

# In Search of a Due Process

This study examines current listing and delisting procedures of the European Union (EU), both with regard to autonomous sanctions measures and to the implementation of United Nations Security Council (UNSC) actions. The aim is to identify recent legal as well as administrative concerns relating to these practices. While much attention has been devoted to UN targeted sanctions, less attention has been given to recent EU practices in this area. This study looks at the most recent developments to strengthen the sanctions tool on a European level. Focus of the study is on measures applied on individuals. The study forms part of a more general scientific debate on the rationale of imposing targeted sanctions as a mean to address threats to peace and security on the one hand, while preserving human rights on the other.

In addition to an overview of current EU sanctions practices, this research project has also created an overview of national practices of sanctions in 11 countries of the European Union ("National Sanctions Practices in 11 European Countries"). This additional part, dealing more exclusively with national practices in Europe, is published separately online at: [www.smartsanctions.se](http://www.smartsanctions.se). The online overview should be considered a work in progress.

## In Search of a Due Process

– Listing and Delisting Practices  
of the European Union

Mikael Eriksson

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## Focus of the Study

This study's aim is to review the current listing and delisting procedures of the European Union (EU), both with regard to autonomous sanctions measures and to the implementation of United Nations Security Council (UNSC) actions. It also seeks to identify recent improvements with regard to these procedures. The discussion follows a broader debate on the rationale, legitimacy and effectiveness of targeted sanctions as a tool of economic and political statecraft.<sup>1</sup> The study begins with a general introduction outlining the shift to targeted sanctions and the problems that follows with this practice. Thereafter, follows a discussion on recent improvements made by the European Union to improve due process procedures.<sup>2</sup>

A note for the reader: This study is a shortened version of longer paper that originally contained two distinct parts: 1. EU listing and delisting practices and 2. sanctions practices of eleven European states. In this newer version however, I have decided to concentrate on EU listing and delisting practices only, while the second part 'National Sanctions Practices in 11 European Countries: Work in Progress' on national practices is published online at: [www.smartsanctions.se](http://www.smartsanctions.se).

<sup>1</sup> For a comprehensive summary of the sanctions literature, see Eriksson 2009.

<sup>2</sup> Although this study takes a 'legal' approach when examining listing and delisting problems of the European Union, the study should however be read more from a political science perspective. By this I mean that the overall aim, rather than providing legal solutions to listing and delisting practices, is to highlight political as well as administrative problems current sanctions management and the consequences this have for the sanctions sending body.

## Background

In the mid-1990s, a growing norm against comprehensive sanctions began to take root in public debate. The debate was commonly referred to as the 'humanitarianism' debate and originated partly in the criticism voiced by organizations like the Catholic Church and the United Nations Children's Fund (UNICEF) concerning the negative effects of comprehensive UN sanctions. Criticism followed a number of dire side effects of sanctions, which at the time had increasingly become socially visible in countries such as in Haiti and Cuba. The UN sanctions imposed on Iraq (August 1990- May 2003) also contributed significantly to this sanctions uproar. Another explanation for the increase of criticism was the launch of a number of studies by the World Health Organisations (WHO) and the United Nations Children's Fund (UNICEF) regarding the negative impact of comprehensive sanctions on Iraq. Thus, in the latter half of the 1990s, this debate and positioning against UN comprehensive sanctions would include several hundred NGOs, businesses, scholars, and practitioners of which most had a humanitarian aid and human rights interest.

Following the widespread criticism of Iraqi sanctions, policy-makers, both in the UN and in many western capitals, thus came to look more specifically into new ways to improve the sanctions tool in search of a restoration of the sanctions policy tool. For instance, in response to the humanitarian impact of sanctions in Iraq, the UN ambassadors of China,

France, the Russian federation, the United Kingdom and the United States wrote to the United Nations Security Council, stating that sanctions “should be directed to minimize unintended adverse side effects of sanctions on the most vulnerable segments of targeted countries”. While initially having been quite obdurate regarding the need to enforce maximum pressure on Iraq and the sitting President Saddam Hussein, even the most pro-sanctions enforcer, the US, began to change foot following the wide criticism of the comprehensive sanctions. In November 2001, both US and UK began to lift certain export prohibitions to Iraq. France, for its part, campaigned for a complete ending of sanctions.

The social failure of the Iraq sanctions regime in the end provided for the shift in the norm of the sanctions. Since then, the UN has not implemented comprehensive sanctions on such a scale. The subsequent turn to more intelligent and ‘smart sanctions’ thus reflected a changing attitude of the UNSC. The shift in this regard was also as much an ethical shift.

Yet, a bona fide shift in attitude from comprehensive sanctions towards targeted sanctions, both at the EU and the UN level, followed a number of international processes related to the implementation of targeted sanctions (2000–2006). These processes mixed government officials, sanctions practitioners, and representatives from a number of international and regional organisations (i.e. the UN), scholars and experts. More precisely: the Interlaken Process, the Bonn-Berlin Process, and the Stockholm Process. While both the Interlaken and

Bonn-Berlin Process considered various ways of designing targeted sanctions, the Stockholm Process looked into the difficult aspect of implementation. Not only did these processes push for increasing practice, but also prompted a number of academic studies on the subject.

This shift from comprehensive to targeted sanctions during the 1990s followed a general trend in thinking about sanctions. The idea was to increase pressure on specific policy-makers whilst avoiding application of measures that would have negative side effects for those not responsible for unwanted policies (i.e. limiting pressure on the population of their country). The shift was therefore not primarily a strategic shift but also one with both ethical and particularly human-rights considerations. Although policy makers originally perceived this shift to targeted sanctions to be a perfect policy tool, its increasing use became increasingly problematic both politically and strategically.

Today, a number of studies on targeted sanctions have been produced and the literature on targeted sanctions mostly meets at the crossroads of political science (international politics, conflict resolution, international relations, and security studies) and law (international law, human rights law, criminal law). One can also note an increasing number of case-specific studies looking at targeted sanctions by explicit actors (such as EU sanctions), or studies reviewing particular sanctions regimes. Over the last few years, a number of evaluations of particular sanctions measures (such as arms embargoes) and particular features of sanctions have been made (such as the

impact of targeted sanctions on civil war).

Moreover, in recent years, several studies have begun to not the difficulties of ensuring correct sanctions performance, particularly targeted sanctions/anti-terrorism field. Notably, a number of court challenges by listed entities against a number of EU and UN governments have prompted a great deal of academic attention. Following vague sanctions procedures, listed individuals, groups and companies have expressed numerous complaints about unclear listing and de-listing procedures.<sup>3</sup> A number of entities have listed under EU and UN sanctions lists have either petitioned their governments by filing cases in their domestic system, or turned to regional or international courts. In this sense, one could perhaps conclude that the policy of targeting has begun to collide with legal realities that did not follow early practices of this policy. In particular, one could distinguish a rather expansive research domain dealing with: 1. legal, institutional and human rights practices of targeted sanctions; 2. studies evaluating the aspects of the Security Council's efforts to counter terrorism practices (institutional procedures of Sanctions Committees) and the general applicability of international law these circumstances; 3. the implementation of counter-terrorism measures; and 4. institutional responses to dealing with problems of implementation.<sup>4</sup> One of the main observations made in these studies is that the codification of sanctions measures into institutional and legal practices has not yet reached a satisfactory level of legal safe-

<sup>3</sup> See for instance the Kadi case and the judgment of the EU Court on 3 September 2008.

<sup>4</sup> Sutterlind (2003), Hurd (2007), and Allen (2008).

guards in terms of protecting the human rights of those on the lists. Another important and often highlighted observation in this literature is that while targeted sanctions have been considered nearly "immune" from the scourges that follow comprehensive sanctions regimes, scholars and practitioners have even begun to conceive targeted sanctions as being in a state of crisis or entering a period of 'lost momentum'.

Yet, despite the increasing legal problems following listing and delisting practices of targeted sanctions, 'sending' bodies have undertaken significant reforms of their targeted sanctions practices.<sup>5</sup> Thus, the early problems that followed with the shift to targeted sanctions have now been given increasing attention by a number of actors.<sup>6</sup>

<sup>5</sup> See for example the up-dated version of the Watson Report, Biersteker and Eckert: "Addressing Challenges to Targeted Sanctions: An update of the "Watson Report" (2009).

<sup>6</sup> An example here is the reform agenda pursued by the informal group of "like-minded states" that have presented ideas to improve UN listing and de-listing practices. The group consisted in 2009 of Denmark, Germany, Liechtenstein, the Netherlands, Switzerland and Sweden as well as a number of associates.

## Targeted Sanctions Adopted in the European Political Framework

Several European states established the European Political Cooperation framework in 1970 with the aim of creating common approaches to foreign-policy issues. Subsequent actions based on this have included instituting country-based sanctions regimes against states posing a threat to European security and interests such as the partial trade embargo against the Soviet Union in 1982, arms and trade embargoes on Argentina in 1982, an arms embargo on Iran in 1985, a partial trade embargo on South Africa in 1985, restrictions on diplomatic relations with Libya in 1986, and an arms embargo on Syria in 1986.

However, the establishment of the current type of sanctions regimes that involve restrictive measures targeting individuals and entities other than entire states did not really materialise until the establishment of the Common Foreign and Security Policy (CFSP) as a distinct intergovernmental pillar of the EU with the signing of the Maastricht Treaty in 1992.<sup>7</sup> Since then the EU has adopted various sanctions regimes to deal with political challenges around the world.<sup>8</sup> A particular push for the instrument came with the targeted sanctions that followed UN sanctions against UNITA (Angola).

<sup>7</sup> It is worth noting that EU targeted sanctions serves various goals and not only to put pressure on particular individuals.

<sup>8</sup> For example, in early April 2009 the EU applied as many as 30 ongoing EU and UN country-based sanctions regimes, based on academic definitions. Of these, 18 had at some point issued lists of individuals to be subjected to a travel bans, financial sanctions, or both.

Therefore, although the EU and its member states have imposed sanctions relatively often against other states and members of governments, this paper will pay particular attention to their more recent strategy of targeting particular non-state individuals, groups and entities, with sanctions, notably by the implementation of asset freezes and travel bans.<sup>9</sup> Most EU sanctions' procedures are in three EU Council documents. These include a document presenting the basic principles for the use of restrictive measures,<sup>10</sup> guidelines for the implementation and evaluation of restrictive measures in the Framework of the CFSP,<sup>11</sup> and best practices for the effective implementation of restrictive measures.<sup>12</sup> The Council then adopted two sets of recommendations in 2007 in regard to dealing with autonomous EU country-specific sanctions.<sup>13</sup> While those documents are not legally binding they are the tools for guiding member states in regard to sanctions.

<sup>9</sup> It is worth noting that individual and natural person are synonyms, whereas legal person (which includes companies, foundations but also public bodies like a State, a province and a municipality) is an expression used on the continent for what is usually called an entity in (e.g. the UK).

<sup>10</sup> Council of the European Union. "Basic Principles on the Use of Restrictive Measures (Sanctions)," Document 10198/04 issued in Brussels on 7 June 2004.

<sup>11</sup> On 8 December 2003 the Council adopted guidelines for the implementation and evaluation of restrictive measures in the framework of the CFSP. These documents amend the Best practices.

<sup>12</sup> The EU best practices is meant to serve as a platform for preferable working methods by (a) setting out the specific situations within the European Union's legal system, (b) establishing how to review the current state of the implementation of sanctions conducted by the Working Party of Foreign Relations Counsellors Sanctions formation, and (c) informing EU member states about already-existing best practices amongst them. Council of the European Union. "Restrictive Measures: EU Best Practices for the Effective Implementation of Restrictive Measures", Brussels on 9 July 2007. Previous EU Best Practices: 13851/4/04/ of 2 December 2004.

<sup>13</sup> These addressed issues involving such matters as listing, motivations, and communications. See Recommendations by Coreper 767/07 and 11054/07.

Several different legislative categories of processes for the listing and delisting of entities subjected to targeted sanctions now exist. Some of these operate independently, some work in conjunction with others, and some are very dependent on each other. Different decisions provide leeway for altered administrative and legal measures, depending on whether the sanctions are country-based or imposed to fight terrorism, and whether they originated in the UN or the EU. This makes it possible to distinguish four categories of sanctions.

(1a) EU-targeted sanctions imposed to fight terrorism are based upon the EU's legislative acts in regard to terrorism, specifically Common Position (CP) 2001/930/CFSP, CP 2001/931/CFSP (CP 931), and Council Regulation 2580/2001.<sup>14</sup> Their aim is to meet those United Nations (UN) obligations stipulated by UN Security Council Resolution (UNSCR) 1373/2001.<sup>15</sup>

CP 931 contains a list of entities that encompasses both terrorists connected with third countries and terrorist organisations based in the EU. The EU autonomous terrorist sanctions list makes a distinction between *internal* and *external* terrorists. Internal terrorists are those lacking material links with a non-EU country, so essentially those based inside the EU and carrying out their activities within it. They are not subject to financial sanctions,<sup>16</sup> which can only be applied

<sup>14</sup> See also Council document 10826/1/07 setting out implementation of 2001/931.

<sup>15</sup> Unlike UNSCR 1267, UNSCR 1337 does not set out a list of entities.

<sup>16</sup> This is because currently no sufficient legal basis exists for such asset-freezing measures, as Article 301 of the EU Treaty only deals with matters of foreign policy. The Lisbon Treaty creates a legal basis for this purpose (Article 75 TFEU). When UNSCR 1373 was established it was up to each member state to implement asset-freezing measures for internal EU actors.

on entities outside the EU (more precisely though, Regulation 2580/2001 applies whenever there is a sufficient link with one or more third countries).<sup>17</sup> External terrorists are those based outside the EU and who carry out their activities away from it. All external entities herein are also included in the Council Regulation 2580/2001 list.

The EU has reviewed CP 931 every six months since 2002,<sup>18</sup> having established a review mechanism with its adoption.<sup>19</sup> The EU review means one decides whether the criteria for listing (set out in Regulation and the Common Position), are still met, i.e. whether a name should be kept or removed. CP 931 sets these criteria, which this article will address in its section on the review process.

(1b) An additional, separate regulation, Council Regulation 881/2002, implements UNSCR 1267 and concerns entities associated with Osama bin Laden, al-Qaeda, and the Taliban. (2) EU autonomous targeted sanctions regimes are those that are country-based, such as the restrictive measures it took against the Belarusian government in 2006. (3) Some EU sanctions transpose such UNSC targeted sanctions regimes as the one against Iran, with added elements. (4) Some EU member states apply sanctions independently of the EU. National targeted sanctions are rare in the EU, but exist, such as these imposed by the United Kingdom (UK).<sup>20</sup>

<sup>17</sup> CP list 2001/931 marks with an asterisk all such internal terrorists as the IRA and ETA.

<sup>18</sup> A new list is expected in December 2009.

<sup>19</sup> Council Regulation (EC) No 2580/2001 provides that "the Council ... shall establish, review and amend the list of persons, groups and entities to which this Regulation applies [2580/2001] in accordance with the provisions laid down in Article 1(4), (5) and (6) of CP 2001/931/CFSP."

<sup>20</sup> No figure is currently available on how many entities are listed on national lists in Europe.

Those listing and delisting practices that take place in the fight against terrorism, whether they are autonomous to the EU or originate in UNSC decisions, are this article's particular interest. Before looking into them more closely, however, it is worth noting that listing and delisting practices are not isolated features in the fight against terrorism, but are also of increasing concern and interest in regard to country-based sanctions. Last but not least, it is worth reiterating that when considering due process right one need to keep in mind that UN sanctions as such do not fit into domestic law and the rights that usually follows here in with regard to criminal and civil law.<sup>21</sup>

<sup>21</sup> Porretto (2009). Study kept with the author.

### **Listing and Delisting Problems in EU and UN Country-Based and Terrorism Sanctions Regimes**

EU and UN sanctions lists have recently been far more difficult to implement than policy makers expected when they originally envisioned them. They have had several notable unintended consequences, particularly with problems related to the listing procedures' fairness and clarity in various legal domains. These problems have been particularly acute for EU and UN terrorism-listing practices,<sup>22</sup> as Lopez et al. (2009) summarized well by noting that:

The crux of the dilemma is this: The P5 and other Security Council members believe that the sanctions regime represents an essential tool for the prevention of terrorist acts and they insist on holding adamantly to the centrality of the 1267 regime as an essential element of the struggle against global terrorism. However, the fallibility of the 1267 system and its Consolidated List has undermined support for the UN counterterrorism mandate ... The discourse on appropriate review mechanisms of the listing/delisting procedures thus appears to be trapped in a quandary. Proposals that would fulfill the due process requirements of international human rights law are politically infeasible, whereas proposals that may gain support from the Council contain shortcomings as far as internationally guaranteed due process rights are concerned.<sup>23</sup>

<sup>22</sup> For an in-depth and well-accounted overview of the problems related to UN counterterrorism listing practices, see Biersteker and Eckert: "Addressing Challenges to Targeted Sanctions: An update of the "Watson Report" (2009).

<sup>23</sup> Lopez, Cortright, Millar, and Gerber-Stellingwerf 2009: 7.

As also identified by other scholars, there exist a tension between counter-terrorism human rights obligations.<sup>24</sup> While actions on the one hand need to be straight and hard-hitting, the same measures need also to be as gentle so that it pay respect to human rights concerns. Still, the quandary involving the procedures for listing and delisting is far from an isolated one for the UN, as Lopez et al. noted. The UN's procedures' weaknesses have also caused difficulties for the EU.

The EU has its own autonomous sanctions, but also recognizes the binding nature of UNSCRs 1267 (1999), 1333 (2000), 1373 (2001), and 1390 (2002) and feels obliged to transpose these measures into its legal order; under international law the Member States of the EU do not have discretionary power to depart from UN decisions.<sup>25</sup>

This has a great effect on such regional organisations as the EU. However, the EU courts have suggested in a number of rulings on listing procedures that EU transposition of UN sanctions has to meet the same minimal legal standards as those involving its autonomous sanctions. Still, the EU has more or less been able to defend its autonomous terrorism sanctions listing procedures in regard to due process since the European Court of Justice (ECJ) induced changes to them. Not only do several officials at the Council of the EU and the

<sup>24</sup> See Porretto (2009) (paper on file with the author).

<sup>25</sup> A main distinction should be made between autonomous EU sanction regimes and UN-transposed ones following different pre-existing legal orders at both the regional and international levels. As Labayle and Long noted, "the principle of primacy of United Nations Law enshrined in Article 103 of the Charter carries with it complete obedience to United Nations Security Council Resolutions" (1999: 42).

European Commission (EC) share this perception,<sup>26</sup> but the ECJ has also accepted a number of listing decisions.<sup>27</sup> However, the EU has also lost some cases (note though that all relevant case law starts in December 2006), either because of the low standards of the past (e.g. that was PMOI and PKK) or because it had not followed its own protocols. A number of improvements still need to be made, as the procedures remain far from perfect.<sup>28</sup>

Relying on the UN's sanctions designations when incorporated into the EU legal order has proved problematic.<sup>29</sup> The EU's challenge now is to incorporate UN sanctions lists and at the same time make sure that the listing actions at the UN follow adequate procedures that meet the standards that the European courts require. At the core of this situation is the problem that the European courts can only annul community acts when judging the listing practices. In this regard, the ECJ does not take those having originated in UN decisions into consideration.<sup>30</sup> This relates in particular to the notification of

<sup>26</sup> I conducted interviews during the late summer of 2009 with key officials at the Council and Commission who work with the legal aspects of the EU's restrictive measures.

<sup>27</sup> See press release no. 67/09 of 2 September 2009, 'Judgment of the Court of First Instance in Joined Cases T-37/07 and T-323/07, Mohamed El Morabit v Council.' The Court of First Instance upheld the Council's decisions freezing Mr. El Morabit's funds, finding that the listing measures did not breach the principle of the presumption of innocence and that the Council is not obliged to wait for a final conviction before freezing funds, thereby supporting the Council's practice in this regard. It is also worth noting the ruling in the case involving the People's Mujahidin Organisation of Iran (PMOI) of 23 October 2008.

<sup>28</sup> As late as September 2009, the Court of First Instance ruled against the Council's freezing of Jose Maria Sison's funds (see ruling on 30 September 2009 in case T-341/07). This judgement however concerned more precisely interpretation of Article 1(4) of CP 2001/931/CFSP rather than a procedural issue per se.

<sup>29</sup> International law and EC law do not easily coincide in this particular context. This is also the core problem in such rulings as those involving Kadi and Al-Barakaat International Foundation.

<sup>30</sup> In Kadi the ECJ noted that UN procedures did not respect fundamental rights. If a notification of reasons was done by the UN this would be taken into account; see also the Melli Bank (Iran) judgement of 14 October 2009, where a French notification was taken into account.

reasons to the listed entity.

For example, the EU must now ensure that sufficient reasons exist in order to list an actor.<sup>31</sup> UNSCR 1822 also made improvements in regard to this. This also suggests that the EU has a great interest in ensuring that the UN improves its procedures, and means that it will have to go back to the UN every time it wants to have further information on the reason for an original listing decision if the designated entity makes an objection in regard to being included on a list. The EU debates concerning fair and clear procedures now mostly concern how to make its transposition of targeted UNSC sanctions against both terrorists and countries more effective.

Most of the discussion at the EU level now involves a court-driven process in which the idea of keeping the various elements of the process court-proof guides EU governments. However, given the recent steps to make listing procedures more effective, a conscious convergence effort is clearly taking place between the EU and the UN in regard to due process, with current discussions centering on procedures and not on the value of sanctions as a policy tool. Similarly, the EU is also increasingly likely to have to deal with its due-process procedures for listed entities in the country-based sanctions

<sup>31</sup> The evidence must meet the standard of Article 1(4) CP 2001/931/CFSP. However the Court of First Instance in the most recent PMOI case did not support the standards of national proceedings that the Council accepts as a basis for listing of an entity in the first place. In this case, French prosecutors had begun investigations against entities claimed to be associated with PMOI and the French government had therefore requested keeping PMOI on the sanctions list. See case T-284/08 of 4 December 2008. It is worth noting that a criminal proceeding is not the same as a national court decision. Note also that the main point of T-284/08 is a procedural one: the revised reasons should have been notified BEFORE the decision was made as PMOI was already listed (see paragraphs 36-47) and that there is an appeal pending against the judgement (C-27/09 P).

regimes. Whilst the terrorism lists have received the most attention, similar problems also exist for country-based sanctions regimes.

The EU's autonomous sanctions lists have received some improvements in recent years.<sup>32</sup> For example, the EU now addresses public notifications to specific entities. Since the autumn of 2008 it has also begun to add specific motivations to the autonomous parts of its Iran sanctions lists, this being a mixed EU-UN sanctions regime (one annex is EU only, the other is UN based). As regards individuals and entities added autonomously to the list that the UN's Iran Sanctions Committee originally provided, the EU now adds a 12-month review component that provides for each name to be reviewed. This practice of specifically notifying listed persons and entities applies to country sanctions regimes as well as mixed ones.<sup>33</sup> All these processes parallel the UN's country sanctions regimes' recent actions, such as in the cases of Somalia and Democratic Republic of the Congo.

<sup>32</sup> In this context it is also worth noting that the legal problems encountering EU is not unique for Europe, but a world problem.

<sup>33</sup> Note that in such mixed regimes the Council review concerns the EU list only for the time being.

## EU Counterterrorism Measures: Listing and Delisting Challenges

As part of the fight against terrorism, the EU has sanctioned a fairly large number of individuals and entities with travel bans (that concern individuals only in EU system) and asset-freezing measures. For example, on 16 June 2009 CP 931 listed 57 individuals and 47 entities, both externals and internals.<sup>34</sup> On 16 June 2009, Council Regulation 2580/2001 contained 26 individuals and 29 entities, all externals,<sup>35</sup> subjecting them to asset-freezing measures. On 29 September 2009 Council Regulation 881/2002 implementing UNSCR 1267 contained 397 individuals, 142 associated with the Taliban and 255 associated with al-Qaeda, and 111 entities,<sup>36</sup> subjecting the individuals and entities to asset-freezing measures (note that restrictions on admission not in Regulation). These numbers are in addition to the other ongoing country-based sanctions regimes.<sup>37</sup>

However, several listing decisions have in recent years problematic for the EU, notably due to several individuals and entities in recent years having challenged the authorities successfully in court. Most of these court cases involved a lack of respect for procedural fundamental rights (rights of defense,

<sup>34</sup> Council CP 2009/468/CFSP.

<sup>35</sup> Council Regulation (EC) No 501/2009.

<sup>36</sup> As of 29 September 2009 (for more details see the UN Consolidated List).

<sup>37</sup> In addition to the individuals and entities included on terrorist lists, all ongoing EU and UN country-based sanctions regimes listed 1,186 individuals in mid-March 2009, based on the latest number of entities listed in each sanctions regime. This is a slight increase from the 950 targets listed during January 2008.

due process), mostly relating to administrative and procedural deficiencies.<sup>38</sup> Both the EU and its member states have taken steps to strengthen both administrative procedures and due process in regard to the terrorism-listing practices involved with both the EU's autonomous measures and designations originating in the UN.

On 27 May 2002 the EU adopted CP 2002/402 and subsequently Council Regulation 881/2002 for dealing with Osama Bin Laden, members of al-Qaeda, the Taliban, and other entities associated with them in order to transpose UNSCR 1390 (2002). The list attached to Regulation (EC) No 881/2002 corresponds to the consolidated list that the UNSC 1267 committee issued. By July 2009 the Commission had amended the list of Council Regulation 881/2002 110 times in order to conform to UN committee decisions.<sup>39</sup>

The EU compiles its autonomous CP 931 list on the basis of proposals from EU member states and proposals from third states. This applies to natural persons, groups and entities involved in terrorist acts when a competent authority in an EU member state (or a third state too) has made a relevant decision in regard to the particular entity.<sup>40</sup> Council Regulation 2580/2001 sets the procedure for implementing these actions.

<sup>38</sup> For current court cases see appendix 1.

<sup>39</sup> See EU Commission Regulation 678/2009.

<sup>40</sup> Article 1(3) of CP 2001/931 sets the criteria for what constitutes *terrorist act*, defining one as an "intentional act which, given their nature or context, may seriously damage a country or international organisation and which is defined as an offence under national law".

In September 2002, the Committee of Permanent Representatives (Coreper) agreed upon working methods for what was then called Clearing House.<sup>41</sup> Its aim was to provide member states with a platform with which they could deal with matters relating to the listing and delisting of groups subjected to restrictive measures in regard to the struggle against terrorism.

On 2 March 2005 the Council further improved Clearing House's working methods. Its primary role was to discuss and advise the Council about what persons and entities to list and delist with such targeted sanctions as freezing funds, other financial assets, and economic resources.<sup>42</sup>

On 31 October 2006 the Coreper endorsed the principle that the EU has to establish a *statement of reasons* concerning each individual and entity subjected to the freezing of funds.<sup>43</sup>

On 12 December 2006 the European Court of First Instance (CFI) issued a judgment in case T-228/02, *People's Mujahedeen Organisation of Iran (PMOI) v. Council of the European Union*. This case was notably important, as the court annulled a Council decision, 2005/930/EC, but only insofar as it blacklisted the applicants (it did not annul the full

<sup>41</sup> Council of the European Union. "Fight against the financing of terrorism: Follow-up of EU measures implementing UNSCR 1373 (2001), Document 11693/1/02, Brussels 3 September (2002). Coreper is responsible for preparing the work of the Council. It consists of the member states' ambassadors, or permanent representatives, to the EU.

<sup>42</sup> Clearing House was an informal, secretive working group in which member states discussed matters concerning listing and delisting practices. Its work was ad hoc, informal, and with little transparency. The shift to the CP 931 Working Party in 2007 was meant to streamline work, make it more formal, apply more transparency, and follow established routines. The CP 931 Working Party is not part of the official calendar of the European Union.

<sup>43</sup> Document 14421/06.

decision), as it failed to provide for a fair hearing procedure.

<sup>44</sup>The court found that the listing of PMOI had not contained a sufficient statement of reasons. The judgment therefore ruled that a statement of reasons had to be included with each listing decision and that it had to be communicated, or *notified*, to the listed entity.<sup>45</sup> This judgment consequently obliged the Council to undertake the necessary measures to comply with it.<sup>46</sup>

On 20 December 2006, the Council established procedures for notifications under Council Regulation 2580/2001.<sup>47</sup> It agreed on a Council notice that draws attention to the possibility of making an exception on humanitarian grounds, contains a statement of reason for the listing, and informs the recipient that it is possible to make a request to reconsider the decision to list.<sup>48</sup>

Meanwhile at the UN, UNSCR 1730 (2006) created a focal point to which any individual included on a sanctions list may submit a petition for delisting if the proposing state accepts the procedure. If it refuses, listed parties cannot file direct petitions directly with the focal point.

In 2007, the EU began a reform process by reviewing and consolidating its procedures for the listing and delisting of entities. On 22 March 2007, the Coreper endorsed recom-

<sup>44</sup> In fact, as noted by de Wet, both the Kadi and the OMPI decisions both underscored the importance of a fair hearing before the administrative court ordering the listing, and then followed by a judicial review before the EC Courts (de Wet 2009: 7).

<sup>45</sup> However, a prior notification does not have to be made the first time an individual or entity is listed, as asset freezing requires a surprise effect that would be lost if a designated individual or entity was informed beforehand.

<sup>46</sup> A summary of this case is located at [http://ec.europa.eu/dgs/legal\\_service/arrets/02t228\\_en.pdf](http://ec.europa.eu/dgs/legal_service/arrets/02t228_en.pdf)

<sup>47</sup> Document 16803/06.

<sup>48</sup> Labayle and Long (2009).

mendations by the EU's Working Party of Foreign Relations Counsellors (RELEX) to strengthen the review procedure of Council Regulation 2580/2001.

In early April 2007 the RELEX's sanctions formation discussed an options paper from the Presidency addressing how to deal with EU autonomous sanctions or EU additions to UN sanctions lists. On 3 April 2007, the RELEX presented recommendations for how to include stating reasons and how to notify the persons, groups, and entities listed.<sup>49</sup> These recommendations suggested inter alia that the Council's listing notifications should include the basic legal acts involved, the political framework, the criteria and motivations for listing the entity in order to facilitate stating the reason for an individual listing measure, information about the right to make views effectively known, and the process for requesting delisting. Then, on 11 May 2007, the Council agreed on a letter to be sent to PMOI to notify the group of its decision to maintain it on its list.<sup>50</sup> The RELEX then made further recommendations on 22 June 2007 in regard to practical aspects related to listing and delisting.<sup>51</sup>

On 21 June 2007, the RELEX consequently invited Coreper to establish a "Working Party on implementation of CP 931 on the application for specific measures to combat terrorism," which became the CP 931 Working Party (CP 931

<sup>49</sup> Document 7697/07, Brussels 3 April (2007).

<sup>50</sup> See General Secretariat, Council of the European Union. "Follow-up to the judgement of the Court of First Instance in case T-228/02 – OMPI v. Council", Document: 5418/3/07 Revision 3., Brussels 11 May (2007).

<sup>51</sup> Document 11054/07, 22 June Brussels (2007).

WP).<sup>52</sup> This was in part to establish more formal, transparent, and court-proof procedures for listing and delisting, replacing Clearing House. The CP 931 WP's meetings remain secret and confidential, although the rules of public access to EU documents do apply to it.<sup>53</sup>

On 3 September 2008 the ECJ made another important ruling on an appeal from the CFI in the case *Kadi v. Council and Commission* (C-402/05 P). This was a landmark decision on UN based targeted sanctions, as it stated that the courts cannot authorize any derogation from the principles of liberty, democracy, and respect for human rights and fundamental freedoms on which the EU treaties are based, but also noted the EU's obligation to abide by international.<sup>54</sup>

The court annulled the listing decisions in this case because the persons challenging the EU regulation had not received the chance to present their case, violating the right to be heard, nor had they been informed about the allegations placed against them, violating the right to a fair trial. In contrast to the CFI's ruling that the EC is bound by the EU Treaty to give effect to UNSCRs and that the CFI has the jurisdiction to examine the compatibility of regulations implementing UNSCRs only by reference to jus cogens, the ECJ held that, although a UNSCR is binding in international law, regulations implementing UNSCRs should be reviewed under Community law and by reference to fundamental rights.

<sup>52</sup> Document 10826/07, Brussels 21 June (2007).

<sup>53</sup> Hayes 2007. What is also worth noting here is that non-EU member states, such as the United States, may submit proposal to the Working Group.

<sup>54</sup> Labayle and Long, 2009: pp. 43-44.

Furthermore, the ECJ did not consider the UNSCR review process to be sufficient, as it did not guarantee judicial protection as required by the standards applicable under Community law. The court therefore annulled the EC regulation giving effect to these UN designations, but allowed the Council three months to remedy the infringements. The EU's Presidency approached the UN committee, which then provided narrative summaries of reasons, of which the EC later informed both entities, and the EC then decided to continue the restrictive measures. In 2008 the UNSC, through UNSCR 1822 (2008), mandated one of its sanctions committees to review all the names on the consolidated list by 30 June 2010, and thereafter conduct an annual review of all the names that had not been reviewed for three or more years.

The EU has therefore clearly taken many steps to revise and strengthen its sanctions practices in recent years, especially when imposing sanctions in combating terrorism. Several of these legal and administrative improvements have followed EU court decisions, rather than resulting from initiatives coming from the Council *per se*. This has been especially so in regard to actions involving listing and delisting procedures since the establishment of the CP 931 WP, particularly the assessment procedures for new proposals on listing and delisting. These include the need for a statement of reasons for listing, notification, procedures dealing with requests for delisting, and the continuation of a six-monthly review of the terrorist list.

### **Statement of Reasons**

Following the CFI's ruling in the PMOI case (see appendix 2), the EU established a statement-of-reasons component for its notification to each individual and entity placed on the sanctions list to allow those designated to understand the reasons for their being so included. The statement must include the specific terrorist acts committed, information on the competent national authority making the decision (referred to Article 1(4) CP 2001/931/CFSP), and the type of decision made, which are the criteria in CP 931. The Council Secretariat is in charge of drafting this statement of reasons on the basis of consultations with EU member states; the statements of reasons are examined by the working party CP 2001/931/CFSP before adoption by Council.

These new procedures, which were prompted by issues involving the terrorism list, have increasingly also come to cover country-based sanctions, which is an often-overlooked aspect of them. The listing and delisting practices of the country-based sanctions lists have received so little attention because most court decisions prompting urgent Council and EC actions to amend these practices have dealt only with the terrorism lists.

The only differences today between EU's autonomous – sanctions terrorism lists and its autonomous country-based lists are that the statements of reasons are much longer for the terrorism list than for the country-based ones and that the statements concerning the terrorism list are not published in

the Official Journal. Longer and more thorough statements of reasons may prove necessary for those persons and entities placed on the country-sanctions lists, as the fundamental rights of listed individuals and entities are the same for both.

At least three cases involving entities' inclusion on the country-based sanctions lists, those of Burma, Zimbabwe, and Iran, are currently before the courts. The difference in the lengths of the statements of reasons is due to the fact that legislation on country-based sanctions describes the range of targets in such a way that it is usually enough to have a general introductory paragraph presenting the Council's motivation for imposing the sanctions, such as members and associates of Country X's regime having clashed with peaceful demonstrators. The appendix listing each person contains a short statement of reasons for each. What is important here is that the introductory paragraph or paragraphs and the personal statements of reasons have to be presented/assessed/read in conjunction with each other, indicating collective responsibility and individual responsibility as part of the collective.

## Notification

Following a decision under CP 931, the Council Secretariat must, in addition to publishing a notice in the EU's *Official Journal*, inform listed individuals and entities by sending a letter of notification to their address, if such an address exists. The letters must inform the entities what measures have been taken, possible humanitarian exemptions, a statement of reasons, how they can ask the Council Secretariat for their listing to be reconsidered, and a reference to the possibility of an appeal to the CFI.

The logic behind the notifications in the country-based sanctions regimes is the same as that established following the PMOI case, which is that the EU must provide statements of reasons to those listed. However, although it must send notifications to natural persons, groups and entities involved or associated with terrorism, the Council only publishes the statements of reasons and a general notice for individuals and entities on the country-based sanctions lists. Only as recently as the summer of 2009 did the EU also start sending separate private notifications to those listed under the country-based sanctions regimes, after the EU's courts began requiring it to do so.

The sender also makes a request to the designated entity in regard to the possibility of providing public access to the statement of reasons. This procedure is the result of a Council decision that the publication of statements of reasons

would infringe on entities' right to data protection.<sup>55</sup> The issue of communicating a statement of reasons to listed persons and entities should be separated from that of granting public access to notifications sent to the listed persons, as it is unlikely to damage reputations, publication of reasons for listing being more defamatory.

The EU is presently working on a revision of Council Regulation 881/2002 to regulate its implementation of the UN 1267 regime. This is a result of the ECJ ruling of 3 September 2008 that annulled the listing of Mr. Kadi and the Al Barakaat International Foundation, and also the changes UNSCR 1822 (2008) introduced to the regime. On 22 April 2009 the EC presented its proposal for amending Regulation (EC) No. 881/2002) to the Council.<sup>56</sup> As before, the day-to-day handling of listing issues would be delegated to the EC. In September 2009, the Coreper accepted an amended version of the EC's revision proposal, which it sent to the European Parliament for the required consultation.<sup>57</sup> The Council of Ministers is due to return to the matter after having received the Parliament's view of it.

The main points of the revised version of 881/2002 at present include that upon notification of a UNSC or a sanc-

<sup>55</sup> A judgment by the ECJ upheld the Council's refusal to provide access to confidential material relating to a confidential statement of reasons in the case of José Maria Sison (see the CFI's judgement of 26 April 2005). However, a difference exists between making a statement of reasons, which is a summary, and the actual material forming the basis of the listing decision publicly available. The secrecy is also somewhat distinct from the procedures in countries like the UK and the United States, where statements of reasons are often included (Hayes 2007).

<sup>56</sup> Document COM (2009) 187, 2009/0055/CNS, Brussels 22 April 2009.

<sup>57</sup> The Parliament is expected to give the required opinion to the Council by the end of 2009.

tions committee listing accompanied by a statement of reasons, the EC, as empowered by the Council, will make an EU (technically EC) listing without delay, as the UN requires, via an EC regulation. As soon as this is done, the EC will notify the person or entity concerned of its decision to list along with the statement of reasons, an invitation to comment, and information about applicable procedures for complaints. If the person or entity responds with comments, the EC must order a review of the listing.

The EC, having studied the statement of reasons and the observations) it has received, must then propose a course of action of either keeping the listing or delisting it and submit this proposal for consideration by a committee of EU member states called a regulatory committee, which would have the power to overrule the EC's proposal with a qualified majority. If it does so the Council of Ministers would have to decide the matter. If the committee agrees, the EC's proposed course of actions would stand. The EC would then communicate any comments or objections it received from the listed party and the result of the review to the UN.

If the Council of Ministers accepts this proposal for amendment of Regulation (EC) No 881/2002<sup>58</sup> (following the European Parliament hearing, which is currently pending) the EC could expect an increasing administrative burden in regard to sanctions. Its current resources allocated for sanctions issues would not be sufficient to cope with this workload and it would have to receive greater resource allocation to be able to do so.

<sup>58</sup> Council document 12883/09 of 4 September 2009.

## Review Process

A review to decide whether to list or delist an entity in itself follows the criteria in CP 931, which are meant to be objective.<sup>59</sup> Most of the evidence that member states provide typically comes from such sources as national criminal proceedings, legal proceedings, prosecutions, and sentences. The EC usually has no case when the basis for listing and delisting is solely intelligence information, unless that can be shown to be hard evidence.

One issue that can arise is that the case is old and the evidence for the original inclusion is not as solid as the current standard requires.<sup>60</sup> The listed entity may also have its case tried directly in the country originally designating it. If the listed entity could undermine the evidence, demonstrate its innocence, and convince a national authority in one of the member states that the listing was wrong it could easily motivate a delisting. The only problem with this is that it could take a long time to have a case reviewed. Several appeals concerning national decisions which provide a basis for listing under Regulation (EC) No 2580/2001 have gone to national courts, such as the Sison case in the Netherlands and the PMOI case in the UK (although it is worth noting in this context that national courts per se cannot annul a Council or Commission regulation listing an individual or entity).

<sup>59</sup> Some political criteria also exist that member states consult, as decisions here are political rather than legal.

<sup>60</sup> This could be contrasted with appeals to the CFI, which are primarily concerned with treaty-related factors rather than the substance giving action to the listing.

As noted earlier, the CP 931 WP assesses the sanctions list every six months.<sup>61</sup> Following the procedure, the Council makes a six-monthly administrative review, essentially asking whether the national decisions are still valid for each listed entity. The Council may look at such information established since the previous review as evidence, intelligence material, and court outcomes to decide if any reasons are present to list or delist.

In addition to the six-monthly review, the Council makes a new review for each entity that objects to a Council decision.<sup>62</sup> Part of this task is to make sure that the grounds for each listing measure are still valid, considering the entity's history, current activities, and intentions. The proposal is then introduced to the RELEX, which makes necessary adjustments vis-à-vis other relevant legislation and EU treaties. The review concludes with a recommendation to the Coreper, which adopts the necessary legal instruments.<sup>63</sup> Following the review, the Council informs all of the entities concerned of their outcomes by letter. Each listed individual and entity has the right to challenge the decision made after review.

<sup>61</sup> At any time the Council could also independently make an individual listing or delisting.

<sup>62</sup> Each new decision herein constitutes a new legal act.

<sup>63</sup> Reviews must be completed by unanimous decisions, which the Council later sends to the RELEX, which deals with the legal aspects of all CFSP decisions, not only sanctions. The RELEX does not consider substance. It then sends a final proposal to the Coreper, which then presents a final proposal to the Council.

## Delisting

CP 931 mandates the Council to review all entities on the autonomous EU lists at regular intervals. Delisting can be based on a request by either the designated entity, a member state, or a third state having originally proposed the listing. Different options are available for challenging an asset-freezing measure. Objections may be raised against the bank freezing the assets, which may then be referred to a national court for judgment in review of the regulation, but in such cases, the national courts must first obtain preliminary rulings from the ECJ.

When an entity wants to challenge a listing measure, such as its inclusion on a sanctions list, it has available two principal procedures. These are an administrative-review procedure by the Council and a legal procedure by the CFI, which can undertake a legal review in regard to the treaties involved and the legality of the listing, such as whether the designating authority notified a statement of reason, the entity has been properly notified, and the EC has followed the proper procedures in a timely manner. European courts do not consider the political reasons for imposing sanctions.

The EU's administrative review procedures contrast with the UN's, which until recently had no such administrative practices, lacking a judicial remedy. Recently, however, this has begun to change, especially since the adoption of UNSCR 1822 and the three-year review practice included in the procedures of the 1267 regime. The UN has therefore moved

closer to the EU's review practice, except that a listed entity cannot take its case to a court.

The EU's procedures are currently reasonably court-proof, at least in regard to their structure and when correctly applied.<sup>64</sup> PMOI judgements (PMOI 2) and the recent 2009 El-Morabit case have partly recognised this.<sup>65</sup> Implementation, however, sometimes fails to follow established procedures for such reasons as time factors, bureaucratic factors, political will, restrictive information sharing, coordination problems, practical problems, and the quality of the statements of reasons.<sup>66</sup>

<sup>64</sup> For instance, PMOI 2 of 23 October and PMOI 3 of 4 December 2008 validate Council procedures by *inter alia* saying that they are "sound".

<sup>65</sup> Actors having challenged their inclusion on the sanctions lists include the PKK, PMOI, Mr Sison, and members of the Hofstad group, as well as Iranian banks and certain individuals and entities on the Iran, Zimbabwe and Burma lists. The designated entities complain almost exclusively about asset-freezing measures and not about travel bans.

<sup>66</sup> See press release no. 67/09 of 2 September 2009 in regard to the judgment of the CFI in Joint Cases T-37/07 and T-323/07 *Mohamed El Morabit v Council*, in which the court upheld the Council's decisions freezing the funds of Mr. El Morabit, finding that the listing measures did not breach the principle of the presumption of innocence and that the Council is not obliged to wait for a final conviction before freezing funds, thereby supporting the Council's practice in this regard.

### Problems Related To Listing and Delisting

Despite the steps the CP 931 WP has taken, the working procedures still suffer from problems. For instance, the CP 931 WP still lacks transparency and entities are still unable to have the substance behind their listing measures tried in an independent judicial review process. Although designated entities may take their cases to the CFI and ECJ, states are subject to no legal and formal requirements in regard to their preliminary investigations, and no clear, formal criteria exist for demonstrating a connection to terrorism.<sup>67</sup>

EU member states do not usually question each others' legal systems or the material that they presented in any of the administrative reviews of listing and delisting, but rather engage in discussions in regard to information third states provide.<sup>68</sup> The definitions of who qualifies for listing remain vague, and secret decisions individual member states take to the CP 931 WP cannot be taken to national courts, thereby failing to guarantee terrorism suspects fair and impartial treatment. Furthermore, the time it takes to lodge an appeal against listing can sometimes be overly long and it remains difficult for listed entities to convince the CP 931 WP that they should be removed, resulting in a high impression threshold that could easily be arbitrary.

<sup>67</sup> The CFI and ECJ are only able to review EU practice in regard to its own treaties. On the other hand it could be argued that Article 1(4) CP 2001/931/CFSP read together with the Sison judgement of 30 September could tantamount to 'clear, formal criteria'.

<sup>68</sup> It is worth keeping in mind that national criminal procedures must respect fundamental rights and notably Article 6 of the European Convention on Human Rights to which all Member States are parties; procedures in certain third countries may not meet this standard.

Although the CP 931 WP's formal working procedures have become clear, identifying its actual practices is much more difficult. Difficulties include those involving obtaining access to confidential material, which the French government is currently appealing because it does not want to give the public access to such material, data protection, and under which national competence the burden of proof should lie.

In recent rulings, the ECJ has referred to the question of evidence when referring to the basis for listing. So far, it has not asked upon what evidence is based, but if it does so it could probably easily reject evidence that fails to fulfill basic legal requirements. The question really is how intelligence has been controlled and verified, as listing proposals are often based on intelligence that includes assumptions rather than such hard evidence as testimony and proven facts. A more profound question, though, involves initial proportionality and how basic human-rights instruments consider these aspects.<sup>69</sup>

<sup>69</sup> Cameron 2008 pp. 35-43.

## APPENDIX I. Pending cases<sup>70</sup>

### Court of First instance

Case no.

- T 135/06 (Al-Bashir Al-Faqih v. Council)
- T 136/06 (Sanabel Relief Agency Ltd. v. Council)
- T 137/06 (Ghunia Abdrabbah v. Council)
- T 138/06 (Taher Nasuf v. Council)
- T 101/09 (Elmabruk Maftah v Council and Commission)
- T 102/09 (Abdelrazag Elosta v. Council and Commission)
- T 45/09 (Al-Barakaat International Foundation v. Commission)
- T 85/09 (Kadi v. Commission)
- T 127/09 (Abdulbasit Abdulrahim v. Council and Commission)

### Court of Justice

Case no.

- C 399/06 (Faraj Hassan v. Council and Commission)
- C 403/06 (Chafiq Ayadi v. Council)

Cases concerning measures adopted by the EU on an Autonomous basis

### Court of First instance

- T-37/07 (El Morabit v. Council)
- T 49/07 (Fahas v. Council)
- T 75/07 (Hamdi v. Council)
- T 76/07 (El Fatmi v. Council)
- T 232/07 (El Morabit v. Council)

- T 341/07 (Sison v. Council)
- T 348/07 (Stichting a. Aqsa v. Council)
- T 362/07 (El Fatmi v. Council)
- T 363/07 (Hamdi v. Council)
- T276/08 (Avaessian Avaki, PMOI v. Council)
- T 409/08 (El Fatmi v. Council)

<sup>70</sup> In addition there are a number of cases relating to country-based sanctions (however not included in this list).

## **APPENDIX 2. Selective Chronology of L'Organisation des Moudjahiddines du peuple iranien (OMPI) / The People's Mujahedin of Iran (PMOI, MEK, MKO)**

17 June 2002 EU includes OMPI on its terrorist list.<sup>71</sup>

26 July 2002 OMPI launch first appeal.

12 December 2006 Court of First Instance rules inclusion of OMPI as unlawful (the “first judgement”), thus ruling in favour of OMPIs appeal (it can be noted that 13 previous challenges had been dismissed). Reasons motivating the ruling was that OMPI had not had right to fair hearing, that no statement of reasons had been given to OMPI, that OMPI had not been notified of evidence used against it (OMPI had not been in a position to determine what evidence was brought against them and not which national decision on which this listing measure was based). The court ruled against the inclusion of OMPI on the terrorist list (with regard to the assets freeze measure and not of for the reason of whether or not OMPI was a terrorist organisation), not following relevant legislation.

9 May 2007 OMPI launch second case.

16 July 2007 OMPI launch third case (following continued inclusion on the list).

30 November 2007 UK Court rules OMPI listing as unlawful.

7 May 2007 UK government loses appeal against OMPI.

21 July 2008 OMPI launch appeal against continued inclusion to the European Court of Justice, brings with it UK ruling.

23 October 2008 Court of First Instance rules OMPI inclusion

<sup>71</sup> Compilation based on collection made by Statewatch.org.

as unlawful (the “second judgment”). The Court annulled a later decision on the grounds that the Council had failed to give sufficient reasons as to why it had not taken into account the judgment of the Proscribed Organisations Appeals Commission ordering the removal of the OMPI from the British list of terrorist organisations.<sup>72</sup>

4 December 2008 Court of First Instance rules OMPI inclusion as unlawful.

22 December 2008 Court of First Instance reject request by France to delay annulment of Council Decision.

23 December 2008 OMPI appeals parts of judgement of Court of First Instance (23 October 2008)

21 January 2009 France appeals CFI ruling

26 January 2009 OMPI removed from EU terrorist list.

<sup>72</sup> On 24 June 2008, following a rejection rule by the Court of Appeal against the UK Home Secretary's application, the UK Parliament approved the Home Secretary's Order removing OMPI from its list of proscribed organisations under the national anti-terrorist legislation.

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