DECISION

Case Number
S 1/2026/1361

Date of issue
4.11.2026

Decision number
1059 0422

UNOFFICIAL TRANSLATION

APPELLANT	Ministry for Foreign Affairs
RESPONDENTS	EuroChem Group AG EuroChem Terminal Sillamäe OÜ
MATTER	Enforcement appeal

DECISION UNDER APPEAL

Decision of the Helsinki Court of Appeal of 31 January 2025, No. 83

APPEAL BEFORE THE SUPREME COURT

This matter, S 1/2026/1361, was previously considered by the Supreme Court under case number S2025/144.

The Ministry for Foreign Affairs was granted leave to appeal pursuant to Chapter 30, section 3(2)(2) of the Code of Judicial Procedure, limited to the question of what significance the protective measures introduced within the EuroChem Group have when assessing the conditions for attachment of the assets located in Finland referred to in the decision of the Court of Appeal. The question of granting leave to appeal in other respects was deferred for determination in connection with consideration of the appeal.

In its appeal, the Ministry for Foreign Affairs requested that the decision of the Court of Appeal be set aside.

In their response, EuroChem Terminal Sillamäe Oü and EuroChem Group AG requested that the appeal of the Ministry for Foreign Affairs be dismissed and that the Ministry be ordered to reimburse EuroChem Terminal Sillamäe OÜ and EuroChem Group AG for their legal costs, with interest.

INTERLOCUTORY MEASURE

The District Bailiff submitted the requested statement.

Decision concerning leave to appeal

Leave to appeal is not granted insofar as the question of granting leave was deferred for determination in connection with consideration of the appeal.

Procedural decisions

New material before the Supreme Court

EuroChem Terminal Sillamäe OÜ and EuroChem Group AG requested permission to submit before the Supreme Court, as new documentary evidence, an audit report dated 22 July 2025 and, as other procedural material, statements by foreign sanctions authorities dated 26 September 2024, 29 October 2024 and 4 September 2025.

The Ministry for Foreign Affairs objected to the admission of the new material.

The Supreme Court notes that, with the exception of the statement dated 26 September 2024, the documents were prepared after the main hearing before the Court of Appeal or only after the Court of Appeal had issued its decision in the matter. The statement dated 26 September 2024 was prepared immediately before the main hearing before the Court of Appeal. The new material does not extend the proceedings to new issues and may be relevant to the determination of the matter.

The Supreme Court considers that EuroChem Terminal Sillamäe OÜ and EuroChem Group AG have grounds within the meaning of Chapter 30, sections 7(1) and 12 of the Code of Judicial Procedure for relying on the new material and permits its submission before the Supreme Court.

Examination of the argument raised in the response

The Ministry for Foreign Affairs was granted leave to appeal pursuant to Chapter 30, section 3(2)(2) of the Code of Judicial Procedure, limited to the question of what significance the protective measures introduced within the Group have when assessing the conditions for attachment of the assets located in Finland referred to in the decision of the Court of Appeal.

In their responses, EuroChem Terminal Sillamäe OÜ and EuroChem Group AG argued that the Supreme Court should examine the question of the exercise of control over the companies before assessing the significance of the protective measures introduced in the companies.

Under Chapter 30, section 3(2)(2) of the Code of Judicial Procedure, leave to appeal may be limited to an issue whose determination is necessary for guiding legal practice or otherwise in view of the grounds for leave to appeal. Subsection 3 provides that, where leave to appeal is granted with the limitation referred to in subsection 2(2), the Supreme Court may, in other respects, base its decision on the facts established in the decision under appeal. In KKO 2025:94, the Supreme Court held that

this means that the respondent to an appeal does not have an absolute right to have the Supreme Court determine an allegation that a fact forming the basis of the decision under appeal, which is not covered by the issue for which leave to appeal was granted, is incorrect.

As stated above, the question of control over the companies was examined as an enforcement appeal first by the District Court and subsequently on appeal by the Court of Appeal. The Supreme Court considers that the right of EuroChem Terminal Sillamäe OÜ and EuroChem Group AG to a fair trial, or the other circumstances relied upon, do not require the matter to be examined by the Supreme Court beyond the issue for which leave to appeal was granted.

On these grounds, the Supreme Court does not examine the submissions made by EuroChem Terminal Sillamäe OÜ and EuroChem Group AG in their response insofar as the companies have argued that Andrey Melnichenko does not exercise control over them.

Reasons for the decision on the merits

Background

1. Under Article 2(1) of Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (the Sanctions Regulation), all funds and economic resources belonging to, or owned, held or controlled by, the persons listed in Annex I to the Regulation shall be frozen.

2. Andrey Melnichenko was added to the list annexed to that Regulation by Council Implementing Regulation (EU) 2022/396 of 9 March 2022.

3. On 10 March 2022, the Ministry for Foreign Affairs submitted to the National Enforcement Authority Finland an application pursuant to section 2b of the Act on the Fulfilment of Certain Obligations of Finland as a Member of the United Nations and of the European Union, requesting enforcement of the Sanctions Regulation and its amendments.

4. By decisions of 13 May 2022 and 1 July 2022, the Enforcement Officer implemented the freezing of funds required under the Sanctions Regulation, inter alia by attaching movable property of EuroChem Terminal Sillamäe OÜ stored in Finland and a receivable of EuroChem Group AG from a Finnish debtor, because those companies were directly or indirectly owned and controlled by Andrey Melnichenko.

5. In their enforcement appeals, the companies requested that the attachment decisions be set aside. The District Court found it established that the companies and their assets were under Andrey Melnichenko's control. According to the District Court, the evidence presented was insufficient to establish that objectively

verifiable protective measures had been implemented in the companies which would remove Melnichenko's control over the companies' assets. The District Court dismissed the enforcement appeals.

6. The Court of Appeal found that there were justified grounds to suspect that Andrey Melnichenko exercised control over the companies, and therefore the companies' assets should, in principle, be frozen. However, after allowing the companies to submit new evidence, the Court of Appeal found it established that, due to the protective measures introduced in the companies, the conditions for freezing measures were not met. The Court of Appeal set aside the attachment decisions.

Issue before the Supreme Court

7. The issue before the Supreme Court is the significance, in assessing the conditions for freezing the companies' assets located in Finland, of the protective measures used by the companies, that is, measures intended to prevent the sanctioned person Andrey Melnichenko from exercising actual control over the companies' assets.

Protective measures and their significance in general

8. Under Article 2(1) of the Sanctions Regulation, all funds owned or controlled by persons listed in Annex I to the Regulation, that is, on the sanctions list, must be frozen. According to the case-law of the Court of Justice of the European Union, this means, inter alia, that where a listed person controls a company, the company's assets are, as a starting point, presumed also to be under that person's control, in which case the company's assets must be frozen irrespective of whether the company itself is listed. It must, however, be possible to rebut that presumption by showing that the person listed in the annex to the Regulation has not in fact controlled the funds or economic resources of the unlisted company, taking particular account of the company's governance structure, rules and the actual circumstances of its operations. (See the judgment of the Court of Justice of 12 March 2026 in EM System, C-84/24, EU:C:2026:181, concerning the interpretation of Article 2(1) of Council Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, which is substantively equivalent to Article 2(1) of the Sanctions Regulation.)

9. Furthermore, Article 6b(5d), added to the Sanctions Regulation by Council Regulation (EU) 2023/1215 amending it, expressly indicates that so-called firewalls may be relevant when assessing whether the assets of a company controlled by a listed person are under that person's control. Under that provision, the competent authorities of a Member State may authorise, inter alia, the release of frozen funds to a listed person where it can be established that this is strictly necessary for the setting-up, certification or evaluation of a firewall which removes the control by the listed person over the

assets of a non-listed legal person, entity or body controlled by that person and ensures that no further funds or economic resources accrue to the listed person. According to the recitals of the amending Regulation, the purpose of such a derogation is to enable the entity concerned to continue its business operations. However, neither the Sanctions Regulation nor other EU legislation lays down more detailed rules on such firewalls or on the assessment of their effectiveness.

10. The EU institutions have, however, issued recommendations and guidance on the interpretation of sanctions provisions, including guidance concerning protective measures of this kind. As the Supreme Court has stated in its case-law, such interpretative guidance is not binding on the Court, but may be taken into account in a matter concerning enforcement of the Sanctions Regulation when assessing whether the conditions for sanctions are met (KKO 2025:30, paragraph 30).

11. According to the Commission's opinion of 19 June 2020 concerning Article 2 of the Sanctions Regulation, an entity may have a freezing measure concerning its assets lifted in whole or in part by demonstrating that the assets are not in fact under the control of the listed person, for example because safeguards have been put in place that prevent the listed person from disposing of the assets. Administrative questions concerning such safeguards are assessed in accordance with national rules.

12. The Commission has issued separate guidance on the establishment of protective measures, or a firewall (Commission updated guidance of 29 November 2023 on implementing firewalls in cases where entities are owned or controlled by a listed person or entity). According to the guidance, the necessary safeguards preventing a listed person from participating in an entity's business decisions and benefiting from its economic resources may be established by legislation or by the entities themselves. In the latter situation, entities are encouraged to obtain an external and independent audit to ensure the effectiveness of the procedures, and the entity's senior management is required to provide written commitments to comply with their obligations. Member States should establish an approval process under which the national competent authority reviews the adequacy of the procedure created by the entity and, if approved, provides written confirmation. A procedure approved in one Member State may also have effects in other countries.

13. On the basis of the Sanctions Regulation and other EU sanctions provisions corresponding to it as regards the freezing obligation, the case-law of the Court of Justice of the European Union, and the considerations set out above, the Supreme Court finds that, when applying the Sanctions Regulation, the assets of a company controlled by a listed person are, as a starting point, presumed to

be under that person's control, but that presumption may be rebutted by showing that, because of protective measures, the listed person cannot in fact exercise control over the company's assets. The national authority must assess the adequacy of the protective measures and their effect on the conditions for freezing on a case-by-case basis in light of the evidence presented concerning them.

Starting points for the assessment of evidence in this matter

14. As stated in KKO 2025:30 (paragraph 28), when assessing evidence in connection with enforcement of the Sanctions Regulation, it is appropriate to apply the standard of credible evidence generally applied in civil cases. Whether the evidentiary threshold is met, and whether this gives rise to an obligation on the opposing party to present counter-evidence, requires a case-by-case assessment also in matters concerning enforcement of the Sanctions Regulation. In assessing the evidence, account must be taken, inter alia, of the parties' opportunities to present evidence.

15. EuroChem Terminal Sillamäe OÜ and EuroChem Group AG, whose assets have been subject to freezing, have argued that effective and reliable protective measures have been implemented at Group level by which the listed person Andrey Melnichenko is prevented from in fact exercising control over the companies' assets. The Ministry for Foreign Affairs disputed the adequacy of those protective measures.

16. The Supreme Court notes that EuroChem Terminal Sillamäe OÜ and EuroChem Group AG, whose assets have been subject to freezing, bear, as a starting point, the burden of presenting evidence of the protective measures implemented in the companies in order to rebut the presumption arising from control. Insofar as the companies are able to present credible evidence in this respect, the Ministry for Foreign Affairs, which sought the freezing of the assets, must correspondingly present counter-evidence capable of undermining the evidence presented by the companies.

17. In its appeal, the Ministry for Foreign Affairs argued that the companies' protective measures should be assessed as they existed at the dates of the attachment decisions.

18. The Supreme Court notes that the interpretation advanced by the Ministry for Foreign Affairs as to the relevant point in time for assessing the protective measures finds no support in the legal principles described above. The legal protection of companies subject to asset-freezing measures requires that they be able to have a freezing measure concerning their assets lifted in whole or in part by demonstrating, for example even during appeal proceedings, that they have put in place safeguards preventing the listed person from exercising control over their assets. Furthermore, Article 6b(5d) of the Sanctions Regulation, described above, indicates that

effective protective measures may be established even after the assets have been frozen. Accordingly, the Supreme Court considers that evidence concerning circumstances after the attachment decisions must also be taken into account.

Supreme Court´s assessment

19. It is undisputed that EuroChem Group AG owns the entire share capital of the other companies belonging to its group, including EuroChem Terminal Sillamäe OÜ. EuroChem Group AG is domiciled in Switzerland.

20. On the basis of the evidence presented, Swiss sanctions legislation and the requirements and procedures concerning safeguards contained therein are essentially equivalent to those in the European Union. The companies have established that protective measures have been implemented within the Group to ensure that no funds or economic benefits are transferred from the companies to sanctioned persons and that such persons are isolated from the companies' decision-making. An external auditor has assessed the effectiveness of the protective measures retrospectively from 1 March 2022 onwards.

21. According to the documents prepared in connection with audits of the Group, the audits concluded that no funds or economic benefits are transferred from the Group companies to sanctioned persons. The competent Swiss authority, SECO, has for its part approved the procedures introduced by the Group as effective and confirmed that there is no need to subject the Group to freezing measures. It has also been established that that authority subjects the Group to long-term monitoring.

22. EuroChem Group AG is in turn owned by a Cypriot company, whose State of domicile, Cyprus, has required the company to continue its operations under a special procedure comprising both measures requiring prior approval and close ex post supervision of the company's operations. Furthermore, on the basis of the statements submitted in the matter, the competent authorities in France, Belgium and Ireland have assessed the protective measures introduced within the Group as adequate.

23. The Supreme Court considers that the approvals and statements of the foreign competent authorities described above support the companies' assertion that the protective measures introduced within the Group may be regarded as effective and adequate. In addition to those statements by authorities of other States, extensive documentary and expert evidence has established the practical measures by which the companies have sought, since March 2022, to ensure the application of the protective measures they introduced and thus their effective implementation. The adequacy of these measures has been audited by an external and independent party. In this respect, reliance was also placed before

the Supreme Court, as new documentary evidence, on the audit report dated 22 July 2025, which for its part demonstrates that adequate measures consistent with the protective measures have continued to be implemented within the Group without interruption.

24. The Supreme Court concludes that EuroChem Terminal Sillamäe OÜ and EuroChem Group AG have presented credible evidence that, as a result of the protective measures introduced within the Group, the companies' assets have not in fact been under Andrey Melnichenko's control. The Ministry for Foreign Affairs has not presented counter-evidence in this respect that would give reason to doubt the actual effectiveness and adequacy of those protective measures. Accordingly, the conditions for the freezing measures referred to in the attachment decisions are not met, and there are no grounds to alter the outcome of the Court of Appeal's decision.

Legal costs

25. Under Chapter 11, section 20(1) of the Enforcement Code, in an enforcement appeal the parties bear their own legal costs unless there is a special reason to order the party against whom the court's decision is rendered to reimburse the opposing party, in whole or in part, for the costs incurred in seeking review.

26. There is no special reason to order the Ministry for Foreign Affairs to reimburse EuroChem Terminal Sillamäe OÜ and EuroChem Group AG for their legal costs before the Supreme Court.

Operative part

The outcome of the decision of the Court of Appeal is not altered.

The claim by EuroChem Terminal Sillamäe OÜ and EuroChem Group AG for reimbursement of their legal costs before the Supreme Court is dismissed.

All concerned shall comply with this decision.

COMPOSITION OF THE COURT

The matter was decided by

Justice Ari Kantor
Justice Jussi Tapani
Justice Tuija Turpeinen
Justice Pekka Pulkkinen
Justice Heli Melander

The matter was presented by
Referendary Antto Orasmaa

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SIGNATURE

The document has been signed electronically.