



The Court of Justice sets aside the judgment of the General Court which annulled the inclusion of Al-Aqsa in the list of persons and entities whose funds have been frozen

The measures taken by the Council against Al-Aqsa are consistent with European Union law in the area of combating terrorism

The Netherlands Al-Aqsa foundation has been engaged since 2003 in judicial proceedings challenging its inclusion and its continued inclusion in the list drawn up by the Council of persons and entities whose assets have been frozen in the fight against terrorism. An initial series of Council decisions by which the Council included, then retained, Al-Aqsa in that list was annulled by a judgment of 2007 of the General Court of the European Union on the ground of inadequate statement of reasons¹. A second series of such Council measures adopted between 2007 and 2009 was also annulled by a judgment of the General Court in 2010, because the Netherlands had repealed the ministerial regulation on sanctions against terrorism (Sanctieregeling) relating to Al-Aqsa which ultimately formed the basis of the Council's measures. Inclusion or retention in the list is conditional upon the active pursuit of a national investigation or prosecution of the relevant person on account of a terrorist act, or enforcement of a penalty previously imposed².

In an appeal, brought by Stichting Al-Aqsa (Case C-539/10 P) and the Netherlands (Case C-550/10 P) against the latter judgment of the General Court, the Court of Justice has been called upon to examine the conditions under which funds may be frozen.

In today's judgment, the Court of Justice dismisses, first of all, Al-Aqsa's appeal in Case C-539/10 P as inadmissible in that it seeks only the amendment of certain grounds of the judgment under appeal.

Next, as regards the appeal of the Netherlands in Case C-550/10 P, the Court of Justice finds that, by considering that, after repealing the Sanctieregeling, there was no longer any 'substratum' in national law that justified continuing to include Al-Aqsa in the list, without taking due account of the reason why the Sanctieregeling was repealed, the General Court erred in law. The sole reason justifying that repeal was the objective of preventing an overlap between the national fund freezing measure, imposed by the Sanctieregeling, and the fund freezing measure prescribed at European Union level by Regulation No 2580/2001³, following the inclusion of Al-Aqsa in the list. Thus, the sole objective of that repeal was compliance with the TFEU, which provides that a regulation of the European Union is to be binding in its entirety and directly applicable in all Member States, which precludes in principle the Member States from adopting or maintaining national provisions in parallel. **The Court of Justice thus sets aside the judgment of the General Court.**

After setting the judgment at first instance aside, the Court of Justice itself gives final judgment on the initial action brought by Al-Aqsa before the General Court seeking the annulment of the Council's decisions to freeze funds.

¹ Case [T-327/03](#) *Al-Aqsa v Council*, see also Press Release [No 47/07](#).

² Case [T-348/07](#) *Al-Aqsa v Council*, see also Press Release [No 81/10](#).

³ Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2001 L 169, p. 58).

The Court of Justice finds, first of all, that **the Council held precise information and evidence in the file showing that a decision falling within the criteria established by European Union law had been taken by a competent Netherlands authority** against Al-Aqsa. The Court of Justice points out in that regard that such a reference to a national decision implies the existence of evidence or serious and credible clues as to the involvement of the person concerned in terrorist activities, regarded as reliable by the competent national authorities. Moreover, the Council was able to consider, without committing an error of assessment, that Al-Aqsa had knowledge that its activity of raising funds and making them available contributed to terrorist activities.

Next, the Court of Justice considers that **the Council did not fail to comply with its obligation to review whether the grounds justifying the decisions to freeze funds still exist**. It finds that the repeal of the Sanctieregeling as such was not sufficient to render the maintenance of Al-Aqsa in the list incompatible with European Union law. There is no evidence which could have led the Council to consider that Al-Aqsa suspended or ceased to contribute to the financing of terrorist activities, irrespective of the fact that the freezing of its funds made such contributions more difficult, if not impossible.

The Court of Justice considers that **the Council's decisions do not infringe Al-Aqsa's right to property**. It states, in that regard, that the right to property under EU law does not enjoy absolute protection and that the exercise of the right to property may be restricted, provided that those restrictions in fact correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right so guaranteed. The freezing of funds is a precautionary measure and does not seek to deprive persons of their property. Given that the alternative and less restrictive measures put forward by Al-Aqsa – such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used – are not as effective in achieving the goal pursued by the European Union, namely combating the financing of terrorism, the restrictions on Al-Aqsa's right to property imposed by the Council are necessary. Similarly, given the importance of combating terrorism, those restrictions are not disproportionate to the aims pursued.

Finally, **the Court of Justice rejects Al-Aqsa's argument that the Council's decision does not satisfy the duty to state reasons** laid down in EU law. There is nothing to suggest that, since the adoption of the Sanctieregeling, the factual situation or the assessment thereof by the Netherlands national authorities has changed in relation to Al-Aqsa's involvement in the financing of terrorist activities. Accordingly, it was not necessary to set out in detail the reasons why the Council was convinced that the grounds which justified including the appellant in the list at issue remained valid.

Consequently, the Court of Justice dismisses the initial action brought by Stichting Al-Aqsa.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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