**Observatoire ARGA**

**INTERNATIONAL ANALYTICAL REPORT**

# D-14. Sanctions Procedures and Procedural Safeguards

**European Union, United Kingdom and United Nations**

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# 1. Principal findings

Procedural protection in individual sanctions cases is determined not by the mere existence of an address for complaints, but by the opportunity to challenge the grounds for a restriction and obtain a legally meaningful response. This requires the person concerned to know which decision has been taken, which facts are relied on against them, how they may respond and who can review the decision independently of the authority that initiated the listing. A break between any two elements of this sequence reduces the practical value of the remaining safeguards.

In the European Union, protection rests on the combined requirements of good administration, reasoned decisions and effective judicial review. Judicial scrutiny must not be confined to whether the authority's explanation appears plausible: the factual basis of the individual decision matters. In the United Kingdom, administrative reconsideration and subsequent court review are organised differently, and the handling of closed material provides for a special advocate. These procedural differences prevent the comparison from being reduced to a claim that one jurisdiction always offers stronger protection. [1-8]

Confidentiality is not proof. Information may warrant protection against disclosure while remaining incomplete, outdated or wrongly attributed to a particular person. Assessment of the need for non-disclosure and assessment of evidential weight must therefore remain distinct. The converse is also true: an inability to provide the applicant with the entire document does not automatically make every use of its contents impermissible. The applicable procedure, judicial oversight and compensating safeguards are decisive. [3-4; 8]

UN mechanisms require separate consideration. The Ombudsperson for the ISIL and Al-Qaida list and the Focal Point for Delisting have different powers. The reform under resolution 2744 (2024) should not be described as the creation of a single international sanctions court. An important development in September 2026 is the new Focal Point's assumption of responsibilities on 1 September, following appointment on 11 June 2026. This distinguishes the adoption of the new procedure from the appointed individual's commencement of work. [11-15]

Procedural fairness and the justification of the final outcome are connected, but are not identical. Denial of an opportunity to answer a material allegation cannot be disregarded simply because the authority considers sanctions useful. Equally, establishing a procedural defect does not always entail immediate release of all assets, permanent removal from every list or entitlement to compensation. Each outcome requires its own legal basis and precise identification of the decision's consequences.

The central analytical conclusion is that the resilience of a sanctions system depends on its ability to correct individual errors without abandoning its legitimate objectives. Secrecy, urgency and foreign policy competence explain procedural features, but do not replace procedure. An effective safeguard must operate in the individual case: communicate a material ground, permit a substantive response, secure independent assessment and lead to an enforceable outcome.

## 2. Scope and limitations

This report examines procedural safeguards for individuals and legal entities subject to individual restrictive measures of the European Union, the United Kingdom and the UN Security Council. Its principal questions concern notification, reasons, access to material, the right to be heard, the limits of closed proceedings, independent review and implementation of a favourable decision. Sanctions procedures are considered as at 23 September 2026. Earlier judgments explain applicable legal approaches rather than establish the current status of the parties to those cases.

The subject is confined to individual measures and related remedies. Trade embargoes, export restrictions, criminal proceedings for sanctions violations and confiscation of criminal proceeds have their own conditions. They are addressed only where confusing them with listing produces an error. For example, freezing property under a sanctions regime cannot, without a further legal basis, be described as transferring ownership to the state.

A statutory safeguard, a judicial interpretation and an institutional description carry different weight. Legislation or a procedural rule establishes powers and procedure; a judgment explains their application in a defined context; an official information page helps identify the administrative route. If departmental guidance is shorter than the law, it does not remove the law's conditions. If an information page retains a historical description, that description must be read against later instruments and their commencement dates.

The selection of judicial examples is qualitative rather than statistical. Kadi II explains the relationship between reasons and factual scrutiny; Al-Dulimi addresses the limits of a state's reliance on implementing UN obligations; Shvidler examines the interaction between individual rights and foreign policy assessments. These cases do not permit calculation of the probability of success, typical duration or comparative effectiveness of jurisdictions. Such conclusions would require a defined population of cases and comparable data on non-public administrative reconsideration.

Effectiveness here means a procedure's ability to secure consideration of a legally material objection by a competent body. It is not synonymous with a favourable outcome for the applicant. A refusal based on established facts and a reasoned application of the law may result from a functioning procedure. Conversely, formal success on a secondary request does not necessarily compensate for an inability to challenge the principal restriction.

## 3. Why the legal nature of the measure matters

The word 'sanction' encompasses substantially different legal mechanisms. Individual asset freezing is generally justified by preventive and foreign policy objectives, whereas punishment for breaching an established prohibition requires separate proceedings. The severity of the economic consequences does not automatically establish the applicability of every criminal procedural rule. Nevertheless, describing a measure as preventive does not release the authority from respecting the rights applicable to the interference and its judicial examination. [3; 9-10]

An error of characterisation changes the very subject of the defence. If a person demands proof of criminal guilt when the listing criterion concerns a different business role or association, the dispute may miss the legally material question. If the authority invokes prevention to avoid explaining why the person falls within the statutory category, it replaces an evidential task with a general description of the regime. Correct analysis first establishes the criterion's substance, then the facts, and only then the adequacy of the procedure.

Distinguishing a legal presumption from a factual inference is particularly important. A rule may attach independent significance to certain relationships. It does not follow that those relationships may be assumed without evidence. Listing on a control criterion requires the relevant control to be established; listing on a support criterion requires the specified form of support. The procedural safeguard enables that connection to be examined even where the criterion itself is broadly formulated.

In Al-Dulimi, the European Court of Human Rights examined access to a court under the civil limb of Article 6 of the Convention. This matters: the conclusion that judicial protection was necessary did not depend on classifying sanctions proceedings as criminal. At the same time, the Court did not turn the case into a universal review of every foreign policy measure or act as an appellate body over the Security Council. [10, paras 139-155]

Analytically, three levels should be distinguished: the legitimacy of the objective, the existence of a power and the justification for its exercise against the individual. International security may be a legitimate objective, but the particular authority must possess the relevant power and its decision must meet that power's conditions. A defence that challenges only the objective or only the severity of the consequences leaves other possible defects unexamined. Scrutiny of all three levels avoids both automatic approval and automatic rejection of the restriction.

## 4. Notification and the ability to understand the decision

Notification performs two functions: it communicates the interference and enables the defence to begin. Merely knowing that a bank has stopped processing transactions is insufficient to identify the authority, contested act and legal basis. The affected person must distinguish their own listing, application of an ownership or control rule, and a mistaken data match. These situations may look identical externally but require different procedural steps.

In the EU, Article 14 of Regulation 269/2014 provides for communication of the decision, including the grounds for listing, directly where the address is known or through publication of a notice, and for an opportunity to submit observations. This connects an individual decision with a subsequent opportunity to respond. It does not mean that a bank's notification replaces communication by the sanctions authority, or that publication of a general description of the regime automatically explains a particular entry. [5, Art. 14]

Defective identification must be distinguished from defective reasons. An incorrect date of birth may prevent accurate identification of the addressee. An accurate date of birth accompanied by a general allegation of 'connections' may identify the person without explaining which relationships matter to the listing. Correcting the first defect does not resolve the second. Assessment of the safeguard requires establishing whether the person received the information without which a substantive objection is impossible.

Timing presents another problem. Freezing seeks to prevent assets from being moved, so advance disclosure of an intended decision could deprive it of effect. The Kadi case law permits this consideration to be taken into account for initial listing. Departure from a prior hearing is not, however, equivalent to an indefinite refusal to explain an existing restriction: the subsequent opportunity for protection becomes more important as the scope for participation before the decision diminishes. [3, para. 24]

Institutionally, notification should make it possible to reconstruct the sequence: the date of the act, the date of communication, the available grounds and the applicable challenge procedure. Losing that sequence can produce a dispute about whether the person could exercise their rights in time, rather than about the restriction's substance. The formal communication channel remains important, but its quality is also assessed by whether it conveys information that the person can act upon.

## 5. Reasons: explaining the choice of the particular person

Reasons connect a general rule to an individual decision. In sanctions proceedings, repeating the regime's foreign policy objective is insufficient: the authority must explain why the restriction targets this person or organisation. The ground should distinguish factual allegations from legal assessment and identify the decisive circumstance. Otherwise, the applicant is forced to dispute every possible version at once, including versions the authority did not actually rely on.

In EU law, the duty to state reasons is established by Article 296 TFEU and is connected with the safeguards in Article 41 of the Charter. Its purpose extends beyond readability. It enables both the affected person's response and subsequent judicial oversight. Reasons and evidence are nevertheless different: a detailed explanation may be unsubstantiated, and a large volume of documents does not cure the absence of a clear legal ground. [1-3]

A hypothetical statement that 'the person is connected with the company's management' has several possible meanings. It may concern a current office, contractual influence, joint ownership or past involvement. If the applicable criterion makes only a particular type of connection legally relevant, listing biographical contacts does not explain the decision. A substantive justification must identify the relationship established, the period in which it existed and why it meets the rule.

Reasons need not answer every secondary observation at length. Failure to address an argument capable of changing the conclusion on fulfilment of the criterion is, however, different from failure to discuss an immaterial detail. Materiality is functional: if the objection were accepted, would the ground for restriction remain? This question separates legal completeness from a demand that the entire correspondence be reproduced in the decision.

The opposite extreme, assessing reasons solely by their length, is also hazardous. A long text may repeatedly describe the general objective without explaining the individual connection. A short text may clearly identify the decisive circumstance while leaving examination of documents to a separate stage. Analysis should therefore assess the traceability of reasoning from rule to fact and from fact to outcome, rather than count pages.

## 6. The right to be heard and genuine consideration of objections

The right to be heard entails an opportunity to present a position before the question is finally resolved within the relevant procedure. Its precise timing and form depend on the regime, the nature of the decision and permissible derogations. Written consideration does not, by itself, mean an absence of protection; an oral meeting does not, by itself, prove that material arguments were assessed. What matters is whether the information submitted can influence the decision. [1; 3]

An urgent initial interference and subsequent maintenance of the measure present different procedural situations. The need for surprise may explain a lack of warning before assets are frozen. Once they are already blocked, mechanical repetition of the same argument requires separate assessment. Renewal on existing grounds and introduction of a new ground must also be distinguished: new material allegations may change what the person needs to answer.

Substantive participation is impossible without a connection between the authority's question and the material the applicant can supply. A demand to 'prove the absence of all connections' does not define a verifiable task. A question concerning an identified office, company, transaction and period, by contrast, enables a relevant document to be produced. This does not oblige the authority to agree its final legal assessment with the applicant in advance; it requires sufficient definition of the subject under discussion.

A genuine hearing is reflected in the response to contrary evidence. If an extract confirms termination of authority, the body may consider it insufficient because another form of control remains. That response permits further examination. A reply merely repeating the original office-holding allegation without discussing the document leaves it unclear whether the document was read and what weight it received. The distinction is procedural, not merely stylistic.

The applicant must also present a consistent case. Selective production, unexplained discrepancies in dates and contradictory information impede consideration and may weaken objections. Defects in presentation must not, however, become a presumption that every proposition advanced by the authority is proved. A fair procedure distinguishes an incomplete response, an untruthful response and the absence of an evidential basis for the adverse allegation itself.

## 7. Access to material and evidential imbalance

A sanctions authority generally possesses a broader body of information than the person affected by its decision. Sources may include public reports, state-supplied information, corporate records and confidential communications. This imbalance is not removed by handing over a large number of pages if it remains impossible to understand which material supports a particular ground. Access must be assessed by the information's significance to the dispute, not solely by the volume of the disclosed file.

Access to one's administrative file, disclosure of evidence in litigation and public access to documents must be distinguished. They are different legal mechanisms with different conditions and exceptions. Refusal to release a document to the public does not automatically determine whether it should be disclosed to a party. Conversely, providing a document to a lawyer for a specified purpose does not always authorise public dissemination. [1; 4, Arts 64, 103-105]

The quality of open evidence depends on the origin of the assertion. Several publications may repeat one anonymous source without providing independent corroboration. A register entry may be accurate for its date but used outside the relevant period. An interview may mix the participant's words with the journalist's conclusions. The procedural opportunity to object is meaningful only if these distinctions can be placed before the authority and the court.

Closed material raises an additional question: which alternative explanations have not been tested because the person did not participate? A source may accurately describe a meeting but misunderstand its purpose; a payment may exist but concern a different transaction; identical names may denote different people. The information's confidential status resolves none of these problems. It explains the handling regime, not the truth of the contents.

Access must also be timely. A document supplied after a practically significant deadline may formally have been disclosed while remaining useless for preparing a response. Assessment must take account of time for translation, obtaining contrary documents and explaining corporate relationships. This is not a right to postpone a decision indefinitely: it requires proportionate time to answer genuinely material information.

## 8. Kadi II: factual basis and the burden of justification

The Court of Justice's judgment of 18 July 2013 in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, Commission and Others v Kadi, remains a key reference point. In paragraphs 119-123, the Court connected effective review with a sufficiently solid factual basis. When a listing is challenged, the competent authority must substantiate the adverse reasons; the person is not required to prove their absence. If the material before the court is insufficient, the relevant reason cannot support the decision. Paragraph 130 nevertheless allows the act to stand where at least one specific and substantiated reason is independently sufficient. [3]

This structure excludes two symmetrical simplifications. The first is that a sanctions authority may rely solely on the international standing of the original source. The second is that disproving any single passage automatically defeats the entire act. Legally, the independence of the grounds matters: is the disputed allegation an essential link in the decision, or does another sufficient ground remain after its exclusion?

Evidence must consequently be analysed proposition by proposition. Suppose the authority relies both on an office and on receipt of a benefit. Resignation documents may rebut the first ground without answering the second. Yet the existence of a second ground does not permit its substantiation to be assumed. Each logical step requires separate examination: receipt of funds, their source, the period and fulfilment of the statutory category.

The requirement of factual support does not import the criminal standard of proof into every sanctions case. The subject and standard are determined by the applicable legal regime. The essential point is that the standard must have a meaning that permits scrutiny. If every supposition can be declared sufficient and every objection rejected because the measure is preventive, the court ceases to examine an individual decision and merely confirms the regime's existence.

Kadi II therefore matters not as a universal promise of annulment, but as a means of preserving a verifiable connection between grounds and evidence. That connection permits both the setting aside of an unsupported measure and reasoned maintenance of a supported one. Institutionally, the approach protects sanctions systems against accumulated errors that would otherwise be reproduced at each renewal.

## 9. EU: confidentiality and the limits of adversarial proceedings

The General Court's Rules of Procedure start from the adversarial principle but provide special arrangements for confidential information. Article 103 governs certain material produced in the course of measures of inquiry; Article 105 concerns the security of the Union or its Member States and their international relations. These procedures cannot be combined under a general heading of 'secret documents': their conditions and prescribed judicial steps differ. [4]

Under Article 105, a party produces the material separately and explains the need for confidential treatment. The Court examines relevance and confidentiality, then balances security requirements against effective judicial protection. A non-confidential version or summary may be used. Paragraph 8 permits reliance, to the extent strictly necessary, on essential material not communicated to the other party, taking account of that party's inability to comment. There is therefore no absolute rule that undisclosed material can never be used. [4, Art. 105]

For the defence, the quality of the compensating procedure becomes decisive. If a summary communicates only the conclusion, it may not enable the factual premise to be challenged. If it identifies the type of event, period and nature of the alleged connection, the applicant may be able to explain matters without knowing the source's identity. The adequacy of a summary cannot, however, be established in the abstract: information sufficient in one case may be meaningless in another.

Judicial oversight of secrecy must remain distinct from assessment of the merits. A justified risk of exposing a source does not remove the need to check whether that source actually supports the ground. If a document contains an assumption, a classification marking does not turn it into an established fact. Logical completeness is particularly important: closed material may explain the origin of a hypothesis without containing information that excludes reasonable alternatives.

Restrictions on adversarial participation create a residual risk even where judicial consideration is conscientious. The court sees the material but may not know a fact that only the applicant could supply in response to a specific allegation. Recognising the legality of a special procedure is therefore not equivalent to denying its costs. Analysis must account both for the need to protect sensitive information and for the loss in the quality of scrutiny caused by one party's incomplete participation.

## 10. United Kingdom: administrative reconsideration as a safeguard

The UK mechanism under section 23 of the Sanctions and Anti-Money Laundering Act 2018, SAMLA, allows a designated person to ask the appropriate Minister to vary or revoke a designation in force. After a previous request, a further request requires a significant matter not previously considered. This gives the initial application independent significance: it frames the administrative consideration and the material with which a court may subsequently work. [6]

The Sanctions Review Procedure (EU Exit) Regulations 2018 prescribe requirements for a written request, proof of representation and evidence. Regulation 7 requires a decision as soon as reasonably practicable after receipt of the necessary information; regulation 8 provides for communication of the decision and reasons, subject to specified exceptions. The existence of this procedure cannot therefore be presented as a guarantee of an answer within an arbitrarily chosen fixed number of days. [7]

The procedural value of the administrative stage depends on how fully the authority addresses the objection. An applicant may argue that the original fact was wrong, the criterion was misapplied or circumstances have changed. These positions require different answers. Establishing that designation was justified in the past does not always resolve whether it should remain now; a recent business sale, conversely, does not automatically establish original unlawfulness.

Further requests reveal the tension between finality and correction of error. The authority has a legitimate interest in not reconsidering an identical text indefinitely. The person has an interest in presenting new significant material. Novelty must therefore be assessed by the substance of the matter, rather than a file's creation date or altered wording. An additional extract may genuinely reveal a different fact, but it may simply repeat a position already examined.

In practice, receipt and consideration of a document must be distinguished. Delivery confirmation proves that a communication arrived through a particular channel. It does not prove that the argument was assessed on its merits. A reasoned decision identifies that next stage: which circumstances were accepted, which were rejected and why they do not change the outcome.

Without this connection, administrative reconsideration risks becoming a compulsory stop before litigation rather than an independent means of correcting the decision.

## 11. United Kingdom: court review and its subject matter

Section 38 SAMLA provides for court review of specified decisions, including a decision on a section 23 request, applying judicial review principles. This is not a general opportunity to ask a court to formulate foreign policy afresh. The subject is legal defects in a particular decision: the scope of the power, factual basis, consideration of material circumstances, procedural fairness and, where applicable, proportionality of the interference. [6]

In England and Wales, CPR Part 79 establishes a special procedure based on a modified Part 8. In Shvidler, the Supreme Court noted the absence of the usual preliminary permission stage associated with ordinary judicial review. That absence does not remove requirements concerning subject matter and evidence. The claimant must identify the decision, its effects and the grounds of challenge. Proceedings before Scotland's Court of Session are governed by their own procedural rules. [8, rr. 79.5-79.6; 9, para. 5]

Assessment of the safeguard turns in part on whether the court can obtain the information needed to answer the issue before it. Rule 79.11 provides for applications for further information about the Minister's grounds on the conditions it specifies. Court proceedings are therefore not necessarily confined to the short initial notice. The party must nevertheless explain what information is needed and why it matters; a general request for the state's entire body of material does not establish relevance to the dispute. [8]

Court review requires a distinction between respect for institutional competence and refusal to scrutinise. A foreign policy prediction may deserve particular weight because the executive has access to diplomatic assessments and bears political responsibility. But whether a person held an identified office or took part in a particular transaction does not become exclusively political merely because sanctions are involved. Conflating these levels excessively expands the area excluded from substantive scrutiny.

The possible outcome must likewise be identified precisely. Setting aside a review decision and remitting the matter differs from conclusively establishing that no ground for designation exists. The safeguard is effective not because the court uses favourable language, but because its order creates a defined obligation for the authority. Subsequent protection depends on understanding which defect has been found and what must change in implementation.

## 12. The special advocate and closed material

CPR Part 79 provides for a special advocate who represents a party's interests in relation to closed material under the statutory arrangements. The role differs from that of an ordinary representative. Once closed information has been received, communication about the proceedings is restricted and requires judicial permission where applicable. An applicant cannot therefore be promised that appointment of a special advocate will allow ordinary exchanges of instructions about every secret document. [8, rr. 79.18-79.21]

The procedure includes oversight of the Minister's non-disclosure application. The court considers whether disclosure would be contrary to the public interest and whether a summary should be provided. If the Minister does not supply material or a summary that the court has required, rule 79.26 provides for possible consequences for reliance on the material and the Minister's case. This is neither unconditional compulsion to reveal every state secret nor automatic acceptance of the state's objection. [8, r. 79.26]

A special advocate reduces some risks of one-sided consideration: the state's closed case can be subjected to professional challenge. The mechanism does not, however, fully reproduce ordinary adversarial proceedings. The representative who knows the closed information may be unable freely to ask the person about a fact needed to explain it. The ordinary lawyer knows the client and defence material but does not see the entire body of information. This creates a structural division of knowledge that cannot be removed merely by pointing to the existence of two representatives.

The open case consequently retains independent importance. The chronology, relationships, documents and possible sources of misunderstanding should be presented there as precisely as possible. Lack of access does not justify assumptions about what the closed file contains. A defence based on an invented version of secret material risks rebutting an allegation the state never made and missing the actual issue.

The existence of open and closed judgments also affects the intelligibility of the outcome. Rule 79.28 permits limitations on the public statement of reasons and establishes a special procedure concerning closed reasons. For an external observer, this limits the ability to assess the completeness of judicial scrutiny from the published text alone. Limited public information does not, however, justify either declaring the hearing a sham or treating it as unquestionably adequate. Such conclusions require analysis of the available procedure and the established facts of the particular case.

## 13. Time as a distinct dimension of protection

Sanctions consequences arise quickly, while collecting documents and securing judicial review take time. This imbalance makes duration part of the assessment of procedural effectiveness. If a business has been lost, a window for medical treatment has closed or a particular right cannot be restored by the time of judgment, a formally favourable outcome may provide only partial protection. Not every delay has the same cause, however, and not every economic loss is irreversible.

The applicant's preparation time, the period awaiting an authority's response and the duration of litigation must be separated. A request for further documents may be justified where a fact cannot otherwise be established; it may cause excessive delay where it repeats an answer already supplied. Assessment therefore rests on the sequence of specific actions. A single figure for the overall length of a case does not identify where the problem arose or who could have remedied it.

In the EU, bringing proceedings does not have a general automatic suspensive effect. Articles 278-279 TFEU and Article 156 of the General Court's Rules provide a separate mechanism for interim protection. In the United Kingdom, the timing of a directions hearing under CPR 79.7 must likewise not be confused with the time for final determination. The procedural timetable must distinguish filing the principal claim, consideration of an urgent issue and determination of the merits. [2; 4; 8]

A substantive explanation of urgency differs from a general account of severity. Interim relief requires attention to the particular threat, its proximity and its connection with the measure requested. If the applicant seeks permission for a specific payment, the case must explain why that transaction cannot wait. A broader request for suspension requires justification for its scope in relation to the threat. An unrestricted request supported only by narrowly established need may be weaker than a precisely defined one.

Time also changes the evidential significance of facts. An office material to the initial listing may end; an old relationship may retain legal significance under one criterion and lose it under another. Duration therefore cannot be assessed merely as the inconvenience of waiting. It raises the question whether the decision remains connected with an applicable ground and whether the authority undertakes fresh analysis rather than mechanically repeating an earlier conclusion.

## 14. Access to a lawyer, translation and funding the defence

Access to a court requires the material conditions for exercising that right. This is particularly visible in sanctions cases: restrictions may affect the funds used to pay for legal assistance, translations and obtaining documents. The ability to appoint a representative on paper is not the same as the ability to make a lawful payment. Conversely, the right to a defence does not create a universal exemption for every transaction from sanctions prohibitions.

Article 47 of the EU Charter provides for legal advice and representation, and legal aid where resources are insufficient in so far as necessary to ensure effective access to justice. Its application must be considered in relation to the Charter's scope and the particular procedure. It does not establish that every service chosen by an applicant must automatically be funded by the state. Admission of a representative, legal aid and authorisation of a payment remain separate questions. [1]

Licensing can be important to the practical availability of a defence. In Shvidler, licensing mechanisms were considered in assessing the consequences of restrictions, but did not replace the right to challenge designation itself. An opportunity to request permission and the actual ability to pay for necessary work in time must be distinguished. Where permission limits the amount, recipient or type of expense, its existence does not yet answer whether a particular transfer is permitted. [9, paras 210-213]

Translation is not a technical luxury: it communicates a legally material fact. An error in describing a corporate role may turn an adviser into a manager or an expired authority into a continuing one. A large volume of translated documents does not compensate for failure to explain their significance. What matters is the accuracy of the key term, the date, the source and the connection to the listing ground. Requirements for official translation are determined by the applicable procedure, including the UK review rules. [7]

A further problem concerns access to documents held by a former employer, foreign registrar or bank. A demand to produce them must be assessed against the actual ability to obtain them. Lack of access does not automatically prove the applicant's case, but is not equivalent to refusing cooperation. A fair procedure must consider whether an objective impediment can be explained and whether reliable alternative sources can answer the same question.

## 15. Proportionality: a process of individual assessment

Proportionality connects a legitimate objective with a particular interference. In sanctions cases, factual fulfilment of a criterion must be distinguished from justification of the measure's consequences. Proven membership of a statutory category does not automatically eliminate every rights question. Equally, the severity of a restriction does not, by itself, demonstrate disproportionality: the objective, causal connection, alternatives and balance of affected interests require examination. [1; 9]

In Shvidler; Dalston Projects, [2025] UKSC 30, the UK Supreme Court majority dismissed Shvidler's appeal, attaching substantial weight to the government's foreign policy competence and the cumulative impact of sanctions. Lord Leggatt, dissenting, considered the justification for the individual restriction insufficient. For this analysis, the significance lies in the disagreement over the connection between severe consequences and the anticipated effect, rather than treating the dissent as the Court's authoritative decision. [9, paras 119-140, 195-217, 253-324]

The procedural question is whether the applicant can put before the authority the facts on which the individual balance depends. A general statement of hardship is less informative than documents concerning inaccessible funds, health, dependants, the duration of restrictions and the outcomes of licence applications. Evidence of harm must nevertheless address causation: a private counterparty's refusal may arise from its own risk decision rather than directly from the contested act.

The state's position must also be stated accurately. If the government justifies a measure by its cumulative effect on a particular network of relationships, an objection based on the individual's inability to change state policy does not exhaust the dispute. At the same time, a general appeal to cumulative effects must not conceal why this particular person was selected. Strong analysis examines both sides of the causal model and does not replace individualisation with a demand to prove the effectiveness of the entire foreign policy.

The difference between the majority and the dissent shows that genuine judicial proceedings may end in refusal even where the seriousness of the interference is acknowledged. The effectiveness of a procedural safeguard therefore cannot be measured solely by the proportion of successful claims. Relevant considerations include clarity of the issue, completeness of available material, the opportunity to respond and an explanation of why the particular burden was considered justified or excessive.

## 16. UN: different mechanisms for different lists

The UN system has no single universal body empowered, on an individual's application, to revoke all international and national sanctions. The Ombudsperson mechanism operates for the ISIL and Al-Qaida list. The Focal Point for Delisting is available for other relevant Security Council lists. The Focal Point's separate functions concerning exemptions, mistaken identity and post-delisting consequences do not make its competence identical to that of the Ombudsperson. [11-12; 15]

The first question in such a case is the source of the restriction. A national act may implement a UN decision, introduce an autonomous measure or combine different grounds. Removal from one international list does not automatically revoke an independent national entry. Equally, a national court victory does not necessarily alter a Security Council list. The defence must identify which legal decisions are connected and what consequence each available mechanism can produce.

The official Ombudsperson procedure under resolution 2734 (2024) provides for information gathering, dialogue with the petitioner, independent preparation of a comprehensive report and consideration by the Committee. Dialogue has independent value: it allows circumstances to be clarified and explanations tested before a recommendation. This is not, however, litigation on the model of a national court or a process guaranteeing the petitioner access to every original communication supplied by states. [11]

Institutionally, powers to obtain and compare material matter. A body that merely forwards a letter to a state supporting the listing performs a different function from one that independently investigates the issue. Nevertheless, adding an investigative function does not make the outcome a binding judicial decision. Analysis must separate the individual's independence, the quality of inquiry, the decision-making process and the scope for states to influence retention of the listing.

These distinctions help avoid two errors in public descriptions. An international procedure must not be presented as a guaranteed bypass of national judicial review. It is equally mistaken to regard it as pointless simply because it is not a court. It can provide access to information, dialogue and changes to a list within its mandate. Assessment should rest on those specific functions rather than on the mechanism's name.

## 17. The Ombudsperson: dialogue, confidentiality and outcome

The official description of the Ombudsperson procedure distinguishes preliminary consideration, information gathering, dialogue and preparation of a report, followed by Committee consideration. The petition must address the designation criteria; a repeat request requires additional material. Information is gathered from relevant states, the Committee, the Monitoring Team and other relevant participants. This structure permits the petitioner's account to be compared with material initially unknown to them. [11]

The Ombudsperson's recommendation and the Committee's decision have different legal positions. A recommendation to consider delisting triggers the prescribed mechanism, which differs from that applicable to retention; referral to the Security Council is possible. Measures remain in place while the matter is being considered. An indication of a favourable direction in the analysis must therefore not be portrayed as restrictions already having ended, and the timing of individual stages must not be treated as an unconditional overall delisting date. [11]

Confidentiality in this system protects sensitive information belonging to the petitioner as well as states. Nevertheless, the request is transmitted to the participants identified in the procedure and does not remain exclusively with the Ombudsperson. The person should understand that personal explanations may be needed for information gathering and discussion of the case. Confidentiality from the general public and restrictions on transmission between institutional participants are different characteristics.

The quality of dialogue depends on the opportunity to test a specific circumstance. If a question identifies the alleged activity and material period, the petitioner can give a substantive answer. If only a general conclusion is communicated, the exchange risks remaining a set of incompatible declarations. Methods of clarification therefore matter: successive questions, examination of contradictions, assessment of independent documents and distinction between past relationships and continuing activity.

Limited public material prevents an external researcher from fully reconstructing each review. Delisting does not automatically establish that the original listing was unfounded: circumstances may have changed. Retention does not establish that every state assertion was accepted as true. These are limitations on interpreting outcomes and require caution in any quantitative comparison with judicial procedures.

## 18. Focal Point reform and the September 2026 transition

Resolution 2744 (2024), adopted on 19 July 2024, established new delisting procedures and developed the Focal Point's functions. The official page describes receipt and preliminary assessment of requests, information requests, engagement with the petitioner, preparation of a confidential comprehensive report and communication of the outcome. These functions show a development beyond simple administrative forwarding of correspondence, but do not confer a power on the Focal Point independently to revoke any entry. [12; 15]

The sequence of dates is central to the 2026 assessment. The report for 2025, published on 18 February 2026, recorded that no appointment had been made as at 31 December 2025. The later official biography states that Yvonne Ching Ling Lee was appointed on 11 June 2026 and assumes her responsibilities effective 1 September 2026. A conclusion that the new procedure was not operating, based solely on the 2025 report, would therefore be outdated for the September assessment. [13-14]

Commencement of work does not, however, establish the reform's effectiveness. At the date of this report, only a few weeks have elapsed since 1 September. The appointment alone does not establish shorter timescales, an increased proportion of delistings or improved reasoning across all committees. Such conclusions require evidence of the actual handling of petitions after the transition, including pending cases and differences between lists.

Substantive assessment of reform must distinguish new powers from the conditions of their exercise. The ability to request information is not the ability to compel its full production. Preparation of a report is not disclosure of that report to the petitioner. Dialogue is not a right to cross-examination. These distinctions do not diminish procedural development, but identify questions that remain when it is compared with judicial protection.

The transition also requires care with older petitions. The 2025 report describes special arrangements for continuing earlier requests and the possibility of resubmission under the new procedure. This does not imply an automatic restart of every case on the same date. For a particular petition, the filing date, applicable transitional rule and actual procedural position matter. Historical descriptions on individual pages must be read in that temporal context. [13]

The institutional significance of September 2026 is therefore the beginning of a new stage in implementing a reform already adopted. The correct conclusion is limited but important: comparison of safeguards must account for the updated mechanism while preserving the distinction between its legal design and its emerging practice. A strong reform is assessed by the errors it enables to be detected and corrected, rather than by promises.

## 19. Al-Dulimi: national courts implementing UN decisions

In Al-Dulimi and Montana Management Inc. v. Switzerland, the ECtHR Grand Chamber found a violation of Article 6 § 1 of the Convention on 21 June 2016. The dispute concerned national measures implementing a UN sanctions decision. The Court did not claim competence to annul Security Council resolutions; it examined whether the applicants had received the necessary judicial protection against arbitrariness in Switzerland's implementation. Merely checking that their names appeared on the list and that the property belonged to them was insufficient. [10, paras 139-155]

The judgment matters because it rejects the international origin of a restriction as a conclusive answer to questions about national procedure. Where a resolution does not exclude judicial supervision clearly and explicitly, it cannot automatically be interpreted as requiring the complete removal of such protection. In the relevant context, the Court required a genuine opportunity to raise arbitrary listing before a national court, including through sufficiently precise information. [10]

This does not mean that every national court may comprehensively reconsider the foreign policy merits of UN sanctions. Protection against arbitrariness and independent political reassessment are different tasks. The former requires examining whether an individual measure has a verifiable connection to its ground. The latter would involve replacing the competent international body. Preserving this boundary allows judicial protection to be discussed without overstating its scope.

The temporal distinction is particularly important to analysis of current procedures. The ECtHR assessed the mechanisms available in a specific historical situation. Its criticism of the Focal Point procedure then in existence cannot mechanically be transferred to the 2024 reform and its implementation in 2026 without fresh analysis. Equally, the reform's introduction does not remove the question whether adequate review is available in a particular national case. Changes to the international mechanism and a state's compliance with its own obligations require separate assessment.

The judgment demonstrates that procedural protection can matter even where a dispute does not result in immediate restitution of property. Its purpose is to restore the opportunity for competent consideration. The legal outcome must therefore be described precisely: a finding of a breach of access to a court is not a finding that no grounds for restriction exist, and the absence of automatic compensation does not make the violation immaterial.

## 20. Implementation of decisions and relisting

A favourable outcome has practical value only to the extent that its consequences are established. Annulment of an act, a duty to reconsider, correction of reasons and removal from a list are different outcomes. Each requires identification of the persons covered, the period and parallel measures still in force. Without this, a legal victory may be misrepresented to a bank, counterparty or another public authority.

In the EU, Article 266 TFEU requires the relevant institution to take the measures necessary to comply with the judgment. Assessment of when consequences take effect must also consider special provisions of the Statute of the Court of Justice, including Article 60 for General Court judgments declaring a regulation void. The formula 'the court annulled the act, so every restriction ended immediately' is therefore not a reliable general rule. The applicable structure and operative part require analysis. [2; 16]

Relisting should not be presumed either lawful or an obvious circumvention of the judgment. A new decision may rely on another period, new evidence or an amended criterion. It may also reproduce the defect already identified. The distinction requires comparison: what violation did the court establish, what circumstances does the authority now rely on and how does it explain the remedying of the problem? A new act number alone provides no answer.

The procedural difficulty is that the new decision may require a separate challenge or modification of the application in pending proceedings. In the EU, Article 86 of the General Court's Rules provides the corresponding mechanism subject to specified conditions. Pending litigation does not mean that later acts are automatically covered by the original claim. Effective protection therefore includes the ability to respond to a change in the legal object of the dispute. [4]

Implementation has an informational dimension as well. A government list, bank notification and commercial database may be updated at different times. Delay is not always the sole reason for a continuing restriction: another rule or independent decision may apply. Identifying the cause enables the correct recipient to be selected. A court annulling a particular act does not become the administrator of every private risk-assessment system.

## 21. Third parties, mistaken identity and independent restrictions

An individual listing affects more than the named person. A company, family member, creditor or business partner may experience consequences. Economic harm does not, however, make all of them participants in the same sanctions procedure with identical rights. The first task is to establish whose right is directly restricted, by which act and which remedy can remove that interference.

Mistaken identification is a distinct situation. A person who is not listed may face refusal because of a matching name. Their task differs from delisting: they do not seek revocation of their own designation, but challenge application of someone else's entry to them. Identifiers, date of birth, nationality and other relevant details matter. Excessive disclosure of unrelated personal data is unhelpful if it does not explain the distinction between the two persons.

Participation in a corporate structure creates a different dispute. Absence of an independent company entry does not always exclude consequences under ownership and control rules. Conversely, a connection with a designated person does not permit every organisation to be declared automatically listed without analysis. The particular rule and actual relationships must be established. The procedural safeguard here includes the opportunity to obtain an explanation of why a restriction applies to property or a transaction not directly named on the list.

The official description of the Focal Point's functions provides for transmission of mistaken-identity communications to the relevant committee. This is a separate function and must not be confused with power to revoke another state's autonomous sanction. The 2025 report directly illustrates that limit: a post-delisting communication may concern a restriction under an independent unilateral regime. The international outcome itself does not resolve that issue. [13; 15]

External analysis should not combine all these cases into a single category of 'continuing sanctions'. A legal entry, mistaken screening, a control rule and refusal under a bank's internal policy have different bases. Failure to distinguish them may wrongly attribute a private system's actions to a state authority or portray correction of a technical error as sanctions revocation. Accurate classification is a condition for choosing the appropriate remedy.

## 22. Assessing procedural quality without misleading statistics

The number of successful requests says little, by itself, about the quality of safeguards. A high delisting rate may reflect effective correction of error, changed circumstances or case-selection characteristics. A low rate may indicate either the strength of initial decisions or the unavailability of a full challenge. Without information about the composition of requests, their grounds and pending proceedings, the inference remains ambiguous.

The unit of observation must also be defined. One person may file several requests; one claim may challenge several acts; one decision may affect a person and associated companies. Counting letters, persons, acts and court proceedings produces different results. The official Focal Point report for 2025 expressly notes that the number of individuals and entities involved in petitions does not equal the number of petitions themselves. [13]

Substantive assessment is better served by examining accessibility, disclosure quality, the opportunity to respond, independence, duration and implementation separately. These parameters cannot automatically be combined into a single ranking without explaining their weights. A system may provide strong judicial scrutiny but impose high entry costs. Another mechanism may be more accessible and faster in communication while lacking the power to issue a binding decision.

Publicity also has a dual effect. Publication of reasoned decisions improves predictability and enables recurring problems to be identified. It may simultaneously expose sensitive information about applicants, witnesses or third parties. The quality of transparency therefore depends not on the maximum volume published, but on the ability to understand the legal approach while protecting information whose disclosure is unnecessary for that purpose.

Particular caution is needed when evaluating reforms immediately after commencement. September 2026 allows the institutional transition of the new Focal Point to be recorded, but does not provide an established empirical picture. Sound monitoring must distinguish functions launched, initial consideration of cases and long-term outcomes. Filling gaps with speculative percentages would create an appearance of precision where sufficient evidence is not yet available.

## 23. Three situations illustrating the limits of safeguards

In the first hypothetical situation, a person receives a notice with accurate identifiers, but the only substantive ground is a general reference to 'influence'. The authority supplies several publications, all referring to one old report. The problem is not a complete absence of notification, but inability to establish the type and period of legally relevant influence and the independence of its evidential support. Analysis must distinguish insufficient explanation from insufficient substantiation.

If the authority subsequently specifies an office and date, the dispute changes. The person may produce a document terminating their authority. That document will not necessarily resolve the case if the criterion covers past activity or the authority relies on continuing contractual influence. The safeguard's quality will depend on whether the new argument can be tested and its relationship to the original act understood. Increasing the number of pages supplied proves nothing in itself.

In the second hypothetical situation, a material document is withheld to protect a source's safety. The court receives it and a summary is provided to the applicant. If the summary identifies the event and enables an alternative explanation, some loss of adversarial participation may be compensated. If it merely repeats the ultimate legal characterisation, the applicant can formally deny it but cannot give a substantive answer. The legal assessment depends on the applicable regime; there is no universal promise of full disclosure.

Such a dispute requires two separate examinations. The first concerns the justification for the disclosure risk. The second concerns the document's sufficiency and reliability. Even a positive answer to the first does not resolve the second. If the source fails to distinguish direct knowledge from supposition, protecting their identity does not cure that defect. Conversely, accurate contents do not, by themselves, justify every restriction on procedural participation.

In the third hypothetical situation, a court annuls a past act, but a new act maintains the listing on a different factual basis and the bank continues to refuse service. At least three questions arise: what has been done to implement the judgment, whether the new entry is lawful and why the bank's refusal continues. Combining them into a single request to 'restore status' obscures the competence of different recipients. Each legal cause requires separate identification.

These situations do not describe ARGA clients or results. They demonstrate that a safeguard is assessed at the point of the particular obstacle. Sometimes clearer grounds are needed; sometimes access to material, independent examination or implementation of an existing decision is required. Substituting one task for another can make even a technically impeccable application useless for the actual problem.

## 24. Overall assessment

Procedural safeguards in individual sanctions cases form a sequence of interdependent conditions. Notification opens the opportunity for protection, reasons define its subject, access to information makes the response substantive, independent consideration tests the authority's position and implementation turns a legal conclusion into actual change. A strong element does not cure weakness elsewhere: a detailed decision does not compensate for an inaccessible court, and a court cannot always fully restore a lost opportunity to present a fact in time.

Comparison of the EU, the United Kingdom and the UN shows different ways of organising that sequence. In the EU, the individual factual basis and judicial review under special confidentiality arrangements are central. In the United Kingdom, the administrative stage, judicial review principles and the particular closed-material structure are significant. At UN level, development of independent inquiry and dialogue does not remove differences between mechanisms or turn them into a single court.

The September 2026 development requires the familiar account of the Focal Point to be updated. The current institutional position already differs from that recorded at the end of 2025. Accuracy nevertheless requires conclusions to stop where confirmed evidence ends: the new Focal Point's commencement does not establish the quality of future decisions in advance or replace analysis of each participant's powers. Implementation of the reform must be assessed through subsequent practice.

Substantive protection also requires recognition of legitimate state interests. Surprise in initial freezing, protection of sources and the complexity of foreign policy predictions may justify procedural features. Each consideration nevertheless answers a particular question and must not extend further than necessary. Secrecy explains non-disclosure, not truth; urgency explains the timing of intervention, not indefinite restriction; political competence explains the scope for assessment, not the absence of an individual ground.

The ultimate criterion is the ability to examine a material error and obtain a proportionate legal consequence. It does not require annulment of every challenged measure. It requires maintenance or termination of the restriction to result from competent, substantive and intelligible consideration. That connection between power, evidence and review enables a sanctions procedure to remain a legal procedure even during an international crisis.

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