



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P  
Commission, Council, United Kingdom v Yassin Abdullah Kadi

## **The Court dismisses the appeals against the General Court's 'Kadi II' judgment**

*The European Union may not impose restrictive measures on Mr Kadi, without evidence to substantiate his involvement in terrorist activities*

In accordance with a number of Security Council Resolutions, all States that are Members of the United Nations must freeze the funds and other financial resources controlled directly or indirectly by persons or entities associated with Usama bin Laden, the Al-Qaeda network or the Taliban. In order to implement those resolutions within the European Union, the Council adopted a regulation<sup>1</sup> ordering the freezing of the funds and other economic resources of the persons and entities whose names appear in a list annexed to that regulation. That list is regularly amended to take account of changes in the Consolidated List drawn up by the Sanctions Committee, an organ of the Security Council.

Yassin Abdullah Kadi, a resident of Saudi Arabia, was designated by the Sanctions Committee of the United Nations Security Council as being associated with Usama bin Laden and the Al-Qaeda network. Accordingly, on 17 October 2001 his name was added to the Consolidated List, then placed in the list annexed to the European Union regulation.

In 2005 the General Court delivered its first judgments<sup>2</sup> on the measures taken to combat terrorism, ruling that European regulations implementing the UN Security Council measures enjoy, in essence, immunity from jurisdiction.

In contrast, the Court<sup>3</sup> held, in 2008, that the Courts of the European Union must ensure the review, in principle the full review, of the lawfulness of all European Union acts, including those designed to implement UN Security Council resolutions. The Court therefore ruled that obligations imposed by an international agreement cannot prejudice the principle that European Union measures must respect fundamental rights. Consequently, the Court annulled the regulation whereby Mr Kadi's name had been added to the list of persons associated with Usama bin Laden, since that regulation infringed a number of fundamental rights which Mr Kadi enjoyed under European Union law (rights of the defence, right to effective judicial protection). None of the evidence relied on against Mr Kadi had been disclosed to him, not even the reasons for his being named on that list.

Following that judgment, the European Commission disclosed to Mr Kadi the summary of reasons for his being listed which had been provided to it by the Sanctions Committee. After obtaining Mr

<sup>1</sup> Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban (OJ 2002 L 139, p. 9).

<sup>2</sup> Judgments of the General Court of 21 September 2005 in Case T-306/01 *Yusuf and Al Barakaat International Foundation v Council and Commission* and Case [T-315/01](#) *Kadi v Council and Commission* (the judgment known as 'Kadi I', see also Press Release [No 79/05](#)).

<sup>3</sup> Judgment of the Court of 3 September 2008 in Joined Cases [C-402/05 P and C-415/05 P](#) *Kadi and Al Barakaat International Foundation / Council and Commission*, see also Press Release [No 60/08](#).

Kadi's comments on those reasons, the Commission decided, by means of a further regulation,<sup>4</sup> to maintain his name on the European Union list relating to persons subject to restrictive measures.

Interpreting the Court's *Kadi* judgment, the General Court annulled<sup>5</sup> the Commission's further regulation, holding that it was its task to ensure full and rigorous judicial review of the lawfulness of that measure, extending to the information and evidence substantiating the reasons underpinning the measure. Since that information and evidence had not been disclosed, and since the indications contained in the summary of reasons provided by the Sanctions Committee appeared, in general, to be too vague, the General Court concluded that Mr Kadi's rights of defence and his right to effective judicial protection had been infringed.

The Commission, the Council and the United Kingdom challenged that judgment by bringing these appeals.

In its judgment delivered to-day, the Court states, first, that in proceedings relating to listing or maintaining the listing of the name of an individual on the list of persons suspected of being associated with terrorism, the competent European Union authority must disclose to the individual concerned the evidence underpinning its decision. Accordingly, that individual must be able to obtain, at the very least, **the summary of reasons provided by the Sanctions Committee** to support that committee's decision to impose restrictive measures on him. Further, that authority **must ensure that that individual is placed in a position in which he may effectively make known his views on the grounds relied on against him and must examine, in the light of comments made by the individual concerned, whether those reasons are well founded.** In that context, if necessary, it is the task of that authority to seek the assistance of the Sanctions Committee and, through that committee, the Member of the UN which proposed the listing of the individual concerned on the Consolidated List, in order to obtain the disclosure of information or evidence, confidential or not, to enable it to undertake a careful and impartial examination of whether the reasons concerned are well founded.

Likewise, in the judicial review of the lawfulness of those reasons, the Courts of the European Union, which must assess whether those reasons are capable of supporting the listing of the person concerned on the list produced by the competent European Union authority, may request that authority to submit to it that information or evidence. **It is the task of that authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded.** If the authority is unable to accede to the request by the Courts of the European Union, **it is then the duty of those Courts to base their decision solely on the material which has been disclosed to them**, namely, in this case, the indications contained in the summary of reasons provided by the Sanctions Committee, the observations and any exculpatory evidence submitted by the person concerned and the authority's response to those observations. **If that material is insufficient to allow a finding that a reason is well founded, the Courts of the European Union shall disregard that reason as a basis for the contested decision to list or maintain a listing.**

If, on the other hand, the competent European Union authority provides relevant information or evidence, the Courts of the European Union must determine whether the facts alleged are accurate in the light of that information or evidence and assess the probative value of that information or evidence in the circumstances of the particular case and in the light of any observations submitted in relation to them by, among others, the person concerned.

In that regard, the Court acknowledges that overriding considerations to do with the security of the European Union or of its Member States or with the conduct of their international relations may preclude the disclosure of some information or some evidence to the person concerned. In such

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<sup>4</sup> Commission Regulation (EC) No 1190/2008 of 28 November 2008 amending for the 101st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban (OJ 2008 L 322, p. 25).

<sup>5</sup> Judgment of the General Court of 30 September 2010 in Case [T-85/09](#) *Yassin Abdullah Kadi v Commission*, see also Press Release [No 95/10](#).

circumstances, **it is nonetheless the task of the Courts of the European Union**, before whom the secrecy or confidentiality of that information or evidence is no valid objection, **to determine**, when examining all the matters of fact or law produced by the competent Union authority, **whether the reasons relied on by that authority as grounds to preclude that disclosure are well founded**.

If the Courts of the European Union conclude that those reasons do not preclude disclosure, at the very least partial disclosure, of the information or evidence concerned, it shall give the competent European Union authority the opportunity to make such disclosure to the person concerned. **If that authority does not permit the disclosure of that information or evidence, in whole or in part, the Courts of the European Union shall then undertake an examination of the lawfulness of the contested measure solely on the basis of the material which has been disclosed to that person.**

On the other hand, if it turns out that the reasons relied on by the competent European Union authority do indeed preclude the disclosure to the person concerned of information or evidence produced before the Courts of the European Union, it is necessary to strike an appropriate balance between the requirements attached to the right to effective judicial protection and those flowing from the security of the European Union or its Member States or the conduct of their international relations. In order to strike such a balance, it is legitimate to consider possibilities such as the disclosure of a summary outlining the information's content or that of the evidence in question. Irrespective of whether such possibilities are taken, **it is for the Courts of the European Union to assess whether and to what the extent the failure to disclose confidential information or evidence to the person concerned and his consequential inability to submit his observations on them are such as to affect the probative value of the confidential evidence.**

The Court also states that, if, in the course of its review of the lawfulness of the contested decision, the Courts of the European Union consider that, at the very least, one of the reasons mentioned in the summary provided by the Sanctions Committee is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that decision. In the absence of one such reason, the Courts of the European Union will annul the contested decision.

In the present case, the Court is of the opinion that, contrary to the analysis of the General Court, **the majority of the reasons** relied on against Mr Kadi **are sufficiently detailed and specific** to allow effective exercise of the rights of the defence and judicial review of the lawfulness of the contested measure. On the other hand, the Court holds that, **since no information or evidence has been produced to substantiate the allegations, roundly refuted by Mr Kadi, of his being involved in activities linked to international terrorism, those allegations are not such as to justify the adoption, at European Union level, of restrictive measures against him.**

Consequently, the Court considers that, notwithstanding errors of law committed by the General Court in the interpretation of the rights of the defence and the right to judicial protection, **the Commission's further regulation must be annulled. The Court therefore dismisses the appeals brought by the Commission, the Council and the United Kingdom.**

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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.

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