

5. Fifth plea in law, alleging that by omitting to weight the interest of public access to environmental information in the studies against the private interest of companies to protect their commercial interests and/or letting prevail the economic interests of the companies EFSA violated Article 4(2), first indent, of Regulation 1049/2001.
6. Sixth plea in law, alleging that as the available data do not permit an independent and complete review of EFSA's peer review on Glyphosate the applicants have an interest in the disclosure of the studies. By denying the general interest and the applicants' interest in disclosure of the requested information EFSA has violated its obligations under the Articles 2 and 4 of Regulation 1049/2001 and Article 41 of Regulation 178/2002.

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- (¹) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 2006, p. 13)
- (²) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 2001, p. 43)
- (³) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 2002, p. 1)
- (⁴) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 2009, p. 1)

Action brought on 29 May 2017 — E-Control v ACER

(Case T-332/17)

(2017/C 249/51)

Language of the case: English

Parties

Applicant: Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control) (Vienna, Austria) (represented by: F. Schuhmacher, lawyer)

Defendant: Agency for the Cooperation of Energy Regulators

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Board of Appeal of the Agency for the Cooperation of Energy Regulators of 17 March 2017, Case A-001-2017 (consolidated);
- order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging an error in law that the Board of Appeal found that ACER was competent to change the proposal of the transmission system.
 - The applicant puts forward that the Board of Appeal erred in law when it assumed a competence of ACER to change the proposal of the transmission system operators because Commission Regulation (EU) 2015/1222 (¹) does not provide for such competence.
2. Second plea in law, alleging an error in law that the Board of Appeal found that ACER was competent even though it disregarded the applicant's amendment request.
 - The applicant puts forward that ACER disregarded its amendment request pursuant to Article 9(12) of Commission Regulation (EU) 2015/1222. According to the applicant, the Board of Appeal erred in law when it concluded that ACER was competent despite the fact that it disregarded its amendment request.

3. Third plea in law, alleging an error in law that the Board of Appeal found ACER was competent to introduce a bidding zone border pursuant to Article 15 of Commission Regulation (EU) 2015/1222.
 - The applicant puts forward that the Board of Appeal made a manifest error in law when it reached the conclusion that ACER was competent to change the bidding zone configuration and introduce new bidding zones pursuant to Article 15 of Commission Regulation (EU) 2015/1222. According to the applicant, ACER acted *ultra vires* and disregarded the legal framework and the competence of the Member States.
4. Fourth plea in law, alleging the absence of a proper justification and alleging an error in law that the Board of Appeal found that ACER has shown that structural congestion exists on the German-Austrian border.
 - The applicant puts forward that its procedural rights have not been observed, because the Board of Appeal has not addressed the arguments brought forward in the appeal but instead relied on a general statement devoid of any specific relation to the case at hand. If the Court should reach the conclusion that the Board of Appeal provided a sufficient justification, so the applicant claims, the Board of Appeal also erred in law when it –without any reference to the legal standard– accepted the conclusion of ACER based on a flawed definition of congestion.
5. Fifth plea in law, alleging the absence of a proper justification and alleging an error in law to not consider the request for evidence by the applicant.
 - The applicant puts forward that the Board of Appeal does not provide any meaningful assessment of the request and thereby violates the obligation to provide a proper justification. According to the applicant, because the Board of Appeal has to reach a reasoned conclusion whether the appeal was well-founded, it had an obligation to request information when necessary to decide the case at hand. It is the applicant's opinion that the Board of Appeal therefore erred in law when it denied its request for information.
6. Sixth plea in law, alleging the absence of a proper justification and alleging an error in law that the Board of Appeal found that the introduction of a bidding zone border was proportionate.
 - The applicant raises two distinct pleas, the absence of a proper justification as a violation of procedural rights, and an error in law in respect of the legal standard required. According to the applicant, the contested decision disregarded the fundamental principle of proportionality contained in Article 16 of Regulation (EC) No 714/2009 ⁽²⁾ which is also a fundamental principle of the TFEU.

⁽¹⁾ Commission regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015, L 197, p. 24).

⁽²⁾ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ 2009 L 211, p. 15).

Action brought on 29 May 2017 — Austrian Power Grid and Voralberger Übertragungsnetz v ACER

(Case T-333/17)

(2017/C 249/52)

Language of the case: English

Parties

Applicants: Austrian Power Grid AG (Vienna, Austria) and Voralberger Übertragungsnetz GmbH (Bregenz, Austria) (represented by: H. Kristoferitsch and S. Huber, lawyers)

Defendant: Agency for the Cooperation of Energy Regulators (ACER)