

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, divided into two parts.

The first part alleges infringement of the principle of equal treatment and non-discrimination and infringement of the right to be heard, in that the Appointing Authority based its decision on rules showing cases different from the applicant's without having heard her or allowed her to put forward her observations to influence the content of the proposed decision and, in consequence, infringed her rights of the defence.

The second part alleges infringement of the principle of sound administration and the duty of care, and a manifest error of assessment of the facts committed by the Appointing Authority, in that it could have considered the allowances for incapacity for work in the light of the general rules of reimbursement of the Joint Rules. The applicant is of the opinion that there is no statutory provision which prevents those allowances from being accumulated with the income drawn from her professional activity, on the ground that her medical situation and her degree of incapacity do not correspond to the medical invalidity criteria provided for in the Staff Regulations of Officials.

Action brought on 7 November 2017 — Euracoal and Others v Commission

(Case T-739/17)

(2018/C 005/68)

Language of the case: German

Parties

Applicants: Association européenne du charbon et du lignite (Euracoal) (Woluwe-Saint-Pierre, Belgium), Deutscher Braunkohlen-Industrie-Verein e.V. (Cologne, Germany), Lausitz Energie Kraftwerke AG (Cottbus, Germany), Mitteldeutsche Braunkohlengesellschaft mbH (Zeitz, Germany), eins energie in sachsen GmbH & Co. KG (Chemnitz, Germany) (represented by: W. Spieth and N. Hellermann, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU ⁽¹⁾ of the European Parliament and of the Council on industrial emissions (OJ 2017 L 212, p. 1), to the extent to which, by that decision, BAT associated emissions levels (BAT-AELs) were accepted and set for NO_x emissions (Article 1, Section 2.1.3 of the Annex, Table 3) and mercury emissions (Article 1, Section 2.1.6 of the Annex, Table 7) which result from the combustion of coal and/or lignite;
- in the alternative, annul Implementing Decision (EU) 2017/1442 in its entirety; and
- order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law:

1. First plea in law, alleging infringement of essential procedural requirements, breach of superior law and disregard for the limits on conferred powers in connection with the vote in the Article 75 Committee,

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.
