Court of Justice of the European Union
**PRESS RELEASE No 108/16**
Luxembourg, 22 September 2016

Advocate General's Opinions in Case C-599/14 P Council of the European Union v LTTE and in Case C-79/15 P Council of the European Union and Hamas

Press and Information

# Advocate General Sharpston considers that the Court should annul the measures maintaining Hamas and LTTE on the EU list of terrorist organisations on procedural grounds

On 27th December 2001, the Council of the European Union adopted a common position[1] and a regulation[2] to combat terrorism. Those measures require the freezing of the funds of individuals, groups and entities that are suspected of involvement in terrorist acts and whose names are included on a list adopted and regularly updated by the Council.

Hamas and the Liberation Tigers of Tamil Eelam (LTTE) are included on that list. Whilst Hamas and the LTTE did not challenge the Council measures by which they were initially listed, they have contested their maintenance on the list, as a result of a series of Council measures, before the General Court. In separate judgments, the General Court annulled the contested measures concerning, respectively, Hamas and the LTTE.[3] It found that those measures were not based on acts examined and confirmed in decisions of competent authorities, as required by the common position and case law[4], but on the Council's own factual imputations derived from the press and the internet.

The Council has appealed both judgments on the grounds that the General Court incorrectly assessed the use of information in the public domain and did not conclude that the listings could stand on the basis of a 2001 UK decision proscribing both LTTE and Hamas as terrorist organisations. In the LTTE appeal, the Council also argues that the General Court incorrectly concluded that the Council must verify whether decisions of third state competent authorities are subject to sufficient safeguards. In the Hamas appeal, the Council also asserts that the General Court was wrong not to conclude that decisions of US authorities constituted a sufficient basis for listing Hamas.

In today's Opinions, Advocate General Eleanor Sharpston concludes that **the Council is under a duty to verify that a decision of a third state competent authority is subject to a level of fundamental rights protection at least equivalent to that guaranteed by EU law.** She notes that unlike the decisions of competent authorities in Member States, for which there can be (save in exceptional circumstances) a general presumption of compliance with the relevant fundamental rights, third state competent authorities are not subject to the same constraints. Consequently, there is no basis for assuming that the level of protection is at least equivalent to that under EU law. The Council must therefore state in clear terms why, in a specific case involving a particular decision of a competent authority, the law of third state competent authorities provides for

[1] Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).
[2] Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344 p. 70).
[3] Joined cases T-208/11 and T-508/11 LTTE v Council, see also Press Release No. 138/14 and Case T-400/10 Hamas v Council, see also Press Release No. 178/14.
[4] See Article 1(4) of the Common Position and Joined Cases: C-539/10 P and C-550/10 P Al Aqsa v Council and Netherlands v Al-Aqsa.

equivalent protection of, at least, the rights of the defence and effective judicial protection Although the Advocate General considers that the Council is not always required to provide new reasons for maintaining a listing, she takes the view that the Council must be satisfied that, in circumstances where the Council did not rely on a new decision of a competent authority, as in the present cases, the facts and evidence on which the initial or earlier decisions of the competent authority was or were based continue to justify the Council's assessment that the person or entity concerned presents a risk of terrorism and that, consequently, restrictive measures continue to be justified. In those circumstances, **the Council is precluded from relying on a list of terrorist attacks without those being shown in decisions of competent authorities**. Furthermore, the initial decision of a competent authority can still be relevant for subsequent listings, but the Council must show that that decision remains a sufficient basis for finding that there is a risk justifying the application of restrictive measures.

Advocate General Sharpston further concludes that **the Council cannot rely on facts and evidence found in press articles and information from the internet, rather than in decisions of competent authorities, to support a decision to maintain a listing**. Such an approach would undermine the two-tier system set-up by the common position.

As to whether the decisions of US authorities constituted a sufficient basis for listing Hamas, the Advocate General considers that the Council has misread the relevant part of the judgment under appeal. In her view, the General Court made no finding as to whether the decision of a US administrative authority may be a decision within the meaning of the common position. Further, she finds nothing in the judgment to support the argument that the General Court required the Council to know all of the factual elements on the basis of which a decision was adopted by a competent authority in a third State. The General Court merely found that **the Council cannot rely on a decision of a competent authority without knowing the actual reasons on which that decision was based**.

Finally, Advocate General Sharpston considers that, having found that some of the reasons advanced could not justify the decision to maintain the listing of LTTE and Hamas, **the General Court had to go on expressly to examine whether the other reasons were sufficient to support the decision**. Only if those reasons were insufficient could the measures be annulled. **The General Court failed to make such findings and, for that reason, the Advocate General suggests that the appeal is upheld.**

Having herself examined those other reasons, the Advocate General's view is that it was not sufficient for the Council to state in the grounds of the contested measures, either that the initial decisions of competent authorities remained valid, or that a decision of a competent authority had been taken, without providing more information. Further, she agrees with the General Court that the Council could not rely on a list of new acts that had not been established by decisions of competent authorities. For those reasons, the Advocate General suggests that the Court of Justice annuls the contested measures.

---

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

*The full text of the Opinions C-599/14 P and C-79/15 P are published on the CURIA website on the day of delivery.*

*Press contact: Holly Gallagher ☎ (+352) 4303 3355*