

MANDATE

13.11.2020

GLEISS LUTZ ADVISES E.ON/PREUSSENELEKTRA ON PROCEEDINGS BEFORE THE FEDERAL CONSTITUTIONAL COURT AGAINST THE 16TH AMENDMENT TO THE NUCLEAR POWER ACT

The First Senate of the Federal Constitutional Court ruled on 29 September 2020 that the federal legislature has not yet met its obligation pronounced in the Federal Constitutional Court's judgment of 6 December 2016 (BVerfGE 143, 246) to remediate certain violations of the constitution in nuclear power law despite the deadline to do having passed – and in particular, not with the 16th Amendment to the Nuclear Power Act of 10 July 2018.

Gleiss Lutz represented E.ON/PreussenElektra in these proceedings as a third-party stakeholder. In reference to its earlier judgment of December 2016, the Federal Constitutional Court again clarified that the legislature must clearly and soundly regulate both the compensation mechanism and the usage of with residual electricity volumes. In doing so, it must ensure that E.ON subsidiary PreussenElektra is able to use the residual electricity volumes allocated to its Krümmel nuclear power plant within the group.

In its judgment of 6 December 2016, the Federal Constitutional Court held that the arrangements for the accelerated phase-out of the peaceful use of nuclear energy (13th Amendment to the Nuclear Power Act) were in part incompatible with the German Basic Law. The violations of the constitution it determined primarily concerned the average operational lifetime of nuclear power plants: These had been extended by an average of around 12 years in 2010 (to an average of around 44 years; international standard: 60 years). The extension of the operating permits was justified with nuclear power's function as a bridging technology, allowing for sufficient time to make the switch to renewable energy sources. The extension was retracted after the events of Fukushima in August 2011. Reversing the previous legal position, a definitive date was then set by which the operation of nuclear power plants was to cease.

The Federal Constitutional Court set the legislature a deadline of 30 June 2018 to pass new arrangements, and the legislature did so by passing the 16th Amendment to the Nuclear Power Act. According to the decision of the Federal Constitutional Court published today, however, this was an unsuitable means of remediating the violations of basic rights determined in the judgment of 6 December 2016. The legislature therefore remains obligated to pass new arrangements with which to remediate the violations of basic rights determined in the judgment of 6 December 2016.

Gleiss Lutz regularly assists E.ON and in November 2011 filed a constitutional appeal against the 13th Amendment to the Nuclear Power Act on behalf of E.ON.

The following Gleiss Lutz team advised E.ON as a third-party stakeholder in these proceedings: Dr. Marc Ruttloff (partner, lead, Constitutional Law/Energy, Stuttgart), Prof. Dr. Rupert Scholz (of counsel, Public Law, Berlin).

PRESS

Melina Merz

Lautenschlagerstraße 21

70173 Stuttgart

T +49 711 8997-366

E melina.merz@gleisslutz.com

EXPERTISE

Public Law

Energy

EXPERTS

Dr. Marc Ruttloff

Prof. (em.) Dr. Rupert Scholz