Reports of Cases

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

8 October 2025*

(Energy – Internal market for electricity – Guideline on electricity balancing – Article 1 of Regulation (EU) 2017/2195 – European platform for the imbalance netting process – Non-participation of the Swiss Transmission System Operator – ACER decision amending the Implementation Framework for the Platform – Appeal brought before the ACER Board of Appeal – Specific conditions and arrangements for appeals – Article 28 of Regulation (EU) 2019/942 – Inadmissibility for lack of standing to bring proceedings before the Board of Appeal – Direct and individual concern)

In Case T-556/23,

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

applicant,

v

European Union Agency for the Cooperation of Energy Regulators (ACER), represented by P. Martinet and E. Tremmel, acting as Agents, and by B. Creve and T. Kölsch, lawyers,

defendant,

supported by

European Commission, represented by O. Beynet, T. Scharf, B. De Meester and C. Hödlmayr, acting as Agents,

intervener,

THE GENERAL COURT (Third Chamber, Extended Composition),

composed, at the time of the deliberations, of P. Škvařilová-Pelzl, President, I. Nõmm (Rapporteur), G. Steinfatt, D. Kukovec and R. Meyer, Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

* Language of the case: English.

further to the hearing on 12 March 2025,

gives the following

Judgment

1 By its action under Article 263 TFEU, the applicant, Swissgrid AG, seeks the annulment of Decision A-009-2022 of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) of 29 June 2023 dismissing as inadmissible the appeal against ACER's Decision 16/2022 of 30 September 2022 ('the contested decision').

Background to the dispute

2 The applicant, a public limited liability company incorporated under Swiss law, is Switzerland's sole electricity transmission system operator ('TSO').

3 Since 2012, the applicant has participated in the International Grid Control Cooperation (IGCC), a structure for cooperation among TSOs the purpose of which is to optimise the automated operation of frequency restoration reserves through an imbalance netting process. In 2016, 11 TSOs, including the applicant, concluded the multilateral agreement on the IGCC, which governed the arrangements for their cooperation.

4 On the basis of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ 2009 L 211, p. 15), the European Commission adopted Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ 2017 L 312, p. 6), which provides for the establishment of common European platforms for operating the imbalance netting process and enabling the exchange of balancing energy from frequency restoration reserves and replacement reserves, and in particular, in Article 22, a European platform for the imbalance netting process.

5 In December 2019, the member TSOs of the multilateral agreement on the IGCC, including the applicant, entered into an agreement on international grid control cooperation ('the IGCC Cooperation Agreement'), which replaces that multilateral agreement. That cooperation agreement is subordinated to a principal agreement regarding the balancing platforms, common to all the platforms, which entered into force on 1 July 2020 ('the Principal Agreement').

6 On 24 June 2020, ACER adopted Decision 13/2020 on the creation of a European platform for the imbalance netting process ('the IN Platform'), including, in the annex to that decision, the framework for implementing that platform ('the Implementation Framework').

7 Article 2(1)(j) of the Implementation Framework defined the concept of 'member TSO' as 'any TSO which has joined the IN Platform, including TSOs from multi-TSO [load-frequency control] areas from different Member States or third countries', and Article 2(1)(l) defined the concept of 'participating TSO' as 'any member TSO using the IN Platform in order to operate the imbalance netting process for intended exchange of balancing energy'.

8 Article 2(1)(f) of the Implementation Framework stated that the IGCC 'is the implementation project that shall evolve into the IN Platform' and Article 5(2) thereof provided that 'all member TSOs agree that they shall implement all necessary adaptations to the functionalities of IGCC in accordance with [the Implementation Framework] …'. According to Article 5(3) of the Implementation Framework, in order to fulfil the requirement to render the IN Platform operational, all member TSOs were to 'establish the IN Platform, which shall be based on the implementation project IGCC that shall be transformed into the IN Platform after the approval of [the Implementation Framework]'.

9 On 31 March 2022, in accordance with Article 10(2) of the Implementation Framework, the European Network of Transmission System Operators for Electricity ('ENTSO-E') submitted to ACER a proposal for amendments to the Implementation Framework as regards the designation of the entities that would perform the functions defined therein.

10 On 30 September 2022, ACER adopted Decision 16/2022 amending the Implementation Framework. Article 1(b) of Annex I to that decision amended the definition of 'member TSO' set out in Article 2(1)(j) of the Implementation Framework so that it now refers to 'any TSO to which Regulation [2017/2195] applie[d] and which [had] joined the IN Platform, including TSOs from multi-TSO [load-frequency control] areas'.

11 On 30 November 2022, the applicant lodged an appeal against that decision with the Board of Appeal of ACER.

12 By the contested decision, the Board of Appeal held that Decision 16/2022 did not constitute an act capable of affecting the applicant's legal position with the result that there was no further need to examine whether that decision was of direct and individual concern to the applicant within the meaning of Article 28(1) 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) and, accordingly, dismissed its appeal as inadmissible. More specifically, the Board of Appeal:

– recalled that the admissibility of appeals under Article 28(1) of Regulation 2019/942 had to be examined in the light of the case-law relating to Article 263 TFEU and deduced that it was necessary to determine whether Decision 16/2022 produced binding legal effects capable of affecting the applicant's interests by bringing about a distinct change in its legal position;

– held that it followed from Regulation 2017/2195 that only TSOs subject to EU law were authorised to participate in the platforms coming within its scope (with the exception of Swiss TSOs in respect of European platforms for the exchange of standard products for balancing energy and provided that the Commission had adopted a decision to that effect under Article 1(7) of that regulation);

– considered that the fact that the procedure laid down in Article 1(7) of Regulation 2017/2195 concerned only the participation of Switzerland in the European platforms for the exchange of standard products for balancing energy, and not in the IN Platform, supported the conclusion that participation was open only to TSOs subject to EU law;

– concluded from the above that Decision 16/2022 simply implemented Regulation 2017/2195 and that the applicant's legal position was determined not by that decision but by Regulation 2017/2195;

– noted that Regulation 2017/2195 had been applicable since 18 December 2017 and Article 1 of that regulation had not been amended, and held that the applicant had been in the same legal position under Decisions 13/2020 and 16/2022, with the result that the latter decision had not altered the applicant's legal position;

– highlighted the fact that the applicant was not among the addressees of Decision 13/2020, with the result that it could not be held that as a consequence of Decision 16/2022 the applicant had lost its membership of the IN Platform, which would have been of direct and individual concern to it;

– held that the applicant's historical participation in platform projects or contractual arrangements could not be relied upon in a way that undermined the interpretation of the provisions of Regulation 2017/2195.

Forms of order sought

13 The applicant claims that the Court should:

– annul the contested decision;

– order ACER to pay the costs.

14 ACER contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

15 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

16 The applicant puts forward three pleas in law in support of its action.

17 The first plea alleges an error of law in the interpretation of Regulation 2017/2195. The applicant submits that the Board of Appeal erred in finding that that regulation excluded it from participating in the IN Platform.

18 The second plea alleges an error of assessment in the application of Article 28(1) of Regulation 2019/942 to the circumstances of the present case. The applicant argues that the Board of Appeal erred in finding that the appeal against Decision 16/2022 was inadmissible.

19 By its third plea, submitted in the alternative, the applicant raises a plea of illegality under Article 277 TFEU in respect of Regulation 2017/2195, in the event that that regulation should be interpreted as prohibiting it from participating in the IN Platform.

The first plea, alleging an error of law in the interpretation of Regulation 2017/2195

20 The applicant submits that the finding in the contested decision that Regulation 2017/2195 excluded Switzerland from participating in the IN Platform is vitiated by an error of law. Under the first part of that plea, the applicant argues that that conclusion stems from a misinterpretation of Regulation 2017/2195. In the second part, it disputes more specifically the interpretation of Article 1(6) and (7) of Regulation 2017/2195.

21 The Commission and ACER contend that that finding in the contested decision is free from any error of law.

22 The two parts of the present plea, which it is appropriate to examine together, require a determination as to whether the Board of Appeal was entitled to find that Article 1 of Regulation 2017/2195, concerning the subject matter and scope of that regulation, excluded the applicant from participating in the IN Platform referred to in Article 22 of that regulation.

23 In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it is part (see judgment of 14 March 2024, *VR Bank Ravensburg-Weingarten*, C-536/22, EU:C:2024:234, paragraph 35 and the case-law cited).

24 It should be noted that Article 1(2) of Regulation 2017/2195 states that 'this Regulation shall apply to [TSOs], distribution system operators ("DSOs") including closed distribution systems, regulatory authorities, [ACER], [ENTSO-E], third parties to whom responsibilities have been delegated or assigned and other market participants.'

25 Article 1(6) of Regulation 2017/2195 specifies that 'the European platforms for the exchange of standard products for balancing energy may be opened to TSOs operating in Switzerland on the condition that its national law implements the main provisions of Union electricity market legislation and that there is an intergovernmental agreement on electricity cooperation between the Union and Switzerland, or if the exclusion of Switzerland may lead to unscheduled physical power flows via Switzerland endangering the system security of the region.'

26 Lastly, according to Article 1(7) of Regulation 2017/2195:

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

27 As regards the textual and contextual interpretation of Regulation 2017/2195, it should be noted that, although Article 1(2) of that regulation does not expressly refer only to EU TSOs, Article 1(6) and (7) of that regulation sets out the situations in which Swiss TSOs may be authorised to participate in some of the platforms provided for in that regulation on the basis of a Commission decision, and the procedure to be followed.

28 The fact that the Commission is afforded the possibility of accepting the participation of Swiss TSOs alone in certain platforms and under certain conditions only can be interpreted only as an exception, revealing the absence of a rule of principle that includes the participation of TSOs from outside the European Union in the platforms provided for by Regulation 2017/2195, including the IN Platform referred to in Article 22.

29 It should also be noted that that conclusion is reinforced by the teleological interpretation of Regulation 2017/2195, since it is apparent from recitals 1 and 10 that that regulation aims to create a fully functioning and interconnected internal energy market.

30 In that regard, it should be noted that the Commission intended that fair rules apply to TSOs participating in the platforms. That objective is stated in recital 8 of Regulation 2017/2195, according to which 'the rules concerning the terms and conditions related to balancing … ensure adequate competition based on a level-playing field between market participants'. That objective is also expressed in Article 19(3)(d), Article 20(3)(d), Article 21(3)(d) and Article 22(3)(d) of Regulation 2017/2195, according to which the rules governing the various platforms are to be 'based on the principle of non-discrimination and [ensure] equitable treatment of all member TSOs and that no TSO benefits from unjustified economic advantages through the participation in the functions of the European platform'.

31 As the Court has had occasion to point out, the Swiss Confederation, by rejecting the Agreement on the European Economic Area (EEA), did not subscribe to the project of an economically integrated entity with a single market, based on common rules between its members, but chose the route of bilateral arrangements with the European Union and its Member States in specific areas. Therefore, the Swiss Confederation did not join the internal market of the European Union (judgments of 12 November 2009, *Grimme*, C-351/08, EU:C:2009:697, paragraph 27, and of 7 March 2013, *Switzerland* v *Commission*, C-547/10 P, EU:C:2013:139, paragraphs 78 and 79).

32 Since Swiss TSOs are not, therefore, subject to the same rules as those applicable to TSOs of the Member States of the European Union, excluding them from participating in the platforms provided for in Regulation 2017/2195, without prejudice to any alternative bilateral arrangement which always remains a possibility, is fully justified in the light of the objective pursued by that regulation.

33 It follows that the Board of Appeal did not err in law as alleged by the applicant in stating, in recitals 52 to 57 of the contested decision, that the participation of Swiss TSOs, outside the situations provided for in Article 1(6) and (7) of Regulation 2017/2195, was excluded.

34 That conclusion is not invalidated by the applicant's arguments.

35 As regards, in particular, recital 70 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), it must be stated that that recital merely highlights the importance of close cooperation between Member States, the Energy Community Contracting Parties and other third countries which apply that regulation or are part of the synchronous area of Continental Europe.

36 There is no contradiction between, on the one hand, the expression of the legislature's intention to promote international cooperation and, on the other, the fact that Article 1 of Regulation 2017/2195 limits participation in the platforms which it governs solely to EU TSOs. Participation in those platforms may be based on a provision other than Article 1 of that regulation, such as an

international agreement between the European Union and the third country concerned, since such an agreement, under Article 216(2) TFEU, is binding upon the EU institutions and, consequently, prevails over acts of the European Union (see judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 50 and the case-law cited).

37 Similarly, in that context, the fact that Article 23 of Regulation 2017/2195, concerning cost sharing between TSOs in different Member States, provides, in paragraph 3 thereof, for the sharing of common costs among the TSOs in the Member States and third countries participating in the European platforms cannot be interpreted, in itself, as entitling third-country TSOs to participate in the platforms. Rather, it must be understood as setting out the arrangements for allocating those costs between the EU TSOs participating in the platforms under Article 1 of Regulation 2017/2195 and the third-country TSOs participating in those platforms on another legal basis.

38 As regards recital 15 of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ 2017 L 220, p. 1), to which the applicant refers, that recital explicitly highlights the objective of supporting third countries in applying similar rules to those contained in that regulation. In addition, although that regulation highlights the objective of facilitating cooperation between EU and third-country TSOs as regards secure system operation, it must be stated that that cooperation does not necessarily involve access to the platforms provided for by Regulation 2017/2195, but may take the form of agreements between the EU TSOs and the third-country TSOs concerned, as expressly provided for in Article 13 of Regulation 2017/1485, according to which 'where a synchronous area encompasses both [EU] and [third-country] TSOs, within 18 months after entry into force of this Regulation, all [EU] TSOs in that synchronous area shall endeavour to conclude with the third-country TSOs not bound by this Regulation an agreement setting the basis for their cooperation concerning secure system operation and setting out arrangements for the compliance of the third-country TSOs with the obligations set in this Regulation.'

39 Lastly, as regards the fact that the IN Platform does not come within the concept of 'European platforms for the exchange of standard products for balancing energy' used in Article 1(6) of Regulation 2017/2195, it means only that the applicant's participation cannot be authorised on the basis of a Commission decision under Article 1(7) of that regulation, but requires the existence of another legal basis, as explained in paragraph 36 above.

40 The first plea must therefore be rejected.

The second plea, alleging an error of assessment in the application of Article 28(1) of Regulation 2019/942 to the circumstances of the present case

41 The applicant submits that the Board of Appeal infringed Article 28(1) of Regulation 2019/942 in finding that Decision 16/2022 did not bring about a distinct change in its legal position. In the first part of the present plea, the applicant criticises the Board of Appeal for not finding that it had a right to participate in the IN Platform under Decision 13/2020. In the second part, the applicant submits that the Board of Appeal erred in not taking into account the effects of Decision 16/2022 on the contracts to which it is a party.

42 ACER, supported by the Commission, replies, inter alia, that the first part is based on the incorrect assumption that the applicant had a right to participate in the IN Platform under Decision 13/2020, since such participation could result only from a Commission decision to that effect under Regulation 2017/2195. It adds that, within the regulatory context of Decision 13/2020, the reference to 'third countries' in Article 3(1)(j) of the Implementation Framework can only be understood as referring to third countries applying EU law. As regards the second part of the plea, ACER disputes its admissibility and contends that, in any event, it must be rejected as unfounded. Thus, according to ACER, the Board of Appeal correctly found that a private law contractual arrangement cannot be relied upon to undermine the application of EU law and the applicant is wrong to claim that Decision 16/2022 amounts to a challenge to the legality of the Principal Agreement and the IGCC Cooperation Agreement.

43 In paragraphs 57 to 63 of the contested decision, the Board of Appeal concluded that Decision 16/2022 did not produce binding legal effects capable of affecting the applicant's interests by bringing about a distinct change in its legal position on the grounds, first, that that legal position was not determined by Decisions 13/2020 and 16/2022, but by Regulation 2017/2195, from which it followed that the applicant did not have the right to participate in the IN Platform, second, that, in the absence of such a right under Decision 13/2020, it could not be held that Decision 16/2022 was of direct and individual concern to it and, third, that the applicant's historical participation in platform projects or related contracts was irrelevant.

44 The Court considers that it is appropriate to deal with the two parts of the plea together and, accordingly, to examine, as a preliminary point, the admissibility of the second part, which is contested by ACER.

Admissibility of the second part, contested by ACER

45 ACER contends that the second part of the plea is inadmissible since the applicant has not provided copies of the IGCC Cooperation Agreement and the Principal Agreement as annexes to its application and refers to their content only in a vague and general manner.

46 Under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 of that statute, and Article 76(d) of the Rules of Procedure, the application must contain the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. Those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without any other supporting information. In order to guarantee legal certainty and the sound administration of justice, it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated coherently and intelligibly in the application itself (see, to that effect, order of 28 April 1993, *De Hoe* v *Commission*, T-85/92, EU:T:1993:39, paragraph 20 and the case-law cited). The application must, accordingly, specify the nature of the grounds on which it is based, with the result that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure. Similar requirements are called for where a submission is made in support of a plea in law (see judgment of 25 March 2015, *Belgium* v *Commission*, T-538/11, EU:T:2015:188, paragraph 131 and the case-law cited; order of 27 November 2020, *PL* v *Commission*, T-728/19, not published, EU:T:2020:575, paragraph 64).

47 Under the second part of the plea, the applicant, first, claims to have a contractual right to participate in the IN Platform under the Principal Agreement and the IGCC Cooperation Agreement. Second, it submits that the Implementation Framework, as set out in the annex to Decision 16/2022, has the effect of depriving it of that contractual right. Third, it deduces from an application by analogy of the position of the General Court in the judgments of 11 July 2007, *Alrosa* v *Commission* (T-170/06, EU:T:2007:220, paragraph 39), and of 12 December 2018, *Groupe Canal +* v *Commission* (T-873/16, EU:T:2018:904, paragraphs 22 to 27), that Decision 16/2022 brought about a distinct change in its legal position.

48 It must be held that that line of argument is fully in conformity with Article 76(d) of the Rules of Procedure.

49 What ACER is challenging relates rather to the applicant's lack of evidence of the factual premiss on which that line of argument is based, namely the existence of a contractual right to participate in the IN Platform under the Principal Agreement and the IGCC Cooperation Agreement, in so far as it did not provide a copy of those documents as an annex to its application.

50 It is correct that the applicant did not produce a copy of those agreements as an annex to its application. In its reply, it justified not doing so on the basis of the complexity and length of those documents and on the basis that such production was allegedly unnecessary, but made an offer of evidence to that effect. Following a measure of organisation of procedure, the applicant provided the Court with a copy of the IGCC Cooperation Agreement and of the Principal Agreement.

51 Pursuant to Article 85(1) of the Rules of Procedure, 'evidence produced or offered shall be submitted in the first exchange of pleadings' and, according to Article 85(2), 'in reply or rejoinder a main party may produce or offer further evidence in support of his arguments, provided that the delay in the submission of such evidence is justified.'

52 It must be stated that the applicant justified, within the meaning of Article 85(2) of the Rules of Procedure, the delay in its offer of evidence by stating, in essence, that it considered that it was not necessary for it to demonstrate that it had a contractual right to participate in the IN Platform.

53 In that regard, it should be noted that, from the time of its notice of appeal before the Board of Appeal, the applicant has maintained that Decision 16/2022 affected its contractual rights, as the Board of Appeal summarised in paragraph 44 of the contested decision. However, the Board of Appeal did not call into question the existence of those contractual rights, but rejected that argument as irrelevant, making clear in paragraph 64 of the contested decision that historical participation in platform projects or contractual arrangements could not be relied upon in a way that undermined the specific provisions laid down in Regulation 2017/2195. The applicant could therefore reasonably take the view that it was not required to prove that it had those contractual rights, the existence of which had not been called into question by the Board of Appeal.

54 ACER's plea of inadmissibility must therefore be rejected.

Examination of the merits of the plea

55 Article 28 of Regulation 2019/942, headed 'Decisions subject to appeal', states, in paragraph 1 thereof, that any 'natural or legal person, including the regulatory authorities, may appeal against a decision referred to in point (d) of Article 2 which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person'.

56 Since that provision is modelled on that relating to actions for annulment before the Court of Justice and, more specifically, on the first part of the fourth paragraph of Article 263 TFEU, it must be interpreted in the light of the case-law relating to the latter provision.

57 In that regard, it should be borne in mind, first, that where an action for annulment is brought by a natural or legal person, the action lies only if the binding legal effects of the contested act are capable of affecting the interests of the applicant by bringing about a distinct change in the applicant's legal position. Second, as regards, more specifically, an action for annulment brought against an act that has not been addressed to the applicant, that requirement overlaps with the conditions laid down in the fourth paragraph of Article 263 TFEU, according to which the contested act must be of direct and individual concern to the applicant (see, to that effect, judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraphs 37 and 38).

58 As regards the condition of direct concern, it is settled case-law that the condition that the act against which the action is brought must be of direct concern to a natural or legal person requires that act to affect directly the legal situation of that person and leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting solely from EU rules without the application of other intermediate rules (see judgment of 13 March 2008, *Commission* v *Infront WM*, C-125/06 P, EU:C:2008:159, paragraph 47 and the case-law cited).

59 As regards individual concern, in accordance with settled case-law, a natural or legal person other than the person to whom an act is addressed may claim to be individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, only if the act in question affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of these factors, distinguishes them individually just as in the case of the person addressed (judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 223; see also judgment of 27 February 2014, *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 44 and the case-law cited).

60 In the first place, it should be noted that the finding in the contested decision that the applicant's legal position is directly governed by Regulation 2017/2195 and not by Decisions 13/2020 and 16/2022 is not capable of substantiating the conclusion that the action brought before it is inadmissible.

61 Since Article 22(1) of Regulation 2017/2195 provides for the submission and adoption of a proposal for the Implementation Framework and it is on that legal basis that Decision 16/2022 was adopted, the applicant was entitled to challenge its legality, provided that the conditions laid down in the case-law referred to in paragraphs 57 to 59 above were satisfied, irrespective of the scope of Regulation 2017/2195. The fact that, for the reasons set out in response to the first plea,

Regulation 2017/2195 does not provide for the possibility of the applicant participating in the IN Platform was a relevant consideration for the examination of the substance of the action, but not for the assessment of its admissibility.

62 In the second place, as regards the question whether the Board of Appeal should have found that Decision 16/2022 was of direct and individual concern to the applicant, it should be noted, first, that the applicant's assertion that it is a party to the Principal Agreement and to the IGCC Cooperation Agreement and, as regards the latter agreement, that it is a 'participating member' thereof, that is to say, that it uses the IGCC for netting purposes and has done so since March 2012, is factually correct.

63 Second, it is common ground, as is apparent from Article 2(1)(f) of the Implementation Framework in the versions resulting from both Decision 13/2020 and Decision 16/2022, that the IGCC is the implementation project that is to evolve into the IN Platform.

64 Furthermore, the adoption of an implementation framework for the IN Platform pursuant to Article 22(1) of Regulation 2017/2195 has not made the contracts to which the applicant is a party irrelevant, since those contracts continue to govern the operation of that platform in line with that implementation framework. Thus, it follows from a reading of the preamble to the Principal Agreement, common to all the platforms provided for by Regulation 2017/2195, that that regulation seeks to determine the framework for the reciprocal obligations of the parties concerning the development, maintenance and operation of those platforms in accordance with the implementation frameworks adopted under that regulation. Furthermore, as regards, more specifically, the IGCC Cooperation Agreement, it is recalled in paragraph 6 of its preamble that it constitutes the implementation project for the establishment of the IN Platform and, in paragraph 8 of that preamble, that it must comply with Regulation 2017/2195 and with the implementation framework adopted pursuant to Article 22(1) thereof.

65 Third, it must be stated that it was not clear from the Implementation Framework as annexed to Decision 13/2020 that the applicant could not continue to participate in the IN Platform on the basis of its contractual rights and that it could therefore consider that its legal position was not affected by Decision 13/2020. The wording of Article 2(1)(j) of the Implementation Framework (see paragraph 7 above) then defined a 'member TSO' by the fact that it joined the IN Platform and expressly included 'TSOs from multi-TSO [load-frequency control] areas from different Member States or third countries' and merely defined a 'participating' TSO as 'any member TSO using the IN Platform in order to operate the imbalance netting process for intended exchange of balancing energy'.

66 Furthermore, while, in so far as the Implementation Framework was adopted under Article 22(1) of Regulation 2017/2195, the exact meaning of its provisions had to be determined in the light of that regulation, an interpretation in conformity with that regulation cannot be regarded as having been capable of dispelling any doubt as to whether the applicant could continue to participate in the IN Platform on the basis of its contractual rights. First, Article 1 of Regulation 2017/2195 had not, at that time, been interpreted by the Courts of the European Union. Second, the way in which that regulation was drafted could have led the applicant to believe that it was able to continue to participate in the IN Platform. This is particularly true of the fact that Article 1(2) does not refer only to EU TSOs, the fact that the IN Platform does not come within the concept of 'European platforms for the exchange of standard products for balancing energy' used in Article 1(6) thereof, and the fact that Article 23(3) of that regulation refers to 'third countries participating in the European platforms'.

67 In that regard, that doubt cannot be regarded as having been dispelled, as at the date on which Decision 13/2020 was adopted, by the informal positions taken by the Commission and ACER. First, as regards the letter from the Deputy Director-General of the Commission of 1 July 2020 sent to certain TSOs, suffice it to state that that letter concerned a different issue from whether the applicant could participate in the platforms covered by Regulation 2017/2195, namely that of the exclusion of third-country TSOs – including Switzerland – from the regional coordination centres provided for by Article 35 of Regulation 2019/943, and contained no reference to either Regulation 2017/2195 or the IN Platform. Second, as regards ACER's letter to ENTSO-E of 24 November 2021, while that letter explicitly concerns the fact that the applicant was unable to participate in the platforms provided for by Regulation 2017/2195, it was issued after the expiry of the deadline for lodging an appeal against Decision 13/2020 with the Board of Appeal.

68 It was only with the adoption of Decision 16/2022 that ACER adopted a formal position explicitly excluding the possibility of the applicant participating in the IN Platform. In Article 2(1)(j) of the Implementation Framework (see paragraph 10 above), it is now explicitly stated that only TSOs to which Regulation 2017/2195 applies come within the concept of 'member TSO'.

69 Consequently, following Decision 16/2022, the applicant can no longer continue to participate in the IN Platform under the Principal Agreement and the IGCC Cooperation Agreement. Accordingly, that decision must be regarded as depriving the applicant of the exercise of its contractual rights and, therefore, as directly affecting its legal position within the meaning of the case-law cited in paragraph 58 above.

70 Similarly, the applicant must be regarded as being affected by Decision 16/2022 by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons within the meaning of the case-law cited in paragraph 59 above.

71 As pointed out in paragraph 63 above, since the IGCC is, according to the Implementation Framework itself, the project which evolves into the IN Platform, the applicant, as a participant in that platform since 2012, is in a different situation from other third-country TSOs which have not been entitled to participate.

72 In addition, the applicant, as the sole Swiss TSO, is in a different situation from TSOs from other third countries, since Switzerland has the geographical uniqueness of being, de facto, surrounded by EU Member States. From the perspective of the purpose of Regulation 2017/2195, as set out in Article 1(1) of that regulation, namely to lay down 'a detailed guideline on electricity balancing including the establishment of common principles for the procurement and the settlement of frequency containment reserves, frequency restoration reserves and replacement reserves and a common methodology for the activation of frequency restoration reserves and replacement reserves', it must be held that that is a factual situation which differentiates the applicant from TSOs located in other third countries.

73 In the light of the foregoing, it must be concluded that Decision 16/2022 was of direct and individual concern to the applicant, with the result that, in accordance with the case-law cited in paragraph 57 above, that decision produced binding legal effects capable of affecting its interests.

74 The Board of Appeal therefore infringed Article 28(1) of Regulation 2019/942 by holding that the appeal before it was inadmissible.

75 The second plea must therefore be upheld and, without it being necessary to examine the third plea, the contested decision must be annulled.

Costs

76 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. In the present case, since ACER has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the applicant, in accordance with the form of order sought by the applicant.

77 Under Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs. The Commission must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

1. **Annuls Decision A-009-2022 of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) of 29 June 2023;**

2. **Orders ACER to bear its own costs and to pay those incurred by Swissgrid AG;**

3. **Orders the European Commission to bear its own costs.**

Škvařilová-Pelzl Nõmm Steinfatt

Kukovec Meyer

Delivered in open court in Luxembourg on 8 October 2025.

V. Di Bucci S. Papasavvas
Registrar President