Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 25 September 2025[1]

Case C-465/24

SBK Art Limited Liability Company
v
Fortenova Group STAK Stichting,
Open Pass Limited

(Request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands))

(Reference for a preliminary ruling – Common foreign and security policy – Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Regulation (EU) No 269/2014 – Article 1(f) – Concept of 'freezing of funds' – Exercise of the rights to attend meetings and the voting rights attached to share certificates held by a person subject to restrictive measures)

I. Introduction

1. Where the Council of the European Union imposes restrictive measures involving the freezing of funds, can the person whose funds have been frozen still exercise voting rights and rights of participation at meetings of depository receipt holders, where he or she holds such depository receipts?

2. To answer that question, the Court of Justice will have to interpret, in the present case, 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,[2] as amended by Council Implementing Regulation (EU) 2024/1493 of 27 May 2024,[3] which, like many other regulations concerning other conflicts or threats, introduced an asset freeze in respect of certain natural or legal persons.

3. I will propose that the Court should interpret the freezing of funds, when it concerns depository receipts, as entailing the freezing of voting rights and rights of participation at meetings.

1 Original language: French.

2 OJ 2014 L 78, p. 6.

3 OJ L, 2024/1493 ('Regulation No 269/2014').

II. European Union law

4. Recital 2 of Council Decision (CFSP) 2024/1843 of 28 June 2024 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [4] states:

'In its conclusions of 21 and 22 March 2024, the European Council reaffirmed the [European] Union's steadfast support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders and recognised Ukraine's inherent right of self-defence against the Russian aggression. The European Council also called for further steps to weaken Russia's ability to continue waging its war of aggression, including by strengthening the sanctions.'

5. Article 1 of Regulation No 269/2014 reads as follows:

'For the purposes of this Regulation, the following definitions apply:

…

(d) "economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

(e) "freezing of economic resources" means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(f) "freezing of funds" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management;

(g) "funds" means financial assets and benefits of every kind, including, but not limited to:

…

(iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(iv) interest, dividends or other income on value accruing from or generated by assets;

…'

6. Article 2 of that regulation provides that:

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

[4] OJ L, 2024/1843.

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

7. Article 7(2)(b) of that regulation states:

'Article 2(2) shall not apply to the addition to frozen accounts of:

…

(b) payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 2 has been included in Annex I …'

8. The first paragraph of Article 9 of that regulation provides:

'It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2.'

9. Article 10(1) of Regulation No 269/2014 provides:

'The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.'

10. Article 14(4) of that regulation provides:

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

11. Article 15(1) of that regulation is worded as follows:

'Member States shall lay down the rules on penalties, including as appropriate criminal penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall also provide for appropriate measures of confiscation of the proceeds of such infringements.'

III. The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

12. In 2018, a Croatian group active in the retail, food production and agricultural sectors underwent restructuring after running into financial difficulties. Following this, a holding company, Fortenova Group STAK Stichting ('STAK'), was established in the Netherlands. STAK holds in trust the shares of another company, Fortenova GroupTopCo BV, for which it exercises voting rights and has issued depository receipts. Fortenova GroupTopCo BV indirectly owns the food company that underwent restructuring.

13. The holders of the depository receipts issued by STAK include SBK Art LLC ('SBK'), which has a 41.82% stake, and VTB Bank (Europe) SE, which has a 7.27% stake. Both companies are subject to restrictive measures under Regulation No 269/2014.

14. The Board of Directors of STAK convened the depository receipt holders to a meeting of depository receipt holders ('the meeting'). The meeting was to be held on 18 August 2022. Its agenda included a proposed change to the corporate governance, inter alia by increasing the quorum to 70% of the depository receipts, while allowing an exception whereby there would be no quorum in the event that at least 35% of the depository receipts were held by sanctioned parties. The Board of Directors explained that sanctioned depository receipt holders forfeited the rights attached to those depository receipts, including the voting rights, and that the corresponding voting rights would be ignored.

15. SBK, which requested that its voting rights be taken into account for the resolutions on corporate governance, brought the matter before the voorzieningenrechter (judge hearing applications for interim measures) at the rechtbank Amsterdam (District Court, Amsterdam, Netherlands). On 6 September 2022, the rechtbank Amsterdam (District Court, Amsterdam) granted that request, finding that the vote on corporate governance did not undermine the objective of the sanctions, since it was unlikely to result in any funds or resources flowing to Russia.

16. On 29 December 2022, the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands) set aside that judgment and dismissed SBK's claims on the grounds that both the European Commission's guidelines and the guidelines of the competent authority of the Netherlands stated that shareholders whose shares are frozen may no longer exercise their voting rights. That court added that that interpretation was consistent with the principle that sanctions must have the maximum impact and be clear and foreseeable. It concluded that STAK's refusal to admit SBK to the meetings and to allow it to exercise its voting rights was consistent with its obligation to comply with the sanctions regime.

17. The Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which is the referring court, recalls that the concept of 'freezing of funds', and in particular of depository receipts, defined in Article 1(f) of Regulation No 269/2014, must be given a uniform and autonomous interpretation. It notes that there are arguments in favour of a broad interpretation of that concept, entailing a prohibition on the exercise of the rights of participation at meetings and the voting rights attached to depository receipts. Thus, efforts must be made to maximise the impact of the sanction measures, in accordance with the best practices of the European Union and the position taken by the Commission in its frequently asked questions, even though the latter are not binding. However, the referring court notes that there are also arguments that support the opposite interpretation, since the inconvenience caused by the sanction measures must not be disproportionate to the objectives pursued. In that case, it is important to take into account the nature and content of the resolution placed on the agenda, the voting intention of the holder of the frozen depository receipts and the implications of that resolution for those depository receipts. That interpretation could be based on one of the answers provided by the Commission in its frequently asked questions, since it states that sanctioned persons are prohibited from exercising voting rights which could lead to any change in relation to those shares (that is to say, in their volume, amount, location, ownership, possession, character or destination, for example) and that it is necessary to prevent those rights from being used to obtain funds, goods or services in any way.

18. In those circumstances, considering that reasonable doubt exists as to the interpretation to be given, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In the case of depository receipts belonging to, owned, held or controlled by natural persons included in Annex I to Regulation [No]269/2014, or natural or legal persons, entities or bodies associated with them, should the freezing of funds within the meaning of Article 1(f) of Regulation [No]269/2014 be interpreted as meaning that the rights to attend meetings and voting rights attached to depository receipts cannot be exercised, at least in so far as this does not result in disproportionate prejudice to the depository receipt holder concerned?

(2) In a specific case, also taking into account the nature and content of the resolution placed on the agenda and the standpoint of the depository receipt holder concerned in respect thereof, does it make any difference to the answer to [the first] question … if the exercising of the rights to attend meetings and voting rights could lead to any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management, within the meaning of Article 1(f) of Regulation [No]269/2014?'

19. SBK, STAK, the Netherlands, Croatian and Austrian Governments and the Commission have lodged written observations. The parties and interested parties, with the exception of the Austrian Government, presented oral argument at the hearing held on 11 June 2025.

IV. Analysis

20. The two questions referred by the referring court may be dealt with together, since the Court is actually being asked whether the freezing of funds, as defined in Article 1(f) of Regulation No 269/2014, entails, with regard to depository receipts belonging to a legal person subject to such a measure under Article 2(1) thereof, a prohibition on the exercise of voting rights and rights of participation at meetings and, where applicable, whether that prohibition is absolute or must take into account the nature of the resolutions put to the vote.

21. In the present case, the inclusion of SBK on the list of sanctioned persons and the fact that its depository receipts are frozen are not in dispute. In that regard, I should point out that depository receipts are equivalent to shares and that, as such, they constitute funds according to the definition in Article 1(g)(iii) of Regulation No 269/2014, which mentions shares and certificates representing securities. By contrast, the extent to which freezing those depository receipts affects the associated voting rights and rights of participation at meetings is up for discussion.

22. Since the freezing of funds is a concept of EU law, defined, inter alia, in Article 1(f) of Regulation No 269/2014, it must be given a uniform and autonomous interpretation. In that regard, according to 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, the objectives pursued by the rules of which it is part and, where appropriate, its origins. [5]

[5] See judgments of 17 November 1983, *Merck* (292/82, EU:C:1983:335, paragraph 12); of 18 October 2022, *IG Metall and ver.di* (C-677/20, EU:C:2022:800, paragraph 31); and of 4 October 2024, *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky* (C-406/22, EU:C:2024:841, paragraph 65).

23. Although there are slight differences between the language versions of Regulation No 269/2014, they do not seem sufficient to call into question the comprehension and interpretation of the text of that regulation.

24. In effect, the interpretation is sought of a provision that actually exists in all legal instruments containing restrictive measures enacted by the Council. Each regulation contains a definition of the freezing of funds; an examination of how the wording of that definition has evolved over time provides valuable clues as to its interpretation.

25. Thus, in the original version from 2001, used in 11 regulations until 2011,[6] the freezing of funds means, in essence, the prevention of any move, transfer, alteration, *use of or dealing with funds* in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

26. However, in four other regulations adopted between 2008 and 2014,[7] the wording used corresponds, in essence, to that for which an interpretation is requested from the Court, namely preventing any move, transfer, alteration, *use of, access to, or dealing with funds* in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

27. Lastly, in two regulations from 2012 and 2016,[8] the Council essentially used the following definition: any action aimed at preventing any move, transfer, alteration, *use of, access to, or dealing with funds* in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

[6] See Article 1(2) of 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); Article 1(3) of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9); Article 1(4) of Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 (OJ 2003 L 169, p. 6); Article 1(c) of Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2004 L 55, p. 1); Article 1(3) of Council Regulation (EC) No 560/2005 of 12 April 2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2005 L 95, p. 1); Article 1(3) of Council Regulation (EC) No 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2005 L 193, p. 1); Article 1(2) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2006 L 134, p. 1); Article 1(h) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1); Article 1(i) of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1); Article 1(b) of Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 1); and Article 1(b) of Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 4).

[7] See Article 1(f) of Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 (OJ 2008 L 66, p. 1); Article 1(1)(a) of Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation No 881/2002 (OJ 2009 L 346, p. 42); Article 1(i) of Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1); and Article 1(f) of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1).

[8] See Article 1(k) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1), as well as Article 1(b) of Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation No 204/2011 (OJ 2016 L 12, p. 1).

28. It should be noted that, in all of these texts, the only substantial differences relate to the expressions 'use of or dealing with funds' and 'use of, access to, or dealing with funds'. Within them, only the word 'access' has been added and the conjunction 'or' has been moved or added.

29. I would add that an examination of the English-language version of the regulations cited in footnotes 6, 7 and 8 to this Opinion shows that the expression 'access to' is found in the definition of the freezing of funds of all but three of those regulations.[9] Thus, in a number of those regulations, the expression 'access to' has not been translated into French. In addition, the French-language version of Regulation 2016/44 contains the phrase 'modification, utilisation ou manipulation de fonds ou tout accès', whereas the English-language version reads 'alteration or use of, access to, or dealing with funds'.

30. It is clear to me, therefore, that the second part of the definition of 'freezing of funds', which lists the changes resulting from transactions with the funds to be frozen, applies to all of those transactions and not simply to access to and dealing with the funds. The grammatical and linguistic imperfections appear to stem from the urgency with which those sanction measures are imposed, so as to retain the element of surprise for the persons targeted.

31. The wording of that definition thus allows a distinction to be made between, on the one hand, certain transactions that must be prevented (move, transfer, alteration, use of, access to, or dealing with funds), and, on the other hand, the consequences for the funds as a result of those transactions (change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management).

32. The freezing of funds therefore means preventing any transaction that has an impact on the funds. Those two conditions ensure that the freezing relates to transactions affecting the frozen funds.

33. The Court has held that the concept of 'freezing of funds', in one of its versions,[10] is defined very broadly[11] and should be interpreted broadly[12] since 'it is apparent from that definition that the purpose of freezing funds is to limit as much as possible the transactions that may be carried out with frozen funds, as demonstrated by the large number of situations referred to and the use of the word "any". As for the means of attaining the limitation of those transactions, those are also defined in broad terms by the EU legislature.'[13]

34. As for the objectives of Regulation No 269/2014, I agree with the Commission that they also justify a broad interpretation of the concept of 'freezing of funds'.

9 Namely Regulations No 2580/2001, No 881/2002 and No 1210/2003.

10 Namely Regulation No 423/2007.

11 See judgment of 11 November 2021, *Bank Sepah* (C-340/20, EU:C:2021:903, paragraph 45).

12 See judgment of 11 November 2021, *Bank Sepah* (C-340/20, EU:C:2021:903, paragraph 56).

13 Judgment of 11 November 2021, *Bank Sepah* (C-340/20, EU:C:2021:903, paragraph 43).

35. First, recital 2 of Decision 2024/1843 states that restrictive measures are taken to weaken Russia's ability to continue waging its war of aggression, including by strengthening the sanctions. In addition, according to the case-law, the objective of the restrictive measures pursued is to increase pressure on the Russian Federation and the costs of its actions to undermine Ukraine's territorial integrity, sovereignty and independence. [14]

36. Second, the Court has further held that, to achieve the aims pursued by the restrictive measures, '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'. [15]

37. The difficulty in the present case is that different rights are attached to depository receipts, just as they are to shares. Those rights can be grouped into two categories: financial rights (right to dividends, pre-emptive subscription rights in the event of a capital increase), and rights related to corporate decisions (right to vote, right to participate at meetings, [16] right to information on the accounts).

38. Should all of those rights be frozen in the same way as the depository receipt that confers those rights? Or are those rights frozen only if they meet the two conditions referred to in point 32 of this Opinion? If both of those conditions are to be met, should this be in general (for example, can the right to vote have an impact on the funds?) or on a case-by-case basis depending on the impact it has (does the vote on a particular resolution have an impact on the funds?), which corresponds to the position of SBK? Alternatively, should the same rights be considered as economic resources separate from the depository receipt itself, the freezing of which is defined in Article 1(e) of Regulation No 269/2014?

A. First hypothesis: freezing of voting rights based on the case-by-case analysis of the impact of resolutions

39. SBK argues that the freezing should apply not to depository receipts and all related rights, nor by category of related rights, but within each category of related rights. Thus, for voting rights in particular, the two conditions mentioned in point 32 of this Opinion must be met, which involves a case-by-case analysis of each resolution according to whether it will affect the company's valuation.

40. In support of its argument, SBK claims that, under the guise of freezing its voting rights and rights of participation at meetings owing to the freezing of its depository receipts, an attempt has been made to take hostile and permanent control of STAK by smaller shareholders, who also obtain a right of veto if the changes to corporate governance are approved. Consequently, it considers that freezing its voting rights would affect its funds to a greater extent than what is allowed, according to the case-law, [17] by the restrictive measures, which must be limited in time and reversible.

[14] See judgments of 25 June 2020, *VTB Bank* v *Council* (C-729/18 P, EU:C:2020:499, paragraph 59), and of 15 November 2023, *OT* v *Council* (T-193/22, EU:T:2023:716, paragraph 49 and the case-law cited).

[15] Judgment of 11 November 2021, *Bank Sepah* (C-340/20, EU:C:2021:903, paragraph 56).

[16] The right of participation at meetings includes the right to ask questions, the right to request the inclusion of items on the agenda, the right to attend the meeting either in person or remotely, and the right to be included in the quorum.

[17] See judgment of 6 September 2023, *Pumpyanskiy* v *Council* (T-270/22, EU:T:2023:490, paragraph 81), decision under appeal (see the judgment in *Pumpyanskiy* v *Council* (C-696/23 P), currently pending).

41. However, none of the arguments put forward by SBK are likely to call into question the broad interpretation of the freezing of funds as entailing the freezing of voting rights and rights of participation at meetings in general, rather than on a resolution-by-resolution basis.

42. First, as regards the disproportionate nature of the adverse effects of restrictive measures, while noting that, with regard to judicial review of compliance with the principle of proportionality, the legality of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue, the Court recalled that restrictive measures, by definition, entail adverse effects, in particular for the entities subject to them. The Court held that the objective of maintaining peace and international security, in accordance with the objectives of the European Union's external action set out in Article 21 TEU, is such as to justify adverse consequences. [18]

43. In the present case, the freezing of voting rights and rights of participation at meetings, including when the resolutions do not entail, a priori, any financial changes, does not seem manifestly inappropriate for achieving the objective of increasing pressure on the Russian Federation and the costs of its actions to undermine Ukraine's territorial integrity, sovereignty and independence. [19] I would add that, in practice, any decision of the meeting has an impact on the company and its value, which SBK acknowledges when it states that changes in the methods of calculating the majority and quorum will adversely affect the value of its shares.

44. In addition, a restrictive measure, although it must be limited in time [20] and reversible – which is the case for the temporary freezing of voting rights and rights of participation at meetings – offers no guarantee that the value of the frozen funds will remain the same while the business is experiencing a period of uncertainty (bankruptcy proceedings, economic crisis affecting the value of the company) or, conversely, a period of growth. Thus, contrary to the Commission's claim, I consider that the temporary and reversible aspect of the measure concerns the freezing of the funds itself and not the value of the frozen funds, which may be affected by a host of external factors, such as an economic crisis, or internal factors, such as decisions relating to corporate governance or strategy.

45. Lastly, four additional arguments undermine, in my view, the case for freezing voting and participation rights according to the content of each resolution.

46. In the first place, since voting rights are exercised freely, there is no guarantee that the person subject to the restrictive measures will vote in the way that they said they would.

47. In the second place, directors of companies where certain shareholders are subject to restrictive measures will incur excessive liability when analysing the direct or indirect financial implications of the proposed resolutions. Regulation No 269/2014 provides for no liability in the event of the freezing of funds in good faith; [21] on the contrary, it prohibits the circumventing of measures related to the freezing of funds, [22] which is subject to the penalties provided for by the

[18] See judgment of 13 March 2025, *PKK* v *Council* (C-44/23 P, EU:C:2025:181, paragraphs 134 to 136 and the case-law cited).

[19] See point 35 of this Opinion.

[20] See Article 14(4) of Regulation No 269/2014.

[21] See Article 10(1) of Regulation No 269/2014.

[22] See Article 9(1) of Regulation No 269/2014.

Member States.[23] Moreover, each director may have a different interpretation of the resolutions that may or may not be voted on, which undermines the effectiveness of the penalty throughout the entire territory of the European Union.

48. In the third place, however, the risk of litigation generated by tabling a resolution where voting would be contested may allow resolutions to be voted for that ought not to have been.

49. That outcome is contrary to the means adopted for the implementation of the restrictive measures, namely a principle of freezing funds set out in Article 2 of Regulation No 269/2014 and the exceptions listed in Articles 2a and 4 to 7 of that regulation, which may result in the release of funds either directly for certain categories of rights, or with the agreement of the competent authority of the Member State for other categories of rights. Thus, if SBK considers that it meets the conditions of one of those exceptions, it may request the release of the voting rights from the competent authority.

50. In the fourth place, I consider that, in the present case, not changing the majority and quorum rules disproportionately affects the rights of other shareholders who represent more than the majority of the capital, because the majority rules that SBK seeks to maintain are set by taking all depository receipts into account.[24]

B. Second hypothesis: freezing by category of rights related to each depository receipt

51. Another way to consider the freezing of rights related to a depository receipt or a share would be to distinguish them according to their category, so as to limit the adverse effects of freezing such rights.

52. First, a distinction would have to be made according to whether the categories of rights are of a financial or non-financial nature. However, I am not convinced by that distinction, since it cannot be denied that voting rights, which are rights of a non-financial nature, may confer entitlement to funds (for example, voting for a resolution may lead to a dividend payout).

53. Second, a distinction between rights entailing a transaction by a shareholder subject to restrictive measures and other rights could also be considered, with only 'active' rights being frozen, provided they have an impact on the funds.

54. 'Passive' rights could include the right to information on the accounts, the consequences of bankruptcy proceedings where the share capital is reduced to zero and new shareholders are brought in, or the allocation of dividends and pre-emptive subscription rights approved by a general meeting which the sanctioned person did not participate in, provided they are frozen immediately. Thus, a pre-emptive subscription right may be allocated to all shareholders, who may choose whether or not to exercise it. However, it may not be exercised by shareholders subject to restrictive measures since, although they received it passively because other shareholders voted for it, exercising it requires a transaction on their part that will have an impact on the volume of funds.

[23] See Article 15(1) of Regulation No 269/2014.

[24] See points 55 and 56 of this Opinion.

55. Yet that distinction between 'active' and 'passive' rights conflicts with the right to participate at meetings, whether in the form of physical attendance or the mere inclusion of depository receipts when calculating the quorum for resolutions. Although physical attendance at a meeting could still be considered to fall into the category of 'active' rights, owing to the influence and pressure exerted by the mere presence of a shareholder subject to restrictive measures, including his or her shares when calculating the quorum for meetings would prevent the company in question from doing any business where the quorum is calculated on the basis of the total number of shares issued, as in the present case.

56. Taking into account the 41.82% of depository receipts issued by STAK and held by SBK, no decision would be able to be taken since, in the original version of STAK's articles of association, majorities are expressed as a percentage (50%, 60% or 66.7%) of all depository receipts issued and outstanding with voting rights. A priori, the reference to voting rights in the articles of association is intended to exclude from the quorum calculation any depository receipts that were originally issued without voting rights, and not those subject to a freezing measure.

57. Similarly, Regulation No 269/2014 expressly provides that the payment of dividends, even where the sanctioned person did not take part in the vote, is considered an exception to the prohibition on making funds or resources available to that person, and not as the simple application of the two conditions provided for in the definition of the freezing of funds referred to in point 32 of this Opinion. [25]

58. Therefore, that distinction between 'active' and 'passive' rights, which arises from the two conditions provided for in the definition of the freezing of funds, as attractive as it is, is also no longer relevant.

C. Third hypothesis: the freezing of all rights attached to depository receipts

59. The final hypothesis of freezing all rights attached to depository receipts has several merits. It ensures the uniform application of the concept of freezing shares or securities, such as depository receipts. It also simplifies the application of the freezing measure, maintains the element of surprise necessary for such a measure to be effective, and avoids any risk of circumvention.

60. Depository receipts essentially have a financial value since they represent a portion of the share capital which in turn has a value. Yet they are also eligible for a share of the profits, in the form of dividends, for example. However, the voting rights and rights of participation at meetings attached to those depository receipts allow the company's performance to be influenced with a view to increasing its profits.

61. Although I questioned whether that interpretation went beyond the definition of the freezing of funds and the two conditions laid down by Regulation No 269/2014 (a transaction affecting the funds), I ultimately came to the conclusion that the intention of the EU legislature, which included those two conditions in the definition of the freezing of funds, was clearly to allow the broadest possible interpretation of that concept. The example of the dividend payout, which is only possible as an exception to the freezing measure, supports that conclusion. [26]

[25] See Article 7(2)(b) of Regulation No 269/2014.

[26] See point 57 of this Opinion.

62. Such a broad interpretation is reinforced by the clarity of the Commission's position on the freezing of voting rights in the consolidated version of the frequently asked questions, which it makes available to Member States, competent national authorities and the public. [27]

63. The fact that voting rights themselves have an inherent value and 'are reflected in the price that has to be paid at the acquisition of the shares' [28] means that they qualify for the definition of 'economic resources' set out in Article 1(d) of Regulation No 269/2014. However, apart from the fact that it has no bearing on the answer to be given to the referring court, I consider that the share or depository receipt and the rights attached thereto should be treated in the same way.

64. In conclusion, I consider that the freezing of funds must be interpreted broadly and that it therefore entails the freezing of voting rights and the rights of participation at meetings. The exceptions to that freezing principle are provided for in Articles 2a and 4 to 7 of Regulation No 269/2014, either directly for certain categories of rights (dividends, for example), or by decision of the competent authority of the Member State for other categories of rights. The competent authority must decide on a case-by-case basis. As a consequence, a company's directors are not entitled to decide whether or not to freeze voting rights and rights of participation.

V. Conclusion

65. In the light of all the foregoing considerations, I propose that the Court answer the questions referred by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) as follows:

Article 1(f) 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) 2024/1493 of 27 May 2024, read in conjunction with Article 2(1) of that regulation,

must be interpreted as meaning that the freezing of funds, in so far as it concerns depository receipts, means the freezing of voting rights and the rights of participation, in any form whatsoever, at meetings of depository receipt holders. The only exceptions to that freezing measure are provided for in Articles 2a and 4 to 7 of that regulation; the implementation of some of those exceptions requires the permission of the competent authority of the Member State.

[27] Consolidated FAQs on the implementation of Council Regulation No 833/2014, Council Regulation No 269/2014, Council Regulation (EU) No 692/2014 and Council Regulation (EU) 2022/263, available in English at https://finance.ec.europa.eu/publications/consolidated-version_en. See, in particular, Part B.1, entitled 'Asset freeze and prohibition to make funds and economic resources available', question 15 (p. 33).

[28] See recital 3 of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ 2007 L 184, p. 17).