HOUSE OF LORDS

Select Committee on the European Union

External Affairs Sub-Committee

Corrected oral evidence
Brexit: sanctions policy

Thursday 14 September 2017

10.05 am

Watch the meeting

Members present: Baroness Verma (The Chairman); Lord Dubs; Lord Horam; Baroness Manzoor; Lord Stirrup.

Evidence Session No. 3 Heard in Public Questions 19 - 38

Witnesses

I: Mr Paul Williams, Director Multilateral Policy, Foreign and Commonwealth Office; Mr Andrew Murdoch, Legal Director, Foreign and Commonwealth Office; Mr Matthew Findlay, Deputy Head of International Organisations Department, Foreign and Commonwealth Office; Ms Rena Lalgie, Head of the Office of Financial Sanctions Implementation; and Mr Giles Thomson, Deputy Director, Sanctions and Illicit Finance, HM Treasury.

Examination of witnesses

Paul Williams, Andrew Murdoch, Matthew Findlay, Rena Lalgie, and Giles Thomson.

Q19 **The Chairman:** Thank you and good morning. First, apologies for the cramped way in which you are having to sit. You are very welcome today. Two more colleagues might join us but we wanted to start promptly. The session will be broadcast live. We will send you copies of the transcript afterwards, so if you have any corrections you can correct them and send them back to us. We tend not to have opening statements, but we like our witnesses to give a brief introduction on the work that they are involved in.

Andrew Murdoch: I am one of two legal directors at the Foreign Office. One of the areas I cover is sanctions, which I have covered for the last six years in various guises as Assistant Legal Adviser and then Legal Counsellor. I am concerned very much with the technical detail of making listings and agreeing them at the UN and the EU, up through the more strategic issues over the last few years.

Paul Williams: I am the Multilateral Policy Director in the Foreign Office. Sanctions fall within the remit of my directorate. I also cover other multilateral issues—the United Nations, human rights and democracy and conflict-related issues—which speaks to how we see sanctions within the remit, as a tool within our overall foreign policy. In that regard, my directorate works closely with geographical directorates, the legal directorate and of course with colleagues across Whitehall, two of whom are here today.

Matthew Findlay: I am Deputy Head of the International Organisations Department, which sits within Paul's directorate. Like Paul, I have been working for about the last three years on a combination of sanctions and broader UN issues. Over the past few months my job has been increasingly 100% about sanctions, given the challenges that we face. I oversee the team in the directorate that co-ordinates all of our sanctions work.

Rena Lalgie: I lead the Office of Financial Sanctions Implementation, which is part of the Treasury. This was set up last March to ensure that financial sanctions are better understood and implemented and robustly enforced.

Giles Thomson: I am a Deputy Director at the Treasury responsible for sanctions and illicit finance. I am responsible for anti-money-laundering and counterterrorist finance policy at the Treasury, where I am also the UK's head of delegation to the Financial Action Task Force. I am also responsible for financial sanctions policy within the Treasury, working closely with Foreign Office and Office of Financial Sanctions Implementation colleagues, with a particular view to trying to design sanctions that have the maximum impact on the target while minimising the impact on the UK economy.

Q20 **The Chairman:** You have had a copy of the questions. We might have supplementary questions, or colleagues might decide that they do not want to ask the questions that we have sent to you. I will start with the first question, which you will be happy to know you have had sight of: what percentage of the sanctions that the UK currently imposes are transposed from the UN sanctions, EU sanctions—either autonomous or going beyond UN sanctions—or autonomous UK sanctions? That is a mouthful but it is an easy enough question to understand.

Paul Williams: I will take that one. We thank the Committee for inviting us here today and allowing us to give evidence. The first thing to say on your question is that we would always prefer to do sanctions through the United Nations, because sanctions done through the UN are binding on all the UN member states—193 countries—and, in foreign policy terms, the wider the scope that you can cover in implementing sanctions the better, to try to coerce the change in behaviour that you are looking for. However, for reasons that you will understand, it is not always possible to go through the UN, so in fact we regularly go further within the EU, or the EU does its own autonomous regimes.

With thanks for sight of the question before we arrived, I can give you some figures that my colleagues have gathered. The UK implements six UN-only regimes, with Mali being a new one. We implement nine sanctions regimes through the EU, which are UN sanctions regimes that have been added to by the EU. That includes the DPRK. We implement 18 EU autonomous sanctions regimes, including the Russia regime and Syria, which you will understand we have not been able to get through the UN. In terms of UK autonomous regimes, we have around 20 individuals and entities listed under the Terrorist Asset-Freezing etc. Act, TAFA. I should note that there are two arms embargoes that we implement through the OSCE relating to Armenia and Azerbaijan. That is 35 regimes in total, of which about 17% are through the UN, 25% are UN but added to by the EU, and 51% are EU autonomous. In terms of listings, it is about 99% UN, UN-plus-EU or EU, and about 1% UK.

Q21 **Lord Horam:** Sticking to the script on this occasion, the second question is: what advantages and disadvantages does EU membership have for Member States in designing and implementing sanctions? Could you give some examples?

Paul Williams: I will start and I am sure colleagues will want to join in. The main advantage of doing things through the EU is the breadth and range of countries. As I said before, we see sanctions as part of our foreign policy toolkit, and therefore the more countries that implement the sanctions regime, the greater the impact of that regime.

Lord Horam: Do you always get all EU countries when you have an EU sanctions regime?

Paul Williams: If it is agreed in the EU, then all the EU countries have signed up to it, yes. You are perhaps alluding to one of the disadvantages: you have to get everyone to agree. Obviously that can take a bit longer and there is potential for watering down what one country would want to do, for example, because everyone has to agree.

Lord Horam: Do you have any recent examples of where the initial idea has been watered down substantially?

Matthew Findlay: Yes. There is a principle that discussions in Council are supposed to be held in confidence.

Lord Horam: So we do not know where we are starting from.

Matthew Findlay: It is slightly difficult to answer the question, but clearly anyone who reads newspapers would know that, for example, in the debate on Russia three years ago, all sorts of positions needed to be reconciled. We would see that as a good outcome. One advantage was that the EU, as a large economic bloc, was able to take decisive action that had an impact on Russia's calculations. There have been cases where it has been more difficult to reach a common line. On some occasions, such as on Syria, there have been disagreements on how far we can go.

Paul Williams: Perhaps I should point to another advantage, which is that when you are 28 you can share experiences and information. That is an advantage of being in the EU. Perhaps an optimum situation when we leave would be that we could continue to work closely with the EU and EU Member States, ideally still sharing information but at the same time having the autonomy to act quickly ourselves, maybe to lead the way and potentially, if Ministers want it, to go further in certain cases.

Lord Horam: Thinking of Russia, which you said it took quite a long time to get agreement on, it was relatively successful in the final analysis. Were there big differences between the various countries in the European Union?

Matthew Findlay: There were three sanctions regimes for Russia. There was the specific response to the annexation of Crimea, with one sanctions regime purely about a trade and investment ban relating to Crimea. A second regime is about listing individuals associated with Russia's aggression in Ukraine. Then there is a third regime, which deals with the wider economic sectoral measures such as limitations on credit that can be provided to certain Russian state-owned banks, on drilling in the Arctic and so forth. It was on that area, the economic measures, that the disagreements were most intense, because they can hit countries' economies and become very political. That was a fairly intensive negotiation. What matters a lot in that context is where some critical players such as Germany come out. Its role has been crucial.

Lord Horam: Is it your impression in the foreign policy context that if the big three in the European Union, France, Germany and Britain—we are coming out, but we are still in there at present—are allied, the others will follow, or are there separate geographical differences?

Matthew Findlay: Experience has shown that where the three are aligned—for example, on Iran—the impact can be very effective. It has been our experience generally of European Union foreign policy that that is the critical triangle. However, there are 28 members of the EU; they all have a veto, and some have very strong interests in particular cases. For example, Poland had a massive interest in the negotiations on Russia. So I would say that EU-3 co-operation is generally necessary, but not sufficient.

Q22 **Lord Stirrup:** I would like to take a dive into the engine room, if I may. In considering all this, it would be very helpful to us if you would give evidence on the mechanics of the process. How are EU sanctions negotiated, constructed and agreed? What role do the various actors such as Member States, the Commission and the External Action Service play in all this, and how do they interact? How does it all work? An understanding of that would be crucial to an analysis of how we might best play our part in sanctions post Brexit.

Paul Williams: Again, Mr Findlay has the closest experience of this on a day-to-day basis, so I will ask him to speak.

Matthew Findlay: With pleasure. First, where the UN Security Council has agreed measures, there is a relatively automatic process of the EU working to turn that into EU law, which then has direct effect in the Member States. That is generally uncontentious. There are cases—for example, the DPRK—where the EU not only takes the UN measures but goes above and beyond, and there are obviously negotiations. I will limit myself more to the EU autonomous sanctions—

Lord Stirrup: So when it comes to UN-agreed sanctions, the British Government do not have to give effect to them in law in this country because it is done automatically through the EU. Is that correct?

Matthew Findlay: That has become the standard practice.

Lord Stirrup: That would have to change, obviously.

Matthew Findlay: Exactly. Where a crisis erupts in the world and there is political impetus for the EU to take action, the first stage is often a political discussion; for example, in the Foreign Affairs Council. Quite often, a head of steam will build up for sanctions to be explored as a possible part of the EU's foreign policy response. There then tends to be a discussion in one of the geographical expert working groups within the EU or within the Political and Security Committee—that is the committee of ambassadors that supports the Foreign Affairs Council. Usually, a mandate is given to the technical experts saying, "We are interested in doing sanctions. Please go away and work up some concrete options". The responsibility for then drafting the legal Acts that would give effect to the Council Decision, which is the political commitment to apply sanctions, tends to sit with the External Action Service. It produces a draft, which is then negotiated by the EU Member States and often amended before it is finalised. In parallel, the European Commission produces a Regulation, which covers those parts of the sanctions for which the EU has competence, such as the trade restrictions and financial restrictions. Those are done through a Regulation, which, once adopted, has direct effect in the Member States. The EEAS and the Commission hold the pen on the legal Acts, but subject to negotiation. Implementation is then partly through that direct effect of EU Regulation, but the Treasury, the Department for International Trade and others have to take certain steps to apply those Regulations in UK law—colleagues will say more about that. When you have a sanctions regime, you then have an opportunity to propose that certain individuals be designated under that regime. It is quite often the Member States which make such proposals, the UK having been one of the most active in doing so. Again, those have to be agreed by unanimity.

Lord Stirrup: Assuming that the UK wanted to continue to align itself with EU sanctions post Brexit, at what stage and how would it need to be involved in the mechanics of that process? Would it be at every stage? What would be the crucial requirement for the UK to have influence over the process and to be able to agree what came out of it?

Matthew Findlay: To some extent, the answer is what you said: at every stage. Going back to what Paul Williams said about sanctions as a foreign policy tool, I think that the crucial thing is that the UK is part of the wider foreign policy strategy. For example, when Russia annexed Crimea and invaded Ukraine, there was a response that involved the United States, the European Union, Canada and Japan. They came together in a group that became known as the G7+, and had a number of meetings looking at how, collectively, the western alliance should respond to the situation. It is very important to be involved in those discussions, because they set the scene for the use of sanctions.

Q23 **Lord Dubs:** If we leave the EU, why would we not automatically line up with EU sanctions? What possible reason could there be for our taking a different path?

Matthew Findlay: Part of the response to that is that since we are leaving the EU, since EU sanctions are done in a way that gives jurisdiction over them to the European Court of Justice and given the Government's negotiating position on exit more generally, it would not be possible for us to be part of the EU legal system for sanctions. Given that our current way of implementing sanctions relies on the European Communities Act 1972, which is being repealed, we need some new legal powers to implement sanctions in the UK. That is why it was announced in the Queen's Speech that the Government would bring forward a Sanctions Bill. So we will be legally separate from the EU, and the fact that we are legally separate can bring in new considerations. It might not always be possible for us to do exactly what the EU is doing.

Lord Dubs: I understand the point about legal separation, and so on. What I do not understand is why, in policy terms, we would not wish automatically to line up with EU sanctions. Obviously this involves looking into the future, but I cannot see where there might be an issue where we would want to be different. I understand the legal situation; I am talking about policy.

Matthew Findlay: I think we would very often have a common view and a strong interest in being lined up. In the other House, the Foreign Secretary, in responding to a question about Russia, made it very clear that we would have the same commitment that we have now to seeing the full implementation of the Minsk agreement, and that is why we maintain that sanctions regime. That is unlikely to change after we exit the EU, so there will be strong foreign policy reasons for being lined up, as set out in the paper that the Government published only this week. However, there may be occasions where we want to go a bit further.

Lord Stirrup: Could you just clarify that? As things stand, is it not possible for us to agree with EU sanctions but then separately to put on additional sanctions ourselves, nationally? The only circumstance in which we would have to break from the EU position is if we wanted to do less than the EU. Is that not correct?

Matthew Findlay: In areas of trade policy, for example, trade is an EU competence so Member States cannot act in a way that is divergent from EU law in those types of areas. In the areas where the EU has competence, while we are in the EU we are limited in the extent to which—

Lord Stirrup: So there are areas in which we could not go further?

Matthew Findlay: Indeed. We also have this so-called duty of sincere co-operation under the treaties to co-operate with other EU Member States on foreign policy, so it is also politically unusual to break ranks.

Rena Lalgie: Once the decision has been made about the policy objectives and the extent to which the policy might come through, it will all still need to be done within the legal framework that is set through the Sanctions Bill, where there will be a question about the alignment between that legal framework and the legal framework that currently sits within the EU. That is why the powers that we in the UK will have will be quite critical in determining what we do.

Andrew Murdoch: As well as the focus on additional measures we might want to take, there is also the counterbalance in terms of mitigations and exceptions that we can put in place to make sure that the measures do not go further than we want—for example, by capturing actors that go further than our policy needs. Obviously we will have much more flexibility within our own domestic system to ensure that those areas are dealt with and captured without agreeing it within the 28.

Lord Dubs: From what you are saying, and I think this goes to the heart of what we are about, the presumption is that, having left the EU, the normal default position would be that we would line up with EU sanctions policy. That is the presumption, isn't it?

Paul Williams: I think the Government have set out that they will continue to want a close relationship with the EU after exit. They said so in the paper that they published earlier this week on foreign policy and Brexit.[1] I think we will continue to share the same basic values, and a lot of our foreign policy will no doubt be very similar. Since we see sanctions as a foreign policy tool and will want to continue co-ordinating with others, I am sure there will be many cases where we will want to do the same and to have the advantage of that breadth of countries. It is hard for us to sit here and say that there might not be exceptions, because that will be up to Ministers at the time. The new system will give them the ability to do more if they wanted to, and that would be completely up to them after exiting.

Q24 **Lord Horam:** From what Ms Lalgie was saying, we may need to look at the legal framework. You talked about the future legal framework, I think.

Rena Lalgie: Yes. As colleagues have explained, we will need to bring forward new legal frameworks. At the moment we introduce the sanctions that the EU—

Lord Horam: Those would not necessarily replicate where we are now?

Rena Lalgie: That is ultimately a matter for Parliament, as the discussions begin around the Sanctions Bill and what specific powers there will be to introduce sanctions in which circumstances. That is where the legal framework will be quite a critical underpinning for what happens in future.

Paul Williams: It is worth saying that we have said we will introduce the Sanctions Bill to create that legal framework to allow us to continue to impose and implement sanctions after exit.

Lord Horam: Along the same lines as we do now?

Matthew Findlay: In the White Paper that was published in April, and then in the further document that we published at the beginning of August following the consultation process, our message was yes, we wish to maintain the ability to do the things that we do now as a member of the EU, so with a broad degree of continuity with our current approach, but once we have exited as an independent country there are some things on which we will have a bit more flexibility—for example, in the way that we operate our licensing system—so in bringing forward this legislation we will also look at opportunities to improve things where we can.

Q25 **Baroness Manzoor:** Does that mean we will be much more aligned with UN sanctions policy once we leave? I understand the point about

[1] Department for Exiting the European Union, Foreign policy, defence and development - a future partnership paper: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643924/Foreign_policy__defence_and_development_paper.pdf

flexibility once we leave the EU. I understand about the flexibility for other businesses as well, because obviously we do not want an even more rigorous sanctions policy than the EU because it would affect our businesses. In terms of foreign policy, though—I hear what you say about values—how does that sit with the UN sanctions regime?

Paul Williams: The UN sanctions regimes are passed in the Security Council, so by definition we are always aligned with that because we are a permanent member of the Security Council and are always involved in agreeing UN sanctions. Those sanctions are then binding on all UN member states. So in that sense we are always aligned with UN sanctions, as all member states of the UN should be.

Andrew Murdoch: Once we have left the EU framework, one of the important aspects will be ensuring that we have the domestic powers to implement those UN obligations. If we did not have a legal framework to do that, we would effectively be in breach of the UN Charter by failing to implement those binding decisions of the Security Council.

Q26 **The Chairman:** We need to move on, but I would like final clarification that once we have exited—although we are a member of the EU, we are already an independent country—for me the alignment, as we have been told, will just be a question of transposing EU sanctions, and we should be taking them on without the jurisdiction of the ECJ.

Paul Williams: Ultimately that is a choice for Ministers once we come out. In UN terms, we have an obligation as a UN member state to implement UN sanctions. Going beyond that will depend on Ministers' choices once we are no longer in the EU. What Ministers have said is that we want to co-operate closely and have a close relationship with EU partners, but also with others, such as the Americans and the Canadians, who also impose sanctions as part of their foreign policy.

The Chairman: But we do that anyway, do we not?

Paul Williams: Yes, we work with other third countries. My expectation is that in much foreign policy we will remain aligned, but ultimately that is a choice for Ministers of the day. The Government's position, as set out this week in their paper, is that they want to co-operate closely with EU countries on foreign policy after exit.

Rena Lalgie: On the co-operation that we already have with EU Member States on implementation, it is domestic competence so the implementation and enforcement do not happen at EU level; they happen at Member State level. Competent authorities, such as OFSI, across the board work together, both within the EU but also beyond, with partners such as the US and others, to work through some of the common challenges that we face in implementing financial sanctions while also taking opportunities to share information and to work together where you have either compliance issues, enforcement cases or licensing issues where those businesses are operating across a number of jurisdictions, and the frameworks are in place for us to work together to work around that and promote the compliance with financial sanctions. Much of the value in the co-operation comes through our bilateral relationships with other competent authorities, and that will continue.

Q27 **Lord Dubs:** Could we turn to countries that are closely aligned with the EU sanctions regime? Norway and Switzerland are obviously good examples. How does their alignment with EU sanctions work in practice, and do they have any influence over the design of EU sanctions?

Matthew Findlay: The answer is that in general they are not in the room when the sanctions are negotiated. The EU will produce its legal Acts—the Council Decision and the Council Regulation—and then there is a standard operating procedure whereby, via the External Action Service, Norway and Switzerland, but also Turkey and countries of the Western Balkans with a membership perspective are invited to align with the EU's position. That means them both politically aligning but, where they have the right legislation, actually implementing those measures as well through their own legal frameworks, and very often they do. It is, however, a political choice for them to do so; it is not a legal obligation. On where the influencing comes in, I mentioned earlier the case of the G7+ group that helped to influence the direction of our sanctions against Russia. Norway was a participant in that informal group, so it also had a role in the wider strategy that then shaped the final sanctions.

Lord Dubs: Given that they are outside the room when these things are being designed in detail, will they be consulted? You mentioned Turkey, for example; would Turkey be consulted if there was a particular aspect of a sanctions policy that might impact more on Turkey than on other countries?

Matthew Findlay: The answer is generally no, given the principle that discussions that go on in the Council are confidential. I know of cases where, after sanctions have been implemented, particular issues have emerged, including one that involved Turkey, but that was after the sanctions had been imposed.

Q28 **Baroness Manzoor:** Continuing on the theme of co-operation, when designing and implementing the EU sanctions, what reference is made to the relevant US regimes? Could you give some examples?

Paul Williams: Thank you for the question. The answer is that we work closely with US colleagues, and if the US already has a regime or designations when the EU is looking at its own, it will of course be aware of that and take account of it. We have regular co-operation with US colleagues; just this week I was talking to one who was in town. In addition, it is worth saying that once a regime exists then US and EU colleagues will talk and can exchange information on the potential for individual designations within that regime. The US is good at gathering information. It is also quite good at open-source information, which is always useful when doing designations because it helps you in potential future court cases.

We also work closely with other countries. To give you a few examples, on Iran, it is well known that it was the so-called E3+3 that worked together on Iranians sanctions. That of course included the US and us, the French, the Germans and the EU. On the DPRK recently, obviously the Americans have a very close interest in it and in talking to us about it. On Russia, as Matthew mentioned, we co-operated closely over the Crimea example from 2014. After we leave the EU we will certainly want to continue to co-operate closely with the US and other key partners as well as, as we have said, EU Member State partners and the EU.

Q29 **Baroness Manzoor:** What percentage of the sanctions regime from the US is adopted by the EU?

Matthew Findlay: We implement 35 sanctions regimes in all. As Paul set out, slightly under half of those—15—flow from the UN. The 18 or so autonomous regimes are almost entirely matched by an equivalent US regime, so in almost all cases. There are a few cases, such as Cuba, where the US has implemented a regime but the EU has not, but they are a minority rather than a majority.

Andrew Murdoch: Although the regimes are as Matthew said, within them there may be differences in designation. Sanctions regarding specific individuals or entities that the US may list might go further than those that are aligned with the EU or the UN.

Q30 **Lord Horam:** To what extent is intelligence shared with like-minded non-EU countries such as the US, Canada, Norway or Switzerland?

Matthew Findlay: I would pick up on the word "intelligence" because there are a variety of different types of information that are important in the sanctions context, ranging from open-source information—stuff that you can get on the internet—to diplomatic reporting of one kind of another, which we would call "restricted", to genuine intelligence.

Lord Horam: We are getting into John le Carré world here.

Matthew Findlay: Because sanctions are often subject to legal challenge and there are limitations on what we can share by way of genuine intelligence with the EU courts, our general practice and preference—

Lord Horam: Is there some limitation there?

Matthew Findlay: Until quite recently there was no legal mechanism for sharing classified material with the EU courts at all, so whenever we needed to provide the reasons why we had proposed a certain designation we would be able to share only the open-source material, which often told only part of the story. The courts have developed a test where, for any sanctions designation, they need to be able to substantiate it—at least to have some information that makes a causal link to the reasons for the designation. So that information is very important. A mechanism was created in 2015 to enable the Council to share information with the EU courts. However, we were not satisfied with the safeguards in that mechanism and in practice it has not been used. So in the EU context we are not really able to share intelligence with the courts if we need to substantiate the reason for a designation.

Going back to your original question, there is quite widespread open-source sharing with the US, Canada, Norway and others. There is much more limited sharing of real, raw intelligence, and that tends to happen through much more informal bilateral mechanisms.

Lord Horam: Is the US a problem here?

Matthew Findlay: No, I would not describe it as that. The US is a very important partner. As Paul says, it is very good at gathering open-source information. It also has plenty of intelligence. Where we have a shared policy goal, it is in our interest to share the information so that we can keep our sanctions as closely aligned as possible. Obviously there are some issues for the US about what it would be willing to share of its more sensitive material.

Lord Horam: Presumably it is a major player in this area—rather more so than Switzerland or Norway?

Matthew Findlay: Yes.

Lord Horam: It is the one that matters.

Matthew Findlay: It is the most important country on sanctions.

Q31 **Lord Stirrup:** May I follow that up, too? The degree to which people will want to co-operate with us post-Brexit depends to a large extent on what we can bring to the table. We have mentioned Norway, Switzerland and others but in terms of economic clout, diplomatic weight and intelligence resources, they have nothing to compare to the UK. The US is of course the major player in this regard but in many respects we are one of the most dominant powers in Europe, if not the most dominant. Do you see that figuring largely in the EU calculation post-Brexit? Clearly there is a risk that it could all be swamped by politics, but is there an acknowledgment of the weight of the UK in all these areas, including intelligence, and therefore the desirability from the EU side of continuing close co-operation? We continue to talk about what we want to do, but it is important to think about what will then be the EU will want to do.

Matthew Findlay: What you have just said is absolutely the message in the paper that was published this week. First, the UK wants the EU to continue to be a powerful player on the global stage. We think the UK has contributed a lot to the development of EU foreign policy to date and can continue to be a very important strategic partner. Yes, we think there is a significant mutual interest in having a partnership that is unprecedented and that goes beyond any arrangement the EU has now with other third countries. That is our ambition. Obviously it will depend on negotiations how that eventually emerges.

Lord Stirrup: Forgive me, I realise I am asking you to put yourself in someone else’s shoes, but do you think there is a perception of that kind within the rest of the EU? We have that perception, but do others share it?

Matthew Findlay: From the feedback that we have had in all our discussions over the years, our contribution on sanctions in particular is very clearly recognised. Some of the other witnesses that you have heard evidence from have also mentioned that, so I think it is understood. Obviously how different countries approach sanctions depends a bit on the issues; the Poles, for example, attach great importance to our role in Russian sanctions.

Q32 **The Chairman:** I would like to widen this a little by looking at countries beyond the US that are emerging as big players, given that our relationships with those third countries tend to be significantly different from countries in the EU. We have to ensure that we still are a big voice, but how do you think that plays with those third countries and our coming out of the EU and perhaps not having so much influence within the EU because we are not there any more?

Matthew Findlay: Again, that underlines the importance of groups such as the G7 that involve the likes of Japan and Canada. The grouping on DPRK sanctions, which has been mentioned, also involves Australia. These countries are ones with which we often share similar strategic goals, and they would therefore have an interest in keeping the UK involved in those strategic discussions. I think we will continue to want to use those types of groupings to build the widest possible like-minded alliance on how we are going to tackle these issues. Canada, Japan and Australia in particular are very important partners.

Rena Lalgie: When it comes to implementing the sanctions that have been imposed, the strong collaboration that we have with other competent authorities beyond the EU, not isolated to the US, is critical to our operational effectiveness. There is a growing sense among other competent authorities that our ability to work together where we are seeing activity that is moving across our jurisdictions can add real value in real time to our ability to ensure that the regulations are being complied with. Continuing the work that we have started around building those bilateral relationships, partly through the information we are able to share in some instances, can put us in good stead for when we leave the EU.

Lord Horam: Which bilateral relationships are you thinking of in particular?

Rena Lalgie: We look at the countries that are facing similar challenges to us with regard to the types of guidance that we might want to put into the public domain, but also where there are economic relationships between particular countries and therefore the transactions are likely to be moving, whether that is between the UK and Singapore or between the UK and Canada, or where we have people who are subject to sanctions who likely have assets within the UK but also have close relationships with other countries. We have worked on a case-by-case basis to think about where we see opportunities, where maybe people are travelling between our country and others, and we try to reach out to the competent authorities on those specific occasions and share information where the law allows us to do so.

Lord Horam: Does the Middle East figure largely in this? Given the amount of investment in the UK from Middle Eastern countries such as Saudi Arabia, Qatar and Dubai, does that figure in these sanctions?

Rena Lalgie: It tends to come up less at the moment, partly because of the sort of sanctions that are currently in place and where the individuals have assets. However, there is a real sense that one of the things that other like-minded competent authorities are quite keen to think about is how we build the relationships and how we share some of the technical expertise around implementing financial sanctions with those within the Middle East as well as more widely. In that regard, we work with the Crown Dependencies to support them in the technical implementation of financial sanctions.

Q33 **Lord Dubs:** Could we return to the impact on businesses? I think you have dealt with this peripherally. What assessment have the Government made of the possible impact of complying with an independent UK sanctions regime as opposed to an EU regime on both UK businesses and on foreign businesses operating in the UK?

Giles Thomson: I will take this one, if that is okay. Our starting point here is that the Government recognise that imposing sanctions carries a cost to business when they are implemented. Ultimately it is a judgment that the Government make that that cost is necessary to meet the foreign policy objectives behind the sanctions. Having said that, we are equally committed to ensuring that those costs are kept to an absolute minimum and are proportionate, and we engage with industry to help us to achieve that. One of the prime considerations in this process of designing sanctions that Matthew described earlier is to take into account their possible impact on business once implemented.

In relation to a new sanctions regime, we have had an exhaustive consultation with industry and others through the White Paper process that Matthew described. We have had a number of round tables with business as well as our ongoing dialogue with them. When the Bill is introduced into the Houses shortly, we will publish the normal regulatory impact assessment alongside it. I cannot say too much because I do not want to pre-empt that document, which will be published shortly, but I have a couple of general observations. First, as previously discussed, the aim of the new Bill is largely a question of replicating the current legal powers that we have as a member of the EU when we exit from it. As such, we would not anticipate imposing significant additional burdens on business; indeed, we have the ambition of reducing burdens on business where we can with any additional flexibility that we may have once we exit the EU. The second general point I would like to make, building on a discussion we have had around multilateral co-operation with partners, is that as we exit the EU we will want to continue to design and implement sanctions alongside other international partners so that they have the maximum possible impact on their target. That in turn will help business by the extent to which sanctions regimes continue to be aligned between the EU, US, Australia and all sorts of other countries that will minimise the burdens on business. That will continue.

Lord Horam: If we hope to stay alongside the European Union when we come out of it, as we have indicated, how can we also reduce the burdens?

Giles Thomson: There are a couple of potential areas. One that we highlighted in the White Paper is drafting the part of the Bill on the licensing powers that we may have in future. In the EU, there is a relatively constrained set of licensing powers that we can exercise. As part of our own legal system, we are keen to look at whether we can have a slightly more flexible system for licensing transactions. I think that came up in your evidence session with the legal sector, and business frequently discusses it.

Lord Horam: Does that not mean that we will make sanctions more difficult to apply if we are more relaxed about the licensing?

Rena Lalgie: Perhaps I may come in on the licensing regime and the partnership that we increasingly have with industry in this space. On licensing, much of what companies need to do in order to comply, making sure that they know enough about their customers and what they intend to do, will be the same for many of the sanctions regimes that apply. There will be a need, particularly at the outset, simply to get up to speed with what sanctions are in place once we leave the European Union. We have started to ensure that we publish more guidance. As Giles said, there will be more flexibility to make sure that the guidance is much clearer. At the moment, the guidance that we publish is about the approach to licensing, how we implement it in the UK, and making sure that people understand who needs to comply.

Lord Horam: Are you saying that we can be more specific with our guidance post Brexit?

Rena Lalgie: There will be more flexibility to think about how we make sure that guidance is clear. At the moment, the competence for implementing financial sanctions sits domestically. We can put out guidance, as we do, which helps people to understand what it means to comply and how they go through the processes. There will be opportunities to do more on the regulations, such as being able to put out much clearer and more explicit guidance on those sanctions regimes, as was said earlier, because we will not have to go through the process of having to think through 28 different legal jurisdictions. We are very conscious of the cost of compliance that falls on business. As Giles was saying, a commitment to make sure that there is increased confidence in the UK's financial services is an important part of why the UK introduces sanctions. We are very conscious that we are part of an implementation community. As much as we work within government on implementation, the private sector and NGOs have to do the same. We are trying to build more forums where we can work with them to make sure that they have the information that allows them to do their part.

Q34 **Lord Horam:** I suppose the European Union may worry that we will apply sanctions less rigorously once we are out. We will be in a weaker economic position, possibly, so there will be more pressure from the Treasury on the Foreign Office, saying, in effect, "Look, we can't do this. We're not in a good position economically". Philip Hammond may say, "This is all very well from the Foreign Office point of view". The European Union may feel that that may happen, might it not?

Rena Lalgie: I think the onus is on us. We discussed earlier the extent to which the UK leaving this space has the expertise across policy, implementation and the legal frameworks—

Lord Horam: Yes, but once we are out, the European Union may feel that Britain will take advantage of being out of the European Union to have a less onerous sanctions regime, whatever we may think. While we are inside, we have to comply.

Matthew Findlay: As you rightly say, it is a political choice. To date, the UK has been at the hawkish end of the spectrum on EU sanctions negotiations. It is possible that that will change, but it is also possible that when we are out we will be tougher than the EU on sanctions. Both are entirely possible. Our interest will generally be in maintaining maximum unity; business generally wants a level playing field. It is about having the kind of relationship with the EU where we can make sure that we bring our systems as closely together as possible. At times, there are political trade-offs. It was well known, for example, that the financial sanctions in the Russia package had a particular impact on our economy, because we have a lot of financial services in this country. Other sanctions, more in the energy sector, had a much bigger impact on the German economy. There was a sort of balancing act. We need to preserve that kind of balance.

Paul Williams: I agree with all that. It perhaps comes back to the overall foreign policy question again. We obviously have obligations for the maintenance of peace and security that derive from our permanent membership of the UN Security Council. That will not change after we exit the European Union. As we have tried to say, we see sanctions within the overall envelope of foreign policy. That is why the Government are saying that they want to continue to co-operate closely with other countries, including EU Member States, on sanctions issues post Brexit. That is where we stand at the moment.

Q35 **The Chairman:** I suppose that, ultimately, we have to preserve some sort of balance. It is a question of how you achieve that. If the sanctions regimes suddenly change and have a big impact on business, it may become difficult for us domestically, yet we also have to make sure that the free sharing of intelligence that we have had within the EU continues. Again, that will surely impact on how our sanctions are developed.

Matthew Findlay: The issue of data sharing more generally has been quite a big topic in the exit negotiations. The UK and the EU have published papers on that subject. In any effective data-sharing arrangement, you need understandings about how data will be handled, the right legal protections and so forth. That is quite a complicated negotiation that will be relevant to sanctions but will go well beyond them.

Q36 **The Chairman:** The fallback is always, "It's a political decision", but ultimately it goes beyond political decisions, because we are talking about third countries and the EU. Some of those decisions are not always political but much more practical, such as how we preserve our balance in working with EU and third countries. I am not sure that I have heard enough from you on how that thinking is going. What are we putting in place to preserve the ability of our businesses to operate without excessive burdens? There will be cost implications.

Matthew Findlay: The key thing that we are doing is working on the Sanctions Bill, which will set our future legal framework and make sure that we have the tools that we need. As Giles said, that will be introduced in Parliament shortly. Parliament, including this House, will have a key role in shaping what that looks like. Alongside the legal framework, we need the political relationships. We already have a lot of informal co-operation through groups such as the G7, the Financial Action Task Force and other groups that are non-EU to make sure we have those relationships in place. The aspiration is to ensure that, at least across the like-minded allies, we have as level a playing field as possible that makes the compliance challenges for businesses as straightforward as possible.

Rena Lalgie: At the moment, businesses are having to comply with more than one set of financial sanctions regimes: the US, the EU and other autonomous arrangements. We are very conscious of the relationship and indeed the dialogue that we need to continue to build up with businesses as well as governments. We have focused quite a lot on our interactions with other governments but, to give an example of how we are expanding some of the outreach that we have been doing, primarily domestically and within the EU with businesses, for the next few months one of my deputies and I will be speaking at business events in the US and elsewhere, trying to work with companies that are operating across jurisdictions. That is the kind of dialogue that we will need to continue as this space continues to be challenging.

Paul Williams: I think all of that is right. It might just be worth saying that of course we already try to find that balance, so when we are thinking about UN or EU sanctions, we are already thinking about a mixture of foreign policy, business and other interests. That will continue after we exit. That balance will continue to be there.

Q37 **Baroness Manzoor:** It is good that you are up and running, and clearly you are working hard. Still, it is always about capacity. Mr Williams has talked about foreign policy and the fact that you are already engaged with many of the elements of sanctions policy in any event. I suspect some of the costs will fall on the legal sector because of the frameworks that will need to be put in place. I am primarily interested in government capacity. Do you think we have the capacity, capability and skills that we need in government and within the Civil Service to develop even further our policy on sanctions and to monitor compliance? Monitoring compliance will be very important, because the EU has done much of that for us, particularly when we leave the EU.

Paul Williams: We already have quite a few skills on sanctions, as we said earlier. We make quite a significant contribution within the EU and at the UN on sanctions regimes and designations, so we have that base there. However, you are right that clearly there are resource and other implications that we need to think about. My team and I are thinking about that at the moment in the short term and the slightly longer term. With that in mind, I have already beefed up my sanctions team in my directorate. I am creating an autonomous sanctions unit within the directorate, whereas at the moment it is part of one department, and we have added a Bill team to do the Bill. So we are already in the process of reallocating resources within the Foreign Office, as I am sure all departments are, to meet what we need to do on exit.

Then there is the slightly longer term. We have talked in this discussion about diplomacy and talking to other countries, which in future will include EU Member States and the EU, and we will probably need to do a little more of that on the sanctions side when we are not actually in the EU meetings. I am planning to have a dedicated head of sanctions. Mr Findlay said when he was introducing himself that he does quite a lot on sanctions but is actually deputy head of a department that does other things apart from sanctions. I am in the process of recruiting someone to do only sanctions, and I envisage that person on exit doing a bit more diplomacy with other countries as well. So we have started to think about it, and I am sure that process will continue to evolve. To a degree, of course, the resource may depend on what this House and the other House decide to do in the sanctions Bill and how all that is set up. Perhaps my colleagues want to say something on the implementation and enforcement side.

Rena Lalgie: Compliance and enforcement responsibilities at the moment sit with each Member State rather than at the EU level, which is why the establishment of OSFI was so significant. The number of staff who work in the Treasury on the implementation of sanctions doubled through that process. For me, the resources question is broader than just the number of staff. The changes that came into effect through the Policing and Crime Act, which increased the enforcement powers, were critical. That was the Government putting a clear emphasis on the need to ensure that sanctions are better enforced. The work that we have started to do there will stand us in good stead for being an effective implementer and enforcer post Brexit. My third point about resources relates to the breadth of experience and expertise that we have put into improving the quality of services that we are able to provide to the private sector in particular. That is about thinking about the diversity of skill sets and backgrounds that we need to have at our disposal to be more effective.

Andrew Murdoch: Perhaps I may mention in conclusion the legal framework. Clearly, much will depend on the exact provisions of that.

On the question of the skills that we already have, in every listing made either at the UN or the EU we already have the legal tests to make sure that there is sufficient information to back up that listing against the reasonable-grounds-to-suspect test. We are all used to doing that for every single listing. That will just continue. We also have experience in legal challenges to and reviews of those listings, be that at the UN decision-making level or in the EU. While we might not defend the challenges at the EU, we often intervene, and have done even in Strasbourg in challenges related to that court.[2] The skill sets are there. The amount of resource that we put into it may depend on the final legal framework and the legal risks that we face. That is something that we will have to adjust to, too.

Q38 **Baroness Manzoor:** I hear that the Sanctions Bill will come forward. Is there an area that concerns you that we as a Committee should be aware of and should perhaps be pushing on further?

Paul Williams: As I say, I think that we are already adapting. For the Bill itself, we will need a team and we have one, so I am satisfied with that. I hope that team will help to guide the Bill through both Houses from the bureaucratic side. We will need to evolve as we go, but the Government in general, in all departments, are looking closely at what resource needs to be allocated in a slightly different way. In our case, we may do foreign policy in a slightly different way—for example, on sanctions—post Brexit. I am satisfied that they are looking at that from my point of view.

Matthew Findlay: Mr Murdoch referred to the reasonable-grounds-to-suspect test that we apply when considering sanctions. That came up in the report produced earlier this year by the EU sub-committee that deals with the legal issues relating to EU sanctions[3]. Our view is that that is the right test to apply when we do sanctions. We have said that in the White Paper. It is quite important, because if we can maintain that test it will facilitate further co-operation in future with partners such as the US and the EU. If we end up with a test that is not aligned with our strategic partners, it would make it much harder for us to maintain convergence. I just stress the importance of that issue.

The Chairman: But in your view there will be added costs as a standalone and you will need added resources anyway. I am pleased that you are sitting next to your Treasury colleagues this morning so that you can make a plea to them here. I think there will be additional work. It will

[2] The European Court of Human Rights
[3] https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/102/102.pdf

perhaps be interesting to see you later on as this journey progresses to see whether you continue to feel that you have adequate resources.

Matthew Findlay: I would be very glad to come back.

The Chairman: Thank you very much. That has been a very helpful session. I think we are all very pleased that you came here and have given us quite a frank overview of how you see things going. We find these sessions incredibly important. As this Brexit journey continues, we would probably like to invite you to give us updates. Thank you very much for coming this morning. If there any changes that you would like to make to the transcripts because they have not been reported properly, please let us know and we will have the appropriate changes made. I now call this session to a close.