

Announcement of appeal¹

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| Case | A-001-2015 |
| Appellant: | Energie-Control Austria (E-Control) |
| Appeal received on | 23 November 2015 |
| Subject matter | Request for annulment and suspension of application |
| Keywords | Admissibility, access to the file, <i>ultra vires</i> , Regulation (EC) No 714/2009, Articles 101 and 102 TFEU, Articles 34 and 35 TFEU |
| Contested decision | ACER Opinion No 09/2015 of 23 September 2015 |
| Language of the case | English |

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- Annul the Opinion of the Agency No. 09/2015 of 23 September 2015 on the compliance of National Regulatory Authorities' decisions approving the methods of allocation of cross-border transmission capacity in the Central-East Europe region with regulation (EC) no 714/2009 and the guidelines on the management and allocation of available transfer capacity of interconnections between national systems contained in Annex I thereto ("Opinion");
- Suspend the application of the Opinion.

Pleas in law and main arguments

In support of the appeal, the applicant claims that the Opinion qualifies as a decision against which right of action must exist under European law, as it has direct and immediate legal effect on E-Control and E-Control is an addressee of the Opinion. E- Control thus has the right to appeal the Opinion to the Board of Appeal.

The grounds of appeal concern:

- i. The violation of procedural requirements, particularly infringement of the right to access to the file, infringement of the right to be heard and lack of proper justification;
- ii. The lack of legal basis for the measures proposed (*ultra vires*);

¹ Announcement published in accordance with Article 9 of Decision BoA No1-2011 Laying down the rules of organisation and procedure of the Board of Appeal of the Agency for the Cooperation of the Energy Regulators.



Board of Appeal

- iii. Infringement of Regulation (EC) No 714/2009;
- iv. Infringement of Commission Regulation (EU) 1222/2015 (CACM Guideline);
- v. Infringement of Articles 101 and 102 TFEU;
- vi. Infringement of Articles 34 and 35 TFUE.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

http://www.acer.europa.eu/The_agency/Organisation/Board_of_Appeal/Pages/Rules-of-procedure.aspx