PHILIPLEE

EU Energy Case Law Update

In this update, we consider some of the recent judgments from the Court of Justice of the European Union ("**CJEU**") and the General Court in the energy sector. These judgments span the areas of state aid for nuclear infrastructure, emergency energy measures, taxonomy regulation and sustainable finance classification, and ACER regulatory procedures. These cases reflect the European Courts' evolving approach to complex questions of administrative law, environmental protection, and judicial access in highly technical energy markets and against the backdrop of the energy trilemma.

1. State Aid: Nuclear Infrastructure and Emergency Market Measures

(a) The Paks II Nuclear Case: Austria v Commission (C-59/23)

This judgment concerns Hungary's planned construction of two new nuclear reactors at the Paks II facility, financed partly through a €10 billion Russian state loan and €2.5 billion from the Hungarian state budget. Austria's legal challenge, initiated over ten years ago, culminated in the CJEU upholding Austria's appeal in September 2025. This case represents the first successful judicial attack on another Member State's nuclear project in the EU's energy law history.

Public Procurement and State Aid Assessment

Austria originally raised four pleas but the CJEU addressed only the first: the absence of public procurement procedures for the reactor construction contract. Austria argued that the Commission's state aid approval, granted in 2017, was unlawful because no competitive procurement process had been conducted and the Commission had failed to assess this omission as part of its state aid analysis.

The Court's Reasoning

The CJEU explicitly rejected the General Court's distinction between, on one hand, construction of the reactors and, on the other, their free of charge transfer to the Paks II company. The Court found that the direct award of the construction contract was "inextricably linked" to the object of the notified aid measure. This language, while emphasising the closeness of connection required, appears broader than initially anticipated and may establish a meaningful new standard for assessing whether secondary legal instruments (such as public procurement law) must be factored into state aid compatibility assessments.

Practical Consequences

The ruling sets aside the Commission's 2017 decision, requiring fresh assessment. Beyond the immediate project, the judgment raises significant questions: (1) the Commission must consider public procurement law as part of the state aid assessment, but should climate law, renewable energy rules, and grid connection standards similarly be integrated into state aid assessments; and (2) the judgment may facilitate strategic legal challenges by Member States to peers' energy infrastructure investments, potentially creating obstacles for large-scale power generation and interconnection projects.

A related development is the Commission's recent introduction of a new review mechanism under the Aarhus Regulation (May 2025) allowing eligible NGOs to request internal review of certain state aid decisions. Through this mechanism, environmental stakeholders could potentially raise secondary legal compliance issues.

(b) Energy Crisis Support Measures: PGI Spain and Others v Commission (T-596/22)

In March 2025, the General Court dismissed a challenge to Spain and Portugal's 2022 state aid scheme designed to reduce wholesale electricity prices by subsidising fossil fuel generation costs. This measure typifies the emergency legal architecture deployed across the EU during the 2023–2024 energy crisis.

Measure Design and Legal Basis

Spain and Portugal justified the scheme as necessary to address both the renewable energy transition (requiring urgent decarbonisation measures) and the acute energy crisis inflating fossil fuel prices and threatening vulnerable households and economic activities. Payments flowed directly to fossil fuel operators, financed by a contribution imposed on wholesale electricity market buyers.

Legal Challenge and Outcome

Companies including PGI Spain contended that the measure violated (1) Article 10 of the Electricity Regulation (technical bidding limits) and Article 5 of the Electricity Directive (market-based pricing), (2) non-discrimination principles, and (3) legitimate expectations. The General Court found no basis for these claims, upholding the Commission's approval and dismissing the action. The judgment reflects the high deference paid to Member State and Commission crisis responses under the Tempus doctrine, which recognises broad discretion in addressing exceptional market emergencies.

PHILIPLEE

EU Energy Case Law Update

2. Taxonomy Regulation and Sustainable Finance Classification

(a) Nuclear and Fossil Gas Classification: Austria v Commission (T-625/22)

Austria mounted a challenge to the Commission's delegated regulation supplementing the Taxonomy Regulation by classifying nuclear and fossil gas activities as contributing substantially to climate mitigation (as transitional activities). It (Austria) filed 16 pleas in law, that were condensed into three core arguments.

Austria's Arguments and Their Rejection

First, Austria contended that nuclear activities inherently bear unacceptable environmental risks (accidents, waste disposal) that breach the "do no significant harm" test and the precautionary principle. Second, it argued that including nuclear as sustainable represented an essential policy choice requiring Parliamentary and Council approval, not Commission delegated action under Article 290 TFEU. Third, it predicted market fragmentation as investors would disagree on whether nuclear qualifies as "green," undermining the Taxonomy's uniformity objective.

The Court's Standard: Broad Discretion in Scientific Assessment

The General Court confirmed that the Commission enjoys a wide margin of discretion when conducting complex scientific and economic assessments in exercise of delegated powers. Critically, the Court held that conclusive scientific evidence does not require scientific unanimity, strict quantitative thresholds, or comprehensive data on every contingency. Further, that the Commission may rely on qualitative criteria and existing thresholds established in other EU instruments (notably the Renewable Energy Directive). Therefore no manifest error of assessment occurred in classifying nuclear and gas activities and both the "do no significant harm" and precautionary principle arguments failed.

Implications for Environmental Litigation Strategy

The judgment establishes a very high bar for environmental challengers attacking technical sustainability criteria. The Court's emphasis on the Commission's "broad margin of discretion" and acceptance of qualitative reasoning has provoked ongoing debate among commentators regarding the proper scope of judicial review and the role of the precautionary principle in taxonomic classification decisions.

(b) Taxonomy Delegated Act Review Process: ClientEarth and Fédération environnement durable v Commission (T-579/22, T-583/22)

These linked cases involved Aarhus Regulation internal review requests directed at the Commission's refusal to conduct internal review of the general Taxonomy delegated act (which originally excluded nuclear and gas pending further negotiation).

Procedural Principles

The General Court clarified that applicants must challenge the Commission's decision refusing internal review, not the underlying delegated act directly. However, when assessing the legality of the refusal, courts will examine the underlying act's lawfulness. A critical procedural principle emerged: a continuum exists between an administrative act/proceeding (Aarhus) and judicial review; pleas not raised during administrative proceedings should not be introduced for the first time in court. Additionally, the Commission retains broad discretion in setting technical screening criteria, and applicants face a formidable challenge in proving a manifest error.

3. ACER Regulatory Procedures

(a) Standing and Jurisdiction: RWE Supply & Trading and Uniper Global Commodities v ACER (T-95/23, T-96/23)

These consolidated cases addressed a fundamental question: what remedies are available to economic operators adversely affected by ACER regulatory acts (as distinguished from decisions addressed to specific parties)?

Background: Balancing Energy Price Cap

Under the Electricity Balancing Guideline, ACER approved a pricing methodology for balancing energy, with a technical price limit. ACER then adopted a decision in February 2022 to amend the pricing methodology and introduced a temporary plus or minus €15,000 price cap for trades on the PICASSO and MARI platforms for 48 months. RWE and Uniper (as balancing energy providers on these platforms) appealed the decision to ACER's Board of Appeal.

The ACER Board of Appeal's Holding

The Board of Appeal declared their appeals inadmissible because the companies were not addressees of the February 2022 decision. Although ACER's pricing decision was a regulatory act, Article 28 of the ACER Regulation contains no provision for standing based on direct concern regarding regulatory acts (unlike Article 263 TFEU, which provides this avenue). RWE and Uniper appealed the decisions of the ACER

PHILIPLEE

EU Energy Case Law Update

The General Court's Clarification

The General Court held that:

1. ACER decisions on technical matters may indeed be regulatory acts (of general application not addressed to specific parties);

2. Where a regulatory act affects non-addressee operators directly and contains no implementing measures, those operators may bring annulment actions directly before the General Court under Article 263 TFEU without proving individual concern;

3. This direct route, available alongside the addressee/directly-concerned route through the Board of Appeal, does not infringe equality or effective judicial protection rights (Articles 20 and 47 of the Charter) because the two groups occupy objectively different legal positions. However, RWE and Uniper's direct actions failed as time-barred: the two-month limitation period had expired while they pursued the (wrongfully) blocked Board of Appeal route.

Implications

The judgment establishes a bifurcated regime: addressees and parties directly and individually concerned must exhaust the Board of Appeal remedy (Article 29 ACER Regulation); other parties directly affected by regulatory acts may proceed directly to the General Court. This structure, while potentially complex, was found compatible with fundamental rights guarantees.

(b) Damages Liability in ACER Proceedings: Aquind v ACER (T-342/23)

The General Court dismissed Aquind's action in Case T-342/23 in connection with ACER's decision to deny certain exemptions from EU electricity market rules for its proposed interconnector project between France and the UK. The General Court found that a manifest error on the part of ACER giving rise to non-contractual liability had not been established.

Aquind sought a derogation from cross-border cost allocation obligations for the interconnector project. In 2017–2018, ACER rejected the exemption and after appeal, a General Court judgment (T-335/18) annulled the ACER Board of Appeal's decision on two grounds: (1) the Board misapplied its own standard of review, and (2) the Board improperly introduced a new condition not found in Article 17 of the Conditions for Access to the Network for Cross-Board Electricity Exchanges Regulation.

Aquind sought compensation from ACER for alleged damages said to arise from ACER's handling of its original request for an exemption. The damages action was framed as an EU non contractual liability claim, arguing that a series of unlawful acts and omissions by ACER (and, indirectly, the Board of Appeal) had caused delay, additional costs and loss of opportunity for the project.

Damages Assessment: The Manifest Error Threshold

For EU non-contractual liability, three elements must be established: (1) unlawfulness (manifest error), (2) damage, and (3) causal link. The General Court examined only unlawfulness.

The General Court held that Aquind had not demonstrated any unlawful conduct by ACER that met the unlawfulness threshold. On the Article 17 condition argument, the Court noted a divergence between its own prior judgment and the Advocate General's opinion; such divergence itself indicates a complex legal question, making it impossible to attribute a manifest error to the Board of Appeal. Regarding the Board of Appeal's misapplication of its own review standard, the Court found this an excusable "transitional" error given the novel ACER Regulation framework. Excusable errors do not satisfy the heightened threshold for EU liability. All additional pleas, concerning legal certainty, legitimate expectations, equal treatment (comparing treatment against Eleclink), and alleged lack of diligence, were rejected.

The damages action was dismissed, establishing a high bar for establishing manifest errors in ACER proceedings.

Conclusion

These recent judgments reflect the European Courts' cautious approach to energy regulation litigation, generally deferring to administrative expertise while tightening procedural safeguards. The outcome in Paks II, setting aside Commission approval of nuclear state aid on public procurement grounds, suggests that where major industrial undertakings intersect with fundamental legal obligations (procurement, environmental law), the courts will demand integrated assessment across other relevant areas of law.

The Taxonomy cases suggest that courts accord broad discretion to scientific assessments. The ACER cases establish clearer jurisdictional boundaries but maintain high hurdles for establishing errors on the part of regulatory authorities operating in complex errors.

The cases demonstrate the difficulty in balancing the EU's decarbonisation goals, infrastructure investment needs and the integrity of decision making processes. The complexity of this balancing exercise will continue to evolve as climate ambitions, geopolitical considerations, and legal certainty intersect in energy law.

PHILIPLEE

Contact Our Energy Group

Niall Donnelly
PARTNER
Energy Projects & Regulation

+353 (0) 1 237 3700
ndonnelly@philiplee.ie
Niall Donnelly

Alice Whittaker
PARTNER
Planning & Environment

+353 (0) 1 237 3700
awhittaker@philiplee.ie
Alice Whittaker

Alison Hardiman
CONSULTANT
Planning & Environment

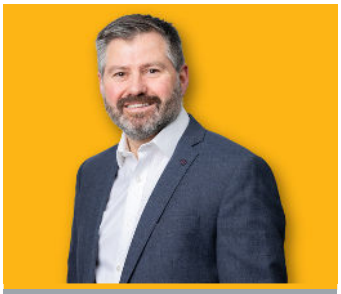
+353 (0) 1 237 3700
ahardiman@philiplee.ie
Alison Hardiman

Eoghan Doyle
PARTNER
Corporate M&A

+353 (0) 1 237 3700
edoyle@philiplee.ie
Eoghan Doyle

Simon O'Neill
PARTNER
Project Finance

+353 (0) 1 237 3700
soneill@philiplee.ie
Simon O'Neill



John O'Donoghue
PARTNER
Property

+353 (0) 1 237 3700
jodonogue@philiplee.ie
John O'Donoghue

Angelyn Rowan
PARTNER
Construction

+353 (0) 1 237 3700
arowan@philiplee.ie
Angelyn Rowan

Kerri Crossen
PARTNER
Construction

+353 (0) 1 237 3700
kcrossen@philiplee.ie
Kerri Crossen

Max Bail
ASSOCIATE
Energy Projects & Regulation

+353 (0) 1 237 3700
mbail@philiplee.ie
Max Bail