

The Commission disregarded mandatory time limits under Article 3(3) of Regulation (EU) No 182/2011⁽²⁾ by introducing an amendment, without setting any deadline, to the draft decision and by bringing about an immediate vote, thereby infringing its obligation under Article 3(4) of Regulation (EU) No 182/2011 to work towards gathering maximum support within the Committee in an objective manner. In addition, the Commission deprived the representatives of the Member States of the possibility properly to adopt a position on the amended draft decision and thereby infringed Article 291(3) TFEU, under which effective supervision of the Commission by the Member States must be ensured. In addition, the Commission, through what was clearly a tactically-motivated approach, abusively and erroneously exercised its position as the chair of the Committee.

2. Second plea in law, alleging infringement of essential procedural requirements, breach of superior law and disregard for the limits on conferred powers on the basis of procedurally-flawed drafting in the context of the so-called Seville Process

In accordance with the requirements laid down in Directive 2010/75/EU and Commission Implementing Decision 2012/119/EU (BAT Guidelines)⁽³⁾, BAT conclusions can be derived solely in accordance with technical standards. That derivation must follow a requirement as to technical content, which excludes political considerations from being taken into account when those conclusions are being determined. In the present case, those requirements were disregarded.

3. Third plea in law, alleging a breach of superior law and disregard for the limits on conferred powers by reason of the content of the disputed BAT conclusions

The substantive determinations, in particular the BAT-AELs for NO_x and mercury, fundamentally disregard the requirement of technical-economic availability which derives directly from Directive 2010/75/EU, and thereby disproportionately burden the installation operators affected by the rules.

That situation inevitably creates the impression that the content of the contested rules was based on political considerations, which are impermissible when BAT conclusions are being drafted. By acting in this way, the Commission once again abused its position and exceeded its powers.

- ⁽¹⁾ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).
- ⁽²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13).
- ⁽³⁾ Commission Implementing Decision of 10 February 2012 laying down rules concerning guidance on the collection of data and on the drawing up of BAT reference documents and on their quality assurance referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (notified under document C(2012) 613) (OJ 2012 L 63, p. 1).

Order of the General Court of 23 October 2017 — 1&1 Telecom v Commission

(Case T-307/15)⁽¹⁾

(2018/C 005/69)

Language of the case: English

The President of the Third Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 270, 17.8.2015.
