

2. Do the organisational requirements of the Italian navy and air force's system of establishments, schools and bodies constitute objective reasons, pursuant to clause 5(1) [of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to] Directive 1999/70/EC of 28 June 1999, and therefore render legislation such as the abovementioned Italian legislation — which, with regard to the appointment of staff external to such military establishments, schools and bodies to carry out teaching, does not lay down conditions for having recourse to fixed-term work in accordance with Directive 1999/70/EC and the annexed framework agreement, and does not provide for a right to compensation for damage — compatible with EU law?

<sup>(1)</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

<sup>(2)</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

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**Appeal brought on 30 April 2023 by Polskie sieci elektroenergetyczne S.A., RTE Réseau de transport d'électricité, Svenska kraftnät, TenneT TSO BV against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 15 February 2023 in Case T-606/20, Austrian Power Grid and Others v ACER**

**(Case C-281/23 P)**

(2023/C 261/19)

*Language of the case: English*

### **Parties**

*Appellants:* Polskie sieci elektroenergetyczne S.A., RTE Réseau de transport d'électricité, Svenska kraftnät, TenneT TSO BV (represented by: M. Levitt, avocat, B. Byrne, and D. Jubrail, Solicitors)

*Other party to the proceedings:* European Union Agency for the Cooperation of Energy Regulators (ACER)

### **Form of order sought**

The appellants claim that the Court should:

- set aside either in whole or in part the judgment under appeal;
- annul either in whole or in part the decision of the Board of Appeal ('BoA') of ACER of 16 July 2020 in case number A-001-2020 (consolidated) (the 'BoA Decision'); and
- order ACER to pay the appellant's costs of this appeal and of the procedure before the General Court.

### **Pleas in law and main arguments**

In support of the appeal, the appellants advance two grounds of appeal.

First, the General Court erred in law by concluding that the BoA had not infringed its obligation to carry out a full review of the underlying Decision 02/2020 of ACER of 24 January 2020 on the Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation. At the time of the adoption of the BoA Decision, the BoA understood its legal obligations as not mandating a full review of complex technical assessments. That understanding, which is contrary to the case law of the Court of Justice, was reflected in the explicit wording of the BoA Decision. It was not open to the General Court to reinterpret the explicit wording in the BoA Decision to conclude — in direct contradiction with that wording — that the BoA had carried out a full review.

Second, the General Court misapplied Articles 21 and 37 of the Commission Regulation (EU) 2017/2195<sup>(1)</sup> of 23 November 2017 establishing a guideline on electricity balancing in its assessment of the legal basis for ‘required’ platform functions under Article 21. The appellants submit that the General Court committed two specific legal errors. First, contrary to the terminology and structure of the Commission Regulation 2017/2195, the General Court wrongly found that capacity management through the calculation of cross-zonal capacity is a required platform function covered by Article 21, because Article 37 requires transmission system operators (‘TSOs’) to conduct a process of continuously updating cross-zonal capacity. Second, the General Court failed to respect the distinction between legal obligations on the TSOs in performing a ‘required’ platform function under Article 21, and their rights (contained in the same provision) to propose additional platform functions.

<sup>(1)</sup> OJ 2017 L 312, p. 6.

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**Appeal brought on 30 April 2023 by Polskie sieci elektroenergetyczne S.A., RTE Réseau de transport d’électricité, Svenska kraftnät, TenneT TSO BV against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 15 February 2023 in Case T-607/20, Austrian Power Grid and Others v ACER**

**(Case C-282/23 P)**

(2023/C 261/20)

*Language of the case: English*

#### **Parties**

*Appellants:* Polskie sieci elektroenergetyczne S.A., RTE Réseau de transport d’électricité, Svenska kraftnät, TenneT TSO BV (represented by: M. Levitt, avocat, B. Byrne, and D. Jubrail, Solicitors)

*Other party to the proceedings:* European Union Agency for the Cooperation of Energy Regulators (ACER)

#### **Form of order sought**

The appellants claim that the Court should:

- set aside either in whole or in part the judgment under appeal;
- annul either in whole or in part the decision of the Board of Appeal (‘BoA’) of ACER of 16 July 2020 in case number A-002-2020 (consolidated) (the ‘BoA Decision’); and
- order ACER to pay the appellant’s costs of this appeal and of the procedure before the General Court.

#### **Pleas in law and main arguments**

In support of the appeal, the appellants advance two grounds of appeal.

First, the General Court erred in law by concluding that the BoA had not infringed its obligation to carry out a full review of the underlying Decision 03/2020 of ACER of 24 January 2020 on the Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation. At the time of the adoption of the BoA Decision, the BoA understood its legal obligations as not mandating a full review of complex technical assessments. That understanding, which is contrary to the case law of the Court of Justice, was reflected in the explicit wording of the BoA Decision. It was not open to the General Court to reinterpret the explicit wording in the BoA Decision to conclude — in direct contradiction with that wording — that the BoA had carried out a full review.