



EUROPEAN COMMISSION

Brussels, 8.6.2017

C(2017) 3547 final

*The Lord Boswell of Aynho
Chair of the European Union
Select Committee
House of Lords
Palace of Westminster
UK – LONDON SW1A 0PW*

Dear Lord Boswell of Aynho,

The Commission would like to thank the House of Lords for its report concerning "The legality of EU sanctions".

As regards the House of Lords' views that the standard of proof should be codified and aligned to that of "reasonable grounds of suspicion", the Commission recalls that the standard of proof is established in the case law of the European Court of Justice: the Court must be satisfied that a listing was adopted on a sufficiently solid factual basis.¹ This requirement may be met by the application of the 'reasonable grounds for suspicion' test, provided that those grounds are supported by sufficient information or evidence.

The preventive rather than punitive nature of restrictive measures necessarily has a bearing on the nature, form and degree of the proof that may be required.² The general context (i.e. geo-political, economic, etc.) in which the restrictive measures are imposed and implemented³ may, in line with the "proof proximity" principle, result in the burden of proof being discharged more easily in certain cases than in others.

As regards the House of Lords' views that a Judgment of the General Court is "of no consequence" as an individual may be re-listed before it comes in to effect,⁴ the Commission considers that this does not reflect either the manner in which judgments of the Court of Justice of the European Union are regarded nor the Union's re-listing practice. Article 13 (2) of the Treaty on European Union provides that the institutions shall practice mutual sincere cooperation and the Judgments of the Court of Justice are, therefore, given full legal effect. It is precisely for this reason that the Court of Justice has consistently recognised that the temporal effects of an annulment may need to be delayed in the context of sanctions as once an annulment is effective, an individual is able to transfer all or part of his assets out of the European Union. This has the potential

¹ C-584/10 P, C-593/10 P and C-595/10 P, Kadi II, EU:C:2013:518.

² Case T-248/13, Al Ghabra, ECLI:EU:T:2016:721.

³ See, for example, T-153/15 *Hamcho v Council* ECLI:EU:T:2016:630, pp. 89 and 96-101 and the case law referred to therein.

⁴ Report, paragraph 103 and 104.

to give rise to the risk of a serious and irreversible infringement being caused to the effectiveness of any asset-freezing likely to be, in future, decided by the Council against that individual.⁵

Moreover, an individual is not re-listed on an identical basis once a listing has been annulled nor is re-listing systematic.

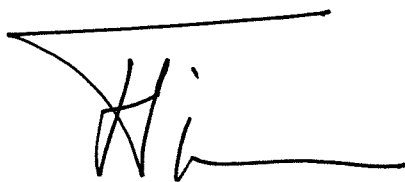
As regards the House of Lords' views that sanctions for misappropriation of State funds in Egypt, Tunisia and Ukraine appear to rely on the existence of criminal proceedings rather than any assessment by the Council of the validity of those proceedings, the Commission recalls that the Council is not required to show that allegations against an individual are well founded, but rather that the listing criteria are met.⁶ There is no requirement, in the absence of evidence casting doubt on their validity, for the Council to systematically assess the merits of criminal proceedings.

Concerning the views regarding Article 105 of the Rules of Procedure of the European Court of Justice,⁷ the Commission notes the United Kingdom's concerns that this mechanism will not be used by all Member States. The Commission recalls that it is incumbent on Member States requesting a listing to ensure that evidence and information supporting the imposition of restrictive measures on an individual is available for review by the Court in the event that the legality of the listing is challenged. The Commission is confident that the Article 105 procedure will provide adequate safeguards to protect the confidentiality of information adduced under this mechanism⁸.

Finally, the Commission agrees that the United Kingdom has made an important contribution to the European Union's sanctions policy. It trusts that the United Kingdom will continue to work closely with the Union in this domain in the future.

The Commission hopes that these clarifications address the issues raised by the report.

Yours faithfully,



Frans Timmermans
First Vice-President



Federica Mogherini
Vice-President/High Representative

⁵ Report, paragraph 103 and 104.

⁶ Case C-220/14P, *Ezz*, EU:C:2015:147, paragraph 77.

⁷ Report, paragraph 108.

⁸ Detailed provisions concerning the handling of information are contained in Decision (EU) 2016/2387 of the General Court of 14 September 2016 concerning the security rules applicable to information or material produced in accordance with Article 105(1) or (2) of the Rules of Procedure, and in Decision (EU) 2016/2386 of the Court of Justice of 20 September 2016 concerning the security rules applicable to information or material produced before the General Court in accordance with Article 105 of its Rules of Procedure.