



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-104/16 P
Council v Polisario Front

According to Advocate General Wathelet, neither the EU-Morocco Association Agreement nor the EU-Morocco Agreement on the liberalisation of trade in agricultural and fishery products apply to Western Sahara

Therefore the Advocate General suggests that the Court should set aside the judgment of the General Court which held that those agreements apply to that territory

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south and the Atlantic to the west. Currently, the largest part of Western Sahara is controlled by Morocco, which considers itself as having sovereignty over that territory. A smaller, very sparsely populated part of Western Sahara in the east of the territory is controlled by the Polisario Front, an organisation which seeks independence for Western Sahara.

In 2012, the European Union and Morocco concluded an agreement providing for reciprocal liberalisation measures on agricultural products, processed agricultural products and fish and fishery products (the 'Liberalisation Agreement'). That agreement, the territorial scope of which depends on that of the EU-Morocco Association Agreement¹, was formally concluded by the European Union on the basis of a Council decision².

The Polisario Front brought an action before the General Court of the European Union seeking the annulment of that decision. By its judgment, delivered on 10 December 2015³, the General Court annulled the decision at issue, in so far as it approves the application of the Liberalisation Agreement to Western Sahara. In particular, the General Court held that the Council had failed to fulfil its obligation, before the conclusion of that agreement, to examine whether there was any evidence of the exploitation of the natural resources of the territory of Western Sahara controlled by Morocco, which was liable to adversely affect its inhabitants and infringe their fundamental rights.

The Council brought an appeal before the Court of Justice against the judgment of the General Court.

In his Opinion, delivered today, Advocate General Melchior Wathelet considers that **Western Sahara is not part of Moroccan territory and, therefore, contrary to the findings of the General Court, neither the EU-Morocco Association Agreement, nor the Liberalisation Agreement are applicable to it.**

¹ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one hand, and the Kingdom of Morocco, on the other hand, signed in Brussels on 26 February 1996 and approved on behalf of the Communities by Decision 2000/204 of the Council and the Commission of 24 January 2000 (OJ 2000 L 70, p. 1).

² Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one hand, and the Kingdom of Morocco, on the other hand (OJ 2012 L 241, pl 2).

³ [Case T-512/12](#) *Front Polisario v Council*

First, the Advocate General notes that, since 1963, Western Sahara has been included by the UN on its list of non-self-governing territories, which comes within the scope of its resolution on the exercise of the right to self-determination by colonial peoples⁴. As regards the question whether the scope of international treaties or agreements concluded by the States administering non-self-governing territories also extends to those territories, the Advocate General points out that the practice of the majority of those States shows that such an extension must be expressly provided for during the ratification of treaties or agreements. The two agreements cited above do not contain any provisions seeking to extend their scope of application to Western Sahara, nor was such an extension expressly provided for when those agreements were ratified by Morocco.

Second, the Advocate General emphasises that the European Union and its Member States have never recognised that Western Sahara is part of Morocco, or that the latter has sovereignty over that territory.

Third, the Advocate General rejects the arguments according to which it should be recognised that the scope of the two agreements at issue includes Western Sahara, on the ground that those agreements are in any event applied *de facto* to that territory. The evidence examined in the present case is not sufficient to establish the existence of a general and long-standing practice which, with the full knowledge of the parties concerned, goes against the very terms of those agreements, terms which limit the scope of the agreements exclusively to Moroccan territory. Only such a practice could constitute a new agreement between the parties on the extension of the territorial scope of the two agreements cited above.

Fourth, the Advocate General recalls that, in principle, international law does not permit the extension of the scope of a bilateral treaty to a territory which constitutes a third party in relation to the other parties to that treaty. Western Sahara specifically constitutes such a territory with respect to the EU and Morocco.

By reason of the fact that the agreements cited above do not apply to Western Sahara, the Advocate General proposes that the Court **should set aside the judgment of the General Court and dismiss the action brought by the Polisario Front as inadmissible, as the latter no longer has any interest in having the contested decision annulled.**

Furthermore, even if the two agreements were applicable to Western Sahara, the Advocate General takes the view that **the Polisario Front is not directly and individually concerned by the contested decision and that, therefore, its action must also be rejected for that reason.** The Polisario Front is recognised by the international community solely as the representative of the people of Western Sahara in the political process aiming to resolve the issue of the self-determination of the people of that territory and not for the purpose of defending the commercial interests of that people. Moreover, the Polisario Front does not appear to be the sole representative of the people of Western Sahara in international relations because it is conceivable that Spain, the former colonial power of that territory, still has responsibilities in that regard.

If the Court decides that the agreements at issue are nevertheless applicable to Western Sahara, and that the Polisario Front is entitled to challenge the contested decision, the Advocate General observes, as the General Court did, that the Council has **failed to fulfil its obligation to examine all the relevant evidence regarding the circumstances in which the Liberalisation Agreement was concluded.** In particular, although contrary to the findings of the General Court, the Council was not required to evaluate the effects of the conclusion of that agreement on the exploitation of the natural resources of Western Sahara, it should have taken into account **the human rights situation in that territory and the potential impact of the agreement on it.** In that case, the Advocate General takes the view that **the General Court was correct to partially annul the contested decision,** in so far as it approves the application of the Liberalisation Agreement to Western Sahara, **so that the Council's appeal must be rejected as unfounded.**

⁴ Resolution of UN General Assembly Resolution 1514 (XV) of 14 December 1960 on the Granting of Independence to Colonial Countries and Peoples.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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