



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 85/17**

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Judgments in Cases C-599/14 P and C-79/15 P  
Council v Liberation Tigers of Tamil Eelam (LTTE) and Council v Hamas

**The Court of Justice declares that the General Court should not have annulled Hamas' retention on the European list of terrorist organisations and refers the case back to the General Court**

*The Court of Justice does, however, uphold the annulment of the retention on the list of the Liberation Tigers of Tamil Eelam*

On 27 December 2001, the Council of the European Union adopted a common position<sup>1</sup> and a regulation<sup>2</sup> to combat terrorism. Those measures require the freezing of the assets of individuals, groups and entities suspected of being involved in acts of terrorism and whose names are included on a list adopted and regularly updated by the Council.

On the same day, the Council adopted an initial decision<sup>3</sup> by which it entered the Hamas movement on the list. It subsequently maintained Hamas' entry on that list.

In 2006, the Council also placed on the list the Liberation Tigers of Tamil Eelam (LTTE), a movement which opposed the Government of Sri Lanka in a violent confrontation that resulted in the LTTE's defeat in 2009. The Council has maintained the LTTE on the list ever since.

Whilst Hamas and the LTTE did not challenge the Council measures by which they were initially listed, they did contest their subsequent retention on the list before the General Court. In two judgments delivered in 2014, the General Court annulled the restrictive measures concerning Hamas and the LTTE respectively.<sup>4</sup> It found that the measures contested by Hamas and the LTTE were based not on facts examined and accepted in decisions adopted by the competent authorities (as required, according to the General Court, by the common position), but on information which the Council obtained from the press and the Internet. The General Court nevertheless decided temporarily to maintain (until the conclusion of any appeal) the effects of the annulled measures in order to ensure the effectiveness of any possible future freezing of funds.

The Council appealed to the Court of Justice and sought to have the two judgments of the General Court set aside.

By today's judgments, the Court of Justice reaffirms its case-law,<sup>5</sup> according to which the Council may maintain a person or an entity on the list if it concludes that **there is an ongoing risk** of that person or entity **being involved in the terrorist activities** which justified their initial listing. The Court states in that regard that, in order to demonstrate that that risk still existed, **the Council was, in the circumstances of these two cases, obliged to rely on more recent material** than the national decisions which justified the initial listing of Hamas and the LTTE.

<sup>1</sup> Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, adopted by the Council on 27 December 2001 (OJ 2001 L 344, p. 93).

<sup>2</sup> Regulation 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).

<sup>3</sup> Decision 2001/927/EC establishing the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2001 L 344, p. 83).

<sup>4</sup> Cases: [T-208/11](#) and [T-508/11](#) LTTE v Council see also Press Release No [138/14](#) and [T-400/10](#) Hamas v Council see also Press Release No [178/14](#).

<sup>5</sup> Cases: [C-539/10 P](#) and [C-550/10 P](#) Al-Aqsa v Council and Netherlands v Al-Aqsa.

As regards material which the Council may use in order to demonstrate the existence of an ongoing risk of involvement in terrorist activities, the Court states, after analysing the common position, that **only the initial entry<sup>6</sup>** of a person or entity on the list **must be based on a national decision** by a competent authority. **Since no such condition is laid down in respect of the subsequent retention<sup>7</sup>** 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 and the LTTE, **the Council was entitled to rely on sources other than the national decisions adopted by the competent authorities.**

Having found that the General Court thus made an **error of law** in its two judgments of 2014, the Court of Justice examines the conclusions to be drawn from this.

With regard to **Hamas**, the Court observes that the General Court annulled the continued freezing of funds solely on the ground that the Council had not referred, by way of justification, to national decisions by competent authorities. The Court of Justice **therefore sets aside the 2014 judgment of the General Court. It refers the case back to the General Court** so that the latter may examine the facts and arguments on which it did not rule in its 2014 judgment. Since the General Court's judgment has been set aside, the Council measures by which Hamas' funds continue to be frozen are to remain in force for the time being.

In the case of the **LTTE**, **the Court of Justice considers the judgment of the General Court to be warranted on other grounds, despite the error of law made.** In the statements of reasons relating to the restrictive measures, **the Council did not refer to anything that might explain why it considered at the time that**, notwithstanding the LTTE's military defeat in 2009, **it was the LTTE's intention to continue terrorist attacks in Sri Lanka.** In view of the fact that such a military defeat represents a significant change in circumstances, one that is capable of calling in question the ongoing nature of the risk of the LTTE's involvement in terrorist activities, the Council should have referred to the evidence supporting that assessment, which it failed to do. **The Court of Justice therefore confirms the annulment of the continued freezing of the LTTE's funds between 2011 and 2015.**

Furthermore, in that case, the Court of Justice also upholds the 2014 judgment of the General Court in so far as the General Court ruled that the Council may not base a person's or entity's initial entry on the list on a decision adopted by an authority of a **third State** unless that decision was taken **in accordance with the rights of the defence and the right to effective judicial protection** and the Council **indicates this** in the statement of reasons communicated to the person or entity concerned.

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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 judgments [C-599/14 P](#) & [C-79/15 P](#) are published on the CURIA website on the day of delivery.*

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<sup>6</sup> See Article 1(4) of the Common Position.

<sup>7</sup> See Article 1(6) of the Common Position.

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