

ENERGY SOLIDARITY REFRAMED THROUGH THE ECJ'S OPAL JUDGMENT

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ABSTRACT

The European Court of Justice's (ECJ) landmark judgment in the OPAL pipeline case (C-848/19 P)¹ arose amid growing concerns about energy security, market integration, and the equitable distribution of resources within the European Union (EU). This judgment has elevated the principle of energy solidarity from a policy aspiration to a legally binding standard in EU energy law, redefining cross-border infrastructure planning.² Grounded in Article 194 of the Treaty on the Functioning of the European Union (TFEU)³ and the Third Gas Directive (2009/73/EC)⁴, the judgment requires decision-makers to assess projects for their social, economic, and political impacts. The paper employs a legal-analytical methodology, reviewing case law, market dynamics, and academic discourse to assess the broader implications of the judgment. Findings highlight how the ruling reshapes EU energy governance by balancing market efficiency with equitable resource distribution, encouraging diversification through liquefied natural gas (LNG) imports and renewable investments, and fostering stronger Member State cooperation. The analysis concludes that the OPAL judgment establishes a precedent for embedding energy solidarity into EU legal frameworks, reinforcing collective security of supply and aligning infrastructure planning with the Union's broader strategic goals.

Key words: energy solidarity, Art. 194 TFEU, OPAL, C-848/19.

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¹ ECJ, Baltic Sea Pipeline Link (OPAL), Case C-848/19 P, 15/07/2021.

² Ibid., paras 73-79; Huhta, K., Reins, L.: Solidarity in European Union Law and its Application in the Energy Sector, *International and Comparative Law Quarterly*, 72(1) 2023, p. 772.

³ Official Journal of the European Union: Treaty on the Functioning of the European Union, O.J. (C 326) 47, 26.10.2012, Article 194.

⁴ European Parliament: Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, O.J. L 211, 14/08/2009.

1. INTRODUCTION

The ECJ's judgment in the OPAL case has intensified debates about the legal scope of the principle of energy solidarity within the EU's energy market. While EU energy law is grounded in overarching objectives such as market integration, security of supply, consumer protection, and sustainability, its practical application often encounters political sensitivities and historical legacies that distinguish it from more harmonized policy fields. Unlike telecommunications or certain areas of competition policy, where regulatory convergence is well-established, the energy sector remains influenced by divergent national interests, strategic alliances, and security-related considerations.⁵

This article aims to address a central research question: How does the ECJ's OPAL judgment redefine the normative contours and operational relevance of energy solidarity in EU energy law, and what implications does this have for future infrastructure decisions, market structures, and inter-state relationships within the EU? To answer this, we draw on a combination of legal doctrine, case law, regulatory reports, and scholarly discourse. We focus on how the principle of solidarity - explicitly referenced in Article 194 of the Treaty on the Functioning of the European Union (TFEU)⁶ - has evolved from a political notion into a legally binding standard, gaining traction as a constraint on both national regulators and EU institutions. It marked a departure from technocratic decision-making, reinforcing solidarity as a binding legal principle rather than a mere policy objective.

By situating the OPAL judgment alongside other fields of EU jurisprudence - such as state aid case *Austria v Commission* (C-594/18 P)⁷ or environmental regulation case *Inter-Environnement Wallonie* (C-411/17)⁸ - we observe a broader judicial pattern: the ECJ is increasingly willing to ensure that economic or technical decisions, once largely the preserve of national agencies or the European Commission, must incorporate transnational considerations of fairness, equity, and long-term stability. In this sense, the OPAL judgment complements a growing body of case law and literature that foreground the EU's integrative ethos over narrowly defined national prerogatives.

⁵ Yafimava, K.: *EU Solidarity at a Time of Gas Crisis: Even with a Will the Way Still Looks Difficult*, OIES Paper: NG, No. 179, The Oxford Institute for Energy Studies Papers, (179) 2023, p. 1, <<https://www.econstor.eu/bitstream/10419/270534/1/1834610168.pdf>>, last accessed on 11/12/2024.

⁶ Official Journal of the European Union: Treaty on the Functioning of the European Union, O.J. (C 326) 47, 26.10.2012.

⁷ ECJ: *Austria v Commission on State Aid for Nuclear Projects*, Case C-594/18 P, 22.09.2020.

⁸ ECJ: *Inter-Environnement Wallonie and Bond Beter Leefmilieu*, Case C-411/17, 29.07.2019.

The paper employs a legal-analytical approach, examining the judgment's implications within the framework of EU energy law and its alignment with broader legal principles. The legal-analytical method combines doctrinal interpretation with case-based inference, incorporating institutional documents and market data where relevant.

2. BALTIC SEA PIPELINE LINK CASE (C-848/19 P)

The OPAL pipeline, as a terrestrial extension of the North Stream corridor, historically played a significant role in channelling Russian gas from the Baltic Sea region into the heart of Europe. Prior to the ECJ's intervention, the European Commission's 2016 decision to grant Gazprom increased usage rights aimed to enhance the internal energy market's efficiency by allowing more direct and supposedly cost-effective gas flows.⁹ Had this approach remained unchallenged, it might have appeared to yield immediate economic benefits such as slightly lower prices or improved infrastructure utilization.

However, the challenge brought by Poland, supported by Latvia and Lithuania, reflected a broader concern: that increasing the capacity of a single route could disproportionately weaken other transit lines, reduce strategic revenue streams, and diminish the bargaining position of countries relying on alternative pathways. Even though the geopolitical landscape - including disruptions to North Stream itself, evolving trade restrictions, and supply uncertainties - has since altered OPAL's practical relevance, the ECJ's finding remains a landmark precedent. This judgment warrants a review to grasp its reasoning and implications.

2.1. REVIEW OF THE JUDGMENT

The ECJ's OPAL judgment (C-848/19 P) stands as a pivotal case that clarifies the substantive weight of the energy solidarity principle in the EU's legal order. Rather than viewing solidarity as a mere political aspiration or a soft policy guideline, the ECJ recognized it as a binding legal standard that must inform both the European Commission's and national regulators' decision-making processes. In the OPAL case, the German Federal Network Agency authorized a 50% capacity increase for OPAL, an onshore pipeline connecting the North Stream corridor to Central and Eastern European markets. While the European Commission had endorsed this step, justifying it on grounds of econom-

⁹ Talus, K.: One for All and All for One? The General Court Ruling in the OPAL Case, *Florence School of Regulation*, 14.04.2020. p. 2.

ic efficiency and market integration, Poland challenged the decision according to Art. 36 para. 1 lit. a (Directive 2009)¹⁰ “the investment must enhance competition in gas supply and enhance security of supply”¹¹, arguing that it undermined their economic interests and violated the principle of solidarity enshrined in Article 194 para. 1 TFEU.¹²

The ECJ’s review went beyond a mere procedural check. It adopted a teleological and systemic interpretation of EU primary law, acknowledging that the energy sector – given its strategic significance and cross-border implications – cannot be regulated as if it were isolated from broader EU objectives.¹³ By examining the chain of potential consequences that a capacity increase would trigger, the ECJ identified a broader transnational ripple effect: re-routing gas flows through North Stream would diminish the relevance of traditional transit routes like the Jamal and Braterstwo pipelines, impacting transit fees, regional supply diversification, and the economic security of certain Eastern Member States.¹⁴ From this perspective, what might appear as a straightforward capacity allocation decision took on a more complex dimension, carrying distributional consequences and shifting leverage in ways that could harm national undertakings such as Poland’s Polskie Górnictwo Naftowe i Gazownictwo (PGNiG).¹⁵

Crucially, the ECJ’s reasoning hinged on the understanding that energy solidarity is not merely a goal to be considered in the abstract. Rather, it serves as a substantive limit on the discretion of decision-makers.¹⁶ The ECJ essentially held that neither the European Commission nor national authorities may prioritize narrow economic or technical criteria at the expense of the legitimate

¹⁰ European Parliament: *Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas*, O.J. L 211, 14/08/2009, Art. 36(1)(a).

¹¹ Talus, K.: One for All and All for One? The General Court Ruling in the OPAL Case, *Florence School of Regulation*, 14.04.2020, p. 3.

¹² Kaschny, L.: Energy Justice and the Principles of Article 194 (1) TFEU Governing EU Energy Policy, *Transnational Environmental Law*, 12(2) 2023, s. 289.

¹³ Riley, A.: Nord Stream 2: Sanctions, Snapbacks, and Solutions, Temerty Contemporary Ukraine Program, Ukrainian Research Institute, & Harvard University, 2021, p. 6.

¹⁴ Lenaerts, K., Gutiérrez-Fons, J. A.: To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice, European University Institute Working Paper, 9 2013, p. 46.

¹⁵ Osiewicz, P.: The OPAL pipeline: controversies about the rules for its use and the question of supply security, *OSW Commentary*, 17.01.2017, p. 3.

¹⁶ Talus, K.: One for All and All for One? The General Court Ruling in the OPAL Case, *Florence School of Regulation*, 14.04.2020, p. 2.

interests of other EU Member States. In doing so, the ECJ elevated solidarity to a principle on par with foundational internal market rules like non-discrimination and free movement, but applied it in a manner uniquely tailored to the complexities of energy supply, infrastructural interdependencies, and long-term strategic planning.

2.2. JUDICIAL DEVELOPMENT

The OPAL judgment must be understood as part of a broader shift in EU jurisprudence, where the ECJ increasingly ensures that sector-specific regulations align with fundamental EU Treaty principles.¹⁷ Just as environmental cases¹⁸ have required that economic considerations yield to sustainability goals, and state aid judgments¹⁹ have demanded that national support measures serve common interests without distorting the internal market unfairly, the OPAL judgment insists that energy infrastructure decisions incorporate solidarity as a legally significant constraint.²⁰ This judicial methodology resonates with broader trends in EU case law, where the ECJ often adopts a purposive reading of Treaty provisions to ensure that their application remains consistent with the evolving nature of the EU.²¹ In the field of energy law, where infrastructures and supply arrangements have far-reaching consequences, a rigid or reductionist interpretation would risk undermining the EU's integrative ethos.

This marks a clear departure from a purely technocratic or efficiency-driven framework. Instead, the ECJ acknowledges that energy infrastructure - given its long-term investment horizons, geopolitical overtones, and direct impact on national security of supply - calls for a balancing act among diverse interests.²² Solidarity, therefore, is not a rhetorical flourish but a guiding principle that can shape outcomes, counterbalance powerful market actors, and ensure that no Member State is relegated to a position of disproportionate vulnerability. This recognition of solidarity as a guiding principle invites a deeper exploration of its practical implications, particularly in the context of market considerations.

¹⁷ Ibid., para. 42.

¹⁸ Ibid., para. 73.

¹⁹ ECJ, *Commission v. Poland*, Case C-562/19 P, 16/03/2021.

²⁰ Ibid., para. 26.

²¹ Lenaerts, K., Gutiérrez-Fons, J. A.: To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice, *European University Institute Working Paper*, 9 2013, pp. 3-4.

²² Talus, K.: One for All and All for One? The General Court Ruling in the OPAL Case, *Florence School of Regulation*, 14.04.2020, p. 2.

3. MARKET CONSIDERATIONS

To fully grasp the OPAL judgment's significance, it is instructive to consider the EU gas market prior to the judgment. Historically, the EU's gas demand hovered between 400 and 500 billion cubic meters (bcm) annually²³, with a substantial portion sourced from long-term Russian contracts. Although the EU has made concerted efforts to diversify supplies - through LNG imports, pipeline connections from the Caspian region, and infrastructure projects like the Southern Gas Corridor - Russian gas has long remained a cornerstone of the EU energy mix.²⁴ Since 2022, however, the EU's dependency on Russian gas has dramatically declined, dropping from over 40% of total gas imports in 2021 to less than 15% by late 2023.²⁵ These efforts accelerated significantly after the Russian invasion of Ukraine, leading to emergency policy packages such as REPowerEU, which set ambitious targets for LNG infrastructure, renewable integration, and reduced Russian gas dependency.²⁶ By 2023, LNG import capacity had increased by over 25%, particularly in coastal Member States such as Germany, Poland, and Italy.²⁷

Had the European Commission's OPAL decision gone unchallenged, one plausible scenario would have seen Gazprom shifting greater volumes through the Baltic Sea corridor, reducing reliance on established transit routes like Jamal.²⁸ This might have yielded short-term efficiency gains, potentially reflected in marginally lower prices for certain consumers. Yet, these immediate advantages could have eroded strategic stability and equity. Transit states, stripped of revenue and influence, would have faced a diminished role, and the principle of solidarity would risk being perceived as a lofty ideal without tangible legal force. Without the ECJ's OPAL intervention, the market might have drifted towards a concentration of supply routes that disregarded the asymmetries in

²³ Osiewicz, P.: The OPAL pipeline: controversies about the rules for its use and the question of supply security, OSW Commentary, 17.01.2017, p. 3.

²⁴ European Commission: Diversification of Gas Supply Sources and Routes.

²⁵ European Commission: *EU Energy in figures. Statistical Pocketbook 2024*, Luxembourg: Publications Office of the European Union, 2024, p. 17.

²⁶ European Commission: *REPowerEU Plan*, COM(2022) 230, 18.05.2022, p. 4.

²⁷ International Energy Agency (IEA): *Gas Market Report Q4 2023*, Paris: International Energy Agency, 2023, p. 12.

²⁸ Naumenko, D.: *Russian Gas Transit Through Ukraine After Nord Stream 2: Scenario Analysis*, Kyiv: Ukrainian Centre for European Policy & Konrad-Adenauer-Stiftung e.V. Ukraine Office Kyiv, 2018, pp. 14-15; Perthes, V.: *Ausblick 2016: Begriffe und Realitäten internationaler Politik*, Berlin: SWP-Ausblick, January 2016, p. 19.

Member States' bargaining power and infrastructure reliance.²⁹ The OPAL judgment reintroduced a balancing mechanism into this logic, ensuring that national vulnerabilities are taken into account during cross-border capacity allocation.³⁰

In contrast, by invalidating the European Commission's measure, the ECJ has brought solidarity into sharper focus. The judgment underscored that infrastructure decisions cannot be divorced from their distributive outcomes.³¹ Without the OPAL judgment, the internal energy market might have drifted towards a scenario where efficiency considerations overshadowed the EU's cohesion. With the ECJ's intervention, however, a different trajectory emerges - one in which solidarity and market efficiency must be reconciled, encouraging policymakers and market participants to invest in more resilient supply networks, including LNG terminals, reverse-flow capacities, and additional interconnectors.³²

Evidence from the Agency for the Cooperation of Energy Regulators (ACER) and the International Energy Agency (IEA) suggests that while efficiency gains might lower costs in the short run, overreliance on a single corridor or supplier can lead to long-term vulnerabilities.³³ ACER's Market Monitoring Reports and IEA's periodic assessments highlight the importance of diversified supply sources and flexible infrastructure arrangements as key to enhancing systemic resilience.³⁴ The OPAL judgment aligns with these findings by legally mandating that no single infrastructural decision can be made without contemplating broader market equilibria and cross-border repercussions. In light of this, infrastructure decisions must now align not only with cost-efficiency but also with long-term resilience and fairness, both politically and economically.³⁵ These considerations are increasingly reflected in the regulatory practices of ACER, which has adopted solidarity-sensitive evaluation criteria

²⁹ Siddi, M.: The EU's Energy Diplomacy with Russia: Competing Logics of Energy Security, *Europe-Asia Studies*, 73(6) 2021, pp. 1050–1072, at p. 1051.

³⁰ Siddi, M., op. cit., p. 1055.

³¹ European Parliament: Energy Policy – General Principles.

³² European Commission: Trans-European Networks for Energy (TEN-E).

³³ ACER: Market Monitoring Report, <<https://www.acer.europa.eu/electricity/market-monitoring-report>>, last accessed on 11/12/2024.

³⁴ Westphal, K.: Europe Held Hostage?, in: Pleines, H. (ed.): *Der russisch-ukrainische Erdgaskonflikt vom Januar 2009, Arbeitspapiere und Materialien der Forschungsstelle Osteuropa*, Bremen, (101) 2009, p. 17.

³⁵ Goldthau, A., Sitter, N.: *A Liberal Actor in a Realist World: The European Union Regulatory State and the Global Political Economy of Energy*, Oxford: Oxford University Press, 2020, p. 88.

for Trans-European Networks for Energy (TEN-E) projects.³⁶ In effect, the OPAL judgment contributes to a redefinition of how energy markets function under EU law—shifting the focus from isolated national optimisations toward a shared regulatory responsibility that internalizes geopolitical and distributive risks.³⁷

Legally, solidarity now influences how fundamental internal market principles - like competition and non-discrimination - are applied in the energy sector. Economically, it promotes a mindset that seeks robust, long-term arrangements over short-term efficiencies. This dual impact of solidarity - shaping legal interpretations and driving economic strategies - sets the stage for examining the ECJ's methodology in reaching its judgment.

4. LEGAL METHODOLOGY APPLIED BY THE ECJ

A particularly noteworthy aspect of the OPAL judgment is the ECJ's methodological approach. Rather than relying solely on formalistic or literal interpretations, the ECJ employed teleological and systematic reasoning. By interpreting Article 194 TFEU in light of the EU's overarching objectives - energy security, market integration, and solidarity - the ECJ situated the principle of solidarity at the heart of its legal reasoning.

This judicial methodology resonates with broader trends in EU case law, where the ECJ often adopts a purposive reading of Treaty provisions to ensure that their application remains consistent with the evolving nature of the EU.³⁸ In the field of energy law, where infrastructures and supply arrangements have far-reaching consequences, a rigid or reductionist interpretation would risk undermining the EU's integrative ethos.³⁹ Instead, the ECJ's approach acknowledges the dynamic interplay between economic forces, geopolitical considerations, and legal norms, thereby offering a more nuanced framework for future decision-making.⁴⁰

³⁶ ACER: ACER Market Monitoring Report 2023, 2023, p. 22.

³⁷ Belyi, A. V., Talus, K.: EU Energy Law and Geopolitics After OPAL, *Journal of World Energy Law & Business*, 16(1) 2023, p. 33.

³⁸ Lenaerts, K., Gutiérrez-Fons, J. A.: To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice, *European University Institute Working Paper*, 9 2013, pp. 3-4.

³⁹ Hancher, L., de Hauteclocque, A.: The Energy Sector at the European Court: Recent Judgments, *Florence School of Regulation*, 2019.

⁴⁰ Ibid.

Crucially, the ECJ's examination did not suggest that solidarity should trump all other considerations. Rather, it demonstrated that decision-makers must balance a range of legitimate interests, factoring in not only immediate economic outcomes but also the longer-term implications for national markets, transit states, and end consumers. The judgment thus sets a precedent: when regulators or the European Commission contemplate capacity allocations or exemptions, they must engage in a reasoned analysis that justifies how and why certain Member States' interests are not disproportionately compromised.

5. CONTRASTING VIEWS

The OPAL judgment has sparked renewed academic interest in the legal status and operationalization of solidarity. Prior to this case, some commentators regarded solidarity as a vague political concept with limited enforceability.⁴¹ Others had argued that, in light of the EU's complex energy mix and the strategic importance of Russian gas, a more robust legal interpretation of solidarity was necessary to prevent dominant suppliers from shaping market conditions unilaterally.⁴²

While the ECJ's judgment supports the latter view, debates continue. Some scholars, e. g. Iakovenko, question whether the standard of review established in the OPAL case might lead to regulatory uncertainty, as agencies must now grapple with complex cross-border assessments and interdependencies.⁴³ Others, e. g. Keypour et al., suggest that the judgment paves the way for codifying clearer, more detailed criteria for implementing solidarity in secondary legislation, reducing ambiguity for market participants and policymakers alike.⁴⁴

6. PRACTICAL IMPLICATIONS

The OPAL judgment has profound implications for the implementation of EU energy policies, particularly concerning future infrastructure projects. By embedding the principle of energy solidarity as a binding legal standard, the ECJ

⁴¹ Talus, K.: *EU Energy Law and Policy: A Critical Account*, Oxford: Oxford University Press, 2013, p. 280.

⁴² Larsson, R.: *Russia's Energy Policy: Security Dimensions and Russia's Liability as an Energy Supplier*, Stockholm: Swedish Defence Research Agency, 2006, p. 262.

⁴³ Iakovenko, S.: The OPAL Judgment and the Evolution of Solidarity in EU Energy Law, *Journal of World Energy Law & Business*, 14(6) 2021.

⁴⁴ Keypour, N., Trindade, M., Terletska, A.: Solidarity and Legal Certainty in EU Energy Governance: Lessons from the OPAL Case, *European Studies Review*, 10(2) 2023, p. 217.

has effectively reshaped the landscape within which policymakers and regulators operate. This section explores the practical consequences of the judgment, highlighting how it influences policy-making processes, infrastructure planning, and inter-state cooperation within the EU.

6.1. ENHANCED INTER-MEMBER STATE COOPERATION

The OPAL judgment underscores the necessity for heightened cooperation among EU Member States in the energy sector. To comply with the solidarity principle, Member States must engage in more transparent and collaborative planning processes when proposing significant infrastructure projects. This includes sharing data on gas flows, coordinating capacity allocations, and jointly developing contingency plans to mitigate potential disruptions.

Such cooperation can be facilitated through existing EU institutions and bodies, such as the Agency for the Cooperation of Energy Regulators (ACER) and the Network of Transmission System Operators for Gas (ENTSOG). These organizations can play a pivotal role in fostering dialogue, harmonizing regulatory standards, and ensuring that infrastructure developments align with the EU's solidarity commitments.⁴⁵ Moreover, regional energy forums and working groups could be established to address specific challenges related to cross-border gas transit and supply security, promoting a more integrated and resilient energy network.

6.2. RESILIENCE STRATEGIES

One of the key takeaways from the OPAL judgment is the imperative to diversify gas supply sources and routes to enhance the EU's energy resilience. By legally mandating the consideration of solidarity, the ECJ has indirectly encouraged the adoption of diversification strategies that reduce dependency on any single supplier or transit route. This aligns with broader EU initiatives, e. g. REPowerEU⁴⁶ aimed at increasing energy security and reducing vulnerability to geopolitical disruptions. Diversification can be achieved through several avenues:

⁴⁵ Agency for the Cooperation of Energy Regulators (ACER): ACER's Assessment of ENTSOG's Winter Supply Outlook, <<https://www.acer.europa.eu/news-and-events/news/acer-assesses-entsogs-gas-supply-outlook-winter>>, last accessed on 11/12/2024.

⁴⁶ European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *REPowerEU Plan*, COM(2022) 230, 18.05.2022.

- **LNG Infrastructure Expansion:** Investing in liquefied natural gas (LNG) terminals across the EU enables the import of gas from a variety of global suppliers, thereby reducing reliance on pipeline imports from specific regions.⁴⁷
- **Renewable Energy Integration:** Accelerating the transition to renewable energy sources diminishes the overall dependency on natural gas, contributing to both environmental goals and supply diversification.⁴⁸
- **Interconnector Development:** Building additional interconnectors between Member States enhances the flexibility of gas flows, allowing for better distribution of supply in response to regional demand fluctuations and emergencies.⁴⁹
- **Strategic Storage Investments:** Expanding gas storage capacities ensures that the EU can manage supply shortfalls during peak demand periods or supply interruptions, enhancing overall system resilience.⁵⁰

This synergy ensures that economic decisions are not made in isolation but are informed by broader social and political considerations, fostering a more just and balanced internal energy market.⁵¹

Moreover, investment incentives and protection⁵² for (renewable) energy projects can be aligned with solidarity objectives, ensuring that the benefits of such investments are distributed fairly across Member States.⁵³ Similarly, regulatory measures that promote competition and prevent market distortions can

⁴⁷ European Council: LNG Infrastructure in the EU, <<https://www.consilium.europa.eu/en/infographics/lng-infrastructure-in-the-eu/>>, last accessed on 11/12/2024.

⁴⁸ DGAP: Gas and Energy Security in Germany and Central and Eastern Europe, <<https://dgap.org/en/research/publications/gas-and-energy-security-germany-and-central-and-eastern-europe-0>>, last accessed on 11/12/2024.

⁴⁹ European Commission: Inauguration of the Gas Interconnection Between Poland and Lithuania, <https://commission.europa.eu/news/inauguration-gas-interconnection-between-poland-and-lithuania-2022-05-05_en>, last accessed on 11/12/2024.

⁵⁰ European Commission: CEF Energy: Diversifying Natural Gas Supply Sources in Central and South-Eastern Europe, 77.02.2024, <https://cinea.ec.europa.eu/news-events/news/cef-energy-diversifying-natural-gas-supply-sources-central-and-south-eastern-europe-2024-02-27_en>, last accessed on 11/12/2024.

⁵¹ Ryś, M.: The Principle of Energy Solidarity Clarified: A Certain Way to Uncertainty, *Revista de Derecho Comunitario Europeo*, (71) 2022, p. 157.

⁵² Energy Charter Treaty (ECT), 1994/2016, Art. 10, <<https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf>>, last accessed on 11/12/2024; ECJ: Slovak Republic v Achmea BV, Case C-284/16, 06.03.2018, para. 59.

⁵³ European Commission: Financing the Energy Transition – Modernisation Fund Allocates €14 Billion to 10 Member States, 09.07.2020 <<https://climate.ec.europa.eu/news-your-voice/>>

coexist with solidarity principles, ensuring that Member States have equitable access to resources and infrastructure.

6.3. INFLUENCE ON THIRD-COUNTRY RELATIONS AND INTERNATIONAL AGREEMENTS

The OPAL judgment also has implications beyond the EU's internal market, particularly concerning relations with third countries and the negotiation of international energy agreements. By prioritizing solidarity, the EU signals to external partners that its energy policies are guided by principles of fairness and mutual support. This can influence the terms of energy agreements, ensuring that they are structured in a way that supports the EU's solidarity commitments. Furthermore, the judgment may encourage third countries to adopt similar principles in their energy policies, fostering a more cooperative and resilient global energy framework. International organizations and trade partners may view the EU's stance on energy solidarity as a model for promoting equitable energy distribution and cooperative infrastructure development.⁵⁴

6.4. FUTURE LEGAL DEVELOPMENTS

The European Commission could propose amendments to existing directives and regulations to incorporate more explicit solidarity criteria, providing clearer guidance for infrastructure projects and regulatory decisions. This could involve:

- **Defining Solidarity Metrics:** Establishing measurable criteria for assessing the solidarity impact of energy projects, such as the economic viability of transit states, supply diversification levels, and consumer price stability.⁵⁵
- **Mandating Impact Assessments:** Requiring comprehensive impact assessments for major infrastructure projects that evaluate both economic and solidarity implications, ensuring that all relevant factors are considered before approval.

news/financing-energy-transition-commission-puts-eu14-billion-fund-modernise-energy-sectors-10-member-2020-07-09_en>, last accessed on 11/12/2024.

⁵⁴ European Commission: *Engaging Energy Partners in a Changing World*, 14.06.2022, <https://commission.europa.eu/news/focus-engaging-energy-partners-changing-world-2022-06-14_en>, last accessed on 11/12/2024.

⁵⁵ European Commission: *Communication on Energy Security Strategy*, COM(2014) 330, 2014, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0330>>, last accessed on 11/12/2024.

- **Strengthening Enforcement Mechanisms:** Enhancing the powers of EU institutions to monitor and enforce compliance with solidarity obligations, including imposing penalties for decisions that neglect solidarity considerations.⁵⁶

Such legal developments would not only reinforce the OPAL judgment's legacy but also provide a more robust and systematic framework for integrating solidarity into the EU's energy governance. This would ensure that future infrastructure projects are evaluated through a consistent and principled lens, promoting long-term stability and cohesion within the Union.

7. CONCLUSION

This judgment underscores the necessity for a balanced approach that harmonizes economic efficiency with the equitable distribution of responsibilities among all Member States. Without the OPAL judgment, the European Commission might have continued to make decisions primarily focused on economic efficiency and market integration, without sufficiently considering the transnational impacts on the interests of all Member States.⁵⁷ The judgment ensures that future infrastructure decisions are not made in isolation from their broader social, economic, and political consequences.⁵⁸ Specifically, it prevents individual Member States from being disproportionately disadvantaged by decisions of the European Commission or national regulatory authorities.

It also demonstrates that judicial decisions can have far-reaching impacts on practical energy supply and the strategic relationships between Member States. Future judgments of the ECJ will likely further refine this principle in various contexts, leading to a continuous development of EU energy law. It promotes a legally grounded, solidarity-oriented approach that not only addresses current challenges but also ensures the long-term stability of the European energy market. In an era where energy issues are closely linked to climate policy, security, and economic development, the OPAL judgment represents an important step towards an integrated, sustainable, and solidaristic energy future for the EU. This analysis is subject to limitations such as the evolving geopolitical context, the lack of full data on implementation effects, and the absence of subsequent case law applying the OPAL precedent.

⁵⁶ European Commission: *Regulation (EU) 2019/942 on the Agency for the Cooperation of Energy Regulators (ACER)*, O.J. L 158, 2019, Art. 16.

⁵⁷ Kaschny, L.: *Energy Justice and the Principles of Article 194 (1) TFEU Governing EU Energy Policy*, *Transnational Environmental Law*, 12(2) 2023, p. 289.

⁵⁸ Larsson, R.: *Russia's Energy Policy: Security Dimensions and Russia's Liability as an Energy Supplier*, Stockholm: Swedish Defence Research Agency, 2006, p. 262.

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