

# An overview of recent energy case law from the CJEU

Adrien de Hauteclocque and Kaisa Huhta  
19 November 2025



## List of cases

- T-596/22, *PGI Spain v Commission* (12 March 2025, State aid)
- C-59/23 P, *Paks II* (11 September 2025, State aid)
- T-625/22, *Austria v Commission* (21 March 2025, Taxonomy)
- T-579/22, *ClientEarth v Commission* ; T-583/22, *FED v Commission* (3 July 2025, Taxonomy)
- T-95/23, *RWE Supply Trading v ACER* ; T-96/23 *UNIPER v ACER* (25 June 2025, regulatory)
- T-342/23, *Aquind v ACER* (11 June 2025, regulatory)
- T-600/23, *BNETZA v ACER* ; T-612/23, *Germany v ACER* (1 October 2025, regulatory)

## T-596/22, *PGI Spain*: background

- In 2022, the Commission approved a State aid scheme aiming to reduce the wholesale electricity price in the Iberian Peninsula by supporting the input costs of fossil fuel technologies.
- PGI Spain and other companies sought the annulment of the Commission's decision.
- On 12 March 2025, the General Court dismissed the action, upholding the Commission's decision to approve the measure.

# T-596/22, *PGI Spain*: the aid measure

- The notified measure
  - was taken in the context of the crises which national and international energy markets have had to face in recent decades, which had led to higher fossil fuel prices, impacting (vulnerable) households and economic activities.
  - entailed making payments to the operators of fossil fuel power plants located in the Iberian Peninsula in order to reduce electricity prices on the wholesale and, consequently, retail markets.
  - would be financed by a contribution imposed by the Spanish market operator OMIE on buyers on the wholesale electricity market (= electricity suppliers and consumers purchasing electricity directly on the wholesale market for their own use) in proportion to the amount of electricity purchased by them.

## T-596/22, *PGI Spain*: the pleas

- The applicants relied on five pleas in law, alleging
  1. a misunderstanding by the Commission of the notified measure;
  2. errors in the assessment of the appropriateness and proportionality of the notified measure;
  3. infringement of Article 10 of Regulation 2019/943 (technical bidding limits) and Article 5 of Directive 2019/944 (market-based supply prices);
  4. breach of the principle of non-discrimination; and
  5. breach of the principle of the protection of legitimate expectations.

## T-596/22, *PGI Spain*: the Court's assessment

- The General Court upheld the Commission's decision and dismissed the action
- The Court's reasoning found no evidence
  - of "serious difficulties" that would have required the Commission to launch a formal State aid investigation.
  - that the Commission's understanding of the measure was flawed
  - the measure was discriminatory
  - of incompatibility between the measure and electricity market legislation
  - of precise, unconditional, and consistent assurances to rely on the principle of legitimate expectation

## **C-59/23 P, *Paks II*: background**

- In 2017, the Commission approved a Hungarian State aid scheme for constructing two nuclear reactors at the Paks II power plant.
- Austria challenged the decision before the General Court, which upheld the Commission's decision.
- Austria appealed the General Court's decision to the Court of Justice
- On 11 September 2025, the Grand Chamber of the Court of Justice delivered a ruling, accepting Austria's appeal and setting the General Court's judgment aside.

## C-59/23 P, *Paks II*: the aid measure

- **Beneficiary:** The aid beneficiary was MVM Paks II Nuclear Power Plant Development Private Company Limited by Shares, a wholly state-owned company responsible for owning and operating the new reactors.
- **Bilateral framework:** The project was based on a 2014 intergovernmental agreement between Hungary and Russia, under which both countries appointed state-controlled entities to carry out technical and financial obligations.
- **Financing structure:** The project was financed through a EUR 10 billion Russian state loan, complemented by EUR 2.5 billion from Hungary's national budget, dedicated to design, construction, and commissioning.
- **Fund management:** Funds were managed primarily by Vnesheconombank (Russia), with disbursements tied to milestone achievements: 80% paid directly to Russia's JSC NIAEP (the reactor constructor) and 20% via Hungary's Government Debt Management Agency.

## C-59/23 P, *Paks II*: the Court's assessment

- Built around the absence of public procurement procedures.
- In its assessment of the first ground of appeal, the Court of Justice found that:
  - the direct award of the contract for the construction of the two new nuclear power plant units 'is inextricably linked to the object of the aid measure notified by Hungary to the Commission, which is aimed at developing those reactors with a view to their provision, free of charge, to the Paks II company'
  - the General Court had erred in law on two counts: first, by accepting that the Commission was not required to assess whether the direct award of the construction contract complied with EU public procurement rules; and second, by finding that the Commission had adequately stated its reasons for that conclusion in the contested decision.

## C-59/23 P, *Paks II*: implications

- Intensifying the divide between the Member States that are in favor of nuclear energy and those that are not?
- Broadening the role of public procurement law and, by extension, other secondary law, in State aid control?
- Further reading:
  - Leigh Hancher, Packed off? The CJEU annuls the Commission decision allowing nuclear State aid in Hungary, FSR blog
  - Kaisa Huhta & Kim Fyhr, State Aid Control in the Age of Decarbonisation and Geopolitical Conflict: Paks II (forthcoming)

## **T-625/22 *Austria v Commission*: the contested act**

- The core of the dispute was the application for the annulment of Commission Delegated Regulation (EU) 2022/1214.
- This Delegated Regulation supplements the Taxonomy Regulation (Regulation 2020/852) by establishing technical screening criteria to classify certain activities in the nuclear energy and fossil gas sectors as contributing substantially to climate change mitigation and climate change adaptation.
- The effect is that investments in these sectors, under specific conditions, can be labeled as "environmentally sustainable."

## T-625/22, *Austria v Commission*: Austria's pleas

- Austria's case against the inclusion of nuclear energy rests on the argument that including nuclear energy as a "sustainable investment" violates core EU environmental and legal principles.
  1. Nuclear energy bears unacceptable environmental risks due to the possibility of reactor accidents and the lack of permanent disposal solutions for nuclear waste
    - Nuclear energy fails the "Do No Significant Harm" (DNSH) test and breaches the precautionary principle.
  2. Classifying nuclear as sustainable is an "essential element" of the law, which should have been decided by the European Parliament and the Council, not the Commission via a technical rule
    - Commission breached the limits of powers delegated to it under Article 290 TFEU
  3. Including nuclear creates a risk of market fragmentation, as investors will disagree on which "sustainable" activity is truly "greenest", defeating the goal of a common standard
    - The new rules allegedly undermine the goal of the Taxonomy: to create a clear, unified investment standard.

## **T-625/22, *Austria v Commission*: the Court's assessment**

- The General Court rejected Austria's pleas and dismissed the case.
- The Court's analysis confirmed that:
  - The Commission has a broad margin of discretion when carrying out complex scientific and economic assessments, which is characteristic of its role under the delegated power of Article 290 TFEU.
  - The Commission did not commit a manifest error of assessment in including nuclear energy and fossil gas as transitional activities under the established technical screening criteria.
  - The technical criteria laid down for both sectors were deemed sufficient to ensure compliance with the objectives of the Taxonomy Regulation, including the DNSH principle and the precautionary principle.

## ***ClientEarth v Commission (T-579/22) & FED v Commission (T-583/22): appeal rejected (1)***

- Contested acts: Not the Taxonomy Delegated Reg. 2021/2139 itself but decisions rejecting NGOs' **internal review requests under Aarhus** review process as regards a) bioenergy, organic base chemicals and plastics; b) on-shore/off-shore wind
- Scope of Art 10 Aarhus Reg.: only arguments targeting the internal-review decision are admissible, but GC checks legality of underlying delegated act to that extent
- Intensity of review: when setting technical screening criteria the Commission enjoys a **wide margin of discretion**

## ***ClientEarth v Commission (T-579/22) & FED v Commission (T-583/22): appeal rejected (2)***

- **“Conclusive scientific evidence”** and the precautionary principle under the Taxonomy Reg. do not require scientific unanimity or strict quantitative thresholds where data are uncertain >> qualitative criteria and reliance on existing EU legislation (RED II, LULUCF...) can suffice
- Both NGO climate-taxonomy litigation and Member States litigation (T-625/22) face a **high bar**

## T-342/23, *Aquind v ACER*: context (in very short)

- 2017-2018:
  - Aquind listed as PCI
  - Exemption request to CRE/OFGEM >> referred to ACER >> rejected by ACER and then BoA >> appeal (T-335/18)
- 2019:
  - Acquind de-listed from PCI list >> stream of appeals
  - ACER refused to re-examine the exemption request
- 2020:
  - New exemption request to CRE/OFGEM: public consultation discontinued due to Brexit (joint statement)
  - **Annulment of ACER BoA decision in T-335/18** on standard of review (confirmed by CJ on appeal in 2023) + interpretation of Art 17(1) Reg. 714/2009 (new condition re. X-border cost allocation request)
- 2021: Back to ACER BoA >> appeal inadmissible due to Brexit
- 2021-2023: All appeals against PCI de-listing decision rejected

## T-342/23, *Aquind v ACER* : Alleged faults by BoA

- Interpretation of Art 17(1) Reg. 714/2009
  - No *res judicata* as no substantive interpretation of Art 17(1)(b) by CJ (plea ineffective)
  - ACER has a margin of appreciation to assess risk
  - Divergence between GC and AG on appeal (but CJ did not rule on that)
- Standard of review:
  - **difficulties of appreciating Arts 18 and 19 of ACER Regulation (713/2009)**, as recognized by CJ
  - **tight four-month time-limits**
  - BoA ‘transitional’ errors are excusable (!)

## **T-342/23, *Aquind v ACER* : Alleged faults by ACER & BoA**

- No violation of legal certainty, legitimate expectations and equal treatment (ElecLink): case by case assessment
- Alleged restrictions resulting from French law cannot be related to the concept of ‘risk attached to the investment’ provided for in Art 17(1)(b)
- Refusal to reopen the exemption procedure after loss of PCI status
  - Reg 714/2009 contained **no provision** on reopening exemption proceedings
  - Loss of PCI status is not the “removal of an unlawful situation”:
- No **lack of diligence** from ACER and BoA

## T-95/23, *RWE Supply Trading v ACER* + T-96/23, *UNIPER v ACER* - context

- Under the Electricity Balancing Guideline (Reg. 2017/2195), ACER approved a pricing methodology for balancing energy, with a technical price limit
- After consultation, ACER adopted Decision 03/2022 (25 February 2022) amending the methodology by introducing a **temporary  $\pm 15\,000$  €/MWh cap** for trades on the PICASSO and MARI platforms for 48 months
- RWE & Uniper appealed to ACER's BoA
- The BoA (Decisions A-002/2022 and A-003/2022, 9 December 2022) declared both **appeals inadmissible**, because the companies were not addressees of Decision 03/2022 and – while ACER decision was a regulatory act (Art 263(4) TFEU) - they were not individually concerned by it.
- Actions: against BoA decisions and, subsidiarily, against ACER decision

## T-95/23, *RWE Supply Trading v ACER* + T-96/23, *UNIPER v ACER* – analysis (1)

- GC accepts that **ACER Decision is a “regulatory act”** (not a legislative act) that directly concerns RWE and Uniper and does not entail implementing measures – classic third limb of Article 263(4) TFEU >> **they could have brought a direct action against ACER’s decision** without proving individual concern.
- GC refuses to read in a third category (persons directly concerned by regulatory acts with no implementing measures) into Article 28(1): that would be *contra legem* and goes beyond what Article 263(5) TFEU allows when creating “special conditions and procedures” for agency appeals.
- Hence, Article 28(1) gives a right of appeal to the BoA only to:
  - addressees of ACER’s decisions, or
  - persons directly and individually concerned by those decisions

## T-95/23, *RWE Supply Trading v ACER* + T-96/23, *UNIPER v ACER* – analysis (2)

- GC also rejects an implicit plea of illegality of Art 28(1):
  - **no gap in judicial protection**, because RWE/Uniper had the possibility of directly challenging ACER Decision under Article 263(4) third limb (Art 47 CFA)
  - Article 29 Reg. 2019/942 (obligation to exhaust BoA remedies before going to the Court) applies **only** to those who *have* such a BoA remedy
  - the differentiated regime is objectively justified and **does not infringe equality** (Art 20 CFA)
- Direct actions against ACER Decision >> inadmissible
  - Out of time
  - no excusable error: they could not reasonably assume that they were required to go via the BoA or that this suspended the time-limit

## T-95/23 *RWE Supply Trading v ACER* + T-96/23 *UNIPER v ACER* – analysis (3)

- Implications:
  - Clarifies the **division of labour** between BoA and GC
  - special agency appeal regimes cannot cut back the categories of standing under Article 263(4): individuals in the third category are meant to come straight to Luxembourg, not via the BoA
  - Application of the *TWD* case law
  - Reform of Art 28?

## T-600/23, *BNETZA v ACER*; T-612/23, *Germany v ACER*

- Act challenged: ACER BoA decision of **7 July 2023** confirming ACER Decision **02/2019** on CORE flow-based capacity-calculation methodologies
  - Previous annulment (T-631/19)
  - Challenge limited to Art 5(8)(b)–(c) and 5(9) of the methodologies, – i.e. a specific “mechanism” for **internal critical network elements (CNEs)**.
- you include a given CNE in the capacity calculation so that the market coupling algorithm sees that line as a **bottleneck** and adjust cross-border trades to not overload it and avoid creating problems afterwards
- For TSOs in the CORE region, Article 5(8)–(9) required that any internal CNEs proposed for inclusion in the capacity calculation (with PTDF  $\geq 5\%$ ) must be accompanied by impact assessment of **raising the PTDF  $\geq 10\%$**  + economic efficiency analysis showing that including the internal CNE in the capacity calculation is “**the most economically efficient solution**”

## T-600/23, *BNETZA v ACER*; T-612/23, *Germany v ACER*

- Is such mechanism compatible with Arts 14-16 Reg 2019/943 and Art 29(3) Reg 2015/1222? >> literal, contextual, teleological readings
- once an internal element is significantly influenced by cross-zonal exchanges (PTDF  $\geq 5\%$ ), it must be treated as a CNE for capacity calculation purposes; there is **no legal room to introduce an additional economic-efficiency filter** that would allow excluding it from the list of CNEs.
- Economic-efficiency analyses and impact assessments “**may be relevant in the long term**” for structural congestion, but they cannot be inputs to capacity calculation
- **EU law does not force TSOs or Member States to choose allegedly more efficient options** (e.g. bidding zone reconfiguration) as long as foreseen minimum capacities or trajectories are met

# Thank you for participating!



**Adrien de Hauteclocque  
(FSR)**



**Kaisa Huhta  
(FSR)**