



Reports of Cases

ORDER OF THE GENERAL COURT (Ninth Chamber)

10 December 2019*

(Action for annulment — Internal market — Fundamental freedoms — Regulation (EU) 2018/1724 — Establishment of a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services — Sub-national authority — Standing to bring proceedings — Individual concern — Inadmissibility)

In Case T-66/19,

Vlaamse Gemeenschap (Belgium),

Vlaams Gewest (Belgium),

represented by T. Eyskens, N. Bonbled and P. Geysens, lawyers,

applicants,

v

European Parliament, represented by I. McDowell, R. van de Westelaken and M. Peternel, acting as Agents

and

Council of the European Union, represented by K. Michoel and O. Segnana, acting as Agents,

defendants,

ACTION under Article 263 TFEU seeking the annulment of Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ 2018 L 295, p. 1),

THE GENERAL COURT (Ninth Chamber),

composed of M.J. Costeira, President, D. Gratsias (Rapporteur) and T. Perišin, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: Dutch.

Order

Background to the dispute

- 1 On 6 May 2015, the European Commission adopted a communication entitled ‘A Digital Single Market Strategy for Europe’ (COM(2015) 192 final). In paragraph 4.3.2 of that communication, entitled ‘E-government’, the Commission notes that ‘contact points between public authorities and citizens/businesses are ... fragmented and incomplete’ and that ‘the needs of businesses and citizens in their cross-border activities could be better met by building on the Digital Services Infrastructures of the Connecting Europe Facility and extending and integrating existing European portals, networks, services and systems ... and linking them to the “Single Digital Gateway”’.
- 2 Thus, the Commission committed itself to bringing forward a new e-government Action Plan for 2016-2020 which would entail, inter alia, ‘extending and integrating European and national portals’ in order to work towards the single digital gateway in question.
- 3 In addition, on 28 October 2015, the Commission adopted a communication entitled ‘Upgrading the Single Market: more opportunities for people and business’ (COM(2015) 550 final). With this communication the Commission set out its strategy for the single market.
- 4 In that regard, the Commission made a legislative proposal which led to the adoption of Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ 2018 L 295, p. 1).
- 5 As stated in recital 4 thereof, Regulation 2018/1724 offers citizens and businesses easy access to the information, the procedures, and the assistance and problem-solving services that they need in order to exercise their rights in the internal market. Consequently, the gateway established under that regulation could contribute to the greater transparency of rules and regulations relating to different business and life events, in areas such as travel, retirement, education, employment, healthcare, consumer rights and family rights.
- 6 According to recital 6 thereof, Regulation 2018/1724 has three objectives, namely (i) to reduce any additional administrative burden on citizens and businesses that exercise or want to exercise their internal market rights, including the free movement of citizens, in full compliance with national rules and procedures, (ii) to eliminate discrimination and (iii) to ensure the functioning of the internal market with regard to the provision of information, of procedures and of assistance and problem-solving services.
- 7 As stated in recital 7 of Regulation 2018/1724, in order for EU citizens and businesses to enjoy their right to free movement within the internal market, the European Union should adopt specific, non-discriminatory measures allowing citizens and businesses to have easy access to sufficiently comprehensive and reliable information about their rights under EU law and to information about the applicable national rules and procedures which they need to comply with when they move to, live or study in, or when they establish or carry on a business in, a Member State other than their own.
- 8 As is recognised in recital 9 of Regulation 2018/1724, citizens and businesses from other Member States can be at a disadvantage in a Member State other than their own due to their lack of familiarity with the national rules and administrative systems, the different languages used and their lack of geographic proximity to the competent authorities. As stated in the same recital, the most efficient way to reduce the ensuing obstacles to the internal market is to enable cross-border and non-cross-border users to access information online in a language they are able to understand in

order to enable them to complete procedures for compliance with national rules fully online and to offer them assistance where rules and procedures are not clear enough or where they encounter obstacles to the exercise of their rights.

- 9 Accordingly, as stated in recital 12 thereof, the objective of Regulation 2018/1724 is to establish a single digital gateway to act as the single entry point through which citizens and businesses are able to access information about the rules and requirements that they have to comply with, by virtue of EU or national law.
- 10 In that regard, recital 35 of Regulation 2018/1724 states that accessibility of information for cross-border users can be substantially improved where that information is made available in an official language of the European Union broadly understood by the largest possible number of cross-border users.
- 11 Article 2 of Regulation 2018/1724 provides as follows:

‘1. A single digital gateway (“the gateway”) shall be established by the Commission and the Member States in accordance with this Regulation. The gateway shall consist of a common user interface managed by the Commission (“the common user interface”), which shall be integrated into the Your Europe portal and shall give access to relevant Union and national webpages.

2. The gateway shall give access to:

 - (a) information on rights, obligations and rules laid down in Union and national law that are applicable to users exercising or intending to exercise their rights derived from Union law in the field of the internal market in the areas listed in Annex I;
 - (b) information on online and offline procedures and links to online procedures, including procedures covered by Annex II, established at Union or national level in order to enable users to exercise the rights and to comply with the obligations and rules in the field of the internal market in the areas listed in Annex I;
 - (c) information on, and links to, the assistance and problem-solving services listed in Annex III or referred to in Article 7 which citizens and businesses can refer to if they have questions or problems related to the rights, obligations, rules or procedures referred to in points (a) and (b) of this paragraph.’
- 12 Under Article 4(1) of Regulation 2018/1724, Member States are to ensure that users have easy, online access on their national webpages to the information referred to in Article 2(2) of the same regulation (see paragraph 11 above).
- 13 In addition, under Article 6(1) of Regulation 2018/1724, ‘each Member State shall ensure that users can access and complete any of the procedures listed in Annex II fully online, provided that the relevant procedure has been established in the Member State concerned’.
- 14 Articles 9 to 11 of Regulation 2018/1724 provide a series of quality requirements regarding the information published pursuant to Article 2(2) and Article 4 of Regulation 2018/1724 to ensure that the information is as detailed as possible as regards the exercise of the rights and initiation of the procedures listed in Annexes I and II to the same regulation, such as the right to travel, to work, to reside, to study and how to start a business in another Member State and send the authorities questions concerning residence, studies or work.

- 15 In that respect, Articles 9(2), 10(4) and 11(2) of Regulation 2018/1724 provide that Member States are to make the information in question accessible in an official language of the European Union that is broadly understood by the largest possible number of cross-border users.
- 16 In addition, under Article 13(2)(a) of Regulation 2018/1724, for the procedures referred to in Article 2(2)(b) of the same regulation, Member States are to ensure that users are able to access the instructions for completing the procedure in question in an official language of the European Union that is broadly understood by the largest possible number of cross-border users.
- 17 Under Article 12(1) of Regulation 2018/1724, where a Member State does not provide the information, explanations and instructions set out in Articles 9 to 11 and in Article 13(2)(a) of the same regulation, in an official language of the European Union broadly understood by the largest possible number of cross-border users, that Member State may request that the Commission provide translations into that language, within the limits of the available EU budget for that purpose.

Procedure and forms of order sought

- 18 By application lodged at the Court Registry on 4 February 2019, the applicants, Vlaamse Gemeenschap (the Flemish Community) and Vlaams Gewest (the Flemish Region), brought the present action.
- 19 By separate documents lodged at the Court Registry on 26 and 29 April 2019 respectively, the European Parliament and the Council of the European Union raised objections of inadmissibility of the action under Article 130 of the Rules of Procedure of the General Court. The applicants lodged their observations on those objections of inadmissibility on 11 June 2019.
- 20 By a document lodged at the Court Registry on 15 May 2019, the Commission sought leave to intervene in the present proceedings in support of the form of order sought by the Parliament and the Council.
- 21 The applicants claim that the Court should:
- annul Regulation 2018/1724;
 - order the Parliament and the Council to pay the costs.
- 22 The Parliament and the Council contend that the Court should:
- dismiss the action as inadmissible;
 - order the applicants to pay the costs.

Law

- 23 Under Article 130(1) and (7) of the Rules of Procedure, on the application of the defendant, the Court may decide on inadmissibility or lack of competence without going to the substance of the case. In the present case, as the Parliament and the Council have requested a ruling on inadmissibility, the Court, considering that it has sufficient information from the documents in the case file, has decided to give a decision on that application without taking further steps in the proceedings.
- 24 The Parliament and the Council claim that the applicants are not individually concerned by Regulation 2018/1724 and therefore they do not have standing to bring an action for its annulment.

- 25 It must be noted, first, that the applicants are Belgian regional entities. Second, as is apparent from the first and fifth citations thereof, Regulation 2018/1724 was adopted on the basis of Article 21(2) and Article 114(1) TFEU and, as a result, in accordance with the ordinary legislative procedure within the meaning of Article 289(1) and Article 294 TFEU.
- 26 It follows that, in accordance with the fourth paragraph of Article 263 TFEU, as sub-national authorities, the applicants may institute proceedings for the annulment of Regulation 2018/1724 provided that they are directly and individually concerned by that regulation within the meaning of that provision. An action brought by a regional or local entity cannot be treated in the same way as an action brought by a Member State, since the term ‘Member State’, for the purposes of the second paragraph of Article 263 TFEU, refers only to government authorities of the Member States. That term cannot be construed as also covering the governments of regions or other sub-national authorities within Member States without undermining the institutional balance provided for in the Treaty (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, paragraphs 31 and 33 and the case-law cited).
- 27 Moreover, it is apparent from settled case-law that national constitutional rules which confer powers cannot determine the standing of regional bodies to bring proceedings for the purposes of Article 263 TFEU (see order of 26 November 2009, *Região autónoma dos Açores v Council*, C-444/08 P, not published, EU:C:2009:733, paragraph 63 and the case-law cited). As a result, the mere fact that a regional authority has certain powers in the area with which the act it is contesting is concerned does not give it standing to bring an action if the act in question is not of direct, or, as the case may be, individual, concern to it.
- 28 Since the Parliament and the Council claim that the action is inadmissible because the applicants are not individually concerned, it is necessary to examine whether the action is admissible in the light of that condition.
- 29 In that regard, the condition — as laid down in the fourth paragraph of Article 263 TFEU — that natural or legal persons other than those to whom an act is addressed must be individually concerned by that act, means that the contested measure must affect them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and must, by virtue of those factors, distinguish them individually just as in the case of the person addressed (see order of 26 November 2009, *Região autónoma dos Açores v Council*, C-444/08 P, not published, EU:C:2009:733, paragraph 36 and the case-law cited).
- 30 In the present case, it is apparent from paragraphs 29, 35, 52, 57 and 72 of the application that, although the applicants seek the formal annulment of Regulation 2018/1724 in its entirety, they focus their arguments on the alleged illegalities that they claim vitiate the provisions of that regulation under which Member States are obliged to make certain information accessible in an official language of the European Union that is broadly understood by the largest possible number of cross-border users (see paragraphs 15 and 16 above).
- 31 By the same token, it is apparent from paragraphs 20 and 22 of the application that the applicants claim that they have standing to bring an action for annulment of Regulation 2018/1724 by reference to the effects that the provisions of that regulation imposing the obligations referred to in paragraph 30 above will have on their powers.
- 32 As a result, it must be assessed whether the applicants are individually affected, within the meaning set out in paragraph 29 above, by Articles 9(2), 10(4), 11(2) and 13(2)(a) of Regulation 2018/1724.
- 33 In that regard, the applicants claim that the provisions at issue call into question the policies implemented under numerous acts adopted by them which seek to confirm or advance the exclusive use of Dutch in communications between themselves and the public. Consequently, in so far as the

provisions referred to in paragraph 32 above lead to a language other than Dutch being used in the applicants' dealings with the public, they prevent the applicants from exercising their powers as they see fit and even oblige them to exercise those powers in a manner that goes against the applicable legislation, certain aspects of which are of constitutional significance.

- 34 In addition, the provisions referred to in paragraph 32 above undermine the effectiveness of the civic-integration policy, implemented by the applicants, under which foreign nationals who settle in Flanders (Belgium) are encouraged to learn Dutch.
- 35 The applicants add that their standing to bring proceedings follows from the division of the Kingdom of Belgium into linguistic regions and the distribution of powers as regards languages provided for by the Belgian constitution, which thus arose in the context of a 'linguistic dispute' which does not exist in other Member States.
- 36 It must be noted, first, that the obligation established under Article 4(1) of Regulation 2018/1724 to ensure that users have easy, online access on their national webpages to the information referred to in Article 2(2) of the same regulation (see paragraph 11 and 12 above), applies to all Member States without distinction.
- 37 Second, similarly, it follows from Articles 9(2), 10(4) and 11(2) of Regulation 2018/1724 that the obligation to make the information in question accessible in an official language of the European Union that is broadly understood by the largest possible number of cross-border users applies, without exception, to all relevant competent national authorities. That is also the case for the obligation to ensure, in accordance with Article 13(2)(a) of the same regulation, that users are able to access the instructions for completing the procedures referred to in Article 2(2)(b) of that regulation in an official language of the European Union broadly understood by the largest possible number of cross-border users.
- 38 It follows that every national authority responsible for implementing the rules established by Regulation 2018/1724 is affected by that regulation in the same way as the applicants are in their capacity as authorities provided with such powers under Belgian law.
- 39 In that regard, it is true that a sub-national authority may be considered to be individually concerned by an EU measure when it affects a measure it adopted and thus prevents it from exercising, as it sees fit, its own powers conferred on it under national law (see, to that effect, judgment of 5 October 2005, *Land Oberösterreich v Commission*, T-366/03 and T-235/04, EU:T:2005:347, paragraph 28).
- 40 However, in the light of the definition of 'individual concern' for the purposes of the fourth paragraph of Article 263 (see paragraph 29 above), those facts may justify a sub-national authority's individual concern only when the exclusive objective of the contested measure is the exercise of EU competence as regards a specific measure adopted by that authority (see, to that effect, judgments of 30 April 1998, *Vlaams Gewest v Commission*, T-214/95, EU:T:1998:77, paragraphs 17 and 29; of 23 October 2002, *Diputación Foral de Álava v Commission*, T-346/99 to T-348/99, EU:T:2002:259, paragraphs 14 and 37; and of 5 October 2005, *Land Oberösterreich v Commission*, T-366/03 and T-235/04, EU:T:2005:347, paragraphs 11 to 14 and 27 to 30).
- 41 Regulation 2018/1724 was adopted within the European Union's powers to achieve the objectives set out in Articles 21 and 114 TFEU, namely to improve the functioning of the internal market by facilitating the conditions for the exercise of the rights which flow from it. In that respect, as is apparent from the provisions referred to in paragraphs 36 and 37 above, Regulation 2018/1724 concerns the provision by the Member States of certain important information for the purposes of exercising the free movement and residence rights which citizens derive from certain provisions of EU

law. The purpose of the adoption of that regulation is therefore not the exercise of EU competence as regards specific measures adopted by the applicants concerning the use of Dutch in dealings between the authorities and citizens.

- 42 In addition, an approach whereby any interference between the scope of an EU measure and that of measures adopted by a sub-national authority means that that authority is a person individually affected by the EU measure would practically raise the sub-national authorities concerned to the same level as the Member States to whom EU measures are addressed. Such an approach would compromise the institutional balance provided for in the Treaty (see paragraph 26 above), with the result that, contrary to what the applicants claim, it cannot be adopted.
- 43 Such a conclusion is not called into question by the fact that the Belgian legislation on the use of languages in administrative matters results, according to the applicants, from a series of compromises made at the end of a long period of demanding negotiations, which today are reflected, in part, in Belgium's constitution. As was stated in paragraph 27 above, the way in which powers are structured under the national constitutional rules which confer powers cannot determine the standing of sub-national authorities to bring proceedings.
- 44 Lastly, it must be borne in mind that the pleas raised by the applicant exclusively refer to the alleged illegalities which they claim vitiate Articles 9(2), 10(4), 11(2) and 13(2)(a) of Regulation 2018/1724. Moreover, the applicants claim that they have standing to bring an action for annulment of Regulation 2018/1724 by reference exclusively to the effects that the provisions in question will have on their powers (see paragraphs 30 and 31 above).
- 45 In those circumstances, it must be stated that, as the Parliament and the Council claim, Regulation 2018/1724 does not individually concern the applicants, with the result that the action must be dismissed as inadmissible.
- 46 Pursuant to Article 144(3) of the Rules of Procedure, where the defendant has lodged a plea of inadmissibility or of lack of competence, as provided in Article 130(1) of those rules, a decision on the application to intervene is not to be given until after the plea has been rejected or the decision on the plea reserved. In the present case, as the action has been dismissed as inadmissible in its entirety, there is no need to adjudicate on the application for leave to intervene by the Commission, in accordance with Article 142(2) of the Rules of Procedure.

Costs

- 47 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. As the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Parliament and the Council, in accordance with the form of order sought by those parties.
- 48 In addition, under Article 144(10) of the Rules of Procedure, if, as in the present case, the proceedings in the main case are concluded before the application to intervene has been decided, the applicant for leave to intervene and the main parties are each to bear their own costs relating to the application to intervene. Given that notice of the application for leave to remain was not served on the main parties and, therefore, they were not put in a position where they might incur costs, it must be held that the Commission is to bear its own costs in that regard.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby orders:

- 1. The action is dismissed as inadmissible;**
- 2. There is no need to adjudicate on the application for leave to intervene by the European Commission;**
- 3. Vlaamse Gemeenschap and Vlaams Gewest shall, in addition to bearing their own costs, pay those incurred by the European Parliament and by the Council of the European Union;**
- 4. The Commission shall bear its own costs relating to the application to intervene.**

Luxembourg, 10 December 2019.

E. Coulon
Registrar

M.J. Costeira
President