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Judgment of the General Court in Cases T-600/23 and T-612/23 | BNetzA and Germany v ACER

The General Court annuls a decision of ACER concerning the management of electricity markets

In 2015, the European Commission adopted a regulation concerning, in particular, the management of the day-ahead and intraday markets in the electricity sector. ¹ In it, it determined the common methodologies relating to the calculation of the day-ahead and intraday cross-zonal capacity within each relevant region. The 'Core' capacity calculation region comprises Belgium, the Czech Republic, Germany, France, Croatia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Romania, Slovenia and Slovakia.

The transmission system operators for electricity of the 'Core' region had to develop proposals for capacity calculation methodologies within their respective region and to submit them to the relevant national regulatory authorities for approval. Those national authorities then had to reach an agreement on the proposals; otherwise, the European Union Agency for the Cooperation of Energy Regulators (ACER) would have to decide.

In the present case, on 21 February 2019, ACER adopted a decision in that regard. Nevertheless, the competent German national authority, Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA) brought an action against that decision before the General Court of the European Union. In 2022, the General Court annulled that decision. ² However, in 2023, the Board of Appeal of ACER confirmed the initial decision. BNetzA (Case T-600/23) and Germany (T-612/23) challenged that second decision before the General Court.

BNetzA and Germany submit, in essence, that ACER may not make the inclusion in the capacity calculation of an internal network element that is significantly influenced by cross-zonal exchanges subject to the performance of an **economic efficiency analysis** and of an impact assessment of increasing the threshold for inclusion ('the requirements at issue').

In its judgment delivered today, the General Court finds that there is no merit to ACER's claim that requirements other than that of being significantly influenced by cross-zonal exchanges could be introduced, into the requirements at issue, in order to determine the internal network elements that should be regarded as 'critical' and, as such, be included in the capacity calculation. That solution follows from a literal, contextual and teleological interpretation, by the General Court, of the provisions relating to the classification of internal network elements as 'critical'.

Furthermore, where the minimum capacity of 70% available for cross-zonal trade, laid down by the EU legislature, has been reached by the transmission system operators for electricity, the application of the economic efficiency criterion, in so far as it requires those operators to ascertain whether a reconfiguration of their zone or the use of remedial action might not be solutions that are more economically efficient as compared to capacity allocation for the purpose of addressing congestion on their internal network elements, is, in practice, wholly irrelevant. It is not legally binding on the Member State or the transmission system operators concerned. Consequently, ACER was not entitled, in that context, to introduce the requirements at issue into the methodologies at issue.

Nor was ACER entitled to rely on the mere fact that there were solutions, in the present case, that were alleged to be more economically efficient as compared to those adopted by the EU legislature.

The General Court therefore annuls the decision at issue adopted by ACER.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text, and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Regulation \(EU\) 2015/1222](#) of 24 July 2015 establishing a guideline on capacity allocation and congestion management. On 5 June 2019, the European Parliament and the Council of the European Union adopted [Regulation \(EU\) 2019/943](#) on the internal market for electricity.

² Judgment of 7 September 2022, *BNetzA v ACER*, [T-631/19](#).