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Judgment of the Court in Case C-84/24 | EM System

The assets of a company not included on the list of persons subject to sanctions may be frozen if it is controlled by a person included on that list

Control of a company and its funds and economic resources is presumed where the listed person has a 50% shareholding in that company

On 17 December 2020, the Council of the European Union included the Belarusian national A.V.S. on the list of natural persons subject to EU sanctions against Belarus, set out in Annex I to Regulation No 765/2006.¹ The following day, two Lithuanian banks froze the assets of the Lithuanian company EM SYSTEM on the ground that A.V.S. had a 50% shareholding in that company. EM SYSTEM brought an action before the Lithuanian courts seeking to have its assets unfrozen. After its action was dismissed, EM SYSTEM brought an appeal before the Supreme Court of Lithuania, which referred questions to the Court of Justice for a preliminary ruling concerning the possibility of freezing the funds of a legal person or entity not included on the list.

In its judgment, the Court of Justice holds, in the first place, that **the freezing of funds pursuant to Regulation No 765/2006 also covers the funds and economic resources of a company not included on the 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.** According to the Court, such an interpretation is necessary to achieve the objective pursued by the restrictive measures.

For the same reasons, the concepts of 'held' and 'controlled' must be interpreted broadly, taking into account 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. It is necessary, first, that the sanctions are applied to as wide a range of persons, groups or entities as possible in order to prevent them from being circumvented and, secondly, to ensure the surprise effect and the speed with which those measures are imposed. Thus, it is necessary to work with clear criteria and with certain presumptions regarding the internal decision-making structure of the legal persons, entities or bodies concerned in order to determine whether they are owned or controlled by a person or entity and, consequently, whether their funds and economic resources are also held or controlled by that person or entity. According to the Court, **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.**

The Court states, in the second place, that it is for the Member States to establish a procedure enabling not only the legal persons, entities and bodies not included on the list whose funds or economic resources have been frozen, on the ground that those funds or economic resources were presumed to be held or controlled by a person included on the list, but also that latter person, to challenge that freezing measure and, where appropriate, to have it lifted. **Such a presumption must be rebuttable** and the legal person, entity or body not included on the list as well as the person included on that list must be afforded the opportunity to overturn the presumption and to secure, as a result, the unfreezing of the funds or economic resources.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ See the list in Annex I to [Council Regulation \(EC\) No 765/2006](#) of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, 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.