Provisional text

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 3 July 2025 (1)

Case C-84/24

'EM SYSTEM' UAB
v
SEB bankas AB,
'Citadele banka' AS Lietuvos filialas

(Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania, Lithuania))

(Reference for a preliminary ruling – Common foreign and security policy – Restrictive measures against Belarus – Regulation (EC) No 765/2006 – Freezing of funds of certain persons and entities – Impact on the funds of a company in which a listed person has a 50% shareholding)

I. Introduction

1. The seizure of yachts, fast cars and luxury homes as part of the enforcement of EU restrictive measures has garnered considerable media attention in recent years. While those initiatives may satisfy public sentiment, the real challenge in making these measures effective lies in targeting the financial interests of those listed by the Council of the European Union.

2. The present case concerns precisely that aspect. At issue is the question of whether the 'funds and economic resources' of a natural person, which are to be frozen because that person is listed by a regulation imposing restrictive measures, also comprise the assets of a company in which that person has a 50% shareholding.

3. That question arises in the context of Regulation (EC) No 765/2006 ('the Belarus Sanctions Regulation'). (2) After the listing of Mr A.V.S., a Belarus national, in the annex to that regulation, SEB bankas AB and 'Citadele banka' AS Lietuvos filialas ('the defendant banks') blocked the accounts of EM SYSTEM UAB, a Lithuanian company, in which Mr A.V.S. holds exactly 50% of the shares.

4. EM SYSTEM challenges that decision before the competent Lithuanian courts. In essence, that company argues that it constitutes an independent legal entity and that it therefore cannot be presumed that the asset freeze imposed on one of its shareholders should extend to its funds and economic resources.

II. Background to the present proceedings and the questions referred

5. On 24 March 2006, the European Council condemned 'the action of the Belarus authorities … in arresting peaceful demonstrators exercising their legitimate right of free assembly to protest at the conduct of the Presidential election' in Belarus and 'decided to take restrictive measures against those responsible for the violations of international electoral standards, including President Lukashenko'. (3)

6. On 10 April 2006, the Council adopted Common Position 2006/276/CFSP. (4)

7. That common position was amended by Common Position 2006/362/CFSP, (5) to impose an asset freeze in respect of certain persons who played a role in that crackdown on civil society and the democratic opposition in Belarus.

8. Both of those common positions were implemented by the Belarus Sanctions Regulation on the basis of (what is now) Article 215 TFEU.

9. On 15 October 2012, the Council adopted Decision 2012/642/CFSP. (6) That decision explained that, given the 'systematic and coordinated violation of international human rights standards and the laws of the Republic of Belarus', the existing 'measures should also be imposed on persons in a leading position in Belarus, and on persons and entities benefiting from or supporting the Lukashenk[o] regime, in particular persons and entities providing financial or material support to the regime'. (7)

10. Accordingly, Article 4 of Decision 2012/642 laid down that:

'1. All funds and economic resources belonging to, owned, held or controlled by:

(a) persons, entities or bodies responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus, or any natural or legal persons, entities or bodies associated with them, as well as legal persons, entities or bodies owned or controlled by them;

(b) natural or legal persons, entities or bodies benefiting from or supporting the Lukashenk[o] regime, as well as legal persons, entities or bodies owned or controlled by them,

as listed in the Annex shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of such natural or legal persons, entities or bodies listed in the Annex.'

11. That decision was implemented by Regulation (EU) No 1014/2012, (8) which, in turn, amended the Belarus Sanctions Regulation inter alia because Decision 2012/642 'decided to clarify the criteria for listing natural or legal persons, entities and bodies'. (9)

12. As amended, Article 2 of the Belarus Sanctions Regulation reads as follows:

'1. All funds and economic resources belonging to, or owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex I shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities and bodies listed in Annex I.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

4. Annex I shall consist of a list of the natural or legal persons, entities and bodies who, in accordance with point (a) of Article 4(1) of Council Decision [2012/642] …, have been identified by the Council as

being responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus, or any natural or legal persons, entities and bodies associated with them, as well as legal persons, entities or bodies owned or controlled by them.

5. Annex I shall also consist of a list of the natural or legal persons, entities and bodies who, in accordance with point (b) of Article 4(1) of Decision [2012/642], have been identified by the Council as benefiting from or supporting the Lukashenk[o] regime, as well as legal persons, entities and bodies owned or controlled by them.'

13. On 17 December 2020, in view of the ongoing repression of civil society in Belarus, the Council adopted Implementing Regulation (EU) 2020/2129 ('the 2020 Listing Regulation') (10) to add a number of natural and legal persons to Annex I to the Belarus Sanctions Regulation.

14. One of the persons included by the Council was Mr A.V.S. In its reasons for listing Mr A.V.S., the Council explained that he benefited from and supported the Lukashenko regime and that he made public comments condemning the opposition protests in Belarus, thereby contributing to the repression of civil society and democratic opposition in that country. (11)

15. On 18 December 2020, the day after the listing of Mr A.V.S. by the Council, the defendant banks unilaterally, and thus on their own initiative, froze the funds held by EM SYSTEM in view of Mr A.V.S.'s 50% shareholding in that company.

16. It appears from the national file that, on that day, the defendant bank SEB bankas AB also contacted the Ministry of Foreign Affairs of the Republic of Lithuania to request clarity over whether, given the listing of Mr A.V.S. as a person subject to an asset freeze and his shareholding in EM SYSTEM, it was correct to effect that asset freeze and whether that bank should continue to freeze EM SYSTEM's accounts.

17. As was confirmed at the hearing, the competent Lithuanian authorities did not issue any type of declaratory measure confirming that EM SYSTEM fell within the scope of the asset freeze imposed by Article 2(1) of the Belarus Sanctions Regulation. Only on 14 October 2022, after the entry into force of new legislation, did the Director of the Finansinių nusikaltimų tyrimo tarnyba prie Lietuvos Respublikos vidaus reikalų ministerija (Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania) issue an order clarifying that EM SYSTEM had links to a person subject to restrictive measures. According to the order for reference, an action for annulment of that order is pending, separately, before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania).

18. On 30 November 2021, EM SYSTEM challenged the defendant banks' decision to freeze its assets before the Vilniaus miesto apylinkės teismas (City District Court, Vilnius, Lithuania).

19. By the judgment of 25 January 2023, the Vilniaus miesto apylinkės teismas (City District Court, Vilnius) dismissed the challenge. It appears from the order for reference that that court's judgment is principally based on the understanding that Mr A.V.S.'s 50% shareholding in EM SYSTEM implies 'control' over that company's funds and economic resources, within the meaning of Article 2(1) of the Belarus Sanctions Regulation. Accordingly, the asset freeze imposed by that provision also applies to those assets of EM SYSTEM that are controlled by Mr A.V.S.

20. EM SYSTEM appealed against that judgment to the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania), which, on 23 May 2023, upheld said judgment and its reasoning.

21. On appeal in cassation, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania, Lithuania), the referring court in the present case, has observed that Article 2(1) of the Belarus Sanctions Regulation does not define the criterion to be taken into account when assessing whether a legal person or

entity is ‘owned, held or controlled’ by another person or entity. That court notes, however, that, in the Lithuanian-language version of the 2018 Guidelines (12) and the 2022 Best Practices document, (13) the respective points 55a and 62 set out a criterion of ‘*more* than 50%’ of the proprietary rights of an entity for the concept of ownership. (14) Moreover, subsequent amendments to the Belarus Sanctions Regulation, reflected in Article 1j and Article 1k(c), refer to sanctions to be imposed on a legal person, entity or body ‘whose proprietary rights are directly or indirectly *owned for more than 50%*’ by a listed person. (15) In any event, the referring court observes that points 55b and 63 of the General Secretariat of the Council’s 2018 Sanctions Guidelines and 2022 Best Practices document respectively indicate that the concept of ‘control’ must be understood, inter alia, as being reflected in the power to prevent the appointment of a company manager.

22. Accordingly, the referring court observes that there is uncertainty as to how to determine ‘ownership’ or ‘control’, for the purposes of Article 2(1) of the Belarus Sanctions Regulation, in a situation, such as that at issue in the present case, where a listed person owns *exactly* 50% of a non-listed entity.

23. Finally, the referring court observes that, if it is presumed that the condition for the application of Article 2(1) is met, the question arises whether that presumption can be rebutted, and, if so, whether the entity falling within the scope of that provision may rely on the fact that the condition in Article 2(2) of the Belarus Sanctions Regulation – that the prohibition on accessing funds applies if the company’s funds are used by, or for the benefit of, a person listed in Annex I to that regulation – is fulfilled.

24. Against that factual and legal background, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are Articles 2(1) and (2) of [the Belarus Sanctions Regulation] to be interpreted as meaning that, where it is established that a person listed in Annex I to the Regulation owns exactly 50% of the shares in a company, it is presumed that the funds of the company … are owned, held or controlled by the entity listed in Annex I to the Regulation?

(2) In proceedings before a national court, such as those at issue in the main proceedings, where a company whose funds have been frozen because exactly 50% of its shares are held by a person listed in Annex I to [the Belarus Sanctions Regulation] seeks an order from the court to require the banks as defendants to perform the agreements to operate a bank account allowing that company to access the funds in its bank accounts without restrictions, can the bank’s decision to freeze its funds be challenged on the basis of the argument that the company’s funds are not used by, or for the benefit of, a person listed in Annex I to that Regulation?

(3) If the answer to the second question is in the affirmative, which criteria must be applied to assess in such proceedings before a national court in order to determine whether the funds are not used by, or for the benefit of, a person listed in Annex I to [the Belarus Sanctions Regulation]? Could circumstances such as (1) the separation of the assets of the company from those of its shareholders, (2) the fact that the head of the company (other than a person listed in Annex I to the Regulation) acts on behalf of the company, and (3) the fact that access to the company’s bank accounts is granted only to the head of the company, be regarded as precluding the use of the company’s funds for the benefit of a person listed in Annex I to the Regulation whose shareholding in the company is exactly 50%?’

25. Written observations were submitted by the defendants at first instance, the Governments of Finland, Estonia, Latvia, Lithuania and Germany and the European Commission. EM SYSTEM, SEB bankas AB and ‘Citadele banka’ AS Lietuvos filialas, the Governments of Spain, Germany, Lithuania and Latvia and the Council of the European Union and the Commission also presented oral argument at the hearing that took place on 27 March 2025.

III. **Analysis**

26. Restrictive measures imposed by the European Union against Belarus, among other things, provide for targeted measures against persons who support or benefit from the Lukashenko regime. Those measures lay down that funds and economic resources 'belonging to, or owned, held or controlled' by listed persons must be frozen.

27. If a listed person has a 50% shareholding in a company established in a Member State, should Article 2(1) of the Belarus Sanctions Regulation be interpreted as requiring banks also to freeze the funds and economic resources of that company? That is the essence of the first question referred in the present case.

28. I will propose that that question be answered in two steps. First, I will explain that the asset freeze imposed by the Belarus Sanctions Regulation does not automatically extend to every company in which the listed person owns shares. In other words, the listing of a shareholder, even if that person is a majority shareholder, does not, in itself, result in the listing of the company whose shares are held by that person (Section III.A). I will then explain that, even though the company itself may not be listed, its assets might nonetheless be understood as being 'controlled' by the listed person. Ownership of a 50% shareholding should be understood as creating a presumption of 'control' not only over the company, but also over its funds and economic resources (Section III.B). For the purposes of the present case, that means that the defendant banks did not err when they froze the assets of EM SYSTEM on the basis of Mr A.V.S.'s 50% shareholding in that company. However, as I shall also explain, that presumption must be rebuttable. It must enable the company to prove that, despite the shareholding, the listed person is not capable of controlling its assets (Section III.C).

29. By the second question, the referring court wishes to establish, in essence, whether a company that is presumed to be controlled by a shareholding may rebut that presumption by showing that the company's assets are not used for the benefit of the listed person. However, as I shall demonstrate, the freezing of funds and economic resources, provided for in Article 2(1) of the Belarus Sanctions Regulation, and the prohibition on making funds and economic resources available to a listed person, as provided for in Article 2(2) thereof, are two independent and unrelated measures. Therefore, I will propose that the Court answer the second question of the referring court in the negative –that is to say that the effects of an asset freeze may not be challenged on the basis that the funds at issue are not used by or for the benefit of a listed person. In those circumstances, it is not necessary to answer the third question put to the Court (Section III.D).

A. No automatic freezing of assets without listing

30. The German Government observes in its submissions that the referring court's analysis appears to suggest that EM SYSTEM's funds and economic resources are frozen *solely* by virtue of the fact that 50% of that company's shares are held by Mr A.V.S.

31. In other words, the referring court appears to interpret Article 2(1) of the Belarus Sanctions Regulation as *automatically* freezing the funds and economic resources of independent and legally distinct persons, even where that legal person is itself *not listed* therein.

32. That interpretation cannot be accepted.

33. Decision 2012/642 lays down that the Council may freeze the funds and economic resources of persons or entities over which a listed person exercises 'control'.

34. That decision was adopted on the basis of Article 29 TEU, which provides for the adoption of external policy measures within the context of a particular 'geographical or thematic nature' for which the Council defines 'the approach of the Union'.

35. Common foreign and security policy (CFSP) measures adopted under Article 29 TEU are implemented by Council regulations adopted under Article 215 TFEU. That type of regulation can take one

of two forms: (i) regulations that provide for the interruption or reduction, in full or in part, of economic and financial relations with one or more third countries, which are adopted on the basis of Article 215(1) TFEU; (16) and (ii) those which 'target' natural or legal persons and groups or non-State entities, which fall within the scope of Article 215(2) TFEU.

36. In both cases, the Council adopts a regulation by qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, and informs the European Parliament of the resulting measures.

37. Even if Article 215(2) TFEU enables the Council to adopt sanctions targeted at individual persons or entities, the powers thus attributed to the Council do not grant that institution 'carte blanche' to impose restrictive measures on just any natural or legal person.

38. Given their inherent link to Article 29 TEU, restrictive measures imposed under Article 215(2) TFEU may *only* concern those natural and legal persons that hold a sufficiently close link to the thematic or geographical nature pursued by the measures at issue. (17)

39. It is through the statement of reasons justifying (18) the listing of natural or legal persons by virtue of their link to said geographical or thematic nature that the EU Courts exercise their full powers of review (19) with regard to controlling the Council's discretion. (20)

40. In the present case, the Belarus Sanctions Regulation put in place certain restrictive measures in respect of Belarus. Part of those measures is the asset freeze imposed by Article 2(1) against the natural and legal persons contained in Annex I thereto. The Council considers that the persons listed in that annex have a thematic link to the violation of human rights and the repression of civil society and democracy in that country.

41. Through the 2020 Listing Regulation, Mr A.V.S. was added by the Council to form part of that list of natural or legal persons.

42. However, the 2020 Listing Regulation does not make reference to EM SYSTEM in Mr A.V.S.'s entry. (21)

43. Nor does it add that company as a separate entry to Annex I to the Belarus Sanctions Regulation. (22)

44. In other words, when, on 18 December 2020, the defendant banks froze EM SYSTEM's accounts by reason of that company's link with Mr A.V.S., that company was not listed in Annex I to the Belarus Sanctions Regulation.

45. Accordingly, while it is clear that, for Mr A.V.S., the Council deemed there to be a sufficient link to the 'geographical or thematic nature' of the measures imposed by the Belarus Sanctions Regulation, there is no indication that the Council deemed there to be such a link *also* for EM SYSTEM – independently of the grounds for listing Mr A.V.S. (23)

46. That company's funds and economic resources were, accordingly, not automatically frozen by means of the Belarus Sanctions Regulation.

47. Assuming that such a listing has occurred in respect of EM SYSTEM, even in the absence of a Council measure to that effect, would be contrary to the requirements of fundamental rights protection guaranteed by EU law.

48. Indeed, as the Court has established, natural or legal persons must be notified of restrictive measures and the reasons for their listing, and offered the possibility to be heard. (24)

49. As the German Government observes, it follows clearly from Article 4(1) of Decision 2012/642, which the Belarus Sanctions Regulation implements, that only the assets of the persons, entities or bodies listed in the annex are automatically frozen. That is so, even when it comes to companies that are associated with or owned or controlled by persons who are listed because they are responsible for the violation of human rights or because they seriously undermine democracy in Belarus.

50. Accordingly, while companies which are associated with or owned or controlled by such persons may be listed by reason of their link to a listed person, Decision 2012/642 does not permit the funds and economic resources held by those companies automatically to be frozen without such a listing. (25)

51. Given that the Council's measures adopted on the basis of Article 215 TFEU sought to implement in EU law and give effect to Decision 2012/642, the Belarus Sanctions Regulation must be read, so far as possible, in the light of that decision. (26)

52. Interpreted in that way, it is clear, to my mind, that the asset freeze imposed by the Belarus Sanctions Regulation must be read as encompassing *only* those natural and legal persons listed in Annex I.

53. It follows that that asset freeze does not apply to EM SYSTEM's funds and economic resources.

54. Nevertheless, those funds and economic resources could still be subject to that measure where the assets in question are, in fact, not controlled by that company, but by a listed person. (27)

55. That brings me to the referring court's first question: can the presence of such control be presumed if a listed person owns 50% of the shares in a non-listed company?

B. When a non-listed company's assets are controlled by a listed person

56. In the present case, it is apparent from the national file that the defendant banks froze EM SYSTEM's accounts on the basis that the assets held therein were subject to the 'control' of a listed person. Said 'control' would arise from Mr A.V.S.'s 50% shareholding in that company.

57. Given that Article 2(1) of the Belarus Sanctions Regulation applies to funds and economic resources 'belonging to, or owned, held or controlled' by Mr A.V.S, it is clear that shares held by that person must be frozen. (28)

58. That measure is designed to prevent him from selling those shares in order to acquire funds and economic resources, thereby circumventing the asset freeze.

59. Given that regulations adopted on the basis of Article 215 TFEU create direct obligations for all subjects of EU law, (29) without implementing measures being necessary to that end, (30) the defendant banks were under an obligation to ensure the effectiveness of the asset freeze imposed on Mr A.V.S.

60. However, subject to confirmation, it appears that Mr A.V.S. does not 'own' or 'hold' the funds that are the subject of this dispute, nor do they 'belong' to him. The funds which the defending banks froze appear to be owned by EM SYSTEM.

61. It is therefore the interpretation of the concept of 'control' that is of principal interest for the purposes of the proceedings before the referring court.

62. That is because only if Mr A.V.S. is found to be capable of exercising control over EM SYSTEM's accounts would the funds held therein also be subject to the asset freeze imposed by Article 2(1) of the Belarus Sanctions Regulation.

63. However, the Belarus Sanctions Regulation does not define the concept of 'control'.

64. It is therefore unsurprising that the parties that have participated in these proceedings diverge on the interpretation of that concept, to the extent that it appears in Article 2(1) of the Belarus Sanctions Regulation.

65. In essence, the Governments of Spain, Estonia, Latvia, Lithuania and Finland, and the Council and the Commission, consider that any 'control' that Mr A.V.S. may exercise *over EM SYSTEM* by reason of his shareholding therein also extends to his control *of the funds and economic resources* of that company. A controlling shareholding therefore establishes a presumption of control over the funds and economic resources of that company.

66. The German Government takes the opposing view. It considers that control over a company by reason of holding shares therein is insufficient also to establish control over the funds and economic resources of that company. Therefore, a controlling shareholding cannot result in a presumption of control over a company's assets and economic resources; it can only be understood as an indication that control may be present. Hence, additional elements are needed to establish that control of a company also extends to a company's funds and economic resources. That government also contends that creating a presumption of control over that company's funds and economic resources would result in a shift of the burden of proof, which is not provided for by the Belarus Sanctions Regulation.

67. Purely from the perspective of the ordinary meaning attributed to the concept of 'control' in the area of company law, the German Government is, of course, correct. A mere shareholding in a company, even at majority level, gives no direct rights to control a company's funds and economic resources. A shareholding entitles the owner to certain rights, such as voting rights in the appointment of management and the receipt of dividends. Nevertheless, it does not normally affect the control of the funds and economic resources of a company. Their use remains at the discretion of the company itself and is exercised by its directors. The latter, in turn, are subject to certain deontological and legal obligations to ensure that they act in the best interests of the company, and not those of its shareholders, when handling the company's assets.

68. If the German Government's interpretation of the concept of 'control' were taken, I would not hesitate to agree that a shareholding in a company cannot result in a presumption of control over that company's funds and economic resources.

69. However, the concept of 'control' in the area of restrictive measures does not have the same meaning as that ordinarily attributed to it in the area of company law. (31)

70. In the realm of restrictive measures, that concept must be attributed a meaning that reflects the objective pursued by the measures of which it forms part.

71. Those measures seek to target natural and legal persons that the Council considered to contribute to the repression of civil society and democratic opposition in Belarus, and those which it considered to benefit from or support the Lukashenko regime. (32)

72. Viewed in that context, attributing to the concept of 'control' the type of restrictive reading advocated by the German Government would not take account of the myriad ways in which Mr A.V.S. could influence the use of those assets *indirectly*, thereby enabling the circumvention of the measures at issue. (33)

73. That risk of circumvention is particularly important when what is at issue is the presence of a network of patronage and loyalty of people who benefit from and support a regime targeted by restrictive measures. (34)

74. In such a situation, the precise details of company law (including the obligations of independent directors) are not reflective of the practical reality of how assets may be moved within short periods of time. (35)

75. It follows that to ensure the effectiveness of the asset freeze at issue, the concept of 'control', as referred to in Article 2(1) of the Belarus Sanctions Regulation, must be interpreted in a manner which is open to both *direct and indirect* ways of influencing the use of funds and economic resources of an entity linked to a listed person. (36)

76. For the purposes of the present case, the question is therefore not whether, by virtue of his shareholding in EM SYSTEM, Mr A.V.S. is capable of freely disposing of the funds and economic resources of that company, but rather whether that link to EM SYSTEM enables him to *influence* the company's decisions relating to those funds and economic resources. (37)

77. When what is at issue is the freezing of funds, time is of the essence. For that reason, the Court has already recognised that, in case of a delay in implementing such measures, there is a risk that capital will be directed away from the natural or legal person intended to be the target of restrictive measures. A surprise effect must, therefore, be ensured at all times. (38)

78. That means that all persons subject to EU law must be capable of implementing an asset freeze in the shortest possible time frame.

79. To that end, it is necessary to work with certain presumptions regarding the internal decision-making structure of potentially affected legal persons.

80. This is also apparent from the Council's 2018 Guidelines and 2022 Best Practices document, which lay down that one indicator of 'control' may be the *power* to exercise a dominant influence over a legal person. (39)

81. While such a power may also be present for smaller amounts of shareholding, where a person has a 50% shareholding in a company, that person is ordinarily capable of dictating or preventing certain decisions within that company, or is at least able to ensure that the affairs of the entity are conducted in accordance with its wishes. (40)

82. It is, therefore, justifiable to presume that a 50% shareholding in a company enables control not only over that company, but also over its funds and economic resources.

83. For the purposes of the present case, it follows that the defendant banks did not err when they froze EM SYSTEM's accounts due to Mr A.V.S.'s 50% shareholding in that company, indeed they were obliged to freeze those accounts by virtue of Article 2(1) of the Belarus Sanctions Regulation.

84. While the referring court also explains that 'control' by Mr A.V.S. could equally have been derived from EM SYSTEM's articles of association, I do not consider that or any other type of additional assessment to be necessary or useful. After all, it cannot reasonably be expected that all persons subject to EU law have available to them the articles of association of all companies registered within the European Union.

85. Likewise, it may well be true that the right to exercise certain voting powers by virtue of shareholding does not necessarily imply 'control' over a company's assets and economic resources. However, even if one had available to him or her the governance structure of the affected companies (and the necessary expertise), one would have to investigate whether, in a particular case, voting powers by virtue of shareholding lead to the potential for control.

86. Such additional steps take time; and time is an element that is in short supply when an asset freeze is to take place immediately.

87. At the same time, the use of presumptions may not be regarded with indifference and must be subject to certain limitations. I shall now address that matter.

C. **Rebutting the presumption of 'control'**

88. Freezing a company's funds and economic resources has significant negative effects on a company's reputation and the ability to conduct its business. (41)

89. Accordingly, if one reads into Article 2(1) of the Belarus Sanctions Regulation a presumption that having a 50% shareholding means that the shareholder is granted control over that company's funds and economic resources, that presumption may be justified only where the affected company is able to adduce evidence to the contrary and ensure the safeguarding of its rights of the defence. (42)

90. Once that presumption is established (in the present case by the defendant banks), the burden of proof shifts to the affected company to furnish evidence that, notwithstanding the presence of a 50% shareholding by a listed person, no control may be exercised over its funds and economic resources.

91. Contrary to the German Government's observation, such a 'shift' of the burden of proof does not have to be expressly provided for by law. That result may be implied once Article 2(1) of the Belarus Sanctions Regulation is interpreted as providing for a presumption of control by virtue of a 50% shareholding.

92. But to whom should proof of the absence of control be provided?

93. One option is to the person that implemented the restrictive measure at issue. In the present case, that would be the defendant banks. However, deciding on such a claim might be too much to ask of those entities. In addition, there may not necessarily be an incentive for them to change their position, given the presence of an express provision in the Belarus Sanctions Regulation shielding those entities and their directors and employees from liability in the implementation of the measures at issue in good faith. (43)

94. Another option is to provide such evidence to a body of the Member State at issue. In the present case, although, as I have explained, the Lithuanian legislation appears to have changed, no such body was involved at the point in time when the facts of the present dispute arose. (44)

95. In such a case, the only place to rebut the presumption of 'control' is before the competent courts of a Member State.

96. Before those courts, the company affected must be capable of establishing that the listed person cannot exercise control over its funds and economic resources. As claimed by the Spanish Government, those courts must have full jurisdiction to review the evidence presented to it.

97. As the present proceedings show, that avenue of independent review is available in Lithuania, in line with the requirements flowing from the second subparagraph of Article 19(1) TEU, given that EM SYSTEM challenges the defendant banks' decision to freeze its accounts before the competent civil courts. (45)

98. However, the referring court seems uncertain as to how the lack of control should be demonstrated.

99. In that sense, by its second question, it asks whether the fact that a company is subject to the prohibition on making funds or economic resources available to a listed person, under Article 2(2) of the Belarus Sanctions Regulation, may be used as an argument to show the lack of control. (46)

100. It is difficult to enumerate *in abstracto* the arguments which a company subject to the presumption of 'control' may rely on. These will depend on a number of factors, such as the company's governance structure, its articles of association and the realities of the functioning of that company. (47)

101. The circumstances which the referring court raises in its third question, namely (i) the separation of the assets of the company from those of its shareholders, (ii) the fact that the head of the company (other than a person listed in Annex I to the Belarus Sanctions Regulation) acts on behalf of the company, and

(iii) the fact that access to the company's bank accounts is granted only to the head of the company, may all be indicators that there is no control by the controlling shareholder.

102. However, none of those elements, in themselves, is sufficient to prove the lack of control by virtue of a 50% shareholding, nor can those elements, in themselves, guarantee that the said shareholder cannot and does not influence how the company's funds and economic resources are used.

103. It follows that the answer to the first question should be that the asset freeze imposed by Article 2(1) of the Belarus Sanctions Regulation against persons listed in Annex I to the Belarus Sanctions Regulation does not automatically extend to a company not listed in that annex. However, where a person listed in that annex owns 50% or more of the shares in that company, it may be presumed that the funds and economic resources of that company are controlled by the person listed in the annex, and must therefore be frozen. That presumption is rebuttable and subject to review by a national court.

D. The link between the prohibition on making funds or economic resources available and the requirement of 'control'

104. By its second question, the referring court in essence asks whether EM SYSTEM could establish that Mr A.V.S. does not have control over its funds and economic resources on the basis that those assets are not made available to him either directly or indirectly.

105. I will address that point briefly.

106. The prohibition on making funds or economic resources available, directly or indirectly, to or for the benefit of the listed natural or legal persons, as laid down in Article 2(2) of the Belarus Sanctions Regulation, is, to my mind, autonomous and distinct from the obligation to freeze funds contained in Article 2(1) thereof.

107. That view is shared by the Commission and the German Government.

108. First, the Belarus Sanctions Regulation does not link those two measures, nor can such a link be implied from their purpose.

109. Second, the mere existence of a prohibition on making funds available to a listed person like Mr A.V.S. does not preclude that person from exercising control over the funds and economic resources of a non-listed company, like EM SYSTEM.

110. Third, the prohibition on making funds available to a listed person, like Mr A.V.S., continues to exist irrespective of whether a non-listed company, like EM SYSTEM, succeeds in proving that that person does not exercise control over its funds and economic resources. (48)

111. It follows that the answer to the second question should be that a decision to freeze the funds and economic resources of a non-listed entity that is controlled by a person listed in Annex I to the Belarus Sanctions Regulation occurs independently of the prohibition on making funds and economic resources available to that person. A decision to freeze funds may not be challenged on the basis that the assets of a company whose funds are frozen are not used by, or for the benefit of, the listed person.

112. Given that the third question was asked on the condition that the second question be answered in the affirmative, there is no need to answer that question.

IV. Conclusion

113. In the light of all the foregoing considerations, I suggest that the Court of Justice reply to the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania, Lithuania) as follows:

(1) Article 2(1) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (‘the Belarus Sanctions Regulation’)

must be interpreted as meaning that the asset freeze imposed by that provision against persons listed in Annex I to the Belarus Sanctions Regulation does not automatically extend to a company not listed in that annex.

However, where a person listed in that annex owns 50% or more of the shares in that company, it may be presumed that the funds and economic resources of that company are controlled by the person listed in the annex, and must therefore be frozen.

That presumption is rebuttable and subject to review by a national court.

(2) Article 2(1) and 2(2) of the Belarus Sanctions Regulation

must be interpreted as meaning that a decision to freeze the funds and economic resources of a non-listed entity that is controlled by a person listed in Annex I to the Belarus Sanctions Regulation occurs independently of the prohibition on making funds and economic resources available to that person.

A decision to freeze funds may not be challenged on the basis that the assets of a company whose funds are frozen are not used by, or for the benefit of, the listed person.

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1 Original language: English.

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2 Council Regulation of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2006 L 134, p. 1), as amended by Council Regulation (EU) No 1014/2012 of 6 November 2012 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 1).

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3 Presidency Conclusions of the Brussels European Council of 23/24 March 2006, CONCL 1, ST/7775/1/06, 24 March 2006, p. 35.

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4 Council Common Position 2006/276/CFSP of 10 April 2006 concerning restrictive measures against certain officials of Belarus and repealing Common Position 2004/661/CFSP (OJ 2006 L 101, p. 5).

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5 Council Common Position 2006/362/CFSP of 18 May 2006 amending Common Position 2006/276 (OJ 2006 L 134, p. 45).

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6 Council Decision of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1) (‘Decision 2012/642’).

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7 Decision 2012/642, recitals 5 and 6.

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8 Council Regulation of 6 November 2012 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 1) (‘Regulation No 1014/2012’).

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9 Regulation No 1014/2012, recital 2.

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10 Council Implementing Regulation of 17 December 2020 implementing Article 8a(1) of [the Belarus Sanctions Regulation] (OJ 2020 L 426I, p. 1).

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11 In full, that justification reads as follows: ‘He is one of the leading businessmen operating in Belarus, with business interests in construction, machine building, agriculture and other sectors. He is reported to be one of the persons who benefited most from the privatisation during Lukashenko’s tenure as President. He is also a member of the presidium of the pro-Lukashenk[o] public association “Belaya Rus” and a member of the Council for the Development of Entrepreneurship in the Republic of Belarus. As such he is benefiting from and supporting the Lukashenk[o] regime. In

July 2020 he made public comments condemning the opposition protests in Belarus, thereby contributing to the repression of civil society and democratic opposition.'

12 General Secretariat of the Council, Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, ST/5664/18, of 4 May 2018, 'the 2018 Guidelines'.

13 General Secretariat of the Council, EU Best Practices for the effective implementation of restrictive measures, ST/10572/22, of 27 June 2022, 'the 2022 Best Practices document'.

14 Emphasis added. In a footnote to point 55a of the 2018 Guidelines and point 63 of the 2022 Best Practices document, both of those documents refer to Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) ('the 2001 Terrorism Regime Regulation'), Article 1(5) of which notes that '"Owning a legal person, group or entity" means being in possession of 50% or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.'

15 Emphasis added.

16 As the case-law shows, these types of measures also cover 'the rulers of … a country and also individuals and entities associated with or controlled, directly or indirectly, by them'; see judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 166), and see, to that effect, judgment of 13 March 2012, *Tay Za* v *Council* (C-376/10 P, EU:C:2012:138, paragraph 61).

17 See, to that effect, judgment of 21 April 2015, *Anbouba* v *Council* (C-605/13 P, EU:C:2015:248, paragraph 52) (explaining that 'the Council discharges the burden of proof borne by it if it presents to the Courts of the European Union a set of indicia sufficiently specific, precise and consistent to establish that there is a sufficient link between the person subject to a measure freezing his funds and the regime being combated'). See also, to that effect, as regards what is now Article 215(1) TFEU, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 166); of 13 March 2012, *Tay Za* v *Council* (C-376/10 P, EU:C:2012:138, paragraph 64); and of 28 July 2016, *Tomana and Others* v *Council and Commission* (C-330/15 P, EU:C:2016:601, paragraph 46) (all speaking of the need for a 'sufficient link' between the persons concerned and the third country targeted by the restrictive measures adopted by the European Union).

18 See, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 116 and the case-law cited) (explaining that the obligation to state reasons laid down in Article 296 TFEU requires 'that that statement of reasons identif[y] the individual, specific and concrete reasons why the competent authorities consider that the individual concerned must be subject to restrictive measures').

19 See judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 326) (explaining that 'the Community judicature must, in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of' CFSP measures).

20 See, to that effect, judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236, paragraph 88) (explaining that 'taking account of the wide scope of the aims and objectives of the CFSP, as set out in Article 3(5) TEU and Article 21 TEU and in the specific provisions relating to the CFSP, in particular, in Articles 23 and 24 TEU, the Council has a broad discretion in determining such persons and entities').

21 That was the design adopted by Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2008 L 163, p. 29), which makes the following addition to the annex to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1): 'Bank Melli, Melli Bank Iran and all branches and subsidiaries including (a) Bank Melli plc (b) Bank Melli Iran Zao'. However, while the listing of multiple entities under the same statement of reasons may satisfy the requirement for the protection of fundamental rights, as the German Government and the Commission argue, with reference to the judgment of 9 July 2009, *Melli Bank* v *Council* (T-246/08 and T-332/08, EU:T:2009:266, paragraph 146),

an indeterminate reference to a particular trait shared by a number of non-designated entities, such as being a 'subsidiary' of a listed company, will fall short of that requirement.

22 When asked at the hearing why EM SYSTEM was not itself listed, especially after the second shareholder, owning the remaining 50% of that company's shares, was listed in 2024, the Council responded that the High Representative of the Union for Foreign Affairs and Security Policy did not propose such listing (see entry 278 of Council Implementing Regulation (EU) 2024/3177 of 16 December 2024 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L, 2024/3177).

23 See also, in that regard, Article 8a of the Belarus Sanctions Regulation, which lays down the specific procedure for the Council to follow in case it wishes to amend Annex I to that regulation. Paragraph 1 thereof specifically lays down that 'where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 2(1), it shall amend Annex I accordingly.' Paragraph 2 thereof states that 'the Council shall communicate its decision, including the grounds for the listing, to the natural or legal person, entity or body [concerned], either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.'

24 See, in that regard, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 284) (explaining that respect for human rights is a condition for the lawfulness of EU acts and that measures incompatible with that respect are not acceptable in the EU legal order). See also Article 215(3) TFEU, which lays down that restrictive measures imposed pursuant to that provision 'shall include necessary provisions on legal safeguards', and Declaration 25 on Articles 75 and 215 [TFEU] (which states that 'the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.').

25 I should also observe that the meaning of the word 'controlled', as used in Article 4(1)(a) and (b) of Decision 2012/642 and in Article 2(5) of the Belarus Sanctions Regulation, appears to be different from the meaning of the same word as used in the first sentence of Article 4(1) of Decision 2012/642. Whereas the former lays down the criteria for the Council to determine which subjects can be listed (that is to say, the personal scope of the measure), the latter determines that assets controlled by the listed entity are to be frozen (that is to say, the substantive scope of the measure).

26 See judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236, paragraph 141) (explaining that given that the objective of a Council regulation adopted on the basis of Article 215 TFEU is the adoption of measures necessary to give effect to a Council decision in the realm of the CFSP, the terms of that regulation must be interpreted, so far as possible, in the light of that decision).

27 That also appears to be the conclusion reached by the Council in point 35 of the 2022 Best Practices document: '…the funds and economic resources of a non-designated entity having separate legal personality from a designated person or entity are not covered, unless they are controlled or held by the designated person or entity'.

28 Article 1(1) of the Belarus Sanctions Regulation defines 'funds' as 'financial assets and benefits of every kind, including but not limited to … (c) publicly- and privately-traded securities … including stocks and shares …'. It is therefore clear that shares fall within the scope of the asset freeze imposed by Article 2(1) thereof.

29 It is worth recalling, in that regard, Article 288 TFEU, which lays down that 'a regulation shall have general application [and] shall be binding in its entirety and directly applicable in all Member States'.

30 See, by analogy, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)* (C-872/19 P, EU:C:2021:507, paragraph 90) (explaining that the restrictive measures vis-à-vis Venezuela 'are also applicable without requiring the adoption of implementing measures, either by the European Union or by the Member States').

31 See, to that effect, judgment of 10 September 2019, *HTTS* v *Council* (C-123/18 P, EU:C:2019:694, paragraph 70) (explaining that 'the concept of a "company owned or controlled" does not have, in the area of restrictive measures, the

same meaning as it generally has in company law, where it serves to ascertain the commercial liability of a company which is legally subject to the control, as regards decision-making, of another commercial entity').

32 Decision 2012/642, recitals 6 and 7.

33 See, to that effect, judgment of 10 September 2019, *HTTS* v *Council* (C-123/18 P, EU:C:2019:694, paragraph 69) (taking the position that interpreting the concepts of 'owned' or 'controlled' only as including direct ownership or control would allow the restrictive measures to be 'circumvented by numerous contractual or de facto possibilities of control').

34 See judgment of 7 June 2023, *Shakutin* v *Council* (T-141/21, EU:T:2023:303, paragraph 153) (accepting that the Council established that 'the exercise of significant economic activities by businessmen in Belarus is possible only with the endorsement of the Lukashenko regime'). See also, by analogy, judgment of the Court of Appeal of England and Wales of 27 February 2024 in *Dalston Projects Ltd and Others v Secretary of State for Transport* (2024) EWCA Civ 172, paragraph 122), referring to a witness statement that explains that 'the nature of the Russian political economy is essentially one of patronage', that is to say 'a system in which opportunities and material benefits, government contracts, and senior positions in the government and government-affiliated entities, are provided by the state to a small circle of insiders, in return for their loyalty and support').

35 See also judgment of the Court of Appeal of England and Wales of 27 February 2024 in *Dalston Projects Ltd and Others v Secretary of State for Transport* (2024) EWCA Civ 172, paragraph 183, in which that court considered it a 'common sense conclusion' and 'not a point which turns on the precise details of company law' that where two or more business partners, who have links to a regime which is to be combatted by restrictive measures, hold a collective shareholding in a company, there is a risk of circumvention of an asset freeze.

36 See, by analogy, judgment of 11 November 2021, *Bank Sepah* (C-340/20, EU:C:2021:903, paragraphs 43 and 56) (noting, as regards the scope of an asset freeze, that 'the purpose of freezing funds is to limit as much as possible the transactions that may be carried out with frozen funds' and that 'in order to achieve [the aims pursued by a restrictive measure], it is not only legitimate, but also indispensable that the definitions of the concepts of "freezing of funds" and "freezing of economic resources" should be interpreted broadly because what is at stake is preventing any use of frozen assets that would enable the regulations at issue to be circumvented and the weaknesses in the system to be exploited').

37 See, to that effect, judgment of 10 September 2019, *HTTS* v *Council* (C-123/18 P, EU:C:2019:694, paragraphs 70 and 71) (explaining that the concept of 'company owned or controlled' must be understood as relating to a situation where a natural or legal person 'is able to influence the commercial decisions of another person with which it has a commercial relationship, even in the absence of any legal tie between the two economic entities, or any link in terms of ownership or equity participation').

38 See, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran* (C-27/09 P, EU:C:2011:853, paragraph 61) (explaining that, in the case of an asset freeze, to ensure that the effectiveness of that measure is not jeopardised, 'such a measure must be able to take advantage of a surprise effect and to apply immediately').

39 See the 2018 Guidelines, point 55b and the 2022 Best Practices document, point 63. Those provisions respectively distinguish between the right to exercise such influence and the power to do so even in the absence of such a right.

40 At this point it may be useful to observe that, according to the national file, shortly after the publication of the 2020 Listing Regulation, an attempt was made to transfer a substantial sum of money from the accounts of EM SYSTEM to the personal bank account of its director. That transfer was blocked by one of the defendant banks.

41 See, to that effect, judgment of 29 November 2018, *National Iranian Tanker Company* v *Council* (C-600/16 P, EU:C:2018:966, paragraph 33) (recognising that the interest in restoring one's reputation also applies to companies affected by restrictive measures).

42 See point 55c of the 2018 Guidelines and point 65 of the 2022 Best Practices document, in which the Council explains that it considers the criteria of ownership or control to be rebuttable. See also, by analogy, judgment of 10 September 2019, *HTTS* v *Council* (C-123/18 P, EU:C:2019:694, paragraph 74) (highlighting the reasoning of the General Court that,

in the area of restrictive measures, 'whilst the existence of a legal tie or a link in terms of ownership or equity participation in a company may, in certain cases, result in the ability to influence the decisions of the owned or controlled entity, it is not a *sine qua non* for the exertion of such influence').

43 See Article 6 of the Belarus Sanctions Regulation.

44 As the Lithuanian Government explained, there is now the possibility to rebut the presumption of 'control' before a State body charged with drawing up the list of entities whose assets are controlled by a listed person. An unsuccessful challenge to that 'implementation' then opens up the possibility of bringing judicial proceedings before the administrative courts of that Member State.

45 Moreover, as the referring court's order for reference highlights, there appears to be a system in place in Lithuania through which it is possible to request the release of frozen assets where a listed person no longer owns or controls the assets in question, or where one of the derogations provided for in EU law, such as that contained in Article 3(1) of the Belarus Sanctions Regulation, applies.

46 As I shall explain in Section III.D, I do not consider that to be possible.

47 As the Lithuanian Government correctly points out, it is irrelevant, for the purposes of that assessment, whether or not the listed person having a 50% shareholding has, in the past, actually exercised dominant control or interfered with the day-to-day decision-making vis-à-vis the non-listed entity's funds and economic resources. What matters is that such a possibility exists by virtue of that person's shareholding in that company. See also, along the same lines, judgments of 9 July 2009, *Melli Bank v Council* (T-246/08 and T-332/08, EU:T:2009:266, paragraph 125) and of 4 February 2014, *Syrian Lebanese Commercial Bank v Council* (T-174/12 and T-80/13, EU:T:2014:52, paragraph 110) (both rejecting the argument that the lack of past interference by a controlling shareholder would be dispositive of that person's future actions in a restrictive measures context).

48 For example, irrespective of whether its funds and economic resources are frozen by virtue of Mr A.V.S.'s shareholding in EM SYSTEM, that company is prevented from paying him dividends on his shares.