

Details of the proceedings before EUIPO

Applicant of the trademark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union word mark COPALLI — Application for registration No 17 955 499

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 May 2021 in Case R 1581/2020-2

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of 25 May 2021 in case R 1581/2020-2;
- annul the decision of the Opposition division of 29 May 2020 in Opposition no. B3075279;
- order EUIPO to pay the costs.

Plea in law

- Infringement and incorrect application of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 28 July 2021 — Commission de régulation de l'énergie v ACER

(Case T-446/21)

(2021/C 368/48)

Language of the case: English

Parties

Applicant: Commission de régulation de l'énergie (Paris, France) (represented by: C. Le Bihan-Graf, lawyer)

Defendant: European Union Agency for the Cooperation of Energy Regulators

Form of order sought

The applicant claims that the Court should:

- annul the Decision No A-001-2021 of 28 May 2021 which confirms the Decision n°30-2020 of ACER of 30 November 2020 on the Core CCR TSO's proposal for the methodology for cost sharing of redispatching and countertrading and its annexes I and Ia;
- by a way of consequence, annul the ACER decision No 30/2020 of 30 November 2020 on the Core CCR TSO's proposal for the methodology for cost sharing of redispatching and countertrading and its annexes I and Ia;
- order the defendant to pay costs and expenses.

Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law.

1. First plea in law, alleging that Article 28 of Regulation No 2019/942 was violated by the Board of Appeal carrying out only a limited review of complex technical and economic assessments encompassed in ACER decision No 30/2020.

In the light of the case-law T-735/18 of the Court, *Aquind v. ACER* (18 November 2020), the Board of Appeal of ACER shall exercise a full review of the pleas and of the arguments of the applicant.

2. Second plea in law, alleging that Article 16(13) of Regulation No 2019/943 was violated by ACER who set a common threshold for loop flows without any prior analysis by the transmission system operators or approval by the national regulatory authorities.
3. Third plea in law, alleging that an error of law was committed by linking the implementation timeline of the methodology to other methodologies without any legal basis.
4. Fourth plea in law, alleging that Article 3 of Regulation No 1/58 and the fundamental legal certainty principle of the EU law were infringed by restricting to English the language used in the contested decision No A-001-2021. It appears that the contested decision No A-001-2021 has not been issued in French, as well as it is unclear and unintelligible to the applicant due to its complexity, length and incompleteness.
5. Fifth plea in law, alleging that Article 74(2) of Regulation No 2015/1222, Article 74(6)(a) of Regulation No 2015/1222 and Article 16(13) of Regulation No 2019/943 were violated by setting an excessive scope for the methodology for redispatching and countertrading cost sharing.

The scope should not be extended to network elements that are not concerned with cross-border exchanges in electricity pursuant to Article 74(2) of Regulation No 2015/1222 and Article 16(13) of Regulation No 2019/943. The scope was linked to other methodologies without any legal basis.

A scope larger than what is provided in the capacity calculation methodology could not be legally upheld. The scope should be consistent with the obligations and liabilities of transmission system operators pursuant to Article 74(6)(a) of Regulation No 2015/1222.

6. Sixth plea in law, alleging that an error in the application of Article 16(13) of Regulation No 2019/943 was committed by setting a unique and common threshold on loop flows for all of transmission system operators of the Core capacity calculation region. There is no ground to justify and explain that a common and unique threshold should apply for all bidding zone border whereas the national transmission networks are different and meshed.
7. Seventh plea in law, alleging that the fundamental principle of non-discrimination in the EU law and Article 16(13) Regulation No 2019/943 were violated by giving the priority to congestion caused by loop flows in the determination of the costs burden in the methodology.

The congestion caused by internal flows and by loop flows should be treated equally in the methodology. Placing the loop flows as first in the priority list of the polluting flows that caused congestion does not provide good incentives to operators to manage the congestion.

The Board of Appeal of ACER dismissed the evidences of the applicant without any justification.

The prioritization of the loop flows discriminated transmission system operators that made the investments required to develop their networks because those operators could be penalized for the residual loop flows for which they may be responsible.

8. Eighth plea in law, alleging that an error in the application of Article 15(3) of Regulation No 2019/943 was committed by acknowledging that the methodology should cover the costs borne by State members under their action plans.

The costs borne by the States members under their action plans shall be excluded from the methodology. The methodology should provide specific rules for the treatment of these costs. The argumentation of the Board of Appeal is inconsistent from a technical point of view. It did not reply to the argument of the applicant regarding the impossibility to distinguish costs incurred to make available cross-zonal capacity from costs incurred for other purposes.

Action brought on 30 July 2021 — Hesse v EUIPO — Wedl & Hofmann (Testa Rossa)

(Case T-451/21)

(2021/C 368/49)

Language in which the application was lodged: German

Parties

Applicant: Kurt Hesse (Nuremberg, Germany) (represented by: M. Krogmann, lawyer)