

IV. ANNOUNCEMENT OF APPEAL²

Case	N/A
Appellants:	Austrian Power Grid AG; ČEPS, a.s.; Independent Power Transmission Operator S.A.; Polskie Sieci Elektroenergetyczne; Red Eléctrica de España, S.A.; Réseau de Transport d'Électricité; Affärsverket svenska kraftnät
Appeal received on	23 March 2020
Subject matter	Appeal against ACER Decision No 02/2020
Keywords	aFRR-Platform; aFRR Implementation Framework; competence; freedom to conduct a business; principles of EU law; proportionality; right to good administration
Contested decision number	02/2020
Language of the case	English

Remedy sought by the Appellants

1. The Appellants request the Board of Appeal to:
 - a) Annul Articles 3.3; 3.4(b); 4.6; 6; 11.1(c) and 12 of the aFRR Implementation Framework;
 - b) Annul Article 1 of the Decision;
 - c) Remit the Decision and aFRR Implementation Framework to the competent body of ACER in accordance with Article 28(5), ACER Regulation; and
 - d) Pursuant to Article 20(3)(d) of the Board of Appeal's Rules of Procedure, require ACER to disclose to the Appellants in unredacted form (i) a copy of any assessment conducted by ACER under Article 21(5), Electricity Balancing Guidelines to determine whether and how the TSOs could perform the cost-benefit analysis necessary to support the amendment required by Article 12(2) of the aFRR Implementation Framework and (ii) copies of any templates recording the views of the Board of

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

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Regulators and ACER on the Decision and aFRR Implementation Framework prior to their adoption, and provide the Appellants with the right to make observations on the outcome of such disclosures.

Pleas in law and main arguments

The contested decision was adopted on 24 January 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 6(10), Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators ("**ACER Regulation**") in acting outside of its competence by extending its decision-making powers to revision of aspects of the aFRR proposal on which the national regulatory authorities ("**NRAs**") were agreed, namely the designation of an entity under Article 12, aFRR Implementation Framework.
2. *Second plea:* Infringement by ACER of Article 5(7), Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing ("**Electricity Balancing Guidelines**") in the same context as under the first plea.
3. *Third plea:* Infringement by ACER of Articles 10 and 21(5), Electricity Balancing Guidelines by exceeding its competence in obliging the TSOs to submit a proposal for amendment of the aFRR Implementation Framework.
4. *Fourth plea:* Infringement by ACER of Article 21, Electricity Balancing Guidelines in its decision to impose a single entity structure on the TSOs, contrary to the terms of that Article.
5. *Fifth plea:* Infringement by ACER of Article 16, 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 Electricity Balancing Guidelines 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 Electricity Balancing Guidelines, and which infringes the right of the TSOs to pursue an economic activity.
7. *Seventh plea:* Infringement by ACER of Articles 6(11) and 14(6), ACER Regulation and Article 41 of the Charter (right to good administration) in failing to consult on its interpretation of the TSOs' second proposals after choosing to evaluate them following the deadline for consultation provided to the TSOs.

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