



## PRESS RELEASE No 54/24

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Advocate General's Opinion in Joined Cases C-779/21 P | Commission v Front Polisario and C-799/21 P | Council v Front Polisario

### **Advocate General Ćapeta: the General Court erred in annulling the decision approving, on behalf of the European Union, a preferential tariff agreement with the Kingdom of Morocco relating to the territory of Western Sahara**

*In spite of what the General Court found, that decision did not run contrary to the judgment of the Court in C-104/16 P Council v Front Polisario*

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, the People's Democratic Republic of Algeria to the north-east, the Islamic Republic of Mauritania to the east and south and the Atlantic to the west.

In its judgment in C-104/16 P *Council v Front Polisario* <sup>1</sup>, the Court concluded that the Association Agreement between the European Union and the Kingdom of Morocco, signed in 2000 <sup>2</sup>, does not apply to the territory of Western Sahara. In order to enable preferential treatment of products imported from that territory into the European Union, the European Union and the Kingdom of Morocco signed in 2019 an agreement extending expressly the preferential tariff treatment enabled by the Association Agreement also to products originating in the territory of Western Sahara (the "Preferential Tariff Agreement") <sup>3</sup>. That agreement was approved <sup>4</sup> by the Council on behalf of the European Union (the "Council decision").

In April 2019, Front Polisario <sup>5</sup>, a movement supporting the right of the Sahrawi people to self-determination sought the annulment of the Council decision before the General Court. In its action, Front Polisario claims to represent the people of Western Sahara. It argues that the Council failed to respect the right to self-determination of that people and the relative effect of treaties. In its judgment <sup>6</sup>, the General Court annulled the Council decision.

In 2021, both the Commission and the Council brought an appeal before the Court of Justice <sup>7</sup>.

**In her Opinion, Advocate General Tamara Ćapeta proposes to uphold these appeals and annul the General Court's judgment.**

First, the Advocate General explains that **the people of Western Sahara have no official or recognised representative** to bring an action on their behalf. **However, Front Polisario fights for one of the three possible outcomes of the right to self-determination of the people of Western Sahara:** the creation of an independent State. Accordingly, Front Polisario should be viewed as **reflecting the interests and wishes of (at least) part of the people of Western Sahara.**

**On substance**, the Advocate General concludes that the Preferential Tariff Agreement **treats the territory of Western Sahara as separate and distinct from the Kingdom of Morocco**, in line with the requirements arising

from the judgment in C-104/16 P *Council v Front Polisario*.

However, she considers that the **General Court misinterpreted the Court of Justice's judgment in C-104/16 P Council v Front Polisario**. That judgment **did not require that the Council obtain directly from the people of Western Sahara their consent**, when concluding an agreement with the Kingdom of Morocco in relation to the territory of Western Sahara. **In their current form of organisation, that people cannot consent on their own to the conclusion of an international agreement relating to their territory.**

However, under public international law, **an administering power may**, under certain circumstances, **conclude an international agreement on behalf of a non-self-governing territory**, like that of Western Sahara.

**The European Union regards the Kingdom of Morocco as the administering power** of the territory of Western Sahara. Accordingly, **it was not contrary to the principle of the relative effect of treaties**, as interpreted by the Court in C-104/16 P *Council v Front Polisario*, **for the European Union to accept that the Kingdom of Morocco may consent to that agreement on behalf of the people of Western Sahara.**

Nevertheless, the Advocate General considers that there may be other obligations resulting from the right to self-determination of the people of Western Sahara that may be relevant when concluding an agreement with the Kingdom of Morocco on behalf of the territory of Western Sahara. Those issues were raised before but not decided by the General Court. For that reason, the Advocate General proposes to return the case to the General Court for it to rule on the pleas which it did not adjudicate.

**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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<sup>1</sup> Judgment of 21 December 2016, *Council v Front Polisario*, C-104/16 P (Press Release [Press Release n° 146/16](#)).

<sup>2</sup> [Euro-Mediterranean Agreement](#) establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (the "Association Agreement").

<sup>3</sup> [Agreement in the form of an Exchange of Letters](#) between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.

<sup>4</sup> [Council Decision \(EU\) 2019/217](#) of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.

<sup>5</sup> Frente Popular para la Liberación de Saguia El-Hamra y Rio de Oro (Popular Front for the Liberation of Saguia El-Hamra and Rio de Oro).

<sup>6</sup> Judgment of 29 September 2021, *Front Polisario v Council*, T-279/19 ([Press Release n° 166/21](#)).

<sup>7</sup> These appeals are linked to the appeals in joined cases [C-778/21 P](#) and [C-798/21 P](#), *Commission and Council v Front Polisario* ([Press Release n°53/24](#)).