

Michèle Alliot-Marie
French Minister for the Interior
French Presidency of the European Union

Brussels, 24 November 2008
Ref: B829

Dear Ms Alliot-Marie,

Subject: JHA Council 27 November 2008 – the issue of “terrorist lists”

Ahead of the meeting of the EU's Home Affairs Ministers on 27 November 2008 to discuss their actions to combat terrorism, Amnesty International would like to draw the Council's attention to the impact on fundamental rights of listing and asset freezing of persons and entities involved in terrorist activities.

In its revised strategy on terrorist financing of July 2008, the Council stated that it *“has continued work on improving its procedures for the listing and de-listing of persons and entities pursuant to regulation No 2580/2001 and Common Position 2001/931/CFSP. The need to respect fundamental rights implies, in particular, that proper attention is given to the protection and observance of the due process rights of the persons to be listed. Listing and de-listing procedures have been improved in accordance with the rulings of the court of first instance.”* Amnesty International is concerned that only minor improvements have been made so far, falling short of the substantive reforms needed to ensure full respect of human rights and the rule of law in EU's listing and de-listing procedures. The long-awaited judgment from the Grand Chamber of the European Court of Justice (*Kadi and Al Barakaat v. Council of the European Union and European Commission*) delivered on 3 September 2008, presses the EU to engage meaningful action to improve the situation.

The Court ruled that the Council had infringed the defence rights of the claimants by listing them and freezing their assets for a period of more than six years without any notification of the grounds for listing. It stated that individuals are entitled to these rights under EU law, regardless of whether the listing measures affecting them are a direct implementation of UN Security Council resolutions. The Court also drew a stark distinction between the “guarantees of judicial protection” to which individuals are entitled under EU law, and the essentially diplomatic and intergovernmental nature of the procedure at the UN level. Amnesty International believes that this places a responsibility on the EU institutions to ensure that, whatever changes are needed at UN level, its own procedures are reviewed to fully comply with fundamental rights which form an integral part of the general principles of Community law. In a context of growing controversy and numerous court cases around the issue of ‘terrorist’ lists at UN, EU and national level, the ECJ's *Kadi* judgment sends a strong and authoritative signal that a comprehensive reform of the system is needed beyond limited case by case, diplomatic or administrative responses.

The Court has granted the Council three months (until 3 December 2008) to remedy the infringements found. As the JHA Council is meeting less than one week before this deadline, Amnesty International calls on the Council to indicate how it is implementing the Court's decision in the specific case of *Kadi* and *Al Barakaat*, but also how it intends to reform the EU listing and asset-freezing system.

Amnesty International calls on the EU institutions to:

- Undertake a comprehensive reform of its listing and asset-freezing system to create fair and clear procedures respectful of human rights and the rule of law.

In particular, Amnesty International calls on the EU institutions to:

- Ensure more transparency in the listing and de-listing process;
- Provide for a de-listing procedure before an independent and impartial body;
- Guarantee full and systematic respect of the right to be heard and the right to an effective judicial remedy of the persons and entities concerned by the 'terrorist' listing process;
- Ensure more transparency on the reforms undertaken and envisaged.

We hope that these concerns will be raised during the discussions and we look forward to hearing from you as to the outcome of the meeting.

Yours sincerely,



Nicolas Berger
Director
Amnesty International EU Office