



**In Advocate General Trstenjak's view, the Council may freeze funds in the fight against terrorism only while national prosecutions of the persons concerned are ongoing**

*In view of the repeal of the Netherlands measures against Al-Aqsa, the General Court was therefore right to annul the legal acts by which the Council allowed Al-Aqsa's funds to remain frozen*

The Netherlands Al-Aqsa foundation has been engaged since 2003 in judicial proceedings challenging its inclusion or its continued inclusion in the list drawn up by the Council of persons and entities whose assets are to be frozen in the fight against terrorism. An initial series of Council decisions by which the Council included or retained Al-Aqsa in that list was annulled by the General Court of the European Union on the ground of inadequate statement of reasons<sup>1</sup>. A second series of such Council measures adopted between 2007 and 2009 was also annulled by the General Court, in that case because the Netherlands had repealed the ministerial regulation relating to Al-Aqsa which ultimately formed the basis of subsequent Council measures.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 imposed<sup>2</sup>.

In an appeal brought by the Netherlands 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 her Opinion announced today, Advocate General Verica Trstenjak proposes that the Court of Justice uphold the judgment of the General Court. She points out that EU measures to combat terrorism<sup>3</sup> are not a matter for the Council's discretion. Rather, the Council can freeze the funds of persons and entities on the basis of a suspicion that they are supporting terrorist activities only if a Member State has at least instigated investigations against such persons or entities following a decision by the authorities. Since it is ultimately those investigations alone which justify the freezing of funds, the Council must unfreeze those funds if, in accordance with its duty regularly to review the measures adopted, it determines that the national decision has ceased to apply or the investigations being conducted at a national level are no longer being pursued.

Against that background, there were no longer any grounds for keeping Al-Aqsa on the Council's list. The Netherlands had, as long ago as August 2003, repealed the ministerial regulation relating to Al-Aqsa on which that foundation's inclusion in the Council's list was ultimately based, and the Council had not checked whether there was any other national investigation that might have constituted grounds for the Council's freezing of Al-Aqsa's funds. The fact that a Netherlands court had, in June 2003, dismissed an application by Al-Aqsa for the temporary suspension of the Netherlands ministerial regulation is not relevant in this context. To that extent, the General Court was right to find that that Netherlands judgment has no significance of its own following the repeal of the ministerial regulation.

<sup>1</sup> Judgment of the General Court of 11 July 2007 in Case [T-327/03 Al-Aqsa v Council](#). See also Press Release No [47/07](#).

<sup>2</sup> Judgment of the General Court of 9 September 2010 in Case [T-348/07 Al-Aqsa v Council](#). See also Press Release No [81/10](#).

<sup>3</sup> On the basis of the Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93) and 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).

Advocate General Trstenjak therefore proposes that the Court of Justice dismiss the appeal by the Netherlands. She further proposes that the appeal brought by Al-Aqsa also be dismissed, as that appeal is directed not against the outcome of the judgment of the General Court of the European Union but merely against the considerations contained within it, and is thus inadmissible.

---

**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 Opinion is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell 📞 (+352) 4303 3355