

IV. ANNOUNCEMENT OF APPEAL²

Case	A-[NNN]-2020
Appellant:	European Network of Transmission System Operators for Electricity (ENTSO-E) aisbl, represented by Hervé Laffaye, President, and Bird & Bird LLP
Appeal received on	[4] June 2020
Subject matter	Appeal against ACER Decision No 10/2020 of 6 April 2020 on the definition of system operation regions
Keywords:	Article 36 Regulation 2019/943; system operation regions (SORs)
Contested decision Number:	10/2020
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

1. Find the Appellant's appeal well-founded;
2. Remit to the competent body of ACER Article 1 of the Contested Decision and Article 3 of Annex I to the Contested Decision, insofar as they (a) include ENTSO-E's proposed Southwest Europe system operation region (SWE SOR) in the Central Europe system operation region (CE SOR) and (b) do not define a SWE SOR in accordance with ENTSO-E's proposal, and Article 1 of the Contested Decision and Article 3 of Annex I to the Contested Decision, insofar as they do not define a Greece-Italy system operation region (GRIT SOR) in accordance with ENTSO-E's proposal;
3. Insofar as it is necessary, in order for the Board of Appeal to remit the case to the competent body of ACER, and insofar as the Board of Appeal has power to do so, to annul those parts of the Contested Decision in respect of which it finds this appeal to be well-founded;
4. Provide to the competent body of ACER sufficient reasoning, direction and explanation as to the correct interpretation of the relevant provisions of the relevant legislation to enable it to issue a new decision, in accordance with Article 28(5) of Regulation 942 and Article 21(2) of the Rules of the ACER Board of Appeal.

Pleas in law and main arguments

1. First plea: ACER infringed Article 36 of Regulation 2019/943 (the recast Electricity Regulation) by committing a manifest error of assessment in its application of the requirement set out in that Article to take into account in the definition of system operation regions (SORs) the grid topology, including the degree of interconnection and of interdependency of the electricity system in terms of flows and the size of the region that is to comprise each SOR. This manifest error led ACER to include ENTSO-E's proposed SWE SOR in the CE SOR and to reject ENTSO-E's proposed GRIT SOR, thereby disregarding the fundamental objectives of Article 36.

2. Second plea: ACER infringed the principle of proportionality by defining the CE SOR with a geographic scope disproportionate to the tasks for which the SOR provides the context for coordination, which will result in less efficient performance of the tasks allocated to RCCs and TSOs.

3. Third plea: ACER infringed Article 36 of Regulation 2019/943 by interpreting it as prohibiting transmission system operators (TSOs) from participating in more than one regional coordination centre (RCC), contrary to the express words and purpose of the Regulation, particularly Articles 35 to 42, and by taking into account concerns about the implementation of Article 35 by TSOs and NRAs that it was not entitled to take into account, also leading to a definition of the relevant SORs that does not comply with Article 36.

4. Fourth plea: ACER did not provide an adequate statement of reasons for its inclusion of ENTSO-E's proposed SWE SOR in the CE SOR and its rejection of ENTSO-E's proposed GRIT SOR.

5. Fifth plea: ACER infringed an essential procedural requirement by not providing ENTSO-E with an adequate opportunity to give comments on ACER's intended inclusion of ENTSO-E's proposed SWE SOR in the CE SOR and its rejection of ENTSO-E's proposed GRIT SOR.

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

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.

