



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

From : Council Legal Service
To : Permanent Representatives Committee (2nd part)
Subject : Judgment by the Court of First Instance in Case T-228/02, OMPI v. Council

1. By its judgment of 12 December 2006 in the above-mentioned case, the Court of First Instance annulled, so far as the applicant OMPI (Organisation of Modjahedines People of Iran) is concerned, Council Decision 2005/930/EC implementing Regulation (EC) 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.¹ The Court distinguished the present case, which concerned the measures taken by the EU on an autonomous basis against persons and entities associated with terrorism, from the previous cases of *Yusuf* and *Kadi* (T-306/01 and T-315/01), in which it upheld the legality of the EU regime implementing the resolutions of the UN Security Council and the decisions of its Sanctions Committee on the freezing of funds of persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.²

¹ OJ L 340 of 23.12.2005 p. 64 and OJ L 344 of 28.12.2001 respectively.

² Judgments of 21 September 2005, [2005] ECR II 3533 and 3649.

2. In the *Yusuf* and *Kadi* cases, the Court ruled that the Community institutions were obliged to transpose the obligatory decisions of the UN Security Council and its Sanctions Committee, without having any margin of discretion at their disposal. In the present case, however, the Court considered that, since the same consideration did not apply with regard to the EU's autonomous regime against terrorist financing, it followed that the exercise of the Community institutions' powers in this connection is, in principle, fully subject to the rules of Community law concerning the right to a fair hearing, the obligation to state reasons and the right to effective judicial protection. The Court held that each of these rules had been breached in the present case.
3. Right to a fair hearing: the Court held that in the context of the freezing of funds, this requires, firstly, that the persons concerned must be informed of the evidence used to justify the measure taken against them and, secondly, that they be given the opportunity to make their views known on that evidence.

The Court accepted that in the case of an initial decision to freeze persons' funds, it would not be appropriate to notify them in advance, since that would deprive the measure of the necessary surprise effect.

In the case of a subsequent decision to maintain the persons on the list of those subject to the asset freeze, the Court ruled, that since the need for a surprise effect is no longer applicable in such a situation, the Council would have to notify those persons in advance and to give them the opportunity to present their point of view, before adopting any such decision.

4. Statement of reasons: the Court held that the Council must provide a statement of reasons. However, the Court acknowledged that in cases where overriding concerns of national security or the conduct of international relations are at stake, it could be justifiable to withhold certain information, notably for example where it related to evidence or clues forming the basis for a national decision to instigate an investigation or a prosecution.

5. Right to effective judicial protection: the Court recalled that this right is closely linked to the obligation to state reasons, insofar as the persons adversely affected by a measure need to know the reasons for it in order to present their case effectively when bringing a legal challenge, and also to allow the Court to be put in a position to review the lawfulness of the contested decision.
6. Having found that there had been a breach in the present case of the above rules of law (right to a fair hearing, obligation to state reasons and right to effective judicial protection), the Court annulled the contested Council Decision 2005/930, insofar as the applicant OMPI is concerned.

Consequences of the Court's judgment

7. The Court only annulled the reference to the applicant OMPI in the contested Council Decision 2005/930. It did not annul the references to the other persons and entities mentioned therein, and so the asset freeze remains in force in relation to them. Indeed the asset freeze remains in force also in relation to OMPI, since the Court annulled the reference to it in the Council Decision (2005/930) which was in force at the date of the hearing in the OMPI case (7 February 2006), but which has subsequently been replaced by a new decision (Council Decision 2006/379/EC of 29 May 2006³) that maintained OMPI on the list of persons and entities subject to the asset freeze.
8. However, the Council is obliged, according to Article 233 of the EC Treaty, to take the measures necessary to comply with the Courts' judgment.

³ OJ L 144 of 31.5.2006, p.21.