

Provisional text

JUDGMENT OF THE COURT (First Chamber)

12 March 2026 (*)

(Reference for a preliminary ruling – Common foreign and security policy – Regulation (EC) No 765/2006 – Restrictive measures in view of the situation in Belarus – Article 2(1) – Annex I – List of persons, entities and bodies subject to restrictive measures – Inclusion of the name of the shareholder of a company on that list – 50% stake in the capital of that company held by that shareholder – Freezing of the funds of the company, which is not included on the list – Control by a person or entity included on the list of a legal person not included on the list – Criteria for assessment – Right to effective judicial protection – Rights of the defence)

In Case C-84/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decision of 31 January 2024, received at the Court on 1 February 2024, in the proceedings

EM SYSTEM UAB

v

SEB bankas AB,

Citadele banka Lietuvos filialas AS,

THE COURT (First Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, I. Ziemele, A. Kumin and S. Gervasoni, Judges,

Advocate General: T. Ćapeta,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 27 March 2025,

after considering the observations submitted on behalf of:

- EM SYSTEM UAB, by G. Blaškevičius and L. Račkauskienė, advokatai,
- SEB bankas AB and Citadele banka Lietuvos filialas AS, by E. Raciūnas and V. Vaitkutė Pavan, advokatai,
- the Lithuanian Government, by V. Kazlauskaitė-Švenčionienė and V. Vasiliauskienė, acting as Agents,
- the German Government, by J. Möller and R. Kanitz, acting as Agents,
- the Estonian Government, by M. Kriisa, acting as Agent,
- the Spanish Government, by A. Gavela Llopis, acting as Agent,
- the Latvian Government, by J. Davidoviča and K. Pommere, acting as Agents,
- the Finnish Government, by M. Pere, acting as Agent,

- the Council of the European Union, by A. Antoniadis, D. Mykolaitis and S. Van Overmeire, acting as Agents,
 - the European Commission, by M. Carpus-Carcea, L. Puccio and A. Steiblytė, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 3 July 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1) and (2) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus (OJ 2006 L 134, p. 1), as amended by Regulation (EU) No 1014/2012 of 6 November 2012 (OJ 2012 L 307, p. 1) ('Regulation No 765/2006').

2 The request has been made in proceedings between, of the one part, the company EM SYSTEM UAB ('EM System') and, of the other part, the banking institutions SEB bankas AB and Citadele banka Lietuvos filialas AS, concerning the decision of those institutions to freeze the assets held by that company in bank accounts opened in its name with them.

Legal context

European Union law

Decision 2012/642/CFSP

3 Recitals 5 to 8 of Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1) state:

'(5) Particular responsibility is borne by the officials directly involved or responsible for the fraudulent nature of the presidential elections and referendum; those responsible for organising and implementing the dissemination of falsified information through the state-controlled media; those responsible for excessive and unprovoked use of force against unarmed and peaceful protesters; those responsible for implementing the ongoing and politically motivated administrative and criminal sanctions against large groups of representatives of the civil society, democratic opposition, [non-governmental organisations (NGOs)] and free media in Belarus, and those responsible for systematic and coordinated violation of international human rights standards and the laws of the Republic of Belarus in the administration of justice and exercising methods of coercion and intimidation against legal representatives of detainees and against other individuals.

(6) Furthermore, given the gravity of the situation, measures should also be imposed on persons in a leading position in Belarus, and on persons and entities benefiting from or supporting the [Lukashenko] regime, in particular persons and entities providing financial or material support to the regime.

(7) In order to ensure the effectiveness of these measures, they should also apply to entities owned or controlled by natural or legal 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, and to entities owned or controlled by persons and entities benefiting from or supporting the [Lukashenko] regime.

(8) Noting that the most recent elections of 23 September 2012 have also been found to be inconsistent with international standards, in particular in preliminary findings of the [Organization for Security and Co-operation in Europe (OSCE)]/[Office for Democratic Institutions and Human Rights

(ODIHR)] election observation mission to Belarus, and that the situation as regards democracy, human rights and rule of law had not improved, the Council [of the European Union] maintains its grave concerns regarding the situation in Belarus.’

4 Article 4 of Decision 2012/642 provides:

‘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 [Lukashenko] 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.’

Regulation No 765/2006

5 Recitals 2 to 4 of Regulation No 765/2006 state:

‘(2) On 10 April 2006, the Council decided to adopt restrictive measures against President Lukashenko, the Belarusian leadership and officials responsible for the violations of international electoral standards and international human rights law, as well as for the crackdown on civil society and democratic opposition. These individuals should be subjected to a visa ban and possible further targeted measures.

(3) Common Position 2006/362/CFSP [of the Council of 18 May 2006 amending Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2006 L 134, p. 45)] provides that the funds and economic resources of President Lukashenko and certain officials of Belarus that have been identified for this purpose should be frozen.

(4) These measures fall within the scope of the Treaty and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary to implement them as far as the [European] Community is concerned. For the purposes of this Regulation, the territory of the Community should be deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.’

6 Article 1(1)(b) of Regulation No 765/2006 provides:

‘For the purpose of this Regulation, the following definitions shall apply:

1. “funds” means financial assets and benefits of every kind, including but not limited to:

...

(b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations’.

7 Under Article 2 of that regulation:

- ‘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 [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 [Lukashenko] regime, as well as legal persons, entities and bodies owned or controlled by them.’

8 Article 3 of Regulation No 765/2006 is worded as follows:

‘1. By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources are:

- (a) necessary to satisfy the basic needs of persons listed in Annex I and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources.

2. By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that the Member State concerned has notified the other Member States and the [European] Commission of the grounds on which it considers that a specific authorisation should be granted, at least 2 weeks before the authorisation.

3. Member States shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 or 2.’

9 Article 4a of Regulation No 765/2006 provides:

‘By way of derogation from Article 2(1), where a payment by a natural or legal person, entity or body listed in Annex I is due under a contract or agreement that was concluded by, or an obligation that

arose for the natural or legal person, entity or body concerned before the date on which that person, entity or body had been listed, the competent authorities of the Member States, as indicated on the websites listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, provided that:

- (i) the competent authority concerned has determined that the payment is not, directly or indirectly, to or for the benefit of a person, entity or body listed in Annex I; and
- (ii) the Member State concerned has, at least 2 weeks prior to the grant of the authorisation, notified the other Member States and the Commission of that determination and its intention to grant the authorisation.'

10 Under Article 4b of that regulation:

'By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, after having determined that the funds or economic resources are necessary for official purposes of diplomatic missions or consular posts or international organisations enjoying immunities in accordance with international law.'

11 Article 5(1) of Regulation No 765/2006 is worded as follows:

'Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

- (a) immediately supply the competent authorities indicated in the websites listed in Annex II, in the country where they are resident or located, with any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2, and directly or indirectly supply such information to the Commission; and
- (b) cooperate with the competent authorities indicated in the websites listed in Annex II in any verification of this information.'

12 Article 7 of that regulation provides:

'The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.'

13 Under Article 8a of Regulation No 765/2006:

'1. 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.

2. The Council shall communicate its decision, including the grounds for the listing, to the natural or legal person, entity or body referred to in paragraph 1, 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.

3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.

4. The lists in Annex I shall be reviewed in regular intervals and at least every 12 months.'

Regulation (EC) No 2580/2001

14 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) defines, in Article 1(5) thereof, ‘owning a legal person, group or entity’ as ‘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 Article 1(6) of that regulation defines ‘controlling a legal person, group or entity’ as any of the following:

‘(a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity;

(b) having appointed solely as a result of the exercise of one’s voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year;

(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders’ or members’ voting rights in that legal person, group or entity;

(d) having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provision;

(e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;

(f) having the right to use all or part of the assets of a legal person, group or entity;

(g) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts;

(h) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.’

The 2018 Council Guidelines

16 The Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, adopted by the Council on 4 May 2018 (‘the 2018 Council Guidelines’), state, in paragraph 55a:

‘The criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50% of the proprietary rights of an entity or having majority interest in it. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity.’

17 A footnote in that paragraph explains that the criterion concerned is defined in Regulation No 2580/2001.

18 Under paragraph 55b of the 2018 Council Guidelines:

'The criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include ...:

- (a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;
- (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;
- (c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;
- (d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;
- (e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;
- (f) having the right to use all or part of the assets of a legal person or entity;
- (g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;
- (h) sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.

If any of these criteria are satisfied, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established on a case by case basis.'

19 A footnote in that paragraph explains that the criterion concerned is defined in Regulation No 2580/2001.

The 2018 Best Practices document

20 The Council document of 24 June 2015 entitled 'EU Best Practices for the effective implementation of restrictive measures', as amended on 4 May 2018 ('the 2018 Best Practices document'), states, in paragraph 34:

'The freezing covers all funds and economic resources belonging to or owned by designated persons and entities, and also to those held or controlled by such persons and entities. Holding or controlling should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner. A designated person is considered as holding or controlling funds or economic resources, inter alia, if he or she:

- (a) has banknotes or debt certificates issued to bearer,
- (b) has movable goods on his or her premises which he or she owns jointly with a non designated person or entity,

(c) has received full or similar powers to represent the owner, allowing him or her to order the transfer of funds he or she does not own (e.g. for the purpose of managing a specific bank account), or

(d) is a parent or guardian administering a bank account of a minor in accordance with the applicable national law.

The notions of ownership and control in the context of the prohibition on making funds and economic resources available are developed in section B part VIII.'

21 According to paragraph 35 of the 2018 Best Practices document:

'In principle, the freezing should not affect funds and economic resources which are neither owned by or belonging to, nor held or controlled by designated persons and entities. Thus, for example, the funds and economic resources of the non-designated employer of a designated person are not covered, unless they are controlled or held by that person. In the same vein, 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. However, even so, funds and economic resources jointly owned by a designated person or entity and a non-designated one are in practice covered in their entirety.'

22 Paragraph 62 of the 2018 Best Practices document states:

'The criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50% of the proprietary rights of an entity or having majority interest in it. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity.'

23 A footnote in that paragraph explains that the criterion concerned is defined in Regulation No 2580/2001.

24 Paragraph 63 of the 2018 Best Practices document, relating to 'control', states:

'The criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include, inter alia:

(a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;

(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;

(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;

(d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;

(e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;

(f) having the right to use all or part of the assets of a legal person or entity;

- (g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;
- (h) sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.'

25 Paragraph 64 of the 2018 Best Practices document is worded as follows:

'If any of these criteria are satisfied, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established on a case by case basis.'

26 According to paragraph 65 of the 2018 Best Practices document:

'The fulfilment of the above criteria of ownership or control may be refuted on a case by case basis.'

Lithuanian law

The Law of 22 April 2004

27 Under Article 11(1) of the Lietuvos Respublikos ekonominių ir kitų tarptautinių sankcijų įgyvendinimo įstatymas (Law of the Republic of Lithuania on the implementation of economic and other international sanctions) of 22 April 2004 ('the Law of 22 April 2004'), in the version in force on 18 December 2020, being the date on which the funds concerned were frozen in the main proceedings, the Lithuanian Minister for Foreign Affairs coordinated the implementation of international sanctions in Lithuania and provided information to natural and legal persons on matters relating to that implementation.

28 Article 12(1)(2) of the Law of 22 April 2004 provided that the Financial Crime Investigation Department within the Ministry of the Interior of the Republic of Lithuania ('the FNIT'), the Customs Department within the Ministry of Finance of the Republic of Lithuania and the Bank of Lithuania, in accordance with their respective remits, were responsible for supervising the implementation of financial sanctions.

29 Article 4(2) of the Law of 22 April 2004 stated that, in order to qualify for an exemption, the persons concerned had to apply to the authority or financial institution referred to in Article 12 of that law, and that authority or financial institution could grant that exemption only after receiving authorisation from the Lithuanian Ministry of Foreign Affairs.

30 Under the provisions of the Law of 22 April 2004, in particular Article 10(1) thereof, in the version in force when the case in the main proceedings was considered by the referring court, the implementation of international sanctions was coordinated by a committee established by the Government.

31 Article 11(3)(1) of the Law of 22 April 2004, in that same version, provided that the FNIT, the Ministry of Finance of the Republic of Lithuania, the Customs Department within the Ministry of Finance of the Republic of Lithuania and other institutions, in accordance with their respective remits, were the competent authorities for the implementation of restrictions on accessing funds and economic resources, restrictions on payments and restrictions on other financial activities.

Resolution No 535 of the Government of the Republic of Lithuania

32 The Lietuvos Respublikos Vyriausybės nutarimu nr. 535 (Resolution No 535 of the Government of the Republic of Lithuania) of 25 May 2022, as amended on 22 May 2024, describes the procedure for implementing international sanctions.

33 Paragraph 13 of that resolution provides that the FNTT, in the performance of its duties as competent authority laid down in Article 11(3) of the Law of 22 April 2014, is to coordinate, supervise and ensure the implementation of financial sanctions in Lithuania.

34 In particular, where the FNTT establishes, on its own initiative or on the basis of information provided by the competent authorities of other States, financial institutions of the Republic of Lithuania or other entities, in accordance with the criteria laid down in the instruments governing international sanctions, that a legal person or other organisation which does not have legal personality is owned or controlled by a sanctioned entity, the FNTT is to adopt an order to impose financial sanctions also on that legal person or other organisation which is owned or controlled by the sanctioned entity and which does not have legal personality.

35 A list of legal persons or other organisations without legal personality which are owned or controlled by a sanctioned entity and in respect of which no temporary administrator has been appointed, as drawn up or updated on the basis of the orders adopted, is to be published on the FNTT website within 2 working days of the adoption of the respective orders and is to be made available to the operators of State registers and information systems.

36 In addition, the FNTT is to adopt decisions on the application of exemptions or the grant of derogations from the restrictions and obligations laid down in the legislation on international sanctions.

The dispute in the main proceedings and the questions referred for a preliminary ruling

37 EM System has several bank accounts with SEB bankas and the Lithuanian branch of Citadele banka.

38 On 18 December 2020, the two banking institutions, which are the defendants in the main proceedings, froze the assets in those bank accounts on the ground that, on 17 December 2020, A.V.S. ('the listed shareholder'), which has a 50% shareholding in EM System, had been included on the list in Annex I to Regulation No 765/2006, as amended by Council Implementing Regulation (EU) 2020/2129 of 17 December 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2020 L 426 I, p. 1) ('Annex I as amended').

39 On 30 November 2021, EM System brought an action before the Vilniaus miesto apylinkės teismas (District Court, Vilnius, Lithuania), seeking an order requiring the defendants in the main proceedings to perform their contractual obligations and, therefore, to unfreeze the assets in those bank accounts.

40 By judgment of 25 January 2023, that court of first instance dismissed the action on the ground that, according to paragraph 63 of the Council document of 24 June 2015 entitled 'EU Best Practices for the effective implementation of restrictive measures', in the version dated 27 June 2022, and paragraph 55b of the 2018 Council Guidelines, one of the criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, is having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of the legal person or entity concerned. In the present case, since, in accordance with EM System's articles of association, its shareholders, namely the listed shareholder and I.S., each have a 50% stake in its capital, with the result that company's management cannot not be appointed without a decision of one or other of its shareholders, the court of first instance found that EM System's funds were controlled by a person listed in Annex I as amended, with the result that its funds had to be frozen pursuant to Article 2(1) of Regulation No 765/2006.

41 EM System brought an appeal against that judgment before the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania) which, by order of 23 May 2023, dismissed that appeal. That court ruled that the court of first instance had been right to hold that the fact that the listed shareholder had a 50% stake in EM System's capital made it possible to conclude that it was the owner of that company and that, therefore, that company's funds were controlled by a person included on the list in Annex I as amended.

42 EM System brought an appeal against that order before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), which is the referring court. The referring court states, as a preliminary point, that, by order of the Director of the FNTT of 14 October 2022, EM System was included on the list of entities linked to persons subject to sanctions and that that company brought an action – still pending – before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) seeking annulment of that order.

43 The referring court is of the view that, in order to determine whether the funds of a legal person or entity must be frozen under Article 2(1) of Regulation No 765/2006, it is necessary to ascertain whether that legal person or entity is owned or controlled by a person or entity subject to sanctions.

44 In that respect, the referring court observes that, on 18 December 2020, which is the date on which EM System's bank accounts were frozen by the defendants in the main proceedings, Regulation No 765/2006 did not lay down the criteria to be taken into account in order to determine whether a legal person or entity is owned or controlled by another person or entity. That court explains, first, that the 2018 Council Guidelines, applicable to the facts of the case, state, in paragraph 55a thereof, that 'the possession of more than 50% of the proprietary rights of an entity or having majority interest in it' is the criterion to be taken into account in order to determine whether a legal person or entity is owned by another person or entity. Secondly, a footnote in that paragraph references Regulation No 2580/2001, which defines 'owning a legal person, group or entity' as 'being in possession of 50% or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein'. That criterion is formulated in similar terms in the Council document of 24 June 2015, entitled 'EU Best Practices for the effective implementation of restrictive measures', in the version dated 27 June 2022.

45 In those circumstances, the referring court states that it has difficulty in identifying the criteria on the basis of which it may be concluded that a legal person, such as EM System, is owned or controlled by a person or entity included on the list in Annex I to that regulation. It enquires, in particular, whether the fact that a person included on the list in Annex I to that regulation has a 50% shareholding in a company must be regarded as establishing a presumption that that person owns or controls that company and, if so, whether it is to be presumed that the funds of that company belong to that person, or are held or controlled by it.

46 The referring court is also uncertain whether that presumption can be rebutted in a case such as that at issue in the main proceedings, in which the company concerned has asked a national court to order banking institutions to perform their contractual obligations and, therefore, to unfreeze its funds on the ground that they are not used by or for the benefit of a person included on the list in Annex I to Regulation No 765/2006.

47 In those circumstances, 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 Regulation No 765/2006 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 Regulation No 765/2006 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 ... 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 Regulation No 765/2006? 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%?'

Consideration of the questions referred

The first question

48 By its first question, the referring court asks, in essence, whether Article 2(1) and (2) of Regulation No 765/2006 must be interpreted as meaning that assets deposited in the bank accounts of a company, which is not included on the list in Annex I to that regulation but in which a person included on that list has a 50% shareholding, must be presumed to be funds belonging to or owned, held or controlled by that person and, therefore, must be frozen, within the meaning of that provision.

49 The first point to be noted here is that since EM System's assets were frozen by the defendants in the main proceedings pursuant to Article 2(1) of Regulation No 765/2006, on the ground that that company was controlled by the listed shareholder, only the interpretation of that provision is relevant for the purposes of resolving the dispute in the main proceedings.

50 Under Article 1(1)(b) of Regulation No 765/2006, the concept of 'funds' for the purposes of that regulation is defined as financial assets and benefits of every kind, including but not limited to 'deposits with financial institutions or other entities, balances on accounts, debts and debt obligations'.

51 It follows that assets deposited in a company's bank accounts may constitute 'funds' within the meaning of Article 2(1) of Regulation No 765/2006.

The freezing of the funds of a company not included on the list in Annex I to Regulation No 765/2006

52 In order to provide a useful answer to the referring court, it is necessary, in the first place, to answer the question whether, in accordance with Article 2(1) of Regulation No 765/2006, the funds of a company which is not listed in Annex I to that regulation can be frozen.

53 In accordance with settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context and the objectives pursued by the

rules of which it is part (judgments of 6 October 1982, *Cilfit*, 283/81, EU:C:1982:335, paragraph 20, and of 4 September 2025, *Kwizda Pharma II*, C-451/24, EU:C:2025:663, paragraph 55 and the case-law cited).

54 It is apparent from the wording of Article 2(1) of Regulation No 765/2006 that ‘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’.

55 There is nothing in the wording of Article 2(1) of Regulation No 765/2006 to suggest that the funds and economic resources must necessarily be owned, held or controlled directly, so as to exclude situations in which they are owned, held or controlled indirectly, in particular through a legal person, entity or body, or a chain of legal persons, entities or bodies, and that the latter must necessarily be included on the list in Annex I to that regulation themselves.

56 On the contrary, it can be inferred from the wording of that provision that it covers a variety of legal relationships between the person, entity or body included on the list in Annex I to Regulation No 765/2006 and the funds and economic resources at issue, ranging from the most complete legal relationship, namely ownership, to situations in which the person, entity or body is capable of exercising *de facto* power over those funds and resources, whether directly or indirectly.

57 It therefore follows from a literal interpretation of Article 2(1) of Regulation No 765/2006 that the freezing of funds under that provision also covers the funds and economic resources of a company not included on that list, provided that those funds and economic resources are owned, held or controlled by a person, entity or body which is included on that list.

58 As regards the context of which Article 2(1) of Regulation No 765/2006 forms part, it should be borne in mind that Article 2(5) of that regulation states that Annex I thereto ‘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 [Lukashenko] regime, as well as legal persons, entities and bodies owned or controlled by them’.

59 Given that the measures adopted by the Council under Article 215 TFEU are intended to implement Decision 2012/642 in EU law and to give effect to that decision, Regulation No 765/2006 must be read, so far as necessary, in the light of that decision.

60 Article 4(1)(b) of Decision 2012/642 provides that ‘all funds and economic resources belonging to, owned, held or controlled by ... natural or legal persons, entities or bodies benefiting from or supporting the [Lukashenko] regime, as well as legal persons, entities or bodies owned or controlled by them, as listed in the Annex’ to that decision, are to be frozen.

61 It should be observed that those provisions establish a direct link between, on the one hand, the freezing of funds and economic resources under Decision 2012/642 and Regulation No 765/2006 and, on the other hand, the inclusion of persons, entities or bodies on the lists annexed to that decision and that regulation.

62 Such a link could militate in favour of interpreting Article 2(1) of Regulation No 765/2006 as meaning that the imposition of a fund-freezing measure under that provision requires the legal persons, entities or bodies concerned by that measure and which are owned or controlled by a person included on the list in Annex I to that regulation also to be included on that list themselves. Moreover, a textual interpretation of Article 8a of Regulation No 765/2006 could lead to the conclusion that only legal persons, entities or bodies which are included on the list in Annex I to that regulation themselves may be subject to a fund-freezing measure under that provision. Article 8a of Regulation No 765/2006 provides that, where the Council decides to subject a natural or legal person,

entity or body to the measures referred to in Article 2(1) of that regulation, it is to amend Annex I thereto accordingly.

63 However, it must be pointed out that interpreting Article 2(1) of Regulation No 765/2006 as meaning that the imposition, under that provision, of a fund-freezing measure requires the legal persons, entities or bodies concerned by that measure and which are owned or controlled by a person included on the list in Annex I to that regulation to be included on that list themselves might undermine the effectiveness of the system of restrictive measures established by Regulation No 765/2006.

64 In such a scenario, any imposition of a measure freezing funds and economic resources under Article 2(1) of Regulation No 765/2006 would require the Council to assess, on a case-by-case basis, whether the criteria of ownership or control of a legal person, entity or body to which the funds belong, by a person included on the list in Annex I to that regulation, are satisfied, and, if so, would require that legal person, entity or body to be included on that list and reasons to be given for that inclusion. Such an assessment could prove to be particularly complex inasmuch as it would involve gathering and analysing information and evidence relating to, inter alia, the financial interests of the person included on the list in the capital of the legal person, entity or body concerned and the extent of those interests.

65 In accordance with the Court's case-law, an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness (judgment of 23 November 2023, *Ministarstvo financija*, C-682/22, EU:C:2023:920, paragraphs 31 and 32 and the case-law cited).

66 In that regard, as stated in paragraph 57 above, it follows from the wording of Article 2(1) of Regulation No 765/2006 that the freezing of funds under that provision also covers the funds and economic resources of a company not included on the list annexed to that regulation, provided that those funds and economic resources are owned, held or controlled by a person, entity or body which is included on that list.

67 In addition, it should be pointed out that it is apparent from paragraph 35 of the 2018 Best Practices Document that, 'in principle, the freezing should not affect funds and economic resources which are neither owned by or belonging to, nor held or controlled by designated persons and entities' and that, for example, the funds and economic resources of a non-designated entity whose legal personality is separate from that of a designated person or entity are not covered, 'unless they are controlled or held by the designated person or entity'. Paragraph 35 explains that 'however, even so, funds and economic resources jointly owned by a designated person or entity and a non-designated one are in practice covered in their entirety'.

68 Those considerations reflect the literal interpretation of Article 2(1) of Regulation No 765/2006, as set out in paragraph 57 above, according to which the freezing of funds envisaged by that provision applies not only to persons and entities included on the list in Annex I to that regulation, but also to persons and entities not mentioned by name on that list, provided that their funds and economic resources are also owned, held or controlled by a person included on that list.

69 It should also be observed that such an interpretation is supported by the objective pursued by the EU rules of which that provision forms part.

70 It follows from recitals 5 to 8 of Decision 2012/642 and recitals 2 to 4 of Regulation No 765/2006 that restrictive measures, such as the freezing of funds and economic resources provided for in Article 2(1) of that regulation, were imposed because of the lack of improvement in

the situation in Belarus as regards democracy, human rights and the rule of law. The aim of those measures is to increase pressure on the Lukashenko regime and to force it to change its behaviour, which is why the inclusion of persons on the list at issue has been gradually extended to encompass persons and entities benefiting from or supporting the Belarusian regime and entities owned or controlled by those persons or entities.

71 In order to attain the objective pursued by the restrictive measures provided for in Regulation No 765/2006, the surprise effect and the speed with which those measures are imposed must be guaranteed, so as to prevent weaknesses – which would deprive those measures of their effectiveness – from being easily exploited.

72 Consequently, Article 2(1) of Regulation No 765/2006 must be interpreted as meaning that the freezing of funds under that provision is not limited solely to funds and economic resources belonging to persons, entities or bodies included on the list in Annex I to that regulation.

73 Thus, the expression ‘funds and economic resources belonging to, or owned, held or controlled by’, within the meaning of Article 2(1) of Regulation No 765/2006, must be interpreted as encompassing the funds of a legal person, entity or body which is not itself included on the list in Annex I to that regulation, provided that that legal person, entity or body is owned or controlled by a person, entity or body which is included on that list.

The freezing of the funds of a company not included on the list in Annex I to Regulation No 765/2006, in which a person included on that list has a 50% shareholding

74 In order to provide the referring court with an answer which will be of use to it in resolving the dispute in the main proceedings, it is necessary, in the second place, to determine whether Article 2(1) of Regulation No 765/2006 must be interpreted as meaning that funds belonging to a company in which a person included on the list in Annex I to Regulation No 765/2006 has a 50% shareholding must be regarded as funds held or controlled by that person and, therefore, must be frozen.

75 It should be noted at the outset that Regulation No 765/2006 does not define the concepts of ‘held’ and ‘controlled’ by a legal person, entity or body, within the meaning of Article 2(1) of that regulation, and that that provision does not contain any reference to the size of the financial interest in the capital of a company, for example in the form of a percentage. Nor are those concepts defined in any regulation implementing Regulation No 765/2006.

76 In those circumstances, it should be borne in mind that, as is apparent from paragraph 70 above, the aim of restrictive measures such as the freezing of funds and economic resources provided for in Article 2(1) of Regulation No 765/2006 is to increase pressure on the Lukashenko regime and to force it to change its behaviour, which is why the inclusion of persons on the list at issue has been gradually extended to encompass persons and entities benefiting from or supporting the Belarusian regime and entities owned or controlled by those persons or entities.

77 It follows from the case-law of the Court that, in order to achieve the aim pursued by restrictive measures, it is not only legitimate, but also indispensable that the concepts of ‘freezing of funds’ and ‘freezing of economic resources’ should be interpreted broadly, since the objective pursued is to prevent any use of frozen assets that would enable the regulations at issue to be circumvented and the weaknesses in the system of restrictive measures to be exploited (see, by analogy, judgment of 11 November 2021, *Bank Sepah*, C-340/20, EU:C:2021:903, paragraph 56).

78 For the same reasons, the concepts of ‘held’ and ‘controlled’ by a legal person, entity or body, within the meaning of Article 2(1) of Regulation No 765/2006, must be interpreted broadly.

79 It is apparent from paragraph 71 above that, in order to attain the objective pursued by the restrictive measures provided for in Regulation No 765/2006, it is necessary, first, that those measures are applied to as wide a range of persons, groups or entities as possible in order to prevent them from being circumvented.

80 Therefore, as the Advocate General stated, in essence, in point 75 of her Opinion, the concepts of 'held' and 'controlled' in Article 2(1) of that 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 a person, entity or body linked to a person included on the list.

81 Otherwise, that objective would be frustrated. Recourse to legal constructs or other mechanisms of varying sophistication would enable the persons included on the list in Annex I to that regulation to evade the effective application of the freezing of funds and economic resources.

82 Secondly, in order to attain that objective, the surprise effect and the speed with which those measures are imposed must be guaranteed.

83 If there is a delay in implementing the restrictive measures, there is a risk that the assets of the person concerned by those measures will disappear. It is therefore essential to ensure that all parties responsible for implementing Regulation No 765/2006 are able to decide to freeze the funds and economic resources targeted by those measures as quickly as possible.

84 To that end, it is necessary to work with clear criteria and, as the Advocate General observed in point 79 of her Opinion, with certain presumptions regarding the internal decision-making structure of the legal persons concerned.

85 Reliance on such presumptions and on clear criteria to establish that a legal person or entity is owned or controlled by a person included on the list in Annex I to Regulation No 765/2006 facilitates the identification of the funds or economic resources to be frozen, which contributes to making the development of complex circumvention mechanisms more difficult, to preventing the outflow of funds and, consequently, to ensuring the effective implementation of restrictive measures.

86 As regards the relevant criteria in that regard, it is apparent from paragraph 34 of the 2018 Best Practices document that 'holding or controlling should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner'.

87 In addition, it follows from paragraph 55b of the 2018 Council Guidelines that the criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include, inter alia, having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of the legal person or entity concerned, having the right or the power to exercise a dominant influence over a legal person or entity, and having the right to use all or part of the assets of a legal person or entity.

88 Paragraph 55b states that, if any of those criteria are satisfied, the legal person or entity is considered to be controlled by another person or entity, unless the contrary can be established on a case-by-case basis. That paragraph explains, in a footnote, that those criteria are based on the definition laid down in Regulation No 2580/2001, relating specifically to terrorism. Article 1(6) of that regulation reproduces, in its definition of 'controlling a legal person, group or entity', the same criteria as those set out in paragraph 55b.

89 It is apparent from those considerations that the relevant criteria for determining whether a person or entity owns or controls another legal person, entity or body and, consequently, holds or controls its funds and economic resources include the ability to dispose of or transfer those funds or economic resources and, more generally, the ability to exercise a dominant influence over a legal person, entity or body, in particular by having the right or exercising the power to appoint or remove a majority of the members of its administrative, management or supervisory body.

90 As the Advocate General observed in point 81 of her Opinion, although such a power to exercise a dominant influence over a legal person or entity may also be present in the case of a shareholding in a company of less than 50%, a person with a 50% shareholding in a company is, in principle, capable of dictating or preventing certain decisions within that company, or is at least able to ensure that the affairs of that company are conducted in accordance with its wishes.

91 Therefore, it must be presumed that a 50% shareholding in a company makes it possible to control not only that company but also its funds and economic resources.

92 Such an interpretation is reflected in paragraph 55a of the 2018 Council Guidelines, which states that the criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50% of the proprietary rights of an entity or having a majority interest in it. If that criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity. A footnote in that paragraph also explains that that criterion is the criterion as defined in Regulation No 2581/2001. Article 1(5) of that regulation defines 'owning a legal person, group or entity' as 'being in possession of 50% or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein'.

93 In the light of the foregoing, the answer to the first question is that Article 2(1) of Regulation No 765/2006 must be interpreted as meaning that assets deposited in the bank accounts of a company which is not included on the list in Annex I to that regulation but in which a person included on that list has a 50% shareholding must be presumed to be funds held or controlled by that person and, therefore, must be frozen, within the meaning of that provision.

The second and third questions

94 It is apparent from the order for reference that, in its second and third questions, the referring court starts from the premiss that, where the funds and economic resources belonging to a company not included on the list in Annex I to Regulation No 765/2006 satisfy the criteria to be presumed to be held or controlled by a person which is included on that list and are, therefore, frozen pursuant to Article 2(1) of that regulation, Article 2(2) must be regarded as prohibiting the use of those funds only if they are used by or for the benefit of the person included on that list.

95 In that regard, it should be borne in mind that, in accordance with Article 2(2) of Regulation No 765/2006, no funds or economic resources are to be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities and bodies included on the list in Annex I to that regulation.

96 As the Advocate General observed in point 106 of her Opinion, the freezing of funds provided for in Article 2(1) of Regulation No 765/2006 is an autonomous obligation, distinct from the prohibition laid down in Article 2(2) of that regulation.

97 It is therefore important not to confuse the exceptions to the prohibition on making funds and economic resources available, directly or indirectly, to or for the benefit of the persons included on the list in Annex I to Regulation No 765/2006, laid down in Article 2(2) of that regulation, with the

possibility for a person to challenge the decision by which funds or economic resources belonging to or held or controlled by it have been frozen pursuant to Article 2(1) of that regulation.

98 In those circumstances, the view must be taken that, by its second and third questions, the referring court is asking, in essence, whether EU law is to be interpreted as meaning that a company which is not included on the list in Annex I to Regulation No 765/2006, whose funds have been frozen by banking institutions pursuant to Article 2(1) of that regulation on the ground that those funds are presumed to be held or controlled by a person which is included on that list, may challenge that fund-freezing measure and, where appropriate, have that measure lifted.

99 In that regard, it should be observed that Regulation No 765/2006 does not contain any provisions governing the procedure by which a company which is not included on the list in Annex I to that regulation may challenge a fund-freezing measure taken by a private entity under Article 2(1) thereof.

100 It is true that Articles 3, 4a and 4b of Regulation No 765/2006 make it possible for persons subject to a fund-freezing measure pursuant to Article 2(1) of that regulation to secure an exception to or a derogation from that measure, exceptions and derogations that are strictly limited to specific situations and require, in all cases, authorisation from the competent national authority. However, those exceptions and derogations do not cover the situation in which the person subject to such a measure challenges the grounds on which that measure is based, in particular the fact that the funds at issue are held or controlled by the person included on the list in Annex I to that regulation.

101 It is common ground that, where the person whose funds have been frozen under Article 2(1) of Regulation No 765/2006 is included on the list in Annex I to that regulation, that person may challenge the decision underpinning the fund-freezing measure by bringing an action before the General Court of the European Union, under Articles 256 and 263 TFEU, for annulment of the Council's decision including the person concerned on that list.

102 In addition, when it adopts restrictive measures, the Council is required to observe the principle of good administration, enshrined in Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), which includes, inter alia, the obligation for the administration to give reasons for its decisions.

103 In that regard, the Court has held that, given that the person concerned is not afforded the opportunity to be heard before the adoption of an initial decision to include his, her or its name on the lists of persons, entities or groups subject to restrictive measures, such as the list in Annex I as amended, compliance with the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the person concerned, at least after the adoption of that decision, to make effective use of the legal remedies available in order to challenge the lawfulness of that decision. It follows from this that, in principle, the Council is required to inform a person, group or entity subject to restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted. It must thus state the matters of fact and law which constitute the legal basis of the economic measures concerned and the considerations which led it to adopt them (judgment of 15 November 2012, *Council v Bamba*, C-417/11 P, EU:C:2012:718, paragraphs 51 and 52).

104 Thus, even though a restrictive measure must, in order not to jeopardise its effectiveness, be able to take advantage of a surprise effect and to apply immediately, respect for the rights of the defence requires, first, that the competent EU authority disclose to the person or entity concerned the grounds and evidence relied on against it and afford that person or entity the right to be heard at the same time as, or immediately after, the adoption of the decision concerning it, and, secondly, that

that authority, at the request of the person concerned, grant access to all non-confidential administrative documents within a reasonable time (judgments of 21 December 2011, *France v People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 61, and 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, paragraphs 98 to 100, 111 and 112).

105 Accordingly, if the person whose funds have been frozen under Article 2(1) of Regulation No 765/2006 is included on the list in Annex I to that regulation, it may challenge, before the Council and subsequently, if necessary, before the General Court of the European Union, the decision on the basis of which the fund-freezing measure was imposed on it and, therefore, the grounds underpinning that measure. That person also enjoys certain guarantees as regards, in particular, respect for the rights of the defence, subject to the reservations set out in paragraph 101 above.

106 By contrast, in accordance with Article 47 of the Charter and Article 19(1) TEU, a legal person, entity or body which is not itself included on the list in Annex I to Regulation No 765/2006 but whose funds have been frozen under Article 2(1) of that regulation on the ground that they are controlled or held by a person included on that list must, in order to ensure that legal person, entity or body's right to effective judicial protection, be afforded the opportunity to challenge that fund-freezing measure before the national authorities and subsequently, if necessary, before the national courts with jurisdiction, and its rights of defence must be respected. Similarly, the person included on that list, which holds or controls funds that have been frozen under that provision, must have the same ability to challenge that measure.

107 In that regard, it should be pointed out, in the first place, that the obligation for the administration to state reasons for its decisions is laid down, inter alia, in Article 8a of Regulation No 765/2006. Therefore, a person, entity or body which is not included on the list in Annex I to Regulation No 765/2006 must be informed of the reasons why its funds were frozen, in particular, in the present case, the reasons why the defendants in the main proceedings took the view that EM System had to be presumed to be owned or controlled by a person, entity or body included on that list, within the meaning of Article 2(1) of that regulation.

108 In the present case, at the hearing before the Court, the defendants in the main proceedings explained that they had sent letters to EM System setting out the legal basis and the grounds for the fund-freezing measure, following which EM System sent them requests for additional information to which they had replied giving reasons. Furthermore, the Ministry of Foreign Affairs of the Republic of Lithuania also submitted its observations on that measure. It would therefore appear that the defendants in the main proceedings complied with the obligation to state reasons, although that will be a matter for the referring court to ascertain.

109 It should be borne in mind, in the second place, that Article 19(1) TEU provides that Member States are to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law. In addition, Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article (judgments 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 100, and of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 73 and the case-law cited).

110 Furthermore, Article 7 of Regulation No 765/2006 provides that the Commission and Member States are to immediately inform each other of the measures taken under that regulation and are to supply each other with any other relevant information at their disposal in connection with the

regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

111 It follows that it is for the Member States to establish a procedure enabling legal persons, entities and bodies whose funds or economic resources have been frozen under Article 2(1) of Regulation No 765/2006, on the ground that those funds or economic resources were presumed to be held or controlled by a person included on the list in Annex I to that regulation, to challenge that measure and, where appropriate, to have it lifted, a procedure that should also be available to the person included on that list.

112 Such a presumption of holding or control will be consistent with the principle of good administration and the right to effective judicial protection only if it is rebuttable and if the legal person, entity or body concerned has been afforded the opportunity to overturn, where appropriate, that presumption by demonstrating that the person included on the list in Annex I to Regulation No 765/2006 does not actually hold or control its funds or economic resources, in particular in the light of the governance structure, the articles of association and the functioning in practice of the legal person, entity or body concerned, and the opportunity to secure, as a result, the unfreezing of its funds or economic resources. The person included on that list must also be given such an opportunity to overturn the presumption of holding or control.

113 In the present case, the relevant Lithuanian legislation was amended in 2022 in order to entrust the FNTT with the task of coordinating, supervising and ensuring the implementation of financial sanctions in Lithuania, in particular the restrictive measures provided for in Regulation No 765/2006.

114 At the hearing before the Court, the Lithuanian Government explained that the FNTT analyses the links between the persons and entities included on the list in Annex I to Regulation No 765/2006 and the persons and entities owned or controlled by those designated persons and entities, and draws up, on the basis of the criteria laid down in that regulation and the 2018 Best Practices document, a list of the legal persons and entities owned or controlled by a person included on that list. The Lithuanian Government stated that that list is drawn up and amended by the adoption of orders, which provide that the restrictive measures are also to apply to persons owned or controlled by the persons included on the list in Annex I to Regulation No 765/2006. It also made clear that an unsuccessful challenge to inclusion on the list drawn up by the FNTT and the ensuing freezing of funds opens up the possibility of bringing an action before the Lithuanian administrative courts.

115 It must be held that such a procedure provided for by Lithuanian law is appropriate for ensuring respect for the right to effective judicial protection and for the rights of defence of the persons concerned and is, therefore, consistent with the requirements flowing from Article 19(1) TEU.

116 It is, admittedly, apparent from the order for reference that such a procedure did not yet exist on 18 December 2020, when the defendants in the main proceedings froze EM System's funds. However, at the hearing before the Court, the defendants in the main proceedings explained that they had immediately informed the Ministry of Foreign Affairs of the Republic of Lithuania of the fund-freezing measure imposed on EM System and that, consequently, exchanges had taken place between the Ministry and EM System, in particular concerning EM System's objections to the merits of that measure. According to the defendants in the main proceedings, EM System, which, following those exchanges, was not satisfied with the outcome, had two options: (i) to bring an action before the administrative courts against the Ministry's refusal to lift the measure freezing EM System's funds, or (ii) to bring an action before the ordinary courts against the conduct of the defendants in the main proceedings. EM System chose the second option.

117 It follows that, at the material time in the main proceedings, there was at least one judicial remedy in Lithuania making it possible, in accordance with the requirements flowing from the principle of effective judicial protection, for a legal person, entity or body not included on the list in Annex I to Regulation No 765/2006, such as EM System, to challenge the measure freezing its funds, a measure taken by private entities pursuant to Article 2(1) of that regulation on the ground that those funds were controlled by a person included on that list, and to have that measure lifted by adducing evidence of the lack of such control.

118 It should be added, in that regard, that, at the hearing before the Court, the defendants in the main proceedings argued that, even if it were demonstrated to the requisite standard that EM System was not controlled by the listed shareholder, the measure freezing EM System's funds could not be lifted by the referring court. It is apparent from the request for a preliminary ruling that, by order of the Director of the FNTT of 14 October 2022, EM System was included on the list of persons controlled by a person included on the list in Annex I as amended, so that, under that order, its funds must, in any event, be frozen.

119 However, since EM System brought an action challenging that order before a Lithuanian court, it retains the possibility of securing, as the case may be, the annulment of that order and, consequently, of having the freezing measure lifted. Therefore, its right to effective judicial protection as guaranteed by Article 19(1) TEU would appear, on any view, to be ensured.

120 In the light of the foregoing, the answer to the second and third questions is that EU law must be interpreted as meaning that a company which is not included on the list in Annex I to Regulation No 765/2006, whose funds have been frozen by private entities pursuant to Article 2(1) of that regulation on the ground that those funds are presumed to be held or controlled by a person which is included on that list, must, in order to safeguard that company's right to effective judicial protection, be afforded the opportunity to challenge, in an action before the national authorities and subsequently, if necessary, before the national courts with jurisdiction, the measure freezing its funds, and to have that measure lifted if it demonstrates that those funds are not actually held or controlled by the person included on that list.

Costs

121 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. Article 2(1) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus, as amended by Council Regulation (EU) No 1014/2012 of 6 November 2012,

must be interpreted as meaning that assets deposited in the bank accounts of a company which is not included on the list in Annex I to Regulation No 765/2006 but in which a person included on that list has a 50% shareholding must be presumed to be funds held or controlled by that person and, therefore, must be frozen, within the meaning of that provision.

2. EU law must be interpreted as meaning that a company which is not included on the list in Annex I to Regulation No 765/2006, whose funds have been frozen by private entities pursuant to Article 2(1) of that regulation on the ground that those funds are presumed to be held or controlled by a person which is included on that list, must, in order to safeguard that company's right to effective judicial protection, be afforded the opportunity to challenge, in an action before the

national authorities and subsequently, if necessary, before the national courts with jurisdiction, the measure freezing its funds, and to have that measure lifted if it demonstrates that those funds are not actually held or controlled by the person included on that list.

[Signatures]

* Language of the case: Lithuanian.