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Judgment of the General Court in Case T-483/21 | Polskie sieci elektroenergetyczne v ACER

Electricity transmission: the General Court clarifies the scope of compulsory regional coordination with regard to the operational security of electricity transmission systems

ACER's decision on the matter does not infringe the powers of the system operators

The European legislature has established a legal framework to ensure the proper functioning of the internal market for electricity and, in particular, the operational security of regional electricity networks ¹. One of the security coordination measures is the development of an ROSC methodology ². That document identifies, in particular, the risks associated with the operation of the networks and governs the procedure for the coordination, validation and implementation of cross-border relevant remedial actions, used to ensure network security.

The ROSC methodology is to be proposed jointly by all the entities responsible (TSOs ³) for the operation, maintenance and development of the electricity network of the region concerned ⁴. It also requires approval by the national regulatory authorities (NRAs). If the latter are unable to reach an agreement within a prescribed period, or upon their joint request, the European Union Agency for the Cooperation of Energy Regulators (ACER) is to decide on such a proposal.

On 4 December 2020, following a long period of consultations and discussions and in the absence of an agreement between the TSOs and NRAs concerned, ACER took a decision containing the ROSC methodology for the Core region, comprising Belgium, the Czech Republic, Germany, France, Croatia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Romania, Slovenia and Slovakia. Polskie sieci elektroenergetyczne S.A. – the TSO responsible for the electricity network in Poland – sought the annulment of that decision.

Having been unsuccessful before the Board of Appeal of ACER, Polskie sieci elektroenergetyczne brought an action before the General Court of the European Union. It submits that ACER's decision to include, in the ROSC methodology, all remedial actions that are at least sometimes able to relieve congestion on all network elements with a voltage level higher than or equal to 220 kV, with the exception of those excluded, is too broad. That scope prevents the applicant, in particular, from exercising its operational security powers independently, since those remedial actions will be coordinated by the regional coordination centres.

The General Court **dismisses that action** in its entirety.

The General Court considers that, in view of ACER's own decision-making powers, as provided for by EU law, **ACER was competent to amend the TSOs' proposal that was submitted to it**. Otherwise, ACER could not perform its regulatory functions effectively.

The contested methodology also **complies with the applicable legal framework**. In particular, according to the General Court, in the Core region, which has a highly meshed interconnected system, ACER was entitled to regard all remedial actions on network elements with a voltage level higher than or equal to 220 kV as having cross-border

relevance for the purposes of regional coordination.

Similarly, the contested methodology does not deprive TSOs of their ability to manage electricity flows and ensure operational security on their networks ⁵, since it provides for the necessary possibilities for TSOs to ensure the security of their networks independently.

Last, the contested methodology does not prevent TSOs from using the central dispatching model or from ensuring compliance with voltage limits. As regards, by contrast, their investments in phase-shifting transformers, the General Court recalls that, even though regional coordination may entail certain costs, the application of the principle of energy solidarity ⁶ does not mean that EU energy policy must never, under any circumstances, have a negative impact for the particular interests of a Member State in that field.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU 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. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

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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 See, for example, [Regulation \(EU\) 2019/943](#) of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity and Commission [Regulation \(EU\) 2017/1485](#) of 2 August 2017 establishing a guideline on electricity transmission system operation.

² The common methodology for regional operational security coordination.

³ The electricity transmission system operators.

⁴ The capacity calculation region is defined as the geographic area within the internal market for electricity of the European Union in which coordinated capacity calculation is applied.

⁵ In accordance with Article 35 of Regulation 2019/943 and Article 40 of [Directive \(EU\) 2019/944](#) of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity.

⁶ As recalled by the Court of Justice in the judgment of 15 July 2021, Germany v Poland, [C-848/19 P](#) (see also press release [No 129/21](#)).