



Reports of Cases

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

20 September 2019*

(Action for annulment — Common foreign and security policy — Restrictive measures taken with regard to the situation in Venezuela — Action brought by a third State — Lack of individual concern — Inadmissibility)

In Case T-65/18,

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

applicant,

v

Council of the European Union, represented initially by P. Mahnič and L. Ozola, and subsequently by P. Mahnič and A. Antoniadis, acting as Agents,

defendant,

ACTION under Article 263 TFEU for the 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,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of H. Kanninen, President, J. Schwarcz, C. Iliopoulos, L. Calvo-Sotelo Ibáñez-Martín (Rapporteur) and I. Reine, Judges,

Registrar: F. Oller, Administrator,

having regard to the written part of the procedure and further to the hearing on 8 February 2019,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

- 1 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). That decision includes, first, a prohibition on the export to Venezuela of arms, military equipment or any other equipment that might be used for internal repression, as well as surveillance equipment, technology or software. Secondly, it includes a prohibition on the provision to Venezuela of financial, technical or other services related to such equipment and technology. Thirdly, it provides for the freezing of funds and economic resources of persons, entities and bodies. According to recital 1 of Decision 2017/2074, the decision responds to the continuing deterioration of democracy, the rule of law and human rights in Venezuela.
- 2 The second paragraph of Article 13 of Decision 2017/2074 provides that the decision is to be kept under constant review and is to be renewed, or amended as appropriate, if the Council deems that its objectives have not been met. In its initial version, the first paragraph of the same article provided that Decision 2017/2074 was applicable until 14 November 2018. On 6 November 2018, Council Decision (CFSP) 2018/1656 amending Decision 2017/2074 (OJ 2018 L 276, p. 10) extended its validity until 14 November 2019 and amended entry 7 in Annex I to that decision, which concerns one of the persons covered by the freezing of financial assets.
- 3 On 13 November 2017, the Council also adopted Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela (OJ 2017 L 295, p. 21), on the basis of Article 215(2) TFEU and Decision 2017/2074.
- 4 Article 2 of Regulation 2017/2063 specifies that it is prohibited to provide to any natural or legal person, entity or body in, or for use in, Venezuela, technical assistance, brokering services, financing or financial assistance and other services related to the goods and technology listed in the Common Military List of the European Union adopted by the Council on 17 March 2014 (OJ 2014 C 107, p. 1).
- 5 Article 3 of, and Annex I to, Regulation 2017/2063 provide that it is also prohibited to sell, supply or export equipment which might be used for internal repression, such as arms, ammunition, riot control vehicles or vehicles used to transfer prisoners or even explosive substances and to provide technical assistance, brokering services, financing or financial assistance or other services related to that equipment to any natural or legal person, entity or body in, or for use in, Venezuela.
- 6 Article 4 of Regulation 2017/2063 provides that, by way of derogation from Articles 2 and 3 of that regulation, the competent authorities of Member States may authorise certain operations under conditions which they deem appropriate.
- 7 Unless the competent authorities of the Member States have given prior authorisation, Articles 6 and 7 of, and Annex II to, Regulation 2017/2063 prohibit the sale, supply or export of equipment, technology or software for packet inspection, network interception, monitoring, jamming and voice recognition, as well as the provision of technical assistance, brokering services, financial assistance and other services related to such equipment, technology and software to any natural or legal person, entity or body in Venezuela or for use in that country.
- 8 Under Article 20 of Regulation 2017/2063, the aforementioned prohibitions are to 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.'
- 9 Articles 8 to 11 of, and Annexes IV and V to, Regulation 2017/2063 also provide, subject to exceptions, for the freezing of financial assets belonging to certain natural or legal persons, entities or bodies and for a prohibition on making such assets available to them.
- 10 Article 17(4) of Regulation 2017/2063 provides that 'the list set out in Annexes IV and V [is to] be reviewed at regular intervals and at least every 12 months'. On 6 November 2018, Council Implementing Regulation (EU) 2018/1653 implementing Regulation 2017/2063 (OJ 2018 L 276, p. 1), amended entry 7 in Annex IV to that regulation, relating to one of the persons covered by the freezing of financial assets.

Procedure and forms of order sought

- 11 By application lodged at the Court Registry on 6 February 2018, the Bolivarian Republic of Venezuela brought this action against Regulation 2017/2063, in so far as its provisions concern it.
- 12 By separate document lodged at the Court Registry on 3 May 2018, the Council raised an objection of inadmissibility pursuant to Article 130 of the Rules of Procedure of the General Court. The Bolivarian Republic of Venezuela filed its comments on that objection on 27 June 2018.
- 13 On a proposal from the Fourth Chamber, the Court decided, on 17 October 2018, pursuant to Article 28 of the Rules of Procedure, to refer the case to a chamber sitting in extended composition.
- 14 Acting on a proposal from the Judge-Rapporteur, the Court (Fourth Chamber, Extended Composition) decided, in accordance with Article 130(6) of the Rules of Procedure, to open the oral phase of the procedure, limited to the admissibility of the action. Under the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, the Court (Fourth Chamber, Extended Composition) also invited the parties to reply in writing to a question. The parties replied to that invitation by letters of 14 December 2018.
- 15 By a separate document lodged at the 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, so that it also refers to Decision 2018/1656 and Implementing Regulation 2018/1653, in so far as their provisions concern it. The Council replied to the statement of adaptation on 5 February 2019.
- 16 The Bolivarian Republic of Venezuela claims that the Court should:
- annul, first, Regulation 2017/2063, second, Implementing Regulation 2018/1653 and, third, Decision 2018/1656, in so far as their provisions concern it;
 - order the Council to pay the costs.
- 17 In the objection of inadmissibility, the Council contends that the Court should:
- dismiss the action;

– order the Bolivarian Republic of Venezuela to pay the costs.

- 18 In its observations on the objection of inadmissibility, the Bolivarian Republic of Venezuela claims that the Court should reject the objection of inadmissibility.
- 19 The parties presented oral argument and replied to the questions concerning admissibility put by the Court at the hearing on 8 February 2019.

Law

The action in so far as it relates to Regulation 2017/2063

Preliminary observations

- 20 In the application, the Bolivarian Republic of Venezuela requested the annulment of Regulation 2017/2063, in so far as its provisions concern it.
- 21 In its request for a decision on the admissibility of the action without addressing the substance of the case, the Council considered that, in making its request, the Bolivarian Republic of Venezuela referred to Articles 2, 3, 6 and 7 of Regulation 2017/2063. The Bolivarian Republic of Venezuela did not refute that interpretation of the request either in its written pleadings or at the hearing.
- 22 It must therefore be considered that, in so far as it is directed against Regulation 2017/2063, the action concerns only Articles 2, 3, 6 and 7 thereof ('the contested provisions').

Admissibility

- 23 The Council raises three grounds for inadmissibility, namely, first, that the Bolivarian Republic of Venezuela has no legal interest in bringing proceedings, second, that it is not directly concerned by the contested provisions and, third, that it is not a 'natural or legal person' within the meaning of the fourth paragraph of Article 263 TFEU.
- 24 The Court considers that it is appropriate to rule on the admissibility of the action by first examining the second ground for inadmissibility invoked by the Council and alleging that the Bolivarian Republic of Venezuela is not directly concerned by the contested provisions.
- 25 The Council submits that, within the meaning of the fourth paragraph of Article 263 TFEU, the Bolivarian Republic of Venezuela is not directly concerned by the contested provisions.
- 26 The Council argues in this respect that the Bolivarian Republic of Venezuela cannot claim to be directly concerned by the contested provisions on the ground that they are intended to force it to put an end to its policy. Whether a measure directly affects the legal situation of an applicant depends on the content of that measure and not on its objective.
- 27 Furthermore, a measure prohibiting an activity can only directly affect the situation of those exercising that activity. The repercussions of that prohibition on other persons cannot be considered to result directly from the measure in question. However, the contested provisions do not impose any prohibition on the Bolivarian Republic of Venezuela. Under Article 20 of Regulation 2017/2063, they are limited to prohibiting natural or legal persons within the jurisdiction of the European Union from selling or exporting, directly or indirectly, equipment and technology to Venezuela and from providing certain related services.

- 28 The Bolivarian Republic of Venezuela contends that the fact that Article 20 of Regulation 2017/2063 excludes it a priori from its scope of application does not prevent it from producing legal effects for the Bolivarian Republic of Venezuela. Articles 75 and 215 TFEU specifically empower the European Union to adopt economic sanctions intended to produce their effects in third countries. In the present case, the contested provisions prohibit the provision of military equipment, technology, software and related services to prevent it from using them, allegedly, for internal repression purposes and to lead it to change its alleged repression policy. In order to achieve that objective, the contested provisions restrict the exercise of certain rights that the Bolivarian Republic of Venezuela could have enjoyed under international law, such as the right to negotiate or to conclude contracts with European service and equipment providers.
- 29 It should be recalled that, according to settled case-law, the condition that a natural or legal person must be directly concerned by the decision under appeal, as provided for in the fourth paragraph of Article 263 TFEU, requires the fulfilment of two cumulative criteria, namely that the contested measure directly affects the legal situation of the applicant and that it leaves no discretion to its addressees who are responsible for its implementation, as it is purely automatic and derives solely from Union regulations, without the application of other intermediate rules (order of 8 October 2015, *Agrotikos Synetairismos Profitis Ilias v Council*, T-731/14, not published, EU:T:2015:821, paragraph 26, and judgment of 13 September 2018, *Almaz-Antey v Council*, T-515/15, not published, EU:T:2018:545, paragraph 62).
- 30 It should also be recalled that, in order to determine whether a measure produces legal effects, it is necessary to look in particular to its subject matter, its content and substance, as well as to the factual and legal context of which it forms part (see order of 8 March 2012, *Octapharma Pharmazeutika v EMA*, T-573/10, EU:T:2012:114, paragraph 30 and the case-law cited).
- 31 In the present case, the contested provisions contain, first, a prohibition on the sale or supply to any natural or legal person, entity or body in Venezuela of arms, military equipment or any other equipment which might be used for internal repression, as well as surveillance equipment, technology or software. Secondly, the contested provisions contain a prohibition on the provision of financial, technical or other services related to such equipment and technology to the same natural or legal persons, entities or bodies in Venezuela.
- 32 Article 20 of Regulation 2017/2063 limits the application of the abovementioned prohibitions 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.
- 33 On the other hand, the contested provisions do not impose prohibitions on the Bolivarian Republic of Venezuela. At most, the contested provisions are 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.
- 34 Admittedly, in its judgment of 13 September 2018, *Almaz-Antey v Council* (T-515/15, not published, EU:T:2018:545), the Court rejected the argument that the legal situation of an entity established outside the Union was not directly affected by measures which sought to prohibit Union operators from carrying out certain types of transactions with it. The Court held that prohibiting Union operators from carrying out such transactions amounted to prohibiting the applicant from carrying out the transactions in question with them (see, to that effect, judgment of 13 September 2018, *Almaz-Antey v Council*, T-515/15, not published, EU:T:2018:545, paragraph 65).

- 35 However, it should be noted that, 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 applicant was expressly referred to in the contested measure. 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.
- 36 Conversely, in the present case, as a State, the Bolivarian Republic of Venezuela is not explicitly and specifically referred to in the contested provisions in a manner comparable to the applicant in the case which gave rise to the abovementioned judgment.
- 37 In addition, the Council rightly submits that the Bolivarian Republic of Venezuela cannot be assimilated to an operator such as the applicant in Case T-515/15. Indeed, the modes of action of the Bolivarian Republic of Venezuela cannot be reduced to a purely commercial activity, as the Bolivarian Republic of Venezuela itself concedes. Thus, a State is called upon to exercise public authority prerogatives, in particular in the context of sovereign activities such as defence, police and surveillance missions. Furthermore, unlike such an operator whose capacity is limited by its purpose, as a State, the Bolivarian Republic of Venezuela has a field of action that is characterised by extreme diversity and cannot be reduced to a specific activity. That very wide range of competences thus distinguishes it from an operator usually carrying out a specific economic activity covered by a restrictive measure.
- 38 Moreover, it is apparent from the case-law that prohibitions such as those imposed by the contested provisions are not likely to directly affect the situation of operators who are not active in the relevant markets (see, to that effect, order of 6 September 2011, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 79). Thus, in its judgment of 13 September 2018, *Almaz-Antey v Council* (T-515/15, not published, EU:T:2018:545, paragraph 66), the Court specifically found that the applicant was a company active in the defence sector referred to in the relevant provisions of the contested measure.
- 39 In the present case, the Bolivarian Republic of Venezuela produces data compiled by Eurostat showing that the total value of commercial transactions with Venezuela concerning the goods covered by the contested provisions amounted to EUR 76 million in 2016, EUR 59 million in 2017 and was zero in 2018.
- 40 However, while those data are likely to demonstrate the effectiveness of the contested provisions, they are not such as to demonstrate that, in purchasing the goods and services in question, the Bolivarian Republic of Venezuela acted as an entity similar to an economic operator active on the markets in question and not in the context of its sovereign activities.
- 41 Finally, in the absence of a document, such as a contract, the existence of which the Bolivarian Republic of Venezuela has demonstrated before the Court, the possibility for it to enter into a relationship of legal scope with operators in the European Union is purely speculative and can only result from future and hypothetical negotiations. The prohibitions introduced by the contested provisions cannot therefore be regarded as affecting, as such, the legal situation of the Bolivarian Republic of Venezuela.
- 42 Admittedly, the Bolivarian Republic of Venezuela recalls that, according to settled case-law, the fact that a measure of the European Union prevents a public legal person from exercising its own powers as it sees fit has a direct effect on its legal position, with the result that that measure is of direct concern to it.
- 43 However, the case-law referred to by the Bolivarian Republic of Venezuela has been applied in cases concerning the granting of public aid by infra-State entities (see, to that effect, judgments of 8 March 1988, *Exécutif régional wallon and Glaverbel v Commission*, 62/87 and 72/87, EU:C:1988:132, paragraphs 6 and 8; of 30 April 1998, *Vlaamse Gewest v Commission*, T-214/95, EU:T:1998:77, paragraph 29; and of 26 November 2015, *Comunidad Autónoma del País Vasco and Iteiazpi v*

Commission, T-462/13, EU:T:2015:902, paragraph 34), on agriculture and duties applicable to agricultural products imposed on a future Member State before its accession (see, to that effect, judgment of 10 June 2009, *Poland v Commission*, T-257/04, EU:T:2009:182, paragraphs 56 to 58), as well as on motor traffic regulations (see, to that effect, judgment of 13 December 2018, *Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid v Commission*, T-339/16, T-352/16 and T-391/16, under appeal, EU:T:2018:927, paragraph 50). In all those cases, the measures in question directly restricted the exercise by the public legal persons at issue of their substantive powers. However, in the present case, the contested provisions do not directly prohibit the Bolivarian Republic of Venezuela from purchasing and importing the equipment in question and from obtaining the services in question. They do not affect its ability to exercise its sovereign rights over the areas and property under its jurisdiction and there is nothing in Regulation 2017/2063 to suggest that the Council's intention would have been to reduce its legal capacity. Having regard to the right of any State — or association of States — to take sovereign decisions on the manner in which it intends to maintain economic relations with third States, the measures in question restrict, at most indirectly, the opportunities of the Bolivarian Republic of Venezuela in this respect.

- 44 In view of all the above, it must be noted that the legal situation of the Bolivarian Republic of Venezuela is not directly affected by the contested provisions.
- 45 The Bolivarian Republic of Venezuela also claims that the contested provisions reduce its economic and financial relations with EU undertakings. It argues that such an economic effect must be taken into account in assessing its *locus standi*.
- 46 It is true that, in its judgment of 3 May 2018, *Distillerie Bonollo and Others v Council* (T-431/12, under appeal, EU:T:2018:251, paragraphs 51 to 53), cited by the Bolivarian Republic of Venezuela, the Court held that, if the direct effect were limited to legal effects, any action brought by a Union producer against a regulation imposing anti-dumping duties should systematically be declared inadmissible, as should any action brought by a competitor of the beneficiary of aid declared to be compatible with the internal market by the Commission after the formal investigation procedure and any action brought by a competitor against a decision declaring a concentration to be compatible with the internal market. In addition, in its judgments of 13 September 2018, *NK Rosneft and Others v Council* (T-715/14, not published, under appeal, EU:T:2018:544, paragraphs 80 and 81), and of 13 September 2018, *Gazprom Neft v Council* (T-735/14 and T-799/14, EU:T:2018:548, paragraphs 88, 89 and 97), delivered specifically in the field of restrictive measures, the Court held that, in order to establish the individual concern of persons specifically named in the measures in question and having demonstrated, by means of documents submitted before the Court, that they were active on the market affected by export restrictions, account should be taken not only of the effects of such restrictions on the legal position of such persons, but also of their material effects on them.
- 47 However, it is apparent from paragraphs 37 to 40 above that the Bolivarian Republic of Venezuela has not demonstrated that it should be assimilated to an operator active in the field of the goods and services covered by the contested provisions.
- 48 Consequently, the fact that the contested provisions prohibit operators established in the European Union from having economic and financial relations with any natural or legal person, entity or body in Venezuela cannot lead to the conclusion that those provisions directly concern the Bolivarian Republic of Venezuela within the meaning of the fourth paragraph of Article 263 TFEU.
- 49 Finally, the Bolivarian Republic of Venezuela observes that, if it were denied *locus standi*, it would be deprived of all judicial protection since, in the absence of national implementing measures, it would be unable to bring an action before the courts of the Member States.

- 50 However, it must be recalled that the admissibility conditions provided for in the fourth paragraph of Article 263 TFEU must indeed be interpreted in the light of the right to effective judicial protection, but also that that right cannot have the effect of setting aside those conditions, which are expressly laid down in the TFEU (see order of 28 September 2016, *PAN Europe and Others v Commission*, T-600/15, EU:T:2016:601, paragraph 50 and the case-law cited).
- 51 Consequently, the action must be dismissed as inadmissible in so far as it is directed against the contested provisions.

The action in so far as it seeks the annulment of Decision 2018/1656 and of Implementing Regulation 2018/1653 following the amendment of the forms of order sought in the application

- 52 The Bolivarian Republic of Venezuela submits that Article 1(1) of Decision 2018/1656 amends the first paragraph of Article 13 of Decision 2017/2074 and thus extends its period of application until 14 November 2019. It notes that, according to recital 2 of Decision 2018/1656, that extension was decided ‘on the basis of a review’ of Decision 2017/2074. The Bolivarian Republic of Venezuela also claims that Implementing Regulation 2018/1653 was adopted following a review of the situation in Venezuela in accordance with Article 17(4) of Regulation 2017/2063. It therefore follows from Decision 2018/1656 and Implementing Regulation 2018/1653 that the Bolivarian Republic of Venezuela remains subject to the restrictive measures provided for in Decision 2017/2074 and Regulation 2017/2063 for an additional year. However, where a measure initially challenged is extended by a subsequent measure during the proceedings, that subsequent measure should be considered as a new element allowing the applicant to adapt its request.
- 53 However, since the contested provisions do not directly concern the Bolivarian Republic of Venezuela, the same applies to Implementing Regulation 2018/1653. That regulation amends Annex IV to Regulation 2017/2063, as first amended by Council Implementing Regulation (EU) 2018/88 of 22 January 2018 implementing that regulation (OJ 2018 L 16 I, p. 6). The Bolivarian Republic of Venezuela does not dispute the content of that Annex IV.
- 54 In addition, it follows from Article 86 of the Rules of Procedure 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 (see, to that effect, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence v Council*, T-255/15, not published, EU:T:2017:25, paragraphs 37 to 39 and the case-law cited). However, as the Council observes, Decision 2018/1656 amends Decision 2017/2074, the annulment of which the Bolivarian Republic of Venezuela did not request in its originating application.
- 55 Consequently, in so far as it seeks the annulment of Decision 2018/1656 and Implementing Regulation 2018/1653, the action must also be dismissed as inadmissible.
- 56 In the light of all of the foregoing, the action must be dismissed in its entirety as inadmissible, without it being necessary to rule on the other two grounds of inadmissibility raised by the Council.

Costs

- 57 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.
- 58 Since the Bolivarian Republic of Venezuela has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Council, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

- 1. Dismisses the action;**
- 2. Orders the Bolivarian Republic of Venezuela to bear its own costs and to pay those incurred by the Council of the European Union.**

Kanninen

Szwarcz

Iliopoulos

Calvo-Sotelo Ibáñez-Martín

Reine

Delivered in open court in Luxembourg on 20 September 2019.

E. Coulon
Registrar

D. Gratsias
President