Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber, Extended Composition)

25 September 2024*

(Energy – Internal market for electricity – Common methodology for regional coordination of operational security – Rejection of the proposal of the system operators – Capacity calculation region – Core region – Compatibility with Regulation (EU) 2019/942, Regulation (EU) 2019/943 and Regulation (EU) 2017/1485)

In Case T-483/21,

Polskie sieci elektroenergetyczne S.A., established in Konstancin-Jeziorna (Poland), represented by S. Goldberg, Solicitor, and by A. Galos and E. White, lawyers,

applicant,

supported by

Republic of Poland, represented by B. Majczyna and M. Rzotkiewicz acting as Agents,

intervener,

v

European Union Agency for the Cooperation of Energy Regulators (ACER), represented by P. Martinet, Z. Vujasinovic and E. Tremmel, acting as Agents, and by P. Goffinet, M. Shehu and L. Bersou, lawyers,

defendant,

THE GENERAL COURT (Third Chamber, Extended Composition),

composed of F. Schalin, President, P. Škvařilová-Pelzl, I. Nõmm, G. Steinfatt and D. Kukovec (Rapporteur), Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

further to the hearing on 14 June 2023,

gives the following

* Language of the case: English.

Judgment

1 By its action under Article 263 TFEU, the applicant, Polskie sieci elektroenergetyczne S.A., seeks the annulment of the decision of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) of 28 May 2021 ('the contested decision'), confirming ACER Decision No 33/2020 of 4 December 2020 on the proposal of the electricity transmission system operators ('TSOs') of the 'Core' capacity calculation region, comprising Belgium, the Czech Republic, Germany, France, Croatia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Romania, Slovenia and Slovakia ('the Core region'), for the common methodology for regional operational security coordination ('the ROSC methodology'), and dismissing the applicant's appeal in Case A-007-2021 (consolidated).

Background to the dispute

2 The applicant is the TSO responsible for the operation, maintenance and development of the Polish power grid. As a wholly State-owned company, the applicant's only shareholder is the Polish State Treasury represented by the Government Plenipotentiary for Strategic Energy Infrastructure.

3 On 17 November 2016, ACER adopted Decision No 06/2016 regarding the determination of capacity calculation regions. Article 1 of and Annex I to that decision list the territories of the Member States included in the Core region.

4 Pursuant to Article 5(1), Article 6(3)(b) and Article 76 of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ 2017 L 220, p. 1), the TSOs of each capacity calculation region are to propose an ROSC methodology for approval to the national regulatory authorities ('NRAs') no later than three months after the approval of the methodology for coordinating operational security analysis ('the CSAM methodology') referred to in Article 75(1) of that regulation.

5 Since the CSAM methodology was approved on 19 June 2019 by ACER Decision No 07/2019, the TSOs were required to submit a proposal for the ROSC methodology by 19 September 2019 at the latest. Since the TSOs did not submit their proposal within that time limit, they informed the European Commission of their delay and the Commission agreed to extend the time limit until 21 December 2019.

6 On 19 December 2019, the TSOs for the Core region submitted to the NRAs a 'Core TSOs' common methodology for regional operational security coordination in accordance with Article 76 of [Regulation 2017/1485]' ('the TSOs' proposal'). The last NRA received the TSOs' proposal on 31 January 2020.

7 The TSOs' proposal was accompanied by an explanatory note.

8 In accordance with Article 6(7) of Regulation 2017/1485, the NRAs were to reach an agreement and take a decision on the TSOs' proposal within six months following the receipt of the proposal by the last NRA. When the NRAs were not able reach an agreement within the six-month period or upon their joint request, ACER, pursuant to Article 6(8) of that regulation, was to adopt a decision concerning the TSOs' proposal within six months, in accordance with

Article 6(10) of 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 (OJ 2019 L 158, p. 22).

9 On 5 June 2020, the Chair of the Core Energy Regulators' Forum, on behalf of the NRAs of that region, informed ACER that they had agreed to request ACER to adopt a decision on the TSOs' proposal pursuant to Article 6(8) of Regulation 2017/1485. That request, sent by email, was accompanied by a non-paper from the NRAs of the Core region on the TSOs' proposal, setting out their views.

10 Following that request, ACER declared itself competent to adopt an individual decision on the ROSC methodology for the Core region under the second subparagraph of Article 6(10)(b) of Regulation 2019/942.

11 Following a long period of cooperation, consultations and discussions between ACER, all the NRAs of the Core region and all TSOs of that region on the TSOs' proposal and on the amendments made to that proposal during several meetings and rounds of voting, the Board of Regulators of ACER, which is composed of representatives of the NRAs, adopted Decision No 33/2020. Annex I to that decision contains the ROSC methodology for the Core region, in accordance with Article 76 of Regulation 2017/1485 ('the contested ROSC methodology').

12 On 4 February 2021, the applicant submitted an appeal to the Board of Appeal of ACER against Decision No 33/2020, in accordance with Article 28 of Regulation 2019/942. Another TSO in the Core region, namely, TransnetBW GmbH, also appealed against that decision. On 18 February 2021, the Board of Appeal consolidated the two appeals into a single case numbered A-007-2021 (consolidated).

13 By the contested decision of 28 May 2021, the Board of Appeal of ACER upheld Decision No 33/2020 and dismissed in their entirety the two appeals brought against it.

Forms of order sought

14 The applicant, supported by the Republic of Poland, claims that the Court should:

– annul the contested decision;

– order ACER to pay the costs.

15 ACER contends that the Court should:

– dismiss the action in its entirety;

– order the applicant and the Republic of Poland to pay the costs.

Law

16 The applicant puts forward six pleas in law in support of its action. The first plea alleges that the Board of Appeal erred in law in finding, in essence, that ACER was competent to extend the scope and the extent of the regional coordination. The second plea alleges inadequate reasoning for the

contested decision. The third plea alleges that the Board of Appeal erred in law in finding that the contested ROSC methodology was consistent with Article 35 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ 2019 L 158, p. 54), and Article 40 of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ 2019 L 158, p. 125), despite its scope being too broad. The fourth plea alleges that the Board of Appeal erred in law when it decided that the contested ROSC methodology did not affect the TSOs' ability to use the central dispatching model. The fifth plea alleges that the Board of Appeal erred in law in finding that the contested ROSC methodology did not fail to set fair rules for cross-border exchanges in electricity and to ensure appropriate incentives for congestion management and effective investment in remedial actions related to hardware. The sixth plea alleges that the Board of Appeal erred in law in concluding that the contested ROSC methodology did not impede compliance with operational security limits, in particular voltage limits and, therefore, that that methodology was consistent with the relevant legal provisions.

17 The Court considers it appropriate to begin by examining the first and third pleas together, before going on to examine the applicant's fourth, fifth, sixth and second pleas, in that order.

Preliminary observations on the regional operational security assessment process

18 According to Article 3 of the contested ROSC methodology, the regional operational security coordination governed by that methodology includes, on the one hand, regional operational security analysis and, on the other, the regional operational security assessment process ('the CROSA process'), for which the regional coordination centres ('the regional centres') are to be responsible, in accordance with Article 78(2)(a) of Regulation 2017/1485, which results in the coordinated preparation of remedial actions, in accordance with Article 76(1)(b) of that regulation.

19 Before examining the substance of the pleas and arguments raised by the applicant, it is necessary to set out the functioning of the CROSA process in order to obtain a better understanding of the context of the present proceedings and, accordingly, of the technical pleas raised by the applicant.

20 The CROSA process is a process that takes place once one day ahead of the delivery of electricity and then at least three times on the day of delivery, in accordance with Article 3(2) of the contested ROSC methodology.

21 That process begins with the local operational security assessment carried out by each TSO in its network, in accordance with Article 13 and Article 14(1) of the contested ROSC methodology.

22 That assessment leads to the creation, by each TSO, of an individual grid model, which is defined in point 1 of Article 2 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015 L 197, p. 24), as being, inter alia, a 'data set describing power system characteristics (generation, load and grid topology)'.

23 When, in the individual grid model, a flow on a line exceeds the maximum flow, that corresponds to physical congestion, which constitutes a security violation. In such a situation, a remedial action must be prepared and implemented in order to comply with operational security limits.

24 Remedial action is defined, in point 13 of Article 2 of Regulation 2015/1222, as 'any measure applied by a TSO or several TSOs, manually or automatically, in order to maintain operational security'. Such action includes redispatching, which is defined in point 26 of Article 2 of Regulation 2019/943 as 'a measure, including curtailment, that is activated by one or more [TSOs] or distribution system operators by altering the generation, load pattern, or both, in order to change physical flows in the electricity system and relieve a physical congestion or otherwise ensure system security', or countertrading, defined in point 27 of Article 2 of that regulation as 'a cross-zonal exchange initiated by system operators between two bidding zones to relieve physical congestion'.

25 When preparing the individual grid model and identifying congestion, the TSO can already plan the activation of remedial actions, close to real time, to address those operational security violations, in accordance with Article 14(2) of the contested ROSC methodology. Such actions may or may not be of cross-border relevance.

26 It is apparent from Article 9(2) of the contested ROSC methodology that cross-border relevant remedial actions are all those that are at least sometimes able to relieve congestion on the elements referred to in Article 5(1)(a) and (b) thereof, namely all the critical network elements taken into account for the calculation of cross-zonal capacity, as reflected in the capacity calculation methodologies, and all other network elements with a voltage level higher than or equal to 220 kV. In accordance with Article 7(3)(d)(i) and (ii) of the contested ROSC methodology, each TSO may however unilaterally exclude certain network elements from the CROSA process. In addition, in accordance with Article 5(1)(b) of the contested ROSC methodology, TSOs may also exclude any network element from the CROSA process unanimously, with the exception of critical network elements.

27 In its individual grid model, the TSO must also indicate the availability of all cross-border relevant remedial actions, in accordance with Article 13(1) of that methodology.

28 Subsequently, in accordance with Article 18 of the contested ROSC methodology, individual grid models are to be provided to the regional centres and merged by them with a view to the creation of a common grid model for all hours of the day. The common grid model is defined, in point 2 of Article 2 of Regulation 2015/1222, as, inter alia, 'a Union-wide data set agreed between various TSOs describing the main [characteristics] of the power system (generation, loads and grid topology)'.

29 Even if each TSO provides an individual grid model with no congestion on account of the remedial actions planned, flows on the network elements may change when the different models are merged into the common grid model and new congestion may occur.

30 Consequently, the objective of the CROSA process is to coordinate, validate and implement cross-border relevant remedial actions, in accordance with Article 3(2)(b) of the contested ROSC methodology. More specifically, the algorithm within the CROSA process, known as 'remedial action optimisation', identifies, for each hour in the common grid model, an optimal combination of all cross-border relevant remedial actions of the TSOs, to resolve all identified congestion on cross-border relevant network elements in the common grid model, without creating new congestion, in accordance with Articles 20, 23, 24 and Article 27(1) of the contested ROSC methodology.

31 Those remedial actions will be implemented in the course of the following day, as close as possible to real time, in accordance with Article 31(1) of the contested ROSC methodology.

32 The same logic applies to the 'intraday' CROSA process, which takes place on the day of delivery of electricity. Regional centres are to issue, at least three times during the day, coordinated cross-border relevant remedial actions to TSOs.

33 However, if a TSO identifies a new violation of operational security between two iterations of the CROSA process, or after the latest iteration of the CROSA process, when carrying out the local operational security assessment, it may resolve that violation following the fast activation process, outside the CROSA process, in accordance with Article 33(2)(b) of the contested ROSC methodology.

The first and third pleas, relating to ACER's competence and to the scope of the contested ROSC methodology

34 In the first plea, the applicant, supported by the Republic of Poland, claims, first of all, that ACER was not competent to depart from the TSOs' proposal concerning the scope of the contested ROSC methodology and to expand that scope. Next, the applicant claims that ACER's powers are not 'precisely delineated' in accordance with the case-law of the Court, on the ground that the Board of Appeal emphasised, in paragraph 484 of the contested decision, that ACER's powers are limited only by the principles of proportionality and subsidiarity within the meaning of Articles 4 and 5 TEU. Last, the applicant cites several examples from the contested decision that show that the Board of Appeal accepted, and even welcomed, the fact that ACER was departing from its competences, even though it had no legal basis for doing so.

35 In the third plea, the applicant, supported by the Republic of Poland, submits that the Board of Appeal erred in law in finding that the contested ROSC methodology and, in particular, its definition of network elements and remedial actions complied with Article 35(5) of Regulation 2019/943 and Article 40(1)(d) of Directive 2019/944. According to the applicant, that methodology qualifies practically all elements of its network and all remedial actions as cross-border relevant, which deprives TSOs of their ability to manage electricity flows on their systems and to implement the obligations for which they are responsible, thereby limiting their ability to ensure secure operation. By proceeding in that way, the contested ROSC methodology ignores the distinction between operational security violations that 'need' to be managed in a coordinated way and those which do not 'need' such management under Article 21(1)(a) of Regulation 2017/1485 and infringes Article 76(2) of that regulation, from which that distinction arises.

36 In the reply, the applicant also argues that the contested ROSC methodology is not compatible with Article 16 of the CSAM methodology, which provides that, when preparing the ROSC methodology, TSOs must determine 'rules on a process for establishing a common list of [cross-border relevant remedial actions] and the [TSOs affected by those remedial actions] pursuant to Article 15' of the CSAM methodology. In the contested ROSC methodology, ACER introduced a presumption of cross-border relevance that could only be rebutted by the TSOs unanimously.

37 ACER disputes the applicant's arguments and those of the Republic of Poland and contends that those pleas should be rejected.

38 In that context, ACER disputes the admissibility of the first and third pleas. As regards the first plea, ACER submits, first, that it is insufficiently clear and precise for the purposes of Article 76(d) of the Rules of Procedure of the General Court, which prevents ACER from responding fully to it and, second, that it constitutes a new plea in law, not raised before the Board of Appeal. As regards the third plea, ACER contends that it is based, first, on arguments already put forward in identical terms before the Board of Appeal and, second, on a new argument based on Article 21(1) of Regulation 2017/1485.

Admissibility of the first and third pleas

39 As regards the insufficiently clear and precise nature of the first plea for the purposes of Article 76(d) of the Rules of Procedure, it is apparent in particular from its defence that ACER understood all the complaints made by the applicant in that context and that it responded to them fully, thus enabling the Court to exercise its power of review, so that that claim of inadmissibility must be rejected.

40 As regards the novelty of that first plea, it is true that ACER's competence to adopt a decision departing from the TSOs' proposal concerning the scope of the contested ROSC methodology does not appear to have been expressly challenged by the applicant before the Board of Appeal, so that that plea should be declared inadmissible. As is apparent from Article 29 of Regulation 2019/942, actions for the annulment of a decision issued by ACER under that regulation may be brought before the Court of Justice of the European Union only after the exhaustion of the procedure before the Board of Appeal referred to in Article 28 of that regulation, which means, in principle, that pleas not submitted before that board may not be put forward for the first time before the General Court in an action for annulment. Since that action for annulment relates exclusively to the decision of that Board of Appeal, it must be examined in the light of the factual and legal context of the disputes as they were brought before that Board of Appeal (judgment of 16 March 2022, *MEKH and FGSZ* v *ACER*, T-684/19 and T-704/19, EU:T:2022:138, paragraph 48). In any event, for the reasons set out below, the first plea is unfounded and must therefore be rejected.

41 As regards the arguments put forward in support of the third plea, which have already been raised in identical terms by the applicant before the Board of Appeal, it must be held that the applicant is entitled to challenge, before the Court, the reasoning followed by the Board of Appeal in the contested decision and, more specifically, to attempt to demonstrate that that reasoning is vitiated by errors of law, by relying, if it considers it necessary, on complaints already raised before that board but rejected by it. The procedure before the Court would otherwise be deprived of part of its purpose. In the present case, in paragraph 566 of the contested decision, the Board of Appeal concluded its analysis of the scope of the contested ROSC methodology, taking the view that that scope complied with Article 35(5) of Regulation 2019/943, Article 40(1)(d) of Directive 2019/944 and Article 21(1) of Regulation 2017/1485. It follows that the applicant's arguments seeking to call into question that conclusion, which the Board of Appeal reached in the contested decision, are admissible.

42 As regards the allegedly novel nature of the argument based on Article 21(1) of Regulation 2017/1485, relied on by the applicant in support of the third plea, it must be noted that, in paragraphs 552 to 566 of the contested decision, when it examined the concept of 'cross-border relevant remedial action', the Board of Appeal based its reasoning, inter alia, on that provision. It follows that, contrary to ACER's claims, that argument cannot be classified as new and that, accordingly, it is admissible.

Whether the first plea is well founded

43 As regards the merits of the first plea, it should be noted that Article 6(10) of Regulation 2019/942 and Article 6(8) of Regulation 2017/1485 empower ACER, within a period of six months, to rule on or adopt individual decisions on regulatory issues or problems affecting cross-border trade or cross-border network security falling within the competence of NRAs, such as the adoption of the contested ROSC methodology, if the competent NRAs have not reached agreement within the time limit set for them to do so or if the competent NRAs have made a joint request to ACER to that effect.

44 In the present case, it is common ground that, by email of 5 June 2020, the NRAs of the Core region, through the Chair of the Core Energy Regulators' Regional Forum, jointly requested ACER, pursuant to Article 6(8) of Regulation 2017/1485, to rule on the TSOs' proposal.

45 Thus, ACER's competence to rule on or to adopt a final decision on the contested ROSC methodology in the present case was based on the fact, referred to in point (b) of the second subparagraph of Article 6(10) of Regulation 2019/942 and Article 6(8) of Regulation 2017/1485, that all the NRAs had jointly requested it to rule on that methodology.

46 In that regard, it should be recalled that, taking into account, inter alia, the wording of Article 6 of Regulation 2019/942, but also the context of that legislation and the objectives pursued by it, the General Court, in paragraphs 39 to 61 of its judgment of 15 February 2023, *Austrian Power Grid and Others* v *ACER* (T-606/20, under appeal, EU:T:2023:64), held that ACER was not bound by the position taken by the competent NRAs and that it could, having regard to the decision-making powers granted to it and with the aim of performing its regulatory functions effectively, amend the TSOs' proposals prior to their approval. In the light of its wording, Article 6(8) of Regulation 2017/1485, which forms part of the same context as that of Regulation 2019/942 and pursues objectives analogous to those of that regulation, must be interpreted in the same way, since it empowers ACER to decide itself on the proposals submitted to it by the NRAs, as is the case here concerning the contested ROSC methodology.

47 It follows from the foregoing that ACER's competences in that regard are precisely circumscribed by Article 6(10) of Regulation 2019/942 and Article 6(8) of Regulation 2017/1485, which makes it possible to reject the applicant's claim to the contrary.

48 It also follows from the foregoing that, contrary to the applicant's claims, ACER was competent, on the basis of Article 6(10) of Regulation 2019/942 and Article 6(8) of Regulation 2017/1485, to depart from the TSOs' proposal concerning the scope of the contested ROSC methodology and had a legal basis for doing so.

Whether the third plea is well founded

49 As regards the merits of the third plea, it should be noted that it is apparent from Article 35(5) of Regulation 2019/943 that TSOs are responsible for managing electricity flows and ensuring a secure, reliable and efficient electricity system, in accordance with Article 40(1)(d) of Directive 2019/944, whereas regional centres are to complement the role of TSOs by carrying out tasks of regional relevance assigned to them, in accordance with Article 37 of Regulation 2019/943.

50 Article 37(1)(b) of Regulation 2019/943 provides that the regional centres are to be responsible for carrying out the CROSA process in accordance with the methodologies developed pursuant to Regulation 2017/1485. In connection with that competence, they are to issue coordinated actions to the TSOs, which the TSOs are to implement, except where such implementation would lead to a violation of the operational security limits defined by each TSO, in accordance with Article 42(2) of Regulation 2019/943.

51 According to the applicant, Article 21(1)(a) of Regulation 2017/1485 limits coordination by the regional centres only to the management of operational security violations which 'need' to be managed in a coordinated way, whereas the contested ROSC methodology also includes violations which do not 'need' such management.

52 At the outset, it must be observed that, in order to define the operational security violations which need to be managed in a coordinated way, Article 21(1) of Regulation 2017/1485 does not independently determine the operational security violations which need to be managed in a coordinated way and those which do not, but refers, in that regard, to Article 76 of Regulation 2017/1485 and to the ROSC methodology adopted on the basis of that article. The applicant itself claims, moreover, that the relevant legal criterion for defining the remedial actions which 'need' to be managed in a coordinated way is that referred to in Article 76(2) of Regulation 2017/1485.

53 It follows that, in order to examine the merits of the third plea, it is necessary, first of all, to ascertain whether the contested ROSC methodology is based on a misinterpretation of Article 76(2) of Regulation 2017/1485, before examining, next, the complaint alleging infringement of the TSOs' powers under Article 35 of Regulation 2019/943 and Article 40 of Directive 2019/944 and, last, the complaint raised by the applicant in its reply, alleging misapplication of Article 16 of the CSAM methodology.

- Misinterpretation of Article 76(2) of Regulation 2017/1485

54 Article 76(2) of Regulation 2017/1485 states that, in determining whether congestion has cross-border relevance, the TSOs are to take into account the congestion that would appear in the absence of energy exchanges between control areas.

55 It is common ground between the parties that all network elements with a voltage level higher than or equal to 220 kV could have cross-border relevance. The disagreement between the parties relates solely to the question of which specific congestions, on such elements, should be managed in a coordinated way through the CROSA process, in accordance with Article 76(2) of Regulation 2017/1485.

56 In the contested decision, the Board of Appeal confirmed, in that regard, ACER's position that, pursuant to Article 76(2) of Regulation 2017/1485, all congestion on network elements with a voltage level higher than or equal to 220 kV, irrespective of its origin, had to be managed in a coordinated way through the CROSA process, which included both congestion caused by scheduled cross-border exchanges, namely allocated flows, and congestion caused by unscheduled flows, namely loop flows and flows resulting from the activation of remedial actions to alleviate other congestion caused by allocated flows.

57 The applicant disputes that interpretation, maintaining that, according to a literal interpretation of Article 76(2) of Regulation 2017/1485, only congestion caused by scheduled cross-border exchanges, namely allocated flows, should be managed in a coordinated way. Thus, where there

is no scheduled cross-border exchange, congestion on the network controlled by a TSO is better managed by the TSO than through the CROSA process. Consequently, according to the applicant, not all congestion on the same network element with a voltage level higher than 220 kV should always be managed in a coordinated way.

58 In that regard, it is necessary, first, to establish the relevant legal criterion for establishing the ROSC methodology and, second, to ascertain whether the Board of Appeal correctly applied that criterion in that methodology.

59 It follows from the wording of Article 76(2) of Regulation 2017/1485, that, 'in determining whether congestion [has] cross-border relevance, the TSOs shall take into account the congestion that would appear in the absence of energy exchanges between control areas'.

60 From a literal point of view, that provision does not provide any information that would make it possible to identify the remedial actions that would need to be managed in a coordinated way or to define precisely the scope of the contested ROSC methodology. It follows that the applicant's literal interpretation cannot be accepted, since it is not possible to interpret that provision independently of its regulatory context.

61 Contextually, Article 76(2) of Regulation 2017/1485 must be interpreted in the light of that article taken as a whole, and the provisions to which it refers directly or indirectly, namely, in particular, Article 76(1)(b)(iii) of Regulation 2017/1485 and Article 35 of Regulation 2015/1222, to which Article 76(1)(b) of Regulation 2017/1485 refers.

62 As regards, first, Article 76(1)(b) of Regulation 2017/1485, it should be noted that it is apparent from the wording of that provision that the ROSC methodology must provide for the preparation of remedial actions managed in a coordinated way, but that it is in no way apparent from that provision that a distinction should be drawn, for the purpose of determining the scope of that methodology, according to the origin of the security violations, such as congestion, which need coordinated remedial actions.

63 In addition, it must be stated that the wording of Article 76(1)(b) of Regulation 2017/1485 provides, in essence, that the coordination of the preparation of remedial actions is justified 'considering their cross-border relevance' determined in accordance with Article 35 of Regulation 2015/1222, on the one hand, and 'taking into account the requirements of Articles 20 to 23 [of Regulation 2017/1485]', on the other hand, which confirms the reading of Article 76(1)(b) of Regulation 2017/1485 in paragraph 62 above.

64 In that regard, it should also be noted that Article 35(4) of Regulation 2015/1222 provides that redispatching and countertrading of cross-border relevance must be coordinated. Since Article 76(1)(b) of Regulation 2017/1485 provides for the coordination of the preparation not only of redispatching and of countertrading, but also of other non-costly remedial actions, that criterion of cross-border relevance also applies to those remedial actions, on account of the explicit reference made in that provision.

65 Moreover, Article 35(2) of Regulation 2015/1222 provides that the TSOs in each region may in practice relieve physical congestion in their control area, irrespective of whether or not the reasons for that congestion fall mainly outside their control area or not.

66 The need to coordinate remedial actions as long as they have cross-border relevance is also apparent from the third sentence of Article 16(1) of Regulation 2019/943, which provides that 'when taking operational measures to ensure that its transmission system remains in the normal state, the [TSO] shall take into account the effect of those measures on neighbouring control areas and coordinate such measures with other affected [TSOs] as provided for in Regulation … 2015/1222'.

67 In addition, it must be observed that that interpretation is also supported by the content of Articles 20 to 23 of Regulation 2017/1485, which the ROSC methodology must take into account in accordance with Article 76(1)(b) of Regulation 2017/1485.

68 In that regard, it is apparent in particular from Article 23(2) of Regulation 2017/1485 that, when preparing and activating a remedial action, including redispatching or countertrading pursuant to Articles 25 and 35 of Regulation 2015/1222, the relevant TSO is to assess, in coordination with the TSOs concerned, the impact of such remedial action within and outside of its control area.

69 It is also apparent from that provision that that assessment of the impact of a remedial action is carried out in accordance with, first, Article 75(1) of Regulation 2017/1485, which provides for the adoption of the CSAM methodology, next, Article 76(1)(b) of that regulation, which provides for the adoption of the ROSC methodology and, last, Article 78(1), (2) and (4) of Regulation 2017/1485, which governs cooperation between TSOs and regional centres.

70 Accordingly, a combined reading of Article 35 of Regulation 2015/1222, on the one hand, and Articles 20 to 23 of Regulation 2017/1485, on the other hand, reveals that, contrary to the applicant's claims, the ROSC methodology does not have to provide for the coordination of remedial actions on the basis of the origin of the congestion that those actions are intended to relieve, but on the basis of the cross-border relevance that those measures may have.

71 As regards, second, Article 76(1)(b)(iii) of Regulation 2017/1485, that provision provides that the ROSC methodology is to determine the most effective and economically efficient remedial actions in the event of operational security violations, as referred to in Article 22 of Regulation 2017/1485, which describes the different categories of remedial actions.

72 It follows that one of the objectives of the ROSC methodology is to find optimal remedial actions for the entire network of each capacity calculation region. Consequently, when determining the scope of that methodology, ACER had to provide for the identification of remedial actions which could be better managed in a coordinated way through the CROSA process, given their cross-border relevance.

73 In the light of those provisions, it must be held that the legal criterion set out in Article 76(2) of Regulation 2017/1485 provides for the identification of all the network elements on which, first of all, the coordination of remedial actions is necessary on account of their cross-border relevance, next, that the coordination must make it possible specifically to alleviate physical congestion irrespective of the origin of that congestion and, last, that regional coordination must make it possible to find the best possible solution.

74 In that context, Article 76(2) of Regulation 2017/1485 must be interpreted as identifying the network elements on which, in principle, 'congestion [having] cross-border relevance' occurs, which must be managed by remedial actions, which themselves must be regarded as having cross-border relevance.

75 Accordingly, it is necessary to examine whether, in the present case, the Board of Appeal correctly applied that criterion by taking the view that all the remedial actions activated which were at least sometimes able to address violations of current limits on network elements with a voltage level higher than or equal to 220 kV had to be managed in a coordinated way through the ROSC methodology.

76 In that regard, it should be recalled that the determination of cross-border relevant network elements refers to the definition established by the CSAM methodology, adopted on the basis of Article 75 of Regulation 2017/1485. The second sentence of Article 76(1) of Regulation 2017/1485 provides that the ROSC methodology must follow the CSAM methodology, which provides for certain aspects of the adoption of the ROSC methodology.

77 Article 15(1) of the CSAM methodology provides that all critical network elements and all network elements with a voltage above a level defined by the TSOs are to be classified as cross-border relevant network elements, with the exception of network elements for which the TSOs unanimously agree that they are not cross-border relevant.

78 It was pursuant to that provision that the TSOs found, on page 8 of the Explanatory Note to the ROSC methodology (see paragraph 7 above), that the network elements most relevant for the CROSA process were those with a voltage level of 220 kV and 380 kV, 'as these elements [were] used to facilitate the energy exchanges between bidding zones in the European energy system'. By contrast, the TSOs did not consider that all remedial actions activated on those elements should be managed in a coordinated way through the CROSA process.

79 In identifying the remedial actions that needed to be managed in a coordinated way, ACER took the view, as is apparent from recital 12 of the contested ROSC methodology, that, because the interconnected network of the Core region was highly meshed, it was generally not possible to identify a network element that would have been affected only by remedial actions that would not have any impact on other cross-border relevant network elements, such that all remedial actions that were at least sometimes able to relieve congestion on network elements with a voltage level higher than or equal to 220 kV were to be regarded as having cross-border relevance and, consequently, the remedial actions activated on those elements had to be coordinated through the CROSA process.

80 At the hearing, the applicant explained that it objected more specifically to the coordination, through the CROSA process, of remedial actions the physical impact of which on those network elements had an 'influence factor', that is to say, 'a flow deviation on a [cross-border relevant network element] resulting from the application of a remedial action, normalised by the permanent admissible loading (PAL) on the associated [cross-border relevant network element]', of less than 5%. However, ACER explained, without being contradicted on that point, that, because of the highly meshed interconnected system of the Core region, it was not possible to establish, *ex ante*, whether or not a remedial action would exceed that threshold, since its actual impact, at a given point in time, depended on the other remedial actions activated on the network and on the flows on the network elements.

81 Thus, on the basis of that technical assessment, first of all, the Board of Appeal was correct in finding, in the light of the applicable legal criterion, that all remedial actions that were at least sometimes able to relieve congestion on network elements with a voltage level higher than or equal to 220 kV had to be coordinated through the CROSA process. Next, it was correct in confirming ACER's position that the ROSC methodology should provide for the coordination,

through the CROSA process, of the remedial actions necessary to relieve physical congestion, irrespective of its origin, on all network elements with a voltage level higher than or equal to 220 kV. Last, the Board of Appeal made no manifest error of assessment in confirming that the optimal solution for the entire interconnected system of the Core region could be found only among all the remedial actions activated on the network elements with a voltage level higher than or equal to 220 kV.

82 Accordingly, the Board of Appeal did not err in law or make a manifest error of assessment in finding that all congestion on network elements with a voltage level higher than or equal to 220 kV had to be managed in a coordinated way through the CROSA process, in accordance with the ROSC methodology.

83 Consequently, the applicant's complaint alleging infringement of Article 76(2) of Regulation 2017/1485 must be rejected.

- Infringement of the TSOs' powers under Article 35 of Regulation 2019/943 and Article 40 of Directive 2019/944

84 As regards the applicant's claim that the definition of network elements and remedial actions set out in the contested ROSC methodology does not comply with Article 35(5) of Regulation 2019/943 and Article 40(1)(d) of Directive 2019/944, it must be borne in mind that it is apparent from the analysis carried out in paragraphs 52 to 82 above that ACER correctly applied the relevant legal criterion and did not include within the scope of the contested ROSC methodology remedial actions which do not 'need' to be managed in a coordinated way through the CROSA process.

85 It follows that, contrary to what the applicant claims and as the Board of Appeal correctly found in the contested decision, the definition of the scope of the contested ROSC methodology complies with the TSOs' powers as regards the secure operation of their networks, as laid down in Article 35(5) of Regulation 2019/943 and Article 40(1)(d) of Directive 2019/944.

86 In addition, first, it should be noted that, contrary to the applicant's claims, all the network elements and all the remedial actions available to it are not included, by default, in the contested ROSC methodology. On the one hand, the network elements with a voltage lower than 220 kV were not included, in accordance with Article 5(1)(b) of the contested ROSC methodology. Moreover, it remains possible for TSOs to exclude, either unilaterally or unanimously, certain network elements from the scope of that methodology, as listed in Article 7(3)(d)(i), (ii) and (iii) thereof. On the other hand, the contested ROSC methodology does not include certain categories of remedial actions referred to in Article 22 of Regulation 2017/1485, in accordance with Article 8(2) of that methodology. Moreover, it is possible for TSOs unanimously to exclude certain remedial actions that have no cross-border relevance, in accordance with Article 9(2) of the contested ROSC methodology.

87 Furthermore, it must be observed that the applicant has not adduced any evidence to support the conclusion that it no longer had any remedial action available to it to ensure the operational security of its network.

88 Second, it should be noted that the TSOs remain solely responsible for activating cross-border relevant remedial actions to ensure the operational security of their networks.

89 In the event that a recommended remedial action could lead to a violation of the operational security of a TSO's network, that TSO may reject that action in the coordination phase during each iteration of the CROSA process, in accordance with Article 27 of the contested ROSC methodology and Article 42(2) of Regulation 2019/943.

90 Similarly, where an operational security violation that has not been anticipated through the CROSA process occurs, the TSO concerned may use the fast activation process to activate, without the intervention of the regional centre and in close coordination with affected TSOs, cross-border relevant remedial actions to ensure the operational security of its network, in accordance with Article 33 of the contested ROSC methodology. Consequently, there is no reason to assume that regional coordination poses a risk to operational security.

91 It follows from the foregoing that the applicant's complaint that it is impossible for it to ensure the operational security of its network and, therefore, to exercise the powers conferred on it by Article 35 of Regulation 2019/943 and Article 40 of Directive 2019/944 must be rejected.

92 For the same reasons, it is also necessary to reject the Republic of Poland's complaint that it is impossible for the applicant to ensure the energy security of that Member State, on the ground that the contested ROSC methodology limits the catalogue of remedial actions available to the TSOs and that the applicant loses important tools for exercising its powers, contrary to the principle of solidarity, as interpreted by the Court of Justice in the judgment of 15 July 2021, *Germany* v *Poland* (C-848/19 P, EU:C:2021:598).

93 Accordingly, the applicant's complaint alleging infringement of Article 35(5) of Regulation 2019/943 and Article 40(1)(d) of Directive 2019/944 must be rejected.

- Misapplication of Article 16 of the CSAM methodology

94 The applicant also argues that the contested ROSC methodology is not compatible with Article 16 of the CSAM methodology.

95 In that regard, it should be noted that, under Article 76(1) of Regulation 2017/1485, the ROSC methodology must indeed be consistent with the CSAM methodology, adopted on the basis of Article 75 of Regulation 2017/1485.

96 According to recital 3 of the CSAM methodology, that methodology includes, inter alia, provisions for the establishment of remedial actions which need to be coordinated between TSOs and for facilitating efficient regional coordination of remedial actions, in accordance with the regional methodology to be adopted by TSOs on the basis of Article 76(1)(b) of Regulation 2017/1485.

97 In addition, Article 15(3) of the CSAM methodology provides that in the ROSC methodology TSOs should adopt procedural rules for establishing the cross-border relevance of a remedial action that should be based on qualitative or quantitative approaches, which are described in Article 15(4) to (6) of the CSAM methodology.

98 In their proposal, the TSOs provided for such procedures for the assessment of the cross-border relevance of their potential remedial actions, which would be established by the TSOs unanimously for each individual remedial action. In their non-paper, the NRAs of the Core

region, furthermore, agreed on a qualitative and quantitative approach, but also acknowledged that further clarifications were necessary, as the TSOs' proposal was not fully completed or sufficiently detailed.

99 Subsequently, ACER considered, on the basis of a technical assessment, set out in recitals 12 and 13 of the contested ROSC methodology, that any remedial action that was at least sometimes able to address violations to current limits on a network element with a voltage level higher than or equal to 220 kV, namely a cross-border relevant network element, should be considered cross-border relevant itself, unless the TSOs decided otherwise. By contrast, ACER modified the qualitative and quantitative approaches to use them to identify the TSOs affected by the activation of cross-border relevant remedial actions, in particular for the purposes of the fast activation procedure.

100 It should be noted that Article 16 of the CSAM methodology envisages a procedure for developing the ROSC methodology that requires TSOs in the Core region jointly to develop a proposal for an ROSC methodology, including rules for determining the cross-border relevance of remedial actions and the TSOs affected by those remedial actions in general.

101 Thus, the Board of Appeal cannot be criticised for failing to ensure compliance with that provision, since the procedure established by the contested ROSC methodology lays down the criteria for the creation by TSOs of a list of cross-border relevant network elements and for the identification of the cross-border relevance of a potential remedial action and, moreover, it also lays down specific rules concerning the exclusion of network elements and remedial actions that have no cross-border relevance.

102 Accordingly, the applicant's complaint alleging that the scope of the contested ROSC methodology is incompatible with Article 16 of the CSAM methodology must be rejected.

103 It follows from the foregoing that the applicant has not succeeded in demonstrating that the Board of Appeal erred in law or made a manifest error of assessment by not finding, in the contested decision, an infringement of Article 35(5) of Regulation 2019/943 and Article 40(1)(d) of Directive 2019/944. Consequently, the first and third pleas must be rejected.

The fourth plea, alleging infringement of the provisions guaranteeing the possibility of using the central dispatching model to manage national congestion or to carry out balancing tasks

104 In the fourth plea, the applicant, supported by the Republic of Poland, submits that the contested ROSC methodology affects the ability of the TSOs to use the central dispatching model and, in particular, the integrated scheduling process contained in that model, given that, where a cross-border relevant remedial action is activated, it is no longer possible for them to access the generation resources concerned and alone to implement any changes in generation set points. According to the applicant, the integrated programming process conducted in connection with central dispatching is an ongoing process that begins before the CROSA process and is regularly renewed in real time, since it is often repeated more than 50 times a day, whereas there is only one day-ahead iteration and three intraday iterations in the CROSA process. By refusing to accept such an infringement, the Board of Appeal, according to the applicant, erred in law and misinterpreted Article 4(2)(e) of Regulation 2017/1485 and Article 12(1) of Regulation 2019/943.

105 The applicant submits, in essence, that, because of its broad scope, the contested ROSC methodology impedes the use of the central dispatching model by not allowing it itself to manage, in Poland, congestion, on the one hand, and balancing, on the other hand, so that it cannot ensure the operational security of its network. In that regard, the applicant explains that, in the central dispatching model, it carries out balancing tasks together with congestion management in an integrated process, whereas in the self-dispatching model the two processes are carried out separately.

106 ACER disputes the applicant's arguments and those of the Republic of Poland and contends that that plea should be rejected.

107 In that context, ACER disputes the admissibility of the fourth plea, on the ground that it is based on identical arguments already put forward before the Board of Appeal.

108 As a preliminary point, as regards the admissibility of the fourth plea, it should be borne in mind that the applicant is entitled to challenge, before the Court, the reasoning followed by the Board of Appeal in the contested decision, by relying, if it considers it necessary, on complaints already raised before that Board (see paragraph 41 above). In the present case, in paragraph 600 of the contested decision, the Board of Appeal considered that the contested ROSC methodology did not affect the ability of TSOs to use the central dispatching model mechanism. Similarly, it is apparent from paragraph 609 of the contested decision that the Board of Appeal concluded, inter alia, that the constraints stemming from the CROSA process did not undermine the TSOs' responsibilities under Article 4(2)(e) of Regulation 2017/1485, relying on reasoning developed in paragraphs 583 to 608 of that decision. It follows that the applicant's complaints seeking to call into question those considerations, on which the Board of Appeal relied in the contested decision, are admissible.

109 As regards the merits of the fourth plea, it should be noted that, under Article 4(2)(e) of Regulation 2017/1485, the competent authorities 'respect the responsibility assigned to the relevant TSO in order to ensure system security, including as required by national legislation'. Article 12(1) of Regulation 2019/943 refers, for its part, to TSOs' responsibility for dispatching of generation and demand response, providing that that dispatching of generation and that demand response must be non-discriminatory, transparent and, unless otherwise provided for in paragraphs 2 to 6 of that article, market based.

110 That responsibility of the TSOs can be implemented using the central dispatching model, defined in point 18 of Article 2 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ 2017 L 312, p. 6) as being 'a scheduling and dispatching model where the generation schedules and consumption schedules as well as dispatching of power generating facilities and demand facilities, in reference to dispatchable facilities, are determined by a TSO within the integrated scheduling process'.

111 At the outset, it should be noted that neither Article 4(2)(e) of Regulation 2017/1485 nor Article 12(1) of Regulation 2019/943 implies that the ROSC methodology, adopted on the basis of Article 76(1)(b) of Regulation 2017/1485, has no effect on the activities of TSOs, which includes the use of the central dispatching model referred to in those provisions. However, the interpretation of that provision cannot have the effect of circumventing the TSOs' express responsibility for ensuring the operational security of their systems as set out, inter alia, in Article 4(2)(e) of Regulation 2017/1485.

112 Therefore, it is necessary to examine whether the contested ROSC methodology has, as the applicant claims, the consequence of depriving the applicant of the possibility of using the central dispatching model for national congestion management and to carry out balancing tasks, thereby undermining its responsibility to ensure the security of its network.

Infringement of the provisions guaranteeing the possibility of using the central dispatching model for congestion management in the individual grid model

113 As regards, in the first place, the management of national congestion, the applicant submits, in essence, that the less frequent iterations of the CROSA process constitute an obstacle to more frequent iterations of the integrated scheduling process, within the meaning of point 19 of Article 2 of Regulation 2017/2195, since no further modification of the power generation or demand schedules is possible after the day-ahead iteration of the CROSA process, in accordance with Article 14(2) of the contested ROSC methodology.

114 In that regard, the applicant's complaint that, first, there is only one day-ahead iteration of the CROSA process and, second, cross-border relevant remedial actions can only be applied before the day-ahead CROSA process, whereas the integrated scheduling process is, according to the applicant, carried out more than 50 times a day, must be rejected at the outset.

115 In accordance with Article 31(1) of the ROSC methodology, cross-border relevant remedial actions are activated close to real-time, and not before the day-ahead timeframe for the CROSA process, which starts at 18.00 on the day preceding the day of delivery.

116 As regards, in the second place, the applicant's complaint that network conditions can change very quickly, which could be effectively resolved by the integrated scheduling process, it must be stated that the CROSA process provides sufficient guarantees to ensure that the TSOs comply with their obligation to ensure the operational security of their network.

117 Thus, first, it is provided, in Article 27(2)(a) of the contested ROSC methodology, that, if the activation of a cross-border relevant remedial action leads to an operational security violation, the affected TSO and the TSO responsible for activating the remedial action may reject that action. The same possibility is provided for in Article 27(2)(b) of that methodology where that same action is no longer available, that is to say, where it can no longer be implemented.

118 Second, Article 33 of the contested ROSC methodology provides for a fast activation process to address the operational security violations that are identified between two iterations of the CROSA process, without being able to wait for the next timeframe, as well as for operational security violations that are detected after the latest CROSA process.

119 The fast activation process is, therefore, a subsidiary process, outside the CROSA process, which provides for narrower coordination between only the TSOs affected by the remedial actions that need to be activated in order to relieve further violations of operational security that could not be resolved through the CROSA process. That process enables TSOs unilaterally to ensure the operational security of their network, in the event that the CROSA process is unable to identify a violation of that operational security.

120 In the light of the foregoing, the complaint, raised by the Republic of Poland, that the application of the CROSA process for networks with a central dispatching model gives rise to incorrect information about the remedial actions that should be applied, since that process does not have

the latest information on the state of the network, must also be rejected. Even assuming that the CROSA process would be ineffective, which has not been proved by the Republic of Poland, the latter has not demonstrated that the guarantees referred to in paragraphs 116 to 118 above would not be appropriate to enable the TSOs to ensure the operational security of their network where the CROSA process is unable to identify an operational security violation and to recommend a coordinated solution.

121 Accordingly, it must be concluded that the Board of Appeal did not err in law in finding that the contested ROSC methodology did not deprive the applicant of the possibility of managing congestion in the central dispatching model, so that the Board of Appeal did not infringe Article 4(2)(e) of Regulation 2017/1485 or Article 12(1) of Regulation 2019/943.

Infringement of the provisions guaranteeing the possibility of using the central dispatching model to carry out balancing tasks

122 The applicant also complains that, in the contested decision, the Board of Appeal confirmed the contested ROSC methodology even though that methodology prevented the applicant from carrying out balancing tasks.

123 However, as ACER correctly submits, the applicant may change the generation unit schedules for balancing purposes, even if that unit is affected by a cross-border relevant remedial action, until such time as that remedial action is activated on that unit.

124 Admittedly, it is apparent, in essence, from Article 21(1)(b) of Regulation 2017/1485 that a TSO may not 'design, prepare and activate' cross-border relevant remedial actions in an uncoordinated way, or even outside the CROSA process. Similarly, it is apparent from Article 35(4) of Regulation 2015/1222 that TSOs may not take 'unilateral or uncoordinated' cross-border relevant remedial actions.

125 However, the prohibition on taking new cross-border relevant remedial actions after the last iteration of the CROSA process applies to congestion management measures without affecting measures taken for balancing purposes.

126 As ACER correctly submits, even after the timeframe for the CROSA process, the integrated scheduling process may continue and change the generation and demand schedules of generation units, provided that those changes are aimed at balancing. In that regard, at the hearing, the applicant acknowledged that, although it was difficult to distinguish between redispatching measures taken for the purposes of congestion management and those taken for balancing purposes, such a distinction was not, however, impossible.

127 Furthermore, while it is true that, because of the lack of availability of the generation units on which cross-border relevant remedial actions are activated in accordance with the results of the CROSA process, the applicant has fewer resources than before to carry out its balancing tasks, that finding alone is not sufficient to establish an infringement of Article 4(2)(e) of Regulation 2017/1485 and of Article 12(1) of Regulation 2019/943.

128 In that regard, on the one hand, it should be recalled that it is inherent in the logic of regional coordination that TSOs cannot freely have all their resources at their disposal, in so far as they have cross-border relevance.

129 On the other hand, it must be emphasised that the contested ROSC methodology provides for several specific guarantees relating to balancing. In particular, Article 25 of that methodology provides that the CROSA process must ensure that optimised cross-border relevant remedial actions do not create energy imbalances. Furthermore, as ACER correctly submits, according to Article 31(2) of the contested ROSC methodology, a TSO may, as part of the fast activation process, request the reassessment of an ordered cross-border relevant remedial action if, following the changes to the operating set points resulting from the integrated scheduling process, it is no longer necessary to activate that action.

130 Consequently, the Board of Appeal cannot be criticised for having disregarded the TSOs' powers relating to the use of the central dispatching model to ensure operational security and balancing, as referred to in Article 4(2)(e) of Regulation 2017/1485 and Article 12(1) of Regulation 2019/943.

131 The other complaints put forward by the applicant in support of the fourth plea do not invalidate that conclusion.

132 As regards, first, the applicant's complaint that, by confirming the contested ROSC methodology and the CROSA process, the Board of Appeal accepted an unlawful interference in the applicant's competence to carry out balancing tasks, it should be noted that the applicant has not demonstrated how the so-called 'copper plate' paradigm of the zonal market model, which is used in the capacity calculation process and which it relies on, is relevant for assessing the legality of the contested ROSC methodology. The applicant explains that the zonal market model applied in Europe is based on the copper plate paradigm, and states that this means that, from the perspective of the wholesale market, there is no restriction on trading activities within bidding zones, that is to say, there is no restriction on trade between generation and load facilities localised in the same bidding zone, and that trade between bidding zones is limited by the availability of cross-zonal electricity transmission capacity. It must be stated that the applicant does not in any way explain how the fact that the zonal market model applied in Europe is based on that paradigm would have the effect of preventing it from using generation units for balancing tasks when a cross-border relevant remedial action on those units would be activated.

133 Second, it cannot validly be claimed that the Board of Appeal confirmed, in the contested decision, that the regional centres could participate in the real-time operation of the electricity system, in accordance with recital 55 of Regulation 2019/943. It is apparent from the operation of the CROSA process that the regional centres merely recommend coordinated remedial action, whereas the TSOs remain responsible for activating that action in real time, as is apparent from Article 42(2) of Regulation 2019/943 and Article 78(4) of Regulation 2017/1485.

134 As regards, second, the applicant's complaint alleging discrimination between TSOs operating according to the central dispatching model and those operating according to the self-dispatching model, that complaint was not raised before the Board of Appeal or in the application before the Court, but only in the reply. Under Article 84 of the Rules of Procedure, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure, which the applicant has not put forward. Consequently, that complaint is out of time and therefore inadmissible.

135 In any event, it must be held that the applicant has not shown how the equal treatment of the central dispatching and self-dispatching models infringes the principle of equal treatment.

136 The applicant does not dispute that the contested ROSC methodology makes no distinction between those two models and, therefore, that they are treated in the same way.

137 In the present proceedings, ACER moreover explained, without being contradicted by the applicant, that the restrictions flowing from the contested ROSC methodology applied, in principle, in the same way to central dispatching and self-dispatching models, since they affected not only congestion management but also other network management processes. In that context, ACER stated that TSOs operating according to a self-dispatching model also had to take account of those restrictions, for example as regards the purchase of balancing capacity. Thus, a balancing capacity used as a cross-border relevant remedial action is no longer fully available for balancing purposes for TSOs operating according to the self-dispatching model or for those operating according to the central dispatching model, without discrimination. Furthermore, ACER contends that those two models pursue the same objectives, which the applicant does not dispute either.

138 According to settled case-law, the general principle of non-discrimination or equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 23 and the case-law cited).

139 It follows that, in the present case, in order to prove discrimination, the applicant should have demonstrated that the contested ROSC methodology had a different impact on the management of one of those two models, as compared with the other, which it failed to do.

140 It follows from the foregoing that the applicant has not succeeded in demonstrating that the Board of Appeal erred in law by not finding, in the contested decision, an infringement of the provisions guaranteeing the TSOs' ability to use the central dispatching model to manage national congestion or to carry out balancing tasks. Accordingly, the fourth plea must be rejected.

The fifth plea, alleging that the Board of Appeal erred in law in finding that the contested ROSC methodology did not fail to set fair rules for cross-border exchanges in electricity and to ensure appropriate incentives for congestion management and effective investment in remedial actions related to hardware such as phase-shifting transformers

141 The applicant submits that the Board of Appeal erred in law in so far as it confirmed ACER's interpretation of Article 1(c) of Regulation 2019/943 and Article 4(1)(f) of Regulation 2017/1485, according to which the contested ROSC methodology had not failed, first, to set fair rules for cross-border exchanges in electricity and, second, to provide appropriate incentives for congestion management and investment in remedial actions related to hardware such as phase-shifting transformers, which allow congestion to be relieved by 'shunting' electricity from an overloaded power line to a less used power line.

142 In that regard, the applicant observes that, after the initiation of the CROSA process covered by the contested ROSC methodology, the TSOs may no longer individually apply cross-border relevant remedial actions that are available to them because of their investments in certain hardware such as phase-shifting transformers. The contested methodology thus limits the ability of TSOs to resort individually to non-costly remedial actions at local level.

143 The applicant notes that the remedial actions selected to relieve congestion on given network elements under the CROSA process can differ from the remedial actions that concern only local congestion or locally available remedial actions, which poses difficulties when several simultaneous and interdependent congestions occur in different parts of the same region. The existence of those simultaneous congestions is even more problematic where use is made of phase-shifting transformers, built to relieve congestion on a network element, since they may, in connection with a cross-border relevant remedial action, have to be used in the opposite way – counter-intuitively, according to the applicant – to increase the flow on congested elements in order to reduce cross-border congestion.

144 In addition, a TSO could, as part of a cross-border relevant remedial action, be forced to apply a regional solution combining measures using phase-shifting transformers with redispatching measures, which would result in redispatching costs for it, even though it could have used, free of charge, a phase-shifting transformer in which it had previously invested to relieve congestion on its network elements. According to the applicant, no provision of EU law obliges TSOs to act in the interests of other operators established in other Member States.

145 The applicant concludes that, in addition to infringing Article 1(c) of Regulation 2019/943 and Article 4(1)(f) of Regulation 2017/1485, the contested decision, confirming the contested ROSC methodology, is also contrary to Article 1(2) of Regulation 2019/942, read in conjunction with Article 19 of Regulation 2019/943, in so far as Decision No 33/2020 does not contribute to a consistent, efficient and effective application of EU law, but rather complicates or even negates efforts to comply with Article 19 of Regulation 2019/943 with regard to the allocation of congestion revenues to investments aimed at reducing interconnector congestion.

146 ACER contests the applicants' arguments and contends that that plea should be rejected.

147 In that context, ACER disputes the admissibility of the fifth plea, on the ground that it relates to the contested ROSC methodology established by Decision No 33/2020 and not the contested decision.

148 As a preliminary point, as regards the admissibility of the fifth plea, first of all, it should be noted that the applicant complains that the Board of Appeal erred in law in the contested decision by confirming ACER's interpretation of Article 1(c) of Regulation 2019/943 and Article 4(1)(f) of Regulation 2017/1485 in Decision No 33/2020. Next, it should be noted that, in its application, the applicant expressly challenges, in support of the fifth plea, certain specific paragraphs of the contested decision. Last, it must be observed that, in paragraphs 643 to 651 of the contested decision, the Board of Appeal explained the reasons why it considered that the contested ROSC methodology did not infringe Article 1(c) of Regulation 2019/943 or Article 4(1)(f) of Regulation 2017/1485, in particular because it did not have the effect of discouraging the investments made by TSOs in certain hardware such as phase-shifting transformers. It follows that, contrary to ACER's claims, by its fifth plea, the applicant calls into question the contested decision and not Decision No 33/2020. Accordingly, that plea is admissible.

149 As regards the merits of the fifth plea, first, it should be noted that Article 1(c) of Regulation 2019/943 establishes the objective of setting fair rules for cross-border exchanges in electricity and that Article 4(1)(f) of Regulation 2017/1485 seeks to promote coordination of system operation and operational planning.

150 As regards Article 1(2) of Regulation 2019/942, it sets the objective for ACER, inter alia, to contribute to a consistent, efficient and effective application of EU law, in order to achieve the climate and energy objectives pursued by the European Union. Article 19 of Regulation 2019/943, for its part, governs, in essence, the allocation of revenues resulting from the allocation of cross-zonal capacity and provides, in paragraph 2(b) thereof, that the procedure for allocating those revenues is aimed, inter alia, at 'covering costs resulting from network investments that are relevant to reduce interconnector congestion'.

151 Second, it should be noted that the contested ROSC methodology may have the effect of limiting the possibility for TSOs to resort individually to non-costly remedial actions at local level, in particular in the event of simultaneous and interdependent congestions in different parts of the Core region, which ACER does not dispute. However, as ACER recalled, the CROSA process can alter the settings of a phase-shifting transformer only to resolve the congestion identified in the common grid model and is not expected to create new congestions or to recreate old ones, in accordance with Article 23 of the contested ROSC methodology. Moreover, the congestion 'caused' by the application of the remedial actions recommended through the CROSA process, for example the modification of the parameters of a phase-shifting transformer, are also resolved through the CROSA process, so that the costs of redispatching that were necessary to relieve such congestion are attributed to the congested network elements in the common grid model.

152 In addition, it should be noted that, in its written pleadings, ACER acknowledged that the CROSA process could result, for a TSO, in certain redispatching costs to relieve congestion 'caused', inter alia, by the change in the configuration of phase-shifting transformers recommended through the CROSA process, where an optimal solution at the level of the Core region required both a change in the configuration of the phase-shifting transformers and costly remedial actions, such as redispatching. The applicant is therefore correct in claiming that the contested ROSC methodology may generate additional costs for certain TSOs, such as the applicant, which have already invested in hardware such as phase-shifting transformers.

153 It must therefore be examined whether the additional costs that may, in certain cases, be incurred as a result of the contested ROSC methodology by TSOs that have already invested in hardware such as phase-shifting transformers, reveal the unfair nature of the rules laid down by that methodology and have the effect of discouraging TSOs from investing in that hardware, as the applicant claims, to the point of infringing Article 1(c) of Regulation 2019/943, Article 4(1)(f) of Regulation 2017/1485 and Article 1(2) of Regulation 2019/942, read in conjunction with Article 19 of Regulation 2019/943.

154 As regards the allegedly unfair nature of the rules laid down by the contested ROSC methodology, it should be noted that the costs arising as a result of the application of the regional solution selected through the CROSA process are inherent in regional coordination and constitute a tangible expression of the principle of energy solidarity.

155 As the Court recalled in paragraph 73 of the judgment of 15 July 2021, *Germany* v *Poland* (C-848/19 P, EU:C:2021:598), the application of the principle of energy solidarity does not mean that EU energy policy must never, under any circumstances, have a negative impact for the particular interests of a Member State in that field. However, the EU institutions and the Member States are required to take into account, in the context of the implementation of that policy, the interests both of the European Union and of the various Member States that are liable to be affected and to balance those interests where there is a conflict.

156 In that regard, it should be noted that it is precisely the costs arising as a result of the application of the regional solution that will be shared between the TSOs on the basis of their contribution to congestion, in accordance with the cost sharing methodology adopted on the basis of Article 74 of Regulation 2015/1222. In addition, it must be emphasised that one of the objectives of the CROSA process is to resolve such congestion and other violations of operational security in the most cost-effective manner at regional level.

157 Furthermore, account must be taken of the fact that Article 35 of the contested ROSC methodology provides for monitoring, on the basis of which an amendment to that methodology could be justified under Article 7(4) of Regulation 2017/1485 if it were established that the same TSO was regularly or systematically affected by higher costs in connection the CROSA process.

158 Consequently, it must be held that the mere fact that a TSO may bear higher costs as a result of regional coordination cannot mean that the rules laid down by the contested ROSC methodology are unfair and, therefore, that that methodology infringes Article 1(c) of Regulation 2019/943 or that those rules are incapable of promoting regional coordination, for the purposes of Article 4(1)(f) of Regulation 2017/1485.

159 As regards the applicant's claim that the contested ROSC methodology discourages TSOs from investing in hardware such as phase-shifting transformers, the applicant has not provided any specific information on the economic impact of the allocation of redispatching costs that is capable of demonstrating the existence, as a result of that methodology, of a genuine obstacle to investment in that hardware.

160 As ACER emphasised, without being contradicted by the applicant, a TSO may still benefit from its investment in hardware such as a phase-shifting transformer, provided that that hardware reduces the costs it has to bear in order to relieve congestion in its individual grid model before the CROSA process starts.

161 In so far as it has not been demonstrated, in the present case, that the contested ROSC methodology deters TSOs from investing in hardware such as phase-shifting transformers, the applicant's complaint alleging infringement of Article 1(c) of Regulation 2019/943, Article 4(1)(f) of Regulation 2017/1485 and Article 1(2) of Regulation 2019/942, read in conjunction with Article 19 of Regulation 2019/943, must be rejected.

162 It follows from the foregoing that the applicant has not succeeded in showing that the Board of Appeal erred in law in finding that the contested ROSC methodology did not fail to set fair rules for cross-border exchanges in electricity and to ensure appropriate incentives for congestion management and effective investment in remedial actions related to hardware such as phase-shifting transformers. Accordingly, the fifth plea must be rejected.

The sixth plea, alleging infringement of Articles 76 and 77 of Regulation 2017/1485, read in conjunction with Article 25 and Article 4(1)(d) and (h) and (2)(e) of that regulation, which ensure compliance with operational security limits, in particular voltage limits, at local and regional level

163 The applicant submits that the Board of Appeal erred in law in finding that the contested ROSC methodology did not impede compliance by the TSOs with operational security limits, in particular voltage limits. Accordingly, the Board of Appeal erred in finding that that methodology was not contrary to Articles 76 and 77 of Regulation 2017/1485, concerning,

respectively, the proposal to be submitted by the TSOs for regional operational security coordination and the common provisions relating to the organisation of regional operational security coordination which that proposal must include, since those articles must be read in conjunction: (i) with Article 25 of Regulation 2017/1485, which deals with the operational security limits to be set by each TSO; (ii) with Article 4(1)(d) and (h) of that regulation, which sets out, among its objectives, first, that of ensuring the conditions for maintaining operational security throughout the European Union and, second, that of contributing to the efficient operation and development of the electricity transmission system and the electricity sector in the European Union; and (iii) with Article 4(2)(e) of that regulation, according to which Member States, competent authorities and system operators must respect the responsibility assigned to the relevant TSO to ensure the security of the network, including in accordance with national legislation.

164 In that regard, the applicant submits, in essence, that the contested ROSC methodology does not grant TSOs the possibility of using sufficient remedial actions to manage voltage at local level, or regional centres the possibility of managing voltage at regional level.

165 ACER contests the applicants' arguments and contends that that plea should be rejected.

166 In particular, it disputes the admissibility of the sixth plea on the ground that it is the exact copy of a plea already raised by the applicant before the Board of Appeal.

167 As a preliminary point, as regards the admissibility of the sixth plea, it should be borne in mind that the applicant is entitled to challenge, before the Court, the reasoning followed by the Board of Appeal in the contested decision, by relying, if it considers it necessary, on complaints already raised before the Board of Appeal (see paragraph 41 above). In the present case, in paragraphs 677 to 690 of the contested decision, the Board of Appeal set out the reasons why it considered that the contested ROSC methodology did not impede the TSOs' compliance with operational security limits, in particular voltage limits, and, therefore, that that methodology was not contrary to Articles 76 and 77 of Regulation 2017/1485, read in conjunction with Article 25 and Article 4(1)(d) and (h) and (2)(e) of that regulation.

168 It follows that the applicant's arguments seeking to call into question those considerations, which the Board of Appeal set out in the contested decision, are admissible.

Infringement of the provisions which ensure compliance with voltage limits at local level

169 As a preliminary point, it should be noted that, as the applicant correctly submits, both the TSOs and the regional centres are required to comply with voltage limits. That obligation arises, as regards the TSOs, from Article 27(1) and Article 34(2) of Regulation 2017/1485 and, as regards regional centres, from Article 78(2)(a) of Regulation 2017/1485, which requires those centres to carry out the CROSA process on the basis of operational security limits, as specified by the TSOs in accordance with Article 25 of that regulation, read in conjunction with Article 72 of that regulation.

170 It should also be noted that the contested ROSC methodology provides that cross-border relevant remedial actions, which are coordinated by the regional centres, are aimed at reducing flows on cross-border relevant network elements. It follows that that methodology focuses on the resolution of operational security violations in the form of issues with current limits, while TSOs remain primarily responsible for ensuring compliance with voltage limits.

171 That distribution of obligations between regional centres and TSOs follows from the TSOs' proposal. It is apparent from page 5 of the TSOs' explanatory note (see paragraph 7 above) that they considered that the other adverse effects on operational security, such as the voltage and short-circuit current limits referred to in Article 25 of Regulation 2017/1485, could be better mitigated at local level.

172 In that regard, the applicant submits, in essence, that cross-border relevant remedial actions that are the subject of the contested ROSC methodology, on the one hand, and remedial actions to ensure compliance with voltage limits at local level, on the other hand, may conflict, since the former are aimed at reducing flows, while the latter may require flows to be increased. The applicant adds that that 'conflict' was not sufficiently taken into account by the contested ROSC methodology.

173 However, the contested ROSC methodology provides for several guarantees, in the CROSA process, that are specifically intended to ensure that cross-border relevant remedial actions comply with the voltage limits adopted at the end of that process.

174 In the first place, in accordance with Article 22(4) of the contested ROSC methodology, to address violations of operational security limits, such as voltage limits, short-circuit current limits or stability limits being exceeded, it is provided that each TSO in the Core region must perform a local assessment and a long-term operational security analysis. In particular, those violations may be dealt with in the CROSA process, during the phase of coordination of cross-border relevant remedial actions referred to in Article 27 of that methodology, inter alia through the application of additional constraints on cross-border relevant remedial actions.

175 In that regard, the applicant claims that Article 27 of the contested ROSC methodology provides only for a possibility, and not an obligation, of dealing with those violations of voltage limits in the CROSA process. Given that that possibility is a matter for the TSO, the TSO can therefore ensure that that process complies with the voltage limits in its network.

176 In the second place, Article 22(5) of the contested ROSC methodology provides that TSOs may apply additional system constraints, which reflect other operational security limits referred to in paragraph 4 of that article, namely the voltage limits intended to ensure that the CROSA process, in so far as it seeks to optimise remedial actions, does not create any new underlying operational security violations or worsen those already existing. The CROSA process must not, however, resolve those underlying violations, which must be resolved in accordance with Article 22(4) of that methodology.

177 Although the applicant relies on the latter provision in support of its argument that the remedial actions coordinated through the CROSA process could not be used to resolve violations of voltage limits, it does not demonstrate that that provision prevents TSOs from resolving violations of voltage limits at local level. On the contrary, Article 22(5) of the contested ROSC methodology ensures that cross-border relevant remedial actions do not hamper the ability of TSOs to resolve violations of voltage limits. Furthermore, the applicant has not demonstrated how Article 22(5) of that methodology does not allow TSOs to ensure compliance with voltage limits at local level, or why that methodology should provide for the establishment of cross-border relevant remedial actions for resolving violations of voltage limits.

178 In the third place, Article 27(2) and (5) of the contested ROSC methodology provides for the possibility of the affected TSO rejecting a cross-border relevant remedial action recommended through the CROSA process, on the ground that the implementation of that action would lead to violations of operational security on its network. In that regard, the applicant's argument that that provision does not allow TSOs to ensure compliance with voltage limits at local level, on the ground that it provides only for the possibility of rejecting a remedial action, but not of defining or recommending such an action in order to resolve voltage issues, must be rejected. The applicant has not shown how that provision does not allow TSOs to ensure compliance with voltage limits at local level.

179 In the fourth place, Article 16(4) of the contested ROSC methodology provides for the possibility for TSOs to supplement that methodology with provisions concerning system constraints, in order to remedy, inter alia and if necessary, the voltage limits that are being exceeded.

180 It follows that the contested ROSC methodology is intended to take into account remedial actions taken by TSOs at local level in the CROSA process, without, however, requiring their coordination at regional level.

181 Accordingly, the applicant has not demonstrated to the requisite legal standard that the guarantees examined in paragraphs 175 to 180 above were not sufficient to ensure compliance by the TSOs with voltage limits at local level.

182 In any event, the mere fact that the applicant can no longer use certain remedial actions to ensure compliance with the voltage limits on its network, given that those measures are reserved for the CROSA process, is not sufficient to show that it is impossible for it to ensure operational security on that network. There is no reason why the ROSC methodology should provide for the use of minimum power flow constraints and planned outages, since these are measures for the TSOs at local level.

183 Consequently, the applicant cannot criticise the Board of Appeal for having, by the contested decision, confirmed a methodology which did not grant TSOs the possibility of using sufficient remedial actions to manage voltage at local level.

Infringement of the provisions which guarantee compliance with voltage limits at regional level

184 As regards the alleged infringement of the provisions ensuring compliance with voltage limits at regional level, first, the applicant does not provide any evidence to support the assertion that the ROSC methodology should, in general, provide for the possibility of defining cross-border relevant remedial actions and the system constraints necessary to mitigate violations of voltage limits.

185 Furthermore, ACER stated, in paragraph 95 of the rejoinder, that the contested ROSC methodology already included certain remedial actions to resolve voltage issues of cross-border relevance, it being noted that certain remedial actions used to resolve the voltage limit violations at regional level could also be classified as cross-border relevant actions that had to be coordinated in accordance with that methodology.

186 Second, as regards, more specifically, planned outages, it should be noted that, although Article 8 of the contested ROSC methodology precludes the remedial actions referred to in Article 22(1)(d), (h), (i) and (j) of Regulation 2017/1485 from being used in the CROSA process, that is not the case for planned outages, referred to in Article 22(1)(a) of that regulation, which, contrary to the applicant's claims, could be provided for in that process.

187 As regards, moreover, minimum power flow constraints, it should be noted that, as ACER stated, without being contradicted by the applicant, neither Article 75 of Regulation 2017/1485 nor any other provision of EU law requires the inclusion of such an action in the CROSA process. In any event, that minimum constraint may be provided for by any individual TSO in its individual grid model.

188 Third, in so far as the applicant claims that the guarantees examined in paragraphs 175 to 180 above do not ensure perfect consistency between the cross-border relevant remedial actions, which relate to violations of current limits, and local remedial actions, used to mitigate voltage issues at local level, it must be observed that none of the provisions on which it relies, namely Article 25, Article 34(2), Article 72 and Article 76 of Regulation 2017/1485, supports the conclusion that such a situation is unlawful.

189 Consequently, the applicant cannot criticise the Board of Appeal for having confirmed, by the contested decision, a methodology that did not provide regional centres with remedial actions sufficient to manage voltage at regional level.

190 It follows from the foregoing that the applicant has not succeeded in demonstrating that the Board of Appeal erred in law in finding, in the contested decision, that the contested ROSC methodology did not impede, at local and regional level, compliance with operational security limits, in particular voltage limits, and, therefore, that that methodology was not contrary to Articles 76 and 77 of Regulation 2017/1485, read in conjunction with Article 25 and Article 4(1)(d) and (h) and (2)(e) of that regulation. Accordingly, the sixth plea must be rejected.

The second plea, alleging a failure to state reasons for the contested decision

191 The applicant claims that the Board of Appeal failed to provide sufficient reasoning for the contested decision, thereby infringing Article 296 TFEU and Article 28(4) of Regulation 2019/942. In support of that claim, the applicant cites five examples of assessments by the Board of Appeal in the contested decision which, in its view, are insufficiently justified and legally questionable. More specifically, the applicant refers to paragraphs 556, 559, 574, 605 and 644 of the contested decision, which it states that it challenged in more detail in its various pleas.

192 ACER contests the applicants' arguments and contends that that plea should be rejected.

193 In that regard, it must be recalled that the statement of reasons required by the second paragraph of Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to

go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of the second paragraph of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgments of 15 July 2004, *Spain* v *Commission*, C-501/00, EU:C:2004:438, paragraph 73 and the case-law cited, and of 29 June 2017, *E-Control* v *ACER*, T-63/16, not published, EU:T:2017:456, paragraph 68 and the case-law cited).

194 However, a Board of Appeal cannot be required to provide an account that follows exhaustively and one by one all the lines of reasoning articulated by the parties before it. The reasoning may therefore be implicit, on condition that it enables the persons concerned to ascertain why the decision of the Board of Appeal was taken and provides the court having jurisdiction with sufficient material for it to exercise its power of review (see judgment of 29 June 2017, *E-Control* v *ACER*, T-63/16, not published, EU:T:2017:456, paragraph 69 and the case-law cited). It follows that the Board of Appeal cannot be required to examine and give express reasons for rejecting each of the arguments put forward in proceedings brought before it.

195 It must also be borne in mind that the obligation to state adequate reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, those errors will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 181 and the case-law cited).

196 It follows that the examples of assessments by the Board of Appeal that the applicant considers to be 'legally questionable' are entirely irrelevant in so far as they support its second plea, alleging a failure to state reasons for the contested decision.

197 Subject to that proviso, it is in the light of the case-law cited in paragraphs 193 to 195 above that the various examples of assessments by the Board of Appeal cited by the applicant in support of the present plea must be examined.

198 As regards, first, the applicant's claim that the Board of Appeal did not respond, in paragraph 556 of the contested decision, to the complaint that the applicant had raised before it, alleging that the definition of cross-border relevant remedial actions used in the contested ROSC methodology did not fulfil the requirements of Article 21(1) of Regulation 2017/1485, it should be noted that, in paragraphs 552 to 558 of the contested decision, the Board of Appeal set out the reasons why the distinction made in Article 9 of the contested ROSC methodology between cross-border relevant remedial actions and those which were not cross-border relevant complied with that provision.

199 As regards, second, the applicant's claim that the Board of Appeal did not analyse, in paragraph 559 of the contested decision, whether the contested ROSC methodology complied with EU law, given that it did not explain how that methodology complied with the TSOs' proposal, it must be noted that, in that paragraph, the Board of Appeal explained the reasons why that methodology complied with that proposal and, more specifically, with Article 10(1) thereof.

200 In any event, it is apparent from the assessments made, in paragraph 46 above, when examining the first plea, that ACER is not bound by the position taken by the competent NRAs and that it may, in the light of the decision-making powers conferred on it and with the aim of fulfilling its regulatory functions effectively, amend the TSOs' proposals prior to their approval. It follows that the contested ROSC methodology could, in accordance with EU law, depart from the TSOs' proposals, so that the Board of Appeal was not required to explain in more detail how that methodology complied with those proposals.

201 As regards, third, the applicant's claim that the Board of Appeal did not, in paragraph 574 of the contested decision, address its complaint that the contested ROSC methodology deprives the TSOs of the tools enabling them to exercise their responsibility for operational security and flow management, it should be noted that the Board of Appeal's reasoning in that regard is set out in paragraphs 553 to 559 and 568 to 573 of the contested decision. In those paragraphs, the Board of Appeal explains, in essence, that not all remedial actions fall within the scope of the contested ROSC methodology and that certain actions may always be activated individually by TSOs in order to exercise their responsibility for operating their network.

202 As regards, fourth, the applicant's claim that the findings of the Board of Appeal, in paragraph 605 of the contested decision, are 'simply … incorrect', given that Article 37(2) of the contested ROSC methodology does not provide for a coordinated regional assessment of intraday operational security, the applicant disputes, by that claim, the merits of the reasoning set out by the Board of Appeal in paragraph 605 of the contested decision and not the statement of reasons for that decision. Consequently, and in the light of the case-law cited in paragraph 195 above, that complaint must be rejected as irrelevant for the purpose of supporting the present plea.

203 As regards, fifth, the applicant's claim that the Board of Appeal suggests, in paragraph 644 of the contested decision, that the applicant is against regional coordination, whereas that is not the case, it should be noted that, in reality, the applicant is also calling into question, by that claim, the merits of that assessment made by the Board of Appeal and not the statement of reasons for the contested decision, which the applicant moreover acknowledged, in the reply, by stating that the 'fifth example [cited by it] reflects a difference of opinion between the parties rather than a failure to state reasons'. In the light of the case-law cited in paragraph 195 above, that complaint is therefore irrelevant for the purpose of supporting the present plea.

204 It follows from the foregoing that the Board of Appeal stated sufficient reasons for the contested decision, so that the second plea must be rejected.

205 It follows from all the foregoing considerations that the applicant's action must be dismissed in its entirety.

Costs

206 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by ACER.

207 According to Article 138(1) of the Rules of Procedure, the Member States which have intervened in the proceedings are to bear their own costs. The Republic of Poland, which has intervened in the present action in support of the form of order sought by the applicant, must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Polskie sieci elektroenergetyczne S.A. to bear its own costs and to pay those incurred by the European Union Agency for the Cooperation of Energy Regulators (ACER);

3. Orders the Republic of Poland to bear its own costs.

Schalin Škvařilová-Pelzl Nõmm

Steinfatt Kukovec

Delivered in open court in Luxembourg on 25 September 2024.

V. Di Bucci S. Papasavvas
Registrar President