

## JUDGMENT OF THE COURT (Grand Chamber)

22 June 2021 (\*)

(Appeal – Common foreign and security policy (CFSP) – Restrictive measures taken with regard to the situation in Venezuela – Action for annulment brought by a third State – Admissibility – Fourth paragraph of Article 263 TFEU – Locus standi – Condition that the applicant must be directly concerned by the measure that forms the subject matter of the action – Concept of a ‘legal person’ – Interest in bringing proceedings – Regulatory act which does not entail implementing measures)

In Case C-872/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 28 November 2019,

**Bolivarian Republic of Venezuela**, represented by L. Giuliano and F. Di Gianni, avvocati,

appellant,

the other party to the proceedings being:

**Council of the European Union**, represented by P. Mahnič and A. Antoniadis, acting as Agents,

defendant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Prechal, M. Vilaras, E. Regan, M. Ilešič, L. Bay Larsen, A. Kumin and N. Wahl, Presidents of Chambers, E. Juhász (Rapporteur), T. von Danwitz, C. Toader, L.S. Rossi, I. Jarukaitis and N. Jääskinen, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 20 January 2021,

gives the following

### Judgment

- 1 By its appeal, the Bolivarian Republic of Venezuela asks the Court of Justice to set aside the judgment of the General Court of the European Union of 20 September 2019, *Venezuela v Council* (T-65/18, EU:T:2019:649; ‘the judgment under appeal’), by which the General Court dismissed its action for annulment, first, of Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela (OJ 2017 L 295, p. 21), secondly, of Council Implementing Regulation (EU) 2018/1653 of 6 November 2018 implementing Regulation 2017/2063 (OJ 2018 L 276, p. 1) and, thirdly, of Council Decision (CFSP) 2018/1656 of 6 November 2018 amending Decision (CFSP)

2017/2074 concerning restrictive measures in view of the situation in Venezuela (OJ 2018 L 276, p. 10), in so far as their provisions concern the Bolivarian Republic of Venezuela.

### Legal context

2 On 13 November 2017, the Council of the European Union adopted Decision (CFSP) 2017/2074 concerning restrictive measures in view of the situation in Venezuela (OJ 2017 L 295, p. 60).

3 The second paragraph of Article 13 of Decision 2017/2074 provides that that decision is to be kept under constant review and that it is to be renewed, or amended as appropriate, if the Council deems that its objectives have not been met. Initially, the first paragraph of that article provided that Decision 2017/2074 was to apply until 14 November 2018. Decision 2018/1656 renewed the restrictive measures in view of the situation in Venezuela, providing that Decision 2017/2074 was to apply until 14 November 2019, and amended entry 7 in Annex I to that decision, which concerns one of the natural persons covered by those restrictive measures.

4 On the same day, the Council also adopted Regulation 2017/2063, on the basis of Article 215 TFEU and Decision 2017/2074.

5 Recital 1 of Regulation 2017/2063 states that ‘in view of the continuing deterioration of democracy, the rule of law and human rights in Venezuela, the Union has repeatedly expressed concern and called on all Venezuelan political actors and institutions to work in a constructive manner towards a solution to the crisis in the country while fully respecting the rule of law and human rights, democratic institutions and the separation of powers’.

6 Article 2 of that regulation provides:

‘1. It shall be prohibited:

(a) to provide, directly or indirectly, technical assistance, brokering services and other services related to the goods and technology listed in the EU Common List of Military Equipment (“the Common Military List”) and to the provision, manufacture, maintenance and use of goods and technology listed in the Common Military List to any natural or legal person, entity or body in, or for use in, Venezuela;

(b) to provide, directly or indirectly, financing or financial assistance related to the goods and technology listed in the Common Military List, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services and other services, directly or indirectly to any person, entity or body in, or for use in, Venezuela.

2. The prohibition in paragraph 1 shall not apply to the execution of contracts concluded before 13 November 2017 or to ancillary contracts necessary for the execution of such contracts, provided that they comply with Council Common Position 2008/944/CFSP [of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ 2008 L 335, p. 99)], in particular with the criteria set out in Article 2 thereof and that the natural or legal persons, entities or bodies seeking to perform the contract have notified the contract to the competent authority of the Member State in which they are established within 5 working days of the entry into force of this Regulation.’

7 Article 3 of that regulation provides:

‘It shall be prohibited:

(a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any natural or legal

person, entity or body in, or for use in, Venezuela;

- (b) to provide technical assistance and brokering and other services related to the equipment referred to in point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela;
- (c) to provide financing or financial assistance, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, related to the equipment referred to in point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela.’

8 Article 4 of that regulation provides:

‘1. By way of derogation from Articles 2 and 3, the competent authorities of Member States as listed in Annex III may authorise, under such conditions as they deem appropriate:

- (a) the provision of financing and financial assistance and technical assistance related to:
  - (i) non-lethal military equipment intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations (UN) and the Union or its Member States or of regional and sub-regional organisations;
  - (ii) material intended for crisis-management operations of the UN and the Union or of regional and sub-regional organisations;
- (b) the sale, supply, transfer or export of equipment which might be used for internal repression and associated financing and financial and technical assistance, intended solely for humanitarian or protective use or for institution-building programmes of the UN or the Union, or for crisis-management operations of the UN and the Union or of regional and subregional organisations;
- (c) the sale, supply, transfer or export of demining equipment and materiel for use in demining operations and associated financing and financial and technical assistance.

2. Authorisations referred to in paragraph 1 may be granted only prior to the activity for which they are requested.’

9 Article 6 of Regulation 2017/2063 provides:

‘1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, equipment, technology or software identified in Annex II, whether or not originating in the Union, to any person, entity or body in Venezuela or for use in Venezuela, unless the competent authority of the relevant Member State, as identified on the websites listed in Annex III, has given prior authorisation.

2. The competent authorities of the Member States, as identified on the websites listed in Annex III, shall not grant any authorisation under paragraph 1 if they have reasonable grounds to determine that the equipment, technology or software in question would be used for internal repression by Venezuela’s government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.

3. Annex II shall include equipment, technology or software intended primarily for use in the monitoring or interception of internet or telephone communications.

4. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article, within four weeks of the authorisation.’

10 Article 7(1) of that regulation provides:

‘Unless the competent authority of the relevant Member State, as identified on the websites listed in Annex III, has given prior authorisation in accordance with Article 6(2), it shall be prohibited:

- (a) to provide, directly or indirectly, technical assistance or brokering services related to the equipment, technology and software identified in Annex II, or related to the installation, provision, manufacture, maintenance and use of the equipment and technology identified in Annex II or to the provision, installation, operation or updating of any software identified in Annex II, to any person, entity or body in Venezuela or for use in Venezuela;
- (b) to provide, directly or indirectly, financing or financial assistance related to the equipment, technology and software identified in Annex II to any person, entity or body in Venezuela or for use in Venezuela;
- (c) to provide any telecommunication or internet monitoring or interception services of any kind to, or for the direct or indirect benefit of, Venezuela’s government, public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction.’

11 Article 20 of Regulation 2017/2063 provides:

‘This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.’

### **The procedure before the General Court and the judgment under appeal**

- 12 By application lodged at the Registry of the General Court on 6 February 2018, the Bolivarian Republic of Venezuela brought an action for annulment against Regulation 2017/2063, in so far as the provisions of that regulation concern it.
- 13 By separate document lodged at the Court Registry on 3 May 2018, the Council raised a plea of inadmissibility pursuant to Article 130(1) of the Rules of Procedure of the General Court. As can be seen from paragraph 23 of the judgment under appeal, the Council raised, in the context of that plea, three grounds of inadmissibility, namely, first, that the Bolivarian Republic of Venezuela has no legal interest in bringing proceedings, secondly, that it is not directly concerned by the provisions of Regulation 2017/2063 and, thirdly, that it is not a ‘natural or legal person’ within the meaning of the fourth paragraph of Article 263 TFEU. On the basis of Article 130(6) of the Rules of Procedure of the General Court, the General Court decided to open the oral phase of the procedure, limiting it to the admissibility of the action.
- 14 By separate document lodged at the General Court Registry on 17 January 2019, the Bolivarian Republic of Venezuela adapted the application on the basis of Article 86 of the Rules of Procedure of the General Court, so that it also referred to Decision 2018/1656 and Implementing Regulation 2018/1653, in so far as their provisions concern the Bolivarian Republic of Venezuela.
- 15 In the judgment under appeal, the General Court held, first of all, that, in so far as it was directed against Regulation 2017/2063, the action related only to Articles 2, 3, 6 and 7 thereof.

- 16 The General Court then decided to examine only the second ground of inadmissibility raised by the Council, namely that the Bolivarian Republic of Venezuela is not directly concerned by those provisions, upheld that ground and, accordingly, dismissed the action as inadmissible in so far as it was directed against Articles 2, 3, 6 and 7 of Regulation 2017/2063.
- 17 Lastly, the General Court also dismissed the action as inadmissible in so far as it sought the annulment of Decision 2018/1656 and Implementing Regulation 2018/1653 on the grounds, first, that, since Articles 2, 3, 6 and 7 of Regulation 2017/2063 did not directly concern the Bolivarian Republic of Venezuela, the same applied to Implementing Regulation 2018/1653 and, secondly, that it followed from Article 86 of the Rules of Procedure of the General Court that, for the purposes of a statement in adaptation, an applicant is entitled to request the annulment of an act replacing or amending another act only if the annulment of that act was requested in the application. The General Court noted that Decision 2018/1656 amends Decision 2017/2074, the annulment of which the Bolivarian Republic of Venezuela did not request in its originating application.

### **Forms of order sought by the parties before the Court of Justice**

- 18 The Bolivarian Republic of Venezuela claims that the Court should:
- set aside the judgment under appeal;
  - declare the action brought by it before the General Court admissible and refer the case back to the General Court for judgment on the merits; and
  - order the Council to pay the costs.
- 19 The Council contends that the Court should:
- dismiss the appeal, and
  - order the Bolivarian Republic of Venezuela to pay the costs.

### **The appeal**

#### ***Preliminary observations***

- 20 As a preliminary point, it should be noted, in the first place, that, by its appeal, the Bolivarian Republic of Venezuela exclusively challenges the reasoning by which the General Court declared its action inadmissible in so far as it is directed against Articles 2, 3, 6 and 7 of Regulation 2017/2063. Since that appeal does not however relate to the part of the judgment under appeal in which the Bolivarian Republic of Venezuela's action for annulment of Implementing Regulation 2018/1653 and Decision 2018/1656 was declared inadmissible, it must be considered that the General Court has given a final ruling in that respect.
- 21 In the second place, it should be noted that the jurisdiction of the Court is in no way restricted with respect to a regulation adopted on the basis of Article 215 TFEU, which gives effect to decisions adopted by the European Union in the context of the CFSP. Such regulations constitute European Union acts, adopted on the basis of the TFEU, and the Courts of the European Union must, in accordance with the powers conferred on them by the Treaties, ensure the review, in principle the full review, of the legality of those acts (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 106).
- 22 In the third place, according to settled case-law, the Court may rule, if necessary of its own motion, whether there is an absolute bar to proceeding arising from disregard of the conditions as to admissibility laid down in Article 263 TFEU (see, inter alia, order of 15 April 2010, *Makhteshim-Agan Holding and*

*Others v Commission*, C-517/08 P, not published, EU:C:2010:190, paragraph 54, and judgment of 21 January 2021, *Germany v Esso Raffinage*, C-471/18 P, EU:C:2021:48, paragraph 101).

- 23 In the present case, the Court must raise of its own motion the question whether the Bolivarian Republic of Venezuela is to be regarded as a ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU and examine it in the first place, since the answer to that question is necessary for the examination of the second ground of inadmissibility raised by the Council, at issue in the context of the single ground of appeal and according to which the Bolivarian Republic of Venezuela is not directly concerned by Articles 2, 3, 6 and 7 of Regulation 2017/2063.
- 24 By decision of the Court of 7 July 2020, the parties to the appeal were invited to take a position on the issue whether a third State is to be regarded as a ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU. Pursuant to the second paragraph of Article 24 of the Statute of the Court of Justice of the European Union, the Court sent a similar invitation to the European Commission and to the Member States. Observations on that question were submitted by the parties to the appeal, the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Republic of Lithuania, the Kingdom of the Netherlands, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, the Kingdom of Sweden and the Commission.
- 25 The Bolivarian Republic of Venezuela submits that neither the wording of the fourth paragraph of Article 263 TFEU nor the objective or the context of that provision provides any indication – even indirectly – that would allow to it to be excluded from the concept of ‘legal person’ within the meaning of that provision.
- 26 The Council, on the other hand, takes the view that a third State should not be regarded as a ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU, except where specific rights have been conferred on it within the EU legal order pursuant to an agreement concluded with the European Union, an exception which does not apply in the present case.
- 27 It contends that the European Union develops its relations with sovereign third States on the international scene and those relations are governed by public international law, which, in turn, is based on consent. In the international legal order, subjects of public international law do not enjoy an automatic right to a judicial remedy before the courts of other States. They have the right not to submit to the jurisdiction of another State or an international tribunal unless they have consented to it.
- 28 According to the Council, third States are not part of the legal system established by the European Union and cannot, in principle, have access to the EU Courts. In addition, allowing a third State that is targeted by general restrictive measures to challenge such measures on the basis of conditions allowing access to the EU Courts to persons subject to individual measures would run contrary to the distinction established by the Treaties between general and individual restrictive measures and would have as an additional effect an undue extension of the scope of the jurisdiction conferred on the EU Courts with respect to the provisions relating to the Common Foreign and Security Policy (CFSP) or with respect to acts adopted on the basis of those provisions.
- 29 Ultimately, the Council claims that recognising that a third State has legal standing to bring actions to challenge acts of the institutions of the Union in circumstances such as those of the present case could put the EU at a disadvantage vis-à-vis its international partners, whose sovereign decisions pertaining to their international relations, trade or economic policies cannot be challenged before their courts, and would thus unduly restrict the EU in the conduct of its policies and international relations. That is particularly relevant in the context of the present proceedings, where a third State is contesting provisions of an internal EU act implementing a political decision of the Council to reduce economic relations with that State. Third States should not be allowed, by presenting themselves as individual applicants, to use the EU Courts as a back door for resolution of international disputes between subjects of public international law.

- 30 The Greek, Polish, Slovenian, Slovak and Swedish Governments consider, in essence, that a third State cannot, in principle, be regarded as a ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU.
- 31 That concept refers, essentially, to entities having legal personality under the law of a Member State or a third State, but not to those States themselves, in relation to which, moreover, the European Union does not have regulatory competence. Restrictive measures are, in accordance with Article 215(2) TFEU, adopted against natural or legal persons, groups or non-State entities, but not against third States.
- 32 To regard third States as falling within the concept of ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU, without their having concluded with the European Union any agreement defining the legal relations between the parties thereto, would limit the European Union inappropriately in the implementation of its policies and international relations and would place it at a disadvantage in international relations. One of the basic principles of public international law is reciprocity. To allow third States to bring such actions before the EU Courts against acts of the European Union would risk compromising the reciprocity between the European Union and those States. Third States would be able to challenge acts of the European Union before the EU Courts, without there being any guarantee that the European Union would be able to challenge the national measures of those States, whether individually or within the framework of the various associations of States of which they are members.
- 33 By contrast, the Belgian, Bulgarian, German, Estonian, Latvian, Lithuanian and Netherlands Governments argue, in essence, that a third State is covered by the concept of ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU.
- 34 In their view, it is indisputable that a third State has legal personality and that it is a legal person, within the meaning of public international law. If a third State could not be treated as a ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU, it would therefore be unable to protect its interests even where it is certain that its rights have been infringed and that it can prove to the requisite legal standard that all the conditions necessary for it to institute proceedings are satisfied.
- 35 That said, it is also clear that the position of a third State, such as that of the Bolivarian Republic of Venezuela, cannot be equated to that of the EU institutions or the Member States, which are applicants within the meaning of the first paragraph of Article 263 TFEU, with the result that the admissibility of an action brought by a third State must be assessed in the light of the fourth paragraph of Article 263 TFEU.
- 36 Moreover, those Member States argue that to deny a third State the right to effective judicial protection against an EU act adversely affecting it, even though that State complies with all the conditions for admissibility laid down in the fourth paragraph of Article 263 TFEU, would amount to adopting a restrictive interpretation of the rule of law, a value on which, pursuant to Article 2 TEU, the European Union is founded.
- 37 The Commission submits that the concept of a ‘legal person’, within the meaning of the fourth paragraph of Article 263 TFEU, may be understood in several ways. On the one hand, an interpretation of that concept based on the principle of equality of States would lead to the conclusion that third States fall within the scope of that concept only if they act in a private capacity (*acta jure gestionis*) or have access to the EU Courts pursuant to an international agreement with the European Union. Such an interpretation would be consistent with the principle of effective judicial protection, in that it would not deny a remedy to the third State, but would grant that State access to the EU Courts depending on the nature of the actions carried out by that State. Since the restrictive measures regime, the reasons which the Bolivarian Republic of Venezuela invokes for seeking the invalidation of those measures and the relationship between the European Union and that State in that context all fall within the sphere of acts carried out in the exercise of State sovereignty (*acta jure imperii*) and should therefore be treated as matters of public international law, the Bolivarian Republic of Venezuela would not, in the present case, constitute a ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU.

- 38 On the other hand, according to the Commission, if a teleological interpretation of the fourth paragraph of Article 263 TFEU guided by the desire to grant extensive access to the EU Courts is adopted, nothing prevents that provision from being interpreted to include third States within the concept of a ‘legal person’, if those States decide to submit to the jurisdiction of the EU Courts. Thus, where the European Union adopts a unilateral act which potentially affects the interests of a third State and that State chooses to bring an action against that measure before the EU Courts rather than using an international dispute-settlement mechanism, there is no reason why the EU Courts should refuse to hear such a case as a matter of principle, without examining whether all the relevant conditions of admissibility are fulfilled.
- 39 The Commission indicates its preference for the second approach referred to in the preceding paragraph, on the ground that a more restrictive reading of the concept of a ‘legal person’ would mean that, in the absence of an international agreement with the European Union, third States could not voluntarily submit to the jurisdiction of the EU Courts.
- 40 Under Article 19(3)(a) TEU, the Court of Justice of the European Union is to rule, in accordance with the Treaties, on actions brought by a Member State, an institution or a natural or legal person. The fourth paragraph of Article 263 TFEU provides that any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.
- 41 In the present case, it is necessary to examine whether a third State, such as the Bolivarian Republic of Venezuela, which cannot bring an action on the basis of the second paragraph of Article 263 TFEU, may be regarded as a ‘legal person’ within the meaning of the fourth paragraph of that article.
- 42 In that respect, it should be noted that since that provision does not make any reference to national laws concerning the meaning to be given to the concept of a ‘legal person’, that concept must be regarded as an autonomous concept of EU law which must be interpreted in a uniform manner throughout the territory of the European Union (see, to that effect, judgment of 19 December 2019, *Engie Cartagena*, C-523/18, EU:C:2019:1129, paragraph 34). Thus, in accordance with settled case-law, in interpreting the concept of a ‘legal person’ within the meaning of the fourth paragraph of Article 263 TFEU, it is necessary to consider not only the wording of that provision, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 61 and the case-law cited).
- 43 As regards the wording of the fourth paragraph of Article 263 TFEU, it should be noted that it does not follow either from that provision or from other provisions of EU primary law that certain categories of legal persons cannot avail themselves of the possibility of bringing legal proceedings before the EU Courts. That finding thus tends to indicate that no ‘legal person’ should be deprived, in principle, of the possibility of bringing an action for annulment provided for in the fourth paragraph of Article 263 TFEU.
- 44 The Court’s case-law indicates in that regard that the term ‘legal person’ used in the fourth paragraph of Article 263 TFEU cannot be interpreted restrictively.
- 45 Thus, while an action brought by a local or regional entity cannot be treated in the same way as the action brought by a Member State referred to in the second paragraph of Article 263 TFEU (see, to that effect, order of 26 November 2009, *Região autónoma dos Açores v Council*, C-444/08 P, not published, EU:C:2009:733, paragraph 31), such an entity, to the extent that it has legal personality, may nevertheless, in principle, bring an action for annulment under the fourth paragraph of Article 263 TFEU (see, to that effect, order of 1 October 1997, *Regione Toscana v Commission*, C-180/97, EU:C:1997:451, paragraphs 10 to 12, and judgment of 22 November 2001, *Nederlandse Antillen v Council*, C-452/98, EU:C:2001:623, paragraph 51).
- 46 Moreover, it follows more generally from the case-law that not only private legal persons, but also public entities, may bring proceedings under the fourth paragraph of Article 263 TFEU (see, by way of example,

judgments of 1 February 2018, *Deutsche Bahn and Others v Commission*, C-264/16 P, not published, EU:C:2018:60, paragraph 2, and of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 69).

- 47 In addition, the Court has accepted that an organisation which did not have legal personality had to have standing to contest the restrictive measures imposed on it on the ground that, if the EU legislature takes the view that an entity has an existence sufficient for it to be subject to restrictive measures, it must be accepted, on grounds of consistency and justice, that that entity also has an existence sufficient to contest those measures (see, to that effect, judgment of 18 January 2007, *PKK and KNK v Council*, C-229/05 P, EU:C:2007:32, paragraph 112).
- 48 As regards the contextual and teleological interpretation of the fourth paragraph of Article 263 TFEU, it must be recalled that the very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law (see, to that effect, judgment of 19 July 2016, *H v Council and Others*, C-455/14 P, EU:C:2016:569, paragraph 41). It follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails (judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 62).
- 49 Furthermore, the principle that one of the European Union's founding values is the rule of law follows from both Article 2 TEU, which is included in the common provisions of the EU Treaty, and Article 21 TEU, concerning the European Union's external action, to which Article 23 TEU, relating to the CFSP, refers (see, to that effect, judgment of 6 October 2020, *Bank Refah Kargaran v Council*, C-134/19 P, EU:C:2020:793, paragraph 35 and the case-law cited).
- 50 In those circumstances, an interpretation of the fourth paragraph of Article 263 TFEU in the light of the principles of effective judicial review and the rule of law militates in favour of finding that a third State should have standing to bring proceedings, as a 'legal person', within the meaning of the fourth paragraph of Article 263 TFEU, where the other conditions laid down in that provision are satisfied. Such a legal person governed by public international law is equally likely as any another person or entity to have its rights or interests adversely affected by an act of the European Union and must therefore be able, in compliance with those conditions, to seek the annulment of that act.
- 51 That interpretation of the concept of a 'legal person', within the meaning of the fourth paragraph of Article 263 TFEU, is not called into question by the arguments put forward by the Council and by certain governments which submitted observations on the possibility that the European Union may not be able to access the courts of third States which do not allow decisions relating to their own international relations to be challenged before those courts, whether or not they are commercial in nature.
- 52 The obligations of the European Union to ensure respect for the rule of law cannot in any way be made subject to a condition of reciprocity as regards relations between the European Union and third States.
- 53 It follows that the Bolivarian Republic of Venezuela, as a State with international legal personality, must be regarded as a 'legal person' within the meaning of the fourth paragraph of Article 263 TFEU.

### ***The single ground of appeal***

#### *Arguments of the parties*

- 54 In support of its appeal, the Bolivarian Republic of Venezuela relies on a single ground alleging that the General Court wrongly interpreted the condition, laid down in the fourth paragraph of Article 263 TFEU, that the applicant must be directly concerned by the measure which forms the subject matter of its action.
- 55 In its view, the fact, noted by the General Court in paragraphs 35 and 36 of the judgment under appeal, that the Bolivarian Republic of Venezuela was not listed as such in Annex IV or Annex V to Regulation

2017/2063 in a similar manner to the applicant in the case which gave rise to the judgment of 13 September 2018, *Almaz-Antey v Council* (T-515/15, not published, EU:T:2018:545), is irrelevant since it is specifically mentioned in Articles 2, 3, 6 and 7 of Regulation 2017/2063. It is also irrelevant, contrary to what the General Court held in paragraph 40 of the judgment under appeal, whether or not it acted as an economic operator active on the markets in question, since those articles are of direct concern to it both from a legal and factual perspective.

- 56 The Council contends that the question whether Articles 2, 3, 6 and 7 of Regulation 2017/2063 directly affect the position of the Bolivarian Republic of Venezuela was decided by the General Court in the judgment under appeal in accordance with settled case-law, of which the judgment of 13 September 2018, *Almaz-Antey v Council* (T-515/15, not published, EU:T:2018:545), is an integral part. In that context, the General Court was not required to take into consideration the aim of the restrictive measures at issue, consisting in bringing about a change in the Venezuelan Government's behaviour. Such an approach would not only be contrary to the settled case-law of the EU Courts, it would also expand the category of potential applicants to include any third State in respect of which the European Union decides as a matter of foreign policy to interrupt or reduce, in part or completely, economic and financial relations.
- 57 According to the Council, the General Court did not hold that the Bolivarian Republic of Venezuela was not directly concerned on the sole basis that it was insufficiently referred to in Articles 2, 3, 6 and 7 of Regulation 2017/2063. Rather, the General Court reached that conclusion on the basis of a number of relevant elements taken together, which were duly reasoned and supported by the relevant case-law in paragraphs 35 to 48 of the judgment under appeal. In addition, specifically as regards references to the Bolivarian Republic of Venezuela in those articles, it is clear that it is not addressed by those articles directly. There is simply a prohibition against EU economic operators on having economic and financial relations with natural or legal persons, entities or bodies established in or operating in the territory of Venezuela.
- 58 In addition, as regards whether the General Court should have assimilated the Bolivarian Republic of Venezuela to an economic operator, as it did with regard to the applicant in the case which gave rise to the judgment of 13 September 2018, *Almaz Antey v Council* (T-515/15, not published, EU:T:2018:545), the Council submits that the General Court took full account of the specific situation of the Bolivarian Republic of Venezuela and that it analysed whether that State could be compared to an economic operator active in a specific market within the meaning of the case-law. The General Court, without erring in law, concluded that this was not possible, since a State acting in its *jure imperii* capacity is not comparable to a private or public entity whose existence is limited by its purpose.
- 59 Lastly, the Council argues that the Bolivarian Republic of Venezuela is in fact asking the Court to establish a new rule according to which standing to bring proceedings should be automatically granted to third States seeking to challenge economic measures taken by the European Union in the context of its foreign policy, by allowing them to challenge measures that implement decisions adopted with a view to pursuing legitimate objectives of the European Union's external action as laid down in Article 21 TEU, including through the interruption or reduction, in part or completely, of economic or financial relations with one or more third countries pursuant to Article 215(1) TFEU.
- 60 That would be contrary to the system of judicial protection established by the Treaties, designed with a view to ensuring the protection of rights granted under EU law. Sovereign third States have no specific rights under the Treaties to be subject to equal treatment or to trade freely and unconditionally with economic operators in the European Union. Consequently, third States cannot legitimately claim to be directly affected in their legal position by an EU measure which potentially subjects them to differentiated treatment.

#### *Findings of the Court*

- 61 According to settled case-law, the condition that the measure forming the subject matter of the proceedings must be of direct concern to a natural or legal person, as laid down in the fourth paragraph of

Article 263 TFEU, requires the fulfilment of two cumulative criteria, namely the contested measure should, first, directly affect the legal situation of the individual and, secondly, should leave no discretion to the addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (judgments of 5 November 2019, *ECB and Others v Trasta Komercbanka and Others*, C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923, paragraph 103, and of 3 December 2020, *Changmao Biochemical Engineering v Distillerie Bonollo and Others*, C-461/18 P, EU:C:2020:979, paragraph 58).

- 62 In the judgment under appeal, the General Court held that Articles 2, 3, 6 and 7 of Regulation 2017/2063 did not directly concern the Bolivarian Republic of Venezuela, for, in essence, three reasons relating to the first criterion set out in paragraph 61 of the present judgment.
- 63 In the first place, in paragraph 32 of the judgment under appeal, the General Court noted that Article 20 of Regulation 2017/2063 limits the application of the prohibitions set out in Articles 2, 3, 6 and 7 of that regulation to the territory of the Union, to natural persons who are nationals of a Member State and to legal persons constituted under the law of one of them, as well as to legal persons, entities and bodies in respect of any business done in whole or in part within the Union.
- 64 In the second place, in paragraph 33 of the judgment under appeal, the General Court considered that Articles 2, 3, 6 and 7 of Regulation 2017/2063 do not impose prohibitions on the Bolivarian Republic of Venezuela. At most, those articles were likely to have indirect effects on the Bolivarian Republic of Venezuela, in so far as the prohibitions imposed on natural persons who are nationals of a Member State and on legal persons constituted under the law of one of them could have the effect of limiting the sources from which the Bolivarian Republic of Venezuela can obtain the goods and services in question.
- 65 In the third place, in paragraphs 34 to 41 of the judgment under appeal, the General Court distinguished the present case from the case which gave rise to the judgment of 13 September 2018, *Almaz-Antey v Council* (T-515/15, not published, EU:T:2018:545). The General Court observed that, in that case, the applicant was expressly referred to in the contested measure since its name appeared in the annex to the contested decision as an undertaking to which it was prohibited to sell or supply the goods and services in question. Conversely, in the present case, as a State, the Bolivarian Republic of Venezuela is not explicitly and specifically referred to in Articles 2, 3, 6 and 7 of Regulation 2017/2063 in a manner comparable to the applicant in the case which gave rise to that judgment.
- 66 In that regard, it must be noted that the General Court correctly recalled, in paragraph 30 of the judgment under appeal, its own case-law according to which, in order to determine whether a measure produces legal effects, it is necessary to look in particular to its purpose, its content, its scope, its substance and the legal and factual context in which it was adopted.
- 67 In the present case, the title of Regulation 2017/2063, recital 1 thereof and the wording of Articles 2, 3, 6 and 7 thereof show that the restrictive measures at issue were taken against the Bolivarian Republic of Venezuela.
- 68 The General Court rightly pointed out in that regard, in paragraph 34 of the judgment under appeal, that prohibiting EU operators from carrying out certain transactions, which is the purpose of Articles 2, 3, 6 and 7 of Regulation 2017/2063, amounted to prohibiting the Bolivarian Republic of Venezuela from carrying out those transactions with those operators.
- 69 The entry into force of Regulation 2017/2063 had the effect of immediately and automatically applying the prohibitions laid down in Articles 2, 3, 6 and 7 thereof. Since those prohibitions prevent the Bolivarian Republic of Venezuela from obtaining numerous goods and services, those provisions directly affect the legal situation of that State. In addition, as the Advocate General pointed out in point 110 of his Opinion, it is clear, in particular from Articles 6 and 7 of Regulation 2017/2063, that the reference ‘to any natural or legal person, entity or body in, or for use in, Venezuela’ in those prohibitions includes Venezuela’s

government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.

- 70 In that regard, it should be noted that, in order to find that the Bolivarian Republic of Venezuela is directly concerned by Articles 2, 3, 6 and 7 of Regulation 2017/2063, it is not necessary to draw a distinction according to whether such commercial transactions are carried out *iure gestionis* or *iure imperii*, since such a distinction cannot be inferred either from the fourth paragraph of Article 263 TFEU or from any other provision of EU law.
- 71 Moreover, the fact that the restrictive measures at issue do not constitute an absolute obstacle preventing the Bolivarian Republic of Venezuela from procuring the goods and services covered by those articles, since that State remains in a position to procure them outside the territory of the European Union through persons not subject to those measures, does not call into question the conclusion that the prohibitions laid down in those articles directly concern the Bolivarian Republic of Venezuela. The condition that prohibitions such as those laid down in Articles 2, 3, 6 and 7 of Regulation 2017/2063 must be of direct concern to a legal person does not mean that it must be entirely impossible for that person to obtain the goods and services in question.
- 72 It is also irrelevant, for the purposes of ascertaining whether the Bolivarian Republic of Venezuela is directly concerned by Articles 2, 3, 6 and 7 of Regulation 2017/2063, that the activity of that third State is not limited to that of an economic operator active on certain markets.
- 73 It follows that the General Court erred in law in considering that the restrictive measures at issue did not directly affect the legal situation of the Bolivarian Republic of Venezuela and by upholding, on that basis, the second ground of inadmissibility raised by the Council.
- 74 In those circumstances, the single ground of appeal relied on by the Bolivarian Republic of Venezuela must be upheld and the judgment under appeal must be set aside in so far as it dismisses as inadmissible the action brought by the Bolivarian Republic of Venezuela for annulment of Regulation 2017/2063.

### **The action before the General Court**

- 75 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may then itself give final judgment in the matter, where the state of the proceedings so permits, or, where that is not the case, refer the case back to the General Court for judgment.
- 76 In the present case, the Court has the necessary information to enable it to give final judgment on the admissibility of the action brought by the Bolivarian Republic of Venezuela.
- 77 Before the General Court, in the context of its plea of inadmissibility, the Council raised three grounds of inadmissibility of the action, only the second of which was examined, in part, by the General Court. Since, in paragraphs 40 to 53 above, the Court has examined, of its own motion, the question whether the Bolivarian Republic of Venezuela is a ‘legal person’, within the meaning of the fourth paragraph of Article 263 TFEU, as referred to in the third ground of inadmissibility raised by the Council before the General Court, it remains for the Court to examine, first, the first ground of inadmissibility raised by the Council and alleging the absence of an interest in bringing proceedings and, secondly, the part of the second ground of inadmissibility on which the General Court did not rule, by verifying whether the criterion that the restrictive measures in question must leave no discretion to the addressees who are entrusted with the task of implementing them, within the meaning of the fourth paragraph of Article 263 TFEU, is fulfilled in the present case.

### ***The first ground of inadmissibility raised by the Council, alleging the absence of an interest in bringing proceedings***

*Arguments of the parties*

78 By the first ground of inadmissibility, the Council submits that the Bolivarian Republic of Venezuela has no interest in seeking the annulment of the restrictive measures at issue before the EU Courts. Those measures do not bring about a distinct change in the legal position of the Bolivarian Republic of Venezuela since they do not produce any binding legal effect for that State as such or in its territory.

79 As is clear from Article 20 of Regulation 2017/2063, the scope of that regulation is limited to the territory of the Member States and to persons subject to the jurisdiction of a Member State. In addition, the reasons which led the Court to hold, in the judgment of 21 December 2016, *Council v Front Polisario* (C-104/16 P, EU:C:2016:973, paragraphs 131 to 133), that the Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) could not be regarded as having standing to seek the annulment of the contested decision in the case which gave rise to that judgment are applicable by analogy in the present case.

80 The Bolivarian Republic of Venezuela contends that that ground of inadmissibility must be rejected.

*Findings of the Court*

81 Since the Council submits that Regulation 2017/2063 does not produce any binding legal effects capable of affecting the interests of the Bolivarian Republic of Venezuela, it should be recalled that it is settled case-law that an action for annulment must be available in the case of all measures adopted by the EU institutions, irrespective of their nature or form, provided that they are intended to have legal effects (judgment of 16 July 2015, *Commission v Council*, C-425/13, EU:C:2015:483, paragraph 26 and the case-law cited).

82 In that regard, it should be borne in mind that the existence of an interest in bringing proceedings presupposes that annulment of the contested act must be capable, by itself, of procuring an advantage for the natural or legal person who brought the action (judgment of 21 January 2021, *Germany v Esso Raffinage*, C-471/18 P, EU:C:2021:48, paragraph 103 and the case-law cited).

83 Since, for the reasons set out in paragraphs 63 to 73 above, the prohibitions laid down in Articles 2, 3, 6 and 7 of Regulation 2017/2063 are liable to harm the interests, in particular the economic interests, of the Bolivarian Republic of Venezuela, their annulment is, by itself, capable of procuring an advantage for it.

84 As regards the Council's argument concerning the judgment of 21 December 2016, *Council v Front Polisario* (C-104/16 P, EU:C:2016:973), it is true that the Court held, in that judgment, that the Front Polisario could not be regarded as having standing to bring an action for annulment of the Council decision approving, on behalf of the European Union, the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 13 December 2010 (OJ 2012 L 241, p. 4). The line of argument put forward by the Front Polisario in order to establish its standing to bring an action for annulment of that decision was based on the assertion that that agreement was applied in practice, in certain cases, to Western Sahara, even though the latter is not part of the territory of the Kingdom of Morocco, which was, however, rejected by the Court as unfounded. The Court interpreted that agreement as meaning that it did not apply to the territory of Western Sahara. By contrast, as noted in paragraphs 67 and 69 above, the restrictive measures provided for in Articles 2, 3, 6 and 7 of Regulation 2017/2063 were adopted against the Bolivarian Republic of Venezuela, since those provisions prevent it from carrying out certain transactions.

85 The first ground of inadmissibility raised by the Council must therefore be rejected.

***The criterion that the contested measure must not entail implementing measures within the meaning of the fourth paragraph of Article 263 TFEU and the other conditions for admissibility of the action***

86 The General Court did not examine the second of the two cumulative criteria which have to be satisfied in order to find that the Bolivarian Republic of Venezuela is directly concerned by the restrictive measures at issue, namely, as noted in paragraph 61 above, the criterion that those measures must leave no discretion to the addressees who are entrusted with the task of implementing them, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules.

87 If that second criterion is satisfied, it will remain to be determined whether the other conditions for a legal person to be recognised as having standing to bring proceedings against an act which is not addressed to it, under the fourth paragraph of Article 263 TFEU, are also satisfied, that is to say, whether it is individually concerned or whether that act constitutes a regulatory act not entailing implementing measures.

*Arguments of the parties*

88 According to the Council, the application of Articles 2, 3, 6 and 7 of Regulation 2017/2063 necessarily entails the adoption of intermediate rules, since those articles provide for a system of prior authorisation by the competent authorities of the Member States. Moreover, prior authorisation is in itself an implementing measure and the Member States have a broad discretion as regards the conditions under which such authorisations may be granted. It therefore concludes that it is not necessary to examine whether the restrictive measures at issue are of individual concern to the Bolivarian Republic of Venezuela or whether they constitute regulatory acts not entailing implementing measures, merely indicating that it does not concede that either of those criteria is satisfied.

89 The Bolivarian Republic of Venezuela contends that the second ground of inadmissibility, in so far as it relates to the criterion that the restrictive measures at issue must leave no discretion to the addressees responsible for implementing them, must also be rejected. In its application initiating proceedings, it claimed that it satisfied the conditions laid down in the second and third limbs of the fourth paragraph of Article 263 TFEU, since Regulation 2017/2063 was a regulatory act which was of direct concern to it and did not entail implementing measures and since, in the alternative, that act was of direct and individual concern to it.

*Findings of the Court*

90 It follows from the very wording of Articles 2, 3, 6 and 7 of Regulation 2017/2063 that the prohibitions laid down by those provisions – without prejudice to the derogation or authorisation measures for which they provide and which are not at issue in the present dispute – apply without leaving any discretion to the addressees responsible for implementing them. Those prohibitions are also applicable without requiring the adoption of implementing measures, either by the European Union or by the Member States. In that regard, it should be noted that Implementing Regulation 2018/1653 had no function other than the amendment of Annex IV to Regulation 2017/2063, which contains only the list of natural or legal persons, entities or bodies affected by the measures freezing funds and economic resources and which is not referred to in any of the abovementioned provisions.

91 It follows that Articles 2, 3, 6 and 7 of Regulation 2017/2063 are of direct concern to the Bolivarian Republic of Venezuela and that the ground of inadmissibility raised by the Council, alleging that that condition is not satisfied in the present case, must be rejected.

92 Furthermore, that regulation, which has a general scope, in that it contains provisions such as Articles 2, 3, 6 and 7 thereof which prohibit general and abstract categories of addressees from carrying out certain transactions with entities which are also referred to in a general and abstract manner, and which – since it was adopted on the basis of Article 215 TFEU and, accordingly, under the non-legislative procedure laid down in that provision, cannot be regarded as a legislative act – constitutes a ‘regulatory act’, within the meaning of the third limb of the fourth paragraph of Article 263 TFEU (see, to that effect, judgment of

3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 58 to 60). Since the provisions of that regulation challenged by the Bolivarian Republic of Venezuela do not entail implementing measures, as noted in paragraph 90 above, it must be held that that third State does indeed have standing to bring proceedings against those provisions without having to establish that those provisions are of individual concern to it.

93 It follows that the conditions laid down in the third limb of the fourth paragraph of Article 263 TFEU are fulfilled.

94 It follows from all the foregoing considerations that the action brought by the Bolivarian Republic of Venezuela before the General Court is admissible in so far as it seeks the annulment of Articles 2, 3, 6 and 7 of Regulation 2017/2063.

95 However, since the state of the proceedings is not such as to permit final judgment to be given on the merits, the case must be referred back to the General Court.

### Costs

96 Since the case is being referred back to the General Court, it is appropriate to reserve the costs.

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

- 1. Sets aside the judgment of the General Court of the European Union of 20 September 2019, *Venezuela v Council* (T-65/18, EU:T:2019:649), in so far as it dismisses the Bolivarian Republic of Venezuela's action for annulment of Articles 2, 3, 6 and 7 of Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela;**
- 2. Refers the case back to the General Court of the European Union for judgment on the merits;**
- 3. Reserves the costs.**

Lenaerts

Silva de Lapuerta

Prechal

Vilaras

Regan

Ilešič

Bay Larsen

Kumin

Wahl

Juhász

von Danwitz

Toader

Rossi

Jarukaitis

Jääskinen

Delivered in open court in Luxembourg on 22 June 2021.

A. Calot Escobar

K. Lenaerts

Registrar

President

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\* Language of the case: English.