way, the dispute resolution procedure is then terminated. If both sides accept the dispute resolution proposal, it becomes binding, like a contract. The proposal may differ from the outcome that would occur if the dispute went to court. Either party is free to reject the proposal and take the matter to court.

Participation in the telecommunications dispute resolution procedure is voluntary for both parties. Both the applicant and the respondent may request the dispute resolution procedure to be terminated at any time.

The parties in dispute are not charged for the dispute resolution procedure. Each party only bears the costs it incurs from participating in the procedure.

The language of the dispute resolution procedure is German. The dispute resolution procedure is conducted in text form, ie by letter, fax or email.

The telecommunications dispute resolution panel provides a dynamic form on its website that guides the applicant through their request with information about the role of the dispute resolution panel and the details

[1] An exception is if the dispute concerns a matter relating to the provisions of section 54 or section 156 TKG, see section 1(2) sentence 3 SchliO.

the applicant needs to provide. There is also an online form available for applicants to communicate with the panel throughout the procedure.

The panel additionally provides a PDF form on its website in case applicants prefer to make their request by letter or fax.

3 Evaluating the dispute resolution requests and procedures from 2023

3.1 Dispute resolution requests in 2023

The telecommunications dispute resolution panel of the Bundesnetzagentur received 2,310 requests to start dispute resolution procedures during the reporting year, which is almost the same as in the previous year (2,389).

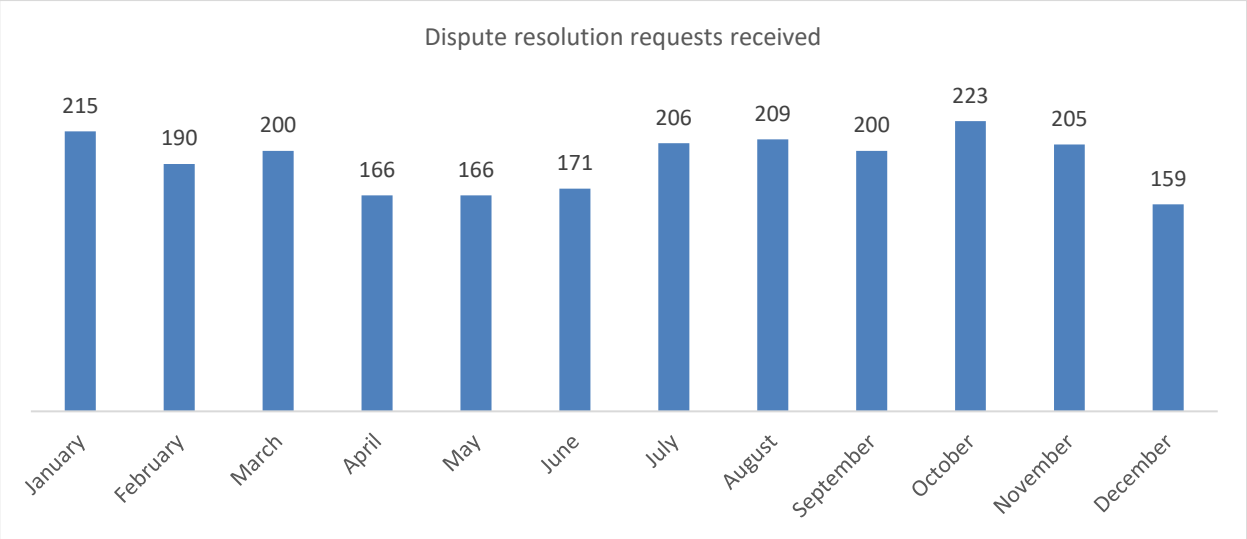

Figure 1: Dispute resolution requests received each month in 2023

In addition to the 2,310 dispute resolution requests, there were 762 other enquiries and requests for assistance. These were mostly requests for information by customers of telecommunications companies and enquiries about whether a particular circumstance could become the subject of a dispute resolution procedure.

3.2 Subjects of dispute resolution requests in 2023

Over a third (39%) of dispute resolution requests in 2023 concerned the content and implementation of contracts. These included disputes relating to making or terminating contracts and contractual changes implemented unilaterally by the provider. Further examples are disputes relating to contract duration and customers' right to cancel contracts that have been automatically prolonged at any time with a one-month notice period after the expiry of the minimum period.

Further common sources of dispute included faults (20%), billing issues (13%) and reduced data transmission speeds (8%). There were also disputes related to moving premises (3%), switching provider (3%) and disconnections (2%).

A number of dispute resolution requests had to do with contract disputes that were not related to the TKG (10%).

In a few cases, disputes about other issues relating to telecommunications services and connections were brought before the dispute resolution panel.

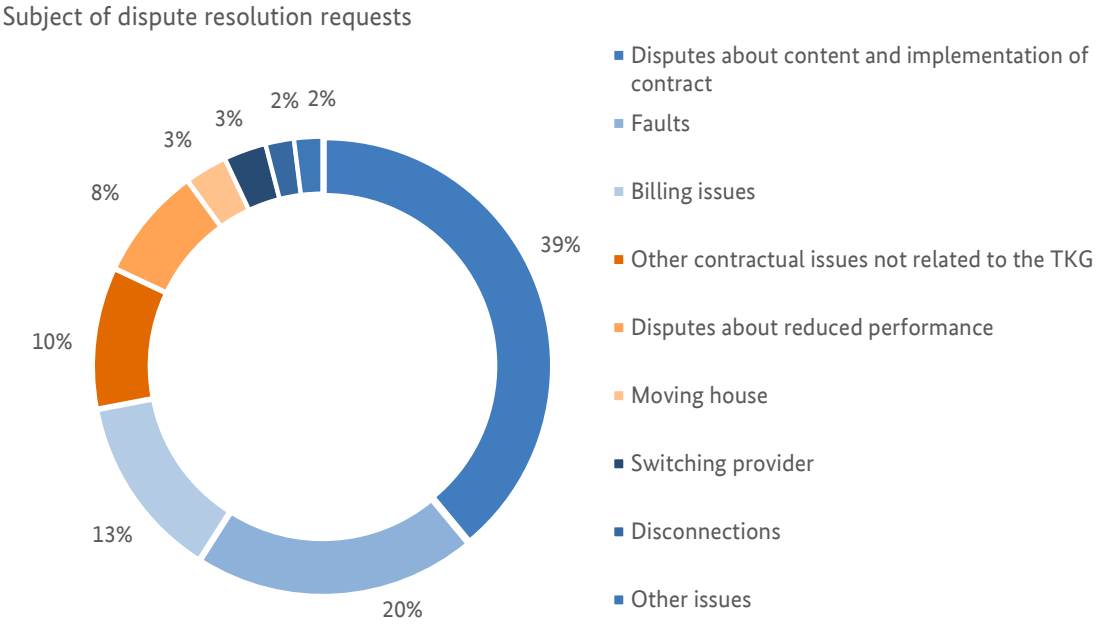

Figure 2: Subject of dispute resolution requests in 2023

3.3 Outcome of dispute resolution procedures in 2023

The telecommunications dispute resolution panel terminated 2,303 procedures in 2023, of which 2,009 met the requirements for the commencement of dispute resolution procedures.

3.3.1 Proportion of dispute resolution procedures in which the parties reached agreement

The parties in dispute reached agreement in 1,013 cases, which is 44% of terminated dispute resolution procedures. The agreement rate is actually 50% of those cases terminated in which the requests were admissible,[2] of which the parties reached an agreement during the procedure in 967 cases.

The dispute resolution panel proposed a solution in 86 cases, of which 46 were accepted by the disputing parties.

3.3.2 Proportion of requests refused under section 14(1) and (2) VSBG

The dispute resolution panel refused a total of 294 inadmissible requests for dispute resolution in 2023.

Of the 2,303 terminated procedures, 13% of them were refused. The previous year, the figure was 16%, so the proportion of refusals was down again in 2023 from 27% in 2021.

The reason for this drop was the amendment to the TKG in December 2021, which widened the scope of the dispute resolution panel. The amended law offers greater opportunities to commence dispute resolution procedures in the event of disputes between telecommunications companies and their customers, partly because the provisions relating to customer protection have been expanded, adding new circumstances in which dispute resolution can take place. In addition, to start a dispute resolution procedure, it is now only necessary for the dispute to be related to the customer protection provisions of the TKG, whereas previously, it was only possible to start a dispute resolution procedure if the applicant claimed that the respondent had breached a consumer protection right set out in the TKG.

Of the 294 refused requests for dispute resolution, 281 did not fall within the competence of the panel (section 14(1) para 1 VSBG). Nine of these involved respondents that could not be party to a dispute resolution procedure under section 68 TKG.

The panel refused eight requests because the applicant had not already asserted the disputed claim with the respondent (section 14(1) para 2 VSBG).

In three cases, the applicant had already requested dispute resolution on the same matter (section 14(2) para 1 VSBG in conjunction with section 7(1) para 4 SchliO).

The dispute was already pending in court in two cases (section 14(2) para 2 VSBG in conjunction with section 7(1) para 3 SchliO).

[2] Admissible requests are those that the dispute resolution panel did not have to refuse, see 3.3.2.

3.3.3 Proportion of procedures with no outcome

Of the procedures closed in 2023, 996 had no outcome.

In 665 of these, the respondent refused to take part in the dispute resolution procedure and did not offer a solution to the dispute. The proportion of procedures terminated in the reporting period (2,303) for which participation was refused was 29%. This level was still high in 2023, as in the previous year (26%). In 2021, it had been 14%.

This development is probably also due to the amendment to the TKG from December 2021. Since the law was changed, the dispute resolution panel no longer needs to ensure that requests for dispute resolution claim a breach of the customer protection provisions of the TKG. The procedure starts as soon as it is clear that the dispute is related to those provisions. This means that requests for dispute resolution now lead to procedures being commenced in cases that would previously have been refused by the panel as no breach of the relevant customer protection provisions by the telecommunications company can be identified.

The experience of recent years has shown that the majority of telecommunications companies look at requests for dispute resolution closely and often use their first statement as an opportunity to show flexibility to customers and offer to resolve the issue. It seems likely that, of the larger number of cases in which telecommunications companies are now refusing to enter dispute resolution, these are mostly matters in which the companies do not consider that they have done anything wrong and/or do not see leeway for a result in the dispute resolution procedure. Based on the 2021 data, the percentage increase in refusals to participate (14%) correlates with the percentage decrease in refused requests for dispute resolution (14%).

In 291 cases, requests for dispute resolution were withdrawn by the applicant, 196 of them before the dispute resolution procedure had started. The requests were withdrawn before the other side had presented a statement and, in some cases, even before the panel had considered the request. As far as the panel can tell, the withdrawals were due to the problem being resolved in the meantime or to information provided by the panel about the requirements of the procedure or about the matter at hand.

In 40 cases, no agreement was reached as the parties involved refused to accept the proposal of the dispute resolution panel.

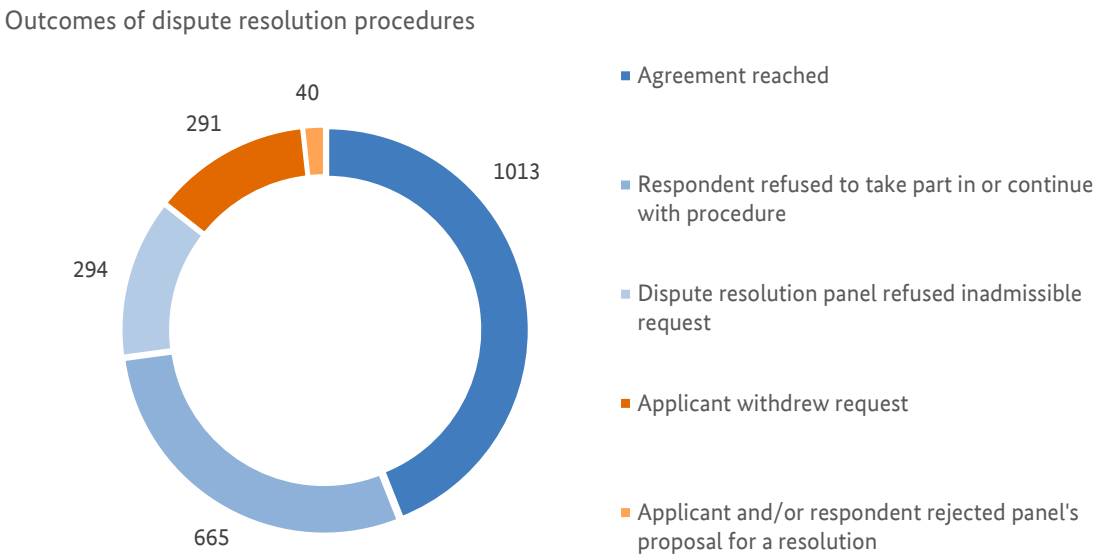

Figure 3: Outcomes of dispute resolution procedures in 2023

3.3.4 Average duration of procedures

In the reporting year, the average time for the procedure from receipt of the request at the Bundesnetzagentur to the conclusion of the procedure was just under seven weeks.

The average time from when all the documents needed for the procedure were complete until the dispute resolution proposal was made was seven weeks.

3.3.5 Proportion of cases in which the parties kept to the outcome of the procedure

The dispute resolution panel is not aware of the number of cases in which the parties do not keep to the outcome of the procedure. It does not ask if the parties keep to the agreement. There were fewer instances in this reporting period of applicants returning to the dispute resolution panel because the telecommunications companies failed to keep their agreements. In such cases, the dispute resolution panel contacted the companies in question and gave them the opportunity to implement the agreements made.

3.3.6 Proportion of cross-border disputes

The dispute resolution panel did not record any procedures regarding cross-border disputes in the reporting year.

4 Common problems

In accordance with section 4(1) para 2 VSBInfoV and section 34(3) VSBG, the dispute resolution panel should report on conspicuous business practices or draw attention to systemic failings or those that occurred particularly often during the reporting period and led to requests for dispute resolution.

An example of such a business practice last year for the dispute resolution panel was that various telecommunications service providers were changing their terms and conditions unilaterally by raising prices for their services, sometimes during the minimum contract duration.

5 Recommendations for avoiding or resolving disputes

The dispute resolution panel welcomes the efforts made by telecommunications companies to continually improve the quality and accessibility of their customer service and to find and implement specific solutions for their customers from the first contact. An easily accessible and appropriately qualified customer service does not just help telecommunications companies and their customers to clear up disputes but can even prevent them from arising. However, if a provider's customer service is difficult to reach or does not fully resolve issues, or if customers do not feel they are being taken seriously, the business relationship is damaged. It is also helpful when customers receive full, binding and competent advice in the telecommunications companies' shops and when providers design their websites and contractual documents in a way that is transparent and understandable for their customers.

The dispute resolution panel recommends that customers make use of the information provided by telecommunications companies about their rates and services before signing a contract. Customers should read the contract summary given to them by the telecommunications provider before committing to a contract. It should be noted that if customers conclude a contract for telecommunications services on the phone, the contract only becomes effective when the provider has sent the customer the contract summary and the customer has then approved the contract in text form (such as by email).

Once the contract has become effective, consumers should check their bills and account statements regularly and, if they find a problem, contact their provider promptly. The deadline for raising objections is eight weeks, as set out in section 67(2) TKG.

The Bundesnetzagentur provides detailed information on consumer rights and dispute resolution opportunities on its website at

https://www.bundesnetzagentur.de/DE/Vportal/Schlichtung/start.html (in German)

The Bundesnetzagentur has published information about the key changes to the customer-protection provisions since the entry into force of the new TKG on 1 December 2021 at

https://www.bundesnetzagentur.de/DE/Vportal/TK/NeueKundenrechte/start.html (in German)

Well-informed consumers are better placed to know their rights and stand up for them if necessary.

6 Structural barriers to resolving disputes

The dispute resolution panel does not see any structural barriers to resolving disputes at the moment (section 4(1) para 4 VSBInfoV).

The telecommunications dispute resolution panel of the Bundesnetzagentur has been offering out-of-court dispute resolution since 1999. Its dispute resolution procedures have proven their worth.

7 Cooperation with other consumer conciliation bodies in networks to resolve cross-border disputes

The telecommunications dispute resolution panel has no cooperation with other consumer conciliation bodies in networks to resolve cross-border disputes (section 4(1) para 5 VSBInfoV) to report for 2023. The dispute resolution panel generally deals with disputes relating to the German Telecommunications Act, so no cooperation with other conciliation bodies to resolve cross-border disputes arose during the year under review.

8 Outlook

The amended TKG, which came into force in December 2021, gave the telecommunications dispute resolution panel greater scope to take action.

A particular change was in the commencement of dispute resolution procedures. Previously, it was possible to start a dispute resolution procedure when the applicant claimed that their customer protection rights under the TKG had been breached. The version of the TKG in force since December 2021 merely states that for a dispute resolution procedure to be started, the dispute has to be related to the customer protection provisions of the TKG. Consequently, a far smaller proportion of requests is now being refused.

Moreover, the version of the TKG in force since December 2021 contains customer protection provisions on issues that were not previously covered under the law. In particular, it has strengthened consumer rights as regards the termination of contracts, reduced performance and compensation claims in the event of faults and missed technician appointments.

This, together with the considerable media coverage that accompanied the TKG changes in December 2021, led to a sharp rise in the number of requests received by the dispute resolution panel in 2022. In 2023, the level of dispute resolution requests remained high.

The accessible dispute resolution service is very easy for telecommunications customers, and indeed the companies themselves, and is therefore well-received. It avoids court cases and takes pressure off the judicial system.

List of figures

Figure 1: Dispute resolution requests received each month in 2023 8

Figure 2: Subject of dispute resolution requests in 2023 9

Figure 3: Outcomes of dispute resolution procedures in 2023 12

List of abbreviations

EU	European Union
SchliO	dispute resolution rules of the telecommunications dispute resolution panel of the Bundesnetzagentur
TKG	Telecommunications Act
VSBG	Consumer Alternative Dispute Resolution Act
VSBInfoV	Ordinance on the Obligations to Furnish and Report Information as per the Consumer Alternative Dispute Resolution Act

Annex: Dispute resolution rules

Dispute resolution rules of the telecommunications dispute resolution panel of the Bundesnetzagentur (SchliO)

[Published in the Official Gazette No 22 of the Bundesnetzagentur of 24 November 2021 as Communication No 315/2021.]

1 Dispute resolution panel, Competence

(1) The telecommunications dispute resolution panel of the Bundesnetzagentur is an official consumer conciliation body in accordance with section 28 of the Act on Alternative Dispute Resolution in Consumer Matters (VSBG) in conjunction with section 68 of the Telecommunications Act (TKG) and fulfils the requirements set out therein.

(2) The subject-matter of the dispute resolution procedure are disputes between an end-user and a public telecommunications network operator or a provider of publicly available telecommunications services about a matter relating to the following provisions:

1. sections 51, 52, 54 to 67 TKG or the determinations made on the basis of these provisions and section 156 TKG or an ordinance having the force of law issued by virtue of section 52(4) TKG, or

2. Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172 of 30 June 2012, page 10), as last amended by Regulation (EU) 2017/920 (OJ L 147 of 9 June 2017, page 1), or

3. Article 4 (1), (2) and (4) and Article 5a of Regulation (EU) 2015/2120.

Disputes may also relate to the performance of a contract on the provision of public telecommunications networks or publicly available telecommunications services.

A contract for telecommunications services must exist between the parties to the dispute except where the dispute concerns a matter relating to the provisions of section 54 or section 156 TKG.

(3) The telecommunications dispute resolution panel of the Bundesnetzagentur is deemed "another conciliation body" under section 15a(3) of the Code of Civil Procedure Introduction Act (ZPOEG). Where state law provides for mandatory out-of-court dispute resolution, the dispute resolution procedure shall take the place of proceedings before a conciliation body set up or recognised by the state department of justice in pecuniary disputes before a local court when the value of the matter in dispute does not exceed 750 euros. The outcome of the dispute resolution procedure is not enforceable since the dispute resolution panel is not a recognised conciliation body within the meaning of section 15a(6) ZPOEG.

Section 2 Organisation of the dispute resolution panel

(1) The Bundesnetzagentur has set up a permanent dispute resolution panel to initiate and to conduct the dispute resolution procedure. The dispute resolution panel has its own administrative office.

(2) Decisions are taken by a panel. The panel comprises a minimum of three employees of the Bundesnetzagentur, one of whom shall be entrusted with the out-of-court dispute resolution and shall be responsible for the fair and impartial conduct of the procedure (dispute mediator). The dispute mediator must be qualified to exercise the functions of a judge or must be a certified mediator and shall be the chairperson of the panel. At least two members of the panel must be rapporteurs. Only employees of the Bundesnetzagentur may be members of the panel.

(3) For the remainder the provisions under sections 6 to 8 of the Act on Alternative Dispute Resolution in Consumer Matters (VSBG) with the exception of section 7(2) of the Act on Alternative Dispute Resolution in Consumer Matters (section 28 of the Act on Alternative Dispute Resolution in Consumer Matters) shall apply to the dispute mediator. At least one deputy must be appointed for the dispute mediator and the regulations governing the dispute mediator shall apply accordingly to the deputy.

. . .

Section 3 The parties

The parties to the dispute resolution procedure are the end-user as the applicant and the operator of public telecommunications networks or the provider of publicly available telecommunications services as the respondent.

Section 4 Principles of the procedure

(1) The aim of dispute resolution is to achieve amicable agreement rapidly and at low cost in the interests of both parties.

(2) The dispute resolution panel is independent and conducts the procedure transparently and impartially. The parties have the right to a fair hearing.

(3) The parties and the dispute resolution panel shall take care that the privacy of the parties is maintained and that trade and business secrets do not become accessible to the public as a result of the dispute resolution procedure. The dispute mediator and other persons involved in conducting the dispute resolution procedure shall be bound to confidentiality unless otherwise provided for by law. The duty of confidentiality shall extend to everything that becomes known to the persons in carrying out their tasks.

(4) Each party may be represented by a lawyer or other authorised representative. The Act on Out-of-Court Legal Services (RDG) must be observed.

(5) The language of the procedure is German.

(6) The dispute resolution procedure is conducted in text form unless the dispute resolution panel considers an oral hearing expedient.

(7) The dispute resolution request, the statements, supporting documents and other communications submitted to the dispute resolution panel by either of the parties in connection with the initiation and conduct of the procedure are to be brought to the notice of the other party except in those cases as set out in section 7(1). Other information that the dispute resolution panel introduces into the procedure shall be brought to the notice of both parties by the dispute resolution panel. The dispute resolution panel shall send the dispute resolution request, the statements, supporting documents and other communications including the dispute resolution proposal electronically where the parties have given the relevant consent and have opened access. Where the parties do not submit the dispute resolution request, statements, supporting documents or other communications electronically, the dispute resolution panel may demand that a copy be submitted.

(8) The dispute resolution panel does not take evidence.

(9) Participation in a dispute resolution procedure is voluntary. The applicant may withdraw their dispute resolution request at any time before completion of the procedure without giving any reason. The respondent may refuse (further) participation in the dispute resolution procedure until the conclusion of the procedure without giving any reason. Despite a refusal to participate the respondent is free to enter into an amicable agreement in any other way.

Section 5 Submitting a request

(1) A request for dispute resolution must be made in text form. For online requests reference is made to the Bundesnetzagentur's dispute resolution panel web pages for further information.

(2) The request must include:

1. the name of the applicant, the name of the respondent and the applicant's matter,
2. a comprehensive presentation of all the facts and documents on which the applicant's matter is based,
3. a description of how the applicant asserted the disputed claim with the respondent before submitting a request,
4. a statement as to whether the matter in dispute is or was pending,
5. a statement as to whether a dispute resolution procedure with the same subject matter has already been applied for or conducted,
6. a statement giving consent to the processing of data and to the forwarding of the data electronically if necessary to the respondent.

(3) If a request fails to meet the requirements of subsection (2), the dispute resolution panel

. . .

will ask the applicant to complete their request within a reasonable period. The period must not exceed three weeks from receipt of the letter. The dispute resolution panel may extend the deadline upon request.

(4) Requests not completed within the specified period will be deemed withdrawn. In this case a dispute resolution procedure will not be conducted.

(5) The limitation period for a claim that is made against the respondent by the applicant by the submission of a request is suspended upon receipt of the request by the dispute resolution panel if notice of the request is to be given shortly. Section 204 of the German Civil Code (BGB) shall apply.

Section 6 Notification of the parties

(1) The dispute resolution panel shall notify the applicant without delay upon receipt of a request for a dispute resolution procedure and at the same time notify the respondent when forwarding the request of the following:

1. that the procedure will be conducted in accordance with the dispute resolution rules and that the wording of these is available on the website of the dispute resolution panel and may be sent in text form upon request,

2. that by their participation in the dispute resolution procedure the parties agree to the dispute resolution rules of the telecommunications dispute resolution panel,

3. that the outcome of the dispute resolution procedure may differ from the outcome of court proceedings,

4. that the parties to a dispute resolution procedure may be represented by a lawyer or by another person (the Act on Out-of-Court Legal Services (RDG) must be observed),

5. that the parties to a dispute resolution procedure need not be represented by a lawyer or by another person,

6. of the possibility of terminating the dispute resolution procedure under section 13(4) and (5),

7. of there being no charge for the procedure in accordance with section 16 and

8. of the extent of the dispute mediator's duty to observe confidentiality and that of the other persons involved in the dispute resolution procedure.

(2) The repeated notification of a respondent that regularly participates in dispute resolution procedures and that has waived any further notification may be dispensed with.

Section 7 Grounds for refusal

(1) The dispute mediator shall refuse a request to conduct a dispute resolution procedure where

1. the applicant or the respondent cannot be a party to the procedure or cannot be a party to the procedure in that particular capacity,

2. the dispute resolution panel is not competent because

   a) the applicant does not submit a dispute that is related to the provisions set out in section 1(2),

   b) no contract exists for telecommunications services between the parties to the dispute unless the dispute concerns a matter relating to the provisions of section 54 or section 156 TKG,

3. the dispute is or was pending,

4. a dispute resolution procedure with the same subject matter has already been requested or conducted,

5. the disputed claim had not been asserted against the respondent before the request was submitted,

6. the disputed claim has already fallen under the statute of limitations and the respondent has invoked the statute of limitations,

7. the dispute has already been settled,

8. a request for legal aid in the dispute has already been denied on the grounds that the intended legal action does not have sufficient prospects of success or appears vexatious,

9. dealing with the dispute would seriously impair the effective operation of the dispute resolution panel because

. . .

a) it would involve unreasonable effort for the dispute resolution panel to clarify all relevant facts or legal issues,

b) a legal principle that is relevant for assessing the dispute has not been clarified,

10. the disputed claim or the legal status of the applicant, which forms the subject matter of the dispute resolution procedure, has been entered in the register of claims under section 608(1) of the Code of Civil Procedure (ZPO) and the test case is still pending.

(2) The applicant must be informed where a request for a dispute resolution procedure is refused and, where the request has already been sent to the respondent, the respondent must also be informed in text form stating the grounds for the refusal. The dispute resolution panel must send the refusal notice within three weeks of receipt of the complete request.

(3) The dispute mediator may refuse to continue to conduct the dispute resolution procedure on the grounds listed in subsection (1) where one of the grounds for refusal first occurs or becomes known during the procedure. Subsection (2) sentence 1 shall apply. A ground for refusal under subsection (1) para 5 shall not apply where the respondent consents to the dispute resolution procedure or provides a statement on the matter.

(4) The dispute mediator shall suspend the dispute resolution procedure where the respondent claims that no more than two months have passed since the applicant asserted the disputed claim against the respondent and during this period the respondent has neither acknowledged nor refused the disputed claim. The dispute mediator shall refuse to continue the dispute resolution procedure if within two months of the disputed claim being asserted, the respondent recognises the claim in full; subsection (2) sentence 1 shall apply. Where the respondent does not recognise the disputed claim in full within two months of it being asserted, the dispute mediator shall continue with the procedure upon the expiry of two months following the assertion of the disputed claim.

Section 8 Commencement of a dispute resolution procedure

The dispute resolution procedure commences upon the sending of the applicant's request documents to the respondent by the dispute resolution panel.

Section 9 Response to the request

(1) Except in the cases set out in section 7, the dispute resolution panel shall send the complete request to the respondent asking the respondent in text form to respond to the request in text form within three weeks of receipt of the letter. The dispute resolution panel may extend the time period upon request.

(2) The respondent's response should provide an account of the respondent's position encompassing all the facts and documents with respect to the applicant's matter.

(3) If no response to the request is received within the period specified in subsection (1), participation in the dispute resolution proceedings is deemed refused. In this case a dispute resolution procedure will not be conducted.

Section 10 Statements

(1) The parties receive the right to a fair hearing and may submit facts and assessments. The dispute resolution panel shall give the applicant a reasonable period of time to provide a statement on the response from the respondent. Likewise, the dispute resolution panel shall give the respondent the opportunity to respond within a reasonable period of time to the applicant's statement. Neither of the time periods should exceed three weeks and may be extended upon request. Where appropriate, the dispute mediator may take a decision on the basis of the documents on file as provided for by section 12(2). The dispute resolution panel shall then refrain from requesting any statements.

(2) If the dispute resolution panel considers further clarification of the matter in dispute necessary, it may in particular obtain additional information from the parties upon setting a reasonable period of time.

(3) Where the statements or the responses as per subsection (1) or the information as per subsection (2) are not provided within the periods specified therein, the dispute mediator shall take a decision on the basis of the

documents on file as provided for by section 12(1). In place of a decision as per sentence 1, the dispute resolution panel may determine that the procedure has otherwise come to an end as provided for by section 13(7). Section 13(1) sentence 3 shall remain unaffected.

Section 11 Oral hearing

(1) In individual cases the dispute mediator may conduct an oral hearing of the dispute with the parties insofar as the parties agree to an oral hearing and where this appears expedient for the dispute resolution procedure.

(2) The mediator may hold individual talks with the parties concerned where the mediator considers this expedient.

(3) An oral hearing may also be a hearing by telephone or by image and sound transmission.

Section 12 Dispute resolution proposal

(1) The dispute resolution panel shall notify the parties as soon as the dispute resolution panel no longer needs any further documents or information (receipt of the complete file of the dispute). The complete file of the dispute shall generally be deemed to have been received where the parties have had an opportunity to provide statements as provided for by section 10.

(2) Where the dispute mediator does not deem any further clarification of the subject matter necessary and the file of the dispute is thus complete, the dispute mediator shall submit a resolution proposal to the parties in text form. The resolution proposal is based on the facts arising out of the dispute resolution proceedings. The resolution proposal should be in line with applicable law and in particular should observe the mandatory consumer protection laws. The resolution proposal must be accompanied by a statement of the grounds from which the underlying facts of the matter and the legal assessment of the dispute mediator result.

(3) The dispute resolution panel shall inform the parties of the dispute resolution proposal within 90 days of receipt of the complete dispute file. The dispute resolution panel may extend the period of 90 days in the case of a highly complex dispute or with the agreement of the parties. The dispute resolution panel shall inform the parties of the extension of the period.

(4) The dispute resolution panel shall notify the parties when sending the dispute resolution proposal of the legal consequences of accepting the proposal and that the proposal may differ from the outcome determined in court proceedings. The dispute resolution panel shall notify the parties of the possibility of not accepting the proposal and of seeking redress through the courts.

(5) The dispute resolution panel shall set the parties a reasonable period of not less than three weeks for accepting the proposal. The dispute resolution panel may extend the time period upon request. The other party must be informed of any such extension. Where the parties do not provide a statement accepting the resolution proposal within the specified period, the dispute resolution panel may determine that agreement could not be reached in the dispute resolution procedure and terminate the procedure as provided for by section 13(3).

(6) Where the parties accept the dispute resolution proposal or otherwise reach agreement before the termination of the dispute resolution procedure, the dispute resolution panel shall determine the termination of the procedure by amicable agreement of the parties as provided for by section 13(1).

Section 13 Termination of the dispute resolution procedure

The dispute resolution procedure shall end if the parties have accepted the resolution proposal. The dispute resolution panel shall then determine the termination of the procedure by amicable agreement of the parties. The same shall apply if the parties otherwise reach agreement before the termination of the dispute resolution procedure and have informed the dispute resolution panel of this.

(2) The dispute resolution procedure shall end if the applicant and the respondent mutually agree that the dispute has been settled.

(3) The dispute resolution procedure shall end if the parties cannot agree. This shall also apply if one of the parties does not respond to the invitation to give a statement on the dispute resolution proposal despite being given a further period of time. The dispute resolution

panel shall inform the parties in text form that it has not been possible to reach agreement in the dispute resolution procedure.

(4) The dispute resolution procedure shall end if the applicant withdraws their application or objects to continuing the dispute resolution procedure.

(5) Where the respondent states that they do not want to participate in the dispute resolution procedure or do not want to continue the procedure, the dispute mediator shall terminate the procedure unless this is otherwise determined by laws and regulations, statutes or contractual agreements.

(6) The dispute resolution procedure shall end if the dispute resolution panel determines that the matters under section 1(2) are no longer affected.

(7) Where the statements or the responses under section 10(1) or the information in accordance with section 10(2) in the commenced procedure do not occur within the set periods of time, the dispute resolution panel may determine that the procedure has otherwise come to an end if a rapid, low cost agreement can no longer be expected due to the behaviour of one or both of the parties.

Section 14 Form of the conclusion of the procedure

(1) The dispute resolution panel shall send the outcome of the dispute resolution procedure in text form to the parties with the necessary explanatory notes. This communication terminates the dispute resolution procedure.

(2) Where no agreement is reached, the communication as provided for by subsection (1) shall be designated as confirmation of an unsuccessful attempt to reach agreement as per section 15a(3) sentence 3 of the Code of Civil Procedure Introduction Act (ZPOEG).

Section 15 Resumption of the procedure

Resumption of the procedure is not possible.

Section 16 Costs

No fees or expenses are charged for conducting a dispute resolution procedure pursuant to section 225 TKG. Each party shall bear their own costs arising from their participation in the dispute resolution proceedings.

Section 17 Presumption of delivery

Written matter that the dispute resolution panel arranges to have sent through the postal service in Germany to a party shall be deemed to have been delivered on the third day after posting.

Section 18 Applicable provisions of the Act on Alternative Dispute Resolution in Consumer Matters and of the Code of Civil Procedure

Insofar as these dispute resolution rules and the provisions applicable mutatis mutandis of the Act on Alternative Dispute Resolution in Consumer Matters (VSBG) pursuant to section 28 of the Act on Alternative Dispute Resolution in Consumer Matters make no specific arrangements, the provisions of the Code of Civil Procedure (ZPO), notably those on summons (sections 214 et seq of the Code of Civil Procedure) and on the re-establishment of rights (sections 233 et seq of the Code of Civil Procedure), shall apply accordingly for the purposes of dispute resolution.

Section 19 Entry into force, Expiry

These dispute resolution rules shall enter into force on 1 December 2021. At the same time the dispute resolution rules pursuant to section 47a(3) of the Telecommunications Act in conjunction with section 5 of the Consumer Alternative Dispute Resolution Act (SchliO) published in the Bundesnetzagentur Official Gazette No 15/2017 of 9 August 2017 as Communication No 515/2017, as last amended by the Third Act amending the Telecommunications Act of 27 June 2017 (Federal Law Gazette I 2017, page 1963), shall cease to have effect.

Publisher's details

Publisher

Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen

Tulpenfeld 4

53113 Bonn

Ordering address | Contact

Telecommunications dispute resolution panel of the Bundesnetzagentur

Section 523

Tulpenfeld 4

53113 Bonn

schlichtungsstelle-tk@bnetza.de

www.bundesnetzagentur.de

Tel: +49 30 22480-590

Fax: +49 30 22480-518

Last revised

February 2024

Printing

Bundesnetzagentur

Text

Section 523 – telecommunications dispute resolution panel

bundesnetzagentur.de

x.com/BNetzA
social.bund.de/@bnetza
youtube.com/BNetzA