Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

13 February 2025 *

(Appeal – Internal market for electricity – Guideline on electricity balancing – Regulation (EU) 2017/2195 – Article 1(6) and (7) – Transmission system operators (TSOs) – Participation in European platforms for the exchange of standard products for balancing energy – Article 263 TFEU – Action for annulment – Admissibility – Concept of 'challengeable act' – Letter from the European Commission refusing the participation of a TSO operating in Switzerland in European platforms)

In Case C-121/23 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 28 February 2023,

Swissgrid AG, established in Aarau (Switzerland), represented by P. De Baere, P. L'Ecluse, V. Lefever and K. T'Syen, avocats,

appellant,

the other party to the proceedings being:

European Commission, represented by O. Beynet and B. De Meester, acting as Agents,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis (Rapporteur), President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias and E. Regan, Judges,

Advocate General: J. Kokott,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 8 May 2024,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2024,

gives the following

* Language of the case: English.

Judgment

1 By its appeal, Swissgrid AG asks the Court of Justice to set aside the order of the General Court of the European Union of 21 December 2022, *Swissgrid* v *Commission* (T-127/21, 'the order under appeal', EU:T:2022:868), by which the General Court dismissed as inadmissible its action for annulment of the decision allegedly contained in a letter signed by a director of the European Commission's Directorate-General (DG) for Energy, by which the Commission allegedly refused to authorise, pursuant to Article 1(7) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ 2017 L 312, p. 6), the Swiss Confederation's participation in European platforms for the exchange of standard products for balancing energy ('European balancing platforms'), in particular in the Trans European Replacement Reserves Exchange platform ('the TERRE platform').

Legal context

2 Article 1 of Regulation 2017/2195, entitled 'Subject matter and scope', provides, in paragraphs 1, 2, 6 and 7 thereof:

'1. This Regulation lays down a detailed guideline on electricity balancing including the establishment of common principles for the procurement and the settlement of frequency containment reserves, frequency restoration reserves and replacement reserves and a common methodology for the activation of frequency restoration reserves and replacement reserves.

2. This Regulation shall apply to transmission system operators ("TSOs"), … the Agency for the Cooperation of Energy Regulators ("the Agency"), the European Network of Transmission System Operators for Electricity ("ENTSO-E"), …

…

6. The [European balancing platforms] may be opened to TSOs operating in Switzerland on the condition that its national law implements the main provisions of [European] Union electricity market legislation and that there is an intergovernmental agreement on electricity cooperation between the [European] Union and [the Swiss Confederation], or if the exclusion of [the Swiss Confederation] may lead to unscheduled physical power flows via Switzerland endangering the system security of the region.

7. Subject to the conditions of paragraph 6, the participation of [the Swiss Confederation] in [European balancing platforms] shall be decided by the Commission based on an opinion given by the Agency and all TSOs in accordance with the procedures set out in paragraph 3 of Article 4. The rights and responsibilities of Swiss TSOs shall be consistent with the rights and responsibilities of TSOs operating in the [European] Union, allowing for a smooth functioning of balancing market at [European] Union level and a level-playing field for all stakeholders.'

Background to the dispute

3 The background to the dispute, as set out in paragraphs 2 to 10 of the order under appeal, may be summarised as follows.

4 The appellant is a limited liability company governed by Swiss law, which acts as the sole TSO in Switzerland. It participates in ENTSO-E.

5 A number of TSOs, including the appellant, conceived the TERRE platform.

6 On 7 September 2017, all the EU TSOs, meeting within ENTSO-E, gave an opinion in favour of the Swiss Confederation's participation in European balancing platforms, pursuant to Article 1(7) of Regulation 2017/2195.

7 On 10 April 2018, the Agency also issued an opinion on the Swiss Confederation's participation in European balancing platforms, pursuant to that provision. In that opinion, the Agency stated that it agreed, in general, with the TSOs' assessment as to the effectiveness of the Swiss Confederation's full participation in those platforms. It also highlighted that it was important for the Swiss Confederation to implement all of Regulation 2017/2195 and other related provisions to ensure a level playing field between TSOs in the European Union and in Switzerland.

8 On 31 July 2020, the Deputy Director-General of DG Energy sent a letter to ENTSO-E and to the appellant, in which he expressed his surprise at the EU TSOs' intention to include the appellant in the TERRE platform as a full member. He also emphasised that the coupling and balancing of markets were based on a comprehensive framework of legally enforceable rights and obligations and that the Swiss Confederation had not yet agreed to apply that framework, so that Swiss operators and TSOs were not, in principle, allowed to participate in that platform. In addition, he pointed out that the Commission had not granted any exception to the Swiss Confederation under Article 1(7) of Regulation 2017/2195.

9 On 29 September 2020, the appellant replied to the Commission, claiming that its full participation in European balancing platforms was necessary for reasons of security of the electricity system. It maintained, in essence, that its consideration in the EU capacity calculation process and its inclusion in the operational security analysis were insufficient. It also referred to the grounds set out in ENTSO-E's opinion of 7 September 2017 and in the Agency's opinion of 10 April 2018.

10 On 5 November 2020, ENTSO-E replied to the Commission that, while the decision as to the Swiss Confederation's participation in European balancing platforms was a matter for the Commission pursuant to Article 1(7) of Regulation 2017/2195, the EU TSOs and the Agency had issued an opinion in favour of such participation.

11 By letter of 8 December 2020, the appellant also reminded the Commission that the EU TSOs and the Agency had issued an opinion in favour of its participation in the TERRE platform. It asked the Commission to authorise that participation pursuant to Article 1(7) of Regulation 2017/2195.

12 A letter of 17 December 2020 ('the letter at issue'), addressed to the EU TSOs and signed by a director of DG Energy, first, highlighted that the appellant's participation in the TERRE platform project did not comply with the applicable EU law, namely Article 1(6) and (7) of Regulation 2017/2195. Second, it stated that the Agency's opinion underlined the importance of the Swiss Confederation implementing all of that regulation and other related provisions. Third, it found that certain measures adequately addressed the risks posed by unscheduled physical power flows and, therefore, that the Swiss Confederation's participation in European balancing platforms was not necessary. In that regard, it emphasised that the basis of operational security lay in capacity (re)calculation, on the one hand, and in regional operational security coordination, on the other,

which already included the Swiss Confederation. Fourth, and consequently, it concluded that the Commission did not have any ground for adopting a decision authorising the Swiss Confederation to participate in European balancing platforms, in particular the TERRE platform. Fifth, it asked the EU TSOs 'to re-establish a situation which is compliant with the conditions for participation in EU platforms in [Regulation 2017/2195] and exclude [the appellant] from the TERRE platform as of 1 March 2021 at the latest'.

The procedure before the General Court and the order under appeal

13 By application lodged at the Registry of the General Court on 26 February 2021, the appellant brought an action under Article 263 TFEU for annulment of the decision allegedly contained in the letter at issue.

14 By separate document lodged at the Registry of the General Court on 19 May 2021, the Commission raised a plea of inadmissibility. First, it maintained that the letter at issue was not a challengeable act for the purposes of Article 263 TFEU, in so far as it formed part of a mere informal exchange between representatives of the EU TSOs and DG Energy and that it did not reflect the Commission's final position, so that it did not produce any binding legal effects. Second, the Commission emphasised that the appellant did not have standing to bring proceedings, for the purposes of the fourth paragraph of Article 263 TFEU, since that letter was not of direct concern to it.

15 By order of 7 October 2021, the General Court decided to continue the proceedings on the substance of the case before ruling on the Commission's plea of inadmissibility.

16 By the order under appeal, the General Court dismissed the action as inadmissible on the ground that the letter at issue was not an act capable of forming the subject matter of an action for annulment under Article 263 TFEU. According to the General Court, the appellant, as a Swiss TSO, had no individual right to request and obtain from the Commission a decision authorising the Swiss Confederation and, therefore, the TSOs operating in that country to participate in European balancing platforms. That letter did not therefore constitute a decision capable of producing legal effects vis-à-vis the appellant, such as to change its legal position.

Forms of order sought before the Court of Justice

17 By its appeal, the appellant claims that the Court should:

– set aside the order under appeal;

– declare the action for annulment admissible;

– refer the case back to the General Court for judgment on the merits of the action; and

– reserve the decision as to the costs of the proceedings on appeal.

18 The Commission contends that the Court should dismiss the appeal as unfounded and order the appellant to pay the costs.

The appeal

19 In support of its appeal, the appellant puts forward three grounds of appeal. By the first ground of appeal, it submits that the General Court erred in law by applying an incorrect legal test to determine whether the letter at issue constitutes a challengeable act for the purposes of Article 263 TFEU. By the second ground of appeal, it claims that the General Court erred in law in finding that Article 1(6) and (7) of Regulation 2017/2195 does not confer on the appellant rights capable of being affected by that letter. By the third ground of appeal, it alleges a failure to state sufficient reasons in the order under appeal with regard to the finding that Article 1(7) does not confer any individual right on the appellant.

20 It is appropriate to begin by examining the first ground of appeal.

Arguments of the parties

21 By its first ground of appeal, which relates to paragraphs 19, 23, 29 and 30 of the order under appeal, the appellant submits that, in so far as it is not an addressee of the letter at issue, the General Court applied, in paragraphs 23 and 30 of that order, an incorrect legal test by requiring that that letter produce binding legal effects vis-à-vis the appellant. According to the appellant, the same error vitiates paragraph 29 of that order.

22 In that regard, the appellant observes, first, that it was not among the addressees of the letter at issue, since it was formally addressed to the representatives of the EU TSOs. When natural or legal persons bring an action against a measure which is not addressed to them, it is not necessary, in order for their action to be admissible, for that measure to produce binding legal effects vis-à-vis those persons. In such a case, it is sufficient to establish, on the one hand, that that measure is intended to produce binding legal effects vis-à-vis its addressees and, on the other, that the person who brought the action demonstrates standing to bring proceedings for the purposes of the fourth paragraph of Article 263 TFEU.

23 Second, in the letter at issue, the Commission asked the EU TSOs ‘re-establish a situation which is compliant with the conditions for participation in EU platforms in [Regulation 2017/2195] and exclude [the appellant] from the TERRE platform as of 1 March 2021 at the latest’. The appellant claims that, in view of the terms used and the time limit set, that letter therefore contains an injunction addressed to all EU TSOs.

24 Third, the appellant submits that it is individually and directly concerned by the letter at issue, for the purposes of the fourth paragraph of Article 263 TFEU, which, moreover, the General Court acknowledged in paragraph 30 of the order under appeal.

25 The Commission contends that the first ground of appeal should be rejected as unfounded and, in any event, ineffective.

26 First, the Commission submits that it is clear from the case-law of the Court that, even where an action for annulment is brought by a natural or legal person against a measure that is not addressed to that person, the requirement that the binding legal effects of that measure must be capable of affecting the interests of that person by bringing about a distinct change in his or her legal position still applies, but overlaps with the conditions laid down in the fourth paragraph of

Article 263 TFEU. Consequently, according to the Commission, the General Court did not err in law in examining, in the order under appeal, whether the letter at issue was capable of producing such legal effects vis-à-vis the appellant.

27 Second, the Commission maintains that the letter at issue merely sets out the existing legal position under Regulation 2017/2195 and does not produce any binding legal effect on its addressees, given the lack of direct enforcement powers of the Commission vis-à-vis the TSOs.

28 Third, according to the Commission, a mere letter from a director of DG Energy is not an act that can bind the Commission in any way. In accordance with the rules of procedure of that institution, its decisions are to be adopted by the College of Commissioners, unless a Member of the Commission, a Director-General or a Head of Service has been empowered or delegated to do so, which is not the case here.

29 Fourth, the Commission submits that the request to the EU TSOs to re-establish compliance with EU law within a certain period, set out in the letter at issue, was intended only to grant a 'grace period', during which the Commission would abstain from taking enforcement measures vis-à-vis Member States, and to encourage the parties concerned to re-establish compliance without the Commission having to take formal legal enforcement action. That letter does not indicate any immediate penalty should the EU TSOs fail to comply with that period.

30 Fifth, according to the Commission, the letter at issue is not of direct concern to the appellant, which therefore has no standing to bring proceedings for the purposes of the fourth paragraph of Article 263 TFEU. It is settled case-law that, for a natural or legal person to be directly concerned by an EU measure, that measure must directly affect the legal position of that person and must leave no discretion to its addressees with regard to the implementation of that measure. The appellant has not established that that was the case here and, contrary to what the appellant maintains, the General Court did not conclude, in paragraph 30 of the order under appeal, that it was directly and individually concerned by that letter.

31 As regards, in particular, the appellant's assertion that the letter at issue is of direct concern to it in so far as that letter deprives it of the rights and obligations linked to membership of the TERRE platform, the Commission submits that such effects cannot be regarded as resulting directly from that letter. Even if the EU TSOs were led to exclude the appellant from that platform, such a measure would result from the fact that the appellant has no legal right to be a member of that platform and from the national regulatory authorities enforcing EU law. That letter cannot, in itself, deprive the appellant of a right that it does not have.

32 In its reply, the appellant states that, by holding that the letter at issue was not intended to produce binding legal effects vis-à-vis the appellant and that it was not capable of forming the subject matter of an action for annulment, the General Court conflated the issue of whether an act is open to challenge with whether an applicant has standing to bring proceedings, as both defined in the judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission* (C-463/10 P and C-475/10 P, EU:C:2011:656).

33 As regards, first, the Commission's argument that it had not intended to confer binding legal effects on the letter at issue, the appellant submits that the intention of the author of an act must be determined objectively. Whether the act is open to challenge depends on the objective

significance that act could reasonably have, at the time it was sent, for a conscientious and prudent addressee. The Commission's contentions relating to the purpose of the letter at issue, which were formulated a posteriori, are therefore irrelevant.

34 Second, according to the appellant, the Commission's arguments that it does not have binding powers to require the EU TSOs to exclude the appellant from the TERRE platform and that the letter at issue does not provide for a penalty in the event of non-compliance with that requirement are also irrelevant, since those circumstances are not clear to the EU TSOs.

35 Third, the appellant submits that the lack of a delegation of power within the Commission as regards the issuing of the letter at issue is a matter pertaining to the analysis of the substance of the case, not the analysis of whether that letter is open to challenge.

Findings of the Court

36 As a preliminary point, it must be stated that the Commission's argument that the present ground of appeal is ineffective cannot be accepted. It is clear from the appellant's arguments in support of that ground of appeal that it challenges all the grounds of the order under appeal concerning the criteria applied by the General Court to determine whether the letter at issue constitutes a challengeable act for the purposes of the fourth paragraph of Article 263 TFEU. Consequently, if the Court were to uphold that ground of appeal, that order would be considered to be vitiated by an error of law, which would entail it being set aside (see, by analogy, judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraphs 44 and 45).

37 In that regard, it is settled case-law that an action for annulment may be brought, under the fourth paragraph of Article 263 TFEU, read in conjunction with the first paragraph of that article, against any measure adopted by the EU institutions, bodies, offices and agencies, whatever form it may take, which is intended to produce binding legal effects capable of affecting the interests of a natural or legal person. In order to ascertain whether a measure is intended to produce such effects and may, accordingly, form the subject matter of such an action, it is necessary to examine the substance of that measure and to assess those effects in the light of objective criteria, such as the content of that measure, taking into account, as appropriate, the context in which it was adopted and the powers of the institution, body, office or agency which adopted the measure, powers which should not be understood in the abstract but should be regarded as factors that inform the specific analysis of the content of that measure (see, to that effect, judgments of 6 May 2021, *ABLV Bank and Others* v *ECB*, C-551/19 P and C-552/19 P, EU:C:2021:369, paragraph 41 and the case-law cited, and of 18 June 2024, *Commission* v *SRB*, C-551/22 P, EU:C:2024:520, paragraph 65 and the case-law cited).

38 Where the action for annulment against an act adopted by an institution is brought by a natural or legal person, the Court had repeatedly held that the action lies only if the binding legal effects of that act are capable of affecting the interests of that person by bringing about a distinct change in his or her legal position (judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 37 and the case-law cited).

39 It must, however, be emphasised that the case-law cited in the paragraph above was developed in the context of actions brought before the EU judicature by natural or legal persons against measures of which they were the addressees. Where, as in the present case, an action for annulment is brought by a non-privileged applicant against a measure that has not been

addressed to it, the requirement that the binding legal effects of the measure being challenged must be capable of affecting the interests of that applicant by bringing about a distinct change in his or her legal position overlaps with the conditions laid down in the fourth paragraph of Article 263 TFEU (see, to that effect, judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 38).

40 In that regard, in view of the subject matter of the first ground of appeal raised, it is necessary to begin by examining whether, in upholding the plea of inadmissibility raised by the Commission on the ground that the letter at issue was not capable of producing binding legal effects affecting the appellant's interests by bringing about a distinct change in its legal position and, thus, not capable of constituting a challengeable act, the General Court correctly applied the criteria relating to whether an act is open to challenge, in the light of the case-law cited in paragraphs 37 to 39 of the present judgment.

41 In the present case, the General Court observed, in paragraph 21 of the order under appeal, that that letter, first, notes that the appellant's participation in the TERRE platform is not possible without the Commission first authorising the Swiss Confederation to participate in it, pursuant to Article 1(6) and (7) of Regulation 2017/2195, second, emphasises that the conditions for such participation do not appear to be satisfied and, third, requests the EU TSOs to exclude the appellant from that platform by 1 March 2021 at the latest.

42 Next, the General Court found, in paragraphs 23 and 24 of the order under appeal, that the legal context of which the letter at issue forms part prevents it from being classified as an act intended to produce binding legal effects vis-à-vis the appellant, since Article 1(7) of Regulation 2017/2195 does not confer a right on the appellant to request and obtain from the Commission an authorisation for the Swiss Confederation and, therefore, for the TSOs operating in that country to participate in European balancing platforms, in particular the TERRE platform.

43 In support of that conclusion, the General Court stated, first, in paragraphs 25 to 27 of that order, that it follows from the wording of Article 1(7) of Regulation 2017/2195 that that provision merely enables the Commission to adopt a position on the question whether such participation should be authorised, but does not impose any obligation on it in that regard, the Commission thus remaining entitled to refuse such participation, even if the conditions for applying Article 1(6) of that regulation were to be satisfied.

44 Second, the General Court noted, in paragraphs 28 and 29 of that order, in essence, that, although Article 1(7) of Regulation 2017/2195 establishes a procedure which the Commission must follow before adopting an authorisation decision, that provision does not confer any right on the appellant as a TSO operating in Switzerland to initiate that procedure or be associated with it, in any way whatsoever, in particular in respect of the exercise of the right to be heard. The General Court concluded therefrom that the adoption of a decision authorising the Swiss Confederation and, therefore, the TSOs operating in that country to participate in European balancing platforms depends solely on the choice made by the Commission, which has discretion in that regard.

45 In paragraph 30 of the order under appeal, the General Court added that the fact that the appellant has a direct and individual interest in the annulment of the letter at issue inasmuch as it refused to authorise the Swiss Confederation and, therefore, the TSOs established there to

participate in European balancing platforms is not such as to confer on the appellant a right to challenge that letter, since it cannot be regarded as an act intended to produce binding legal effects vis-à-vis the appellant.

46 By thus examining whether the letter at issue constitutes a decision capable of producing binding legal effects 'vis-à-vis the [appellant]', such as to change its legal position, the General Court incorrectly applied the criteria specific to situations in which the applicant is the addressee of the contested measure and not those applicable to situations in which, as in the present case, the applicant is not the addressee of the contested measure. In that second situation, it is sufficient to establish that that measure is intended to produce binding legal effects vis-à-vis, in particular, its addressees for it to be regarded as a measure that can form the subject matter of an action for annulment (see, to that effect, judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 40). By contrast, at that stage, it is not necessary to ascertain whether those legal effects are capable of affecting the interests of the applicant by bringing about a distinct change in his or her legal position, within the meaning of the case-law cited in paragraph 39 of the present judgment, since that must necessarily be ascertained, as the latter case-law states, in essence, at the stage of examining the condition laid down in the fourth paragraph of Article 263 TFEU according to which a person must be directly and individually concerned by the measure he or she is challenging.

47 In addition, the General Court's reasoning, as summarised in paragraphs 41 to 45 of the present judgment, does not take sufficient account of the substance of the letter at issue, by which the Commission found the appellant's participation in the TERRE platform to be unlawful and required that participation to be brought to an end, in particular the fact that, in that letter, the Commission found that the conditions required by Article 1(6) and (7) of Regulation 2017/2195 for the Swiss Confederation to be able to participate in European balancing platforms were not met and asked the EU TSOs 'to re-establish a situation which is compliant with the conditions for participation in EU platforms in [that regulation] and exclude [the appellant] from the TERRE platform as of 1 March 2021 at the latest'.

48 In that regard, it should also be noted that the fact that the letter at issue does not take the form of a formal decision of the Commission, but that of a letter signed by a director of a Directorate-General of that institution, namely DG Energy, is not decisive for its classification as a 'challengeable act' for the purposes of Article 263 TFEU (see, to that effect, judgment of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraphs 44 and 59 and the case-law cited). It is, in principle, irrelevant for the classification of the act in question whether or not it satisfies certain formal requirements, namely, in particular, that it be duly identified by its author and that it mention the provisions providing the legal basis for it. It is also of no importance that the applicant was not notified of the act at issue by the Commission, since such an error is not capable of altering the substance of that act (see, to that effect, judgment of 18 November 2010, *NDSHT* v *Commission*, C-322/09 P, EU:C:2010:701, paragraph 47 and the case-law cited).

49 If the position were otherwise, the Commission could avoid review by the EU judicature by failing to adhere to the formal requirements that govern the adoption of the act at issue, requirements which must be observed in the light of its actual substance and which include those relating to the competence of the service that acted and the correct designation of that act as a 'decision'. Since the European Union is a community based on the rule of law in which its institutions are subject to judicial review of the compatibility of their acts with the Treaty, the procedural rules governing actions brought before the EU judicature must be interpreted in such a way as to

ensure, wherever possible, that those rules are implemented in such a way as to contribute to the attainment of the objective of ensuring effective judicial protection of an individual's rights under EU law (see, to that effect, judgment of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 45 and the case-law cited).

50 It is apparent from the Commission's refusal to authorise the Swiss Confederation and, consequently, the TSOs operating in that country to participate in European balancing platforms, pursuant to Article 1(7) of Regulation 2017/2195, read in conjunction with the request to the EU TSOs to bring the appellant's participation in the TERRE platform to an end, that the letter at issue is intended to produce binding legal effects.

51 In addition, by basing its reasoning, in paragraph 29 of the order under appeal, on the appellant not having an individual right, under Article 1(7) of Regulation 2017/2195, that might circumscribe the Commission's decision-making power and, consequently, on the Commission having discretion with regard to the adoption of decisions under that provision, the General Court added a criterion relating to the existence of an individual right which is not apparent from the case-law of the Court relating to whether an act is open to challenge, referred to in paragraphs 37 and 38 of the present judgment.

52 Accordingly, the General Court made a twofold error of law, in so far as, first, it held, without taking into consideration the actual substance of the letter at issue, that that letter is not an act that is capable of forming the subject matter of an action for annulment under Article 263 TFEU and, second, it added a criterion relating to the existence of an individual right.

53 Furthermore, in the light of the developments in paragraphs 47 and 50 of the present judgment, the Commission's argument that the letter at issue merely sets out the existing legal position under Regulation 2017/2195 and does not produce any binding legal effect on its addressees must be rejected.

54 In the light of all the foregoing considerations, the first ground of appeal must be upheld.

55 Consequently, without there being any need to examine the second and third grounds of appeal, the order under appeal must be set aside.

Referral of the case back to the General Court

56 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

57 In the present case, since the General Court declared the action inadmissible on the ground that the letter at issue was not capable of producing binding legal effects, the Court of Justice is not in a position, at this stage of the proceedings, to give final judgment in the matter.

58 In addition, the Commission contended, in support of its plea of inadmissibility, not only that the letter at issue is not a challengeable act, but also that the appellant did not have standing to bring proceedings, since that letter is not of direct concern to it.

59 In that respect, it should be recalled that, under the fourth paragraph of Article 263 TFEU, a natural or legal person may institute proceedings against a decision addressed to another only if the decision is of direct and individual concern to that natural or legal person (judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 65).

60 Concerning, first, the question whether the appellant is directly concerned by the letter at issue, which is addressed to the EU TSOs, it follows from settled case-law that in order to satisfy that requirement two cumulative criteria must be met, namely, in the first place, the contested measure must directly affect the legal position of the individual and, in the second place, it must leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (see, to that effect, judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 66 and the case-law cited).

61 Second, as for whether the appellant is individually concerned by the letter at issue, it should be recalled that, according to consistent case-law of the Court, persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually just as in the case of the person addressed by such a decision (see, to that effect, judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 71 and the case-law cited).

62 In addition, the General Court's statement, in paragraph 30 of the order under appeal, that 'the fact that the [appellant] has a direct and individual interest in the annulment of the [letter at issue] … is not such as to confer on it a right to challenge that letter, since that letter cannot be regarded as an act intended to produce binding legal effects vis-à-vis [the appellant] …', must be regarded, failing any reasoning intended to substantiate the existence of such a direct and individual interest, as a finding included for the sake of completeness, since it was given in the event that a direct and individual interest is established. That finding is, in any event, irrelevant, since the General Court concluded that the letter at issue does not constitute an act intended to produce binding legal effects.

63 In those circumstances, the case must be referred back to the General Court for it to rule on whether the appellant is directly and individually concerned by the letter at issue and, as the case may be, on its application for annulment of that letter.

Costs

64 Since the case is being referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Sets aside the order of the General Court of the European Union of 21 December 2022, *Swissgrid* v *Commission* (T-127/21, EU:T:2022:868);**

2. Refers the case back to the General Court of the European Union;

3. Reserves the costs.

Jarukaitis Gratsias Regan

Delivered in open court in Luxembourg on 13 February 2025.

A. Calot Escobar
Registrar

K. Lenaerts
President