

IV. ANNOUNCEMENT OF APPEAL²

Case	N/A
Appellant:	RTE Réseau de Transport d'Électricité
Appeal received on	23 August 2020
Subject matter	Appeal against ACER Decision No 13/2020
Keywords	IN-Platform; IN Implementation Framework; Articles 6(3), 21 and 22, EBGL; freedom to conduct a business; principles of EU law; proportionality; transparency; right to good administration
Contested decision Number:	13/2020
Language of the case	English

[Remedy sought by the Appellant](#)

The Appellant requests the Board of Appeal to:

- a. Annul Recitals 13, 14 and 16 of the section entitled 'Whereas', and Articles 3.3, 4.6, 6, 10(2), and 13.1(b) of the INIF;
- b. Annul Article 1 of the Decision;
- c. Remit the Decision and INIF to the competent body of ACER in accordance with Article 28(5), ACER Regulation.
- d. Pursuant to Article 20(3)(d) of the Board of Appeal's Rules of Procedure, require ACER to disclose to the Appellant (i) copies of materials (in unredacted form) recording the views of the Board of Regulators on the Decision and INIF (together with meeting agendas and minutes) prior to their adoption, and (ii) a copy of the LEN Recommendation, and provide the Appellant with the right to make observations on the outcome of such disclosures.

² 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.

Date of Submission: 23 August 2020	Name: Matthew Levitt Baker Botts (Belgium) LLP	Signature:
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Pleas in law and main arguments

The contested decision was adopted on 24 June 2020.

The Appellant contests the Agency's decision. The Appellant's claims and arguments can be summarised as follows:

1. *First plea*: Infringement by ACER of Article 22, Electricity Balancing Guidelines ("**EBGL**") in the imposition and design of a single entity structure for the INIF.
2. *Second plea*: Infringement by ACER of Articles 21 and 22, EBGL by basing its decision in Article 10(2), INIF on the designation of the entity in the aFRR Platform.
3. *Third plea*: Infringement by ACER of Article 22, EBGL in the introduction of the capacity management function ("**CMF**") as a required platform function to be operated by the designated INIF entity.
4. *Fourth plea*: Infringement by ACER of Articles 6(3), 10 and 22, EBGL by exceeding its competence in *obliging* the TSOs to submit a subsequent proposal for amendment of the INIF no later than eighteen months before the deadline when the capacity management function shall be considered as a function required to operate the aFRR-Platform.
5. *Fifth plea*: Infringement by ACER of Articles 16 and 52(1), Charter of Fundamental Rights of the EU (the "**Charter**") (freedom to conduct a business) by requiring a single entity for all platform functions despite the TSOs' ability to fulfil the requirements of the EBGL outside of a single entity structure.
6. *Sixth plea*: Infringement by ACER of the principle of proportionality through the imposition of a single entity structure on the TSOs which is not justified by the scope and purpose of the EBGL, and which infringes the right of the TSOs to pursue an economic activity.
7. *Seventh plea*: Infringement by ACER of Article 14(6), ACER Regulation and Article 41 of the Charter (right to good administration) in failing to launch a public consultation on the TSOs' proposal; and failing to state reasons resulting in a lack of transparency in the Decision.

Further information

More information on the appeal procedure can be found on the 'Appeals' section of the Agency's website:

http://www.acer.europa.eu/The_agency/Organisation/Board_of_Appeal/Pages/default.aspx

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