



Press and Information

Court of Justice of the European Union

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Judgment in Case C-104/16 P

Council v Front populaire pour la libération de la saquia-el-hamra et du rio de oro (Front Polisario)

## **The Association and Liberalisation Agreements concluded between the EU and Morocco are not applicable to Western Sahara**

*The Court therefore sets aside the judgment of the General Court which had found the opposite to be the case and dismisses the action for annulment brought by the Front Polisario against the Council's decision to conclude the Liberalisation Agreement*

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south and the Atlantic to the west. Currently, the largest part of Western Sahara is controlled by Morocco. A smaller part of that territory, in the east, is controlled by the Front Polisario, a movement which seeks independence for Western Sahara and whose legitimacy has been recognized by the United Nations.

In 2012, the EU and Morocco concluded an agreement providing for reciprocal liberalisation measures on agricultural products, processed agricultural products and fish and fishery products (the 'Liberalisation Agreement'). That agreement, the territorial scope of which depends on that of the EU-Morocco Association Agreement<sup>1</sup>, was formally concluded by the EU on the basis of a Council decision<sup>2</sup>.

The Front Polisario brought an action before the General Court seeking the annulment of that decision. By its judgment, delivered on 10 December 2015<sup>3</sup>, the General Court annulled the decision, having held, first of all, that the Association and Liberalisation Agreements were applicable 'to the territory of the Kingdom of Morocco' and that that expression was to be understood, in the absence of a stipulation to the contrary, as encompassing Western Sahara. The General Court then held that, in view of the application of those agreements to Western Sahara, Front Polisario was concerned by the Council's decision and therefore had standing to request the annulment of the decision. Finally, the General Court held that the Council had failed to fulfill its obligation to examine, before the conclusion of the Liberalisation Agreement, whether there was any evidence of the exploitation of the natural resources of the territory of Western Sahara under Moroccan control likely to be to the detriment of its inhabitants and to infringe their fundamental rights. Dissatisfied with that judgment, the Council brought an action before the Court of Justice seeking its annulment.

**In today's judgment, the Court, giving judgment following an expedited procedure at the request of the Council, upholds the appeal and sets aside the judgment of the General Court.**

<sup>1</sup> Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one hand, and the Kingdom of Morocco, on the other hand, signed in Brussels on 26 February 1996 and approved on behalf of the Communities by Decision 2000/204 of the Council and the Commission of 24 January 2000 (OJ 2000 L 70, p. 1).

<sup>2</sup> Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an 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, on the one hand, and the Kingdom of Morocco, on the other hand (OJ 2012 L 241, p. 2).

<sup>3</sup> [T-512/12](#) Front Polisario v Council.

The Court observes that, in determining the territorial scope of the Liberalisation Agreement, whose terms do not at any point refer to Western Sahara, the General Court failed to take account of all the rules of international law applicable to relations between the EU and Morocco, as required by the 1969 Vienna Convention on the Law of Treaties<sup>4</sup>.

In that regard, it notes first of all that, **in view of the separate and distinct status guaranteed to the territory of Western Sahara under the Charter of the United Nations** and the principle of self-determination of peoples, **it cannot be held that the term ‘territory of the Kingdom of Morocco’, which defines the territorial scope of the Association and Liberalisation Agreements, encompasses Western Sahara and, therefore, that those agreements are applicable to that territory.** The General Court thus failed to draw the consequences of the status of Western Sahara under international law.

Secondly, it is clear from international practice that, **where a treaty is intended to apply not only to the sovereign territory of a State but also beyond it, that treaty must provide therefor expressly**, whether it is a territory under the jurisdiction of that State or in any territory for whose international relations the State in question is responsible. That rule therefore also precludes the application of the Association and Liberalisation Agreements to Western Sahara.

Finally, after recalling **the principle of the relative effect of treaties under which a treaty must neither impose any obligations or confer any rights on third States without their consent**, the Court states that, in view of the Advisory Opinion on Western Sahara handed down in 1975 by the International Court of Justice at the request of the United Nations General Assembly<sup>5</sup>, **the people of that territory must be regarded as a third party** which may be affected by the implementation of the Liberalisation Agreement. In the present case, **it is not apparent that that people consented to the agreement being applied to Western Sahara.**

As to the fact that certain clauses in the Association and Liberalisation Agreements were applied ‘de facto’ in some cases to products originating in Western Sahara, the Court finds that **it has not been established that such a practice is the result of an agreement between the parties to amend the interpretation of the territorial scope of those agreements.** Moreover, a purported intention to that effect by the EU entails conceding that it intended to implement the agreements in a manner incompatible with the principles of self-determination and of the relative effect of treaties as well as the requirement of good faith under international law.

**Having concluded that the Liberalisation Agreement does not apply to the territory of Western Sahara, the Court sets aside the judgment of the General Court** which had reached the opposite conclusion and decides to adjudicate itself on the action brought by the Front Polisario. In that regard, it notes that, since the Liberalisation Agreement does not apply to Western Sahara, the Front Polisario is not concerned by the decision of the Council to conclude that agreement. **The Court therefore rejects the Front Polisario's action on the ground of lack of standing.**

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**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.

Press contact: Holly Gallagher 📞 (+352) 4303 3355

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<sup>4</sup> The Vienna Convention on the Law of Treaties, concluded in Vienna (Austria) on 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331).

<sup>5</sup> Advisory Opinion of the International Court of Justice on Western Sahara (*ICJ Reports* 1975, p. 12).

*Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*