



The Court dismisses France's appeal against the judgment of the General Court removing the PMOI the EU list of terrorist organisations

The General Court rightly decided that the Council had breached the PMOI's rights of defence by failing to notify it of the grounds for its inclusion in the list before the decision was adopted

In December 2008, the General Court annulled a Council decision including the People's Mojahedin Organization of Iran ('PMOI') in the European list of terrorist organisations whose funds and other financial assets must be frozen¹. This was the third time that the General Court had annulled a decision of that kind.

The previous Council decisions annulled by the General Court² had been based on an order proscribing PMOI in the United Kingdom, the existence of such a decision taken by a competent authority at national level being a pre-condition for the inclusion of an organisation in the EU list. However, PMOI's name was removed from the list of organisations proscribed in the UK on 24 June 2008, following the decision of a British court in November 2007 describing that listing as 'perverse' and 'unreasonable'.

Nevertheless, when the Council adopted another decision³ on 15 July 2008 updating the EU list, it maintained PMOI on the list. The inclusion of PMOI was based on two pieces of information supplied by the French Government: the first, relating to the opening in 2001 of a judicial investigation by the anti-terrorist prosecutor's office of the Tribunal de grande instance of Paris and the second, relating to two supplementary charges in 2007 against alleged members of PMOI. PMOI was notified of that information by the Council on the day the decision was adopted.

Annuling this decision, the General Court found that the Council had violated PMOI's rights of defence by failing to notify it of the new information before adopting the decision.

Whilst this in itself was sufficient to annul the decision, the General Court, for the sake of completeness, also examined the other arguments put forward by PMOI. In particular it found that the opening of a judicial inquiry and the two supplementary charges did not constitute a decision by a competent authority, in respect of PMOI itself, noting that no reasons were advanced as to why the acts ascribed to the alleged members of PMOI should be attributed to that organisation itself. Furthermore, the Court found that by failing to communicate to the Court certain information about the case which the French authorities refused to declassify, the Council had equally infringed the fundamental right of PMOI to effective judicial protection.

France brought an appeal against that judgment before the Court of Justice.

In its judgment today, the **Court of Justice has dismissed** that appeal and upheld the judgment of the General Court.

¹ Case [T-284/08](#) *People's Mojahedin Organization of Iran II* (see also Press Release [84/08](#))

² Case [T-228/02](#) *Organisation des Modjahedines du peuple d'Iran* (see also Press Release [97/06](#)) and Case [T-256/07](#) *People's Mojahedin Organization of Iran* (see also Press Release [79/08](#))

³ Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC (OJ 2008 L 188, p. 21).

First of all, the Court notes that, in the case of an initial decision to freeze funds, the Council is not obliged to inform the person or entity concerned beforehand of the grounds of his or its inclusion in the list. So that its effectiveness may not be jeopardised, such a measure must be able to take advantage of a surprise effect and to apply immediately. In such a case, it is, as a rule, sufficient if the institution notifies the person or entity concerned of the grounds and affords it the right to be heard at the same time as, or immediately after, the decision is adopted. In contrast, in the case of a subsequent decision to freeze funds maintaining the person concerned in the list, that surprise effect is no longer necessary, with the result that the adoption of such a decision must, in principle, be preceded by notification of the incriminating evidence and by allowing the person or entity concerned an opportunity of being heard.

In the judgment under appeal, the General Court applied those principles to the facts of the case and rightly concluded that, given that PMOI's name had been maintained in the list by the contested decision, the Council could not, as it did in that case, simply communicate the new incriminating evidence against PMOI at the same time as it adopted the contested decision. The Council was bound, imperatively, to ensure that PMOI's rights of the defence were observed, that is to say, that the incriminating evidence against it was communicated and PMOI given the opportunity to respond, before that decision was adopted. The Court emphasises that the protection offered by this notification is fundamental and essential to the rights of defence.

Next, the Court considers that the General Court did not err in law in holding that the Council had not established that the contested decision had to be adopted so urgently that it was impossible for that institution to notify PMOI of the new evidence adduced against it and to allow PMOI to be heard before the contested decision was adopted. While it is indeed true, as France has maintained, that the Council could not possibly allow a situation to continue in which the earlier decision lacked any basis following the removal of PMOI from the British list, the fact nevertheless remains, as indeed that Member State accepts, that that removal had no automatic, immediate effect on the earlier decision, which remained in force by reason of the presumption that acts of the institutions of the European Union are lawful.

Lastly, the Court rejected the arguments directed against the grounds of the judgment of the General Court included purely for the sake of completeness, since they cannot, in any event, lead to the judgment's being set aside and are therefore ineffective.

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.

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