

Action brought on 9 August 2021 — Polskie sieci elektroenergetyczne v ACER**(Case T-484/21)**

(2021/C 412/24)

*Language of the case: English***Parties**

Applicant: Polskie sieci elektroenergetyczne S.A. (Konstancin-Jeziorna, Poland) (represented by: S. Goldberg, A. Galos and E. White, lawyers)

Defendant: European Union Agency for the Cooperation of Energy Regulators

Form of order sought

The applicant claims that the Court should:

- Annul the decision of Board of Appeal in case A-001-2021 (consolidated) of ACER of 28 May 2021 (the ‘Contested Board of Appeal Decision’) dismissing the applications for annulment and remittal of Decision No 30/2020 of 30 November 2020 (the ‘Agency Decision’) on the Core CCR TSO’s proposal for the methodology for cost sharing of redispatching and countertrading (the ‘RDCTCS Methodology’);
- Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the following errors in law: an error in law by the Board of Appeal in finding that the competence of ACER was not limited by Article 16(13) of the Electricity Regulation and that ACER was effectively competent to adopt policy measures penalising cross-zonal transactions inconsistently with Article 16(13) of Regulation 2019/943 ⁽¹⁾; an error in law by the Board of Appeal in disregarding the limits to the competence of ACER resulting from Article 9(11) of Commission Regulation 2015/1222 ⁽²⁾, and an error in law in finding that ACER’s competence is ‘conferred’ by Article 6(10) of Regulation 2019/942 ⁽³⁾.
2. Second plea in law, alleging a failure by the Board of Appeal to provide adequate reasoning to its ruling and thus violation of Article 296 TFEU.
3. Third plea in law: an error in law that the Board of Appeal found that decomposition of flows does not contradict the definitions of Article 2 of the ACER RDCTCS Methodology.
4. Fourth plea in law: an error in law that the Board of Appeal found that the decomposition of flows in the ACER RDCTCS Methodology (overestimation of Loop Flow (LF) of importing bidding zones) does not infringe Article 74(6)(c) and (i) of Commission Regulation 2015/1222.
5. Fifth plea in law: an error in law that the Board of Appeal found that the value of the 10 % Loop Flow (LF) of threshold set by ACER is not too high, which infringes the ‘polluter-pays’ principle, as enshrined in Article 16(13) of Regulation 2019/943.

⁽¹⁾ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ 2019, L 158, p. 54).

⁽²⁾ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015, L 197, p. 24).

⁽³⁾ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ 2019, L 159, p. 22).