

## House of Lords' report on the legality of the EU sanctions listing process

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**Corporate Crime analysis:** The House of Lords EU Justice Sub-Committee recently published a report on the legality of the process for listing people and entities on the EU's various sanctions programmes. Michael O'Kane, senior partner at Peters & Peters, examines the main findings of the report and the possible impact on challenging listings or sanctions compliance.

### Original news

More can be done to improve EU sanctions listing, says Lords Committee, [LNB News 02/02/2017 139](#)

*The European Council should codify the standard of proof it applies when it adopts sanctions listings to bring much-needed transparency to the listings process, according to the findings of a report by the House of Lords EU Justice Committee. The committee has concluded that while improvements had been made to the listing process, much more could be done.*

### What are the key findings of the report?

The [report](#)'s key findings chiefly address the issue of unfairness that has often been raised in respect of the sanctions listing process.

It says that the EU Council should less readily re-list people and entities who have successfully had their original listings struck down by the EU courts, a practice which in essence leaves them without access to an effective judicial remedy or due process. This is especially so because they are typically re-listed before the judgment annulling their original listing can take effect. Tied to this, it also says that the Council should codify the standard of proof it applies when it adopts sanctions listings, bringing greater transparency and uniformity to the process, while also ensuring that listings are better substantiated in the first instance.

As a matter of urgency, the report also highlights the need for the Council to reduce the time taken for it to respond to correspondence from targeted people and entities, a point frequently raised in challenges to sanctions listings, albeit without much success. Additionally, it says that it is the duty of the EU to ensure that it has sufficiently robust but fair procedures to allow the EU courts to assess confidential evidence underpinning sanctions listings, and also recommends that the Council consider an Ombudsperson for EU sanctions, similar to the role of the UN Ombudsperson to the ISIL and Al-Qaida Sanctions Committee.

More generally, the report concludes that the UK government should provide open-source information justifying sanctions listings to select committees, to allow Parliament to more effectively scrutinise them, and states that the UK should introduce legislation formally aligning itself with EU sanctions policy post-Brexit.

### Which sanctions regimes does the report cover?

The inquiry covered EU sanctions as a whole, but its focus was on those regimes which provide for the imposition of targeted sanctions on people and entities and the process by which that is done.

### What is the potential impact for practitioners advising clients on challenging listings or sanctions compliance?

The inquiry was undertaken independently of the EU and has no direct influence on it. However, while many of the criticisms in the report are not new, they are lent some weight by the stature of the Lords Sub-Committee and the substantial experience of the witnesses who gave evidence, including the EU Council's Senior Legal Adviser Michael Bishop. A caveat to this is that the views of the English Parliament may hold less sway over the EU following the Brexit vote than would otherwise have been the case, much less those of one of its Sub-Committees. Furthermore, the UK government's support for the report's findings is itself far from certain, not least in view of its recently stated position on

the deproscription of organisations under its own counter-terrorism sanctions, that a 'cautious approach' is appropriate (see '[The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2014 by the Independent Reviewer of Terrorism Legislation](#)'). The government took this position in spite of its Independent Reviewer David Anderson QC having repeatedly stated that several aspects of the listing process were unfair or contrary to the rule of law (see '[The Terrorism Acts in 2015 Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006](#)').

The above cautions notwithstanding, were the report's recommendations to be implemented there would be several implications for practitioners advising clients. For clients seeking to be de-listed from EU sanctions, a codified standard of proof for sanctions listings would allow practitioners to frame their advice in much more concrete terms than they are currently able to. In addition, better substantiated listings combined with a more restrained attitude to re-listings on the part of the Council would make successful annulment applications a far more effective remedy for the client than they are at present.

Were an Ombudsperson for EU sanctions introduced, in the mould of the UN Ombudsperson to the ISIL and Al-Qaida Sanctions Committee, there would be a new starting point for de-listing requests. Practitioners would need to get the measure of how best to put their clients' cases in this new forum, to the end of securing a favourable report from the Ombudsperson for use in an application before the EU courts. If the courts were given greater access to confidential information, practitioners would have new material available to them but would also face new procedures to navigate.

On the compliance side, were the UK to introduce legislation aligning itself with EU sanctions post-Brexit practitioners would need to keep an even closer eye than they do at present on how EU sanctions are being implemented in the UK, once EU regulations no longer have direct effect. Whether such legislation is introduced or not, the most likely outcome at present is that UK sanctions remain closely aligned with EU sanctions for the foreseeable future.

*Interviewed by Susan Ghaiwal.*

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