

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

1 October 2025 ([*](#))

(Energy – Internal market for electricity – Regulation (EU) 2015/1222 – Regulation (EU) 2019/943 – Allocation of cross-zonal capacity between bidding zones and congestion management – Determination of common regional methodologies for the calculation of daily and intraday capacity – Proposals from the transmission system operators of the ‘Core’ capacity calculation region – Internal critical network elements – Economic efficiency – Power transfer distribution factor (PTDF) – Decision of the Board of Appeal of ACER)

In Cases T-600/23 and T-612/23,

Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA), established in Bonn (Germany), represented by U. Karpenstein and K. Reiter, lawyers,

applicant in Case T-600/23,

Federal Republic of Germany, represented by J. Möller and R. Kanitz, acting as Agents, and by R. Bierwagen, lawyer,

applicant in Case T-612/23,

v

European Union Agency for the Cooperation of Energy Regulators (ACER), represented by P. Martinet, E. Tremmel and M. Povh, acting as Agents,

defendant,

supported by

European Commission, represented by O. Beynet and T. Scharf, acting as Agents,

intervener in Case T-612/23,

THE GENERAL COURT (Third Chamber, Extended Composition),

composed, at the time of the deliberations, of S. Papasavvas, President, P. Škvářilová-Pelzl (Rapporteur), I. Nõmm, D. Kukovec and R. Meyer, Judges,

Registrar: S. Jund, Administrator,

having regard to the written part of the procedure,

further to the joint hearing on 4 March 2025,

gives the following

Judgment

1 By their actions under Article 263 TFEU, the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA) and the Federal Republic of Germany seek the annulment of Decision A-003-2019_R of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) of 7 July 2023, published on ACER’s website on 26 July 2023 (‘the contested decision’).

Background to the dispute

2 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) provided, in Article 18(5) thereof, that the European Commission could adopt guidelines on, inter alia, paragraph 3(d) of that article. Those guidelines included, by reference to Article 8(6)(g) of that regulation, capacity-allocation and congestion-management rules.

3 On the basis of Article 18(3)(b) and Article 18(5) of Regulation No 714/2009, the Commission adopted Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015 L 197, p. 24). That regulation set out a series of requirements relating to the allocation of cross-zonal capacity between bidding zones (‘zones’) and congestion management in the day-ahead and intraday markets in the electricity sector. Those requirements included, inter alia, the determination of common methodologies relating to the calculation of the day-ahead and intraday cross-zonal capacity (‘capacity calculation’) within each relevant capacity calculation region, in accordance with the provisions of Section 3, entitled ‘Capacity calculation methodologies’, of Chapter 1 of Title II of Regulation 2015/1222. Article 20, contained in that section, set out the rules for the introduction of capacity calculation methodologies using a ‘flow-based approach’. According to point 9 of the second paragraph of Article 2 of Regulation 2015/1222, such an approach may be defined as ‘a capacity calculation method in which energy exchanges between ... zones are limited by power transfer distribution factors [(PTDFs)] and available margins on critical network elements’. The capacity calculation region comprising Belgium, the Czech Republic, Germany, France, Croatia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Romania, Slovenia and Slovakia (‘the “Core” region’) uses a flow-based approach.

- 4 In accordance with Article 9(1) and Article 20(2) of Regulation 2015/1222, the transmission system operators (TSOs) of each capacity calculation region were required to develop proposals for capacity calculation methodologies within their respective region and to submit them to the relevant national regulatory authorities ('NRAs') for approval.
- 5 In accordance with Article 9(10) and (12) of Regulation 2015/1222, the relevant NRAs then had to attempt to reach an agreement and take a decision as regards the proposals of the TSOs or, as the case may be, as regards a version amended by the TSOs following a request made by those NRAs. Under Article 9(11) and (12) of Regulation 2015/1222, where the NRAs concerned were not able to reach such an agreement, ACER had to take a decision concerning the TSOs' proposals or the amended version thereof, in accordance with Article 8(1) of Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ 2009 L 211, p. 1).
- 6 On 15 September 2017, the TSOs of the 'Core' region submitted to the NRAs of that region, for approval, proposals for the regional design of the capacity calculation methodologies for their region.
- 7 Since the NRAs of the 'Core' region were unable to reach an agreement on those proposed methodologies, the matter was referred to ACER. By Decision No 02/2019 of 21 February 2019 ('the initial decision'), ACER adopted amended versions of the regional design of the common capacity calculation methodologies for the 'Core' region, as set out in Annexes I and II to that decision ('the methodologies at issue').
- 8 On 23 April 2019, BNetzA, as the competent NRA for Germany, brought an appeal before the Board of Appeal of ACER against the initial decision. That appeal was based on Article 19 of Regulation No 713/2009.
- 9 By application lodged at the Registry of the General Court on 2 May 2019, the Federal Republic of Germany brought an action seeking the annulment of that decision, which was registered under case number T-283/19.
- 10 On 5 June 2019, the European Parliament and the Council of the European Union adopted Regulation (EU) 2019/943 on the internal market for electricity (OJ 2019 L 158, p. 54). According to recital 1 thereof, that regulation recast Regulation No 714/2009 and entailed, in accordance with its Article 70, the repeal of Regulation No 714/2009. Regulation 2019/943 was published on 14 June 2019 and, in accordance with Article 71(1) thereof, entered into force on 4 July 2019. Under the first subparagraph of Article 71(2) of Regulation 2019/943, that regulation was in principle to apply from 1 January 2020. Nevertheless, in accordance with the second subparagraph of Article 71(2) thereof, by way of exception, Articles 14 and 15 thereof were to apply from the date of its entry into force. The same applied to Article 16 of Regulation 2019/943, for the purpose of implementing Article 14(7) and Article 15(2) of that regulation.
- 11 By Decision A-003-2019 of the Board of Appeal of ACER of 11 July 2019, the appeal brought by BNetzA against the initial decision was dismissed as unfounded.
- 12 On 21 September 2019, BNetzA brought an action before the General Court seeking, first, the partial annulment of the initial decision and, second, the annulment of Decision A-003-2019 of the Board of Appeal; that action was registered at the Court Registry under case number T-631/19.
- 13 By judgment of 7 September 2022, *BNetzA v ACER* (T-631/19, EU:T:2022:509), the Court annulled Decision A-003-2019 and dismissed the remainder of the action brought by BNetzA as inadmissible. The Court annulled Decision A-003-2019 on the ground that, in that decision, the Board of Appeal had erred in law by failing to determine whether the methodologies at issue complied with the requirements of Articles 14 to 16 of Regulation 2019/943, which had been specifically relied on by BNetzA in its appeal to that Board, since those requirements were already applicable (see paragraph 10 above).
- 14 Following the judgment of 7 September 2022, *BNetzA v ACER* (T-631/19, EU:T:2022:509), the Board of Appeal of ACER, by the contested decision, confirmed the initial decision, stating in particular that the methodologies at issue complied with Articles 14 to 16 of Regulation 2019/943.
- 15 Article 5(8) of the methodologies at issue, read in the light of Article 5(7) thereof, provides that the proposed list of internal critical network elements ('CNEs') (and the relevant contingencies) submitted by the TSOs of the 'Core' region pursuant to paragraphs 5 and 6 of that article, which is to be updated every two years, is to include at least the following:
- (a) a list of proposed internal [CNEs (and the relevant contingencies)] with the associated maximum zone-to-zone PTDFs referred to in paragraph 7[, namely 5% or higher];
- (b) an impact assessment of increasing the threshold ... for [inclusion]... to 10% or higher; and
- (c) for each proposed internal [CNE (and the relevant contingencies)], an analysis demonstrating that including the concerned internal network element in capacity calculation is economically the most efficient solution to address the congestions on the concerned internal network element, considering, for example, the following alternatives:
- (i) application of remedial actions;
- (ii) reconfiguration of bidding zones;
- (iii) investments in network infrastructure combined with one or the two above; or
- (iv) a combination of the above.'
- 16 Furthermore, Article 5(8) of the methodologies at issue states that, before performing the analysis pursuant to point (c), the TSOs of the 'Core' region must jointly coordinate and consult with the NRAs of that region on the methodology, assumptions and criteria for that analysis.

17 In accordance with Article 5(9) of the methodologies at issue, the proposed lists of internal CNEs (and the relevant contingencies) submitted by the TSOs of the 'Core' region must also demonstrate that those TSOs have diligently explored the alternatives referred to in paragraph 8 of that article sufficiently in advance, taking into account their required implementation time, such that they could be applied or implemented by the time that the decisions of the NRAs of that region on those proposals are taken.

Forms of order sought

18 In Case T-111/23, BNetzA claims that the Court should:

- annul the contested decision;
- order ACER to pay the costs.

19 In Case T-612/23, the Federal Republic of Germany claims that the Court should:

- primarily, annul the contested decision, in so far as it confirms Article 5(8) and (9) of the methodologies at issue;
- in the alternative and in the event that paragraphs 8 and 9 of Article 5 of the methodologies at issue are inseparable from the other provisions of Article 5 or from all the other provisions of those methodologies, annul all of those provisions;
- order ACER to pay the costs.

20 ACER contends, in essence, in Case T-600/23 and, supported by the Commission, in Case T-612/23, that the Court should:

- dismiss the action;
- order BNetzA and the Federal Republic of Germany to pay the costs.

Law

21 Having heard the parties, the Court has decided to join Cases T-600/23 and T-612/23 for the purposes of the present judgment, in accordance with Article 68(1) of its Rules of Procedure.

Subject matter of the dispute

22 It is apparent from an overall reading of the application in Case T-600/23 that, in that application and like the Federal Republic of Germany in Case T-612/23, BNetzA is seeking the annulment of the contested decision only in so far as that decision has adopted Article 5(8)(b) and (c) and Article 5(9) of the methodologies at issue, imposing on the TSOs of the 'Core' region certain requirements to be complied with when they propose an internal network element and the relevant contingencies for inclusion on the list of CNEs and contingencies to be taken as inputs to the capacity calculation ('the provisions at issue').

23 It is apparent from paragraph 5 of the application in Case T-600/23 that 'the action aims at a specific element of the [initial decision]: The mechanism imposed by Article 5(5) to (9) [of that decision]', since, 'in the view of BNetzA, that mechanism is unlawful, because it makes it impossible or, at least, more difficult than provided by the law, to apply capacity calculation to internal network elements'. In addition, it is apparent from paragraphs 13 and 14 of that application, contained under the heading 'Object of the action', that, although BNetzA is formally seeking 'the annulment of the contested decision', it also states that 'the plea in law raised ... concerns the mechanism imposed in Article 5(5) to (9) [of the initial decision], which was confirmed in the contested decision'. In particular, in paragraph 14 of the application, BNetzA states that '[it] does not submit any plea in law against the contested decision inasmuch as it confirms the other provisions of the [initial decision] that formed the object of [its] appeal to the [Board of Appeal]' and that, even though '[it] still considers those other provisions unlawful', it 'abstains from attacking them in the present proceedings for lack of practical significance'. The part of the application entitled 'Summary of the plea in law' also confirms that BNetzA's entire line of argument is directed against 'the mechanism imposed by Article 5(5) to (9) [of the initial decision]'.

24 Accordingly, it should be stated that both the action in Case T-600/23 and the action in Case T-612/23 have as their subject matter an application for the annulment of the contested decision, in so far as that decision has adopted the provisions at issue.

Substance

25 In support of its action, BNetzA raises a single plea in law, alleging, in essence, infringement of Articles 14 to 16 of Regulation 2019/943 and of Article 29(3)(b) of Regulation 2015/1222, inasmuch as the Board of Appeal's interpretation of those articles in the provisions at issue of the contested decision is, in BNetzA's submission, not consistent with those articles as well as with various provisions of primary EU law and principles of EU law, namely Article 194 TFEU, Article 16 of the Charter of Fundamental Rights of the European Union, the principle of proportionality, the principle that essential elements are reserved for the legislature, the principle of institutional balance and the principle of conferral of powers, the principle of equal treatment, the principle that 'no one is obliged to do the impossible', and the principle of legal certainty.

26 In support of its action, the Federal Republic of Germany relies on five pleas in law. The first plea alleges, primarily, infringement of Articles 14 to 16 of Regulation 2019/943 and of Article 29(3)(b) of Regulation 2015/1222. The other pleas in law, raised in the alternative, allege, as regards the second plea, infringement of Articles 32 to 34, Article 25 and Article 29(3)(b) of Regulation 2015/1222; as regards the third plea, infringement of Article 21(2)(a) and Article 22 of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ 2017 L 220, p. 1); as regards the fourth plea, failure to observe the principle of proportionality; and, as regards the fifth plea, lack of competence on the part of ACER and failure to comply with the formal requirements arising from Articles 2 and 4 of Council Regulation No 1 of 15 April 1958 determining the

languages to be used by the European Economic Community (OJ, English Special Edition, Series 1 Volume 1952-1958, p. 59), as amended.

- 27 BNetzA, in the context of its single plea in law, and the Federal Republic of Germany, in the context of the first plea raised by it, submit that the provisions at issue are based on a misinterpretation, on the part of the Board of Appeal, of Articles 14 to 16 of Regulation 2019/943 and of Article 29(3)(b) of Regulation 2015/1222; they state that, according to that Board's interpretation, those provisions do not preclude, where a TSO proposes an internal network element (and the relevant contingencies) for inclusion on the list of internal CNEs (and the relevant contingencies) taken into account in the capacity calculation, that TSO from having to, first, and in accordance with the criterion of economic efficiency set out in Article 5(8)(c) of the methodologies at issue ('the economic efficiency criterion'), demonstrate that the inclusion of that element in that calculation is the most economically efficient solution to address congestions on that element, taking into account other available solutions, such as the application of remedial actions, the reconfiguration of zones, or investments in network infrastructure, and, second, carry out an impact assessment of increasing the threshold for inclusion to 10% or higher ('the interpretation at issue').
- 28 According to BNetzA and the Federal Republic of Germany, the interpretation at issue is not compatible with a literal, contextual and teleological interpretation of Articles 14 to 16 of Regulation 2019/943 and of Article 29(3)(b) of Regulation 2015/1222, from which, in their submission, it is clear that the capacity calculation must include all internal network elements (and the relevant contingencies) that are influenced by cross-zonal exchanges irrespective of whether or not those elements are structurally congested.
- 29 In that regard and as a preliminary point, it should be noted that Article 5(8) of the methodologies at issue requires that the proposed list of internal CNEs (and the relevant contingencies) that the TSOs of the 'Core' region must submit, for approval, to the NRAs of that region or, in the absence of an agreement between those NRAs or upon their joint request, to ACER, must include, in addition to the proposed list of internal CNEs whose associated power transfer distribution factor ('PTDF') is 5% or higher (Article 5(8)(a)), an impact assessment of increasing the threshold for inclusion to 10% or higher (Article 5(8)(b)) and an analysis of the most economically efficient solution to address congestions (Article 5(8)(c)). It should also be noted that Article 5(9) of the methodologies at issue requires, in essence, the TSOs to demonstrate, when submitting the proposal in question, that they have diligently explored the alternatives referred to in paragraph 8 of that article sufficiently in advance, such that they could be applied or implemented by the time that the decisions of the NRAs of that region on that proposal are taken. It follows that, for the purpose of including an internal network element on the list of internal CNEs (and the relevant contingencies) to be taken into account in the capacity calculation, the provisions at issue impose on the TSOs requirements ('the requirements at issue') going beyond the communication of the list of internal CNEs (and the relevant contingencies) that meet the PTDF criterion referred to in Article 5(8)(a) of those methodologies.
- 30 Furthermore, it must be borne in mind that Article 14 of Regulation 2019/943 lays down rules on the bidding zone review, in order to prevent those zones from containing long-term, structural congestions in the transmission network. Article 15 of that regulation provides a framework for the possibility given to Member States with identified structural congestion in their networks of developing action plans, in cooperation with their NRAs, in order to achieve, progressively and by 31 December 2025 at the latest, the minimum levels of capacity which the TSOs must make available for cross-zonal trade. Article 16 of that regulation governs those minimum levels of capacity, providing, inter alia, that where the flow-based approach is used, that minimum capacity, namely 70%, determines the minimum share of the capacity of a cross-zonal or an internal CNE respecting operational security limits to be used as an input to coordinated capacity calculation under Regulation 2015/1222, taking into account contingencies. The total remaining share of capacity, namely 30%, may be used for the reliability margins, loop flows and internal flows.
- 31 Furthermore, Article 29(3)(b) of Regulation 2015/1222 provides that the coordinated capacity calculator is to ignore, for the purposes of that calculation, those CNEs that are not significantly influenced by cross-zonal exchanges.
- 32 That said, it must be ascertained whether, as BNetzA and the Federal Republic of Germany in essence submit, the interpretation at issue infringes Articles 14 to 16 of Regulation 2019/943 and Article 29(3)(b) of Regulation 2015/1222, by allowing ACER to introduce the requirements at issue into the methodologies at issue.
- 33 In that regard, it must be borne in mind that it is settled case-law that, when interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see judgments of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41 and the case-law cited, and of 9 March 2023, *ACER v Aquind*, C-46/21 P, EU:C:2023:182, paragraph 54 and the case-law cited).
- 34 In the first place, it is necessary to examine whether it is apparent from the wording of the provisions of Regulations 2019/943 and 2015/1222 that ACER could, without committing an error, introduce the requirements at issue into the methodologies at issue.
- 35 BNetzA and the Federal Republic of Germany submit, in essence, that nothing in the wording of the provisions of Regulations 2019/943 and 2015/1222 permits the inclusion in the capacity calculation of an internal network element that is significantly influenced by cross-zonal exchanges to be made subject to the performance of an economic efficiency analysis and of an impact assessment of increasing the threshold for inclusion.
- 36 ACER disputes that the requirements at issue are incompatible with a literal interpretation of Articles 14 to 16 of Regulation 2019/943 and of Article 29(3)(b) of Regulation 2015/1222.
- 37 In that regard, first, it is important to recall that Article 2 of Regulation 2019/943, entitled 'Definitions', provides, in point 69 thereof, that the definition of a CNE is 'a network element either within a ... zone or between ... zones taken into account in the capacity calculation process, limiting the amount of power that can be exchanged [between zones]'. As BNetzA and the Federal Republic of Germany correctly submit, it does not follow from that definition that, in the context of Regulation 2019/943, requirements concerning the classification of internal network elements (and the relevant contingencies) other than that of being significantly influenced by cross-zonal exchanges may be introduced into the methodologies at issue and thus lead to some elements that significantly limit cross-zonal trade, on account of being influenced by structural congestions, not being regarded as critical and being excluded from the capacity calculation and from the application of the rules on the calculation of that capacity.

- 38 Moreover, Article 16(4) of Regulation 2019/943 confirms that the maximum level of cross-zonal capacity to be made available to market participants concerns, in addition to ‘interconnections’, ‘transmission networks affected by cross-border capacity’, that is to say, all internal network elements that have a considerable impact on that capacity and may thus limit it.
- 39 Second, that interpretation of Regulation 2019/943 is borne out by the content of Article 29(3)(b) of Regulation 2015/1222, according to which, ‘when calculating cross-zonal capacity, each coordinated capacity calculator shall ... ignore those [CNEs] that are not significantly influenced by the changes in ... zone net positions according to the [capacity calculation] methodology’.
- 40 In that regard, the calculation of the PTDF is a mathematical tool used to measure the influence exerted on the CNE by cross-zonal exchanges in the context of the flow-based approach, as is apparent in particular from point 9 of the second paragraph of Article 2, Article 21(1)(b)(v) and Article 29(7)(b), (c) and (f) of Regulation 2015/1222. Article 2(22) of Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 (OJ 2013 L 163, p. 1) defines PTDF as a representation of the physical flow on a CNE induced by the variation of the net position of a zone. As ACER acknowledged at the hearing and as follows from Article 5(7) and Article 5(8)(a) of the methodologies at issue, the Board of Appeal accepted, in the contested decision, the TSOs’ proposal to consider that an internal network element whose PTDF was less than 5% did not satisfy the criterion of being significantly influenced by cross-zonal exchanges.
- 41 It follows that, as the Courts of the European Union have previously had occasion to clarify, as EU law currently stands, the view must be taken that CNEs include all the internal network elements which satisfy the criterion of being significantly influenced by cross-zonal exchanges, as measured by their PTDF (see, to that effect, judgment of 25 September 2024, *CRE v ACER*, T-446/21, not published, EU:T:2024:647, paragraph 51; of 25 September 2024, *RTE v ACER*, T-472/21, not published, EU:T:2024:648, paragraph 52; and of 25 September 2024, *BNetzA v ACER*, T-485/21, EU:T:2024:653, paragraph 47).
- 42 As BNetzA and the Federal Republic of Germany correctly submit, it does not follow from the wording of Article 29(3)(b) of Regulation 2015/1222 that, in the context of the capacity calculation methodology referred to in Article 21 of that regulation, internal network elements that are significantly influenced by cross-zonal exchanges, as measured by their PTDF, may be regarded as not being critical and may be excluded from the capacity calculation and from the application of the rules on that calculation on the ground that they do not meet additional requirements, intended in particular to take account of the fact that those elements are structurally congested.
- 43 Third, it is necessary to reject ACER’s arguments that the reference, in the text of the second sentence of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943, to ‘the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation ... No 714/2009’ and therefore, in essence, to Regulation 2015/1222, permitted the classification of ‘internal network elements’ as ‘critical’ and, accordingly, their inclusion in the capacity calculation and the application to those elements of the rules on the calculation of that capacity to be made subject to additional requirements, such as compliance with the economic efficiency criterion or the performance of an impact assessment of increasing the threshold for inclusion to 10% or higher.
- 44 First of all, in so far as ACER refers primarily to the French-language version and BNetzA and the Federal Republic of Germany to the German-language version of the second sentence of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943, it must be borne in mind that, in accordance with settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. Where there is a divergence between the various language versions of an EU legislative text, the provision in question must thus be interpreted by reference to the general scheme and purpose of the rules of which it forms part (see order of 2 December 2022, *Compania Națională de Transporturi Aeriene Tarom*, C-229/22, EU:C:2022:978, paragraph 21 and the case-law cited; judgments of 21 March 2024, *Cobult*, C-76/23, EU:C:2024:253, paragraph 25, and of 5 September 2024, *BIOR*, C-344/23, EU:C:2024:696, paragraph 45).
- 45 In the present case, it must be identified, in the various language versions of the second sentence of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943, what it is that, from a grammatical point of view, must be determined ‘in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation ... No 714/2009’. In that regard, apart from the Bulgarian-, Czech- and German-language versions of that provision, which, from a grammatical point of view, refer to the ‘contingencies’ affecting the CNEs rather than – as ACER claims – to the CNEs themselves, the other language versions may be understood as referring generally to the first part of the sentence and, therefore, to the capacity respecting operational security limits of each CNE (and the relevant contingencies), a margin of 70% of which must be kept available for cross-zonal trade (‘the MACZT of 70%’).
- 46 Thus, most of the language versions of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943 confirm the reading of that provision advanced by BNetzA and the Federal Republic of Germany, according to which the EU legislature sought to refer, in it, to the determination of the capacity respecting the operational security limits of each CNE (and the relevant contingencies), a substantial part of which, namely the MACZT of 70%, had to be kept available for cross-zonal trade. By contrast, none of those versions supports a finding – sought by ACER – that that provision authorises the TSOs, the NRAs or ACER itself to make the classification of ‘internal network elements’ as ‘critical’ and, accordingly, their inclusion in the capacity calculation and the application to those elements of the rules on that calculation subject to additional requirements.
- 47 That interpretation is borne out by the *travaux préparatoires* for Regulation 2019/943 (documents ST 5834/18 REV 4, ST 5834/18 REV 5 and ST 5070/19), which are publicly available and which clearly point, by the reference contained therein, in essence, to Regulation 2015/1222, to the determination of the capacity respecting the operational security limits of each CNE (and the relevant contingencies) and not only to the contingencies or only to the CNEs.
- 48 Next, in so far as the parties also claim that the content of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943 should be read in the light of recital 31 of that regulation, it must be borne in mind that, although the text of a recital of an EU legislative act may be used to clarify a provision of that act and is an important interpretative tool (see judgment of 19 December 2019, *Puppinck and Others v Commission*, C-418/18 P, EU:C:2019:1113, paragraph 75 and the case-law cited), it is settled case-law

that the preamble to an EU legislative act does not, in itself, have binding legal force. Such a preamble cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner clearly contrary to their wording (*contra legem*) (see judgment of 19 June 2014, *Karen Millen Fashions*, C-345/13, EU:C:2014:2013, paragraph 31 and the case-law cited).

- 49 In the present case, the content of recital 31 of Regulation 2019/943 cannot therefore lead to an interpretation *contra legem* of point (b) of the first subparagraph of Article 16(8) of that regulation, which, in accordance with the conclusion reached in paragraph 46 above as a result of the uniform interpretation, refers to the determination of the capacity respecting the operational security limits of each CNE (and the relevant contingencies), a substantial part of which, namely the MACZT of 70%, must be kept available for cross-zonal trade.
- 50 Moreover, apart from the German-language version, the versions of recital 31 of Regulation 2019/943 existing in all other languages of the European Union, including the Bulgarian- and the Czech-language versions, confirm that the EU legislature sought to point, by the reference, in essence, to Regulation 2015/1222, to the determination of the capacity respecting the operational security limits of each CNE (and the relevant contingencies), a substantial ‘percentage’ of which, namely the MACZT of 70%, must be kept available for cross-zonal trade.
- 51 It must be added that the fact, referred to by ACER, that it is stated, in the versions existing in all the languages of the European Union, with the exception of the German-language version, that that determination must be made in accordance or following the ‘selection process under Regulation ... 2015/1222’ does not mean that that determination may be based on the requirements at issue. On the contrary, that indirect reference to the selection process under Article 29(3)(b) of Regulation 2015/1222, referred to in paragraph 39 above, reflects the EU legislature’s intention to apply the approach adopted in that provision for the selection of CNEs, that is to say, an approach based on the criterion of the internal network elements being significantly influenced by cross-zonal exchanges, as measured by their PTDF. It does not therefore follow from that reference that the classification of ‘internal network elements’ as ‘critical’ and, accordingly, their inclusion in the capacity calculation and the application to them of the rules on that calculation could be made subject to requirements other than the requirement of being significantly influenced by cross-zonal exchanges.
- 52 In the light of the foregoing, there is therefore no merit to ACER’s claim that it is apparent from the wording of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943, read in the light of recital 31 of that regulation, that requirements other than that of being significantly influenced by cross-zonal exchanges could be introduced, into the methodologies at issue, in order to determine the internal network elements that should be regarded as ‘critical’ and, as such, be included on the list of CNEs (and the relevant contingencies) taken into account in the capacity calculation and subject to the rules on that calculation.
- 53 Furthermore, in so far as ACER submits that Article 21 of Regulation 2015/1222, entitled ‘Capacity calculation methodology’, adopted by the Commission upon delegation by the EU legislature, only lays down the items which that methodology, in particular for the flow-based approach, must ‘at least’ include, without precluding that methodology from containing other items not explicitly set out in that provision, it should be stated that that cannot allow the amendment, in the methodologies at issue, made to the criteria established by the relevant rules on the determination of the internal network elements that may be regarded as ‘critical’ and, as such, be included on the list of CNEs (and the relevant contingencies) taken into account in the capacity calculation and subject to the rules on that calculation.
- 54 Lastly, the fact that, first, Article 21(4) of Regulation 2015/1222 provides that all TSOs in each capacity calculation region are to use, as far as possible and by 31 December 2020 at the latest, harmonised capacity calculation inputs, in particular for the flow-based approach, and that, second, the CNEs (and the relevant contingencies) that, in accordance with Article 2(69) of Regulation 2019/943, are taken into account in the capacity calculation process and limit the amount of power that can be exchanged between zones constitute inputs to ‘the capacity calculation process as available for flows induced by cross-zonal exchange’, referred to in point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943 and established by the flow-based capacity calculation methodology, adopted in accordance with Article 20(2) of Regulation 2015/1222, does not permit the conclusion that the selection of internal network elements that should be regarded as ‘critical’ and, as such, be included on the list of CNEs (and the relevant contingencies) taken into account in the capacity calculation and subject to the rules on that calculation may be made subject to requirements other than that of being significantly influenced by cross-zonal exchanges.
- 55 In that regard, the situation differs from that concerning the technical implementation by the TSOs, the NRAs or ACER, by identifying the relevant PTDF to be taken into account in the context of the methodologies at issue, of the criterion of being significantly influenced by cross-zonal exchanges laid down by the EU legislature and, upon delegation, by the Commission, in Article 2(69) of Regulation 2019/943 and Article 29(3)(b) of Regulation 2015/1222. In paragraph 112 of the initial decision, ACER itself stated that the significant influence criterion was an important element in defining the final list of CNEs (and the relevant contingencies) to be taken into account in the capacity calculation, as explicitly required by Article 29(3)(b) of Regulation 2015/1222.
- 56 Regulation 2015/1222 does not provide for any express basis equivalent to that in Article 29(3)(b) thereof, which concerns the significant influence criterion, such as to warrant, in the context of that methodology, the additional determination of a criterion indicating on what condition internal network elements limiting the amount of power that can be exchanged between zones may be included on the list of CNEs (and the relevant contingencies) taken into account in the capacity calculation process and, accordingly, to warrant ACER’s adoption of the requirements at issue. Moreover, in paragraphs 109 and 112 of the initial decision and in paragraphs 47, 48 and 52 of the contested decision, ACER and the Board of Appeal merely referred, as the basis for the economic efficiency criterion, to point 1.7 of Annex I to Regulation No 714/2009, in respect of which the Board of Appeal correctly found, in paragraph 46 of the contested decision, that it could no longer constitute a valid legal basis for that criterion, since it was no longer applicable (see, to that effect, judgment of 7 September 2022, *BNetzA v ACER*, T-631/19, EU:T:2022:509, paragraphs 76 to 85).
- 57 In that context, it must be borne in mind that the purpose of the common methodologies referred to in Article 9(7) and Article 20(2) of Regulation 2015/1222 is the definition, by TSOs, of a coordinated capacity calculation methodology relating to a region. Under Article 21(1) of Regulation 2015/1222, the methodology proposal developed by the TSOs must include ‘at least’ certain items, including, inter alia, ‘methodologies for the calculation of the inputs to capacity calculation’; those methodologies must include the parameters listed in Article 21(1)(a) to (iv) of that regulation. Article 21(1)(a) to (iv) relates to the determination of the reliability

margin, the determination of operational security limits, contingencies relevant to capacity calculation and allocation constraints that may be applied, the determination of the generation shift keys, and the determination of remedial actions to be considered in capacity calculation.

- 58 In the present case, it should be noted that the methodologies at issue implement those provisions. More specifically, Article 5 of those methodologies, which contains the requirements at issue, appears in Title 3 thereof, which is devoted to ‘capacity calculation inputs’. That article is therefore intended to implement Article 21(1)(a) of Regulation 2015/1222 and, as its title indicates, its subject matter is the definition by the TSOs of internal CNEs (and the relevant contingencies), which constitutes, in accordance with Article 4(8) of those methodologies, the first step of the capacity calculation process.
- 59 As stated in paragraph 29 above, Article 5(8) of the methodologies at issue requires the inclusion, in the proposed list of internal CNEs (and the relevant contingencies) that the TSOs of the ‘Core’ region must submit, in addition to the proposed list of internal CNEs with an associated PTDF of 5% or higher, of an impact assessment of increasing the threshold for inclusion to 10% or higher and an analysis of the most economically efficient solution to address congestions.
- 60 The obligation to include, in the proposed list of internal CNEs (and the relevant contingencies), such an impact assessment and such an analysis goes beyond the parameters set by Article 21(1)(a) of Regulation 2015/1222 for the calculation of the inputs to capacity calculation and does not correspond to the objectives referred to in that provision. Although such assessments and such analyses could prove relevant, in the long term, in order to address structural congestions, the fact remains that they do not amount to inputs to capacity calculation and are not, as such, part of the capacity calculation process, which is based, primarily, on the determination, by the TSOs, of a list of CNEs meeting the definition given by the EU legislature in Article 2(69) of Regulation 2019/943. The same conclusion must be drawn, for the same reasons, in respect of the obligation, laid down in Article 5(9) of the methodologies at issue, that it be shown, in the proposed list of internal CNEs (and the relevant contingencies), that the alternatives referred to in Article 5(8) were explored diligently and sufficiently in advance.
- 61 It follows that it is not clear from the wording of the provisions of Regulations 2019/943 and 2015/1222 that ACER could, without committing an error, introduce the requirements at issue into the methodologies at issue.
- 62 In the second place, it must be examined whether the context of which the provisions of Regulation 2019/943 in part supports the conclusion that the requirements at issue could not be introduced into the methodologies at issue.
- 63 BNetzA and the Federal Republic of Germany submit, in essence, that it follows from a contextual interpretation of the provisions of Regulation 2019/943 that the inclusion in the capacity calculation of internal network elements influenced by cross-zonal exchanges cannot be made subject to an economic efficiency criterion.
- 64 ACER claims that a contextual interpretation of the provisions of Regulation 2019/943, made in the light of the rule of principle that the EU legislature set out in the first sentence of the first subparagraph of Article 16(8) of Regulation 2019/943, confirms that ACER could introduce the requirements at issue into the methodologies at issue. It states that, according to that rule, TSOs should not limit cross-zonal capacity to manage internal congestion problems, which, in its submission, is also borne out by the definition of ‘zone’ and by the rules governing those zones laid down in Article 2(65) and Article 14(1) of Regulation 2019/943. According to ACER, the inclusion of the requirements at issue into the methodologies at issue was necessary in order to ensure compliance with that rule of principle.
- 65 In that regard, it should be observed that, pursuant to the second sentence of the first subparagraph of Article 16(8) of Regulation 2019/943 and points (a) and (b) of the first subparagraph of Article 16(8) of that regulation, the rule of principle set out in the first sentence of Article 16(8) is deemed to be complied with when the levels of capacity available for cross-zonal trade reach, for borders using a flow-based approach, the MACZT of 70%; the remaining total amount of 30% can be used for reliability margins, loop flows and internal flows. The EU legislature thus established a presumption of compliance, for TSOs reaching the MACZT of 70%, with their obligation not to limit cross-zonal capacity in order to manage internal congestion problems.
- 66 In the fourth and sixth sentences of recital 27 of Regulation 2019/943, the EU legislature thus clearly explained that, in the context of that regulation, ‘clear minimum levels of available capacity for cross-zonal trade [needed] to be put in place in order to reduce the effects of loop flows and internal congestions on cross-zonal trade and to give a predictable capacity value for market participants’, whereas ‘the total remaining share of capacity [could] be used for reliability margins, loop flows and internal flows’.
- 67 The presumption referred to in paragraph 65 above is not called into question by the definition of a ‘zone’ or by the rules governing those zones set out in Article 2(65) and Article 14(1) of Regulation 2019/943, the content of which is relied on by ACER.
- 68 It is true that it follows from Article 2(65) and from Article 14(1) of Regulation 2019/943 that, within a zone, ‘market participants are able to exchange energy without capacity allocation’ and that, in principle, those zones ‘shall not contain ... structural congestions’.
- 69 Nevertheless, the third sentence of Article 14(1) of Regulation 2019/943 specifies the cases in which structural congestions remain permissible, which is the case, in particular, where ‘those structural congestions do not lead to reductions of cross-zonal trading capacity in accordance with the requirements of Article 16’. Furthermore, the fourth sentence of Article 14(1) of that regulation provides that the configuration of zones in the European Union is to be designed in such a way as to maximise economic efficiency and to maximise cross-zonal trading opportunities in accordance with Article 16 of that regulation, while maintaining security of supply. As has already been observed in paragraph 65 above, under Article 16(8) of Regulation 2019/943, when the TSOs of the ‘Core’ region reach the MACZT of 70% and manage internal congestion problems with the total remaining 30%, they are considered not to be unlawfully undermining the maximisation of economic efficiency and of cross-zonal trading opportunities.
- 70 Furthermore, in Article 15 of Regulation 2019/943, to which Article 16(8) of that regulation refers, the EU legislature has provided that any Member State with identified structural congestion may, in cooperation with its NRA, decide, in accordance with Article 14(7) of that regulation, to develop an action plan containing a concrete timetable (‘the linear trajectory’) for adopting measures to reduce that congestion and to enable its TSOs to reach, by 31 December 2025 at the latest, the MACZT of 70%.
- 71 On 28 December 2019, the Federal Republic of Germany submitted to the Commission and ACER an ‘action plan for the area’ controlled by its TSOs (*Aktionsplan Gebotszone*). In accordance with the third sentence of the second subparagraph of Article 15(2)

of Regulation 2019/943, during the implementation of that action plan, the Federal Republic of Germany must solely ensure that the capacity made available for cross-zonal trade to be compliant with Article 16(8) of that regulation is at least equal to the values of the linear trajectory, including by use of remedial actions in the 'Core' region.

- 72 As ACER acknowledged at the hearing, in response to an oral question put to it by the Court, the Federal Republic of Germany and its TSOs have generally complied, so far, with the linear trajectory provided for in their action plan, with the result that, in accordance with the presumption laid down in the first sentence of Article 16(8) of Regulation 2019/943, they must be deemed to have complied with the rule of principle that they must not limit cross-zonal capacity in order to manage internal congestion problems.
- 73 In that context, it is important to recall that, under Article 16(4) of Regulation 2019/943, TSOs are required to use remedial actions, such as counter-trading or redispatching, within the meaning of Article 2(26) of Regulation 2019/943, to maximise available capacities for cross-zonal trade, only for the purpose of achieving the minimum capacities provided for in Article 16(8) of that regulation, namely the MACZT of 70% or, if an action plan is currently being implemented, the values corresponding to the linear trajectory.
- 74 Furthermore, in accordance with Article 15 of Regulation 2019/943 and as is apparent from the sixth sentence of recital 31 of Regulation 2019/943, and as the Board of Appeal itself acknowledged in paragraph 60 of the contested decision, a zone should not be reconfigured against the will of the Member State concerned, provided that the minimum capacity is reached, namely the MACZT of 70% or the values corresponding to the linear trajectory.
- 75 It follows that, where the minimum capacity has been reached by the TSOs, the application of the economic efficiency criterion, in so far as it requires the TSOs to ascertain whether a reconfiguration of their zone or the use of remedial actions might not be solutions that are more economically efficient as compared to capacity allocation for the purpose of addressing congestion on their internal network elements, is, in practice, wholly irrelevant, since it is not legally binding on the Member State or the TSOs concerned. That was, moreover, acknowledged by ACER at the hearing, in response to an oral question put to it by the Court, relating to the potential reconfiguration of a zone.
- 76 Consequently, the examination of the context of which the provisions of Regulation 2019/943 are part confirms that ACER could not, without committing an error, introduce the requirements at issue into the methodologies at issue.
- 77 In the third place, it must be examined whether a teleological interpretation of the provisions of Regulations 2019/943 and 2015/1222 confirms that the requirements at issue could not be introduced into the methodologies at issue.
- 78 BNetzA and the Federal Republic of Germany submit that the interpretation at issue is incompatible with a teleological interpretation of Articles 14 to 16 of Regulation 2019/943 and of Article 29(3)(b) of Regulation 2015/1222.
- 79 ACER contends that a teleological interpretation of the provisions of Regulation 2019/943, made in the light of the objective that, in its submission, is pursued by the EU legislature in the context of that regulation, confirms that ACER could introduce the requirements at issue into the methodologies at issue. According to ACER, like Regulation 2019/943, those requirements sought to guarantee the proper functioning of the internal market for electricity by ensuring that the most economically efficient and cost-effective solutions were systematically favoured. BNetzA and the Federal Republic of Germany dispute the merits of those arguments.
- 80 In that regard, it should be pointed out that, even assuming, as ACER submits, that it were clear from an overall reading of the various provisions of Regulation 2019/943 that that regulation contained a general rule that, in the context of the application of the rules intended to guarantee the proper functioning of the internal market for electricity, the most cost-effective solutions would have to be favoured and that ACER would be authorised, on the basis of that rule, to introduce the requirements at issue into the methodologies at issue, it should be borne in mind that any general rule may be limited or excluded, according to the principle that a special rule derogates from the general rule (*lex specialis derogat legi generali*), where there are special rules governing specific matters (judgment of 14 July 2005, *Le Voci v Council*, T-371/03, EU:T:2005:290, paragraph 122). Special provisions thus prevail over general rules in situations which they specifically seek to regulate (see judgment of 22 April 2016, *Italy and Eurallumina v Commission*, T-60/06 RENV II and T-62/06 RENV II, EU:T:2016:233, paragraph 81 and the case-law cited). In any event, as special rules, the capacity-allocation and congestion-management provisions in Articles 15 and 16 of Regulation 2019/943 should thus prevail over the general rule relied on by ACER.
- 81 Moreover, as BNetzA and the Federal Republic of Germany correctly claim, it is clear from the legislative history of Regulation 2019/943, recasting Regulation No 714/2009, that the special rules laid down in Articles 15 and 16 of Regulation 2019/943 were adopted by the EU legislature even though it was fully aware of ACER Recommendation No 02/2016 of 11 November 2016 on the common capacity calculation and redispatching and countertrading cost sharing methodologies, and of the explanatory memorandum of the Commission accompanying its proposal COM(2016) 861 final of 30 November 2016 for a regulation of the European Parliament and of the Council on the internal market for electricity, both of which argued in favour of the systematic application, as regards capacity allocation and congestion management, of the most cost-effective solutions, which ACER and the Commission considered to follow from point 1.7 of Annex I to Regulation No 714/2009.
- 82 As is apparent from Article 16(8) of Regulation 2019/943, read in the light of the fourth and sixth sentences of recital 27 of that regulation, having regard to the various interests involved, the EU legislature intended, in that regulation, to implement a more balanced approach than that advanced by ACER, in its recommendation, and by the Commission, in its proposal, by requiring, inter alia, TSOs to comply with minimum levels of cross-zonal capacity corresponding to the MACZT of 70% or, as the case may be and by 31 December 2025 at the latest, with the values corresponding to the linear trajectory, while allowing TSOs to use the total remaining 30% to manage, in particular, internal congestion problems.
- 83 ACER is therefore not justified in claiming that, pursuant to a general rule favouring the most cost-effective solutions, it was authorised to limit, by the requirements at issue, the scope of Articles 15 and 16 of Regulation 2019/943, and the mere fact that, in the present case, there were solutions that were alleged to be more economically efficient as compared to those adopted by the EU legislature could not be such as to warrant the disregard of the solutions adopted by the EU legislature.

- 84 It follows that a teleological interpretation of the provisions of Regulations 2019/943 and 2015/1222 confirms that ACER could not, without committing an error, introduce the requirements at issue into the methodologies at issue.
- 85 It follows from all of the foregoing assessments that the interpretation at issue infringes Articles 14 to 16 of Regulation 2019/943 and Article 29(3)(b) of Regulation 2015/1222, since those provisions did not permit the introduction, into the methodologies at issue, of the requirements at issue, which impose obligations going beyond the mere communication of the list of internal CNEs (and the relevant contingencies) meeting the PTDF criterion, as referred to in Article 5(8)(a) of those methodologies.
- 86 Consequently, and without it being necessary to examine the other complaints and arguments advanced by BNetzA in support of its single plea in law or those raised in support of the first plea in law of the Federal Republic of Germany, alleging infringement of Articles 14 to 16 of Regulation 2019/943 and of Article 29(3)(b) of Regulation 2015/1222, or the other pleas put forward in the alternative by the Federal Republic of Germany, that single plea in law and that first plea in law must be upheld and, on that basis, the provisions at issue of the contested decision must be annulled.

Costs

- 87 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.
- 88 Since ACER has been unsuccessful, it must be ordered to pay the costs, in accordance with the forms of order sought by BNetzA and the Federal Republic of Germany.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

1. Joins Cases T-600/23 and T-612/23 for the purposes of the judgment;
2. Annuls Decision A-003-2019_R of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) of 7 July 2023 in so far as that decision adopts Article 5(8)(b) and (c) and Article 5(9) of the regional design of the day-ahead and intraday common capacity calculation methodologies for the capacity calculation region comprising Belgium, the Czech Republic, Germany, France, Croatia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Romania, Slovenia and Slovakia, as set out in Annexes I and II to ACER Decision No 02 of 21 February 2019;
3. Orders ACER to pay the costs.

Papasavvas

Škvařilová-Pelzl

Nömm

Kukovec

Meyer

Delivered in open court in Luxembourg on 1 October 2025.

V. Di Bucci

M. van der Woude

Registrar

President

* Languages of the case: German and English.