

This plea consists in four parts (A to D):

- A: unjustified imposition of administrative penalties for failure to fulfil the requirements of identification and registration of animals before the date fixed by a Member State, in accordance with Article 31(3) of Delegated Regulation No 640/2014, in conjunction with Article 53(4) of Delegated Regulation No 639/2014.
 - B to D: unjustified imposition of administrative penalties under Article 31(3) of Delegated Regulation No 640/2014 for animals in respect of which non-compliant identification and registration was found a priori during administrative checks on all the aid application files of a Member State which, like the Kingdom of Spain, applies, in accordance with Article 21(4) of Implementing Regulation No 809/2014, ⁽⁴⁾ a claimless system which, by its very nature, excludes any risk to the EAGF.
2. Second plea in law, alleging correct production of statistics of on-the-spot checks of sufficient quality (key control), including the size of the random sample and the effectiveness of the risk analysis, in accordance with Article 34 of Implementing Regulation No 809/2014.

⁽¹⁾ OJ 2021 L 218, p. 9.

⁽²⁾ Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48).

⁽³⁾ Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ 2014 L 181, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69).

Action brought on 9 August 2021 — BNetzA v ACER

(Case T-485/21)

(2021/C 401/17)

Language of the case: German

Parties

Applicant: Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA) (Germany) (represented by: U. Karpenstein and K. Reiter, lawyers)

Defendant: European Union Agency for the Cooperation of Energy Regulators

Form of order sought

The applicant claims that the Court should:

- annul Decision No A-001-2021 (consolidated) of the defendant's Board of Appeal of 28 May 2021 (contested decision);
- in the alternative, in the event that the Court does not annul the contested decision in its entirety, annul that decision in so far as it upholds the following parts and provisions of the defendant's Decision No 30/2020 of 30 November 2020:
 - (i) Article 1(1), second sentence, Article 2(2)(j) and Article 3 of Annex I thereto;
 - (ii) Article 7 of Annex I;
 - (iii) Article 12(2) of Annex I;

(iv) all parts and provisions that explicitly refer to the provisions referred to under (i) to (iii).

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the extension of the cost sharing methodology to network elements other than cross-zonal ones is inconsistent with the requirements of Article 16(13) of Regulation (EU) 2019/943⁽¹⁾ and Article 74 of Regulation (EU) 2015/1222.⁽²⁾ In any event, the requisite legal basis is lacking. At the very least, deducing the scope of the cost sharing methodology from requirements of operational security and the polluter pays principle constituted an error of law.
2. Second plea in law, alleging that the prohibition on netting infringes in particular Article 16(11) and (13) of Regulation (EU) 2019/943. In addition, it renders the cost sharing methodology inherently contradictory.
3. Third plea in law, alleging that the setting of a temporary threshold for legitimate loop flows, carried out by the defendant on the basis of its own criteria, is formally and substantively in breach of EU law. Formally, the defendant infringes the power of the transmission system operators and the national regulatory authorities to set the threshold. In addition, the defendant sets a temporary threshold despite the lack of analysis of the level of legitimate loop flows by the transmission system operators as required under the second subparagraph of Article 16(13) of Regulation (EU) 2019/943. Substantively, the cost sharing methodology does not comply with the requirement laid down in the second subparagraph of Article 16(13) of Regulation (EU) 2019/943 that an individual threshold be set 'for each individual bidding zone border', in that it sets a unitary threshold that is split equally between the bidding zones creating the loop flows. At the very least, the temporary threshold set lacks the requisite legal basis.
4. Fourth plea in law, alleging that the prioritisation of loop flows over internal flows when determining the causes of network congestions, on which the cost sharing methodology is based, infringes Article 16(13) of Regulation (EU) 2019/943. In addition, it provides wrong incentives. It is also inconsistent with the requirement of fairness and the prohibition of discrimination.
5. Fifth plea in law, alleging that the cost sharing methodology is in breach of EU law at the very least in the context of the requisite overall assessment. The broad scope, the prohibition on netting, the inappropriate threshold and the prioritisation of loop flows over internal flows are linked to one another and amplify one another. At the very least when taken together, they lead to an infringement of the polluter pays principle, the prohibition of discrimination and the requirement of fairness. Moreover, the cost sharing methodology is inconsistent at the very least in its overall effect with the European Union's objective of increasing the share of renewable energy. The cost sharing methodology is on the whole disproportionate and, in any event, lacks the requisite legal basis.
6. Sixth plea in law, alleging that the unconditional obligation of the transmission system operators, included in the cost sharing methodology, to develop amendment proposals and submit them for approval to the regulatory authorities within 12 months of the implementation of the cost sharing methodology infringes Article 16(13) of Regulation (EU) 2019/943 and Article 74(6)(b) in conjunction with Article 9(13) of Regulation (EU) 2015/1222.

⁽¹⁾ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (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).