

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

**Case:** A-002-2021

**Appellant:** Commission de régulation de l'énergie (CRE)

**Appeal received on:**

**Subject matter:** Decision n°30-2020 of the Agency for the Cooperation of Energy Regulators of 30 November 2020 on the Core TSOs' proposal for the methodology for cost sharing of redispatching and countertrading

**Keywords:** RDCT Cost sharing, CACM regulation, Internal market for energy, Electricity Regulation, polluter-pays principle

**Contested decision Number:** ACER decision n°30-2020

**Language of the case:** English

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

The Appellant requests the Board of Appeal to:

- to **annul** Decision n°30-2020 of ACER of 30 November 2020 on the Core TSOs' proposal for the methodology for cost sharing of redispatching and countertrading **entirely**;
- or, in the event that the Board of Appeal does not annul the decision entirely,
- to **annul article 3 and 7 of Annex I** of Decision n°30-2020 of ACER of 30 November 2020 on the Core TSOs' proposal for the methodology for cost sharing of redispatching and countertrading.

<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

Date of Submission: 29/01/2021	Name: Jean-François Carencu on behalf of the Commission de régulation de l'énergie (CRE)
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The Appellant includes the following procedural requests: 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:

First plea: By failing to issue the contested decision in the addressees' official language and with its practice consisting in allowing appeals before ACER's Board of Appeal solely in English, ACER not only violates Article 3(3) of the Treaty on the European Union and Article 22 of the Charter, but also Articles 3 and 4 of Regulation n° 1, Article 44 of the ACER Regulation and the provisions of ACER's Board of Appeal's Rules of Procedure themselves.

Second plea: By failing to impose an impact study to evaluate the financial consequences for each TSO of the design options for key cost sharing parameters eventually retained in the contested decision, the contested decision does not comply with Article 74(6)(c) of the CACM Regulation and Article 16(13) of the Electricity Regulation.

Third plea: By failing to provide a defined timescale for the implementation of the contested decision directly in the contested decision itself, ACER has infringed Article 9(9) of the CACM Regulation which provides that "the proposal for terms and conditions or methodologies shall include a proposed timescale for their implementation [...]".

Fourth plea: By prioritising only loop flows over internal flows in the determination of the contribution of polluting flows to congestion that underlies RDCT cost allocation, the contested decision violates not only Article 16(13) of the Electricity Regulation, but also Article 3(g) and Article 74(6)(a) and (b) of the CACM Regulation.

Fifth plea: By setting a common loop flow threshold without any prior study performed by TSOs and approved by regulatory authorities, the contested decision violates Article 16(13) of the Electricity Regulation.

Sixth plea: By defining the cost sharing scope as "all cross-border relevant redispatching and countertrading actions activated pursuant to the coordination process as defined in the methodology pursuant to Article 35 of the CACM Regulation and the methodology pursuant to Article 76 of the SO Regulation", the contested methodology violates Article 74 of the CACM Regulation, read in conjunction with Article 16(13) of the Electricity Regulation which provides for a more limited cost sharing scope.

Seventh plea: By stating that the costs of remedial actions in Member States applying an action plan should still be subject to cost sharing in accordance with the contested methodology, the contested decision violates Article 15(3) of the Electricity Regulation which clearly excludes elements on which an action plan has been implemented from the cost sharing.

### 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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