ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

CVRIA
LUXEMBOURG

JUDGMENT OF THE GENERAL COURT (Third Chamber)

4 February 2026 *

(Energy – European platforms for the exchange of standard products for balancing energy – Switzerland's participation – Article 1(6) and (7) of Regulation (EU) 2017/2195 – Letter from the Commission refusing to authorise the Swiss transmission system operator to participate in the platforms – Action for annulment – Challengeable act – Continuing interest in bringing proceedings – *Locus standi* – Admissibility – Lack of competence of the author of the act)

In Case T-127/21 RENV,

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

applicant,

v

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

defendant,

THE GENERAL COURT (Third Chamber),

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

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

having regard to the judgment of 13 February 2025, *Swissgrid* v *Commission* (C-121/23 P, EU:C:2025:83),

* Language of the case: English.

further to the hearing on 13 October 2025,

gives the following

Judgment

1 By its action under Article 263 TFEU, the applicant, Swissgrid AG, seeks annulment of the decision contained in the letter of the European Commission of 17 December 2020 (‘the contested letter’), by which the Commission refused to authorise, pursuant to Article 1(7) of Commission Regulation (EU) 2017/2195 of 23 November 2017 concerning a guideline on electricity balancing (OJ 2017 L 312, p. 6), the Swiss Confederation to participate in the European platforms for the exchange of standard products for balancing energy (‘the European balancing platforms’), in particular the Trans European Replacement Reserves Exchange platform (‘the TERRE platform’).

Background to the dispute

2 The applicant is a limited liability company governed by Swiss law, which is the sole transmission system operator (‘TSO’) for electricity in Switzerland. It participates in the European Network of Transmission System Operators for Electricity (‘ENTSO-E’).

3 A number of TSOs, including the applicant, conceived the TERRE platform.

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

5 On 10 April 2018, the European Union Agency for the Cooperation of Energy Regulators (ACER) also issued an opinion on the Swiss Confederation’s participation in the European balancing platforms, pursuant to Article 1(7) of Regulation 2017/2195. It stated that it agreed, in general, with the TSOs’ assessment as to the effectiveness of the Swiss Confederation’s full participation in those platforms. It also claimed that it was important for the Swiss Confederation to implement all of Regulation 2017/2195 and other related provisions to ensure a level playing field between TSOs in the European Union and in Switzerland.

6 On 31 July 2020, the Deputy Director-General of the Commission’s Directorate-General (DG) for Energy sent a letter to ENTSO-E, as well as to the applicant, in which he welcomed progress in the implementation of the TERRE platform, while expressing his surprise at the TSOs’ intention to include the applicant in that platform as a full member. In his view, the coupling and balancing of markets were based on a comprehensive framework of legally enforceable rights and

obligations, the Swiss Confederation had not yet agreed to apply that framework and, accordingly, Swiss operators and TSOs were not, in principle, allowed to participate in the platform. In addition, he stated that the Commission had not granted any exception to the Swiss Confederation under Article 1(7) of Regulation 2017/2195. Last, he emphasised that taking the applicant into consideration in the EU capacity calculation process and including it in the operational security analysis would significantly mitigate the risk of unscheduled physical power flows from Switzerland endangering the system's security.

7 On 29 September 2020, the applicant replied to the Commission, claiming that its full participation in the European balancing platforms was indispensable for reasons of security of the electricity system. It maintained, in essence, that it being taken into consideration in the EU capacity calculation process and it being included in the operational security analysis were insufficient. It also referred to the grounds set out in ENTSO-E's opinion of 7 September 2017 and in ACER's opinion of 10 April 2018. Last, it argued that, if it were not included in the TERRE platform, it and the TSOs neighbouring Switzerland in the European Union would be led to infringe their obligations under Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ 2017 L 220, p. 1), under Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015 L 197, p. 24) and under the Continental Europe Synchronous Area Framework Agreement.

8 On 5 November 2020, ENTSO-E replied to the Commission. While emphasising that the decision as to the Swiss Confederation's participation in the European balancing platforms was a matter for the Commission, pursuant to Article 1(7) of Regulation 2017/2195, it pointed out that the TSOs and ACER had delivered an opinion in favour of such participation. In essence, it stated that, although taking the applicant into consideration in the EU capacity calculation process and including it in the analysis of the operational security of the electricity system were consistent with protecting that operational security, those matters had not yet been finalised and would not resolve all of the issues. Thus, it emphasised the importance of a decision from the Commission, under that provision, authorising the Swiss Confederation to participate in the European balancing platforms. Last, it pointed out that the members of the TERRE platform project had decided, by qualified majority, not to oppose the applicant's participation in that platform and that it had become an operational member thereof from 8 October 2020.

9 On 8 December 2020, the applicant sent a letter to the Commission in which it stated that the TSOs and ACER had issued an opinion in favour of its participation in the TERRE platform and asked it to authorise that participation pursuant to Article 1(7) of Regulation 2017/2195. It also requested a virtual meeting to be held in the week beginning 11 January 2021.

10 By the contested letter, signed by a director of DG Energy, it was, first, emphasised that the applicant's participation in the TERRE platform project did

not comply with the applicable EU law, namely Article 1(6) and (7) of Regulation 2017/2195. Second, it was stated that ACER's opinion underlined the importance of the Swiss Confederation implementing all of Regulation 2017/2195 and other related provisions. Third, it found that certain measures adequately addressed the risks posed by unscheduled physical power flows and, accordingly, that the Swiss Confederation's participation in the European balancing platforms was not necessary. In that regard, it was argued that the basis of operational security lay in capacity (re)calculation, on the one hand, and in regional operational security coordination, on the other, which already included Switzerland. As regards situations in which those two measures would not ensure operational security, described as rare emergency situations, it was stated that that issue was provided for in Article 150(3) of Regulation 2017/1485 and that other measures could be adopted. Fourth, and consequently, it was concluded that the Commission did not have any grounds for adopting a decision authorising the Swiss Confederation to participate in the European balancing platforms, including the TERRE platform. Fifth, the TSOs were requested to exclude the applicant from the TERRE platform by 1 March 2021 at the latest.

Earlier proceedings before the General Court and the Court of Justice

Earlier proceedings before the General Court

11 By application lodged at the Registry of the General Court on 26 February 2021, the applicant brought an action under Article 263 TFEU, registered as Case T-127/21, for annulment of the contested letter.

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

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

14 By order of 21 December 2022, *Swissgrid* v *Commission* (T-127/21, not published, 'the initial order', EU:T:2022:868), the General Court dismissed the action as inadmissible on the ground that the contested letter was not an act capable of forming the subject matter of an action for annulment under Article 263 TFEU. According to the General Court, the applicant, as a Swiss TSO,

had no individual right to request and obtain from the Commission a decision authorising the Swiss Confederation and, accordingly, the TSOs operating in that country to participate in the European balancing platforms. According to the General Court, the contested letter did not therefore constitute a decision capable of producing legal effects vis-à-vis the applicant, such as to change the applicant's legal position.

Earlier proceedings before the Court of Justice

15 By application lodged at the Registry of the Court of Justice on 28 February 2023, the applicant brought an appeal against the initial order.

16 By judgment of 13 February 2025, *Swissgrid* v *Commission* (C-121/23 P, 'the judgment on appeal', EU:C:2025:83), the Court of Justice set aside the initial order. It held that it was apparent from the Commission's refusal to authorise the Swiss Confederation and, consequently, the TSOs operating in that country to participate in the European balancing platforms, pursuant to Article 1(7) of Regulation 2017/2195, read in conjunction with the request to the EU TSOs to bring the applicant's participation in the TERRE platform to an end, that the contested letter was intended to produce binding legal effects. The Court of Justice referred the case back to the General Court for it to rule on whether the applicant was directly and individually concerned by the contested letter and, as the case may be, on its application for annulment of that letter, and reserved the costs.

Forms of order sought by the parties following referral of the case back to the General Court

17 The applicant claims, in essence, that the Court should:

– annul the contested letter;

– order the Commission to pay the costs.

18 The Commission contends, in essence, that the Court should:

– dismiss the action, principally, as inadmissible or, in the alternative, as unfounded;

– order the applicant to pay the costs.

Law

The applicant's standing to bring proceedings

19 The Commission recalls that, in the judgment on appeal, the Court of Justice did not give a final ruling on the admissibility of the action. It maintains that the action should be dismissed as inadmissible on the ground that the applicant does not have standing to bring proceedings.

20 The Commission refers to the arguments developed in the plea of inadmissibility, relating to whether the applicant is directly and individually concerned by the contested letter. It notes that it emphasised, in essence, that the applicant was not directly concerned by the contested letter for the purposes of the fourth paragraph of Article 263 TFEU. The Commission contends that the applicant errs in claiming that the contested letter had the effect of excluding it from participating in the TERRE platform and other rebalancing platforms, thereby depriving it of the rights and obligations arising therefrom. According to the Commission, without a formal decision on its part, the applicant had no right to participate in those platforms.

21 The applicant claims that it has standing to bring an action for annulment of the decision contained in the contested letter.

22 Article 1 of Regulation 2017/2195, entitled 'Subject matter and scope', provides, in paragraph 6 thereof, that the European balancing platforms 'may be opened to TSOs operating in Switzerland on the condition that its national law implements the main provisions of [European] Union electricity market legislation and that there is an intergovernmental agreement on electricity cooperation between the [European] Union and [the Swiss Confederation], or if the exclusion of [the Swiss Confederation] may lead to unscheduled physical power flows via Switzerland endangering the system security of the region.'

23 According to Article 1(7) of Regulation 2017/2195, 'subject to the conditions of [Article 1(6) of that regulation], the participation of [the Swiss Confederation] in [the European balancing platforms] shall be decided by the Commission based on an opinion given by [ACER] and all TSOs in accordance with the procedures set out in [Article 4(3) of that regulation; t]he 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 [the] balancing market at Union level and a level playing field for all stakeholders.'

24 As a preliminary point, it should be noted that the Court of Justice held that it was apparent from the Commission's refusal to authorise the Swiss Confederation and, consequently, the TSOs operating in that country to participate in the European balancing platforms, pursuant to Article 1(7) of Regulation 2017/2195, read in conjunction with the request to the EU TSOs to bring the applicant's participation

in the TERRE platform to an end, that the contested letter was intended to produce binding legal effects (judgment on appeal, paragraph 50).

25 In that regard, in order to reach that conclusion and refute the Commission's argument that the contested letter merely set out the existing legal position under Regulation 2017/2195, the Court of Justice referred to the substance of the contested letter and, in particular, to the fact that the Commission had found in that letter that the conditions required by Article 1(6) and (7) of that regulation for the Swiss Confederation to be able to participate in the European balancing platforms were not met (judgment on appeal, paragraph 47). In addition, the contested letter was adopted at the end of the procedure laid down in Article 1(7) of Regulation 2017/2195, all TSOs and ACER having expressed their opinion, as noted in paragraphs 4 and 5 above.

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

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

28 It follows from the wording of Article 1(6) and (7) of Regulation 2017/2195 that, without a Commission decision authorising Swiss TSOs to participate in the European balancing platforms, those TSOs cannot participate therein. The Commission's refusal set out in the contested letter thus precludes any participation by the applicant pursuant to that regulation. It therefore directly affects the applicant's legal position within the meaning of the case-law cited in paragraph 27 above.

29 Similarly, in so far as it follows from the clear wording of Article 1(6) and (7) of Regulation 2017/2195 that, without an authorisation decision from the Commission, the Swiss TSOs do not have the right to participate in the European balancing platforms, the EU TSOs to which the contested letter was addressed cannot be regarded as having any discretion, within the meaning of the case-law cited in paragraph 27 above, that could result in the applicant's participation in a way that is compatible with Regulation 2017/2195, failing any decision to that effect by the Commission.

30 The applicant is, therefore, directly concerned by the contested letter.

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

32 In that regard, it appears that the Commission does not dispute that the applicant is individually concerned by the contested letter. In any event, it is common ground that the applicant is the only Swiss TSO. Thus, although it is not the addressee of the decision provided for in Article 1(7) of Regulation 2017/2195, its participation in the European balancing platforms is nevertheless the subject matter of that provision. Accordingly, the applicant must be regarded as being affected by the Commission's refusal in the contested letter by reason of attributes which are peculiar to it and, therefore, distinguished individually just as in the case of the person addressed by such a decision, within the meaning of the case-law cited in paragraph 31 above.

33 In accordance with the case-law cited in paragraph 26 above, the applicant, being both directly and individually concerned by the contested letter, has standing to bring an action against that letter under the fourth paragraph of Article 263 TFEU.

34 The plea of inadmissibility alleging that the applicant does not have standing to bring proceedings must therefore be rejected.

The applicant's interest in bringing proceedings

35 The Commission adds, in essence, that the applicant no longer has an interest in continuing with its action, since, first, the TERRE platform will cease its operations permanently on 31 December 2025 and, second, the applicant has not suffered any damage as a result of the contested letter, since it has continued, without interruption, to participate in the TERRE platform. It infers therefrom that the action, even if successful, would not procure any advantage to the applicant.

36 It is true that, in accordance with the settled case-law of the Court of Justice, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in having the contested act annulled. Such an interest requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it. That interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of

lodging the action, failing which the action will be inadmissible, and continue until the final decision, failing which there will be no need to adjudicate (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraphs 55 and 57 and the case-law cited).

37 However, it is sufficient to note that, as the applicant observes, the contested letter, although adopted in connection with the applicant's participation in the TERRE platform, expresses the Commission's refusal to authorise such participation in all the European balancing platforms. It is expressly stated therein that 'the Commission currently does not see grounds for adopting a decision which would allow [the Swiss Confederation's] participation in the balancing platforms[;] this reasoning applies to all the European platforms developed pursuant to [Regulation 2017/2195]'.

38 The applicant is therefore correct in submitting that it has an interest in having the contested letter annulled, in so far as it expresses the Commission's refusal to authorise its participation, under Article 1(7) of Regulation 2017/2195, not only in the TERRE platform, but also in all the European balancing platforms, namely the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation and the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation. It follows that the applicant has not lost its interest in bringing proceedings as a result of the TERRE platform ceasing operations.

39 The Commission's argument that the applicant has lost its interest in bringing proceedings must therefore be rejected.

Substance

40 In support of its action, the applicant puts forward four pleas in law, alleging (i) infringement of Article 1(6) of Regulation 2017/2195; (ii) infringement of Article 1(7) of that regulation; (iii) infringement of its right to be heard under the first indent of Article 41(2) of the Charter of Fundamental Rights of the European Union; and (iv) infringement of the obligation to state reasons under the third indent of Article 41(2) of the Charter of Fundamental Rights and Article 296 TFEU.

41 In the present case, the Court considers it necessary to raise of its own motion a plea involving a matter of public policy, based on the lack of competence of the author of the contested letter.

42 It is settled case-law that the EU judicature is required to examine of its own motion questions as to the competence of the authority whose act is being challenged before it, even if none of the parties has made any application to that effect, since the lack of competence of the author of an act that adversely affects a person is a plea of public policy which the EU judicature must examine, where necessary of its own motion (judgments of 6 April 1995, *BASF and Others* v

Commission, T-80/89, T-81/89, T-83/89, T-87/89, T-88/89, T-90/89, T-93/89, T-95/89, T-97/89, T-99/89 to T-101/89, T-103/89, T-105/89, T-107/89 and T-112/89, EU:T:1995:61, paragraph 95; of 8 July 2010, *Commission* v *Putterie-De-Beukelaer*, T-160/08 P, EU:T:2010:294, paragraph 61; and of 14 January 2016, *Doux* v *Commission*, T-434/13, not published, EU:T:2016:7, paragraph 80).

43 In that regard, the Commission was asked to address in the defence the question of the competence of a director of DG Energy to adopt the contested letter, should that letter be akin to a decision. The parties also had the opportunity to express their views on the question of the competence of the author of the contested letter at the hearing.

44 The Commission submits, in essence, that, should the Court consider that the contested letter must be subject to judicial review, the question of the competence of the author of the act is irrelevant and should not be examined, as in the case that gave rise to the judgment of 24 March 1994, *Air France* v *Commission* (T-3/93, EU:T:1994:36). Otherwise, that would lead to the paradoxical situation where an informal act of the Commission would be reclassified as a decision in order to ensure that it is subject to judicial review, meaning that it would automatically be annulled on the ground that the procedure for adopting it was not followed, thus preventing any review of its substance. The Commission adds that, although a director is not competent to adopt a decision, he or she may, by contrast, provide legal guidance and remind the parties concerned of the views of the Commission's services regarding the interpretation to be given to EU law. At the hearing, it also stated, in essence, that it was also relevant to take account of the fact that the contested letter was akin to a negative decision, that is to say, refusing to apply Article 1(6) and (7) of Regulation 2017/2195.

45 The applicant claims that the contested letter must be annulled on the ground of lack of competence.

46 First, it must be borne in mind that, in the judgment on appeal (paragraph 50), the Court of Justice held that the contested letter produced binding legal effects. It was therefore adopted in the exercise of a decision-making power.

47 Second, in that regard, it should be noted that the need to prevent the Commission from being able to avoid review by the EU judicature by failing to adhere to the formal requirements that govern the adoption of the act at issue, requirements which must be observed in the light of its substance and which include the competence of the service, is one of the grounds that led the Court of Justice to find that the contested letter produced binding legal effects (judgment on appeal, paragraph 49).

48 Third, the Commission itself stated in its written pleadings, on the one hand, that Article 8 of its Rules of Procedure, in the version then applicable (OJ 2000 L 308, p. 26), defined, in binding terms, the procedure by which its decisions are taken, which presupposes the agreement of a majority of its Members unless the decision

is taken by empowerment or by delegation, and, on the other hand, that the contested letter did not fulfil any of those conditions.

49 More specifically, it should be noted that empowerment is, in any event, possible, under Article 13 of the Rules of Procedure of the Commission, only in respect of Members of that institution and that the adoption of management or administrative measures may be delegated, pursuant to Article 14 of those rules of procedure, to the Directors-General and Heads of Service. This means that empowerment and, even more so, delegation cannot extend to the adoption of a decision of principle (see, to that effect, judgments of 12 March 2003, *Maja* v *Commission*, T-254/99, EU:T:2003:67, paragraphs 41 and 42; of 2 October 2009, *Cyprus* v *Commission*, T-300/05 and T-316/05, not published, EU:T:2009:380, paragraphs 213 and 214; and of 2 October 2009, *Estonia* v *Commission*, T-324/05, EU:T:2009:381, paragraphs 67 and 68).

50 In addition, it must be observed that the fact that natural or legal persons may not rely on a breach of rules which are not intended to ensure protection for individuals but to organise the internal functioning of the institution's services in the interests of good administration (see, to that effect, judgment of 7 May 1991, *Nakajima* v *Council*, C-69/89, EU:C:1991:186, paragraphs 49 and 50) does not mean, however, that an individual can never successfully rely on a breach of a rule governing the decision-making process that led to the adoption of an EU act. Among the provisions governing the internal procedures of an institution, a distinction must be made between those in respect of which natural and legal persons cannot plead infringement, because they concern only the rules governing the internal functioning of the institution and can have no effect on the legal position of those persons, and those provisions which, if infringed, may, on the contrary, be relied on as they create rights and are a factor contributing to legal certainty for those persons (judgment of 17 February 2011, *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council*, T-122/09, not published, EU:T:2011:46, paragraph 103).

51 That is the case with Articles 8, 13 and 14 of the Rules of Procedure of the Commission, which implement the principle of collegiality laid down in Article 250 TFEU, which is based on the equality in the decision-making process as between the Members of that institution and signifies, in particular, that decisions must be deliberated on jointly and that all the Members of the College of Commissioners bear collective responsibility at political level for all decisions adopted (see judgment of 30 November 2009, *France and France Télécom* v *Commission*, T-427/04 and T-17/05, EU:T:2009:474, paragraph 116 and the case-law cited). The natural and legal persons concerned by the decisions which the Commission is called upon to adopt are entitled to expect that those decisions will be deliberated on by that college, except in the situations and in accordance with the arrangements laid down in those rules of procedure. It follows that the provisions laid down for that purpose in those rules of procedure are intended to ensure the protection of individuals for the purposes of the case-law cited in paragraph 50 above and that the EU judicature is required to raise of its own

motion the lack of competence of an author other than the College of Commissioners.

52 It must be noted that the contested letter, in so far as it states that the conditions of Article 1(6) and (7) of Regulation 2017/2195 are not met and contains a refusal to authorise the Swiss Confederation to participate in the European balancing platforms, is based on the examination of complex factual issues and involves the exercise of discretion. It is therefore a decision of principle, and not a management or administrative measure.

53 Moreover, in the plea of inadmissibility and in the defence, the Commission expressly acknowledged that any decision with regard to opening the TERRE platform to the Swiss TSO had to be taken by the College and that an official, such as a Head of Unit or a Director, could not legally take such a decision. It also acknowledged that the College had not delegated the adoption, on its behalf, of a decision with regard to opening the TERRE platform to the Swiss TSO to a director of DG Energy, it being observed that, in any event, that decision could not lawfully be delegated to that director.

54 As the applicant correctly observed, in its observations on the plea of inadmissibility and in the reply, the Commission thus itself admitted that the Director of DG Energy who signed the contested letter was not competent to adopt the decision contained therein.

55 Fourth, as regards the Commission's reference to the judgment of 24 March 1994, *Air France* v *Commission* (T-3/93, EU:T:1994:36), in which an action had been declared admissible against a decision contained in an oral statement by the Commission's spokesperson and in which the lack of competence of the author of the act was not raised by the Court of its own motion, it is sufficient to point out that it follows from paragraph 58 of that judgment that the existence of a decision of the institution was not disputed between the parties, and the involvement of the spokesperson merely had the effect of making that decision public.

56 Accordingly, the decision contained in the contested letter is vitiated by lack of competence and must, on that ground, be annulled (see, to that effect, judgments of 11 November 2004, *Portugal* v *Commission*, C-249/02, EU:C:2004:704, paragraphs 44 to 47, and of 15 December 2005, *Infront WM* v *Commission*, T-33/01, EU:T:2005:461, paragraphs 173 to 178), without there being any need to examine the pleas in the application.

Costs

57 In accordance with Article 219 of its Rules of Procedure, in decisions of the General Court given after its decision has been set aside and the case referred back to it, the General Court is to decide on the costs relating to the proceedings instituted before it and to the proceedings on the appeal before the Court of Justice. Given that, in the judgment on appeal, the Court of Justice reserved the

costs, it is for the General Court to decide, in the present judgment, on all the costs relating to the proceedings brought before it, including the proceedings at first instance, and on the costs relating to the proceedings on the appeal in Case C-121/23 P.

58 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.

59 Since the Commission has been unsuccessful, it must be ordered to pay the costs relating to the proceedings before the General Court and to the appeal proceedings before the Court of Justice, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. Annuls the decision contained in the letter of the European Commission of 17 December 2020, by which the Commission refused to authorise, pursuant to Article 1(7) of Commission Regulation (EU) 2017/2195 of 23 November 2017 concerning a guideline on electricity balancing, the Swiss Confederation to participate in the European platforms for the exchange of standard products for balancing energy, in particular the Trans European Replacement Reserves Exchange platform;

2. Orders the Commission to pay the costs relating to Cases T-127/21, T-127/21 RENV and C-121/23 P.

Škvařilová-Pelzl Nõmm Kukovec

Delivered in open court in Luxembourg on 4 February 2026.

V. Di Bucci M. van der Woude

Registrar President