



Select Committee on the European Union

EU Justice Sub-Committee

Corrected oral evidence: The Legality of EU Sanctions

Tuesday 11 October 2016

10.15 am

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Members present: Baroness Kennedy of The Shaws (The Chairman); Lord Cromwell; Baroness Hughes of Stretford; Earl of Kinnoull; Baroness Ludford; Baroness Neuberger; Baroness Newlove; Lord Richard; Baroness Shackleton of Belgravia.

Evidence Session No. 1

Heard in Public

Questions 1 - 20

Witnesses

I: Paul Williams, Director Multilateral Policy, Foreign and Commonwealth Office, Andrew Murdoch, Foreign and Commonwealth Office Legal Adviser, and Matthew Findlay, Deputy Head of International Organisations Department, Foreign and Commonwealth Office.

II: Maya Lester QC, Brick Court Chambers, and Mr Michael Bishop, Senior Legal Adviser, EU Council Legal Service, Council of the European Union.

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Examination of witnesses

Paul Williams, Andrew Murdoch and Matthew Findlay.

The Chairman: Welcome. Thank you very much for accepting our invitation to come. We are very grateful to have you here at last. As you all know, this is an open session. It is open to the public, and a webcast of the session goes out live and is subsequently accessible via the parliamentary website. A verbatim transcript of the evidence will be taken and will be put on the parliamentary website. A few days after this evidence session, you will be sent a copy of that transcript to check for accuracy. We would be grateful if you could advise us of anything that needs correcting as quickly as possible. If after the session you wish to add any points that you feel need further elucidation, please submit them to us as supplementary written evidence. For the record, could you introduce yourselves, going from my left to right, to let people know who you are?

Matthew Findlay: I am Matthew Findlay. I am deputy head of the international organisations department in the multilateral policy directorate of the Foreign Office. I oversee the team that co-ordinates our sanctions effort within the FCO.

Paul Williams: I am Paul Williams. I am the director for multilateral policy in the FCO and therefore have an overview of sanctions.

Andrew Murdoch: Good morning. My name is Andrew Murdoch. I am a legal counsellor at the Foreign and Commonwealth Office. I oversee the legal team that advises on sanctions.

Q1 **The Chairman:** Could we kick off with some general questions? What are the principal reasons for the European courts—plural—annulling as many sanctions listings as they are doing? Are their reasons for annulling them valid? Are they justified?

Paul Williams: Thank you, Lord Chairman, for inviting us today. Sanctions are an important foreign and security policy tool for us, so we are very grateful for the opportunity to come here to talk about them and for the Committee's interest.

To answer your question, I think that the reasons have evolved over time, as the system has evolved. The sanctions tool and our use of it have evolved quite substantially over the last 10 to 15 years, starting post 9/11 and post the Iran sanctions regime in the mid-2000s, and continuing on to today, with other regimes. As the system has evolved and become more sophisticated and, in some ways, more complicated, so too the jurisprudence of the court has evolved. The cases coming before the court and its decisions have evolved as well.

In the early days of targeted EU sanctions, the standard practice was not to notify individuals when they were listed by the EU. Those listings were challenged by the court, which started to decide that pre-notification was necessary¹. The Council took that and started to do pre-notification on a

much more proactive basis. Therefore, the number of cases lost on that particular basis has fallen recently. The courts also decided that the reasons for listing—at least, one of those reasons—should be backed up substantially, to the level that the court decided was sufficient. It annulled some listings on that basis. The Council has responded to that, too. The reasons for annulling have evolved, but the Council's practice, and our practice, because of course the UK Government are a member of the Council, has also evolved, such that, although a couple of years ago the Council was losing significantly more cases than it won, in 2015 the Council won 30 cases and lost 15.

The Chairman: It is quite a big ratio that half of the cases were found to be inadequate with regard to evidence and procedures.

Matthew Findlay: As Paul said, the ratio has shifted a bit. Last year the Council won 30 cases and lost 15.

Baroness Ludford: Fifteen?

Matthew Findlay: Yes. In 2015 the Council won more cases than it lost. None the less, 15 is a not insignificant number.

The Chairman: Fifteen is not insignificant.

Matthew Findlay: The point worth getting across is that a lot of the organisations or individuals we are looking to target are engaged in clandestine activity linked to proliferation or terrorism. They are not always organisations that leave a heavy footprint on the internet. Often the evidence-gathering process is quite difficult. The Council faces difficult judgments on whether it is appropriate to go ahead with a listing, for security reasons, or whether it needs to weigh more heavily the requirements of due process. That balancing act will remain difficult, but the Council is handling the balance better now than it used to.

The Chairman: Can we make it clear for the listening public whom sanctions are directed against?

Paul Williams: We use sanctions as a foreign and security policy tool to try to coerce a change of behaviour, to restrict the movement of certain goods or money or to restrict the proliferation of materials, such as nuclear materials, that we do not want to be proliferated. It fits into the armoury of tools that we can use in foreign policy. Within my directorate, I have a department called the conflict department. The whole of the conflict cycle stretches from political issues in a country, through potential conflict, to post conflict and development of that country. For me, sanctions, on occasion, fit part way through the spectrum of tools that we have available. They are more than a political statement and significantly less than a military action. They are an important tool for us. We use them as a way of trying to create a change in behaviour.

The Chairman: They seem to have been particularly effective in Iran.

¹ In respect of decisions to relist.

However, I want you to deal with the suggestion that is afoot—certainly among sections of the business community—that they are sometimes used against people who are really running straightforward businesses and have business links to a particular country that is within your sights, who end up receiving rather punitive action by being put on lists; and that, in fact, they are just a way of creating discomfort and alienating business links between businesspeople in this country and businesspeople in the targeted country. What is your response to the suggestion that often regular businesses end up being put on lists without any real recourse and that, basically, that is just a way of being punitive towards a country and is not really to do with security?

Matthew Findlay: Previously you asked who is being targeted by sanctions. The answer to that is generally either individuals or entities, as they are known, which are essentially companies or enterprises. In some cases, we have so-called sectoral sanctions, such as prohibitions on lending of certain types to Russian state-owned banks. Those are more general sectoral measures.

To address your specific point, it is clearly the case that a number of listings of businesses have been overturned by the courts. The rationale that the Council often adopts is that in the decision that sets out the reasons for the listing there are criteria such as, "X is providing support to the Government of Iran or providing financial support for X policies". In a number of cases in Syria, for example, the court agreed with the argument that, by the very nature of the political economy of that country, certain businessmen are closely aligned with the regime and there are clear financial links between them and people such as Assad and his entourage. We have to make that judgment. Does going after that business for political reasons justify the inevitable costs? It is always a case-by-case judgment. Whether the court ultimately supports what the Council has done depends on how clearly the reasons are articulated in the Council decision, and often on the particular circumstances of the country.

The Chairman: Rather than looking at Syria, let us stay with Iran or Russia. What about businessmen just doing business with those countries, in tourism and lots of other ways? What do you say about the targeting of that? In many ways, it is bolstering their economy and helping its development.

Matthew Findlay: It is quite difficult to answer that without pointing to specific cases. In the Iran context, the rationale was always to target organisations that were providing some sort of financial support to the regime for its proliferation activity. That is the general test. There are cases where the court has upheld that kind of judgment.

It is probably worth saying that, in the Russia context, the additional financial restrictions meant that, for example, some forms of lending to Russian state-owned companies were ruled out and therefore certain business deals that involved providing credit to state-owned banks fell on

the wrong side of the line. It is possible that those are the kinds of cases you are referring to.

The Chairman: What is the standard of proof applied by the Council in adopting listings?

Paul Williams: There is a 2013 case that provides the framework for the standard of proof. Andy is most expert to talk on that.

Andrew Murdoch: The well-known case of Kadi II in 2013, which has been followed subsequently, set out the broad basis on which the Council would have to defend listings. There has to be a sufficiently solid factual basis to substantiate the reasons for listing. The court has not elaborated in detail exactly the threshold that is needed to underpin that, although in Kadi II, which was a terrorist case, it went on to say, "the reasons for listing on a European Union list may be based on suspicions of involvement in terrorist activities, without prejudice to the determination of whether those suspicions are justified".

In the UK approach to adopting listings, we adopt a "reasonable grounds for suspicion" test as to whether there is evidence to back up those reasons. That was tested before the Supreme Court in a case called Youssef². In that case, the Supreme Court effectively upheld the use of a reasonable grounds to suspect test in the UK's decision-making as a member of the UN sanctions committee when it agreed to adopt a listing. If there is time, I will read out one small line from that judgment, because it is quite important with regard to the risk in decision-making, which applies equally to all these measures. It says, "The position of a decision-maker trying to assess risk in advance is very different from that of a decision-maker trying to determine whether someone has actually done something wrong. Risk cannot simply be assessed on a balance of probabilities. It involves a question of degree". It goes on, "The Court of Appeal were right to attach weight to the notes to the FATF"—the Financial Action Task Force—"Special Recommendation which referred to the 'preventative' purpose of designation, and the requirement to freeze terrorist-related funds based on 'reasonable grounds, or a reasonable basis, to suspect or believe' that they could be used to finance terrorist activity". That approach is one that we would endorse, but it has not been spelled out in terms by the European courts.

The Chairman: Do you think that the Council uses the test that you have just enunciated of reasonable grounds for suspicion? Do you think that it applies that test?

Andrew Murdoch: When it comes to decision-making in the Council, it is for each member state to make its own decision in the vote on adopting a listing. That is certainly the approach that we would adopt.

Q2 **Lord Richard:** Can I continue on this standard of proof problem? It seems to me that one of the real difficulties in this whole area is that the

² Youssef v Secretary of State for Foreign and Commonwealth Affairs [2016] UKSC 3

Council seems to have been applying one standard of proof and the courts seem to have been applying another. The two do not always mesh. As far as the Council standard of proof is concerned, you say that it is “reasonable grounds for suspicion”—at least, that is what we advocate in the Council. Do the other member states in the Council accept that?

Matthew Findlay: It is not written into any Council decisions. There is no agreed formula.

Lord Richard: There is no agreed formula.

Matthew Findlay: We have the test that was set by Kadi in 2013, which Andy read out.

Lord Richard: But “reasonable grounds for suspicion” is not written down and is not accepted generally in the Council.

Matthew Findlay: It is not explicitly written down by the Council.

Lord Richard: Has it been discussed?

Matthew Findlay: It is always part of the discussion among 28 member states of whether a listing is appropriate.

Lord Richard: I understand that, but has the issue of what standard of proof the Council wants to apply been specifically discussed in the Council?

Matthew Findlay: Following the Kadi judgment, particularly Kadi II, there was a lot of discussion about the appropriate threshold that the Council should set. There are some documents that codify the Council’s practice. For example, there is something called the EU guidelines on restrictive measures, which is a public document that sets out the Council’s approach to doing sanctions.³

Lord Richard: Is that the same approach? Is it a reasonable grounds for suspicion approach?

Matthew Findlay: As I said, that is not written down in black and white.

Lord Richard: What is?

Matthew Findlay: What is written down is the Kadi test. Essentially, the Council has been responsive to the court’s jurisprudence. That is the limit of what has been explicitly agreed by the Council.

Lord Richard: It is all a bit ad hoc, is it not?

Matthew Findlay: It is 28 member states coming at this and reaching consensus. The UK is one of the most active member states in the process. We take the legal framework and the legal thresholds very

³ Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy. Available at <http://data.consilium.europa.eu/doc/document/ST-11205-2012-INIT/en/pdf>

seriously. We codified those ourselves in something we call a smarter sanctions policy, a document that has been agreed by successive Foreign Secretaries. We apply those thresholds every time we put forward a listing. We advocate that strongly, but ultimately other member states have to speak for themselves.

Lord Richard: How often do you get disagreement in the Council as to whether an appropriate standard of proof has been reached?

Matthew Findlay: I talked about the balance between the security drivers for taking action and the demands and requirements of due process. That is often the crux of a debate in the Council. Since the Kadi judgment, certain quarters within the Council, including the Council Legal Service, which you will hear from shortly, have become very conscious of the legal risks of acting in a way that is not properly evidenced. You always have that kind of advice on the need to substantiate listings. Typically, you have a member state that, for political reasons, is particularly keen on a listing, and often you have others that are much more cautious. That is the typical dynamic in the Council.

Andrew Murdoch: What has to be borne in mind across all the EU sanctions regimes is that the criteria for listing under each one are different. In some of the regimes, when listing decisions are made, there may be new listing criteria that are untested. If a case is brought immediately after a decision is made, often it may be about three years before it reaches the end stage of an appeal before the European Court of Justice.

Lord Richard: I am interested in the difference between listing criteria and the standard of proof.

Andrew Murdoch: Under the listing criteria, an individual or an entity could be listed for supporting a certain regime, for example. Those are the criteria. Then you need a solid factual basis to substantiate that particular listing under those listing criteria. The point is that there can be a time lag before a court says, "In that particular case, there was sufficient evidence that you put before us", or, "In fact, there is not sufficient evidence for those particular criteria". Then the Council can take note of the court's interpretation in how it goes forward, but in the intervening period it may well have made a number of listing decisions, based on its good-faith interpretation of the listing criteria, without the guidance from the court.

Lord Richard: Why cannot the Council express a standard of proof? Why can it not say what standard of proof it requires? You say that it is not written down. Why not?

Matthew Findlay: There are different views on where to strike the appropriate balance between security and liberty. In general, the Council will defer to the court, where there is jurisprudence, and say, "That is the test that we should now apply". It is relatively easy to get consensus that we should follow the court's jurisprudence. Something like the Kadi II

judgment—a further judgment of that level of importance—is probably the trigger that it would take for the Council to develop its policy in a more explicit way.

The Chairman: Would it have to come from the court?

Matthew Findlay: The court is seen as the natural place to look to for guidance on this. It is worth underlining that it is unusual in the area of common foreign and security policy for the court to have any jurisdiction at all. In most of the CFSP, the court is not involved. The difference in the area of sanctions is that, because of the impact on individual rights, a number of cases were brought post 9/11—particularly linked to terrorism and to Iran—that changed that. That was then codified in the Lisbon treaty. The Council has been getting used to its interplay with the court, in a way that is not the case in most of foreign policy.

Baroness Hughes of Stretford: We may have moved on, but I just want to check something. Mr Findlay, when you led us to reasonable grounds for suspicion as the benchmark, you began by talking about EU counterterrorism sanctions and terrorist cases. I was not clear about that, because we have been advised by others in writing that there is a different legal basis in the procedure for the EU counterterrorism sanctions, compared with all the other sanction regimes, and that the counterterrorism process is rather more robust. It involves a competent national authority coming to a view, which is then scrutinised by the Council, whereas in all the other regimes the Council itself decides on listings and there is no scrutiny of the Council's decision. In assuring us that we operate on the basis of reasonable grounds of suspicion and that Kadi says this, that and the other about having a process that is justifiable judicially and so on, are you talking generally or just about counterterrorism sanctions?

Andrew Murdoch: The Kadi II decision was based on a UN listing that was being implemented by the EU, so it was about an EU sanctions regime dealing with terrorism. There are other, similar sanction regimes that also implement UN sanction regimes. The one exception to that is a regime called CP 931⁴, which is the EU's autonomous counterterrorism regime. That is the one you may be referring to as being slightly different. There, the underlying decision is by the national authority. National authorities will reach decisions about terrorist acts. The EU can then rely on those decisions for its own purposes in order to impose sanctions against the same entity and group across the entire EU. The decision of the national competent authority will be made under its own decision-making and its own thresholds, which may not always be the same. In its recent jurisprudence, which is still evolving, the court will look at the framework for that decision and whether the EU can properly rely on it.

⁴ Short-hand for Common Position 2001/931/CFSP. For detail see:
http://www.consilium.europa.eu/uedocs/cmsUpload/080206_combatterrorism_EN.pdf

What I was suggesting with regard to reasonable grounds to suspect refers just to UK decision-making and whether we would support a listing, whether at the UN or in the EU, as a member of the Council. If we do not think that there are reasonable grounds to suspect, based on the evidence we have, we will not support the listing.

Baroness Hughes of Stretford: That is right across the board, whether it is a terrorist case or a business case.

Andrew Murdoch: Yes.

Q3 **Baroness Ludford:** I want to ask whether the number of listings being annulled has a wider bearing on the credibility or effectiveness of EU sanctions. In that context, perhaps I could follow up on the question of standard of proof. Presumably, critics of the credibility and effectiveness of the sanctions regime can point not only to the flaws but to the divergence between courts. Our own Supreme Court works on a “reasonable suspicion” test, but apparently, if I have understood correctly, the European court—not only the Council—does not have such a test. It would be interesting to know whether there is a dialogue between our Supreme Court and the Luxembourg court. Presumably there is. Does all this end up by undermining the credibility and effectiveness of EU sanctions? As you said, we will hear from the Council Legal Service, which will presumably give us some of its thinking. Why is something not done to increase the credibility?

Paul Williams: Thank you for that question. The answer goes back partly to the first answer that I gave about the evolving process. As Mr Murdoch pointed out, there is inevitably a time delay between the Council making listings and a court process running through with a judgment coming out at the other end. There can be some considerable time between those two things, which means that sometimes the number of cases and annulments drags a little on the Council’s decisions of a couple of years previously. I agree that it is still not ideal, but the turnaround that I mentioned—the fact that at least the Council is now winning more cases than it loses—suggests that there is an evolution in the way it and the court relate to each other on listings. I am not sure that the number of annulments from a few years ago necessarily has a significant impact on the credibility of sanctions today.

The Iranian sanctions regime is a recent example of a regime that had a significant effect. It was well known, and publicly known, that that was a significant factor in the eventual deal that the E3+3 got with Iran. The credibility of sanctions as a tool in that context got a boost from that particular example. I will hand over the second part of the question to Mr Findlay.

Matthew Findlay: You asked about the credibility and effectiveness of sanctions and whether those have been called into question. I think that they are questioned from two directions. On the one hand, there are those who say that they are not credible because you are losing all these cases, which must mean that something is going wrong. On the other

hand, there are those—including, for example, certain US policymakers—who say, “We are concerned about the effectiveness of the EU sanctions because you are unable to sustain a policy of pressure on the Iranian regime, which means that our shared policy goal of applying pressure is perhaps less effective”. We are perennially trying to balance those two pressures.

It is fair to say that, inevitably, some of the early cases that were lost on simple procedural grounds dented the credibility of sanctions at the time. Steps have been taken to improve that and have led to a better record in recent court cases. In the end, in order to have a credible and effective sanctions policy, we need to continue those reforms, but we need to be aware that, ultimately, this is a political tool and we need to make political judgments about when to deploy it.

The Chairman: I am anxious that we move on, because we have a lot to cover.

Q4 Earl of Kinnoull: I wonder whether the Foreign Office has its own assessment of whether the various sanctions regimes have been effective. It was interesting to hear that you are at least thinking about it, but do you have some examples where you feel that you have been really effective?

Paul Williams: The Iran example is the prime one. At this point, it is worth saying a little about our system, because it too has been evolving. Mr Findlay mentioned the smarter sanctions policy that we have. We also make a significant effort in the UK to join up the various ministries that work on sanctions. For example, I chair a cross-Whitehall committee that meets regularly and brings together people from the Treasury, HMRC, the NCA and other relevant parties from across Whitehall to talk about precisely these kinds of questions—how effective we think we are in sanctions and how we can get better both at designing sanctions and at implementing and enforcing them. Those actors are relevant in all three areas. I will hand over to Mr Findlay.

Matthew Findlay: The other thing we focus on is when it is right to lift sanctions. Some of the examples where we think that there has been success and effectiveness are when, ultimately, we have been able to lift the sanctions because we think that we have seen behavioural change. Iran is one case, but quite recently we lifted UN sanctions against Côte d’Ivoire. Following the regime change, we lifted them from Liberia. Recently, the EU quite substantially relaxed measures against Belarus. It is very important to the credibility of sanctions that we do that.

On assessing effectiveness, we have been quite rigorous about looking at the impact of sanctions on Russia, particularly in the EU. There have been a number of Commission analyses of the impact they are having on the Russian economy, as well as on our own economy. Ultimately, as well as looking at economic impact, you want to see whether there is political change going on and whether the economic pressure is causing that political change. That is often a harder judgment to make. It is where

intelligence comes in and you have to form an assessment. Our view is that in a number of cases—most strikingly, Iran—it has been really crucial in effecting a change of behaviour.

Baroness Shackleton of Belgravia: Do you ever lift sanctions conditionally and monitor them?

Matthew Findlay: Yes is the answer to that, I think. In the context of Iran, as part of the initial deal in 2012, essentially the EU suspended sanctions for a limited period. It was done in a way that meant that if, at the end of the period, any member state felt that it was time to snap the sanctions back in, it took only one member state to say, “Okay, the sanctions come back”. It changed the decision-making process in a way that kept the regime on its toes.

The Chairman: Baroness Shackleton, I was going to invite you to come in, in any event. Would you like to continue?

Q5 **Baroness Shackleton of Belgravia:** I have a different point now. What has the Council done over the last two or three years to improve the fairness of the listing and relisting process?

The Chairman: You have indicated what we are doing, but what of the Council? The Council must be well aware of the criticisms. What is it doing?

Baroness Shackleton of Belgravia: What are the priorities, the weight and so on?

Paul Williams: We referred to a few of those things earlier. Coming from the court’s judgments, the Council has changed the way in which it does listings; for example, the process for informing listed persons, the opportunity for them to make observations and the use of open-source evidence. I know that this comes back to us again, but our strategic defence and security review last year talked about trying to improve the way we do open-source evidence. That is part of the reaction to court judgments. The Council has changed the way it does things. That is what is starting to show now in the judgments. My colleagues may want to give more specific examples.

Matthew Findlay: There are a couple of other things that the EU does. It has become standard practice for every EU sanctions regime and every listing under that regime to be reviewed at least once a year, which forces a review of all the evidence. Again, 28 member states have to agree unanimously to continue that listing, so there is a certain pressure. There are also provisions such as allowing assets that have been frozen to be partially unfrozen to pay for the legal defence of those who want to bring cases against their listing. There are a number of due process provisions.

We keep coming back to the Kadi II judgment of 2013 and the standard of evidence required, but the big change over the last two or three years has been really embedding that as standard practice in what the Council

does. We have had to do it in some very politically charged negotiations, such as following Russia's action in Ukraine, when we had very strong political reasons for wanting to do some listings, but the Council Legal Service reminded us that we had to be able to find the appropriate evidence before we could go ahead. That kind of dynamic has really embedded itself in the last two or three years.

Baroness Shackleton of Belgravia: Do you think that the Council's response, particularly the introduction of the closed material procedure, has had an effect in stemming the flow?

Paul Williams: It is too early to say at the moment. The CMP has been adopted, but it is not yet in practice. I am not sure that it will necessarily have a significant impact on the flow of cases, because people or entities that have been listed still have a right to bring cases. It is about the closed material that the court would be able to look at. As you know, we have some reservations about the CMP from a UK point of view, which is why we have a particular emphasis on open-source material and trying to be as good as we can be in providing it.

Matthew Findlay: Cases will still be brought. The closed material procedure opens up another avenue for the Council to try to defend those cases in situations where, for the reasons I referred to earlier, there is simply no open-source information available and the only thing we have that indicates behaviour that is unacceptable is intelligence. It is down to the judgment of the member states that have the intelligence whether they trust the mechanism and are willing to put that information into the system.

The Chairman: I have to say to the Committee that we will have to be a little more brisk. Baroness Hughes, will you take the next question? I will then look at whether some of the questions may be otiose.

Q6 **Baroness Hughes of Stretford:** We were wondering whether you had identified here in the UK any changes or improvements you would like in the process to make it fairer and to address some of the issues about credibility and so on.

The Chairman: I want to supplement that. We have just had a little interchange between Mr Murdoch and Baroness Hughes about the regime that operates for terrorism, which is that national Governments make a decision and then it is put forward. Would that not be a fairer process across the board? We want to hear from you how you would suggest improving the situation.

Paul Williams: There has already been quite a lot of change in the Council over the years. No system is perfect. We would be very interested to see any recommendations from the Committee on this. We do not think that there is a fundamental problem with the system as it is at the moment, although it continues to evolve. We are always looking at improvements as they stem from judgments, both in the Council and in our own practices and what we do. In an earlier answer, I mentioned the

strategic defence and security review last year in relation to open-source material, but that also set in train a review of our UK sanctions governance procedures, which is going on at the moment—how the FCO and other departments interact on sanctions. There are always things that we can do to get better. Matthew or Andy may have particular views on the Council side.

Matthew Findlay: I would just underline that we still have some way to go across the whole of the Council—all 28 member states—in embedding some of the process changes we have been trying to codify ourselves through the smarter sanctions process. For us, that is the priority.

It is very important that the Council is always thinking quite deeply about the political impact of sanctions. Are the sanctions having the desired policy effect? Have the circumstances changed? We may need to get better at that sort of analysis. Part of understanding that is really understanding the impact of sanctions on business, which includes listening to the perspectives of corporations in the UK. That is one reason why the Government have set up the new Office of Financial Sanctions Implementation, both to provide better guidance to our own businesses on the implementation of sanctions and to hear their perspective on how sanctions are affecting them. Those are some of the measures that we are pursuing.

Q7 **Baroness Neuberger:** What do you think is the value of parliamentary scrutiny of all these sanctions listings, when the great majority are submitted after adoption by the Council and the evidence tends to be confidential? We have had a lot of correspondence about this. Indeed, the House of Commons European Scrutiny Committee has been very critical of the way it has been going. What is your view?

Paul Williams: Our view is that scrutiny is extremely important. I know that for a fact from my Ministers. If something goes wrong, it is not unusual for me as the director to be hauled in by the Minister and asked, "What went wrong?" Ministers take scrutiny extremely seriously across the board, not just in sanctions.

With sanctions, of course, there are particular difficulties with the release of material on listings before they have been made public, because of the risk of asset flight or people being informed that they are about to be listed. For example, if UN sanctions have been put in place that then need to be implemented by the EU, that needs to go as fast as possible to minimise those risks. We recognise that there are difficulties with sanctions and we want to work with you and other Committees to try to do as much as we can. For example, we have sought to improve scrutiny around what Mr Findlay referred to earlier—the renewal and rollover of sanctions. That is less sensitive, because it is about people or entities that have already been listed. We would be very willing to talk to the Committee or the Committee's clerks in an informal way about sanctions regimes. I know that there is a particular issue about recesses. Sometimes sanctions measures have to be done during a recess period. Perhaps we can think of a way of working better with the Committee on

that. We are committed to doing everything that we can on scrutiny, within the limits that we have on the confidentiality of some information.

The Chairman: Can I call time? Mr Williams, I am glad that you have spoken on behalf of the department. I would like to bring in the Earl of Kinnoull on the whole business of open-source and closed information.

- Q8 **Earl of Kinnoull:** I have two very specific questions. First, does open-source information include paid-for internet services? There are a lot of business intelligence services—some very good ones—that go right to the heart of this type of area. I wonder whether it includes those. The second precise thing is this. Is it a correct interpretation of Council procedural rules that the national parliaments are not entitled to see the open-source information on which decisions rely?

Paul Williams: Mr Findlay will answer on the detail of open source.

Matthew Findlay: The answer to your first question is yes. It would sometimes include paid-for searches. We look at a range of things. We do some of our own research in-house when we are presenting a sanctions proposal, but we are also open to procuring that information. Sometimes you need records of corporate structures. You might buy that from Companies House or others who provide that sort of service.

I know that the point about the rules of procedure has been a subject of discussion with the Committee for some time. The former Europe Minister has written on it. It is our view that Article 6 of the Council rules of procedure means that we have a duty of professional secrecy about the deliberations of the Council. When a sanctions proposal is put forward, typically you get a restricted COREU—an EU telegram, in effect—with a set of underlying evidence supporting it, which might include a confidential UN panel of experts report or something like that, as well as open internet searches. That becomes a case file that sits on the Council's file. It has not been our practice to share any of that externally. There is a practice whereby the Council writes to defendants, if there is a legal case, to make some of that information available to them on a privileged basis. The understanding is that they are to use it but not to publicise it. That has been the approach to date.

The Chairman: Thank you. We have to press on.

- Q9 **Baroness Newlove:** How effective is the Council in corresponding with individuals or entities that are subject to listing?

The Chairman: This is a source of serious criticism. People say that they do not get their letters answered.

Paul Williams: The Council corresponds with people and entities that have been listed. In particular, at the renewal point, there is a system for the Council to be able to do that. It discusses replies and sends them out. Sometimes people write in between those renewal points—at other times of the year. I know that there is an issue around the pace of reply. We do what we can on that. We have made representations to people in the

Council about the pace of reply on an in-year basis. Matthew, do you want to add anything?

Matthew Findlay: The process for this happening is that the defendant sends a letter to the Council, which goes to the Council secretariat. Typically, it, or often the External Action Service, drafts the reply. That draft then has to be discussed in the relevant Council working body, so it has to be agreed by 28 member states. Sometimes the whole process takes a certain amount of time.

The Chairman: It is a bureaucratic nightmare. Lord Cromwell, I wonder whether you could put the remaining questions together.

Q10 **Lord Cromwell:** I will try. There has been some reference to the tension between using commercial sanctions as what David Lidington, in correspondence with us, called a quintessentially political policy tool, and, on the other hand, the legal requirement for quality, hard factual evidence, which we have already explored. Can we take the specific case of Yury Chyzh in Belarus? The General Court was very critical of the Council for applying sanctions in that case on the basis of general connections with the regime. In your view, are such general connections a realistic and sufficient basis for sanctioning, or was it correct of the General Court to require a greater linkage between the regime and the gentleman concerned? Is that being unrealistic or being smarter?

Paul Williams: I will turn to Mr Murdoch for this one, as it relates to a specific case.

Andrew Murdoch: For background, this was the October 2015 General Court annulment of that listing. The particular issue that was put forward as the basis for listing was benefitting from or supporting the regime of President Lukashenko. As you say, the court found that insufficient evidence was put forward for the reasons for linking benefitting from or supporting the regime.

You may hear from the Council Legal Service on this later. When making its decision, it put a number of pieces of evidence before the court to demonstrate that linkage. The key cross-cutting issue was how the information could be interpreted, in the political and other contexts of the particular situation in Belarus, and how much weight could be put on that context as regards the linkages between leading businessmen in Belarus and supporting the regime. Instead, the court found that it needed more sufficient, detailed information, which, in its view, the Council had not put forward.

The case, in that particular context, showed that the court was not satisfied with the contextual argument, but there have been other cases in the context of Syria. In the Anboubia case, the Council's approach was to use the same premise of taking into account how leading businessmen operate in a particular country and how much regard the court can have to the fact that, in that particular regime, leading businessmen have linkages and support and therefore must benefit from and support the

regime. In that particular case, the court was satisfied, up to the European Court of Justice, that the contextual situation was relevant and could be used as evidence.

Yes, the Yury Chyzh case was not a successful case for the Council—

Lord Cromwell: I am sorry to interrupt. Was the General Court being unrealistic in demanding that higher level of evidence? Is it just too difficult to get it?

Andrew Murdoch: Sometimes it is. The court recognised that, for example, if you are putting forward the case that if you are a leading businessman that is the only way you get deals, evidence of the kind of bribery behind that will not be very easy to obtain. The court needed to see more. Arguments could have been made on appeal against that particular interpretation. The decision not to appeal that was taken by the Council has to reflect the fact that at that particular time there were discussions ongoing about the suspension of a number of listings across the whole of the Belarus sanctions regime. Any decision to appeal has to take into account all the factors, not just the legal ones and whether the case could have been put forward—

Q11 **Lord Cromwell:** In the interests of time, we will move on. To assert that all businessmen in a particular country are corrupt and involved with the regime is probably quite a broad statement to try to get away with in court, but let us leave that alone.

Can I move on to another case? This is more specific, so perhaps we can have a shorter question and a shorter answer. I turn to the case of Bank Saderat. The supplementary to the statement of reasons for that listing was given just three days before the decision of the Court of Justice upholding the annulment of the original listing. Is that a matter of concern? I am looking at Andrew Murdoch, but Matthew Findlay may answer, if he wants.

Matthew Findlay: I will say a very quick word about the political context of the case and then hand it back to Mr Murdoch. Clearly, the decision-making on it came around the time when the nuclear deal had been reached and shortly after the first wave of sanctions relief had been agreed. Under the JCPOA⁵, there was a distinction between phase 1 listings and phase 2 listings—phase 1 being those where the EU would agree to lift the sanctions immediately, which happened in January, versus phase 2, where they were to be kept in place for eight years. That provided a particular political context. In this case, we had had the General Court judgment, so we were aware of the issues that had been found with the original listing. The case was live before the European Court of Justice. I will ask Mr Murdoch to give the rationale for that amendment.

The Chairman: I really want us to move quickly. You will have to be very succinct in giving the rationale.

⁵ Joint Comprehensive Plan of Action

Lord Cromwell: The question is the shortness of time, not a rehashing of the procedure.

The Chairman: The argument is not about the listing and the legal decision; it is about the shortness of time. Was it a matter of concern for you that it was being done not even at the 11th hour but at 10 minutes to midnight?

Andrew Murdoch: It is unusual, which is why the question has been brought. In principle, there is no reason for the Council not to be able to do that. The reasons given for the decision were different, effectively, and there was a change from the original judgment. Obviously the Council had taken into account the criticisms of the original decision when doing that. In certain other cases⁶, there is support for the Council to be able to relist with new evidence or amended grounds in that particular area. In principle, there is nothing wrong with it, albeit that it is unusual.

The Chairman: How worried are you about Brexit? I am merely asking with regard to the sanctions regime; we are not entering into a little seminar on the Brexit issue. Once the UK has withdrawn from the EU, it is likely to have to align itself with all autonomous EU sanctions. How does that feel for all of you, sitting in the front line?

Paul Williams: While we remain a member of the EU, we remain fully committed to our obligations and commitments as an EU member state. We have talked quite a lot about that today. That includes our proactive approach to sanctions and so on. The future relationship that the UK will have with the EU on sanctions is one of a range of issues that will need to be considered. It is worth saying that, after we leave the EU, the UK will still be a permanent member of the UN Security Council, so I am sure that sanctions will remain a significant foreign and security policy tool for us in that context. Of course, that will involve working with like-minded partners.

Matthew Findlay: The Prime Minister has said that the European Communities Act will be repealed. It is fair to say that our current basis for doing sanctions rests on powers in the European Communities Act, so we will need to adapt our systems, but precisely how we do that is still to be decided.

The Chairman: It is uncertain. I thank all three of you for coming to give us your time this morning and for answering questions on quite complicated and difficult issues. I am grateful to you for sparing the time. Thank you very much. Please let us know if there is anything that you would like to add to the evidence you have already given.

Examination of witnesses

Maya Lester QC and Mr Michael Bishop.

⁶ E.g. T-207/15 - National Iranian Tanker Company v Council, paragraphs 52 to 54.

The Chairman: We now move to the second part of the session. I thank Ms Maya Lester QC and Mr Michael Bishop, senior legal adviser to the European Council Legal Service, Council of the European Union, for coming. I am very grateful to you both. As I mentioned at the outset, the session is open to the public and is going out live on the webcast. It will subsequently be accessible on the parliamentary website. A verbatim transcript will be available on the parliamentary website, too. In a couple of days' time, you will receive a copy of that transcript. Please correct anything that you would like to correct and send us any supplementary written evidence, if you feel that you would like to elaborate on anything you have said. For the record, could you introduce yourselves?

Maya Lester: I am Maya Lester. I am a barrister at Brick Court Chambers, specialising in European law, particularly sanctions work.

The Chairman: Thank you very much. Mr Bishop, would you like to say who you are and what you do?

Michael Bishop: I am Michael Bishop. I am senior legal adviser in the EU Council Legal Service, directorate for external relations. I co-ordinate the legal aspects of sanctions within the Council and with other institutions—the Commission and the External Action Service.

The Chairman: I saw that Ms Lester was present during the last evidence session. Were you here for it, too, Mr Bishop?

Michael Bishop: For a quarter of an hour, I was sitting outside, because there was a notice saying, "Private meeting". I would have liked to be here, but I came in at the end so I heard some of it.

Q12 **The Chairman:** I am sorry that you did not hear some of the earlier part of the discussion and evidence. I will cover some of that. In light of the time, I will select the areas that I think home in on the problems, as the Committee has seen the issue, to see whether you can help us.

I want to cover the business of the European Union courts annulling so many sanctions listings. Mr Bishop, are there justified reasons for that? Perhaps you would like to reflect on what we heard from our previous witnesses, which was that, to some extent, this is historical, in that many of the cases—that are now coming before the courts—certainly in the last few years—predate some of the changes that have taken place, and that some improvement is being made. Why do you think that so many of the sanctions listings ended up being annulled?

Michael Bishop: In most cases, the reason was normally failure to specify in sufficient detail the reasons for the listing or to substantiate them. There can be annulments on procedural grounds—for example, failure to give access to the file of the listed person, when he has requested it—but normally the court will examine those two issues together. Although it can make an annulment just on a procedural ground, it will tend to look at the substantive reason as well, which saves time and means that the person does not have to come again with a second case.

The Chairman: You are saying that in the majority of the cases that were annulled it was really because of their Kafkaesque quality. People were not able to find out exactly why they were on the list, so they took a case to court.

I want you to help us on an issue that has really tested us and is testing for everyone. What is the standard of proof used by the Council?

Michael Bishop: The standard of proof is now based on case law. It is a very general concept, from Kadi II, which is that the reasons must be sufficiently specific and “on a sufficiently solid factual basis”. That is a general expression, but equivalent expressions such as “beyond reasonable doubt” exist in other jurisdictions. One has to be sufficiently certain that the criteria for listing are satisfied in a given case. On that basis, the court’s case law will help. The court might have given judgments in similar circumstances, where the Council will have a clear idea of what kind of evidence will be required and what will not satisfy the requirement.

The Chairman: Maya Lester, that seems to be quite a high bar. Is that your experience, as counsel acting in many of these cases?

Maya Lester: No, it is not. I have put in a note in writing. I think that the Committee has had a chance to look at that, for which I am grateful, so I will not repeat everything that I said in it.

The Chairman: No. Could you just go to the gravamen?

Maya Lester: Michael Bishop refers to other systems having a standard of “beyond reasonable doubt”. Of course, that would be a high bar, but I am not aware of any standard of proof being regularly applied by the Council or written down anywhere. That came out in the earlier questions. The court has said that there must be a sufficiently solid factual basis, so that is the standard the court is working to. My concern, which I expressed in the note, is not so much that there is not a written-down standard of proof, although one might expect that, but the way in which the standard of proof, or lack of it, has been applied by the Council in a number of cases. I have given some examples.

To take one example—this came out of the discussion about the Yury Chyzh Belarus case—instead of relying on what we would call evidence, the Council regularly relies on presumptions. It says, “If you are a wealthy businessman in Belarus and your company has been given procurement contracts, it must have been”—

The Chairman: Because.

Maya Lester: Yes. There is a lot of that kind of reasoning. If you are a family member of someone on a sanctions list, we can assume that you have also been associated with the regime, for example.

The regimes that particularly worry me as regards the standard of proof—I say this in the note—are the misappropriation of state funds regimes.

Can I underline that this is one of my principal concerns? We have heard a lot from the Foreign Office about how the Council relies on evidence from member states, for example, to substantiate sanctions listings.

In the case of misappropriation of state funds regimes relating to Egypt, Tunisia and Ukraine, sanctions have been imposed on former regimes in those countries on the basis of criminal investigations being opened by state prosecutors in those countries at the moment. Those are the former regimes of Mubarak, Ben Ali and Yanukovych. With great respect, those regimes do not respect the rule of law in the way we would expect them to.

However, the Council not only relies on evidence from those states that there are allegations and criminal files against people on those lists, but has invited state prosecutors to send it lists of people who are, as it puts it in the case of Tunisia, "enemies of the Tunisian state". Not only is a regular standard of proof not being applied—today is the first time I have heard the Foreign Office say that it accepts that the counterterrorism standard should apply in all country sanctions cases, which I have not heard before—but the Council is accepting evidence from third countries that, in my view, do not respect the rule of law and it is simply taking that as the basis for sanctions listings.

The Chairman: Lord Cromwell will ask a supplementary and then I will give Mr Bishop an opportunity to respond.

Lord Cromwell: Going straight to the point that you made, do you think that some of the early cases were perhaps a bit cavalier? It was enough to say, "This person is obviously a bad 'un". Has the case law and the work of people such as you caused that to be tightened up, so that a better standard is now applied, or are you more pessimistic?

Maya Lester: I agree with the earlier comments that the early cases concerned a regime in which no reasons at all were given and there was no notification that you were on a blacklist, as they are called. The first you might hear about it was when you suddenly discovered that you could not withdraw money. The early cases, therefore, are on rights of defence and the importance of basic due process in this area.

Yes, things have improved since then; those are historical. Yes, there was a particular problem after 9/11, with a lot of people being added to counterterrorist lists. The White House counsel at the time described the process as, "We just rounded up the usual suspects and said, 'Let's go and freeze their assets'". That was a time when no reasoning was given. It is an historical problem, although there are still people on lists resulting from that period. Things are a lot better, in that there is now notification and there are now basic reasons. As Michael Bishop rightly said, the focus of the court has now become not so much, "Are the reasons vague or not vague?"—although there is still some of that—but, "Is there any foundation for the reasons that you have given?"

Michael Bishop: Could I make two points? The first is that the trend in the Council improving its record before the courts has got much better. This is rather recent. The figures that I have show that in 2012, 2013 and 2014 the Council was still losing twice as many cases as it won, which is not good at all. In 2015 that trend was reversed; the Council won more than twice as many cases as it lost. The same applies for 2016. The figures for 2012 do not concern the very historical cases, where no reasons at all were given. They are country sanctions regimes where, initially, the reasons were not specific and not sufficiently substantiated. Now a much better job is being done on that by proposing states and within the Council.

The second point is that I want to clarify, in case there was any misunderstanding, the standard of proof. I said that the Council's basis is "a sufficiently solid factual basis". That is the expression used in Kadi. I did not say that the standard was equivalent to the criminal one, which, as you know, in the UK is "beyond reasonable doubt". The point I was making was that, if the expression "a sufficiently solid factual basis" is considered to be broad and general, the same observation can be made of other standards of proof that you find in paragraph 47 of Maya's submission—things like "reasonable grounds" or "basis to suspect or to believe". I do not think that that is any more specific and detailed than "a sufficiently solid factual basis".

Lord Richard: Can I deal with the last point? You refer to a sufficiently solid factual basis, but for what—for the allegations or for suspicion of the allegations?

Michael Bishop: The purpose of the sanctions is certainly precautionary and preventive. It is not a criminal measure. There is no implication that the person has necessarily been guilty of a crime. Therefore, that is not the standard.

Lord Richard: What is the standard?

Michael Bishop: The standard has to apply, first, to the fact that the reasons for listing come within the listing criteria.

Lord Richard: Yes. That is the easy one.

Michael Bishop: That is the easy one. Then it has to be substantiated. There have to be enough elements in the file to make it out—to show that it is indeed the case.

Lord Richard: To show that what is indeed the case?

Michael Bishop: Let us take the example of providing financial support to the Government of Iran. That is an easy one to satisfy. You can take a state-owned company and say, "This provides financial support to the Government of Iran". It is not enough to say that it is state owned; you would probably have to find the provisions in its articles of association that say, "Yes, the dividends are paid to it". You would also have to go to the accounts and show that significant amounts of money were paid. On

the basis of those facts, which are impossible to controvert, you can say, "This is a sufficiently solid basis to consider that the company is supporting the Government of Iran", because it reaches the threshold of providing sufficiently substantial support.

Lord Richard: Why can you not codify the standard of proof?

Michael Bishop: The EU system is that the legislation tends to be rather general and the court then interprets it. That is a fact of life in the EU.

Lord Richard: Most countries have a codified standard of proof, one that is legally expressed and that everybody understands. It need not be the same one in different countries. Why on earth can it not be transparent, such that before sanctions are introduced, there has to be a certain standard of proof applied and that standard of proof has to be complied with?

Michael Bishop: We think that it has to be sufficiently solid.

Lord Richard: That is enough.

Michael Bishop: Yes.

Baroness Ludford: Perhaps I can be devil's advocate to Maya Lester. Are you saying that there should be no role for presumption, even if it is a rebuttable presumption? If someone has got very rich in Russia or Ukraine or belongs to the family of a regime member in Burma—at least, the old Burma—can that play no role in a listings decision? Would it not be unrealistic and naive for it to play no role in such a decision?

Maya Lester: It depends on what role it is playing. The difficulty is that we are talking about freezing the assets of individuals and companies—people who have been singled out. This is not a decision where, for example, we are placing broad sanctions on the business community in X country; we are picking and choosing them. That is one reason why one cannot simply say that, as a result of the application of a presumption, we are choosing this person, because obviously it would apply to everyone. Once you are in the business of picking and choosing, it seems to me that you have to provide some basis for thinking that a particular individual has, for example, got contracts as a result of corruption, rather than merit.

The second point is that very serious allegations are being made about individuals and companies. The point was made earlier that if you are going to allege that all successful businesspeople in a particular country must be corrupt, that is a very significant allegation. If that is to be used as a presumption across the board, not only does it have to result in equal treatment of all those people, but there has to be serious substantiation for its being the case.

The way in which the presumptions are offered by the Council is simply by asserting that they must be correct in that country. That is what the court has been objecting to. If what one is doing is offering a

presumption instead of evidence, which is the Council's case—"We do not need evidence. Your company must have got these contracts as a result of corruption"—that is the bit that most troubles me. The Council is saying, "We do not need to show that this in fact happened, because we simply assume it". From the perspective of someone whose business is seriously affected by that, it is highly objectionable, for obvious reasons. They can say, "Actually, the laws in Belarus are clear on this". The same presumption has been applied in Russia and Syria. To correct one matter, I do not think that it is correct that in the context of Syria, the court upheld the use of presumptions. It started that way, but more recently it has decided that you cannot use presumptions instead of an evidential basis.

Michael Bishop: The starting point is to recall that the purpose of targeting prominent or leading businessmen, which is the criterion—not any businessmen—in countries such as Belarus and Syria is that the regime depends on the support of those people in order to survive. If the business class in Syria had made it clear to Assad some time ago that it would withdraw its support from him as a class, I think he would have been out of power by now. The same can be said for Belarus. The purpose is to target the influential businessmen, not because they are necessarily doing bad things or because we are accusing them of anything, but because the policy idea is that the Governments in those countries depend on those people's support. If they have the impression that the regime is no longer working in their interests or in their favour, they will think twice. They will hedge their bets and look at something else.

That is the starting point. On the application of the so-called presumption, you asked, "Is it naive?" I will point you to another Belarus case, called Ternavsky. That, too, was delivered by the General Court—the same judges, actually—six months earlier. This man was also a leading businessman. He did not dispute that. He had a company that was one of the biggest construction companies in Belarus. The court said quite clearly in paragraph 121 of its judgment, which is available only in French, that in a country like Belarus—it did not even say in Belarus, but "in a country like Belarus"—economic activities on such a scale by the companies of that businessman were possible only with the approval and support of the regime of President Lukashenko.

That was one approach that the court took earlier in the same year. Later, in the case of Chyzh—also a businessman—it took a rather more formal approach and noted, "The laws in Belarus provide a procedure for the award of public contracts. The Council has not disputed that. Unless it can prove that Chyzh actually paid a bribe, we cannot make any presumption about how he managed to get some very valuable contracts". There the court went the other way. If you ask me which approach is preferable, I think it is certainly the first one, which now has a lot of support in the case law of the Court of Justice—the case of Anboub.

Q13 The Chairman: Mr Bishop, this homes in on something that has concerned us on the Committee. The court may make a decision and unlist someone, but then, within a very short time—sometimes within two months or 10 days of the annulment of the original listing—people suddenly find that they are on the list again. That is flying in the face of due process. You are off the list, but it has no meaning. The court decisions do not seem to have much meaning. What do you have to say about that?

Michael Bishop: I understand that. In fact, in the history of EU sanctions, the Council has always paid close attention to the judgments of the court. In the case of annulment of a listing, it is obliged to take full account of the reasons for the annulment. That means that, if it wishes to relist, not only can it not just repeat the same statement of reasons, on the same information, but it cannot adopt a listing that would be affected by the same kind of illegality as the court has already ruled on.

However, the court is not the arbiter of whether a person should be listed, or whether it is right or proper to list someone. It does not rule in a general way like that. This is a policy decision for the Council to make. The court has to review whether the listing criteria are valid—whether they are legal or arbitrary. Then it has to see whether the reasons for the listing given are sufficiently precise. Then it has to see whether they are substantiated. It is not required that the Council put together all possible, conceivable reasons for listing against someone at the time of the initial listing. Indeed, in most relisting cases, the new listing has taken place on the basis of a new criterion that was subsequently added. That is what you find in the case of Iran. The initial listings were for involvement in nuclear proliferation. That was difficult to prove. Then in 2012, for policy reasons, the Council decided to broaden the scope of those measures and allowed for a listing criterion of “providing support to the Government of Iran”. Most of the relistings were done on the basis of the second criterion.

The Chairman: It seems surprising to people that suddenly a new criterion arrives days after one decision of the court. It has all the appearances of playing cat and mouse. Somebody wins a case, but within a short period of time, they immediately have another blacklisting slapped on them. Then they have years of process before they can get back before the court. It has the sense, to the public and to those affected, of being politics ignoring law. Maya Lester, what do you have to say on the subject?

Maya Lester: I said everything that I would like to say on it in the note. I will not repeat it, but I will make a couple of points. First, in addition to the substantive unfairness problem with some kinds of relistings, which I have addressed, this highlights some of the process problems. If you are in the position of a company or a person who suddenly finds themselves relisted, having won, one of the most frustrating problems is that there is nothing that you can do about it, other than go back to court. That is because there is no meaningful administrative procedure at all with the Council, by contrast with the US system, where the Office of Foreign

Assets Control of the US Treasury responds, holds meetings with people who have been listed and sometimes provides some swift procedure to sort it out, without having to go to court.

Even in cases of real injustice, there is no means for that to happen when it comes to the European Council. I have had a case of mistaken identity, where someone was listed under the Syria sanctions regime because their name happened to be Assad. No identifying information was given in the listing. He was receiving serious threats. We urgently contacted the European Council to say, "There must be a mistake. Please clarify". What one gets is a standard letter six months later saying, "Your letter is under review". Eight months later, you might get a further letter. By that time, you have had no choice but to submit your application for annulment in the European court. The European court, with the best will in the world, has no meaningful expedition process at all, although it is in its rules of procedure, so you never get a swift hearing there. You are in a situation where, two to three years later, you might be at the end of the second court process, when you have already won your first. There is all that, not to mention the expense of having to do it.

On the substance of the relistings, there must be cases where it is permissible to relist. In my view, the problem is that the court has treated this as a category of measure that means that when you get an annulment—unlike a judgment here, which you would expect to have immediate effect—the court suspends the effect in order to give the Council time to rectify the mistake. It does so partly because it takes the view, perhaps rightly, that there must be cases where there is an urgent need to do something and it does not want dissipation of assets, for example. Because that has now become completely standard practice in the court, it enables the Council—with respect—sometimes to play a cat-and-mouse game. It seems to me that there are cases where it might be justified. The problem I have is when the Council relies on matters that it could have put at the time of the original listing or that it put at the time of the original listing but is now giving a new legal label, because the legal criteria have changed. I have given a number of examples of that.

The Chairman: It is called spinning.

Maya Lester: The difficulty is that I have lost on this issue in the European court, so legally it is a permissible practice. It is one that the Council uses again and again. We have put the arguments that UK courts might call this an abuse of process, but so far unsuccessfully.

The Chairman: Baroness Hughes, you might like to ask the question that you put to our other witnesses.

Q14 **Baroness Hughes of Stretford:** Thank you very much for your note, Ms Lester, which I found very helpful generally. In the note, you answered this question fairly fully. It is about whether either of you can see improvements or changes that you think would make the process fairer. Ms Lester, you have given several that are largely about improving capacity, speed and so on. Finally, you suggest a rethink about the

misappropriation of state funds regimes, to which you alluded before. Having heard the evidence, and perhaps the previous evidence from Foreign Office officials, would you like to make any additions to that list of improvements?

Maya Lester: No, I think it covers all the improvements that I would like to make. I do not expect that any of them would find favour with the Council. The one I wanted to deal with is the issue of why there is not an equivalent two-tier regime for all sanctions listings, which was put to the Foreign Office. I suspect that the answer is that, first, it is extremely onerous for member states to have a rigorous system of sanctions listings themselves. Secondly, they do not all have powers in their national legislation to enable them to do that. Currently, we have them only for one sanctions regime. My guess is that the member states would rather leave the capability in the hands of the EU.

It seems to me that we have the problem of an evidence-gathering gap. You will have seen reference in my note to remarks by the European court that perhaps at the moment the European Council simply does not have the capacity to gather evidence—not evidence of a kind that we would call evidence in a court here—so what one regularly gets is reliance on press articles and the internet. There seems to be a problem, which is why the focus for the annulment cases is now on lack of evidence. If there were some mechanism for a more rigorous evidence-testing process, that would seem to me highly desirable. I will not repeat the other points that I made in writing.

I have to say that I am slightly sceptical about the comment that things are getting better in the Council—again, from the perspective of people on the list. It seems to me that one reason why the Council is now winning more cases than before is that it has made the criteria easier to satisfy. It is therefore much more difficult to say that someone is not, for example, connected with providing support to the Government, rather than engaging in misconduct of one kind or another. That is not to say that the Council is not fully entitled to make that judgment as a matter of policy, but it is why, as a matter of law, the Council has been winning those cases. It is not a sign that a more rigorous standard of evidence gathering or of due process is being followed.

The Chairman: Lord Cromwell will supplement that. I will then let Mr Bishop answer all of it.

Q15 **Lord Cromwell:** May I pick up briefly the point that you made earlier, Ms Lester, about countries cottoning on to our sanctions system and sending in suggested enemies' names to be subject to sanctions, which is a political act? Is that a growing trend? How can we deal with it?

Maya Lester: It is a growing trend, in the sense that there are now three misappropriation of state funds regimes. The Egypt and Tunisia regimes were Arab spring regimes. Now exactly the same regime has been used for Ukraine.

In my view, the reason why these are even called sanctions regimes at all is a mistake. They are called sanctions regimes because what the European Council has as its instrument of choice is an EU-wide asset freeze, but they are not sanctions in the sense of trying to change behaviour. They are sanctions in the sense that the EU has chosen a side in a political fight and has decided to side with a certain faction. Therefore, it uses its very broad sanctions tool of being able to impose an EU-wide asset freeze.

There are a number of problems with that. One is that there are very well-established legal procedures, with which many of you will be familiar, for countries providing one another with mutual legal assistance. In other words, if there is genuine concern that somebody has misappropriated the funds of a state, there are procedures by which the United Kingdom can say to Germany, "There is good, prima facie evidence that someone has engaged in these offences and that X amount of euros are in Germany. Please will you freeze them so that they can then be returned, rightly". The way EU sanctions work is that there is an immediate total freeze across all member states, with no regard to quantum and to the quality of the evidence.

Lord Cromwell: I do not want to get us too far off-piste, but are you suggesting that there is collusion between both ends of the process—that people are sending names from a regime that the EU has decided that it likes, and the EU is very happy to sanction those people because it is supporting that regime? Is it a sort of collusive relationship?

Maya Lester: That is exactly what has happened. Some of these regimes have been initiated, to my surprise, by the EU. The Tunisia regime, for example, started in 2011 with a note verbale from the EU saying, "Please send us a list of those you regard as your enemies". They were only too happy to oblige. The list came the next day. Twenty-four hours later, there was a total EU-wide asset freeze on all those people.

That might be one problem. The next problem is that these are people against whom very serious allegations have been made in those countries and who are very often standing trial and being convicted in their absence. This is not a system that by any means respects the rule of law. Again, this is an argument I have failed on in the European court. When I say that this is not a legally valid or appropriate use of EU sanctions power, the EU court says, "As long as there is some sort of judicial process, essentially we trust the EU to rely on that third-country information". Contrast the position with the terrorist listings, where, if the EU is going to rely on a non-EU member state to provide it with information, it has to check to a quite onerous standard that that country complies with the rule of law. The same is not true for any of those regimes, but as a matter of law, I am afraid that there is nothing we can do. In answer to your question, "What do we do?" the only hope is that a country such as the United Kingdom might say that this is not an appropriate use of sanctions powers, but that has not happened so far.

Q16 **Baroness Ludford:** Leaving aside cases of misappropriation of public

funds, I have a question for Michael Bishop. We have talked about the type of evidence that is used, such as articles on the internet, and the charge. Does the Council have a system for accessing intelligence, either from national intelligence agencies and national police or from Europol and the European Counter Terrorism Centre? Are those accessed, or is it easier—now I am falling on the other side of the fence—to go with the presumption that, because you are a mate of the regime, you must be a bad guy? Are the channels of intelligence being used?

The Chairman: Mr Bishop, hold on to that question. I am just going to ask Mr Kinnoull—sorry; the Earl of Kinnoull—

Earl of Kinnoull: Thank you so much, Chairman.

The Chairman: Forgive me. You lost your title—very briefly. Is your question linked to any of this, or would you like to hold on to it and let Mr Bishop answer what has gone before?

Earl of Kinnoull: I would prefer to hold on, if it is all right. I have two very short questions.

The Chairman: Fine. Mr Bishop, there are a number of points that I would like you to have the opportunity to answer. You answered on the circumstances in which someone is relisted and new information comes, but Maya Lester has raised a number of things. First, if you were looking for improvements, why could you not have the Council introduce what the Americans have—a more informal process where, if it is done suddenly and there is an intimation that you are going to relist someone, even after a legal ruling, people can go much more informally—rather than a system where you end up having to go back into the court system and it can take years? That is the first thing that came out of Ms Lester's response.

The other thing she talked about was the blanket nature of this process and the risk in saying, "Give us a list of enemies of the state, as you see them", and relying on such lists from countries that we are now trying to support in developing democracy—Tunisia, for example. How does that fit with our concerns, on the one hand, to be supportive of new democracies, but, on the other hand, to be concerned about the rule of law? I am interested to know your answer to that and your response to Lord Cromwell's question. Would you like to cover that bit of waterfront for us? I will prompt you if it looks as though—

Michael Bishop: I have forgotten one of them. Yes, please do. On the question of the list of enemies of the state, that is just not true. The EU has never used that expression. It was never the case that there was some kind of political stitch-up in advance for the EU to do that, based simply on a list of members of the previous regime. In those three countries, it was perfectly obvious that there was a huge degree of nepotism in the regimes in question—Mubarak, Ben Ali and his wife Leila Trabelsi and her family in Tunisia, and in Ukraine. Okay, the information is open source, but there were television pictures of palaces, helicopters

and large properties. It was a question of recovering all the theft that had been going on for so long by those people, in order for the funds to be returned to their rightful owners—the peoples of Egypt, Tunisia and Ukraine.

As Maya says, there is a UN convention that allows for mutual legal assistance between states to request confiscation orders and mutual enforcement of judgments, but it takes years for the proceeds to be recovered. Meanwhile, the idea is for the EU asset freeze to apply immediately, in order to prevent asset flight. It is very easy for these people to dispose of their money outside the EU—outside jurisdictions—so it was necessary to introduce that. It is understood that this is a provisional measure that will be lifted when the national mutual legal assistance processes to recover the funds can be and have been completed.

The criterion for designation of these people is a high one. The court ruled in the recent cases concerning the ex-President of Ukraine that EU action is justified not by any misappropriation of public funds, but only by misappropriations where, either because of the amounts involved or because of the context—in other words, where the inner cadre of a regime has long been misappropriating state funds in a context of corruption—it is necessary to recover those funds and to support the processes for prosecuting and punishing people, in order to support the rule of law in Ukraine. These things cannot go unpunished in those countries.

- Q17 **The Chairman:** We understand the principle. Everyone would be in agreement about the importance of bringing to book people who have robbed the peoples of countries and viciously exploited their resources in the way that you have described. What we are looking at is how, procedurally, you can do that in a way that does not carry injustice for some people and is in accordance with some sort of respect for the rule of law. That is the bit that we are examining, as a Justice Committee. I want to home in on that, rather than the good principle behind what you are seeking to do. It is about marrying that endeavour of high value and importance with high standards, in accordance with the rule of law. I want to ask you about that.

A suggestion has been made to us that names are sent in to you by people from Tunisia and Egypt and that that becomes the starting point from which the Council operates. Is that something you know of?

Michael Bishop: Certainly the Council depends primarily on the information of the authorities of the country concerned. It does not necessarily have its own idea about who has been stealing money in those countries.

The Chairman: For example, the current President of Egypt, President Sisi, and his regime would be a source of information about people to put sanctions on.

Michael Bishop: That regime is a successor to the one that replaced Mubarak. The list that the Council drew up at the time, which is still applicable, comprises Mubarak and his inner cadre. It is not updated by adding subsequent people nominated by Sisi. It is a frozen list that remains from the time of the transition of power. It is not supplemented by new additions.

The Chairman: Baroness Ludford asked whether you access security services in finding intelligence to support you.

Michael Bishop: The answer is no. The Council depends on the member states—its own members—to supply information. Intelligence services information would be relevant to clandestine activities, such as involvement in nuclear proliferation. For matters such as whether a businessman is prominent in a third country and, therefore, satisfies the criteria for listing, you do not really need intelligence information. It can be done simply by ordinary internet searches and reading press articles.

Lord Cromwell: I do not have the written record in front of me, but I think you said earlier that there were two ways of establishing whether somebody was suitable for listing. One was, *de facto*, that all people who are successful in countries such as Belarus are fair game. The second was that a higher level of evidence has to be provided to substantiate that. I think you said that you preferred the former. Am I misrepresenting you? Is that what you said?

Michael Bishop: No. I think that the two situations are slightly different. As Maya said, the court is more comfortable with a broader-based listing criterion, such as providing support to the Government of Iran, than with a criterion such as involvement in nuclear proliferation, which is more difficult to prove. That means that, as Maya said, part of the reason for the Council winning more cases now is that more use has been made of those other status-based, broader-based criteria. However, I must insist that at least half of the reason for the improved success rate is definitely an improvement in the quality of the listing proposal and the information that accompanies it. I have seen that. It is clear.

Lord Cromwell: But you appreciate the risk of listing people on the basis that all prominent people in Belarus have certain characteristics, in the same way that all prominent people in Scotland have certain characteristics. That would not get you very far in a legal process.

Michael Bishop: The Council would not accept that Belarus and Scotland are in anything like the same situation. It is a value judgment on the socioeconomic situation of the country. It is quite interesting to see the codification that was introduced to the Syria sanctions in autumn 2015, where the Council specifies, in a page and a half of recitals, the concrete reasons why it is not just a general supposition. There are good reasons to consider that there is a close link between the superior cadre of Syrian businessmen, which has benefited for many years from favours from the Assad regime. Therefore, there is that link. In the opinion for Anboub, the Advocate-General cites a lot of literature to support that idea.

Equally, it was acknowledged within the Council that this was an analysis that certainly applied to Syria but did not necessarily apply to other countries against which sanctions would be applied. It was done on a serious, very evidence-based approach.

The Chairman: Baroness Hughes raised with you the question of whether you have ideas for improvement, picking up Ms Lester's suggestion of the American system, where there is a more informal way of intervening on something that you think is wrong by having informal meetings.

Michael Bishop: In a few cases, someone has written in and it appears immediately that there has been a mistake. That happened in the case of Assad. There was also the case of a company in northern Africa that had provided agency services to a big Iranian shipping company. It had clearly done so by mistake; it was not a company that regularly did that. They wrote in, it was clear and the council delisted them both speedily.

In other cases, the listing is much more complicated, and is based on other policy considerations. Can you imagine the Council, which is made up of 28 members, inviting a listed person—even a terrorist—to come in to explain, negotiate and speak about their situation? How could that be done? This room has 10 people in it. Can you imagine the Council, with 28 member states, conducting such a negotiation? I think it would be impossible.

Baroness Shackleton of Belgravia: Ms Lester said quite clearly that it took four years for Mr Assad to be dealt with, did she not? How does that square with your evidence that, if it was a mistaken identity, which I think it was, it was dealt with immediately?

Michael Bishop: I do not think it was four years. I can find out the actual facts of the matter.

Baroness Shackleton of Belgravia: I am talking about any delay, and the funding for any delay. How can it be justice that an error has occurred and there is no tribunal to appeal against that immediately?

Michael Bishop: Okay. In the case of mistaken identity, people who are listed use aliases—even before they are listed. They do it to dispose of their funds more effectively. They have several passports. It is not always so obvious that there is a case of mistaken identity. If someone claims that it is not him but someone else, you depend on the member state that has proposed the listing to check all that, and the person is in Syria.

Baroness Shackleton of Belgravia: Quick, to me, is not four years.

Michael Bishop: As I said, I do not think that it was four years—nothing like it. We will check the facts, but it was not four years.

The Chairman: We can have a look at that. Ms Lester, do you want to respond to that briefly?

Maya Lester: Four years was the very approximate figure that I gave for relisting cases—where you find yourself on a list again and have to go back to court—not for mistaken identity cases. What I recall about Mr Assad is that we did not get a response. Therefore, we had to go to court. When we got to court and put in an application for annulment, which was two months after the listing, the Council put in a defence saying, “You have no standing to challenge this listing, because your client is not the person who is on the list. Therefore, will you please withdraw your application? And by the way, we will not pay your costs”—which it never does, other than a tiny proportion. It is true that eventually he came off the list not as a result of a court judgment, but only after that process. I cannot say how many months or years it took for him to come off, but there was no swift process.

I would not necessarily want to recommend the US process in other respects. Experience of the degree to which OFAC is or is not a swift responder is very varied. I can imagine some of my counterparts saying, “I cannot believe you said that this was a good system”. It is true that OFAC holds meetings and sometimes responds under the radar, as it were, without having to go to litigation.

The Chairman: Thank you for that clarification. I am sure that the Earl of Kinnoull, like me, is very happy that Scotland has been vindicated as not comparable to Belarus. He has a question.

Q18 **Earl of Kinnoull:** It is really tidying up. I have two very precise questions. First, exactly how pervasive is the practice of relisting? Is it in fact the case that there is pretty well a rebuttable presumption that, if a case is lost, relisting occurs? Secondly, following on from the question that I asked before, Mr Bishop, is it a correct interpretation in your view of Council procedural rules that national parliaments are not entitled to see the open-source information used in listings? They are two quite different questions.

The Chairman: They are really directed at you, Mr Bishop.

Michael Bishop: On the first question, it is not always the case that, following a judgment, there is a relisting. In some cases, the Council accepts that following the judgment of the court it has no possibility of doing a relisting. The illegality that the court has identified means that the information available to the Council does not support a relisting.

Earl of Kinnoull: I am really asking for numbers. Is it nine out of 10 times relisted? I am asking for the degree of pervasiveness.

Michael Bishop: I do not have the facts and figures at my disposal. I can certainly think of two or three cases in recent times when the Council accepted—so-called accepted—the judgment. Even if you produced facts and figures, you would probably need to distinguish cases where the Council has relisted as part of a general policy, which I talked about for Iran. In 2012, it introduced a broad range of economic sanctions against Iran, targeting the oil industry and other matters as part of a general

attempt to ratchet up the pressure on Iran, which was felt by the population as well.

The Chairman: The delistings in Iran were automatically listed again.

Michael Bishop: Yes. That accounts for many of the cases, but I do not think that it corresponds to your concern, which is not really about when the Council is using a completely different criterion. Rather, it is about when the Council is relisting on the basis of similar kinds of facts or things that could have been used earlier. Those statistics would not really enlighten you. What I can say is that the Council relists in certain cases, but not always.

The Chairman: What about the business of open-source information, which the Earl asked you about—the fact that people are not given access even to open-source information?

Michael Bishop: I see. On that question, a listing decision, and the file that makes it up within the Council, will be composed of the proposal by the originating state, plus the administrative documents within the Council: the record of the discussion, the recommendation and the note that is sent to the Permanent Representatives Committee of the Council for adopting the act. Where it is based on open-source information, it will be additional information that the member state has sent in, not through its COREU, which the FCO talked about, but parallel to that. The statement of reasons will not normally include all the open-source information, which can run to many scores of pages; it will be just a paragraph.

When a person is listed, the first thing that the lawyers normally do is apply to have access to the Council's file. The Council's response will be to give the person so-called privileged access to the documents on the file that are not public. That is the first category of documents I talked about—the listing proposal and the internal Council documents inviting the Council to adopt the decision. It will give him privileged access, telling him, "These documents are not publicly available. You must not make them public". It will also give the person access to the open-source information—the photocopies of press articles or the screenshots of internet searches—without that caveat. Obviously, those are public documents. The mere fact that there is a Council stamp on them saying, "Meeting document of the working party", does not make them something confidential.

The rules of the Council say that its deliberations are covered by the obligation of professional secrecy. That covers all the documents that are part of the Council's file, except those that are public anyway. Applying all of that to your question, it means that there is no Council rule prohibiting or preventing public disclosure of information that has been obtained from open sources. There is no reason to refuse that, either to the listed person or—but that is a matter for the member states—within the member states' own parliamentary scrutiny. Of course, that would be done only after the listing. If someone thought that he might be listed,

applied for the Council's file and suddenly saw a whole load of open-source information on him, he might realise what was going on. That never happens. People who think that they might be listed never ask the Council if they will be. Rather, they dispose of their funds beforehand.

The Chairman: Mr Bishop, thank you very much. You have helped us. There is no rule prohibiting us from having access to open-source information. We will rely upon your evidence in our exchanges with the Government. Baroness Newlove, could you ask your question?

Q19 **Baroness Newlove:** How effective is the Council in corresponding with individuals or entities subject to listings? When the staff of the service receive correspondence, how effective are they?

Michael Bishop: This is how it works. When a delisting request comes in, the letter received and all the annexes—the supporting documents—are sent to the Council working party responsible for that sanctions regime. You have one working party for eastern Europe and Ukraine, another for northern Africa, and so on. It will look at the letter and discuss, on its merits, whether or not the listing should be maintained.

If the working party decides that the listing should be maintained, on that basis, officials in the External Action Service will draft a letter of response to explain to the listed person why the Council does not agree with their request for delisting. That letter of response is submitted for approval to a co-ordinating working party called the foreign relations working party, which is the one that I follow. Then it is submitted for approval to Permanent Representatives and the Council. Since it is the Council that decides to put someone on the list, only the Council can decide to remove the person from the list or maintain them on it. The response is approved at the level of the Council.

According to the case law, it is not necessary for the Council to respond in detail to every observation that is presented. Sometimes the letters are presented by lawyers who do a summary, or even a cut and paste, of their application for annulment to the court. It can be 50 pages long. It would not be appropriate for the Council, as a political body, to go into all that detail. There is an administrative process, and a process to go before the court.

Having said that, there have been quite a few cases in my experience where, equally, the person making the application—even the lawyers—has not engaged very seriously with the reasons or the information given at the time when they applied for access, and where the Council's response has been more detailed than what it received. Of course, you also have delisting requests written by hand—for example, from the widow of someone who is on the list—which are not drafted by lawyers. Those are considered by the Council working party in the same way.

The Chairman: Ms Lester, how have you experienced the business of people writing to the Council and the speed of response, or getting any response at all?

Maya Lester: There is always a response now. The concerns are, first, that it is a very slow response, and secondly, equally importantly, it does not usually, in my experience, engage with the substance of the complaint. The Council might write back and say, "We have had regard to your observations". Often those are detailed observations—I have certainly never seen 50 pages, but they may be a couple of pages—pointing out factual inaccuracies, very often, in the listing process and deficiencies in the evidence relied on. What one usually sees, although not always, is a letter from the Council saying, "Thank you very much. We have heard your observations. We are not persuaded to change our mind. The reasons why we are minded to relist you are the following". That is very frustrating for a party to see. There is very rarely a taking on board of the points that are being made, which then of course forces you to go to court.

I have two other points on that. First, the Council never responds when people ask what they have to do in order to be delisted. I do not understand why. People have said, "The sanctions are supposed to be behaviour changing. Tell me what behaviour you would like me to engage in, or to stop engaging in, for them to be lifted". In my experience, the Council never responds to that. It also never responds, in my experience, to suggestions for less restrictive alternatives. If the Council says, "Our object in putting you on an asset freeze is X", and an entity, in order to engage in business, or a person, in order to live their life, asks, "Why do you not do the following instead? How about a proportion of my funds, or some kind of mechanism, as an alternative?" that is not something the Council has been willing to engage in; nor, I might say, has the court done any proportionality analysis of that kind. Just on the correspondence, those are particular points of frustration.

The Chairman: Mr Bishop, do you want to respond to that? We are really running out of time, but there seems to be frustration. If your purpose is to create change, Ms Lester's suggestion is that there could be a productive engagement that involves saying, "If you want to get rid of these sanctions, the way to do it is the following". She suggests that there does not seem to be that element within the whole regime—there is an absence of a change mechanism, if you like.

Michael Bishop: Yes. We could think of the example of a close associate or a businessman in Belarus or Syria. If the Council responded, "To get off the list, you have to denounce the President publicly"—

The Chairman: That would not be very easy.

Michael Bishop: It would not go that far. EU power is not as tough as that.

The Chairman: No, but in Tunisia, a place that is supposed to be engaging with democracy and so on, you could have quite an effective role in improving the way in which the business world should relate to government.

Michael Bishop: Yes, and that is the policy of the Council. The purpose of the misappropriation regimes is not regime change. That has already happened. It is simply to recover the stolen funds of the previous regime, in order to return them to the state. It is not to change behaviour.

The Chairman: What about not engaging with the issues that are raised in letters? There is a failure to do that.

Michael Bishop: If a businessman thinks that he should not be listed, he will say, "I am prominent, but I do not agree with the basis on which you think that prominent people should be listed". It is clear in the legal act why the Council has adopted that particular policy. It is not going to have a new debate with each person.

Q20 **The Chairman:** I come to the final question that the Committee would like to ask both of you. The regime arrangement, which is based within the European Union, is obviously one of the things that will be part of the considerations of Brexit. How worried are you about Brexit?

Michael Bishop: As far as EU sanctions are concerned, the UK has contributed enormously to the substance and quality of improvements in the sanctions process that we have seen over the last couple of years. There might be fewer listings after the UK has left. Without the UK, a very valuable input, as regards quality, could be lost, unless other ways are found of preserving it. That will be part of the negotiations.

Maya Lester: I agree with that. My understanding is the same—that the UK has been very influential in EU sanctions policy. Of course, to some extent, the UK would then be able, potentially, to engage in its own sanctioning processes, but they would only be EU-wide. In that sense, therefore, they would be much less effective, if what it is trying to achieve is an EU-wide policy. I do not know whether there are any suggestions for ways in which the UK could still be involved in EU sanctions policy if it is no longer a member state. I simply do not know what discussions are happening.

Could I make two very small points, to finish? One is on the comments about behaviour changing. Of course, in a great number of cases, the Council could respond. If, for example, the allegation is that you are engaging in certain transactions to circumvent sanctions, there seems to be no reason why the Council could not come back and say, "If you stop doing X, Y and Z, sanctions will be lifted". They are not all about businessmen in Belarus.

Secondly, the suggestion that mutual legal assistance procedures are too slow is not correct. There are very speedy MLA procedures. Of course, it is true that they do not happen overnight. The point I want to end on is the idea that that did not happen with regard to Tunisia. I have a record of the note that the EU sent to Tunisia. It is the note from the EU Council's Tunisian delegation to the Tunisian Ministry of Foreign Affairs on 25 January. It reads, "We ask urgently to receive a list of persons known or suspected of having acted against the interests of the Tunisian state

and/or its people and whom Tunisia wishes to punish. Please could you send this list immediately". Tunisia did so. That resulted the next day in the EU sanctions programme. With respect, it did happen.

The Chairman: Mr Bishop, that would seem like an invitation to send a list that could have on it people who, precisely as you described, have been stealing the assets of the people on a large scale, but could also include people who are just deemed to be enemies of the state.

Michael Bishop: Yes. I agree that the wording chosen by the official in the Tunisian delegation was unfortunate. On the substance, he asked for "a list of persons known or suspected of having acted against the interests of the Tunisian state". The only possible interpretation that could be given to that is that he meant, "by having stolen public funds". If the interpretation was, "Just give us a list of all enemies of the state", it would not be serious. The Council never intended anything like that. Equally, I see that the reference to "and whom Tunisia wishes to punish" is in inverted commas, so it is a record of something.

Maya Lester: No, those are my inverted commas.

Michael Bishop: Okay. One of the criteria for the designation was that these people have to be subject to proceedings by judicial authorities for their misappropriation of public funds.

The Chairman: I can see the purpose in the letter, but it carries the risk that people would be included on such a list who might not fulfil your sense that they have been recognised as persons who have been involved in misappropriation.

Michael Bishop: It carries that risk—indeed.

The Chairman: That is why standards of proof are so important.

Michael Bishop: Yes. That is why you also need to look at the lists in question. For Tunisia, it is all one family, which is called Ben Ali or Trabelsi—50 people, all with the same name. What that family did with Tunisian public funds is well known. The list for Egypt is about 15 people—Mubarak and his associates. The list for Ukraine is about 15 or 20—the President and close aides to the presidential regime. The court has said that you can go only for the top people. You can do it only when the measure is necessary to prevent the foundations of the state being undermined; it is not just any misappropriation. Those are the guarantees that the Council, too, respects.

The Chairman: Mr Bishop and Ms Lester, thank you very much for coming and giving your time this morning. It has been invaluable. If there is anything that you would like to add or to supplement your answers with, please send it through to us. If there is any correction that you want to make when you receive the transcript, please correct it. If, for example, you stumble upon any statistics that would be helpful to us, Mr Bishop, they would be really useful as well, just so that we can look at how things are shifting and changing and—in answer to the Earl of

Kinnoull's question—the number of cases where people are relisted pretty promptly. All of that would be very helpful to us. If you could send it through to us, I would be grateful. Thanks to you both.