



Select Committee on the European Union

EU Security and Justice Sub-Committee

Corrected oral evidence: The UK's international sanctions policy post Brexit

Tuesday 27 October 2020

10 am

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Members present: Lord Ricketts (The Chair); Lord Anderson of Ipswich; Lord Anderson of Swansea; Lord Arbuthnot of Edrom; Lord Dholakia; Baroness Finn; Baroness Goudie; Baroness Hamwee; Lord Kirkhope of Harrogate; Lord Lexden; Lord Polak; Baroness Primarolo; Lord Rowlands.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 15

Witnesses

I: Dr Clara Portela, Lecturer in Political Science, University of Valencia; Emil Dall, Senior Research Fellow, RUSI Centre for Financial Crime and Security Studies; Maya Lester QC, Brick Court Chambers.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Dr Clara Portela, Emil Dall and Maya Lester QC.

Q1 The Chair: Good morning and welcome to the EU Security and Justice Sub-Committee session on the future of EU-UK co-operation on sanctions policy. This is a public meeting that is being broadcast and is being transcribed. We will give our witnesses a transcription to correct before it is made public. I will start by asking our three panellists to introduce themselves and then we will launch into a series of questions.

Maya Lester: Thank you very much indeed. I am a barrister, Queen's Counsel, at Brick Court Chambers, and I specialise in sanctions law among other things. I also have a legal website, a blog, that tries to keep abreast of sanctions topics around the world, which needs updating regularly, often several times a day.

Dr Clara Portela: Thank you very much. I am a faculty member of the Faculty of Law at the University of Valencia in Spain. I am a professor in political science and my specialisation is the sanctions policy of the European Union.

Emil Dall: I am a senior research fellow in the Centre for Financial Crime and Security Studies at RUSI, where I work on sanctions. Last year we established a task force to look into the future of UK sanctions policy after Brexit.

Q2 The Chair: Thank you very much to all three. This evidence session follows on from work done by two of our predecessor committees. The EU External Affairs Sub-Committee produced a report on Brexit sanctions policy in 2017; and the EU Justice Sub-Committee produced one on the legality of EU sanctions, also in 2017. I think all our panellists took part in one or other of those evidence sessions, so thank you for your patience in coming back to us.

This is, of course, a new committee, with many members who were not on the previous committees. The world has moved on quite a lot since 2017 in respect of the nature of Brexit that we are looking at and the implications of that for sanctions policy in co-operation with the EU, so I think it is timely to update the previous evidence session.

I will launch proceedings with a first question addressed to all three panellists. Could you set the context for us by giving us your brief assessment of the contribution that you think the UK has been able to make as a Member State of the EU to the development of EU sanctions policy? What has been our distinctive contribution as a Member State?

Maya Lester: As a general remark, a number of the questions relate to matters of policy and what has happened in the EU and what is likely to happen in the future, so, of course, the answers that I give are based on my understanding and my perception. I suspect that a lot of them can truly be answered only by the Foreign and Commonwealth Office, because the process is not enormously transparent in many respects. Only they will have been present and party to policy discussions.

With that introduction, and with your leave, my impression is that the UK collaborated with the EU, if that is the right way of putting it, extremely fully as a Member State. What do I mean by this? The UK was by far the most active and proactive Member State—I do not think that is controversial—in every aspect of sanctions policy. Sanctions are decided in the European Union by unanimous decision-making of all the Member States, and that is really the foreign ministries, the Council.

However, the UK played a leading role in the formation of policy and the design of sanctions. The UK was absolutely key to all decisions, such as whether to target those sanctions—in other words, to have sanctions based on lists of people and companies chosen for asset freezing and travel ban measures—or to design sectoral, more wide-reaching sanctions.

The UK was also by far the most prominent Member State when it came to proposing the right people and companies for listing. The system works by Member States proposing lists of names that are then to some extent discussed in Council and voted on. The UK has great expertise in that field, not least because it places a particular emphasis on the importance of gathering open-source evidence, and no doubt sometimes intelligence evidence, to found the evidential basis for those listings.

It is really important for some of the Committee's other questions to understand that the UK's role was not only as a formal member of the EU Council and discussions in Council. Of crucial importance are the UK's bilateral relationships with Member States when it comes to sanctions issues. The UK had, and I suggest will still have—we will come on to that—very strong relationships with Germany, France and whichever other key Member States are interested in any particular sanctions regimes. Lots of discussion is happening between the UK and other single Member States and, equally importantly, with other non-EU Member States—the United States and Canada in particular, but not only.

Like other Member States, the UK was also involved—again, this will continue—not just in the policy-making and the sanctions decision-making in the EU but in the process of taking that home and implementing it. The United Kingdom was, and still will be, implementing United Nations Security Council sanctions and EU sanctions into UK law. Of course, all that will now happen under the authority not of the European Communities Act but of the Sanctions Act, which we will discuss. The UK, like other Member States, also decided on whether the penalties for breach of sanctions should be civil or criminal, on the exceptions to sanctions and when they would grant licences or exceptions, and on breaches and prosecuting breaches.

The impact of Brexit, which we will come on to, is that the UK will now decide on what sanctions it would like unilaterally. That is really the big change, and I will not elaborate on that because I know that a question is coming on that.

However, in brief answer to the last bit of the question, which was for examples of where the UK's participation made a real difference to the effectiveness of

sanctions, I think the UK played an absolutely central role in almost every sanctions regime, as I understand it. Examples that come to mind are sanctions not related to any particular country but to a form of conduct, including recent cyber sanctions, sanctions on those responsible for chemical weapons, but also sanctions on Iran—the United Kingdom played an absolutely founding role in the Iran nuclear deal—sanctions on Russia on its actions in Ukraine, sanctions on Syria. The UK was not, of course, the only important Member State, but it was at the forefront of all those regimes.

I want to say something about the Committee's question on what we mean by the effectiveness of sanctions, because that puts an important framework in place for the rest of the questions. When the question asks whether the UK has made a difference to effectiveness, I think it is really important to have in mind what we mean by the effectiveness of sanctions. Do we mean: are they actually implemented, complied with and enforced? That is one question.

Another is: do they achieve their goal? This raises the important question: what is the goal of sanctions? Very often, in fact almost always, there is no clearly articulated policy goal or achievable end written into a sanctions regime. They tend to be phrased in broad terms along the lines of, "We've imposed sanctions in view of the deteriorating situation in a country", or, "in view of actions in Ukraine", but not with any clearly articulated goal or road map towards their lifting.

Another goal, of course, is sending political signals of one kind. Another is trying to coerce or change behaviour and constrain behaviour by the targets of sanctions, but I suggest that all those are extremely difficult to measure and often, as far as I understand it, are not really measured at all.

That may not be the central concern of today and of this Committee, but it is important, given how many of the questions are framed in terms of the effectiveness of sanctions, to realise that that in itself is quite a complex issue.

Q3 The Chair: Thank you very much. That is a very good and comprehensive opener for us. Would Mr Dall and then Dr Portela like to add any comments on those general issues? In doing so, you might weave in whether you agree with what the FCO said in its evidence to the Foreign Affairs Committee of the House of Commons in 2019: that sanctions are most effective when they are agreed and adopted collectively.

Emil Dall: Thank you, members of the Committee, for inviting me today. I will add a few points to what Maya has covered already. In addition to the UK being quite an ambitious advocate for sanctions around the EU negotiating table, we should also remember that the UK has been credited as being a bridge builder between the US and the EU on sanctions when the UK was still a member of the European Union. The US often used the UK as an entry point into the EU's sanctions decision-making mechanism. I just wanted to emphasise that part of the influential role that the UK played as well.

In our research over the last few years—unfortunately not recently during the pandemic, but while we were still able to travel—we went to a couple of EU capitals to talk about the impact on the EU sanctions policy of the UK leaving the European Union. A quote that kept coming up was that, “When the UK was a member of the European Union we didn’t have to invest that much in our own capacities as Member States in coming up with sanctions and designing sanctions”. Policymakers in one Member State said, “If the FCO lawyers have looked at this, we’re happy to go ahead with the designations”. I think that is quite telling.

The UK, prior to Brexit, had quite a large function for sanctions, whereas some Member States will have a few people looking at sanctions. After Brexit, the UK has expanded that role for sanctions, so the UK has more capacity and has invested more resources in sanctions. That was very evident while the UK was a member of the European Union.

This is not just about the UK being of benefit to the EU on sanctions. While a member of the European Union, the relationship was one of mutual benefit. UK intelligence very often supported the designations agreed around the EU negotiating table. It often strengthened the sanctions agreed by the EU, but we also should not forget that due to the size of the EU market—the EU being a primary trading partner with many economies around the world; a large economy taken together as a bloc—the EU gave impact and weight to the UK’s priorities abroad. What I mean by that is that the UK was able to push its priorities within the EU on sanctions, and in return the EU gave weight to the sanction decisions that came about.

That leads into your quote about sanctions being more effective when done in co-ordination. That is very true, because the more countries there are that implement a sanctions measure, the fewer avenues there are for evasion, the fewer avenues are left for the sanctions actor to pursue business opportunities, the more markets you can shut off, the more you can inflict economic harm on the sanctions target.

But there is also an argument to be made about speed, and speed and effectiveness is a careful balancing act. While doing sanctions with the EU might be more effective in its ultimate economic impact on the sanctions target, there is an argument to be made that the speed by which sanctions are decided in the EU might not have contributed to that. If you cannot deploy sanctions fast enough, you might lose some effectiveness as well. I will finish there, but there are a few points to build on.

The Chair: We can develop a lot of these points as the discussion goes on. Dr Portela, do you want to add to this general presentation before we get into the more specific points?

Dr Clara Portela: Thank you very much. I will complement what my predecessors have said. I fully agree with the analysis presented by both of them. As far as the contribution of the UK to the development of EU sanctions policy is concerned, I can only corroborate the statement that the role of the UK has been absolutely central.

It has had a role of leadership in the context not only of the establishment of sanctions regimes but of proposals for specific designation, which often came from the UK. This role has been so central that one can hardly imagine that sanctions regimes such as the sanctions regime on Zimbabwe or on Myanmar over previous decades could even have come about in the absence of the UK's input.

Another important aspect that has contributed to the development of EU sanctions policy is the support of Brussels structures via the secondment of experts from London. The main driver or the main reason for this is because the UK has much better capacities for sanctions design and sanctions implementation, basically everything related to sanctions, than any other Member State.

I fully agree with what the first speaker said about the lack of specification of the objectives of sanctions. Obviously, this makes an evaluation of their performance pretty difficult. The EU's sanctions policy has traditionally been characterised by timidity in making it public and clear that the EU had sanctions as part of its foreign policy, and this has impacted on the sanctions discourse in that there was very little explanation of the objectives of sanctions and what they were actually intended to achieve.

I will complement the different functions of sanctions that Ms Lester has put forward by pointing out that often the EU imposes sanctions because it wants to support the democratic opposition in the target countries. It is under no illusion that simply by blacklisting a number of people it will be able to bring about a change in leadership or stop a situation of democratic backsliding, but it wants to make it clear to the leadership that the EU is watching what is happening to the political opposition and that if something happens to it the EU will react to that. Even looking at the very sparse information provided on the objectives of the sanctions regimes, we can see that sanction has been very much a policy of protecting democratic opposition in autocracies.

Of course, there is also an element of showing a united front, making it clear that all Member States—formerly 28, now 27—are behind the policy, and this has particularly come to the fore in the current discussion on unanimity. The fact that every sanction regime has to be accepted by every Member State gives a clear message of unity.

Other questions will be more prospective, so for the time being this is what I wanted to allude to.

The Chair: Thank you very much indeed. Those were three very comprehensive introductions. That gets us well into the substance. We have lots of questions to ask you on more specific points. I should have said at the beginning that not all three panellists necessarily have to answer every question so that we have time to get round to all of them. I will pass the ball now to my colleague, Lord Lexden.

Q4 Lord Lexden: Mine is the obvious next question on what we have heard. It is simply: what is the impact of Brexit on EU sanctions policy likely to be? As we have heard,

the UK has played a central role and often advocated strong or robust positions against targets such as Russia. Is there a real danger that the UK's departure will lead to a more cautious or restrained EU sanctions policy that would be widely deprecated and against so many of our interests?

Emil Dall: It is difficult to say, so I will argue on one hand and on the other hand and get myself out of the question that way.

On one hand, yes, it could lead to a more cautious European Union approach to sanctions because of the need to create consensus. We saw that recently with sanctions against Belarus when the EU announced its intention to respond to the developments in Belarus with sanctions. Nothing happened for a while, because it hit a deadlock with a Member State objecting and effectively vetoing those sanctions going ahead. That caused the UK, which had originally envisioned collaborating with the EU on those sanctions, to move ahead on its own, because now it can move ahead on its own.

It can be argued that because the UK is not around the negotiating table it has lost its ability to win over the support of the more sceptical countries or what we sometimes call spoiler countries, the countries that have other interests at heart or might have closer relations with some of the countries that are due to be sanctioned or might have other priorities and which are therefore spoiling the consensus on sanctions with the EU. That is a prospect, and there has been recognition by the Commission—by the High Commissioner for External Affairs, Josep Borrell, and the Commission President—that the consensus decision-making may not be fit for purpose if the EU wants to pursue a faster-acting sanctions policy.

However, I recognise that since Brexit and the UK's departure from the EU there have been steps in the EU to set itself ambitious goals on sanctions. I do not think we should see the EU as a static actor that will not move after the UK leaves the negotiating table. The first moves were made by moving the sanctions portfolio away from the External Action Service and into the financial stability and capital markets department, with a clear mandate to strengthen the enforcement of sanctions among all Member States and make enforcement of sanctions more uniform—something which the EU is often critiqued with.

The EU rolled out and started using cyber sanctions this summer. That is a new regime that it has embraced. The EU is moving ahead with its own human rights sanctions regime. We see the emergence of new sanctions players that are perhaps anxious about the UK's departure from the EU and therefore eager to fill that capacity gap. Countries like Germany and the Netherlands recently co-authored a paper to the Commission where they encouraged the Commission to be more ambitious on human rights sanctions and perhaps move towards a majority voting system rather than a consensus system.

There are things happening in the EU that mean that the EU will not be stuck where we left it at the point of departure from the EU, but there are also risks that on certain sanctions issues the UK's influential voice might not be there. Then, of

course, there is the crucial aspect of whether, if the UK is not able to share its intelligence—it is the intelligence that will support designations, even if the EU has a cyber sanctions or a human rights sanctions machine in place that is ambitious in scope and objective—it will be able to pass as many designations as it would have, had it been able to readily feed into those designation processes. So, yes and no is my answer on that.

The Chair: Very good. Dr Portela, do you want to give us a quick comment, from the EU perspective, on Lord Lexden’s question?

Dr Clara Portela: Certainly. Thank you very much. I think that we can distinguish between short-term effects and long-term effects. In the short term, the EU is unlikely to relinquish the sanctions regimes that have already been established, simply because this poses a credibility problem. We have seen how the sanctions regime on Russia has persisted beyond the expectations of many observers.

However, in the long term I think we face trends that go in opposite directions. On the one hand, the EU has now established horizontal sanctions regimes that have already been mentioned; one of them is against cyberattacks and the other is on chemical weapons attacks. This is definitely a tool that will facilitate co-ordination with British sanctions policy and with North American sanctions policy, which are likely to be very close in any case.

Another possible trend is that there has already been a process of socialisation among members of the Council. They have got used to the idea of resorting to sanctions as an important foreign policy tool, so this will not go away overnight. In the long term, I think we can expect to see a decline in the number of sanctions regimes established, because their establishment is very much linked to the exercise of leadership by a strong Member State that has capacity, as used to be the case with the UK.

Secondly, with the quality of sanctions regimes we will see the EU sticking more to personal sanctions regimes, narrowly targeted sanctions measures, rather than measures that affect the economy more broadly or that affect specific sectors or that may have broader implications for the economy.

The Chair: Ms Lester, do you want to add any quick thoughts at this point?

Maya Lester: I do, and my answer will, I hope, also cover some of the other questions that are closely related to it.

It is very difficult to answer in the abstract what will happen on foreign policy. In theory, of course, the point of Brexit is that the UK will be responsible for its own foreign policy and the 27 Member States will decide the EU’s foreign policy without the UK being there, but I do not see it as necessarily signalling any particular change in EU sanctions or indeed in the approach of the UK; we will come on to that. That is because of what I said about the very high degree of co-operation and co-ordination between the UK and Member States.

There is a very real possibility that, as long as the will is there, that can continue post Brexit. What do I mean by that? I think it is unlikely that there will be a formal relationship between the UK and the EU on sanctions. It is very hard to see there being some sort of formal relationship with regard to each other's foreign policies.

However, the Committee has asked about potential informal co-operation post Brexit, and if the bilateral relations that I mentioned with France, Germany and other Member States continue to be strong, they are not formally related to the UK's position in the EU Council working group meetings, for example. We will still continue to have a mission in Brussels, albeit it is no longer called representation but a mission, but as long as the political will is there, there will continue to be conversations between the United Kingdom and the European Commission, the External Action Service and other EU institutions, even though the UK will not be present at Council meetings. Crucially, as long as the political will is there, the UK will still have those relationships with the US, Canada and so on.

At the moment, my impression is that the EU will still have respect for the UK's expertise when it comes to sanctions. Both the EU and the UK should, I imagine, agree that sanctions are more effective when they are multilateral. The simple reason for that is that they apply in more Member States. A UK sanction applies only in the UK or to UK nationals. An EU sanction applies throughout the EU and to EU nationals across the world. That is obviously desirable in multiplying the effects of sanctions. The UK is highly likely to want to partner with international partners and allies, which will include the European Union, the United States and others where that is possible in policy terms.

It is interesting that you can already see that the post-Brexit picture is likely to be characterised by a high degree of co-operation between the UK and the European Union. I will give three quick examples. Germany and France recently proposed to the EU that they target those responsible for the poisoning of Alexei Navalny with targeted sanctions, and the Foreign Secretary immediately said that the United Kingdom would support that and work with international partners to achieve it. As you know, the UK has recently enacted its own new global human rights sanctions regime and the EU's is very much in the pipeline. It is not exactly co-ordinated, but it would be surprising if there had not been conversations between the UK and the EU about those regimes.

Finally, there is Belarus. As Mr Dall said, the UK has recently listed Lukashenko and others on its new human rights sanctions list. Canada listed exactly the same people at the same time, and the EU has indicated that it will do so shortly after. It seems to me that it would be unlikely if that did not reflect a very close degree of continued co-operation between the United Kingdom and the EU on sanctions.

Lord Lexden: Thank you very much for those extremely valuable and wide-ranging comments.

Q5 **Baroness Finn:** Good morning. My question will be in three separate parts, so I will ask one part after the other. The two following parts will be about formal and

informal mechanisms for co-operation between the UK and the EU on sanctions.

The first question relates to the likelihood of co-operation in the first place. In evidence to the Lords EU External Affairs Committee's inquiry into Brexit in 2017, the Government said that they would seek an unprecedented relationship with the EU on sanctions. This is not surprising because, as the RUSI report points out, the EU states would be the most obvious partners for the UK.

However, given that no mechanism currently exists that would allow third parties to have formal involvement in the direction and formulation of the EU sanctions policy, how likely is such a relationship in the future?

I do not know who the best witness is to answer first. Maybe as the RUSI report looked into this area, it might be sensible for Emil to go first on this.

Emil Dall: I agree with what Maya Lester said about the likelihood. If there is the political will to seek co-ordination, it is certainly possible. There are a lot of informal relationships currently in place between officials who work on sanctions in the various Member States, and those relationships are still in place for the foreseeable future. In the UK, we have had the Civil Service shifting around for a few years, and there is a risk that the personal relationships that were in place while the UK was a member of the European Union will be replaced with new relationships. I do not think that personal relationships should be underestimated in that context.

If the political will is there, it is certainly possible to have some kind of channel for co-operation. I do not think there would be a formal mechanism whereby the UK had the same input and power it used to have—the ability to veto and to sit around the negotiating table and directly convince and influence other Member States.

I think it is more likely to be like the relationship that we see the US has right now with the European Union. The US is a third country that sits on the outside but often seeks to influence. It communicates and co-ordinates quite frequently with the EU on sanctions, but it is not up to the US whether the EU follows everything the US wants it to do.

We will see the same kind of mechanism at the very least for the UK, because there is still that respect for the UK expertise. Whether a more formal channel is developed for co-ordinating intelligence, proposed designations, and things like that remains to be seen. There have been mixed communications from the Government and from the EU, and I am not sure where those negotiations stand right now on developing such a relationship.

I will say, to play Devil's advocate a little bit, that the EU could also be willing to have extensive consultations with the US on sanctions, because the US sanctions have wider reaching effects, primarily through the centrality of the US dollar to global financial transactions, and the US sanctions often having extraterritorial reach. The UK does not wield a similar financial and economic power, so we need to be careful about the fact that the EU might not view co-ordination and the UK's input as important a priority, as the US often had a channel for that.

Finally, it is worth emphasising that we will operate with two different sanctions regimes and that small nuances will exist over time. There will be different listing criteria. Some of those designations will now be challenged in UK courts as opposed to EU courts. That will also create differences in how future designations are done—I am sure Maya Lester will be able to expand further on that point—and there will be different foreign policy priorities.

So, yes, some form of co-ordination is possible if there is political will, but we are operating a separate sanctions regime right now, so there is only so much you can do with it, if that makes sense.

Baroness Finn: Thank you. Do Maya Lester or Clara Portela have anything they would like to add on that before I go on?

Maya Lester: I have already presumptuously answered that question in my previous answer. In a nutshell, yes, there could be separate foreign policies pursued by the EU and the UK but, in my view, discussions are highly likely to continue to take place. The UK is very unlikely to be a third country that simply always aligns with EU sanctions, which is the position of lots of non-Member States. I think it is much more likely that there will be active discussions of the kind we are already seeing.

Q6 Baroness Finn: Thank you. That leads on to the next part of my question. Should the future co-operation between the UK and the EU sanctions be on a formal or an informal basis? At the moment, only formal mechanisms are recognised, but if it is informal, how will that affect the UK's ability to influence the EU sanctions policy and to ensure that its own sanctions are enforced by EU states?

Maya Lester: As I have said, I think formal mechanisms are unlikely. Informal mechanisms can certainly work if there is will on either side. They are already working and to some extent, with the UK as a Member State, were already a key aspect of the EU's sanctions. You could say that it would be harder for the UK to persuade the EU to adopt a similar sanctions position as it has done, because it will not be round the Council table and there could well be divergence on some issues. I do not think that will have an impact on the UK's own sanctions regime, which I know we will come on to talk about.

But, yes, it certainly means that some sanctions may have effect just in the UK and that other sanctions may have effect in the EU but not in the UK, and there will be others. At the moment, it is hard to think of a foreign policy issue on which we have radically different views. The EU and the UK seem to me to be broadly aligned on most foreign policy issues I can think of, but that could change very quickly.

One only has to think of United States sanctions in 2013 and 2014 in particular. When negotiating the Iran nuclear deal and negotiating sanctions on Russia, the US and the EU were absolutely joined up and hand in hand on sanctions policy. That was considered very important. That was under a different US Administration, and now we are in the opposite position whereby the US, the EU and the UK take diametrically opposite views, particularly when it comes to Iran and sanctions, so

the picture is very much one of non-alignment. Indeed, we have enacted legislation in the EU to try to make it unlawful in the EU to comply with some US sanctions.

So this possibility for legal divergence is very real and could exist in theory between the UK and the EU, but as far as I understand policy at the moment, that is not the situation we are in now.

Baroness Finn: Thank you very much for that. To be honest, you have answered the second part of the question, which was: if co-operation could be on a formal basis, what form could this take? The point is that you do not feel that it will be on a formal basis in any case, in which case I will leave the floor open to Dr Portela and Emil Dall to answer on formal and informal mechanisms.

Dr Clara Portela: I want to make a very brief comment. Again, I would make a distinction between the short term and the long term. In the short term, the UK will remain very influential thanks to the strong bilateral partnerships that it has with some EU members.

However, I would like to caution that, in the long term, if the smaller and middle-sized Member States in the EU, which now make up the vast majority of the membership in the Council, have the feeling that sanctions policy is being co-ordinated between just a handful of important or big Member States in co-operation with the UK without them being involved in the conversation, this might create some resentment and there might be a push back towards this practice.

In the short term, none of the Member States has upgraded sanctions design capacities at home, simply because they have not had the time and they have had other priorities, so reliance on the UK's input will be quite high. I think everybody will be happy about that, but this situation might not necessarily persist for five or 10 years. That is all I wanted to say.

The Chair: That is a very important point. Mr Dall, forgive me, I will pass on now to Lord Kirkhope.

Q7 Lord Kirkhope of Harrogate: The generality of my question has been touched on by one or two of our speakers so far, because I want to look more at the question of alignment between the UK and the EU on sanctions policy.

I think it is true to say that the EU has over 40 sanction regimes in place at present. It operates entirely on the basis of Article 21 of the European treaties, which of course develops the objectives and the goals of the common foreign and security policy. Those goals are very specifically in respect of human rights, democracy and the rule of law, and they are laid down in very specific terms, with updates regularly taking place through the European Council. I think the last one was in 2017.

Talking about how we can have any kind of alignment, you mentioned bilateral issues, good relationships and those sorts of things, which are very important indeed but also very nebulous. My concerns are these. If we wish to align, we probably need some form of clearing house—maybe other than the United Nations, because the United Nations is where, with many of their policies, the EU, UK and

other countries go to get clearance for sanction approaches.

I do not see, unless there is some other kind of mechanism, how we can have regular and constant alignment between the United Kingdom and the EU on this matter. How will we align, not in the sense of being a third country, which we legally will be, of course, but in a much wider sense? I would like the views of our guests on that point in particular, please.

Maya Lester: As a result of Brexit, almost by definition we cannot guarantee regular and constant alignment between the UK and the EU on foreign policy issues. What we can do, particularly with the UK's new legal powers, is act pretty quickly. If the EU enacts sanctions that we wish to apply in the UK, the fact that we are not legally obliged to do so any more certainly does not mean that we will not be able to do so. We could do so extremely rapidly but using powers under the Sanctions Act rather than the European Communities Act. Likewise, if the EU wishes to follow what the UK has done—a good example now is global human rights sanctions—it can do so perhaps slightly less rapidly, but there is no reason at all why we cannot adopt the same foreign policy as each other post Brexit.

The United Nations is a slightly different body here, because although it has sanctions of its own, the presence of Russia and China in particular in the Security Council means that its regimes are far more limited than those of the EU and the UK. I agree that there will no longer be a legal mechanism for ensuring alignment, but if the EU and UK wish to align they should be able to do so pretty swiftly.

Lord Kirkhope of Harrogate: This is all very well, but that is no more an alignment of any kind of semi-permanent or constant set of principles than an alignment between any two countries of the world. In a way, therefore, there is no real prospect, is there, of any mechanism, any means, whereby our close connections through the European Union as members can be continued in this field?

Maya Lester: I do not think there can be a guaranteed legal mechanism. I may be wrong. A formal sanctions relationship may be agreed, although I would find that very surprising, but, with respect, I may not be as concerned about the practical impact of having two different systems. Indeed, as we will come on to in later questions, there are real advantages in the United Kingdom having its own sanctions system, because the EU system, at least in my own personal view, was very far from perfect when it came to sanctions imposition.

It is absolutely correct to say that the immediate effect of Brexit will be that, at the end of the transition period, we will have legally separate regimes and there will be no legal mechanism to require the EU and the UK to work in lockstep. But I would also emphasise that where countries wish to do the same thing on sanctions policies, which they did for many years, and I would include the United States and the European Union in that, they did so; by that, I mean that one country would impose sanctions one day, and the next would follow with pretty much identical sanctions a couple of days later. Although it is not automatic, if the foreign policy will is there, it can be done, albeit by a non-legally required mechanism.

Q8 Lord Polak: Is divergence possible on sanctions against financial institutions, where the UK has perhaps a slightly lighter touch on enforcement than the EU; and on human rights, where the UK seems to be seeking to be more robust?

Emil Dall: I am not sure there will necessarily be differences on enforcement, because traditionally the EU has farmed out enforcement of sanctions to individual Member States. While the sanctions were designed in Brussels, they were implemented in each individual Member State, so I do not think the UK's attitude to enforcement will necessarily change having left the European Union.

I think the EU's attitude to enforcement will become more uniform across Member States because of the steps now being taken by the European Union to create more uniform guidelines and to educate Member States on how to implement and enforce sanctions effectively.

On that point, the human rights angle is interesting, because it has very clearly been a priority for the UK Government to use human rights sanctions as a way to establish themselves on the global sanctions scene. The EU does not have a human rights sanctions regime at the moment, and it is rapidly moving towards that.

If I can add to what Maya said in her last answer, a good example of where there is no formal or legal requirement for co-ordination but where co-ordination still happened is what the UK has done so far on human rights sanctions. I believe that 45 out of the 49 designations imposed by the UK in July directly copied designations that were already in place in the US. More recently, the individuals designated in the case of Belarus were designated in direct co-ordination with Canada and announced at the same time.

If the EU has the similar regimes in place, I do not see why they would not be able to be brought into those conversations and co-ordination decisions going forward. I hope that answers your question.

Lord Polak: Yes, I think it does. Earlier, you said that the US used the UK as an entry point on sanctions—the most current issue being the UN arms embargo on Iran, which expired on 18 October, literally last week. It seems that the UK went with France and Germany automatically against the US. Do you feel that the US using the UK as an entry point will come to an end post Brexit?

Emil Dall: I think that to a certain extent is more of a historical relationship. There have been a lot of developments in US sanctions policy over the last four years which mean that the UK and the US are not as aligned on their priorities and their view of sanctions as they perhaps used to be—not looking, of course, at human rights sanctions, which are more values based and less consequential, because they are against specific individuals who have been involved in human rights abuses rather than against the whole country. With country-wide regimes, there are closer views and there is closer alignment between the UK and its European partners, so on Iran, Syria or Russia there are priorities with which the UK is still aligned.

The UK played a useful role in the transatlantic co-ordination of sanctions when the Iran sanctions were first agreed. The UK advocated for the EU to impose comprehensive sectoral sanctions against Iranian oil exports, for example, which was something the US was also pushing for the EU to do.

On Russia, we saw it happening with the invasion of Crimea and the incursion into eastern Ukraine. Again, the UK advocated and was in lockstep with the then US Administration. Perhaps my comment needs the caveat that it also depends on the mood of the current US Administration. The current US Administration using sanctions much more aggressively and much more sporadically is perhaps not always something the UK can sign up to.

Lord Polak: Thank you. My second question has already been answered, so I am happy to move on.

The Chair: Thank you very much. We can always circle back on some of these. I pass the floor to Lord Dholakia.

Lord Dholakia: I think all three witnesses have mentioned that the UK has played a very important and effective role on sanctions. That gives rise to two very brief questions. Dr Portela, will the EU continue to be influenced by UK sanctions policy and priorities? To Maya Lester, should the UK seek to influence EU sanctions policy to align it with the UK foreign policy, and in particular to the strengthening of co-ordinated sanction efforts?

Dr Clara Portela: The question directed to me is whether the EU will continue to be influenced by UK sanctions policy and priorities. I think this relates to what I mentioned earlier. In the short term, the answer is certainly. The EU is also quite interested in international alignment of its sanctions, basically because of the nature of the instrument: there is very little to gain from imposing sanctions in isolation from other international actors, and there is a lot to be gained from co-ordinating with others.

I see a lot of potential for co-ordination, particularly because the EU is already trying to co-ordinate as much as possible. Of course, there are also limits to that, but it already follows a policy of co-ordinating with the North Americans. It is difficult to see the UK imposing sanctions that are very different from those that are going on in North America and which European partners are also contemplating.

My guess is that we will move to a situation where all three actors—or four; including the Canadians, we will have four actors in this landscape—will largely agree on imposing sanctions regimes together. The differences will be in the specific designations and the extraterritorial reach of the measures, which is obviously part of US policy and not part of Canadian or EU policy.

As far as sanctions regimes are concerned, we will see a lot of co-incidence, or coherence, of alignment, but when it comes to specific designations and the nature of the measures, we will see discrepancies. In order to minimise the level of discrepancies, it would be quite useful to contemplate some sort of formal

consolidation mechanism, which is definitely nothing that imposes any legal obligation on any actor to adopt sanctions imposed by any other. This is already subject to intense communication between the EU and the North Americans. I think that touched on the thrust of the question.

Maya Lester: Should the UK seek to influence EU sanctions policy? I should imagine that the UK very regularly tries to get foreign policy support from its international partners, and in that sense I imagine that it will seek to do so where the interests of the EU and UK line up on sanctions issues. I have already given examples of three cases where the UK has sought to do that, but, I emphasise, where it is in the foreign policy interests of the UK and the EU both.

Lord Polak's question on the arms embargo on Iran is an excellent example of where foreign policy interests and goals do not always line up. At the moment, I am not aware of a sanctions issue where the UK and the EU radically diverge, but the gulf at the moment between the United States and the European Union and the UK on Iran's actions is a very good example of where we may not seek alignment. In fact, we may seek absolutely the opposite, which will now be possible post Brexit.

Briefly, on that example, the arms embargo expired. That was a key part of the Iran nuclear deal. The US tried, in the United Nations, to stop the arms embargo from expiring, and the UN voted against letting it do so on the grounds that the US had expressly ceased participation in the Iran nuclear deal and therefore was not in a position to say that certain parts of it should continue. So the UK and the EU, which are seeking to make sure the Iran nuclear deal lives in despite the US exit, have taken a different view from the United States on Iran.

However, importantly for this discussion, that does not mean that there are not still—I imagine there are—regular discussions between the US State Department and the Foreign Office on sanctions issues. It may be a different flavour of discussion under this Administration from the last. I do not know, but I would be very surprised if there were not regular sanctions discussions on key policy issues between the United States and the EU and the United States and the UK among others.

The Chair: Thank you. I certainly hope so, and I am sure you are right. I am sure there will be. It also shows, as you say, how quickly the weather can change on sanctions with a change of policy or regime.

Q9 Lord Arbuthnot of Edrom: This is a question for Emil Dall. The evidence the RUSI task force received was about what would happen if there was divergence on the standards between the sanctions policy of the UK and of the EU. Some sanctions designations on the EU's list might not be transferred to the UK after the end of the transition period. What would be the consequences of that?

Emil Dall: I would first like to correct my former answer. I said that the US used sanctions more aggressively and sporadically. I of course meant more aggressively and perhaps more randomly. They are by no means sporadic; they are very frequent.

Thanks for your question. We do not yet know how many EU designations will still be in place in the UK after the end of the transition period. The UK will have different evidentiary thresholds—the standard of evidence that will be needed to support sanctions designations. The good thing there is that a lot of the EU designations have originally been supported by UK evidence, so it is envisioned that a lot of them will be acceptable to the UK. There will be different listing criteria. We are likely to see a small drop off in the number of EU designations currently in place that will still exist in the UK after the end of the transition period. I do not think an official percentage has been confirmed yet. I have heard various numbers, and I am not willing to share them here, because every number I hear is slightly different.

There is no immediate consequence of a designation which the EU has in place not showing up in the UK, other than that person would technically be able to access assets and use financial services through the United Kingdom, and will be able to travel to the United Kingdom. However, if you are on an EU sanctions list, I would be very surprised if any UK bank did not continue to obey the EU sanctions lists on top of the UK's sanctions list.

That is an aspect that we have not discussed as much here—the role of the private sector. The private sector, of course, has a rules-based approach whereby they implement the lists that are in place within the jurisdiction they operate in. However, private-sector financial institutions, which are really in the front line of sanctions implementation, also operate according to risk. If you are a bank in the UK, you are unlikely to be willing to offer financial services to someone who is on an EU sanctions list, and, until very recently, used to be on the UK sanctions list. The role of the private sector is quite interesting here.

Another interesting aspect is that, even if some of the designations are transferred over—so even if the same name continues to appear on the UK's sanctions list—we might have different identifying details. If the UK has access to slightly different evidence than the EU, we might see different aliases coming up, or different details about that designated person.

The financial institutions that we have interacted with, both in the UK and the European Union, have expressed some concern that that will cause additional compliance hurdles, because not only do you need to consult two different lists, but people on those lists might be identified in slightly different ways, if that makes sense, and you need to account for that. If we are talking about just a few designations, the consequences of those few designations are unlikely to be great, and the private sector is there to pick up any of the gaps that might exist.

Finally, we will have designations that will be transferred into the UK, and the role of the courts here will be important, because the UK courts will start deciding on challenges to those designations. That might cause the designations to change over time, so even if a designation is transferred over to the UK after the end of the transition period, it might not be there two years later if the UK courts find

something there. I am not an expert in prophesying what the UK courts might do, but I hope that answers your question.

Q10 Lord Anderson of Swansea: Of course, the private sector was decisive in effective change in South Africa when, in 1986, Chase Manhattan refused to roll over loans to South Africa.

I have two questions. One is on alignment. The other is about the common sources of intelligence on human rights infractions. First, regarding alignment, I note that in December of last year the high representative said that the EU has “agreed to launch the preparatory work for a global sanctions regime to address serious human rights violations”. How much progress has been made in that formulation, and can it in some way align with the announced new global foreign policy of the UK?

Maya Lester: The brief answer is that the EU has made enormous progress. The first legislative step has already been taken, which is the joint proposal for a Council regulation that was made on 20 October. The aim, albeit an informal one, is that by Human Rights Day on 10 December an EU human rights regime will be in place. We will see whether that happens, but all that remains is that the Council regulation and the decision, which are the formal bits of EU legislation, are agreed.

There is, I suspect, a draft, although not a public one, of the legislation. Whether it mirrors the United Kingdom human rights global targeted sanctions list in all respects we of course do not know. We will have to see. But I would have thought, again, that it would be unlikely that there has not been some sort of discussion between the UK and the EU about what those human rights sanctions regimes would look like.

If I may, I will take the opportunity to make one comment on Mr Dall’s answer to the last question. I very much hope that he is not right about the approach of the banks. As I understand the position, the Foreign Office, to which tribute is due for an incredible amount of work between the Brexit referendum and now preparation for this, has looked at the evidence underlying around 1,000 listings—evidential files that are probably more open-sourced than intelligence led, but who knows—and decided which meet the standard to become UK listings. So if there is divergence between the UK list and the EU list, my understanding, as I think is Mr Dall’s, is that all but a handful will become UK listings.

My own view is that there are some sanctions regimes—namely, those relating to Ukraine, Tunisia, and Egypt—that I strongly feel should not become UK sanctions regimes, but sadly I do not think we have time for that detailed discussion today. What I will say is that if the United Kingdom does not list somebody in the United Kingdom, that should mean that those people are free to use their assets in the United Kingdom and to travel in the UK. Even though banks, of course, take a cautious view to compliance with sanctions, it would be surprising if banks, therefore, prevented them from exercising those rights.

The Chair: I wonder whether Dr Portela wants to comment on the first part of that question on where the EU are on a draft human rights regime.

Dr Clara Portela: Thank you very much. Basically, my information is similar to the information presented by Ms Lester. Even though we are aware that the draft legislation has already been tabled, the contents are not public, so it is very difficult to comment on that.

Lord Anderson of Swansea: Presumably we and the European Union would draw broadly on the same sources of information to select targets, which include, of course, the United States and Canada, possibly Spain in respect of Latin America, in addition to the diplomats in the field and our own intelligence. To what extent would the UK and the EU rely on well-known NGOs? I am thinking of Human Rights Watch, Amnesty, and of course individuals, like the remarkable Bill Browder and that Norwegian NGO that collates information around the world. How warmly inclined are both the UK and the EU to draw on the pool of expertise and information in NGOs?

Emil Dall: Civil society input into human rights designations has been incredibly important, because it ensures that evidence is often collected on the ground by people who view it first-hand, and with a subject like human rights abuses you often need some evidence that a specific person has been involved in a human rights abuse. While it might be common knowledge that human rights abuses are taking place in a country, civil society can play a role in identifying specific people that have taken part.

I am not familiar, I have to admit, with the extent to which the UK is willing to accept civil-society input into those designations. I know that it is a topic of discussion in the EU's regime. In the US and Canada, it is more commonplace for civil society to feed into designations. In the EU, there is encouragement from some Member States to accept civil-society evidence.

I will also point out another point of contention right now in the EU's human rights sanctions regime. You might also know that they are often refer to Magnitsky-style sanctions, primarily in the US and Canada, and in the US they include human rights and corruption. The EU is yet to decide, I believe, whether corruption will be part of the regime, but since it has named it the human rights sanctions regime, I do not think corruption will be part of it.

I am not entirely convinced about the ability of the UK to include corruption-based designations within its human rights sanctions regime. I believe that there is more flexibility for the UK to do so, because the Sanctions and Anti-Money Laundering Act that out the UK sanctions regime provides for quite wide reasons for designations. I do think there is more flexibility for the UK to do human rights and corruption, and the EU might not follow on that.

The Chair: Thank you very much. Thank you, Lord Anderson. I will now move on to the issue of the UK future global sanctions policy, and ask Baroness Primarolo to open up that area for us.

Q11 **Baroness Primarolo:** Good morning. Thank you very much for what has been a very

informative and detailed session of evidence this morning. You have stressed all points rightly: the importance of co-ordination and collaboration in both the design and execution of sanctions.

Given the UK's interaction with the US, North America, the EU and other actors in this field, and the change in environment, are there advantages to the UK having its own sanctions regime, even though it will be outside the European Union's dragnet?

If there are advantages, could you spell out what they are so that we can see how, in this changing environment, the UK might respond?

Maya Lester: I think we have all been clear about the most significant disadvantage, which is simply that sanctions which the UK imposes will not automatically have effect in 28 Member States. Apart from that serious disadvantage, I see a number of very significant advantages: first, advantages to the UK not having to try to reach agreement with 27 Member States.

Mr Dall has already mentioned the need for speed, and trying to reach unanimity is a significant hurdle to having swift EU sanctions. He also mentioned the case of Belarus, where sanctions were recently very nearly not agreed because of the actions of one Member State. There will not be that EU need for compromise and unanimous agreement, but there are a number of opportunities for the UK to do sanctions better than the EU, with no disrespect to the EU system.

One of the principle disadvantages of the EU system was a lack of clarity about what the sanctions legal instruments actually mean. If this Committee were minded to speak to the private sector, or anyone trying to comply with sanctions, the vagueness of the EU text would be high among their complaints. That is, of course, partly in the nature of EU legislation: that it has to be the result of some degree of compromise.

There has also been an almost complete lack of guidance from the EU institutions, or indeed Member States, on what the meaning of those sanctions really is. That is part of the explanation for the significant degree of over compliance, because, of course, those seeking to comply who do not really understand what the rules mean will seek to do the right thing by giving them wide meaning.

What we are proposing in the UK, and indeed what the Act requires, is a statutory duty on the Government to give guidance. They have now published very helpful guidance on every sanctions regime, so we have that already. They have also engaged in a significant degree of outreach. Last week, there were remote round tables—if you can have a remote round table—between the UK sanctions authorities, the legal sector, NGOs and charities, and the financial sector, to explain what is happening post Brexit.

Another very significant disadvantage of the EU system is that there is no regulator, no central agency, with responsibility for sanctions implementation. There is simply, as it were, the Council of Ministers—all the Foreign Ministers meeting together and

enacting sanctions. What there is not is any responsive agency that will give guidance, answer the questions of those who are the subjects of sanctions who feel very frustrated that they might have been wrongly designated, for example, or indeed answer questions about what sanctions mean.

Another frustration is that the EU system, as with the UN system, only permits exceptions to sanctions, to asset freezes, in extremely limited situations. The Sanctions Act in the UK takes a much broader approach, I think wisely, and it permits, for example, exceptions to be made for whole categories of transaction or conduct, rather than having to make a separate application in every case.

I also think that there is a significant opportunity for parliamentary scrutiny. The Sanctions Act requires Ministers to report to Parliament on a number of aspects of sanctions, and I very much hope that when they do so those reports will—I am sure they will—be carefully read and scrutinised. Now, for the first time, a sanctions imposer, the UK, will have to report on the purpose of the regime—coming back to a point we discussed earlier—the point of the regime, and why sanctions are a reasonable course of action.

Ministers have to report on reviews of sanctions, something that only in theory happens at EU level. Every year, in principle, a decision is supposed to be made about whether a sanctions regime is appropriate and whether any purpose is served by keeping people on the list. However, I have never, with great respect, seen that done in any substantive way. That is now a requirement of the Sanctions Act.

Some significant scrutiny was given by the House of Lords and Commons EU Scrutiny Committees to some of the practices of the EU, and not only the legality of sanctions reports, which criticised a number of aspects of the EU sanctions system. They even took an interest in some very detailed practices in individual cases, in particular the EU practice of relisting those whose designations had been found to be unlawful by the European Court. They found themselves, as invariably happens, on another sanctions list the very next day, even in circumstances in which there is no new evidence relating to them.

I think parliamentary scrutiny is an excellent idea, particularly in circumstances where an amendment was rejected to extend the role of the Individual Reviewer of Terrorism Legislation to a sanctions list. That was considered and rejected, and in those circumstances I would welcome some degree of parliamentary scrutiny.

I would also point to two further factors. One is that the Sanctions Act presents real opportunities for there to be not only a responsive agency but an administrative agency that actually responds to submissions and representations, not only by those on sanctions lists but by others, as well as a court process. I know that forms the subject of one of the other questions that we may come to, but my view is that there will be a substantially better system for judicial review of sanctions listings than there has been before.

One final comment, if I may, on the question about the role of civil society and NGOs. First, the Foreign Office has confirmed, I think, that the UK will, at least as a matter of policy, work on extending the human rights regime to corruption. There are different ideas about whether that is a sensible idea or not, but the UK, unlike the EU, has confirmed that that is happening. The NGOs, of course, provide very helpful material, but one key aspect of targeted sanctions regimes, particularly human rights regimes, is what the standard of evidence should be that gets somebody on to one of these lists, because the allegations made against these individuals are of extremely serious, often criminal, conduct, and the question is: who said that he or she was guilty of that, and what is the evidence?

As a counterbalance to the gratitude for the work of NGOs, there is a very real danger of people being listed on the basis of, “He said he did this”, or, “They said this happened”, or, “They said that somebody is connected to somebody else on the sanctions list”. The consequence, if it happens, is immense from the point of view of the listed individual, or company, and their family. There is a very real danger, which I think is alive in the EU system, of unsupported allegations without any right of the defence to say, “Actually, I didn’t do it, and this didn’t happen”, before people are added to the list. There is another side to the coin of the NGO, civil-society question.

Baroness Primarolo: Okay. Thank you. To be honest, that is a very specific criticism of the current regime of the European Union, which I absolutely understand, and the advantages of not being in it. None the less, there is the challenge of co-ordination and working together, and not being in isolation.

Maya, I have to come back to you to ask whether you are therefore suggesting that there is an opportunity to set higher standards of checks and balances, evidence, and democratic scrutiny of sanctions, and whether you believe that setting a higher standard will make the UK a world leader in sanctions policy and the future development of that policy, given the breakdown identified earlier in the session of divergence between some of the main players.

Maya Lester: Yes, absolutely. There is the obvious disadvantage that sanctions imposed only by the UK do not get multiplied automatically across all Member States, although of course that may happen.

However, there is absolutely the opportunity, which the UK, I am pleased to see, is already seizing, to become a leader on due process. A point that I should have made at the outset in listing the areas where the UK has been prominent as a Member State of the EU is that the UK has been the Member State that cares most—if I can put it in rather loaded terms—about the procedures and the procedures that need to be followed to make the sanctions system fair as well as effective.

The UK has in the Sanctions Act, thanks to amendments introduced in particular by Lord Judge and Lord Pannick in the House of Lords, written in some very significant procedural protections. We will have to see how the process is operated in practice, of course, and how it is interpreted by the United Kingdom courts, but I really do see this as a significant opportunity.

If you were to ask businesses about the opportunity, they would of course say that there is a cost to having yet another regime to have to look at and screen, but my guess is that the main response of businesses would be, “We want clarity, and we want a well-resourced and well-informed agency that will engage with us on how to apply these things”. They want clarity and certainty. There are lots of opportunities.

Q12 **Baroness Goudie:** Good morning. Thank you so much for all the information we have had this morning. As a believer in sanctions, I have found it extremely interesting. I have two questions, but to save time I will put them into one.

Does the UK’s new global policy potentially present any new challenges for UK organisations, and if so, what are they? If the UK-created sanctions that had to be enforced against EU businesses that were trading with the principal target of the UK sanctions, would there be a negative impact on the future of the UK-EU co-operations sanctions policy? I think these questions fit well together.

Emil Dall: On the consequences to UK-based organisations, Maya has already alluded to the challenges of a sanctions list, but also to the potential benefits, so I will not expand too much on that.

On the question of UK sanctions being enforced against EU businesses that are trading with an UK sanctions target, it is my view that such sanctions that extend the territorial reach of UK sanctions—that apply not only in the UK and to UK persons, but now also to EU businesses—would not be very welcomed by the European Union.

The European Union has traditionally and historically had a very long-standing opposition to the use of secondary sanctions by the United States. The difference between the United States and the United Kingdom is that the United States can go ahead and do it anyway because of the power of the dollar system and the need to clear dollar transactions through New York, which means that the private sector has often followed US sanctions even if they have no legal effect in the EU.

A UK attempt to do the same would definitely invite EU pushback, and I do not think the UK would be able to go ahead anyway because it does not have the same power and is more easily isolated from transactions compared to the United States. So, yes, if UK sanctions started to be enforced against EU businesses that have no UK nexus, that would have a very negative impact on future UK-EU co-operation on sanctions policy, and potentially spill into other areas, because you would see pushback from the EU against the UK trying to interfere perhaps too much.

We need to remember that if there is no formal mechanism for sanctions co-ordination, this would be seen as an attempt still to enforce UK sanctions views on an EU body that perhaps does not agree with those sanctions designations.

The Chair: Did either of the other witnesses want to comment on Baroness Goudie’s questions?

Dr Clara Portela: I will pass in the interests of time.

Q13 **Baroness Hamwee:** I got the impression this morning of a very constructive culture in the Foreign Office towards these issues. When we ask questions of the Government on almost anything at the moment, we tend to get an answer that, “We are asserting the UK’s sovereignty”. I know this is a political question, but would you like to comment on whether the Foreign Office’s culture can survive this?

Emil Dall: The communication on the UK’s first sanctions designations, which were all related to human rights designations, has been quite telling. There has been language to do with the projection of British values and being able to project British priorities abroad, and in that sense I do think that those sanctions are a tool for the UK to project its values abroad and can directly support UK foreign-policy priorities.

I am not sure that it is about asserting sovereignty. I think it comes down to the balance between speed and effectiveness. That might be the primary concern here, because if the UK wants to deploy sanctions tomorrow on an entity it can do so. It does not have to wait for any others, and if they are in support of UK foreign policy policies they can do so.

That might not entirely answer your question, but it is a very political one. The answer is perhaps best found in the Foreign Office.

Baroness Hamwee: I imagine that Dr Portela will think that that is better left to the Brits, but I do not know whether you have any comment.

Dr Clara Portela: You are right in your guess, so I will pass. Thank you.

Maya Lester: One could say that asserting sovereignty over foreign policy is a necessary by-product of leaving the EU. I suspect, and hope, that the Foreign Office would recognise that in this area there is a role for discussion and potential co-ordination or alignment where foreign policy goals are aligned. I do not think that is necessarily a trade-off against effectiveness.

If I can speculate, I do not think the United Kingdom was originally motivated by a great desire to take back control over sanctions policy. In all the debates on the Sanctions Act, it was made very clear that this was about trying to make sure that the UK has the relevant legal powers rather than necessarily wanting to do something different in policy terms. But now we have the legal powers, divergence is perfectly possible. The future depends entirely on the different shape of foreign policy between the United Kingdom and the EU.

Q14 **Lord Anderson of Ipswich:** I declare an interest as a barrister who has pleaded a number of sanctions cases, some of them alongside Maya Lester. My first question is for her.

There is quite an industry of challenging designations before the courts of the EU, although in my experience the victories are often pyrrhic ones, an error in the procedure is identified, the error is corrected and then the sanctions are reapplied. Maya, you said that the new UK system for judicial review looks substantially better than the EU system we are used to. Can you briefly explain why?

Maya Lester: First, the administrative system—the system for trying to solve the problem before one gets to court—is likely to be better. It is pretty non-existent at the moment, although not as non-existent as it is in the United Nations. Since our Government are used to being judicially reviewed constantly, they are also used to actively engaging in pre-action resolution, in having to put their cards face up on the table and disclose documents, which the EU is not so used to doing. I hope that the system of reviewing and considering the position before court is more robust. Of course, that is all about how it is managed by the Foreign Office in practice.

On the court system in particular, it is absolutely right that if you are on an EU sanctions list you are allowed to go to the court in Luxembourg to challenge your designation. It is also true that in theory the court in Luxembourg, in cases that you were largely responsible for, said that you are entitled to basic standards of procedural justice, by which they mean some reasons—these are no longer lists of names with no reasoning at all for their inclusion—and some sort of evidence supporting them.

However, it has become my view that, in practice, it is no longer an effective process of judicial review, and the UK High Court is likely to be much more effective. Why? We have already touched on this: there is no effective standard evidential threshold. Surprisingly, the EU has never articulated the standard to which it works. The Sanctions Act says that “reasonable grounds to suspect” is the test.

As you will recall better than anyone else, the Joint Committee on Human Rights expressed serious concerns that that threshold was too low in the context of terrorist asset freezing. But the question is how it will be interpreted by the courts. I very much hope, given the seriousness of the allegations and the effects, that they will require a higher standard of evidence than the court in Luxembourg, which has almost always accepted, as sufficient evidence to justify sanctions listings, Wikipedia and internet articles and sometimes unattributed sources making serious allegations with very little on the other side.

If one goes to court and says, “My client says they did not do this” or, “They were not in the country”, or, “They were not connected with that person”, if that comes in the form of a witness statement from that individual, the case law of the court in Luxembourg is that that should not be given weight, because that person would say that because they are *parti pris*. That is not an approach that I suspect the High Court will take. I think the court will permit people to defend themselves in a more robust way and will not permit the use of presumptions against people, which sometimes take the place of individual evidence in Luxembourg.

The Sanctions Act also has a system of closed material procedures, which means closed hearings in which any intelligence material underlying listings will be held in such a way that the listed person will get only a summary but the court will see the full thrust of evidence. That has never happened in the Luxembourg court, and I suspect it is likely to be used, I hope with good effect, in the courts here.

Remedies are a serious issue in Luxembourg. If you win a case in the court, as you have alluded to, you will almost always be relisted in a Kafkaesque loop, and your only remedy against being relisted, even if nothing has changed, is to go back to the court in Luxembourg, which is a very long and expensive process. If you win, at the end of the day it is virtually impossible to get an award of damages. I hope again that more serious consideration will be given to an effective remedy in the UK.

Another matter written into the Sanctions Act is proportionality: in other words, that a listing should be appropriate, there should be a reason for including someone in a measure, and the Government have to have express regard to the likely impact of designating a person or a company. That has never been measured or had regard to in the EU system, as far as I am aware, and where the court automatically says that a sanctioned listing is justified because the purpose of the sanctions measure is so important.

Our system is also much swifter and nimbler than the system of court in Luxembourg.

There is only one respect in which the Sanctions Act might leave somebody less protected than under the current system, and that is if you are unfortunate enough to find yourself on a United Nations sanctions list. The Sanctions Act has prevented a court, even if they find that your listing is completely unjustified, from quashing the listing. The Act requires, because that is the Government's view of their international law obligations, that the most that can happen is that the UK uses its best endeavours—that is, politics—to try to persuade the UN to delist you. Very serious concerns in rule of law terms were expressed about that in Parliament, but that is the enacted position.

In all other respects, I am hopeful that the court system will be more robust. It is not only in the interests of those on lists that this should be so. It is my view that it is essential to the effectiveness, credibility, fairness and robustness of a targeted sanctions regime at all that it should be seen by all not to be based on speculation and a Kafkaesque system of process and that there should be a proper and robust system for ensuring procedural rights.

Q15 Lord Anderson of Ipswich: Finally, and on a different tack, you have all spoken about co-ordination between the US and the EU in relation to designations. My own experience of terrorist asset-freezing, which I used to review, is that there was not always the time or the will for formal or even informal co-ordination. It could easily be a question in practice of the United States wanting sanctions against a particular terrorist, or group of terrorists, calling the UK and asking it to deliver the EU, which it was rather good at doing sometimes, I remember, on an urgent basis within a few days.

Two short sets of questions to whoever wants to pick them up. First, is that a picture you recognise? If so, how will the US achieve its goals in such cases in future? Is another Member State being prepared to play the rather special role that we used to play ourselves?

Secondly, now that the UK is a third country, do you think that we too might sometimes seek EU designations bilaterally through a like-minded Member State rather than a more general co-operation mechanism? If so, which? I should say that the Chair is a former ambassador to France and may have his own views. I would be interested in yours.

The Chair: I will leave it to the witnesses and perhaps ask Mr Dall and Dr Portela to comment very briefly on this issue of the EU and the US, because then we must wrap it up.

Emil Dall: There are avenues for the US to go directly to Brussels, and it will certainly seek not always to have to go via the UK. However, I would find it strange if the US had a sanctions priority that it would want to push with the EU which it would not also at the same time push with the UK. There might be some kind of trilateral co-ordination on those specific issues. That is just me guessing.

In terms of the UK dealing with specific Member States, I mentioned earlier that there have been Member States that have sought to bridge a gap that has been created. One of the first steps the UK took after Brexit was to deploy sanctions envoys at three European embassies: Berlin, Paris and Brussels. Whether those are the entry points that will be used for bringing on board the EU on sanctions actions, I do not know, but I certainly see that there is a role for the UK to establish closer relations with some Member States on sanctions and using those relationships to push sanctions priorities.

The Chair: Dr Portela, can you just comment on that EU-US aspect, and then any last thought from Ms Lester.

Dr Clara Portela: I certainly fully concur with what Mr Dall has just pointed out. It seems to me that the US has traditionally been very active in lobbying other EU Member States bilaterally, relying primarily on London but also activating relationships with other Member States, and this policy continues to be very actively followed. There can be lobbying efforts on sanctions issues in Brussels and at the same time also with other capitals.

I have only a very brief qualification to make about the debate on the trade-off between effectiveness and speed in the case of a Member State that develops a sanctions policy after having left the EU. It is true that the UK does not need to wait for anyone else in order to impose its own sanctions. We saw in the case of Belarus that speed is an issue, because everybody had been waiting for the EU to come up with a listing on the Belarus sanctions for quite a number of days. It was never legally impossible for individual Member States, while being members of the EU, to adopt their own listings of visa bans. That was not a legal impossibility; it was simply a policy by the Member States not to go ahead with blacklisting any individuals before the EU came up with its own blacklist at the Council.

We can see how the Baltic states put some designations in place before the EU came up with its own sanctions list. We are also witnessing a move towards

adopting more designations by individual Member States before the EU has agreed anything at the EU level.

Maya Lester: If the second question was whether the UK could seek to achieve some sort of EU alignment through its bilateral relationships—in other words, speaking to one Member State—I would think that was highly likely. Obviously that Member State would then have to speak to the others, but I suspect that happens regularly.

As to the US, you will probably recall that, post 9/11, a reported approach was the US speaking not just to the UK but to the UN and that their process for drawing up counterterrorist sanctions list was to draw up a list of the usual suspects and say, “Let’s freeze their assets”. The US was certainly very affronted when the European Court tried to question the process for implementing those sanctions in the European Union. I hope that does not happen now and that, if there is such an attempt, the EU and the UK will say, “We have our own legal threshold and we cannot simply add people to the list”.

However, the right answer is that we have no idea how that process operates. There is no transparency as to how people are added to lists or how that US, UK, EU relationship works. I hope that you will ask the Foreign, Commonwealth and Development Office that question. It might give you a real answer to it, because it is a fascinating one.

The Chair: Thank you very much. If we can have a Foreign, Commonwealth and Development Office Minister in front of us, we will certainly ask that question of them.

Thank you, very warmly, to all three of our panellists. It has been a fascinating, very wide-ranging comprehensive and interesting session. I am sorry that we have run over time. We will produce a transcript and make sure you see that. If you had any further written material—we have already had one very interesting one from Maya Lester—we would be interested to have that.