

**IV. ANNOUNCEMENT OF APPEAL<sup>2</sup>**

<b>Case</b>	A-006-2021
<b>Appellant:</b>	RTE Réseau de Transport d'Électricité
<b>Appeal received on</b>	
<b>Subject matter</b>	Appeal against ACER Decision No 30/2020
<b>Keywords</b>	RDCT; cost sharing; Article 74, CACM; Articles 15 and 16, Electricity Regulation; proportionality; principles of EU law; right to good administration
<b>Contested decision</b>	
<b>Number:</b>	30/2020
<b>Language of the case</b>	English

**Remedy sought by the Appellant (including procedural requests)**

The Appellant requests the Board of Appeal:

1. By reason of ACER's infringement of Regulation No 1/1958, to annul the Decision (including its Annex I);
2. In the alternative, by reason of ACER's infringement of Regulation No 1/1958, to (i) declare the Decision (including its Annex I) unenforceable pending the provision by ACER of a French-language version of the Decision (including its Annex I), and (ii) extend the implementation timeline set in Article 13 of Annex I to the Decision by a period equal to the period that the Decision (including its Annex I) remains unenforceable;
3. Unless the Decision (including its Annex I) is annulled pursuant to the request under point 1. above, to annul Article 1 of the Decision and Articles 3, 7, 13 and Recitals 3, 4, 6, 7, 8, 9 and 10 of Annex I to the Decision;

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<sup>2</sup> 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.

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4. And to remit the Decision and its Annex I to the competent body of ACER in accordance with Article 28(5), ACER Regulation.

The Appellant includes the following procedural requests:

1. Request for confidentiality.
2. Request for an oral hearing.

### Pleas in law and main arguments

The contested decision was adopted on 30 November 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 the principle of conferral enshrined in Article 5(2) TEU in conjunction with Article 16, Electricity Regulation by determining and expanding the scope of eligible network elements included in the Methodology despite its lack of competence to do so.
2. *Second plea*: Infringement by ACER of Article 291, TFEU in conjunction with the Electricity Regulation and the CACM by imposing a general threshold (even if temporary) for penalising polluting flows, thereby failing to comply with clear boundaries of competence in the implementation of delegated powers.
3. *Third plea*: Infringement by ACER of Articles 16(8) (restrictions on the limitation by TSOs of volume of interconnection capacity) and 16(13) (allocation between TSOs of the cost of remedial actions), Electricity Regulation and Article 74, CACM (redispatching and countertrading cost sharing methodology) by incorrectly interpreting and applying these provisions to determine the Methodology.
4. *Fourth plea*: Infringement by ACER of the principles of non-discrimination and proportionality in its interpretation and application of Article 16, Electricity Regulation and Article 74, CACM.
5. *Fifth plea*: Infringement by ACER of Articles 15(3), 15(6), 16(8) and 16(13), Electricity Regulation, and Article 74, CACM, by failing to adhere to the polluter pays principle.
6. *Sixth plea*: Infringement by ACER of Article 9(9), CACM and of the principle of proportionality by obliging the TSOs to commit to a defined implementation timeline at the point of adoption of the Methodology.

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7. *Seventh plea*: Infringement by ACER of the duty to state reasons enshrined in Article 296, TFEU and Article 41(2)(c), Charter and the principle of good administration, by failing to conduct a robust assessment of the TSOs' Proposal, by basing the Decision on irrelevant and inadequate reasons, and by failing to take sufficient account of the application of Article 16(13), Electricity Regulation.
8. *Eighth plea*: Infringement by ACER of Articles 6(11) and 14(6), ACER Regulation and Article 41, Charter by failing to discharge its consultation obligations properly.
9. *Ninth plea*: Infringement by ACER of Article 4 or, in the alternative, Article 3 of Regulation No 1/1958 and of the principle of legal certainty by failing to issue the Decision in French.

### Further information

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

[https://www.acer.europa.eu/en/The\\_agency/Organisation/Board\\_of\\_Appeal/Pages/Procedural-Documents.aspx](https://www.acer.europa.eu/en/The_agency/Organisation/Board_of_Appeal/Pages/Procedural-Documents.aspx)

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