HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the European Union

Sub-Committee C (External Affairs)

Inquiry on

EUROPEAN UNION RESTRICTIVE MEASURES

Evidence Session No. 1 *Heard in Public* *Questions 1 - 13*

THURSDAY 6 FEBRUARY 2014

10.15 am

Witnesses: Philip Moser QC and Maya Lester

Members present

Lord Tugendhat (Chairman)
Lord Boswell of Anyho
Baroness Coussins
Lord Foulkes of Cumnock
Baroness Henig
Lord Jopling
Lord Maclennan of Rogart
Baroness Quin
Lord Radice
Earl of Sandwich
Lord Trimble
Baroness Young of Hornsey

Examination of Witnesses

Philip Moser QC, Monckton Chambers, and **Maya Lester**, Brick Court Chambers

Q1 The Chairman: Mr Moser and Ms Lester, thank you very much for coming before us. As I think you understand, this is a formal session and a record will therefore be taken.

This issue of EU restrictive measures has cropped up on a number of occasions with decisions we have had to take. We thought that it had cropped up sufficiently often and in a sufficiently sharp fashion, if I could put it that way, that we ought to inquire further into it. So this is somewhat of a probing session. When we have heard what you have to say, we will be able to decide whether we ought to look still further into the matter or whether there are other things we should do or nothing we should do. I cannot say exactly what the follow up will be, but we are very grateful to you for opening up this discussion and we recognise that you would not wish us to refer to any particular cases by name. Nobody will intentionally do so, but if there is something that causes you difficulty in a sub judice fashion, obviously we would understand.

I will kick off and then my colleagues will have a number of questions. The EU sanctions regimes have come under increasing judicial pressure at the European courts and the ECJ

has ruled that an individual placed on the sanctions list must have the right to a fair hearing, have a meaningful opportunity to respond to the allegations, have the right to effective judicial review, and must not have his property restricted in a disproportionate way. Notwithstanding all the actions taken by the Council and the European Union to fulfil these criteria, the courts continue to overturn listings. Therefore, the first question is whether you can offer us a brief explanation of recent developments in the European courts in regard to restrictive measures and the scale of the challenge posed by recent rulings. Also, if you can, please provide a brief summary of the work that you have been doing on this issue. Obviously on this question I would be grateful if both of you would reply. On other questions, both of you are perfectly able to reply, but if only one of you does that is also fine. Mr Moser.

Philip Moser: Thank you, Lord Chairman. I know that both Ms Lester and I have dealt extensively with these issues. Having had the benefit of seeing most of the questions in draft beforehand, we agreed that Ms Lester would lead off on question 1 and I will follow on.

Maya Lester: My Lord Chairman, thank you very much for giving us the opportunity to come and speak to you today. As you know, we are both barristers practising mainly in European law. I do not know if I speak for Mr Moser as well, but our experience comes both from advising companies and people on the scope of sanctions, but principally acting for designated individuals and companies who are bringing challenges in the European courts. That goes for all the different types of sanctions: sanctions on Iran, Burma, Zimbabwe, Egypt, Tunisia and Syria, terrorist sanctions, Belarus, UN and EU sanctions. To some extent all these different regimes have raised very different issues.

For those of you who do not know, the context in which these cases arise is that as soon as a person or a company is added to a list, they have two months to get to Luxembourg in order to challenge their designation. That is the context in which all these cases have arisen.

Both of us have also been involved in some cases against the Foreign & Commonwealth Office, to the extent to which the UK is involved in designations.

On first question about recent developments in the European courts, we propose very briefly to outline what has been happening recently in the European courts, and when we come to the later questions—we are very grateful for having seen draft questions—we will both give some views on why we have, as you rightly identify, such a spate of delisting decisions at the moment.

In very brief summary, the story of what has happened in the European courts in these cases is that, as my Lord Chairman rightly outlined at the beginning, the basic principles of due process have been outlined by the European court in this context, starting in 2008 with cases about counterterrorist listings brought by the People's Mujahedin of Iran. Right from the word go, the court outlined the basic principles of rights of defence, which are easy enough to articulate. The difficulty in more recent years has been how to apply those principles in a number of different contexts and where the problems lie. Effectively the court has said that there must be basic rights of defence: a right to know the case against you, a chance to comment, clear reasons given for designations, effective full judicial review, a proper assessment by the European Council of whether a particular person or entity fulfils the listing criteria in question—which of course are very different from regime to regime—and evidence supporting the basis for a designation.

As I say, it is easy to articulate but harder perhaps to apply. The court has been struggling more recently with how to apply those principles, which were originally laid down in a terrorist context, to Iranian nuclear proliferation sanctions and to what some people call regime sanctions, such as sanctions against Zimbabwe, Burma and Syria. Then again there are the very different kind of sanctions on Arab Spring countries, Tunisia and Egypt, which are designed to freeze misappropriated assets, and other cases working out what to do about

particular cases such as subsidiaries of parent companies that are listed, family members of listed people and so on.

Recently the main development has been a huge number of Iran cases. The complete case law on this area fits into about four big files and roughly three of those are accounted for by Iran cases. A lot of very high profile cases recently have resulted in the applicants listed—companies, banks, institutions—winning their cases. I think that is partly what has led to this recent interest.

Very generally speaking, most of those entities have been winning their cases because the court has required of the European Council that there be evidence justifying the reasons given for each entity being on the list. For example, if the reason given on the list is that a bank has been said to have engaged in transactions that assist in nuclear proliferation, according to the court it is not enough simply to say that: it has to have some evidential basis. If that has not been forthcoming for one reason or another, which we will come on to, by and large the court has said that that is an error of assessment on the part of the Council.

The other recent development is that a large number of the companies and people who have won have been relisted and/or there have been appeals against the judgments in which they have succeeded. Again, that creates an issue that I hope we will come to later.

Finally in other contexts, there have been far fewer cases about these country sanctions. In my personal view there is an inconsistency between the approach that the court has taken to the Iranian proliferation and terrorism cases and these country cases, although it is too early to tell in a sense because there are so few. I am oversummarising really, but very broadly speaking I think the court has been more willing to tolerate presumptions and less of an evidential support for listings in sanctions regimes such as Syria and Ivory Coast than when the Council is alleging nuclear proliferation, rightly or wrongly. In the Tunisia and Egypt kinds of cases we are expecting some judgments later this month, but again I think the court

has taken a slightly different approach there from that of the Iran chamber of the court and has said that if there is a prosecution in Egypt or Tunisia for state funds being misappropriated that is sufficient to constitute responsibility for misappropriating the funds of the state. I think that creates problems, which again we will come back to.

A final word on recent developments on UN listings. Most of the cases that I have talked about and which the court has decided have been autonomous EU sanctions where the designations come at EU level and someone has not been designated by the UN. The well known Kadi case is the main example of what you do about it where it is the UN that is proposing a designation rather than the EU. Very broadly speaking, as you know the European court has said that in those circumstances it will still review the EU's implementation of those measures and will apply, very broadly speaking, the same principles. Most recently in the Kadi (II) judgment it has said that that means that the EU itself must scrutinise whether there is a sufficient justification for a UN designation, which the court has said might require the EU to make inquiries of the UN or the member states.

A major recent development in that area is that the United Nations has put in place the Office of the Ombudsperson for the Al-Qaida Sanctions Committee, so in some measure the United Nations has responded to criticism from the European court and has put in place a measure of due process, which again I think we will come back to.

Philip Moser: I am grateful for that very full summary, which brings us up to date. I think it is important for the Committee to appreciate how we got here. We have the interesting findings in Kadi last year, but it was not ever thus. I will take the second part of the question and speak from my own experience, and conflate that with the development of the case law, particularly, in Luxembourg. Domestically I deal largely with people caught up in the difficulties of the Iran sanctions, but the area I would like to concentrate on is the Luxembourg cases., because the history of taking sanctions cases by way of direct action in

the European courts illustrates the step-by-step development of the law as we see it today in a jurisdiction that was not designed for this kind of case.

The European courts are notoriously user hostile for individuals, and that is not surprising. A particular direct and individual interest has always been required. In an ordinary EU case, such as a competition case, you can see why that is. Being mentioned in EU legislation is of course of sufficient interest, but again, outside competition law decisions that did not use to happen to individuals. My first involvement in this area was the PKK case, which was even before the PMOI case, about nine years ago. The difficulty faced by the applicants in that case was that they were met immediately with a series of admissibility defences, such as, "There was no decision of your board authorising your counsel", "There is no certificate of incorporation of your organisation", which, if you are a proscribed organisation, is of course difficult. One of the arguments involved the PKK saying, "We have disbanded so you should not list us". The defence said, "If you have disbanded you cannot exist and therefore you cannot apply". That was upheld in the first instance. It went up on appeal and on appeal it was found that if you exist sufficiently to be listed you have to exist sufficiently to apply to be delisted, which seems only right. But these things had to be fought for.

Then gradually, having got passed most of the inadmissibility problems, we got into procedural issues, such as, "You have not looked at any reasons. You have not provided us with any reasons", and so forth. That was the case law that eventually culminated last year in Kadi.

One of the procedural difficulties was that with the advent of the Ombudsperson for UN sanctions and the delisting of many applicants in the course of the ongoing proceedings in Luxembourg, because they tend to take quite a long time, whenever somebody was delisted by the suggestion of the Ombudsperson the General Court had a habit of saying, "Right, now you have no further interest in your annulment, you have been delisted", and it

terminated the case. We took that case on appeal. It was called Abdulrahim and it went to the Grand Chamber of the ECJ just a week after Kadi. We succeeded in that case to establish that the applicant still had a continuing interest. If you have been falsely accused of being a terrorist, that is a very grave matter, so you want to be able to quash that listing, ab initio. It is not enough simply to have another piece of legislation that says, "You are now delisted", because it does nothing under the EU legislative scheme about the listing for the period that you were on the list – apparently associated with al-Qaida according to the legislation.

That was the second phase. Now we have reached, post-Kadi, the third phase, which deals with substantive evidence. Under paragraph 120 of the Kadi judgment, the General Court is supposed to order the disclosure of documentary evidence that the Commission holds on which the listing is based. I came back yesterday from Luxembourg and the hearing in the first case in which this has been done: the Abdulrahim case, which has returned from the Grand Chamber and is now having the substantive hearing. In that case, disclosure was ordered to be made two weeks before the oral hearing and some disclosure was given. It was to be of confidential and non-confidential information. Perhaps unsurprisingly no confidential information was forthcoming. I say "unsurprisingly" for reasons we will come on to. We then had the oral hearing. So this is the beginning of the new phase of substantive review.

It is an odd beginning in a sense. I do not want to make a particular comment about this case, but speaking generally parties get all the documents a few weeks before the oral hearing. For these oral hearings you have 15 minutes and you have to go first if you are the applicant. There is no disclosure statement, so you do not know what the other side is going to make of the evidence that you saw for the first time 14 days ago. The first time you hear about this is in the oral hearing. The only chance you have to react to it is in the four to five-

minute reply, which you are given at the end of that hearing, barring questions. Clearly something will have to be done about bringing the evidence rules up to date. Things are being done to some extent, but we will come on to that. That is all I want to say in opening.

The Chairman: Thank you. We have covered quite a lot of the ground that comes up in the subsequent questions, but anyway let us go first to Baroness Henig.

Q2 Baroness Henig: Thank you very much. I found that absolutely fascinating. I am still trying to keep up with it. I also think that the way this is evolving is very interesting. What are the weaknesses of the current sanctions process in respect of individual human rights and respect for judicial due process? You have touched upon this but perhaps you could elaborate.

Philip Moser: In my view the main problem with the system of so-called smart sanctions is that there is an inevitable disconnect between the international law and the foreign policy level at which they are made, and the implementation in relation to individuals at a local and national level on the other hand. The individual has very little control as far as judicial review is concerned. The problem has been that the national Government who we complain to would say, "Oh, no, the EU has listed it", and the EU would say, "But the United Nations", if it is a United Nations case, "has passed a resolution". So you have these different levels.

In Kadi it was established, at least at the supranational level, that is the EU level if it is a UN sanction, that there has to be due process and there is the possibility of judicial review by direct action in Luxembourg. That takes a very long time and there is a limit to the remedies that can be obtained there. So far there has been no successful damages case, for instance. You cannot get interim relief. You never get expedition, so you would be listed for some time. If it is a UN sanctions case you have the UN Ombudsperson, who came in not least because of comments made by the European court—a very creative force in that way. Although it is a very good thing, it is not judicial review and it is not a process that is

immediately controllable by the individual. It has not been brought to the local level where in one form or another—certainly in my view—it ought to be, so people have proper access to justice.

It is not the fault of the EU Courts that it takes a long time. They are inundated by these cases. They have been faced with something that they just have had to deal with, and with respect they have been making it up on the hoof. Something along the lines of an American Cyanamid-type injunction that would enable you to talk about the balance of prejudice and suspend inappropriate cases would be useful: not at an EU level, although that would be something, but perhaps at a local level in ways that we can perhaps discuss.

On the question of remedies, the reason why so many sanctions cases have not led to damages is because, again, it is said that there are UN sanctions in place anyway, so the EU says, "We have not caused that damage". It is very difficult for the individual to make his or her way up that international chain.

I have just a final point on this. We have a Zimbabwe sanction damages case pending for the first time. When we talk about country sanctions we mean that they are still individual sanctions but they are country focused. The Zimbabwean claimant is seeking damages in a case where you cannot say there were UN sanctions, so that will be an interesting one to watch.

Baroness Henig: Could I just ask a question about that, because I am completely ignorant on this? At United Nations level the permanent Court of Justice would not have any sway?

Philip Moser: No.

Baroness Henig: There is nothing at United Nations level that approximates to what is happening at the EU level? That is what I am struggling with.

Philip Moser: That is right. The ICJ has no jurisdiction in these matters.

Baroness Henig: There is no way something can be supplied at that level? As you say it is very awkward, so you are addressing things that happen here but you are addressing them down here.

Maya Lester: My understanding is that it is regarded as politically extremely difficult in the United Nations. That was the problem in Kadi: "There is no court at UN level, so what can we do?". I would add one footnote to what Mr Moser said. There is now a UN Ombudsperson, but we should emphasise that she only has jurisdiction to review the evidence for listings that are on one sanctions list, namely the al-Qaida terrorist list, and that is the list that was at issue in the Kadi litigation. If you are on another UN sanctions list, the only thing you can do is have recourse to what the court was very critical of in Kadi, which is the "focal point." That means that if your Government want to try to put your case forward at the UN there can be some political pressure, but there is absolutely no recourse for individuals who are on UN lists by way of judicial review or courts. So there is a UN Ombudsperson for only one list.

Baroness Quin: So should the Ombudsperson's role be expanded? Do you think that would be a good route to go down?

Maya Lester: Personally I think at the UN level that would be an excellent route to go by. If you spoke to the Ombudsperson, or the people involved in the United Nations, you would be told that is not a very easy ask at the UN. I also think that an ombudsperson-type mechanism at EU level might be a very useful development, and perhaps we can come on to that when I am answering the next question.

Philip Moser: I would add a short footnote to that. At EU level, or indeed at national level, there is a slight risk, if I can put it that way, in concentrating too much on the Ombudsperson and saying, "Now we have perfected the Office of the Ombudsperson" because again you will face the argument, "You do not need the judicial review at EU or

national level anymore because you now have a much better Ombudsperson". It rather depends on what the outcome would be, whether it would be judicial review, and if it is not judicial review then certainly for my part I would be hesitant.

Lord Foulkes of Cumnock: This is probably a very naive question. How does an individual challenging their listing get their legal costs paid?

Maya Lester: That is a very important question. It depends which country in the EU regime you are in. In my experience, in the United Kingdom the Treasury is extremely responsive to request from lawyers like me to get an exception to an asset freeze to allow legal fees to be paid. That now happens quickly and efficiently. If you are in a jurisdiction like the United States, and you are dealing with challenging US sanctions, it is a very different kind of story. Here you can simply be paid by funds that would otherwise be frozen.

Lord Foulkes of Cumnock: What about other countries? African or—

Maya Lester: I act for many people on the Zimbabwe sanctions list and I can be paid via a law firm by them. In order to receive the money you need a special licence from the Treasury to do that.

The Chairman: Lady Coussins has a supplementary on this too.

Baroness Coussins: You mentioned that no claims for damages have been successful up to date. Why has that been the case? What reasons have been given?

Philip Moser: There are two reasons, I think. In the first place, despite the fact that this has been going on for almost a decade, we are still at a relatively early stage in the development of case law, and by definition the damages aspect comes last after all the other aspects. Also, it is not always obvious in many of the cases, many of which so far have been terrorist cases, where the damages in fact have been suffered. As I say, the reason for no damages in UN sanction cases is because that is used as a defence: "He was sanctioned anyway by the UN

so it is not our fault". There are going to be developments, perhaps particularly in the Iranian cases. I am sure Ms Lester has something to add on that.

Maya Lester: There are very few cases where people have tried to get damages, so the answer is: we do not really know. There is an additional legal hurdle to getting damages, which is that you cannot get damages for any old breach of European law. It has to be a very serious breach, so there might be a question whether the court will regard these breaches as serious. Secondly, as Mr Moser says, there is a causation issue. Is it your EU listing that has caused your loss or, for example, the fact that you were on a United Nations list? Of course there is also the difficulty of relistings and appeals, as I have said. In order to claim damages, you would need to show that your designation has been unlawful for a period of time. Again, we can come on to this problem of entities succeeding and the response simply being to go back on the list with slightly amended reasons, or an appeal that might also chill an action for damages.

The Chairman: Perhaps we should move to the next question as we still have quite a way to go.

Q3 Lord Boswell of Aynho: The picture is beginning to become clearer. I get the impression that the courts are making it up as they go along. In particular, I would like to probe the interaction between the European Union instruments and the court and the European Convention on Human Rights. As you know, they are hugely confused in the political debate here, but we will leave that issue for this morning.

Perhaps I could ask one question before we get into that. There are moves, glacially slow ones, for the European Union to accede as a state party to the European convention. If that happens, as seems likely, will it make any difference to where we are?

Maya Lester: I think there are a number of consequences if that were to happen. The first obvious consequence is that if anything the European institutions did in this context was

arguably a breach of the European Convention on Human Rights, then provided one had exhausted domestic remedies, which I imagine might include going to Luxembourg, one could have ultimate recourse to Strasbourg. At the moment, even pre-accession, the position is that Strasbourg has had a look at sanctions regimes twice. The way in which that arises at the moment is that there are two cases that have both been against Switzerland, which is not part of the European Union, so these were due process-type challenges to the way in which Switzerland had implemented United Nations sanctions. Very roughly speaking, the Strasbourg court has taken a very similar approach to Luxemburg in saying, "We need a level of due process at national level, even if there is a UN listing". So it takes a similar line to the European court in Kadi but it comes to the Strasbourg court in that slightly circuitous way.

It also might make a difference when we come to talk about the interesting question of confidential information and the way in which the Luxembourg court might start dealing with information that cannot be disclosed to listed parties. I am mindful of the time, so I might address that when we get to that question.

Lord Boswell of Aynho: Thank you for that. But, of course, the European court in Luxembourg is responsive to cases that come to it and then has to take the circumstances into account. Do you get any impression across the Union, in the policy making rather than the judicial consideration side, that anybody is trying to get a handle on whether the whole thing is compliant with convention standards and due process, or is it just evolving in the course of litigation?

Philip Moser: Speaking from my own experience, which is all I can do, it seems to me that it evolves at the litigation stage, and in my view that is too late. By that time the decisions have all been taken. It is not just the court that has been reactive. It has also been, specifically in an EU context, the EU institutions. The Commission would say, "If the court tells us to

examine this, or the court tells us to delist, we will do that". We have said, "No, that is too late. You should look at it at the beginning". Indeed, it should never get to court. There have been examples now where it has become obvious, now that we are dealing with disclosure, that the first time the Commission has asked for any supporting documents, from member states or the United Nations, has been at the last possible stage in the litigation, when the court has said, "Do you have any documents?". They do not then produce the four lever arch files that they have. In the experience of my clients, we find there is a letter going from the Commission to the UK or the proposing state and to the United Nations saying, "Do you have any documents? We have a hearing next month". In my view all that ought to happen at the pre-listing stage. Very often when we get to disclosure—particularly nationally, sometimes because something is inadequately redacted or indeed because of WikiLeaks—it is found that mistakes have been made, that evidence has been inadequate. If that had been evaluated in advance, if somebody had made those inquiries in advance, you would not have had to wait several years.

Lord Boswell of Aynho: I have two other quick questions, if I may. One is on the damages side. Just to be clear: are we talking about damage to reputation or damage in terms of the actual pecuniary losses to individuals who have been sanctioned? It is one thing to be told you are a nasty person. It is another thing to be told that you cannot conduct business.

Philip Moser: It is both. It is what the EU calls material and non-material damages.

Lord Boswell of Aynho: The final question is this. I appreciate that in a sense—and perhaps I should not use the word "double jeopardy"—there is a second line of consideration if it is a UN sanction that is being applied through an EU vehicle. Apart from that issue, which we have already discussed, are there any other issues, for example evidential or quasi-evidential issues, differentiating sanctions based on UN lists and autonomous EU sanctions?

Maya Lester: Do you mean a difference in the standard of evidence that is required?

Lord Boswell of Aynho: It is one thing to say that you are on one list because you are on the other list. It is another thing to say that the criteria under which the two lists are composed, whatever they might be, are different or that the standards of evidence or proof are likely to be different.

Maya Lester: The reason why we are slightly struggling to answer that question brings me on to the point I was hoping to make, which is that there is a real absence of a standard of evidence both at the UN and the EU level. With your leave I will use your question as an excuse to answer a question I should have answered earlier, which is: what is the nub of the weakness in the system, and why are so many cases losing? I think it is exactly the point that has just been identified. I was trying to think of analogies. If you were going to court in the United Kingdom and you were trying to get an asset freeze, which is effectively what these measures are, or even more intrusively a travel ban trying to prohibit someone's travel, the closest analogy I can think of is an ex-parte injunction to freeze assets. In other words, there is no notice to the person whose assets you are trying to freeze and you have to go to court very quickly to try to freeze their assets. If that is what you are trying to do in a domestic court, perhaps unsurprisingly you would have to satisfy the court that you have a prima facie case that that person has done the things you are suggesting that they have done. Of course in this context, the thing that they have done varies between terrorist acts—in which case there is a need for some sort of national decision that they have done something—being involved in nuclear proliferation, undermining the rule of law if it is Zimbabwe, suppressing the people of Syria if it is Syria, or misappropriating state funds if it is Egypt. In my view the most important shortcoming of the system at the moment—and the reason why so many cases are winning when perhaps they should not—is that there is no requirement in relation to any of these lists, other than the terrorist list, for there to be a standard of evidence. In

other words there is no requirement for the European Council, or even the national proposing bodies, to show that this company, which they are proposing for a list with quite far-reaching draconian effects, has been involved in acts to further nuclear proliferation. I am not suggesting that there ought to be a full criminal trial with a prosecution at the end, but the difficulty the court has at the moment is that once it gets to the European court level, the court is saying, "What evidence is there for these allegations?". At the moment the process is that if you are someone who has been listed, before you are listed you are given nothing, perhaps unsurprisingly because the argument is made that you need a surprise effect to avoid assets being dissipated. Once you are on one of these lists, in a sense—as Mr Moser has been saying—it is too late, because although the court has been resounding in its upholding of the importance of the rule of law and due process in this area, it is unable to assist at that point. As I say, if it were a domestic court you would be required to show some sort of prima facie case. At the moment people and companies that are listed try in vain to get in touch with the European Council. Sometimes they try to do it via the British Government, who are more responsive. The European Council is spectacularly unresponsive. You write letters, including in serious cases of injustice—of course, some are serious and some are not—saying, "There is a very real problem here".

I had a case where someone who had the same name as the Syrian President's family was listed by mistake. This had very serious consequences. If you are on one of these lists and you should not be, there is evidence of death threats or exile. You can imagine the consequences of a wrong listing. The European Council simply does not respond. Then you are forced to go to Luxembourg to the European court. With the best will in the world, that court has a very serious case load. Everything is translated. You are talking about two years for some sort of response from the European court.

The European court is struggling to give proper remedies in these cases, and when it tries to give a remedy, what happens? The European Council will immediately relist you and/or appeal to the Court of Justice, which then takes a further two years. That is why I completely agree with Mr Moser's point. In my view, what is needed is some kind of revision of the system at the stage where you apply for your ex-parte freezing injunction—at the stage where there is some kind of real scrutiny of the evidential basis for names being proposed in the first place.

Of course it is easy to say that and much harder to craft a system that might work, but that is why the idea of some kind of ombudsperson mechanism, even though it is not a perfect system of judicial review, provides a real degree of scrutiny of the evidence of the current basis for a designation. In many cases the UN Ombudsman has found that there is simply no evidential support for a listing and has recommended that people come off the UN Al Qaida list.

Q4 The Chairman: Can I just ask you about nomenclature? You use the words "European Council". "European Council" is generally taken to mean the Heads of State and Government, and I wonder who exactly you meant by "European Council".

Maya Lester: It is slightly opaque who the real decision-makers are here. As we understand it, it is the Council in the sense of all the Foreign Ministers meeting together acting by unanimous—

The Chairman: You mean the Council of Foreign Ministers?

Maya Lester: Yes, indeed.

Philip Moser: The Council of the European Union as opposed to the European Council, to be precise.

The Chairman: Yes, the nomenclature is significant. Lord Foulkes would like to come in, but I am anxious that we move on because we have the Foreign Office coming afterwards.

Q5 Lord Foulkes of Cumnock: Another very quick question. You are arguing your case very cogently on behalf of people who are wrongly listed and the difficulties you face. Can I just put the other point of view? Every person in Britain accused of murder deserves to have a lawyer representing them. Supposing a Mugabe or a Karadžić came to you. Could you say, "No, I am not going to take your case because you are manifestly properly listed."?

Maya Lester: Your question is closer to the truth than you might anticipate, in my case. I am not for a second suggesting that there are not people who are correctly on the list. The point about all these cases, and the principles which the court has set down, is that due process applies to everyone. If you take Robert Mugabe's listing, the reason that is given for his listing on the Zimbabwe~~'s~~ sanction measure is something like, "undermines the rule of law in Zimbabwe", full stop. It may be that in a case like that there is overwhelming evidence that—

Lord Foulkes of Cumnock: Would you be obliged to take up his case if he came to you?

Maya Lester: As barristers under the code of conduct we are bound by our own professional standards, but do I think that even—

Lord Foulkes of Cumnock: What does that mean?

Maya Lester: In professional terms we are bound by the "cab rank" rule, which requires us to take any case that comes our way provided it is within our expertise.

Philip Moser: To be a little fussy, I think that since 1 January the cab rank rule no longer applies for international work, but that is by the bye. I completely agree that everyone is entitled to due process. You might imagine that the PKK was not a popular client. The point was that the PKK had been listed in complete disregard of the due process that is required. As it happens, it was a somewhat pyrrhic victory because it was delisted eventually and then immediately relisted. But the case law then stands. It has proved very important case law to

protect others who came afterwards who have also suffered from not having the correct procedural safeguards.

Lord Foulkes of Cumnock: But there is a value between the greater good of all of us and the rights of the individual, is there not?

Philip Moser: There is. Of course, the principal safeguard is to get the proper evidence and then to list in the proper manner. In the words of Thomas More, you cannot simply cut down all the trees. When you run into the forest and the devil turns on you, where will you hide, because all the laws are flat?

Lord Foulkes of Cumnock: But if the proper evidence is listed for a large number of dangerous people, and they then clog up the system by getting able barristers to take up their case, that could create problems, not just for the greater good but for the individuals who are wrongly listed.

Maya Lester: The same could be said for the criminal justice system more broadly. It is a very well made point, in the sense that the Luxembourg court may well agree with you that there are too many of these cases and that the Court is no adequate mechanism after the fact to go into the detail. As Mr Moser said, it is a 15-minute speech, with a hearing of about an hour. This is not a court that is used in this context to going through minutiae of evidential support for a designation. So I agree with you.

In my view, the whole robustness of the process, and of course from the point of view of these very important lists and the very important sanction regimes, and the reputation and the credibility of the regime, depend upon a proper system of judicial scrutiny and proper evidential support for the designations, whoever is on the list. I do not see that principle as shifting between the bad guys, the less bad guys and the good guys, if we can put it like that.

Q6 Lord Trimble: I wonder if I might just fast forward to the questions later on. You used the term "proper evidence". I would ask you to define that, and to indicate your

attitude to decisions based on intelligence that does not normally fall within what our laws define as "proper evidence".

Philip Moser: Again, one struggles slightly in answering that because at the moment there is no clear answer. The European Court of Justice is still making up its mind as to exactly what is and is not evidence, and in part perhaps there is a language difficulty. I understand that in French there is a difference between the words for "fact" and "evidence". Leaving that aside, we are still trying to work out exactly what is and is not going to be admissible as evidence and how it is going to be scrutinised in the European court. That is probably something we will come on to. At the moment the real proof is in the outcome. When so many delistings occur after challenges, in what is an emerging field, that indicates that the evidence that is available, at least for scrutiny, is not such as to justify the listing. Then you have to start asking whether there is other evidence, whether there is closed evidence, whether there is secret evidence that we are not seeing. In order to deal with the sort of protection Lord Foulkes addressed, perhaps we have to expedite the systems whereby that evidence can be seen. I am not a blinkered defence lawyer who says, "Anything that is good for the applicant is fine. As long as we do not have proper rules of evidence we are never going to see any confidential evidence, so they will all be delisted. Is that not great?". If there is real, serious evidence showing that these people ought to be on the list, then produce it.

Q7 Lord Trimble: We have had a number of systems developed under domestic law whereby decisions can be based on intelligence and there can be a degree of scrutiny of it. That at least is something that you should be addressing.

Maya Lester: Indeed. At the moment the European Court of Justice is looking at exactly this problem. What has happened so far on this issue is not satisfactory because the European Council has sometimes indicated—

The Chairman: Again you mean the Council of Ministers?

Maya Lester: Forgive me, we always use that shorthand in court and you are quite right to say that it is wrong. So the Council of Ministers, forgive me. All my references to the European Council should be taken as the Council of Ministers. The Council of Ministers indicates in court sometimes that there is evidence that it would like to rely on but it cannot. It usually uses the term "confidential", but sometimes that may be intelligence material. So far the Court's approach has been that if that evidence is not forthcoming and cannot at least be shown to the Court, then the Court will not allow the Council of Ministers to rely on that intelligence material as evidence. That obviously creates a problem, I would suggest in the Iran cases in particular, where this has come up a lot.

As we speak, the European Court of Justice is looking into whether its rules of procedure should be amended to permit some kind of reliance on intelligence material that genuinely cannot be shared. Of course that raises the issue of whether we have a special advocate system and what kind of system the Court will go on to. You will all recall the intense scrutiny that went into the Justice and Security Act here on similar topics. We will wait to see what the European Court does.

I would just make two comments on it. First, there has been no consultation or public scrutiny at all of what the Court may do, so there is completely opacity in terms of what they are considering. There are various different options with obviously quite—

Lord Trimble: But you can see that unless some special procedure is devised along those lines, the sanctions regime would collapse and you will deprive the European Union of a tool in the absence of which it will have to use other tools, which might turn out to be even nastier.

Maya Lester: I accept that there is a problem that it ought to be looking into. However, in most cases it is true to say that the bar to providing evidence is not a confidentiality intelligence material bar. The standard of evidence we are seeing at the moment—this is

literally true—is that the Council of Ministers' representatives in court will sometimes take out an iPad and say to the Court, "I have just Googled the company that is the subject of this procedure and you can see from X, Y and Z articles"—deriving from, as you can imagine, all kinds of interest groups and bodies with agendas—"that this is a bad company that must be listed". That is not a satisfactory situation.

At the other end of the scale, you have the problem of real intelligence material where there may seriously be a problem along the lines of the Justice and Security Act. The Strasbourg Court has said about this that of course there are cases where techniques of some kind, such as special advocates, might have to be employed, but the key under Article 6 of the fair trial provision of the European Convention on Human Rights is that the main thrust of the allegations must always be put to a party who is on one of these lists. The indications from the case law in Luxembourg, in the Kadi case and a case called ZZ, is that in its view there may be cases where even the substance of an allegation will not be put to a designated party. In that case the Court will decide how much weight it will give to that allegation, but it can still be relied on.

You can have arguments about this, but in my view that would be a very serious difficulty for anyone's rights of defence in this context. That might create a very real difference with the position in the European Court of Human Rights.

The Chairman: Lord Boswell also had a supplementary.

Q8 Lord Boswell of Aynho: Appropriately enough it is about urgency, in view of the timescale. It just occurs to me that this creates a further difficulty in evidence gathering. If I can put it simply, for example you may have a Head of State who has a pattern of delinquency, which you know. You may know that he has an agent, who we will call A. You may list A, and he will then switch his business through agent B at relatively short notice. No court is going to find it easy to catch up with that. It will be difficult enough even for the

administrative authorities to do that. Do you recognise that as a difficulty? How can you at least produce an audit trail that looks, and indeed is, reasonably judicially respectable?

Maya Lester: At least in the first instance, a question like that would not be one for the Court to have to chase up. I am sure it is a question for the Foreign and Commonwealth Office. It would be quite used to cases where allegations are made where we list a company and all the company does is transfer assets to another company, and then we have to list that company. That is certainly a live issue and one that it is responding to.

Philip Moser: These sanctions are constantly updated in both directions: individuals and companies going on the list and coming off the list. There is something to be said about confidential information. I do not know whether that is another question that we have yet to come to.

The Chairman: Let me pass to Baroness Quin, who has waited very patiently.

Q9 Baroness Quin: Quite a bit of my question has been overtaken, but some of the injustices that have occurred have involved even just confusion about somebody's name: having the same name or a similar name. How quickly can those mistakes be rectified? In some ways what you have been saying makes me feel that the whole system needs to be looked at and almost redesigned, but short of that are there some practical measures that can be taken to speed up the process when those kind of injustices have occurred?

Philip Moser: I entirely agree that it seems that the answer is that the whole system has to be looked at. As Ms Lester says, and I completely agree with everything she said in that part of her submissions, at the moment the relevant authorities have been fantastically unresponsive: the "relevant authorities" in particular being the Council and the European Commission.

It is perhaps unsurprising, because although they are the listing authorities, if I can put it that way, in reality they are not the interested parties. For instance, in cases where the United

Kingdom is the proposing state, it is the proposing state that is keen to get so and so listed, and that is where the impetus comes from. It is then conveyed to the Council and the Council generally duly lists.

It appears that the information very often is not with the apparently competent European Union authority. You then write to the Commission or the Council to say, "Please delist me. I am the wrong man", and you get no response. The system is not set up for it. There has to be a pre-court way of getting off the list, of having correspondence with the Commission or the Council. Yes, they have to give a statement of reasons and then they invite representations on those reasons, but one gets the feeling that one is sending representations into a void because nothing comes back the other way. Certainly you never get a delisting. So far there has been no delisting initiated by the competent EU authorities with respect to submissions. It has always come either down from the Ombudsperson or a change of policy by the listing state or up from the Court. So something has to happen at that crucial point. If that is where you are going to be listing that is where you have to have some procedural safeguards.

Maya Lester: I have two examples of this. One is a case I have of two people who were proposed for the Iran list by the United Kingdom. It was our case that they should never have been listed. Eventually the United Kingdom, but only under pressure of judicial review proceedings, accepted that they should not have been proposed. They were incorrectly proposed to the list, but not only did we have to go to judicial review in the United Kingdom, we had to bring Luxembourg proceedings in order to show that they should not have been listed. Even at the point at which the United Kingdom accepted that they should never have been proposed for designation, because these were not people who were said to have done anything wrong, the Council of Ministers still maintained that even though they had not been said to do anything wrong, it was part of putting general pressure on Iran that

these people should be on the list. One of these people lives and works in the United Kingdom. Even after they had been delisted, we still had to go to the end of the Luxembourg proceedings, which took about two years, and we are still trying to argue that they should never have been listed in the first place. So when I say "an absence of responsiveness" I really mean an absence of responsiveness.

Another example relating to Syria—the mistaken identity of the unfortunately named client I had mentioned earlier—we had to go through proceedings in Luxembourg, because the Council of Ministers would not respond to our letter saying that we thought think there had been a mistake. We issued proceedings in Luxembourg. When the Council of Ministers responded months later to our pleadings it said, "You do not have standing to challenge this listing in the European Court because you are not the person that we intended to list".

The next year, after we had won that case, my client was relisted in exactly the same way with exactly the same mistake. In that case we got on the telephone very urgently to someone extremely helpful in the UK authorities who made sure that within about a week he was removed. So you can get very lucky, and I pay tribute to many people in both the Treasury and the Foreign Office who can be extremely helpful on these issues. But unfortunately it is not always the UK authorities that one is dealing with in these issues.

What the mechanism is at the Council of Ministers' level I simply do not know, but at the moment there is a real problem here.

Philip Moser: I would just like to underline that we have found the Asset Freezing Unit at the Treasury to work excellently and to be very co-operative and helpful—really interactive. You can pick up the telephone and speak to them. It is an entirely different matter. The problem is that it does not get you home, because even once you get the UK on your side that does not seem to do it.

The Chairman: In the last two questions we talk about limited information available to the Court, and quite a lot of that has been covered. None the less, Lord Jopling.

Q10 Lord Jopling: The problem is the availability of essential information. Ms Lester talked earlier about the lack of a standard of evidence. That is the phrase you used. It seems to me that with regard to the inadequacy of evidence, the UN very often supplies inadequate evidence. The Council of Ministers withholds confidential evidence. We have talked about that, so there is no need to go back on that. Therefore we have ended up with a situation where the courts say they cannot judge and they overturn the sanctions or the listing or whatever it is. Am I right in thinking that that is the background to this? What do you think might be done to improve information sharing between the UN and the EU in particular in the future?

Philip Moser: The problem about secret information is that the national intelligence services will not let go of it unless they have absolute assurance that it is not going to be made public. At present, the competent court that has to deal with the delistings—at least in this part of the world—the CJEU, has no procedures in place to deal with confidential information, and I mean none, including the most basic as to how to receive it and where to keep it, leaving aside the fact we do not know what the standard of evidence is.

The rules of procedure committee of the Court has been beavering away these past months. I hazard a guess that sometime this spring we are likely to see the result of it. As Ms Lester has pointed out, this has been done in secret by the Court. The chairman of the Bar Council and the president of the CCBE wrote to the Court offering their assistance and they were rebuffed. The Court has been working it out itself. We do not know what the thinking of the Court is.

It will stop being secret at the moment the Court has to send it to the Council of Ministers for approval, at which point it will pop up on the Council of Ministers' website without

fanfare. We will have to keep a weather eye out for that. That will be the first time we see the draft proposal from the Court. This is a very important aspect of this. It may seem like a procedural aspect but until the competent Court is capable of receiving confidential information, and keeping it confidential, member states are not going to send their information there. You can ask the Foreign Office or the Home Office, I bet they are going to say, "No way are we are sending that over there if we do not know who is going to handle it or whether it is going to end up published".

One of the cases that my learned friend addressed—the case of ZZ—gives us a certain hint as to what the Court is likely to say about these things. It includes that in principle the person is entitled to see the evidence against them, which concerns the security services. In exceptional cases, for reasons of state security, the Court would make an exception, but in ZZ the Court said, the way that is judged is that it is "necessary for the Court to be entrusted with verifying whether those reasons stand in the way of precise and full disclosure of the grounds on which the listing is based". In other words, it seems quite likely in my view, and I am speculating, that the Court of Justice will say, "We are going to assess what is and is not secret".

Again, you can ask the Foreign Office colleagues, and I bet that they will say, "We are not happy to have the CJEU tell us what is and is not secret, and we want to know before we send it over there as to whether it is likely to be published". That is just one of the many practical problems in a multilingual court of dealing with secret evidence. Who is going to do the vetting? There are 28 judges. Each one has a number of référendaires. Everything has to be translated. The translators and interpreters all have to see the material because—

The Chairman: Can I just interrupt you? You say "multilingual court". A long time ago when I was a Commissioner, the Court was unilingual—in the sense that it operated in

French, just as the European Central Bank operates in English. Are you saying that the Court now operates in everybody's language?

Philip Moser: It has to. French is the official language of the Court, so only the French transcript is the official version of proceedings. When the judges are in délibéré they deliberate with one another in French, and the original version of the judgment in most cases would be in French. But certainly in direct action cases you speak the language of the country from whence the direct action originates, so when I went there the day before yesterday our hearing was in English. Everybody listened in English.

The Chairman: Thank you for clarifying.

Philip Moser: Everything has to be translated into every language before it can be published.

Lord Jopling: Sorry, I am a little confused. I asked about the limited information that is available to the courts. Are you saying that that is all confidential information? Is there not a big area of material evidence, which is not confidential or secret, which is not provided, and that when Ms Lester talked about lack of standard of evidence she was talking about a failure to provide a proper case?

Philip Moser: Absolutely, yes. I will let Ms Lester follow on if necessary. That is exactly the point about evidence. There are two kinds. We have the confidential and the non-confidential. We have not even begun to see the confidential because there is no procedure, even though the General Court has started hearing cases in which it is asking for confidential evidence. Of course none has been forthcoming yet.

Then there is all the non-confidential evidence. Again, we are only just, post-Kadi, reaching the stage of substantive review where actual evidence is being asked for by the courts by way of disclosure. I think it is just this one case experienced so far, where there has not exactly been a feast of evidential disclosure. We had six documents disclosed. Two of them were extracts from websites and the others were all things that had been produced, not

only after the listing but after the delisting of the particular applicant. Just as a snapshot of the many problems, one of the things we do not know there is when something is even admissible, so would we be looking only at evidence that existed before the listing? We do not know these things yet, but that is where we are.

It is easy to criticise. The courts are making it up as they are going along, but that is because they have had to and they can only work with what they have.

Maya Lester: I agree with what Mr Moser has said. At the moment there is a surprising absence of evidence. When you are initially told that you are on one of these lists you are given very brief reasons but nothing to support the reasons. You are simply given the wording that you will have seen when you have seen these lists.

If you litigate, and only if you litigate in the European Court, you are given what is called "privileged access to the file". That is the file on the basis of which the Council of Ministers decided who should be on and who should be off the list. The file usually consists of redacted notes of meetings and a listing proposal from a member state. It is often extremely thin.

When there is supporting evidence, which there sometimes is, it usually consists of what would be described as open source evidence, which is often printouts of websites. What you do not get is what we would describe in a UK court as evidence, as some substantial foundation for a listing. In some cases it is said that is because it is intelligence material or it is confidential. What surprises me about that is that you do not get a file of material with two pages redacted, on the grounds that this is intelligence material that cannot be disclosed for the reasons we talked about before. As I say, you simply get things like internet printouts. That indicates to me, in what is a very opaque process, that there is a problem at the early stage of member states either not being willing or not being able to gather or share information with each other in the Council of Ministers. But that is not something that we

are able to address for you, because from our end of the process we simply do not know what happens at that stage.

Q11 Lord Jopling: In view of the Court's recent judgments, are you finding that the situation where non-confidential evidence is not provided is improving and people realise that if they want the courts to uphold an allegation, they must provide fuller and better non-confidential information?

Maya Lester: The short answer is no, I do not think it is improving. It is slightly different between different regimes. In the case of Iran, the Council of Ministers has found it very difficult to show links between individual companies or people and support for nuclear proliferation, so it has changed the listing criteria. That means that it is now enough to get on, say, the Iran list to have some connection with or support for the Government of Iran. That is much easier for the Council of Ministers to prove than that you have been supporting nuclear proliferation.

The wave of cases that concerned the previous criteria, which required an evidential link with proliferation, are coming to an end. Most, although not all, of those applicants won. But I think the tide will turn in the sense that, at least as far as I can see, the reaction has not been, "Let us try to produce better evidence", but, "Let us change the criteria to make it easier so that we do not have to give such evidential support". Of course one can understand that.

I would add one important point: it very much depends on what regime you are talking about. It is easy to think of all these regimes as showing terrorist conduct or nuclear proliferation conduct, which of course requires some showing of nefarious conduct, if I can put it that way.

A very important regime in this context, which gives quite a different sense to the word "injustice" in this case, is the Arab Spring context. The potential for problems with those

sorts of regimes seems to be not so much injustice, in the sense of there not being enough evidence to support allegations, but the extremely serious potential for political use of the sanctions lists. In some sense they are all political tools, but the origins of the Egyptian and Tunisian sanctions list are very interesting. There are provisions for mutual legal assistance between member states. If one country wants to ask another country for assistance in freezing assets across borders—as I said in the case of ex parte injunctions—some kind of standard of evidence is required. The UK can say to France, "We want French assets seized". France will say, "We need to know that there is some evidence that these people, whose assets you want to freeze, have done X, Y and Z".

In the case of Egypt and Tunisia, Egypt contacted the United Kingdom for mutual legal assistance with having assets of Egyptian citizens frozen in the United Kingdom. The United Kingdom said, "You have no evidence. We will not give you mutual legal assistance". Egypt wrote instead to the European Union and got an instant EU-wide asset freeze. A very similar story happened with Tunisia, except that in that instance Tunisia wrote to the European Union and gave a list of what it described as "enemies of the state", and the next day those people were added to the Tunisian sanctions list. The position gets much worse if one sees what has now happened in Egypt, and of course to call it highly political and in turmoil is a serious understatement. The criterion for being added to the Egyptian sanctions list is, "Are you responsible for misappropriating the funds of the Egyptian state?", and that is decided on the basis of, "Are you being investigated and tried for corruption at the moment in Egypt?". Of course that is itself highly political.

So whether you regard those as cases of injustice or evidence is not the point. It is on what basis these lists are being scrutinised and drawn up.

The Chairman: Lady Young has the last question.

Q12 Baroness Young of Hornsey: Thank you very much. Throughout our conversation you have given examples of where you think procedural issues could be changed and very practical suggestions. Is there anything you would like to add to the list of changes that you would like to see, and where do you think the priority should be? What is the most urgent area to change in order to safeguard people's individual rights as well as keep up this political platform?

Philip Moser: I think the most urgent areas to address are both at the beginning and at the end, if you will. At the beginning it is whether there is proper focus on the reasons for listing, on what you have to prove and how you are going to prove it, and on whether there is enough there. At the end it is where it affects the individual, because if you are going to sanction individuals—and it seems easy to say we have smarter sanctions now; we are not going to sanction everybody in the country, we are only going to sanction individuals—there is a danger of a lower threshold and countries seeking a listing are tempted to list someone more easily. You do not have to get broad political consensus as you do for sanctions against Iran as a country or South Africa in its day. You say, "We are just going to list an individual", and if a mistake is made perhaps it is perceived—this is my view—that the damage is not so great. But for that individual, of course, the consequences are catastrophic. That individual has to have access to some form of redress where he or she is, whether that is by means of a national form of preliminary injunction proceedings, where you can seek at least an interim suspension on the basis of the appropriate standard, and whether prima facie or otherwise. It could be through an ombudsman, at least at the Community level. That would be a start. Again, I add that this is not a replacement for judicial review, but it would be better than what we have at the moment.

You have those things at the end in order to protect the individual and to enable them to make these sanctions judicially reviewable within a proper time. It would be advantageous—I

would say really necessary—not to have to go via a direct action to Luxembourg or the cumbersome aspects of that process. Unless Luxembourg is suddenly to turn round and develop a discrete sanctions court. That is a suggestion that I would not consider realistic, because the timeframe that that would take, and the Treaty change that that it would require, do not bear contemplating.

Those are the things I would suggest, and I would like to make this general comment about the robustness of the sanctions regime. It is only going to be robust if it is seen to be fair and robust. If these are continually overturned on procedural and substantive grounds or whatever, that undermines the whole idea of smart sanctions. It is ultimately beneficial to the whole system; to both sides, if there are sides in this.

Maya Lester: One difficulty may be that the reform probably has to come at the level of the Council of Ministers. At the moment, although there has been this spate of court judgments against them, I am not sure that they will be feeling the pressure to reform the system. That is because they are relisting companies. The only way companies or people can have recourse is to go back to the Court. It is expanding the criteria on the basis of which it lists entities and companies, so in a sense I am not sure—the Foreign and Commonwealth Office may correct me on this—that there is significant recognition that there is a problem, from a due process human rights perspective here, to have some impetus for reform.

I know that the FCO was instrumental in encouraging the United Nations to introduce this ombudsperson procedure, which I think has worked very effectively. It is very difficult to know whether there is practical discussion at the level of Council of Ministers that something needs to be done here, but I agree entirely that the overall conclusion is that what needs to be done is not more at the end of litigation, of which there has been more than enough, after the fact, but in trying to get reform and more stages of scrutiny at the

early state. It is much more for the FCO to suggest what is possible politically and practically at that stage than for us.

Q13 The Chairman: Mr Moser and Ms Lester, you have brought to our attention a very disquieting situation. Obviously we were aware of the disquiet originally, otherwise we would not have invited you to appear before us. You have given us and I am sure Lord Boswell, as Chairman of the overall EU Select Committee, a good deal to think about in how we might follow up on this. Can you answer one final question? To what extent is the kind of disquiet that you have expressed, and the issues that you have raised with us, being raised and discussed in other member states? Have you been in contact or shared these concerns with people in the legal profession in other member states?

Philip Moser: I think I am right in saying that the United Kingdom is leading the charge. There is certainly considerable disquiet within my profession. I have mentioned that the chairman of the Bar Council wrote to the Court about confidential information. There is an intense interest on these issues and there is a similar interest at the CCBE, the Council of Bars and Law Societies of Europe, which represents the professions across the whole of the Union. There, really, ends the scope of my knowledge. I do not know to what extent there is concern in the chancelleries of continental Europe about this, particularly in relation to Zimbabwe sanctions, terrorist sanctions, and, to a degree, Iran sanctions. The UK is more interested in these issues than certain other member states, naming no names. Very often we have found in terrorist cases that the UK was, at least at some stage, the proposing state. Then sometimes it is the state that most efficiently changed its mind and said, "No, that was wrong". I have not seen that with such intensity from other countries.

I do have some applicants from other states, notably Ireland. There are issues there, but I suspect that we are at the forefront of this. Perhaps it is extremely important for this Committee and the Parliament of this country to have these things in mind. It is excellent to

know that we have the attention of this Committee for these issues, because for too long there has been too little attention.

The Chairman: Thank you very much indeed. We have kept you for longer than was foreseen. The fullness of answers has been extremely helpful and generated further questions. On behalf of the Committee, thank you very much indeed.