States — Legal personality of States under international law — European Union — State not Member of the European Union — Whether possessing legal personality under European Union law — European Union sanctions against Venezuela — Whether Venezuela entitled to challenge sanctions before European Union courts

Comity — International organizations — European Union — Standing before courts of European Union — Third States — Whether third States can challenge economic restrictions before European Union courts — Reciprocity — Whether access to European Union courts by third States conditional on agreement — Whether third States having standing to annul European Union Regulations — Whether third States having access to European Union courts — Whether third States directly affected by a European Union Regulation

Treaties — Interpretation — Treaty on the Functioning of the European Union, 2007 — Article 263 — Fourth paragraph of Article 263 — Meaning of "legal person" — Whether third State a "legal person" — Rule of law — Whether access to European Union courts can be subjected to condition of reciprocity — Meaning of directly and individually concerned — Whether a third State is directly affected by a regulation

Economics, trade and finance — Restrictive measures — Venezuela — Whether regulation restricting European Union nationals directly concerning third State — Whether access of third States to European Union courts placing European Union at disadvantage — The law of the European Union

Bolivarian Republic of Venezuela *v.* Council of the European Union[1]

(Case C-872/19)

Court of Justice of the European Union (Grand Chamber).
22 *June* 2021

[1] Venezuela, the appellant, was represented by L. Giuliano and F. Di Gianni. The Council of the European Union, the defendant at first instance, was represented by P. Mahnič and A. Antoniadis.

https://doi.org/10.1017/ilr.2022.26 Published online by Cambridge University Press

(Lenaerts, *President*; Silva de Lapuerta, *Vice-President*; Prechal, Vilaras, Regan, Ilešič, Bay Larsen, Kumin and Wahl, *Presidents of Chambers*; Juhász (*Rapporteur*), von Danwitz, Toader, Rossi, Jarukaitis and Jääskinen, *Judges*; Hogan, *Advocate General*)

Summary:[2] *The facts*:—The Bolivarian Republic of Venezuela ("Venezuela") commenced proceedings against the Council of the European Union ("the Council") for the annulment of European Council Regulation 2017/2063 ("the Regulation"). In response to the situation in Venezuela, the Regulation imposed restrictive measures within the European Union ("EU") and prohibited nationals and other entities of EU Member States from providing certain listed goods and services, including military equipment, to Venezuela.

The General Court of the Court of Justice of the European Union ("the General Court") dismissed Venezuela's claim as inadmissible. It found that Venezuela was not directly concerned by the relevant provisions of the Regulation, as required by Article 263 of the Treaty on the Functioning of the European Union, 2007 ("TFEU").[3]

Venezuela appealed to the Court of Justice of the European Union ("CJEU"), arguing that the General Court had incorrectly interpreted Article 263 of the TFEU and erred in holding that Venezuela was not directly concerned by the relevant provisions of the Regulation. The Council submitted that a State which was not a Member of the EU (a "third State") had no specific rights under the treaties of the EU to be subject to equal treatment or to trade freely and unconditionally with economic operators in EU Member States. A third State could not claim to be directly affected in its legal position by an EU measure which subjected it to differentiated treatment. The Council argued that Venezuela sought to establish a new rule under which third States would automatically be granted standing to challenge economic measures taken by the EU in respect of its foreign policy.

On appeal, the Grand Chamber of the CJEU considered, on its own motion, that it was first necessary to determine whether Venezuela was a "legal person" within the meaning of Article 263 of the TFEU. The Council argued that a third State should not be regarded as a "legal person" under the TFEU unless specific rights had been conferred on it by agreement with the EU. It argued that States, as subjects of public international law, did not enjoy an automatic right to a judicial remedy before the courts of other States. Venezuela argued that neither the wording, objective, nor context of Article 263 precluded it from being considered as a "legal person" within the meaning of that provision.

[2] Prepared by Mr D. Peterson.

[3] Article 263 of the TFEU, in its fourth paragraph, provided that: "Any natural or legal person may, under the conditions laid down in the first and second paragraphs, 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."

https://doi.org/10.1017/ilr.2022.26 Published online by Cambridge University Press

The Council raised two further grounds of inadmissibility: first, that Venezuela had no interest in bringing the proceedings, and, secondly, that Venezuela had failed to satisfy the other admissibility conditions required by the fourth paragraph of Article 263 of the TFEU.

Opinion of the Advocate General

Held:—(1) It was not disputed that Venezuela enjoyed legal personality under international law. Established State practice and the traditional principles of comity accorded to all sovereign States ensured that they were permitted to sue in the courts of another sovereign (paras. 64-5 and 83).

(2) Even judged solely by reference to principles of public international law, it was clear that Venezuela was a legal person for the purposes of the fourth paragraph of Article 263 of the TFEU. The principle of State immunity could not be relied upon to limit Venezuela's standing before EU Courts (paras. 68, 84 and 90).

(3) No comparison could be made between the present case and the decision of the European Court of Human Rights in *Democratic Republic of the Congo* v. *Belgium*.[4] That ruling was based on the particular wording of Articles 33 and 34 of the European Convention on Human Rights, 1950, which was designed to allow claims to be brought either by individuals or by one Contracting State against another. The wording and context of Article 263 of the TFEU were different and less prescriptive and clearly envisaged that a challenge might be brought by a legal person subject only to the requirement that they be directly and individually concerned by the contested provision (paras. 69-70).

(4) Established practice in public international law and the principle of judicial comity followed by the courts of individual Member States required that the CJEU should be open to challenges brought by other sovereign States in their capacity as legal persons (para. 72).

(5) The fourth paragraph of Article 263 of the TFEU was not limited to private actors or individuals. It had consistently been held that a local or regional entity might, to the extent that it had legal personality under national law, institute proceedings against a decision addressed to it, or against a decision where it was directly or individually concerned (para. 81).

(6) Recognizing a third State as a legal person for the purposes of Article 263 of the TFEU would not place the EU at a disadvantage compared to its international partners or restrict the EU in the conduct of its internal policies and international relations. Respect for the rule of law and the principle of effective judicial protection was not based on any notion of reciprocity and could not be traded or compromised or made subject to reciprocal treaty obligations (paras. 86-7).

[4] *Democratic Republic of the Congo* v. *Belgium*, 200 ILR 283.

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(7) In order to determine whether a measure had produced legal effects it was necessary to look to its subject matter, its content and substance, as well as the factual and legal context. This was a holistic and pragmatic approach that favoured substance over form and should be used when the effects of a measure on the legal situation of a natural or legal person were examined (para. 105).

(8) The General Court's assessment of the effects of the contested provisions on Venezuela's legal situation was highly artificial, unduly formalistic, and at odds with the reality of the restrictive measures in question. The contested measures were designed to affect Venezuela (para. 109).

(9) It was artificial and formalistic to suggest that a ban on the sale and supply of goods and services to Venezuela did not directly and individually affect its legal situation. The fact that the prohibitions contained in the contested measure were limited to the territory of the EU did not mean that the contested provisions did not directly affect Venezuela's legal situation (paras. 111-12).

(10) The General Court had erred in holding that the proceedings were inadmissible pursuant to the fourth paragraph of Article 263 of the TFEU (para. 123).

Judgment of the Court of Justice

Held:—The appeal was allowed. The judgment of the General Court was set aside; Venezuela's claim was admissible.

(1) Venezuela was a "legal person" within the meaning of the fourth paragraph of Article 263 of the TFEU. The term "legal person" used in the relevant provision could not be interpreted restrictively; it was to be interpreted in the light of the principles of effective judicial review and the rule of law. This approach weighed in favour of a finding that a third State had standing to bring proceedings as a "legal person" where the other conditions required by Article 263 of the TFEU were satisfied (paras. 41-50 and 53).

(2) A legal person governed by public international law was equally as likely as any other person, or entity, to have its rights or interests adversely affected by an act of the EU and must therefore be able to seek the annulment of that act. The obligations of the EU to ensure respect for the rule of law could not be made subject to a condition of reciprocity in the relations between the EU and third States (paras. 50-2).

(3) The prohibition on operators located or established within the EU amounted to a prohibition on Venezuela from carrying out the relevant transactions with those operators. That the restrictive measures did not constitute an absolute obstacle for Venezuela to obtain the goods and services prohibited by the Regulation did not call into question the conclusion that Venezuela was directly concerned by the measure. The requirement that a legal person had to be directly concerned by a measure in order to institute

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proceedings against the EU did not demand that it be entirely impossible for that person to obtain the goods and services in question (paras. 68-71).

(4) The General Court had erred in finding that the claim was inadmissible on the grounds that the restrictive measures did not directly concern Venezuela (paras. 73-4).

(5) An action for annulment had to be available for all measures adopted by the EU that were intended to have legal effects capable of affecting the interests of a legal person (para. 81).

(6) The annulment of the contested measure had to be capable, by itself, of procuring an advantage for the applicant. As the Regulation harmed Venezuela's economic interests, its annulment was capable of procuring it an advantage. Venezuela therefore had an interest in instituting the annulment proceedings (paras. 82-5).

(7) The restrictive measures laid down in the Regulation applied without requiring the adoption of implementing measures and without leaving any discretion to those responsible for its implementation. Venezuela's claim had satisfied the conditions required by the fourth paragraph of Article 263 of the TFEU and was admissible (paras. 90-4).

(8) The matter was referred back to the General Court for judgment as the state of the proceedings did not permit final judgment to be given on the merits (para. 95).

The text of the judgment of the Court of Justice commences at p. 260. The following is the text of the Opinion of Advocate General Hogan:

OPINION OF ADVOCATE GENERAL HOGAN[1]

I. INTRODUCTION

1. The deteriorating political and economic situation in the Bolivarian Republic of Venezuela has brought in its wake a state of affairs where ordinary democratic, rule of law and human rights principles appear to have been significantly compromised. It is against this background that the Council of the European Union has since 2017 decided to adopt a series of restrictive measures (sanctions). These restrictive measures impose export bans on the sale, supply, transfer or export of certain military and other equipment (such as riot control vehicles or vehicles used for the transfer of prisoners) to Venezuela. It is clear from the recitals of the decisions and the regulations giving effect to those restrictive measures that the Council feared

[[1] Delivered on 20 January 2021.] Original language: English.

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that that equipment might be used for the purposes of internal repression along with the general suppression of legitimate democratic protest within that State. The measures also extended to the provision of technical, brokering or financial services associated with the supply of that equipment. The measures additionally provide for the possibility of imposing travel bans on certain named natural persons and asset-freezing measures directed against certain named natural or legal persons, entities or bodies. Those particular individualised measures are not, however, the subject of the present proceedings.

2. The present proceedings rather involve an endeavour brought by the Bolivarian Republic of Venezuela to challenge the validity of certain of those restrictive measures. This immediately raises the much broader question of whether a State which is not a member of the European Union is entitled to bring proceedings of this nature before the Union's judicature. While these questions might be thought to touch on important and potentially sensitive issues of public international law, at the more specific level of European Union law, the issues requiring resolution in this appeal might be said to reduce themselves to these: (i) is the Bolivarian Republic of Venezuela a legal person for the purposes of Article 263 TFEU and (ii) assuming that the answer to the first question is in the affirmative, are the measures imposed of direct concern[2] to the Bolivarian Republic of Venezuela such as would enable it to have the necessary standing to challenge the validity of the restrictive measures for the purposes of Article 263 TFEU?[3]

3. The present case accordingly concerns an appeal brought on 28 November 2019 by the Bolivarian Republic of Venezuela ("the appellant") against the judgment of the General Court (Fourth Chamber, Extended Composition) of 20 September 2019, *Venezuela* v. *Council* (T-65/18, EU:T:2019:649; "the judgment under appeal"). In that judgment, the General Court held that the appellant had not demonstrated that it was directly concerned by the measures within the meaning of the fourth paragraph of Article 263 TFEU. It followed,

[2] The question of individual concern was not addressed so far as the present case was concerned in the judgment under appeal. The Council, in its objection to admissibility, considered that it was not necessary to address this matter in the absence of direct concern on the part of Venezuela. I would note however that Venezuela, in its response to the Council's objection to admissibility, claimed that Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela (OJ 2017 L 295, p. 21), which was adopted on the basis of Article 215 TFEU, is a regulatory act and that it is thus sufficient to show that it is directly concerned by that measure.

[3] In the event that it is also established that Venezuela is individually concerned by those measures.

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therefore, that the appellant lacked the necessary standing to maintain its annulment action and the proceedings were accordingly held to be inadmissible on that basis.

4. The appellant claims in essence that the General Court wrongly interpreted the criterion of direct concern provided for in the fourth paragraph of Article 263 TFEU in light of the judgment of 13 September 2018, *Almaz-Antey Air and Space Defence* v. *Council* (T-515/15, not published, EU:T:2018:545; "the *Almaz-Antey* judgment"). This appeal accordingly presents the Court with a unique opportunity to rule on the application of the criteria for admissibility laid down in the fourth paragraph of Article 263 TFEU in relation to an action for annulment brought by a third State against restrictive measures adopted by the Council of the European Union in view of the situation in that State. So far as the appeal is concerned, it is thus necessary to consider, as I have already indicated, whether, in the context of the present proceedings, the appellant is a legal person for the purposes of the fourth paragraph of Article 263 TFEU and, if so, whether it is also directly concerned by the restrictive measures in question.

II. LEGAL CONTEXT AND BACKGROUND TO THE DISPUTE

5. On 13 November 2017, the Council adopted Regulation 2017/2063 on the basis of Article 215(2) TFEU and Council Decision (CFSP) 2017/2074 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela.[4]

6. 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

[4] OJ 2017 L 295, p. 60. According to paragraph 1 of the judgment under appeal, Decision 2017/2074 "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." In its initial version, the first paragraph of Article 13 of Decision 2017/2074 provided that it 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.

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technology listed in the Common Military List of the European Union adopted by the Council on 17 March 2014.[5]

7. 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.

8. 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.

9. 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.

10. Article 6(2) of Regulation 2017/2063 provides that the competent authorities of the Member States shall not grant any authorisation to sell, supply, transfer or export, directly or indirectly, equipment, technology or software to any person, entity or body in Venezuela or for use in Venezuela 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.

11. Article 7(1)(c) of Regulation 2017/2063 provides that unless the competent authority of the relevant Member State has given prior authorisation in accordance with Article 6(2), it shall be prohibited 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.

12. Articles 8 to 11 of, and Annexes IV and V to, Regulation 2017/2063 also provide, subject to exceptions, for the freezing of financial

[5] OJ 2014 C 107, p. 1.

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assets belonging to certain natural or legal persons, entities or bodies and for a prohibition on making such assets available to them. 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".[6]

13. 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.

III. THE PROCEDURE BEFORE THE GENERAL COURT AND THE JUDGMENT UNDER APPEAL

14. By application lodged at the Registry of the General Court on 6 February 2018, the appellant brought an action for annulment against Regulation 2017/2063, in so far as its provisions concern it. The General Court considered that, in so far as it is directed against Regulation 2017/2063, the appellant's action for annulment concerns only Articles 2, 3, 6 and 7 thereof ("the contested provisions").[7]

15. By separate document lodged at the Registry of the General Court 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 Council raised three grounds for inadmissibility, namely, first, that the appellant, the applicant in that case, has no legal interest in bringing proceedings, secondly, that it is not directly concerned by the contested provisions and, thirdly, that it is not a "natural or legal person" within the meaning of the fourth paragraph of Article 263 TFEU. The appellant filed its comments on that objection on 27 June 2018. By a separate document lodged at the Registry of the General

[6] 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.

[7] See paragraph 22 of the judgment under appeal. This finding has not been challenged in the present appeal. See paragraph 14 of the appeal.

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Court on 17 January 2019, the appellant adapted the application on the basis of Article 86 of the Rules of Procedure of the General Court, 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 parties presented oral argument and replied to the questions concerning admissibility put by the General Court at a hearing on 8 February 2019. The General Court considered that it was appropriate to rule on the admissibility of the action for annulment before it by first examining the second ground for inadmissibility invoked by the Council in which it alleged that the appellant is not directly concerned by the contested provisions.

17. In the judgment under appeal, the General Court 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 appellant and that it leaves no discretion to its addressees who are responsible for its implementation, as it is purely automatic and derives solely from EU regulations, without the application of other intermediate rules. In order, moreover, 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.[8]

18. According to the General Court, 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.[9] Moreover, the General Court stated that Article 20 of Regulation 2017/2063 limits the application of the above-mentioned 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.[10]

[8] See paragraphs 29 and 30 of the judgment under appeal and the case-law cited.
[9] See paragraph 31 of the judgment under appeal.
[10] See paragraph 32 of the judgment under appeal.

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19. The General Court found that the contested provisions do not impose prohibitions on the appellant and, at most, are likely to have indirect effects on it, 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 appellant can obtain the goods and services in question.[11]

20. The General Court stated that, admittedly, in the *Almaz-Antey* judgment, it rejected the argument that the legal situation of an entity established outside the Union was not directly affected by measures which sought to prohibit EU operators from carrying out certain types of transactions with it. The General Court held in that case that prohibiting EU operators from carrying out such transactions amounted to prohibiting the applicant from carrying out the transactions in question with them.[12] The General Court noted, however, that the appellant 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 *Almaz-Antey* judgment.[13]

21. In addition, according to the General Court, the appellant cannot be assimilated to an operator such as the applicant in the case which gave rise to the *Almaz-Antey* judgment as the modes of action of the appellant cannot be reduced to a purely commercial activity, as 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, the General Court considered that unlike such an operator whose capacity is limited by its purpose, as a State, the appellant 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.[14]

22. The General Court also stated that prohibitions such as those imposed by the contested provisions are not likely directly to affect the situation of operators who are not active in the relevant markets. In the *Almaz-Antey* judgment, the General Court specifically found that

[11] See paragraph 32 of the judgment under appeal.

[12] See paragraph 34 of the judgment under appeal.

[13] The General Court noted in paragraph 35 of the judgment under appeal that in the case giving rise to the *Almaz-Antey* judgment, the applicant's name appeared in the annex to the contested decision in question as an undertaking to which it was prohibited to sell or supply the goods and services in question.

[14] See paragraph 37 of the judgment under appeal.

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the applicant was a company active in the defence sector referred to in the relevant provisions of the contested measure.[15]

23. The General Court considered that Eurostat data adduced by the appellant 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 EUR 0 in 2018, while likely to demonstrate the effectiveness of the contested provisions, were not such as to demonstrate that, in purchasing the goods and services in question, the appellant acted as an entity similar to an economic operator active on the markets in question and not in the context of its sovereign activities.[16] The General Court stated that, in the absence of a document, such as a contract, the possibility for the appellant 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 General Court thus held that prohibitions introduced by the contested provisions could not be regarded as affecting, as such, the legal situation of the appellant.[17]

24. In response to the appellant's claim 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, the General Court held that the contested provisions do not directly prohibit the appellant from purchasing and importing the equipment in question and from obtaining the services in question. It also held that 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 appellant in this respect.[18]

25. The General Court concluded that the legal situation of the appellant was not directly affected by the contested provisions and that the action must be dismissed as inadmissible in so far as it was directed against those provisions.[19]

[15] See paragraph 38 of the judgment under appeal.
[16] See paragraphs 39 and 40 of the judgment under appeal.
[17] See paragraph 41 of the judgment under appeal.
[18] See paragraphs 42 and 43 of the judgment under appeal.
[19] See paragraph 51 of the judgment under appeal.

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IV. FORMS OF ORDER SOUGHT IN THE PRESENT APPEAL

26. The appellant claims that the Court should:

– set aside the judgment under appeal in so far as it dismissed the action as inadmissible;
– declare the action brought by the appellant admissible and refer the case back to the General Court to rule on the merits of the case; and
– order the Council to pay the costs of these proceedings and of the proceedings before the General Court.

27. The Council claims that the Court should:

– dismiss the appeal;
– order the appellant to pay the costs before this Court.

V. THE PROCEDURE BEFORE THE COURT

28. 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, 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". The conditions laid down in the fourth paragraph of Article 263 TFEU are essential conditions prescribing the necessary *locus standi* requirements in respect of proceedings brought by natural or legal persons seeking judicial review of a Union act. If those essential conditions are not met, it follows that any such proceedings are inadmissible and that inadmissibility therefore constitutes a ground involving a question of public policy which may—and even must—be raised of its own motion by the Union judicature.[20] Therefore, the failure to comply with the essential conditions laid down in the fourth paragraph of Article 263 TFEU in respect of an action for annulment raises an absolute bar to proceedings brought by natural and legal persons which the EU Courts may consider at any time, even of their own motion.[21]

29. Although the present appeal is directed against the ruling of the General Court in the judgment under appeal that the action before it was

[20] See, by analogy, judgment of 29 April 2004, *Italy* v. *Commission* (C-298/00 P, EU:C:2004:240, paragraph 35).

[21] See, to that effect, judgment of 27 February 2014, *Stichting Woonpunt and Others* v. *Commission* (C-132/12 P, EU:C:2014:100, paragraph 45 and the case-law cited).

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inadmissible as the legal situation of the appellant was not directly affected by the contested provisions, the Court, by decision dated 7 July 2020, decided to request the appellant, the Council, the European Commission and the Member States to adopt a position in writing, by 11 September 2020, on whether a third State is to be regarded as a legal person within the meaning of the fourth paragraph of Article 263 TFEU.

30. At the request of certain interested parties, the deadline for the submission of such written observations was extended to 25 September 2020. Moreover, certain interested parties requested access to the file in this case. Access was granted given the absence of any objection by the parties. Written observations on the question of whether the appellant is a legal person for the purposes of the fourth paragraph of Article 263 TFEU were submitted by the appellant, the Council, 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.

31. In my view, it is convenient to examine the question of whether the appellant is a legal person for the purposes of the fourth paragraph of Article 263 TFEU prior to examining the question of direct concern.

VI. THE APPEAL

A. The concept of "legal person"

1. Arguments of the parties

32. The appellant notes that the Council, in its response in the present appeal proceedings, accepted that the appellant has international legal personality and is a legal person in accordance with the relevant rules of public international law and domestic law. The obligation to ensure compliance with the rule of law requires the EU to ensure that any natural or legal person is "entitled to effective judicial protection of the rights they derive from the EU legal order". In addition, any such person must be allowed to challenge before the EU Courts the measures adopted by the EU institutions that are prejudicial to them, in so far as the conditions established in Article 263 TFEU are met. This is an expression of the *ubi ius ibi remedium* principle, which is a general principle of EU law, and is reflected in Article 47(1) of the Charter of Fundamental Rights of the European Union ("the Charter") as well as in Article 19(1) TEU.

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33. The appellant considers that the wording of the fourth paragraph of Article 263 TFEU does not provide any indication—be it even indirect—that would allow to it to be excluded from the concept of "legal person" set out therein. Moreover, in its order of 10 September 2020, *Cambodia and CRF* v. *Commission* (T-246/19, EU:T:2020:415), the General Court held inter alia that the expression "any natural or legal person" in the fourth paragraph of Article 263 TFEU must be understood as also covering States which are not members of the European Union, such as the Kingdom of Cambodia. According to the appellant, that reasoning applies *mutatis mutandis* in the present appeal. In addition, the use of the determiner "*any*", not only in English, but also other language versions,[22] with reference to "natural or legal person" in the fourth paragraph of Article 263 TFEU indicates that it includes "all" individuals and entities that are natural and/or legal persons, without distinctions. Any interpretation of the terms "any natural or legal person" laid down in the fourth paragraph of Article 263 TFEU, to the effect that they would not encompass entities with international legal personality, such as the appellant, would violate the wording of that provision and be *contra legem*. Moreover, such a *contra legem* interpretation would also violate the case-law according to which "provisions of the Treaty concerning the right of interested persons to bring an action must not be interpreted restrictively, and hence, where the Treaty makes no provision, a limitation in that respect cannot be presumed to exist".[23]

34. The appellant claims that the above literal interpretation is confirmed—*ad abundantiam*—by a reading of the fourth paragraph of Article 263 TFEU in light of its objective and regulatory context. According to well-established case-law, the objective of the fourth paragraph of Article 263 TFEU "is to provide appropriate judicial protection for all persons, natural or legal, who are directly and individually concerned by acts of the [EU] institutions".[24] Moreover, the right to bring an action for annulment is essential to ensure compliance with the requirements stemming from the rule of law principles.

[22] "*jede Person*" in German, "*toda persona*" in Spanish, "*toute personne*" in French and "*qualsiasi persona*" in Italian.

[23] Judgment of 11 July 1996, *Métropole télévision and Others* v. *Commission* (T-528/93, T-542/93, T-543/93 and T-546/93, EU:T:1996:99, paragraph 60). See also, to that effect, judgment of 15 July 1963, *Plaumann* v. *Commission* (25/62, EU:C:1963:17, pp. 106-7).

[24] Judgment of 10 June 2009, *Poland* v. *Commission* (T-257/04, EU:T:2009:182, paragraph 53), and order of 10 June 2009, *Poland* v. *Commission* (T-258/04, not published, EU:T:2009:183, paragraph 61).

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Accordingly, the EU Courts have already accepted as a legal person within the meaning of that provision, for example, regions and other territorial entities in a Member State,[25] sub-regional entities in third States,[26] companies established in third States,[27] third States,[28] new Member States before they acceded to the European Union[29] and even organisations without any legal personality under national law, EU law or international law.[30] To exclude the appellant from the judicial protection granted under the fourth paragraph of Article 263 TFEU would run counter to that provision and would deprive it of any legal remedy in respect of measures which have a direct and significant impact on its legal situation. Moreover, EU primary legislation does not contain any indications supporting the view that an entity with international legal personality, such as the appellant, would not be included in the notion of "legal person" for the purpose of that provision. Indeed, the case-law on the right to intervene pursuant to Article 40 of the Statute of the Court of Justice supports the conclusion that the appellant is a legal person within the meaning of the fourth paragraph of Article 263 TFEU.

35. The Council considers that a third State is not 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 EU. This exception does not apply to the case at hand. The aim of the provision is to strengthen the protection of individuals, not States.[31] Pursuant to Article 47 of the Charter, effective legal protection must exist for every right derived from EU law. Sovereign States, which are not subject to such a system and have no rights conferred on them (nor are they subject to obligations) by EU law, cannot—in principle—claim to have access to EU Courts. To grant a sovereign third State access to EU Courts beyond the limits outlined above would not only be inconsistent with the literal and teleological interpretation of the Treaty

[25] Order of 8 February 2007, *Landtag Schleswig-Holstein* v. *Commission* (C-406/06, not published, EU:C:2007:90, paragraph 9).

[26] Order of 3 July 2007, *Commune de Champagne and Others* v. *Council and Commission* (T-212/02, EU:T:2007:194, paragraph 178).

[27] Order of 13 May 2019, *Giant (China)* v. *Council* (T-425/13 DEP, not published, EU:T:2019:340).

[28] Order of 10 September 2020, *Cambodia and CRF* v. *Commission* (T-246/19, EU:T:2020:415).

[29] Judgment of 10 June 2009, *Poland* v. *Commission* (T-257/04, EU:T:2009:182, paragraph 53), and order of 10 June 2009, *Poland* v. *Commission* (T-258/04, not published, EU:T:2009:183, paragraph 61).

[30] Judgment of 18 January 2007, *PKK and KNK* v. *Council* (C-229/05 P, EU:C:2007:32).

[31] See Opinion of Advocate General Kokott in *Inuit Tapiriit Kanatami and Others* v. *Parliament and Council* (C-583/11 P, EU:C:2013:21, point 90).

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provision in question, but would in the view of the Council also run against the very system of remedies under EU law (and its underlying spirit), which was designed for the protection of rights granted under EU law.[32] Given that "the Union possesses a constitutional framework that is unique to it",[33] the remedies provided for under the Treaties cannot be extended to third States. A third State, although a legal person of international law, is nonetheless not subject to that constitutional framework which is limited to the Member States. The Union develops its relations with sovereign third States on the international scene and those relations are governed by international law which, in turn, is based on consent. In the international legal order, subjects of international law do not enjoy an automatic right to a judicial remedy; rather, they have the right not to submit to the jurisdiction of another State or an international tribunal unless they have consented to it. Sovereign third States have no specific rights under the EU Treaties, including any alleged right to be subject to equal treatment or to trade freely and unconditionally with economic operators in the EU. This is consistent with the sovereign immunity doctrine according to which the subjects of international law cannot, via their internal rules, regulate the conduct of other subjects of international law.

36. The Council claims that case-law on the principle of equality between old and new Member States, in which the Court of Justice endorsed the position, advocated by the Republic of Poland, that the latter State enjoyed a right of action in its capacity as a future Member State,[34] cannot serve as a justification for according standing before the EU Courts to a third State such as Venezuela which is not and cannot become a Member State. Moreover, the Council stresses that, while it is true that the Court implicitly recognised that the Swiss Confederation had legal standing in its order of 14 July 2005, *Switzerland* v. *Commission* (C-70/04, not published, EU:C:2005:468), this was done in an entirely different context, as the agreement between the European Community and the Swiss Confederation on Air Transport provided for the Swiss Confederation to be treated as a Member State for the purposes of applying specific provisions of the EU internal legislation. In addition, Article 20 of that agreement conferred exclusive jurisdiction on the Court regarding certain matters.

[32] The Council cites, to that effect, Opinion 1/17 of 30 April 2019 (EU:C:2019:341, paragraph 109).

[33] See Opinion 1/17 of 30 April 2019 (EU:C:2019:341, paragraph 110).

[34] Judgments of 26 June 2012, *Poland* v. *Commission* (C-335/09 P, EU:C:2012:385, paragraph 45), and of 26 June 2012, *Poland* v. *Commission* (C-336/09 P, EU:C:2012:386, paragraph 38).

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37. The Council also considers that allowing a third State that is targeted by general restrictive measures (embargoes) 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 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 or with respect to acts adopted on the basis of those provisions. The necessary coherence of the system of judicial protection under the Treaties therefore requires that access to the EU Courts not be exceptionally granted to a third State which, as in the present case, challenges an embargo—that is, restrictive measures of a general nature, which have their legal basis in the first paragraph of Article 215 TFEU and which, in accordance with Articles 24(1) TEU and 275 TFEU, fall outside the jurisdiction of the EU Courts. This conclusion is moreover consistent with the established case-law of the Court, which gives access to EU Courts to different entities considered emanations of a State, when inscribed on the list of persons subject to individual restrictive measures.[35]

38. Moreover, in the view of the Council, recognising that a third State has legal standing to bring actions to challenge acts of the institutions of the Union in the circumstances of the present case would create a legal avenue that 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 in this way would unduly restrict the EU in the conduct of its policies and international relations. This 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 it.

39. The Republic of Poland considers that legal persons within the meaning of the fourth paragraph of Article 263 TFEU are, essentially, entities which have legal personality under the law of a Member State or of a third country, but not those countries themselves. It claims that, "according to reports on the work of the European Convention on the current wording of the fourth paragraph of Article 263 TFEU", the intention of the authors of the Treaties was to protect the rights of *individuals*. The concept of a legal person within the meaning of the

[35] Judgment of 1 March 2016, *National Iranian Oil Company* v. *Council* (C-440/14 P, EU:C:2016:128).

https://doi.org/10.1017/ilr.2022.26 Published online by Cambridge University Press

fourth paragraph of Article 263 TFEU can also be defined by reference to the context in which it is used in the case-law of the Court of Justice. Pursuant to that case-law, the term "natural and legal person" is used interchangeably with the term "individual", or even "private person", which is in certain contrast to States (and thus excludes States from the scope of the term). The status of States, in contrast to that of individuals, is, however, determined by international law. One of the basic principles of international law is reciprocity. Allowing third countries to bring direct actions against acts of EU law before the Courts of the European Union would result in a lack of reciprocity, both substantive and procedural, in the European Union's relations with those countries, because, although third countries would be able to challenge acts of EU law before the internal Court of the European Union (the Court of Justice), the European Union would not be able to challenge the national acts of those countries and the acts which they adopt within the framework of the various associations of States (international organisations) of which they are members (before their national courts or before the courts of those international organisations). Third countries are not parties to the Treaties on which the European Union is founded (the EU and FEU Treaties) and do not derive their rights and obligations from those Treaties. At the same time, acts of EU law adopted pursuant to the Treaties are not addressed to third countries. Those acts do not have legal effects vis-à-vis third countries and are not binding in their territory, nor do they confer any rights or obligations on third countries. This also includes restrictive measures which, pursuant to Article 215(2) TFEU, may be imposed on natural or legal persons and groups or non-State entities. Internal laws enacted by the European Union, which is a subject of international law, cannot regulate the situation of other subjects of international law such as sovereign States.

40. The Republic of Slovenia considers that an interpretation of the concept of "legal person" referred to in the fourth paragraph of Article 263 TFEU under which *locus standi* before the Court should also be granted to third countries without their having concluded with the European Union any agreement defining the legal relations between the parties thereto would lead to the risk of the Court becoming the forum for contesting EU policies. Nor would reciprocity be ensured in international relations. The third countries in question should not be permitted to influence EU policies by bringing actions before the Court.

41. The Kingdom of Belgium considers that as international law currently stands, it is indisputable that a third State is a legal person by

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virtue of the fact that, inter alia, it has legal personality and is able to be a party to legal proceedings. The European Union has never sought to call into question that state of affairs in international law, and moreover cannot do so. To deny that a third State may be concerned by an EU act would be tantamount to calling into question the European Union's ability to carry out the task conferred on it by Article 3(5) TEU. Moreover, to deny a third State concerned by an EU act the right to effective judicial protection would be tantamount to adopting a restrictive view of the rule of law, a value on which, pursuant to Article 2 TEU, the European Union is founded.

42. The Republic of Bulgaria and the Republic of Lithuania consider that sovereign States have legal personality under international law and that a third State can in principle be regarded as a legal person within the meaning of the fourth paragraph of Article 263 TFEU. However, in order for a third State to bring an action against an EU act, the additional conditions laid down in the fourth paragraph of Article 263 TFEU need to be met. According to both the Republic of Bulgaria and the Republic of Lithuania, the appellant is not directly concerned by the contested provisions.

43. The Hellenic Republic considers that a third State may not be regarded as a legal person within the meaning of the fourth paragraph of Article 263 TFEU. It considers that recognising a right of recourse of third countries against acts of the European Union imposing sanctions may undermine the integrity and autonomy of the sanctions introduced in the Treaties. In addition, it may place the European Union at a disadvantage to third countries which do not recognise a similar right of recourse for the benefit of the European Union in their domestic legal system in connection with the application of international conventions.[36]

44. The Republic of Estonia considers that since neither the fourth paragraph of Article 263 TFEU nor the case-law relating to that provision states exactly who falls within the notion of legal person, it cannot be ruled out that a third State may also be regarded as a legal person within the meaning of that provision. The natural and legal persons referred to in Article 263 TFEU are not privileged applicants, such as the Member States and the institutions of the European Union, and must therefore satisfy additional requirements in order to bring proceedings. The Republic of Estonia considers that the provisions of the fourth paragraph of Article 263 TFEU may not be broadened in

[36] See, by analogy, judgment of 16 July 2015, *Commission* v. *Rusal Armenal* (C-21/14 P, EU:C:2015:494, paragraph 39).

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such a way that a third State would be in a more favourable position than individuals who seise the General Court on the basis of that provision. 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.[37]

45. The Slovak Republic considers that there is no legal basis in the Treaties for the Court to hear actions for annulment brought by sovereign third States, in respect of which the European Union does not even have regulatory competence. No analogy can be drawn between Case C-70/04, which does not address the question whether the Swiss Confederation is a legal person for the purposes of the fourth paragraph of Article 263 TFEU, and the case-law on regions which have legal personality under national law and whose territory falls within the regulatory competence of the European Union or the case-law on interveners in actions before the Court. In accordance with Article 129(1) of the Rules of Procedure of the Court of Justice, "the intervention shall be limited to supporting, in whole or in part, the form of order sought by one of the parties. It shall not confer the same procedural rights as those conferred on the parties . . ." Moreover, under Article 129(2) of those rules, "the intervention shall be ancillary to the main proceedings". In addition, the purpose of the fourth paragraph of Article 263 TFEU is to confer legal standing on individuals to bring an action for annulment.

46. The differing wording of Article 215(1) TFEU, which refers to "the interruption or reduction, in part or completely, of economic and financial relations with *one or more third countries*", and Article 215(2) TFEU, which provides that "where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against *natural or legal persons* and groups or non-State entities", shows that the concept of "legal person" referred to in Article 215(2) TFEU covers not States but standard examples of legal persons, such as commercial companies, associations, unions or various other entities. Thus, according to the Slovak

[37] That may impel the third State to seek other routes by which to access the Court of Justice of the European Union, for example by the intermediary of a legal person governed by private law, or to have recourse instead to dispute resolution procedures outside the European Union, for example arbitration.

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Republic, Article 215(2) TFEU permits the adoption of restrictive measures only against natural persons, legal persons, groups or non-State entities, but not directly against third States.

47. Moreover, Article 275 TFEU limits the jurisdiction of the Court of Justice of the European Union (in addition to monitoring compliance with Article 40 TEU) to ruling on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 TFEU, reviewing the legality of decisions providing for restrictive measures against natural or legal persons. There are no grounds for interpreting the concept of "legal person" appearing in the context of restrictive measures in Article 215(2) TFEU differently from its interpretation in the second paragraph of Article 275 TFEU.

48. Lastly, the Slovak Republic states that if sovereign third States were able to challenge the acts of the EU institutions by means of an action for annulment, that would place the European Union at a disadvantage vis-à-vis its international partners and, therefore, would limit the European Union inappropriately in the implementation of its policies and international relations.

49. The Kingdom of the Netherlands considers that the appellant can be regarded as a legal person within the meaning of the fourth paragraph of Article 263 TFEU. Third States, which under international law pre-eminently enjoy legal personality, may be regarded as legal persons for the purposes of the fourth paragraph of Article 263 TFEU. However, the position of a third State such as the appellant can never be equated with that of the EU institutions or of the Member States. The right to institute proceedings of a third State should therefore be assessed under the fourth paragraph of Article 263 TFEU and the conditions of admissibility laid down therein. The Kingdom of the Netherlands considers, however, that the appellant does not meet those conditions as the restrictive measures in question, first, are not addressed to the appellant, but to specific, identified natural and legal persons from Venezuela and the European Union, and, secondly, are not of direct concern to the appellant.

50. The Kingdom of Sweden considers that a third State is not a legal person pursuant to the fourth paragraph of Article 263 TFEU. Pursuant to Article 275 TFEU, the Court does not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions. However, the Court has jurisdiction to monitor compliance with Article 40 TEU and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 TFEU, reviewing the legality of decisions providing for restrictive

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measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V TEU. That is also reflected in Article 24(1) TEU. The fact that there is a link between the individual nature of restrictive measures and access to the Courts of the European Union, as follows from Article 275 TFEU and the fourth paragraph of Article 263 TFEU, also follows from the Court's case-law.[38] Article 215(2) TFEU provides that the Council may adopt restrictive measures against natural or legal persons and groups or non-State entities, where a decision adopted in accordance with Chapter 2 of Title V TEU so provides. It therefore follows from the wording of that provision that restrictive measures under Article 215(2) TFEU, which may be subject to review by the Court, cannot be taken against States.

51. The Federal Republic of Germany considers that a third State is a "legal person" within the meaning of the fourth paragraph of Article 263 TFEU and may bring proceedings thereunder provided that it is directly and individually concerned by the measure in question. In the case of third States, that status can be inferred from general international law, which confers on every State recognised by the community of States the status of legal subject. However, a third State has a right of action only if the other conditions laid down in the fourth paragraph of Article 263 TFEU are present.[39]

52. The Federal Republic of Germany considers that the principle of effective legal protection, in the light of which the conditions of admissibility laid down in Article 263 TFEU must be interpreted, requires that effective recourse to judicial review as to the lawfulness of the acts of the EU institutions referred to in the first paragraph of Article 263 TFEU must be made available to third States also. It is true that third States are not in principle legal subjects bound by EU law. However, restrictive measures such as those at issue in the main proceedings are particularly liable to have specific de facto effects on third States. A refusal to classify third States as legal persons pursuant to the fourth paragraph of Article 263 TFEU would amount to an outright denial of effective legal protection and would to some extent constitute an

[38] See, for example, judgment of the General Court of 16 July 2014, *National Iranian Oil Company* v. *Council* (T-578/12, not published, EU:T:2014:678, paragraph 36); and judgments of the Court of Justice of 28 November 2013, *Council* v. *Manufacturing Support & Procurement Kala Naft* (C-348/12 P, EU:C:2013:776, paragraph 50); of 1 March 2016, *National Iranian Oil Company* v. *Council* (C-440/14 P, EU:C:2016:128, paragraph 44); and of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236, paragraph 103).

[39] That understanding is consistent with the previous case-law of the EU judicature, which confers capacity to bring proceedings under the fourth paragraph of Article 263 TFEU, in particular on the local authorities of Member States. See judgment of 15 June 1999, *Regione Autonoma Friuli-Venezia Giulia* v. *Commission* (T-288/97, EU:T:1999:125, paragraph 41 et seq.).

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inconsistency of approach in relation to the capacity of third State natural and legal persons governed by private law to bring proceedings under the fourth paragraph of Article 263 TFEU, which the Court of Justice recognises even in groups of persons who enjoy no or only limited legal recognition in the third State concerned. It would thus seem unacceptable not least on grounds of equality of arms in procedural matters for third-State-based "organisations without legal recognition", such as the Western Sahara Liberation Front "POLISARIO" or the Sri Lankan "Liberation Tigers of Tamil Eelam", to have capacity to bring proceedings under the fourth paragraph of Article 263 TFEU, while their respective State counterparts do not.

53. The Commission considers that no definitive conclusion can be drawn in respect of the terms "legal person" on the basis of a literal interpretation or a contextual analysis of the fourth paragraph of Article 263 TFEU.

54. If a teleological interpretation of the fourth paragraph of Article 263 TFEU based on the principle of equality of States is adopted, actions by third States are not covered by the EU jurisdiction when they deal with relations with the EU that are governed by international law (*acta jure imperii*). Consequently, third States can be considered as legal persons under the fourth paragraph of Article 263 TFEU only when they act *jure gestionis* or have access to the EU Courts pursuant to an international agreement with the EU. Looking at the objective of the fourth paragraph of Article 263 TFEU, this approach is in line with the principle of effective judicial protection. It does not deny a remedy to the third State but implies that the remedy is granted under the appropriate jurisdiction. Thus, when the third State acts as a sovereign, the remedy is to be accorded in line with international law[40] rather than EU law. This approach is also compatible with Article 47 of the Charter, as the third State would be accorded the rights under the Charter only when it falls in the category of those "*whose rights and freedoms guaranteed by the law of the Union are violated*", that is, when it acts as a private party. According to the Commission, if this approach were applied to the case at hand, the appellant cannot be considered to be a legal person, since the restrictive measures regime, the reasons which the appellant invokes for seeking its invalidation and the relationship between the Union and the appellant as regards the measure all fall in the area of *jure imperii* and are to be regulated as matters of international law.

[40] See Article 65 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, vol. 1155, p. 331), referring to Article 33 of the UN Charter.

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55. The Commission considers that if a teleological interpretation of the fourth paragraph of Article 263 TFEU guided by the openness of the EU legal order is adopted, nothing prevents the fourth paragraph of Article 263 TFEU from being interpreted to include third States within the notion of "legal person", if a third State decides to submit itself to the jurisdiction of the EU Courts.[41]

56. According to the Commission, where the Union adopts a unilateral act potentially affecting interests of a third country and that third country chooses to seek judicial review before the EU Courts instead of opening international dispute settlement mechanisms, 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. The constitutional traditions of the Member States also do not appear to stand in the way of such an open interpretation: at least in certain Member States, third countries can bring actions before national courts, which can in turn submit, in that context, requests for preliminary ruling to the Court of Justice, including regarding the validity of Union acts.

57. The Commission, however, stresses that the conditions of direct and individual concern must be met by the third State.

2. Analysis

58. It is clear from the observations submitted to the Court, which I have taken the liberty of briefly summarising, that, in the context of the present appeal proceedings, the issue of *locus standi* of the appellant raises not only the general question of whether the concept of "legal person" pursuant to the fourth paragraph of Article 263 TFEU includes third States, but it also concerns the more narrow question—which is specific to proceedings concerning restrictive measures—of whether the Court has jurisdiction pursuant, inter alia, to Article 275 TFEU to rule in an action for annulment of restrictive measures brought by a third State. In my view, it is convenient to look in the first place at the question of the jurisdiction of the Court.

(a) Jurisdiction of the Court in the field of Common Foreign and Security Policy ("CFSP")

59. In its action before the General Court, the appellant challenged a number of provisions of Regulation 2017/2063. The legal basis of that regulation is Article 215 TFEU.

[41] The Commission favours this second teleological interpretation.

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60. It is settled case-law that the second paragraph of Article 275 TFEU confers on the Court jurisdiction to give rulings on actions, brought subject to the conditions laid down in the fourth paragraph of Article 263 TFEU, concerning the review of the legality of Council decisions, adopted on the basis of provisions relating to the CFSP, which provide for restrictive measures against natural or legal persons.[42] In paragraph 106 of the judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236), the Court stated 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 the positions adopted by the Union in the context of the CFSP. Such regulations constitute European Union acts, adopted on the basis of the FEU Treaty, 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."

61. There is really no reason to depart from that ruling in these proceedings. It follows that the EU Courts have jurisdiction to rule on the validity of restrictive measures adopted pursuant to Article 215 TFEU provided that the applicant complies with the criteria laid down in Article 263 TFEU. For this purpose, it is first necessary to determine whether the appellant is a legal person for the purposes of the fourth paragraph of Article 263 TFEU.

62. It is to this question that I shall now turn.

(b) Fourth paragraph of Article 263 TFEU—Legal person

(1) International law precedents

63. While the issue of the interpretation of Article 263 TFEU is, of course, a matter of EU law for the determination by this Court, the issues of public international law raised in this appeal are nonetheless important and have some bearing on this question.

64. Sovereign States, such as Venezuela, which are recognised by the community of nations, enjoy legal personality and are, from the standpoint of international law, regarded as legal persons. It is accordingly inherent in that sovereign status that they can both sue and be sued. That principle is admittedly qualified in certain respects since there may be circumstances where a sovereign State can either plead sovereign immunity as a complete defence or, alternatively, can rely on doctrines

[42] See, most recently, judgment of 6 October 2020, *Bank Refah Kargaran* v. *Council* (C-134/19 P, EU:C:2020:793, paragraph 27 and the case-law cited).

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such as the Act of State doctrine, so far as the validity of official acts committed within its own State boundaries are concerned.

65. A central part of the Council's case is that the public international law principle of State immunity (including related doctrines such as the Act of State doctrine) effectively precludes proceedings of this kind being brought in the Union's courts by third States. For my part, however, I consider that the established State practice is that the traditional principles of comity accorded to all sovereign States ensure that, save in the case of actual hostilities, such States are permitted to sue in the courts of another sovereign.

66. While this matter has not yet been directly considered by this Court, such that this matter must be considered almost from the perspectives of first principles, the following statement of the relevant international law practice which is contained in the judgment of the US Supreme Court in *Banco Nacional de Cuba* v. *Sabbatino*[43] can nonetheless be regarded as authoritative: "Under principles of comity governing this country's relations with other nations, sovereign states are allowed to sue in the courts of the United States . . . Although comity is often associated with the existence of friendly relations between states . . . the privilege of suit has been denied only to governments at war with the United States . . . or to those not recognised by this country . . ."[44]

67. In that case, the US Supreme Court held that the Republic of Cuba was entitled to sue in the US Federal courts, the strained relationship between the two countries notwithstanding.

68. In principle, therefore, even judged solely by reference to public international law principles, it is clear that the appellant is a legal person for the purposes of the fourth paragraph of Article 263 TFEU. In my view, the principle of State immunity cannot be relied upon in order to limit the appellant's standing before the EU Courts, given that an action is not being brought *against* the appellant, but is rather being brought by it. The doctrine of State immunity, which is a shield or a bar to suit,[45] was restated by the International Court of Justice in *Jurisdictional Immunities of the State (Germany* v. *Italy—Greece Intervening)*.[46] In its judgment in that case, the International Court of Justice held that customary international law continues to require

[43] 376 US 398 (1964).

[44] 368 US 398 (1964) at 408-9, per Harlan J (footnotes omitted).

[45] And which is thus defensive in nature. For an overview of the distinction between acts performed *jure imperii* and acts performed *jure gestionis* by a State, see Opinion of Advocate General Saugmandsgaard Øe in *Supreme Site Services and Others* (C-186/19, EU:C:2020:252, points 59 to 63).

[46] [2012] ICJ Reports, 99.

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that a State be accorded *immunity* in proceedings for torts allegedly committed on the territory of another State by its armed forces and other organs of State in the course of conducting an armed conflict.[47]

69. Moreover, I do not think that the recent decision of the European Court of Human Rights in *Democratic Republic of the Congo* v. *Belgium* (ECtHR, 29 October 2020, CE:ECHR:2020:1006DEC001655419) is really of any assistance in this particular case. In that case, the ECtHR held that an application which had been brought before it by the Democratic Republic of the Congo was inadmissible. That ruling was, however, based on the particular wording and contents of Articles 33[48] and 34[49] of the ECHR. It is clear that the ECHR system is, however, a specific and special one, designed to permit complaints to be brought either by individuals (including legal persons) against Contracting States or by one Contracting State against another Contracting State. It was against that background that the ECtHR thus held that only High Contracting Parties, private persons, groups of individuals or non-governmental organisations may bring an action before it. As the Democratic Republic of the Congo did not fall into any of those categories, the action was declared inadmissible.[50]

70. No true comparison can, however, be made in this respect with the Union judicature established by the Treaties. In the first instance, the wording and context of Article 263 TFEU is different and less prescriptive than in the case of the Convention. It clearly envisages in its fourth paragraph that a challenge may be brought by a legal person, subject only to the requirement that such person is, for example, "directly and individually concerned" in the manner required by that provision. Critically, however, the fourth paragraph of Article 263 TFEU does not differentiate between the various types of legal

[47] In that case, the International Court of Justice considered that State immunity for *acta jure imperii* extended to civil proceedings for the acts in question.

[48] Article 33 of the European Convention on Human Rights ("the ECHR"), entitled "Inter-State cases", provides that "any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party".

[49] Article 34 of the ECHR, entitled "Individual applications", provides that "the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto".

[50] I would note that the rules on standing pursuant to the Convention are somewhat less "generous" than those of the FEU Treaty. While local or regional authorities with legal personality under national law may institute proceedings pursuant to the fourth paragraph of Article 263 TFEU provided they comply with the conditions, inter alia, of direct and individual concern, the European Court of Human Rights in its decision in *Republic of the Congo* v. *Belgium* (ECtHR, 29 October 2020, CE:ECHR:2020:1006DEC001655419) restated that national authorities exercising public functions have no standing to make an application to the Court under Article 34 of the Convention.

https://doi.org/10.1017/ilr.2022.26 Published online by Cambridge University Press

persons. Given that the appellant has legal personality by virtue of its status as a sovereign State, it must thus be regarded as a legal person for the purposes of the fourth paragraph of Article 263 TFEU.

71. Secondly, the restrictive measures which are challenged in these proceedings reflect not only the fact that the Member States have elected to pool their own sovereignty in this aspect of foreign and security policy via the European Union but also that by virtue of the Treaties, the Council has been given an express power to adopt measures of that kind as a collective instrument representing the will of the Member States. This Court has frequently indicated that EU law will, where appropriate, take its cue from established public international law principles and practice.[51] All of this means that in this context, at least, I consider it appropriate that public international law practice should inform the interpretation of the fourth paragraph of Article 263 TFEU in so far as the meaning of the words "legal person" is concerned, while accepting, of course, that those words have an autonomous meaning at the level of EU law, which is ultimately for this Court to determine.

72. In these circumstances, it is accordingly appropriate that the Union's judicature should follow the established public international law practice and the associated principle of judicial comity which would also be followed by the individual courts of the Member States in the event that they had adopted restrictive measures of this kind in their own right. That practice and that principle accordingly require that the Courts of the Union should be open to challenges brought by other sovereign States in their capacity as legal persons.

(2) Existing precedents before EU Courts

73. Article 19(3)(a) TEU provides that the Court of Justice of the European Union shall, in accordance with the Treaties, rule on actions brought by a Member State, an institution or a natural or legal person. Applicants who have standing to bring an action before the Court are thus listed in that provision.[52] As regards the review of the legality

[51] See, for example, judgments of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118, paragraph 47), and of 12 November 2019, *Organisation juive européenne and Vignoble Psagot* (C-363/18, EU:C:2019:954, paragraph 48). See also, in that regard, A. Masson and J. Sterck, "The Influence of International Law on the Court of Justice's Case-Law", in D. Petrlík, M. Bobek, J. M. Passer and A. Masson (eds.), *Évolution des rapports entre les ordres juridiques de l'Union européenne, international et nationaux: Liber amicorum Jiří Malenovský*, Bruylant, Brussels, 2020.

[52] Aside from preliminary rulings, which are referred to in Article 19(3)(a) TEU, the Court of Justice of the European Union, pursuant to Article 19(3)(c) TEU, may also rule in *other cases* provided for in the Treaties.

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of certain acts—referred to as actions for annulment[53]—in addition to actions which may be brought by Member States and EU institutions[54] referred to in the second and third paragraphs of Article 263 TFEU, the fourth paragraph of Article 263 TFEU provides that any natural or legal person may, under certain conditions, 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.

74. Neither Article 19(3)(a) TEU nor the fourth paragraph of Article 263 TFEU contains a definition of the term "legal person". In addition, no other provision of that Treaty, nor indeed the Treaty on the European Union, provides such a definition.[55] That term, which does not contain any reference to national laws, must be regarded as an *autonomous concept* of EU law.[56]

75. The Court of Justice has yet to rule explicitly on whether a third State may be considered a legal person for the purposes of the fourth paragraph of Article 263 TFEU. By contrast, the General Court, in its order of 10 September 2020, *Cambodia and CRF* v. *Commission* (T-246/19, EU:T:2020:415, paragraph 51), considered that the expression "any natural or legal person" in the fourth paragraph of Article 263 TFEU must be understood as also covering States which are not members of the European Union, such as the Kingdom of Cambodia in that instance.[57] Previously, in its judgment of 10 June

[53] See Article 264 TFEU, which provides that if the action is well founded, the act will be declared void.

[54] The Member States, the European Parliament, the Council and the Commission are sometimes referred to as "privileged" applicants as they do not have to demonstrate an interest in the proceedings in order to have standing. See the second paragraph of Article 263 TFEU. The Court of Auditors, the European Central Bank and the Committee of the Regions are "semi-privileged" applicants as they have standing for the purposes of protecting their prerogatives. See the third paragraph of Article 263 TFEU.

[55] See, for example, Articles 7, 40 and 42 TEU and Articles 75, 215(2) and 275 TFEU. See also, for example, Article 15(3) TFEU, which refers to a "legal person *residing or having its registered office in a Member State*". Emphasis added. The additional qualification or limitation added in that provision—which is not reproduced in Article 267 TFEU—would tend to indicate that the term "legal person" is very broad in nature.

[56] See, by analogy, judgment of 3 September 2014, *Deckmyn and Vrijheidsfonds* (C-201/13, EU:C:2014:2132, paragraphs 14 and 15). Indeed, in paragraph 10 of the judgment of 28 October 1982, *Groupement des Agences de voyages* v. *Commission* (135/81, EU:C:1982:371), the Court stated that the meaning of "legal person" in Article 263 TFEU is not necessarily the same as in the various legal systems of the Member States.

[57] In that case, the General Court recalled that the objective of the fourth paragraph of Article 263 TFEU is to grant adequate judicial protection to all persons, natural or legal, who are directly and individually concerned by acts of the institutions of the EU. The General Court held that although non-Member States may not claim the status of litigant conferred on the Member States by the EU system, they may nevertheless bring proceedings under the right of action conferred on legal persons.

https://doi.org/10.1017/ilr.2022.26 Published online by Cambridge University Press

2009, *Poland* v. *Commission* (T-257/04, EU:T:2009:182, paragraphs 51 and 52), the General Court[58] considered that the Republic of Poland, which at the relevant time[59] was not a Member State, had standing to bring an action for annulment under the fourth paragraph of Article 263 TFEU.[60]

76. Despite the absence of a direct ruling on this point by the Court of Justice, there are, however, a number of earlier authorities that would tend to indicate that the terms in question are sufficiently broad as to encompass annulment proceedings brought by third States.

77. Perhaps the most compelling precedent of the Court of Justice on the matter is the order of 14 July 2005, *Switzerland* v. *Commission* (C-70/04, not published, EU:C:2005:468), in which the Court of Justice examined whether it or the General Court had jurisdiction in an action for annulment brought by the Swiss Confederation.[61] The Court held that the Swiss Confederation was entitled to maintain the proceedings, irrespective of whether this was by reason of the Agreement between the European Community and the Swiss Confederation on air

Thus, where an entity has legal personality, it may, in principle, bring an action for annulment under the fourth paragraph of Article 263 TFEU.

[58] The General Court cited the Opinion of Advocate General Poiares Maduro in *Poland* v. *Council* (C-273/04, EU:C:2007:361, point 41). In that point, Advocate General Poiares Maduro considered that given that the Republic of Poland has legal personality under its own domestic law and, like any State, is recognised by international law as having international personality, it had capacity to bring proceedings before the Court to challenge an act adversely affecting it under the fourth paragraph of Article 263 TFEU, provided the criteria of direct and individual concern are met and in order to prevent the right of action in question from being transformed into a kind of *actio popularis*. Ultimately, it can be inferred from Advocate General Poiares Maduro's Opinion that, given that he considered that the time limit for challenging the act in question ran from the date of the entry into force of the Treaty of Accession, the Republic of Poland had standing to bring its action as a Member State and thus as a privileged applicant in accordance with the second paragraph of Article 263 TFEU. In its judgment of 23 October 2007, *Poland* v. *Council* (C-273/04, EU:C:2007:622), the Court, despite an objection to admissibility raised by the Council, did not examine the standing of the Republic of Poland, but merely ruled on the substance of the action.

[59] Which, crucially, according to the General Court, preceded the Republic of Poland's accession to the Union in May 2004.

[60] See also order of 10 June 2009, *Poland* v. *Commission* (T-258/04, not published, EU: T:2009:183, paragraphs 60 and 61). In that order, the General Court held that prior to becoming a Member State, the Republic of Poland had standing to bring an action for annulment in respect of an act pursuant to the fourth paragraph of Article 263 TFEU, which affected it directly and individually. It held, however, that the action was time barred. On appeal, the Court of Justice, in the judgment of 26 June 2012, *Poland* v. *Commission* (C-336/09 P, EU:C:2012:386), set aside the order of inadmissibility of the General Court, holding in effect that the Republic of Poland, in the case at hand, had a right of action in its capacity as a Member State.

[61] That action was brought against Commission Decision 2004/12/EC of 5 December 2003 on a procedure relating to the application of Article 18(2), first sentence, of the Agreement between the European Community and the Swiss Confederation on air transport and Council Regulation (EEC) No 2408/92 (Case TREN/AMA/11/03—German measures relating to the approaches to Zurich airport) (notified under document number C(2003) 4472) (OJ 2004 L 4, p. 13).

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transport (for the purposes of which the Swiss Confederation is assimilated to the status of the Member States for the purposes of the second paragraph of Article 263 TFEU)[62] or whether the Swiss Confederation was independently a legal person for the purposes of the fourth paragraph of Article 263 TFEU.[63] On at least one reading of that order, the Court thereby implicitly considered that the Swiss Confederation was, at the very least, a legal person for the purposes of the fourth paragraph of Article 263 TFEU.

78. In adopting that position, the Court, however, specifically referred to the particular context, which was characterised by the agreement in question. That context is undoubtedly absent in the present case, which is characterised by restrictive measures rather than a bilateral agreement. Nevertheless, the Court, in its judgment of 18 January 2007, *PKK and KNK* v. *Council* (C-229/05 P, EU:C:2007:32), accepted that the Kurdistan Workers' Party (PKK), an organisation which *lacked legal personality*, should have standing to contest restrictive measures imposed on it. The Court held that given that the Community legislature took the view that the PKK *retains an existence sufficient for it to be subject to the restrictive measure*s, it must be accepted, on grounds of consistency and justice, that that entity continues to have an existence sufficient such as would entitle it to contest such measures. According to the Court, the effect of any other conclusion would be that an organisation could be subject to such measures without being able to challenge them.

79. That judgment is particularly interesting, as it would tend to suggest that the requirement of being a "natural or legal person" is not strictly adhered to in order for an entity to have standing to challenge restrictive measures pursuant to the fourth paragraph of Article 263 TFEU. Thus, it may be argued that an entity such as the appellant, provided it can demonstrate, inter alia, that it is directly and individually concerned by restrictive measures, must have access to the EU Courts to protect its rights, irrespective of its legal qualification under national, international or perhaps indeed EU law.

80. Moreover, pursuant to the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, any *person* may intervene before the Courts of the European Union if that *person* can establish an interest in the result of a case submitted to one of those

[62] While it is not explicit in the order, such assimilation would be based on the text of the agreement.

[63] See order of 14 July 2005, *Switzerland* v. *Commission* (C-70/04, not published, EU:C:2005:468, paragraph 22).

https://doi.org/10.1017/ilr.2022.26 Published online by Cambridge University Press

Courts.[64] While the provision in question does not refer to a "legal person", I consider that the term "person" undoubtedly includes "legal person". Indeed, in its order of 23 February 1983, *Chris International Foods* v. *Commission* (91/82 and 200/82, EU:C:1983:45), the Court held that the Commonwealth of Dominica, a third State, could intervene in an action for annulment as it had shown sufficient interest in the outcome of the proceedings.[65]

81. Furthermore, in my view, the fourth paragraph of Article 263 TFEU is not limited to private actors or individuals.[66] The Court has consistently held that, pursuant to the fourth paragraph of

[64] Any analogy with Article 263 TFEU should not be overstated, as an application to intervene is limited to supporting the form of order sought by one of the parties and is not an autonomous action.

[65] See, by contrast, order of the Vice-President of the Court of 17 May 2018, *United States of America* v. *Apple Sales International and Others* (C-12/18 P(I), not published, EU:C:2018:330), in which the Court of Justice dismissed the appeal brought by the United States of America against the order of the General Court of 15 December 2017, *Apple Sales International and Apple Operations Europe* v. *Commission* (T-892/16, not published, EU:T:2017:925), by which the General Court rejected its application to intervene in support of the form of order sought by Apple Sales International and Apple Operations Europe in Case T-892/16, on the sole basis that the United States of America had not established an interest in the result of the case. See also paragraph 14 of the order of 4 June 2012, *Attey and Others* v. *Council* (T-118/11, T-123/11 and T-124/11, not published, EU:T:2012:270), in which the General Court indicated that the Republic of Côte d'Ivoire had been granted leave to intervene in that action.

[66] In support of the claim that the fourth paragraph of Article 263 TFEU is limited to private actors or individuals, certain parties have observed in these proceedings that in point 25 of his Opinion in *Stichting Woonlinie and Others* v. *Commission* (C-133/12 P, EU:C:2013:336), Advocate General Wathelet stated that following the amendments to Article 230 EC introduced by the Treaty of Lisbon, as now reflected in the fourth paragraph of Article 263 TFEU, "*individuals* can now bring an action for annulment without having to prove that they are individually concerned, on condition, however, that the act in question is a regulatory act of direct concern to them and does not entail implementing measures" (emphasis added). In my view, that does not mean that the fourth paragraph of Article 263 TFEU merely grants *locus standi* to private actors. The passage should not be read out of context and in isolation. The appellants in that case were housing corporations and thus private actors, albeit with a social function. See also point 90 of Opinion of Advocate General Kokott in *Inuit Tapiriit Kanatami and Others* v. *Parliament and Council* (C-583/11 P, EU:C:2013:21), which states that "the authors of the Treaty decided, after intensive discussion of the whole problem in the European Convention, with a view to strengthening the legal protection of *individuals* against European Union acts of general application, not to revise the criterion of individual concern, but instead to introduce into the fourth paragraph of Article 263 TFEU a completely new, third possibility for instituting proceedings: . . . for natural and legal persons to institute proceedings against a regulatory act which is of direct concern to them and does not entail implementing measures" (emphasis added). However, it must be noted that in point 22 of that Opinion, Advocate General Kokott stated that "all the parties in the present appeal proceedings agree that the fourth paragraph of Article 263 TFEU extended the standing of natural and *legal persons* to institute proceedings". The question being examined was the extent of that extension. Once again, the appellants in that case were private actors, namely, Inuit Tapiriit Kanatami, a body representing the interests of the Canadian Inuit, and a number of other parties who were mainly producers of or traders in seal products. In any event, I fail to see the relevance of the changes introduced by the Treaty of Lisbon in the context of the present proceedings, as the concept "legal person" in Article 263 TFEU has existed—and arguably remained unchanged—since the entry into force of the Treaty of Rome in 195[8] (see Article 173 EEC).

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Article 263 TFEU, a local or regional entity may, to the extent that it has legal personality under national law, institute proceedings against a decision addressed to it or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to it.[67]

82. An example here is provided by the judgment of 22 November 2001, *Nederlandse Antillen* v. *Council* (C-452/98, EU:C:2001:623). In those proceedings, the Netherlands Antilles maintained that since, by virtue of the Constitution of the Kingdom of the Netherlands, they may independently defend their own interests, they should accordingly have *locus standi* to bring proceedings in their own right under the second paragraph of Article 263 TFEU or the third paragraph of Article 263 TFEU in order to protect their prerogatives and therefore without having to prove that they were directly and individually concerned by the measure. The Court rejected this claim, holding that the Netherlands Antilles' right to bring proceedings could only be examined under the fourth paragraph of Article 263 TFEU, provided it had legal personality under Netherlands law.

(3) Present proceedings

83. It is not disputed that the appellant has legal personality and is undoubtedly a legal person for the purposes of international law. It was, after all, a founding member of the United Nations in 1945.

84. While, as I have already observed, the Court has never ruled directly on this point, the existing case-law of the General Court and the Court of Justice on standing would nonetheless all tend to suggest that the appellant is a legal person for the purposes of the fourth paragraph of Article 263 TFEU. As the General Court stated in its order of 10 September 2020, *Cambodia and CRF* v. *Commission* (T-246/19, EU:T:2020:415, paragraph 46), the provisions of the fourth paragraph of Article 263 TFEU must be given a purposive interpretation[68] and to exclude third States from the judicial protection granted under that article would run counter to its objective.

85. In addition, respect for the rule of law and the principle of effective judicial protection[69] also argues in favour of a ruling that the

[67] Judgment of 22 March 2007, *Regione Siciliana* v. *Commission* (C-15/06 P, EU:C:2007:183, paragraph 29). See also judgment of 10 April 2003, *Commission* v. *Nederlandse Antillen* (C-142/00 P, EU:C:2003:217, paragraph 59).

[68] The General Court cited in that regard judgment of 15 July 1963, *Plaumann* v. *Commission* (25/62, EU:C:1963:17, p. 106).

[69] The principle of the effective judicial protection of individuals' rights under EU law, which is referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States. Judgment of 5 November 2019,

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appellant is a legal person for the purposes of the fourth paragraph of Article 263 TFEU. As is apparent inter alia from Article 2 TEU, the rule of law is one of the founding values of the EU. Moreover, while Article 47 of the Charter cannot confer jurisdiction on the Court, that provision, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that *any person* whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. The very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law.[70]

86. Contrary to the arguments raised by certain parties, and in particular the Council, I do not consider that recognising a third State as a legal person for the purposes of the fourth paragraph of Article 263 TFEU would place the EU at a disadvantage vis-à-vis its international partners and accordingly restrict the EU in the conduct of its internal policies and international relations. In that regard, the Council emphasises what it says is the lack of reciprocal access to the courts of third States, who do not allow the sovereign decisions pertaining to their own international relations, trade, or economic policies to be challenged.

87. I have already dealt with the issue of State practice in international law, so I consider that the fears of the Council regarding a lack of reciprocity are, to that extent, misplaced. In any event, justice, fairness and effective judicial protection are hallmarks of the democratic tradition which is a basic and essential feature of the 27 Member States and the European Union alike. Even if it were the case that the courts of Venezuela (or those of any other third State) were effectively closed to any proceedings brought by the Union or its individual Member States, that would be a matter for that State. This, however, could not take from the Union's obligations to ensure that it maintains the highest democratic standards, respect for the rule of law and adjudication by an independent judiciary. It follows that respect for the rule of law and the principle of effective judicial protection is not based on any notion of reciprocity and they cannot be traded or compromised in diplomatic exchanges or made subject to reciprocal treaty obligations.

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 55). Such protection is ensured for non-privileged litigants pursuant to the fourth paragraph of Article 263 TFEU.

[70] Judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236, paragraphs 72 and 73).

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88. I would merely add that, contrary to the Council's assertions, the fact that a third State "is contesting provisions of an internal EU act implementing a political decision of the Council to reduce economic relations with it" can only be regarded as a statement of fact. It is, however, one with no relevance to the legal question of whether the appellant is entitled to maintain these proceedings.

89. Moreover, recognising a third State as a legal person pursuant to the fourth paragraph of Article 263 TFEU does not exempt that State from the necessity to comply with the other relevant criteria governing the issue of standing. Ultimately, allowing a third State access to the EU Courts pursuant to those conditions, far from placing the EU at a disadvantage either internally or externally, ensures above all that the rule of law is adhered to.

90. For all of these reasons, I consider that the appellant must be regarded as a legal person pursuant to Article 263 TFEU, its status as a third State notwithstanding.

B. Direct concern

1. Arguments of the parties

91. In support of the appeal, the appellant relies on a single ground of appeal in which it claims that the General Court wrongly interpreted the criterion of direct concern provided for in the fourth paragraph of Article 263 TFEU in light of the *Almaz-Antey* judgment.

92. The appellant contends that, in assessing whether it is directly concerned by the contested provisions, the General Court wrongly relied on the *Almaz-Antey* judgment, whose relevance to the present case is difficult to perceive. It maintains that the present case, which is the first of its kind in EU case-law, concerns instead an action brought by the government of a third country which is expressly targeted by the restrictive measures. This important feature of the present case, which distinguishes this case from the EU Courts' existing case-law, was completely neglected by the General Court. In that regard, the appellant recalls that, in assessing novel questions relating to the admissibility of an action for annulment, this Court emphasised the importance of "avoiding excessive formalism which would amount to the denial of any possibility of applying for annulment even though the entity in question has been the object of restrictive Community measures".[71]

[71] Judgment of 18 January 2007, *PKK and KNK* v. *Council* (C-229/05 P, EU:C:2007:32, paragraph 114).

https://doi.org/10.1017/ilr.2022.26 Published online by Cambridge University Press

The appellant submits that the question of whether it acted as an economic operator active on the markets in question cannot be seen as the guiding criterion to decide whether it is directly concerned by the contested provisions, as this is not what the fourth paragraph of Article 263 TFEU requires. According to the appellant, the contested provisions are aimed at preventing it from purchasing goods and services. As a result, by their own nature and content, the contested provisions directly affect the appellant both from a legal and factual viewpoint.

93. The appellant also claims that the fact that it is not listed as such in a relevant annex to Regulation 2017/2063 in a similar manner to the applicant in the *Almaz-Antey* judgment is irrelevant as the appellant is specifically referred to in the contested provisions. By prohibiting exports of certain items and services to Venezuela, the contested provisions by their very content have significant direct factual and legal effects towards the appellant. The appellant considers that the fact that the activity of the government of a third country is not a *purely commercial activity* is undeniable. However, this fact does not exclude that the appellant can also act as an economic operator in a specific market. Therefore, the circumstance referred to in paragraph 37 of the judgment under appeal is insufficient to conclude that such an entity is not directly concerned by the contested provisions. The appellant claims that while purchasing the goods and equipment covered by the contested provisions it engaged in a purely commercial activity, as it acted in the manner of a private player within the relevant market. It follows that, contrary to what the judgment under appeal states, the appellant acted as an economic operator.

94. The appellant considers that the contested provisions prevent it from (i) purchasing arms, military equipment or any other equipment which might be used for internal repression, as well as surveillance equipment, technology or software and (ii) obtaining financial, technical or other services related to the above equipment and technology. It is therefore clear that, by affecting the existing economic relationship of the appellant with all the relevant operators in the European Union, the contested provisions have a significant factual effect on it. That effect is, moreover, more than merely indirect. The appellant submits that the General Court erroneously interpreted the case-law referred to in paragraph 46 of the judgment under appeal and, therefore, neglected to consider the crystal-clear circumstance that the contested provisions have direct factual effects on the appellant's situation.

95. The Council claims that the appellant's pleadings in respect of the three limbs of its single plea overlap to some extent. The Council considers that, in essence, the three limbs revolve around the same

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question, namely whether the General Court erred in law by concluding that the contested provisions of Regulation 2017/2063 do not directly concern the appellant within the meaning of the fourth paragraph of Article 263 TFEU. No other specific provisions or principles of EU law are claimed to have been violated. The Council considers that to the extent that the appellant merely seeks the re-examination of evidence that was before the General Court, the appeal must be dismissed as going beyond the object of an appeal which, in accordance with Article 58 of the Statute of the Court of Justice, must be limited to points of law.

96. The Council considers that the present appeal is inadmissible in part, and also unfounded, and must therefore be dismissed.

97. The Council considers that the appellant does not invoke any specific provision or principle of EU law on the basis of which the General Court would have been required to extend the notion of direct concern beyond the one currently established in the case-law of the EU Courts. It notes that the judgment of 18 January 2007, *PKK and KNK* v. *Council*[72] is entirely irrelevant to the present case. In that judgment, the Court decided to adapt the procedural rules governing the admissibility of an action for annulment by extending standing to organisations lacking legal personality. According to the Council, "there is no issue regarding legal personality in the present case, however: it is uncontested that the appellant is a legal person and therefore in principle has access to the EU courts, subject however to general admissibility conditions, which according to the Council, are not fulfilled in this case".[73]

98. The question of whether the contested provisions directly affect the appellant's position was determined by the General Court in accordance with the settled case-law, that is to say, "specifically in each individual case having regard to the regulatory content of the EU act in question".[74] Contrary to the appellant's allegations, there was consequently no obligation under EU law for the General Court to assess the overall aim of the restrictive measures in question with a view to determining whether the appellant was directly concerned by the contested provisions. If the aim of the measure was used as a criterion

[72] C-229/05 P, EU:C:2007:32.

[73] I would note that this statement of the Council is somewhat contradicted by the Council's subsequent answer to the question of the Court. I would note however that the Council, in its plea of inadmissibility before the General Court, claimed that the appellant was not a natural or legal person for the purposes of the fourth paragraph of Article 263 TFEU.

[74] Judgment of 13 September 2018, *Gazprom Neft* v. *Council* (T-735/14 and T-799/14, EU:T:2018:548, paragraph 97).

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to assess whether an EU law act directly affects the legal or factual position of a third State, this would be contrary to the settled case-law of the EU Courts, and such an approach would also expand the category of potential applicants to include any third State with respect to which the EU decides as a matter of foreign policy to interrupt or reduce, in part or completely, economic and financial relations. Moreover, whilst the persons, entities or bodies in such third countries, including those which could be considered as emanations of the State, may be hindered in purchasing equipment subject to export restrictions from the EU market, it is clear that such limitations for them produce no direct effect on the legal situation of a third country, as a State, in its capacity *jure imperii*, that is to say, in the capacity in which, according to the appellant, it should have been granted standing.

99. The Council considers that, contrary to the appellant's contention, the General Court did not hold that the appellant was not directly concerned on the sole basis of being insufficiently referred to in the contested provisions. Rather, the General Court reached this 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 appellant in the contested provisions, it is clear that the appellant is not addressed by those provisions 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. What are directly addressed are the specific uses of certain equipment by such persons or entities in the territory of Venezuela, "in view of the risk of further violence, excessive use of force, and violations or abuses of human rights".

100. The Council considers that, contrary to the appellant's claim (under the first plea), the General Court did fully take into account the specific situation of the State and made an analysis as to whether it can be compared to an economic operator active in a specific market within the meaning of the EU Courts' case-law. It concluded that this is not possible, as a State acting in its *jure imperii* capacity is not comparable to a private or public entity whose existence is limited by its purpose (the commercial activity in question). The appellant does not explain why it considers this conclusion by the General Court to be wrong in law. Its submission that a State can act as an economic operator in a specific market is beside the point made in the analysis of the General Court. The underlying reason for establishing the condition of direct concern for entities other than States is the impact that the application

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of restrictive measures may have on their economic activity. Such an impact cannot be established in relation to a State given the "very wide range of competences" and diverse fields of action that are characteristic of a State.

101. The Council considers that the General Court correctly concluded that the appellant, which is not specifically named in the measures and has not demonstrated that it was active on the market affected by export restrictions, failed to meet the requirements of the case-law, for the reasons developed in paragraphs 37 to 40 of the judgment under appeal, and on this basis had to refuse standing to the appellant. In so far as the appellant claims that the General Court should have recognised the factual effects of the measures irrespective of the circumstances in which such effects have been recognised as sufficient for establishing *locus standi* in the settled case-law, the appellant actually requests the Court to establish a new rule according to which standing should be granted automatically to third States seeking to contest economic measures taken by the EU in the context of its foreign policy. In other words, the appellant seems to insist on the creation of a new rule which would automatically give standing to third States by allowing them to challenge measures that implement decisions adopted with a view to pursuing legitimate objectives of the 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 (Article 215(1) TFEU).

102. The Council submits that this would be contrary to the system of judicial protection under the Treaties, designed with a view to ensuring the protection of rights granted under EU law. Sovereign third countries have no specific rights under the EU Treaties to be subject to equal treatment or to trade freely and unconditionally with economic operators in the EU. Therefore, by definition they cannot successfully claim to be affected in their legal position as a result of an EU measure which potentially puts them in differentiated treatment (typically only within limited sectors of their activity), and possibly also vis-à-vis other third States with which the EU does not decide to reduce or interrupt its economic relations. Moreover, creating *ab novo* such a legal avenue would put the EU at a disadvantage vis-à-vis its international partners whose sovereign decisions pertaining to their economic policies cannot be challenged before their courts, and in this way would unduly restrict the EU in the conduct of its policies and international relations. This is particularly relevant in the context of the present proceedings where a third State is contesting provisions of

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an internal EU act implementing a political decision of the Council to reduce economic relations with that State.

2. Analysis

103. The condition according to which a natural or legal person must be directly affected by the decision forming the subject matter of the action, as provided for in the fourth paragraph of Article 263 TFEU, requires two cumulative criteria to be met, namely that the measure at issue, first, must directly affect the legal situation of the individual and, secondly, it must leave no discretion to the addressees entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules.[75]

104. It is thus necessary to examine whether the General Court has correctly applied the criteria in question in the present case.

105. It is clear from the judgment under appeal that the General Court only examined the first of the two cumulative criteria and found, in effect, that the contested provisions did not directly affect the legal situation of the appellant. The General Court stated, correctly in my view, in paragraph 30 of the judgment under appeal 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.[76] This position, which advocates a holistic and pragmatic approach when assessing the effects of a measure and favours substance over form, should be used when examining the effects of a measure on the legal situation of a natural or legal person. Given the novel nature of the present case where, for the first time, a third State has sought the annulment of restrictive measures, such an approach is particularly warranted and complies with the spirit of paragraph 114 of *PKK and KNK* v. *Council* (C-229/05 P, EU:C:2007:32), in which the Court

[75] Order of 10 March 2016, *SolarWorld* v. *Commission* (C-142/15 P, not published, EU:C:2016:163, paragraph 22). See also judgment of 10 September 2009, *Commission* v. *Ente per le Ville vesuviane and Ente per le Ville vesuviane* v. *Commission* (C-445/07 P and C-455/07 P, EU:C:2009:529, paragraph 45 and the case-law cited).

[76] While the case-law cited by the General Court in paragraph 30 of the judgment under appeal relates to whether a measure is actionable and thus produces legal effects (in the abstract), I consider that the pragmatic approach advocated can also be used in order to assess whether a measure directly affects the legal situation of any natural or legal person. For an example of such a pragmatic approach when assessing the question of direct concern, see judgment of 5 May 1998, *Glencore Grain* v. *Commission* (C-404/96 P, EU:C:1998:196, paragraphs 38 to 54), in which the Court rejected purely theoretical suppositions or arguments which would mitigate against a finding of direct concern.

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advocated "*avoiding excessive formalism* which would amount to the denial of any possibility of applying for annulment even though the entity in question has been the object of restrictive . . . measures".[77]

106. The main reasoning of the General Court of direct concern in the judgment under appeal may be found in paragraphs 31 to 33 thereof.[78]

107. In paragraph 31 of the judgment under appeal, the General Court found that the contested provisions prohibit first, 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 and, secondly, the provision of financial, technical or other services related to such equipment and technology to any natural or legal person, entity or body in Venezuela.

108. The General Court then stated that Article 20 of Regulation 2017/2063 limits the application of the prohibitions contained in the contested provisions 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, and that the contested provisions do not impose prohibitions on the appellant. Thus, according to the General Court, the contested provisions at most are likely to have indirect effects on the appellant 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 appellant can obtain the goods and services subject to those prohibitions.[79]

109. For my part, I cannot help thinking that the General Court's assessment of the effects of the contested provisions on the appellant's legal situation is one which, with respect, is highly artificial and unduly

[77] Emphasis added. The fact, as indicated by the Council, that the judgment of 18 January 2007, *PKK and KNK* v. *Council* (C-229/05 P, EU:C:2007:32), specifically related to the question of standing of an organisation lacking legal personality by no means diminishes the need to avoid excessive formalism in other cases.

[78] The other, subsequent paragraphs merely provide, in my view, additional justifications for the General Court's ruling that the appellant is not directly concerned by the contested provisions.

[79] The distinction between direct and indirect effects on a person's legal situation was also raised for example in the case giving rise to the judgment of 13 March 2008, *Commission* v. *Infront WM* (C-125/06 P, EU:C:2008:159). See also Opinion of Advocate General Bot in *Commission* v. *Infront WM* (C-125/06 P, EU:C:2007:611). In that case, the Court held that a decision which imposed new restrictions on rights held by a person which did not exist when that person acquired those rights and which rendered their exercise more difficult directly affected that person's legal situation.

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formalistic. I feel equally bound to observe that the General Court's analysis is simply at odds with the reality of the restrictive measures in question. Those measures were especially aimed at and were designed to affect the appellant. I say that for the following reasons.

110. First, 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 the contested provisions *includes* Venezuela's government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction. The specific identification and targeting of the appellant by the contested provisions is evident from the fact that, otherwise, it would not have been necessary expressly to exclude or refer to "Venezuela's government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction" in Article 6(2) and Article 7(1)(c) of Regulation 2017/2063.[80] The prohibitions contained in the contested provisions therefore specifically identify and target the appellant and various emanations of that State.[81] They seek further to ensure inter alia that the appellant itself (and the various emanations of that State)[82] does not obtain certain specified goods and services from any person identified in Article 20 of Regulation 2017/2063.[83]

111. Given that the prohibitions contained in the contested provisions prevent the appellant from obtaining the listed goods and services from any person identified in Article 20 of Regulation 2017/2063, it is, with respect, simply artificial and formalistic to suggest that a ban on the sale and supply of goods and services to the specifically identified

[80] The fact that the contested provisions do not relate merely to natural or legal person[s], entities or bodies in Venezuela *but* also specifically target and identify the appellant itself and emanations thereof is hardly surprising as it is clear from the recitals 1, 2 and 3 of Regulation 2017/2063 that that regulation was adopted in the light of the continuing deterioration of democracy, the rule of law and human rights in Venezuela and the need to address inter alia internal repression, serious human rights violations or abuses and the repression of civil society or democratic opposition. In that regard, I consider, as observed by the Council, that the aim of a measure would not *in itself* be sufficient to assess whether an EU act directly affects the legal situation of a third State. What is of particular importance, in my view, is the terms and content of the measures in question which, in this instance, expressly identify and target the appellant.

[81] Indeed, the Council itself accepts that emanations of the appellant *qua* State may be hindered in purchasing equipment subject to the restrictions in question.

[82] As well as, more generally, any other natural and legal persons, entities or bodies in Venezuela. In my view, the contested provisions, to the extent that they limit the possibility for any natural and legal persons, entities or bodies in Venezuela other than the appellant to purchase certain goods and services, will also have an *indirect impact* on the legal situation of the appellant.

[83] I therefore consider that the General Court erred in law in paragraph 43 of the judgment under appeal when it stated that the measures in question restrict, at most indirectly, the opportunities of the appellant.

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and targeted appellant does not directly, and indeed individually, affect the legal situation of the appellant.[84] From this one might also observe that those measures plainly impact on the reputation of Venezuela as a member of the community of nations: they suggest and are intended to suggest—perhaps with very good reason—that Venezuela's commitment to democratic values and traditions is a hollow one and that that State needs to do much more before it can enjoy the full confidence of the European Union and its Member States so far as the maintenance of these values is concerned.

112. Secondly, while the General Court has correctly outlined the scope *ratione loci* and *ratione personae* of the prohibitions contained in the contested provisions in accordance with Article 20 of Regulation 2017/2063, the fact that those prohibitions are limited to the territory of the Union and that the contested provisions do not impose prohibitions on the appellant *per se* does not mean that the contested provisions do not directly affect the appellant's legal situation.

113. Indeed, Article 20 of Regulation 2017/2063 merely indicates the scope of the EU legislature's competence or jurisdiction—both geographical and personal—in relation to the restrictive measures adopted pursuant to that regulation. Thus, the fact that Regulation 2017/2063 does not "*apply*"[85] to the appellant as the EU legislature clearly does not have direct jurisdiction over it does not necessarily entail that restrictive measures which apply, for example, only within the territory of the Union and are binding on nationals of a Member State, do not directly affect the appellant's legal situation.[86] Any other conclusion would mean that no natural or legal person outside the territory of the Union and who is not a national of a Member State or incorporated or constituted under the law of a Member State who is listed, for example, in Annex IV and Annex V to Regulation 2017/2063 and

[84] Such an artificial approach, which can also be found in paragraph 43 of the judgment under appeal, and in which the General Court states that the contested provisions do not directly prohibit the appellant from purchasing and importing the equipment in question and from obtaining the services in question, would negate the fact, for example, that the right to receive services is a corollary to the right to provide services and that both rights exist in parallel. See, for example, judgments of 31 January 1984, *Luisi and Carbone* (286/82 and 26/83, EU:C:1984:35, paragraph 16), and of 1 July 2010, *Dijkman and Dijkman-Lavaleije* (C-233/09, EU:C:2010:397, paragraph 24).

[85] Emphasis added. See language used in Article 20 of Regulation 2017/2063.

[86] See, by analogy, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v. *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 241 to 247), and of 13 September 2018, *Rosneft and Others* v. *Council* (T-715/14, not published, EU:T:2018:544, paragraph 68). Thus, despite the fact that restrictive measures may be of general application and may impose obligations on persons and entities defined in the abstract[, it] does not mean that those measures may not be of direct and individual concern to natural and legal persons named in those measures within the meaning of the fourth paragraph of Article 263 TFEU.

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whose funds or economic resources have been frozen in accordance with Article 8 of that regulation or equivalent restrictive measures would have standing to seek annulment of those measures.[87]

114. The Court, however, has repeatedly stated that, given its significant negative impact on the freedoms and fundamental rights of the person or of the entity concerned, any inclusion in a list of persons or entities subject to restrictive measures, whether based on Article 215 TFEU or on Article 291(2) TFEU, allows that person or entity access to the Courts of the European Union, in that it is similar, in that respect, to an individual decision, in accordance with the fourth paragraph of Article 263 TFEU.[88]

115. I would stress in that regard that the inclusion of persons or entities subject to restrictive measures in a list results in the persons or entities being *both directly and individually concerned* by the measures.[89] Moreover, while the freezing of a person's funds or economic resources may perhaps (*quod non*) have a greater impact on that person's legal situation than a ban on the sale of certain goods or the provision of certain services to him,[90] it is nonetheless striking that in the *Almaz-Antey* judgment, the General Court held that such a ban directly affected[91] the legal situation of the applicant in that case.[92] The General Court therefore held in the *Almaz-Antey* judgment that given that the restrictive measure in question in that case prohibited, first, the direct or indirect sale, supply, transfer or export of dual use goods and technology to any person, entity or body in Russia as listed in Annex IV to that decision by nationals of Member States or from the territories of

[87] I would also note that the Council in its objection to admissibility before the General Court submitted that, in the light of the terms of Article 20 of Regulation 2017/2063, that regulation produces no binding legal effect for the appellant or in the territory of Venezuela and is limited to the territory of the Member States and person[s] subject to their jurisdiction. In my view, this separate objection to admissibility is inherently linked to the question of direct concern.

[88] Judgment of 1 March 2016, *National Iranian Oil Company* v. *Council* (C-440/14 P, EU:C:2016:128, paragraph 44 and the case-law cited).

[89] See, in that regard, judgment of 21 September 2005, *Yusuf and Al Barakaat International Foundation* v. *Council and Commission* (T-306/01, EU:T:2005:331, paragraphs 184 to 188), confirmed by the Court in judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v. *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 241).

[90] See, to that effect, judgments of 28 May 2013, *Abdulrahim* v. *Council and Commission* (C-239/12 P, EU:C:2013:331, paragraph 70), and of 6 June 2013, *Ayadi* v. *Commission* (C-183/12 P, not published, EU:C:2013:369, paragraph 68 and the case-law cited).

[91] On the question of individual concern, which was also found, see paragraphs 68 to 72 of the *Almaz-Antey* judgment.

[92] In that regard, no meaningful distinction can be drawn for the purposes of an assessment of *locus standi*, and in particular the existence of direct concern, on the basis of the intensity alone of the effect of a measure on a person's legal situation. It is sufficient, in my view, that such an effect is direct and can in fact be ascertained.

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Member States, and, secondly, the provision of technical assistance, brokering services, financing or financial assistance related to the goods and technology referred to, to any person, entity or body in Russia, as listed in Annex IV, the relevant provisions of that decision directly affected the legal situation of the applicant, which was designated by name in Annex IV to the decision in question.[93]

116. The General Court, in the *Almaz-Antey* judgment, thus rejected the Council's contention that the legal situation of the applicant in that case was not affected, as the provision in question did not prohibit the entities referred to from carrying out certain activities, but rather prohibited the sale of dual use goods and technology to those entities by natural and legal persons who come under EU jurisdiction.[94]

117. For my part, I agree that the decision and reasoning in the *Almaz-Antey* judgment is correct and I consider that it should be applied, by analogy, in the present case. In my view, the contested provisions prevent the appellant from purchasing certain specified goods and services from certain defined EU operators and thus directly affect the appellant's legal rights and interests. I will, however, for the sake of completeness and in the light of the novel nature of this case, address certain other arguments of the parties and the reasoning of the General Court.

118. The General Court, in paragraphs 34 to 37 of the judgment under appeal, distinguished the facts in the present case from those that gave rise to the *Almaz-Antey* judgment. In that regard, the General Court noted that in that case the applicant's 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. Moreover, the General Court considered that the appellant cannot be assimilated to an operator such as the applicant in the *Almaz-Antey*

[93] See paragraphs 63 and 64 of the *Almaz-Antey* judgment, which specifically relate to the question of direct concern.

[94] See paragraph 65 of the *Almaz-Antey* judgment, where the General Court stated, "self-evidently it is for the bodies established in the European Union to apply those measures, given that the acts adopted by the EU institutions are not, as a rule, intended to apply outside the territory of the European Union. That does not, however, mean that the entities affected by the relevant provisions of [Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13)] are not directly concerned by the restrictive measures applied with regard to them. Indeed, the fact of prohibiting EU operators from carrying out certain types of transaction with entities established outside the European Union amounts to prohibiting those entities from carrying out the transactions in question with EU operators. In addition, accepting the Council's argument in that regard would be tantamount to considering that, even in cases of individual fund freezes, the listed persons subject to the restrictive measures are not directly concerned by such measures, given that it is primarily for the EU Member States and the natural or legal persons under their jurisdiction to apply them."

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judgment as its modes of action could not be reduced to a purely commercial activity.

119. For my part, I consider that it is wholly irrelevant whether the appellant is named or identified in the body of Regulation 2017/2063 rather than in an annex thereto. If it were otherwise, it would mean that an applicant's entitlement to commence Article 263 TFEU proceedings could be set at naught through the simple expedient of naming or identifying that party in the main body of the regulation itself rather than in an annex.

120. What is important is the effect or impact of the contested provisions and the prohibitions contained therein on the legal situation of the appellant rather than the precise form in which those prohibitions are presented. I therefore consider that the General Court erred in law in stating in paragraph 36 of the judgment under appeal that the appellant 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 *Almaz-Antey* judgment.

121. In addition, I consider that it is irrelevant for the purpose of the question of direct concern in the present case that the legal status or activity of the appellant is not limited to that of an economic operator active in certain markets. The fact that the appellant as a State enjoys a diverse range of competences which are not solely commercial in nature by no means per se eliminates, reduces or renders indirect the effects of the contested provisions on the appellant's legal situation.[95] I would note in that regard that aside from the requirement that proceedings must be instituted by a natural or legal person, the fourth paragraph of Article 263 TFEU does not impose any further requirements concerning the status or capacity of that person.[96]

122. I would also add that, contrary to the submissions of the Council, the approach to direct concern which I advocate in this Opinion in respect of the appellant does not create any new rule or "legal avenue"[97] which automatically grants standing to third States in actions for annulment under Article 263 TFEU in respect of restrictive measures. Rather, what I propose is that the Court follow its existing case-law and merely adapt it to this novel action.

[95] While the applicant in the *Almaz-Antey* judgment was a joint-stock company operating in the defence sector, rather than a State, given that the appellant qualifies as a legal person for the purposes of the fourth paragraph of Article 263 TFEU, I see no reason to diverge from the General Court's reasoning in that judgment on direct concern in respect of the appellant in the present appeal.

[96] Perhaps the only other relevant requirement is that the appellant must have an interest in the outcome of its action (*un intérêt à agir*), but that issue is not in dispute in the present proceedings.

[97] To use the language of the Council.

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Furthermore, and again contrary to the submissions of the Council, the rules on standing laid down in Article 263 TFEU, and in particular the fourth paragraph thereof, are based on the objective criteria which have been laid down in that Treaty and interpreted by the EU Courts, rather than on the existence or absence of any reciprocal arrangements on standing between the EU and third States.

VII. CONCLUSION

123. For all of the above reasons, I would therefore propose that the Court of Justice should rule that the General Court erred in law in so far as it held that the present proceedings were inadmissible for want of standing on the part of the appellant for the purposes of the fourth paragraph of Article 263 TFEU. I would accordingly suggest that the present proceedings should be remitted to the General Court so that it can proceed to adjudicate on all remaining admissibility issues arising in the annulment proceedings brought by the appellant and on the substance of its action.

[Report: EU:C:2021:37]

[The following is the text of the Court of Justice:]

JUDGMENT OF THE COURT OF JUSTICE*

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.

* Language of the case: English.

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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

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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.

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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;

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(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.

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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

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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

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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.

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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

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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.

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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.

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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,

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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.

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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

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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,

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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,

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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 *jure gestionis* or *jure 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.

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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.

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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

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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.

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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

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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 above-mentioned 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.

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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.

[Report: EU:C:2021:507]

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