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Judgment of the Court in Case C-465/24 | SBK Art

Restrictive measures in respect of Russia: the freezing of funds prevents, absolutely and unconditionally, the holder of a depositary receipt from attending a general meeting of shareholders and from voting in that meeting

In 2022, the European Union adopted restrictive measures against the Russian bank Sberbank. That decision is part of the sanctions imposed on Russia because of its war of aggression in Ukraine. ¹ As SBK Art is an indirect subsidiary of Sberbank, its funds were also frozen in accordance with EU law. ^{2 3}

STAK, an entity governed by Netherlands law, keeps and manages the shares in Fortenova GroupTopCo. ⁴ On that basis, STAK issues depositary receipts in respect of Fortenova TopCo and pays dividends to the holders of those instruments. The holders of those depositary receipts include SBK Art, which holds 41.82% of them. ⁵ When STAK's board of directors convened the holders of depositary receipts to a general meeting of shareholders, scheduled for 18 August 2022 in Amsterdam (Netherlands), it announced that holders subject to sanctions would be deprived of the rights attached to those instruments and, in particular, their right to vote in the meeting. On the day of the meeting, SBK Art nevertheless attempted to exercise its voting rights both physically and electronically, but was denied access to the meeting and to the electronic voting system. Due to a lack of quorum, a new meeting was convened for 30 August 2022.

STAK's board of directors again announced that the votes of persons subject to restrictive measures would not be recognised. In the meantime, SBK Art filed an application for interim measures seeking an order requiring STAK to allow, during the period up to 31 December 2022, its participation in any meeting and the exercise of the voting rights attached to its depositary receipts. In a ruling dated 6 September 2022, the judge hearing applications for interim measures of the Amsterdam District Court granted that application. As a result, a third meeting, which had been convened for 8 September 2022, was cancelled. However, on 29 December 2022, the Amsterdam Court of Appeal set aside the decision of the judge hearing applications for interim measures. SBK Art brought an appeal on a point of law against the decision of the Court of Appeal before the Supreme Court of the Netherlands. That court asked the Court of Justice to interpret EU law in relation to the concept of 'freezing of funds'.

In its judgment, the Court rules that **the freezing of funds** ⁶ **prevents, absolutely and unconditionally, a holder of depositary receipts**, or a person or entity associated with him, her or it, **from attending a general meeting of shareholders and from voting** in that meeting.

The Court justified its decision by explaining that **certificates representing securities constitute funds. The exercise of the rights** to attend, and vote in, a meeting of the holders of those certificates **conferred by such certificates constitutes** an act of use of those certificates which, as such, must be classified as '**use of funds**'. Furthermore, **the exercise of those rights entails**, even if only indirectly, one or **more consequences for the funds**, such ⁷ as a change in their volume, amount, location, ownership, possession, character or destination. Indeed, **exercising those rights leads to the adoption**, by the meeting of holders of those instruments, **of decisions which necessarily affect the state and functioning of the company** and, consequently, at least indirectly, its value and, therefore, the estimated value of the shares or depositary receipts held by the person subject to sanctions.

Any interpretation that is less strict would hinder the objective of ensuring that the freezing of funds has the effect of **limiting as far as possible the transactions that can be carried out with frozen funds.**

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 EU law or the validity of an EU 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, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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

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¹ Council [Implementing Regulation \(EU\) 2022/1270](#) of 21 July 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

² Pursuant to Article 2(1) of Council [Regulation \(EU\) No 269/2014](#) of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended by Council Implementing Regulation (EU) 2022/1354 of 4 August 2022.

³ According to the Supreme Court of the Netherlands, which referred the matter to the Court for a preliminary ruling.

⁴ Fortenova GroupTopCo is an indirect shareholder of Fortenova Grupa d.d., a company incorporated under Croatian law, active in the retail, food production and agriculture sectors.

⁵ Open Pass and VTB Bank (Europe) hold 27.52% and 7.27% of those depositary receipts, respectively.

⁶ Within the meaning of Article 1(f) of Regulation No 269/2014.

⁷ See, in that regard, Article 1(f) of Regulation No 269/2014.