



Press and Information

General Court of the European Union
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Judgment in Case T-400/10 RENV
Hamas v Council

The General Court dismisses the action brought by Hamas against the decisions to maintain the freezing of its funds as an entity involved in acts of terrorism

On 27 December 2001, the Council of the European Union adopted a common position¹ and a regulation² with a view to combatting terrorism. Those measures order the freezing of the funds of persons and entities entered on a list established and regularly updated by decisions of the Council. On the same day, the Council adopted its first decision³ establishing that list. By that decision, the Council included the Hamas movement on the list of those whose funds were to be frozen and it has remained on that list from then on. Hamas challenged its retention on that list and requested the General Court of the European Union to annul the acts of the Council related thereto.

By judgment of 17 December 2014⁴, the General Court found that the acts challenged were based on factual imputations derived from the Press and the Internet, and held that those acts should have been based on elements which had been concretely examined and confirmed in decisions of national competent authorities within the meaning of the Common Position.

The General Court therefore annulled the acts challenged, while temporarily maintaining their effects in order to ensure the effectiveness of any possible future freezing of funds. The effects of the measures were to be maintained for a period of three months, or, if an appeal was brought before the Court of Justice, until that appeal is closed.

In the context of the appeal brought against the judgment of the General Court, the Court observed, in its judgment of 26 July 2017⁵, that only the initial entry⁶ of a person or entity on the list must be based on a national decision by a competent authority. Since no such condition was laid down in respect of the subsequent retention⁷ of such persons or entities on the list, the Court infers that it is not necessary for new material on which the Council may rely in order to justify the retention of a person or entity on the list to have been the subject of a national decision adopted after the decision on which the initial listing was based. The person or entity concerned is protected by the possibility of disputing all the material on which the Council relies in order to demonstrate before the Courts of the European Union that the risk of their involvement in terrorist activities is ongoing. It follows that, contrary to what was held by the General Court, when reviewing the situation of Hamas, the Council was entitled to rely on sources other than the national decisions adopted by the competent authorities.

¹ Common Position 2001/931/CFSP 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 Council Decision 2001/927/EC of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 (OJ 2001 L 344, p. 70).

⁴ Judgment of 17 December 2014, *Hamas v Council* (T-400/10), see also PR No [178/14](#).

⁵ Judgment of 26 July 2017, *Hamas v Council* (C-79/15), see also PR No [85/17](#).

⁶ See Article 1(4) of the Common Position.

⁷ See Article 1(6) of the Common Position.

Therefore, the Court of Justice set aside the judgment of the General Court of 2014 and referred the case back to the General Court. Since the judgment of the General Court was set aside, the acts of the Council maintain the freezing of Hamas' funds remained in force.

By its judgment today, in the context of the referral back of the case ordered by the Court of Justice, the General Court dismisses Hamas' appeal concerning the acts of the Council adopted between 2010 and 2014 and in 2017.

The General Court notes that, although the acts of the Council are based on American decisions, it is not clear from the statement of reason for those acts that the Council verified that the American decisions had been adopted in compliance with the rights of defence and the right to effective judicial protection. The General Court concludes that the American decisions cannot serve as the basis for the acts of the Council.

However, the General Court states that the Council is not required to refer to a plurality of decisions by the competent authorities. Therefore, the General Court considers that the Council was able to refer to a single decision of the United Kingdom, in the present case a decision of the Home Secretary who, although being an administrative authority, has the status of competent authority within the meaning of the Common Position, since his decisions may be subject to judicial review.

The General Court states that, in the acts challenged, the Council was not required to set out the facts on which the Home Secretary's decision was based, or to verify the classification of those facts with regard to Common Position 2001/931. There was also no need to refer to the arrangements for review of that decision.

The General Court observes, contrary to Hamas' submissions, that holding on to power following elections, the political nature of an organisation or its participation in a government do not constitute grounds for avoiding the application of the rules in the Common Position. It adds that since Hamas is not a Sovereign State, it cannot rely, in support of its claim, on the principle of non-interference to try to annul the decisions of the Council.

Regarding the alleged violation of its right to property by the decisions of the Council, the General Court considers that the measures for the freezing of Hamas' funds are neither disproportionate nor intolerable, especially as they do not violate its fundamental rights, since the aim pursued by such measures is to counter threats posed by terrorist acts on international peace and security. Furthermore, retention on the list of those whose assets are frozen is subject to periodic review.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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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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