Neutral Citation Number: [2025] EWHC 1938 (Comm)

Case No: CL-2022-000456

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, WC4A 1NL

Date: 31 July 2025

Before :

MR JUSTICE BRIGHT

- -

Between :

(1) LLC EUROCHEM NORTH-WEST-2
(2) EUROCHEM GROUP AG

Claimants

- and -

(1) SOCIÉTÉ GÉNÉRALE S.A.
(2) SOCIÉTÉ GÉNÉRALE S.A.
(described as SOCIÉTÉ GÉNÉRALE PARIS)
(3) SOCIÉTÉ GÉNÉRALE – MILANO BRANCH
(described as SOCIÉTÉ GÉNÉRALE MILANO)
(4) ING BANK N.V.
(5) ING BANK N.V. – MILAN BRANCH

Defendants

-and-

TECNIMONT S.P.A.

Third Party

- -
- -

Mr Justin Fenwick KC, Mr Tim Chelmick, Ms Marie-Claire O'Kane, Mr Emile Simpson, Ms Helena Spector (instructed by Vinson & Elkins RLLP) for the Claimants
Mr Richard Handyside KC, Mr James Duffy KC, Ms Natasha Bennett (instructed by Herbert Smith Freehills Kramer LLP) for the First, Second and Third Defendants

Mr Neil Kitchener KC, Mr James Weale, Mr Robert Harris (instructed by Clifford Chance LLP) for the Fourth and Fifth Defendants
Mr Alan Maclean KC, Mr Tom Leary (instructed by McDermott Will & Emery UK LLP) for the Third Party

Hearing dates: 11, 12, 13, 16, 17, 18, 19, 23, 25 June, 1, 2, 3 July 2025

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Approved Judgment

This judgment was handed down remotely at 10:30am on 31/07/25 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Contents

Mr Justice Bright:

PART A: INTRODUCTION AND PARTIES [1]-[22]

I: Overall introduction [1]-[10]

1. This judgment is concerned with six on-demand bonds ("the Bonds"), each governed by English law, issued by the First to Third Defendants ("SocGen") and the Fourth to Fifth Defendants ("ING") (together "the Banks"), in favour of the First Claimant ("EuroChem NW2") as beneficiary.

2. The total value of the Bonds was over €280 million. They were issued on various dates in 2020 and 2021, in connection with the construction for EuroChem NW2 of a major fertiliser plant in Kingisepp, Russia.

3. On 24 February 2022, Russia invaded Ukraine. On 9 March 2022, the EU imposed sanctions on the founder of the EuroChem Group, Mr Andrey Melnichenko. On 3 June 2022, the EU imposed sanctions on his wife, Mrs Aleksandra Melnichenko. The EU sanctions include, in particular, designation by being listed under Annex I to Council Regulation (EU) No. 269/2014 ("Regulation 269").

4. EuroChem NW2 made demands under the Bonds on various dates in August 2022. The Banks have declined to pay, on the basis that to do so would be illegal because of the EU sanctions.

5. On 23 December 2024, EuroChem NW2 entered into a Deed of Assignment and Assumption ("Assignment") by which it assigned the proceeds of the Bonds to the Second Claimant ("EuroChem AG").

6. The issues that I have to determine largely focus on whether either EuroChem NW2 or EuroChem AG is owned or controlled by Mr or Mrs Melnichenko, for the purposes of Regulation 269. The provision within Regulation 269 that is at the heart of the case is Article 2. This has two limbs:

   (1) Article 2(1) provides: "All funds and economic resources belonging to, owned, held or controlled by" anyone listed in Annex I "shall be frozen."
   (2) Article 2(2) provides: "No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of" anyone listed in Annex I.

7. As already stated, Mr and Mrs Melnichenko are both listed in Annex I to Regulation 269. The case therefore is principally concerned with whether the Bonds are frozen under Article 2(1), because they must be considered funds or economic resources that belong to, or are owned, held or controlled by Mr or Mrs Melnichenko; and whether payment under the Bonds is prohibited under Article 2(2), because it would make funds or economic resources available to Mr or Mrs Melnichenko.

8. The Banks say that one or both of Article 2(1) and Article 2(2) apply. They say that payment under the Bonds therefore would be illegal under the law of France or Italy, or any other relevant EU country; and that this foreign illegality renders the Bonds

unenforceable as a matter of English law. The Claimants deny this, and also say that illegality under the law of any EU country is irrelevant.

9. There are also issues as to a separate EU sanctions provision, Council Regulation (EU) No. 833/2014 ("Regulation 833"); implied terms; the Bonds' expiry dates; and as to the validity and effectiveness of the Assignment.

10. The Claimants' case was primarily presented by Mr Justin Fenwick KC, with assistance from others including Mr Tim Chelmick. SocGen's case was primarily presented by Mr Richard Handyside KC, with assistance from others including Ms Natasha Bennett. ING's case was presented by Mr Neil Kitchener KC, with assistance from others including Mr James Weale. The Third Party's case was presented by Mr Alan Maclean KC. I am very grateful to them all, and to the extensive teams of barristers and solicitors behind the lead advocates, for their assistance. The trial was conducted on all sides with great skill and professionalism.

II: The Claimants [11]-[17]

11. The EuroChem group was founded by Mr Melnichenko in Russia in 2001. Since its foundation, the group has grown considerably and is now one of the largest fertiliser manufacturers in the world. Most of its manufacturing and production continues to take place in Russia. However, it has interests in many countries around the world. Some are in the EU; in particular, there are fertiliser production plants in Belgium and in Lithuania.

12. EuroChem NW2 is a single-purpose company, incorporated in Russia. Its purpose is the construction and commissioning of the new fertiliser plant at Kingisepp.

13. EuroChem NW2's immediate owner is MCC EuroChem JSC ("MCC EuroChem"), a Russian company, which holds all the shares in EuroChem NW2. In turn, all the shares in MCC EuroChem are owned by EuroChem AG, which is incorporated in Switzerland. EuroChem AG therefore is the indirect owner of EuroChem NW2.

14. Appendix 1 to this judgment is a structure chart showing what I understand to be the current ownership structure, so far as concerns EuroChem NW2 and EuroChem AG. I discuss this in more detail below, but the structure above EuroChem AG is as follows:

    (1) 100% of the shares in EuroChem AG are owned by AIM Capital Limited ("AIM Capital"), a Cypriot company. The name of this company matches the initial letters of Mr Melnichenko's full name.
    (2) 99.38% of the shares in AIM Capital are owned by Linea (CY) Limited, a Cypriot company. The remaining shares (2,000 preference shares) are held by Mrs Melnichenko, and have been frozen since she was sanctioned by the EU on 3 June 2022.
    (3) 75.1% of Linea (CY) Limited is owned by the Firstline Trust. The remainder of the shares in Linea (CY) Limited are owned by Mrs Melnichenko, and have also been frozen from 3 June 2022.
    (4) The Firstline Trust is a discretionary trust, which currently has one discretionary beneficiary – Mrs Melnichenko. Until March 2022 (the precise date is controversial), the sole discretionary beneficiary was Mr Melnichenko.

(5) The trustee of the Firstline Trust is Linetrust PTC Limited ("Linetrust PTC"), a Cypriot company. The protector of the Firstline Trust is Mr Andrei Fokin.
(6) Linetrust PTC is owned by Lineboro ("Lineboro Trust"), a purpose trust.
(7) The trustee of the Lineboro Trust is Alfo Trustees Limited, a Cypriot company.

15. It is important that the structure above EuroChem AG involves a number of trusts – above all, the Firstline Trust; and that immediately below EuroChem AG is MCC EuroChem.

16. It is also important that, although not shown on Appendix 1, EuroChem AG's subsidiaries are not limited to MCC EuroChem and EuroChem NW2. EuroChem AG is the direct or indirect owner of all the other EuroChem group companies. It has several important subsidiaries in the EU, notably those relating to the plants in Belgium and in Lithuania, as well as a subsidiary incorporated in France ("EuroChem Agro France") and a subsidiary incorporated in Italy ("EuroChem Agro Italy").

17. Through MCC EuroChem, it owns various business group interests in Russia, where the bulk of the group's existing manufacturing capacity resides. It also owns the group trading companies, which are incorporated and headquartered in the UAE. There are further subsidiaries in other countries and regions.

III: The Banks and Tecnimont [18]-[20]

18. SocGen is a bank incorporated in Paris in the name of the First Defendant. The Second and Third Defendants are not separate legal entities from the First Defendant. The Third Defendant ("SocGen Milan") is SocGen's branch in Milan.

19. ING is a bank incorporated in The Netherlands in the name of the Fourth Defendant. The Fifth Defendant is not a separate legal entity from the Fourth Defendant, but is its branch in Milan.

20. The Third Party ("Tecnimont") is an Italian engineering company which, together with its Russian affiliate LLC MT Russia ("MT Russia"), was contracted by EuroChem NW2 to design and construct the plant.

IV: The new Kingisepp plant [21]-[22]

21. When completed, the new Kingisepp plant will be one of the largest fertiliser plants in the world. It will significantly increase the total manufacturing capacity of the EuroChem group. The construction project being undertaken by EuroChem NW2 therefore is of strategic importance to the EuroChem group, and indeed to the Russian economy. It therefore has attracted interest at the level of the Russian federal government.

22. The project continues to proceed, despite sanctions and despite the withdrawal of Tecnimont and the Banks' failure to pay under the Bonds. EuroChem NW2 found alternative finance, largely from Russian banks which are subject to EU and other sanctions. It also found an alternative contractor: Velesstroy, a Russian company which is now subject to US sanctions. The plant is expected to commence operating in 2026.

PART B: THE BONDS AND EUROCHEM NW2'S DEMANDS [23]-[45]

V: The Bonds [23]-[28]

23. The contracts between EuroChem NW2 and Tecnimont/MT Russia ("the Contracts") required them to provide EuroChem NW2 with financial security including the Bonds. Tecnimont duly procured the necessary security to be issued by SocGen and ING. SocGen and ING, in turn, have the benefit of various counter-guarantees/indemnities, including an agreement by Tecnimont to indemnify ING under its Bond.

24. The Bonds, and the sums demanded under them, are as follows:

Issuer	**Bond No.**	**Issue date**	**Expiry date**	**Maximum sum**	**€ Sum demanded**
SocGen	17002-0059299ETR	30/09/20	16/09/23	53,081,075.40	12,660,113
SocGen	17002-0061491ETR	26/02/21	16/09/23	4,923,915.70	631,610
SocGen	17002-0059306ETR	02/10/20	16/08/24	86,336,753.96	74,470,755.36
SocGen	17002-0061721ETR	15/03/21	16/09/23	9,808,200.25[1]	9,808,200.25
SocGen Milan	08502-0009506MIL	30/09/20	16/09/23	51,605,624.04	39,589,203
ING	DLG 1440/20	03/11/20	16/08/24	75,285,299.85[2]	75,285,299.85
€ Total				**281,040,869.20**	**212,445,181.46**

25. The Bonds are in near identical form. The "Issuer" was a defined term referring to the relevant Bank. The "Owner" was a defined term referring to EuroChem NW2. EuroChem NW2 was also described in the transmission instructions given to the receiving bank (PJSC Rosbank) as the "Beneficiary". The Bonds identified Tecnimont and MT Russia as "Contractor", and also identified the Contracts.

26. Taking the text of the first SocGen Bond (No. 17002-0059299 ETR), the key terms are as follows:

> "3.1 The Owner may from time to time make a written demand upon the Issuer stating that a contractor has defaulted in its obligations under a contract with respect to the advance payment or has failed to make any payment in accordance with a contract and the amount claimed by the Owner. This demand shall be sent to the Issuer through the Owner's bank which shall confirm that demand was signed by authorized signatories.

[1] Increased by amendment on 13 January 2022
[2] Increased by amendment on 8 February 2021

3.2 The Issuer shall immediately but in any case not later than four (4) business days upon receipt of any such compliant demand pay to the Owner the amount or amounts demanded up to the maximum sum.

…

4.2 The Issuer is not entitled to rely on any defenses or claims which may be available to a contractor under a contract.

4.3 Any demand made by the Owner in accordance with clause 3 and any sum or sums stated in such demand shall be conclusive evidence that such sum or sums are properly due and payable to the Owner under this bond.

…

6. Continuity and discharge of the bond

The Issuer confirms that:

(a) Its obligations under this bond shall be irrevocable and primary.

(b) this bond shall come into force on the date hereof and shall remain in full force and effect until the earlier of:

(i) 16.09.2023, or

(ii) the date on which the owner notifies the issuer of repayment in full of the advance payment by EP Contractor to Owner,

when this bond shall cease to have effect save in connection with any demand notified to the Issuer on or prior to the said date.

…

9. Assignment

9.1 The Owner may assign, charge or transfer this Bond to:

(a) any of the following parties: EuroChem MCC or EuroChem Group AG to whom rights, obligations and benefits under the Contracts have been assigned by Owner, without Issuer's consent and provided that at the time of the assignment, charge or transfer such action would not cause Issuer to be in breach of any restrictions imposed by sanctions laws or regulations issued by the Republic of Italy, European Union, the United Kingdom…, and/or

(b) any other person or entity to whom the rights, obligations and benefits under the Contracts have been assigned by Owner, subject to Issuer's consent, such consent not to be unreasonably withheld, conditioned or delayed.

Once the Financing Agreement will be closed, we will check the list of Financiers and upon Issuer's approval, an amendment will be issued, including them in the list of approved assignees sub a) and sub the below paragraph.

The Owner may assign the proceeds arising from the possible drawdown of this Bond to any of the following parties: EuroChem MCC or EuroChem Group AG without the consent of Issuer, remaining understood that any request of payment to the possible assignee shall be executed by Issuer provided that such action would not cause Issuer to be in breach of any restrictions imposed by sanctions laws or regulations issued by the Republic of Italy, European Union the United Kingdom..."

…

10. Notice

> Any notice or other communication to be given, served or made under this bond:
> (a) shall be written in English and shall be delivered by hand, and/or by registered mail/express courier with return receipt to:
> (i) the Issuer at:
> Societe Generale Paris
> GTPS/GPS/OPE/TRA/GAR
> Immeuble Cristallia
> 189, Rue D'Aubervilliers
> 75886 Paris Cedex 18 France
> Attention: International Guarantees Dept
> (ii) the Owner at:
> EuroChem North-West-2 Limited Liability Company
> Building 7, Central Lane, Industrial Area 'Phosphorit',
> Bolshelutskoe Rural Settlement,
> Kingisepp Municipal District,
> The Leningrad Region, 188452, Russian Federation
> Attention: Ilya Beloborodov, Executive Director
> or to such other address as a party may specify from time to time by notice to the other party,
> ...
> 11. Governing law
> This bond, and any non-contractual obligations arising out or in connection with this bond, shall be governed by and construed in accordance with the laws of England and Wales.
> Each party irrevocably submits to the exclusive jurisdiction of the courts of England with regard to all matters arising from or in connection with this bond and agrees that a judgment on any proceedings brought in the courts of England shall be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction."

27. One difference between the SocGen Bonds and the ING Bond is that the SocGen Bonds all provide that there are no applicable rules, whereas the ING Bond provided for the application of the URDG Rules. Article 20(c) of the URDG 758/2010 provides as follows:

> "(c) Payment is to be made at the branch or office of the guarantor or counter-guarantor that issued the guarantee or counter-guarantee or such other place as may be indicated in that guarantee or counter-guarantee ("place for payment")."

28. Other than this, the only other material difference concerns the address given in clause 10 for notice to the Banks. For all the SocGen Bonds, the address for notice to SocGen was as set out above. This includes the Bond issued by SocGen's branch in Milan (No. 08502-0009506MIL). By contrast, for the Bond issued by ING (No. DLG 1440/20), the address for notice to ING was the address of the Milan branch – "ING Bank N.V. - Milan Branch, Via Santa Margherita 16, 20121 Milano."

VI: Designation under Regulation 269 [29]-[33]

29. The Russian invasion of Ukraine commenced on 24 February 2022. Sanctions were imposed by a number of countries, including the UK and the EU. So far as concerns EU sanctions, Mr Melnichenko became designated as someone listed in Annex I to Regulation 269 on 9 March 2022. The text under the heading "Reasons" in Annex I originally read as follows:

> "Andrey Igorevich MELNICHENKO is a Russian industrialist owning major fertiliser producer EuroChem Group and coal company SUEK. A. Melnichenko belongs to the most influential circle of Russian businesspeople with close connections to the Russian Government. He is therefore involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine.
> On 24 February 2022, in the aftermath of the initial stages of Russian aggression against Ukraine, Andrey Igorevich MELNICHENKO, along with other 36 businesspeople, met with President Vladimir Putin and other members of the Russian government to discuss the impact of the course of action in the wake of Western sanctions. The fact that he was invited to attend this meeting shows that he is a member of the closest circle of Vladimir Putin and that he is supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, as well as stability and security in Ukraine. It also shows that he is one of the leading businesspersons involved in economic sectors providing a substantial source of revenue to the Government of Russia, which is responsible for annexation of Crimea and destabilisation of Ukraine."

30. Mr Melnichenko remains listed in Annex I, but the text under "Reasons" has changed. As of 15 March 2025, it reads as follows:

> "Andrey Melnichenko is a Russian industrialist who continues to control major fertiliser producer EuroChem Group and coal company SUEK. On 9 March 2022, Melnichenko transferred his interests in SUEK and EuroChem Group to his spouse, Aleksandra Melnichenko. He continues to benefit from the wealth he transferred to his wife. His wealth has increased very considerably in recent years.
> Andrey Melnichenko belongs to the most influential circle of Russian businesspersons with close connections to the Russian government, as is evident from his involvement with the Russian Union of Industrialists and Entrepreneurs, where he holds the position of member of the Bureau of the Board and is the Chairman of the Committee on Climate Policy and Carbon Regulation. On 24 February 2022, in the aftermath of the initial stages of Russia's war of aggression against Ukraine, Andrey Melnichenko, along with 36 other businesspersons, met with the

> President of the Russian Federation, Vladimir Putin, and other members of the Russian government to discuss the impact of the course of action in the wake of Western sanctions, thus exemplifying his importance as a leading businessperson in Russia. Moreover, he was among the leading Russian businesspersons who participated in the congress of the Russian Union of Industrialists and Entrepreneurs in March 2023, where the President of the Russian Federation, Vladimir Putin, gave a speech and urged billionaires to put 'patriotism before profit'. In April 2024, Melnichenko also participated in the congress of the Russian Union of Industrialists and Entrepreneurs, where the President of the Russian Federation, Vladimir Putin, gave a speech, discussing the cooperation between the Russian state and leading companies of the country. Those elements show that he is a leading businessperson as well as a businessperson involved in economic sectors providing a substantial source of revenue to the Government of Russia, which is responsible for the annexation of Crimea and the destabilisation of Ukraine."

31. His wife, Aleksandra Melnichenko, was designated on 3 June 2022. In her case, the text under "Reasons" in the relevant entry in Annex I reads as follows:

> "Aleksandra Melnichenko is the wife of Andrey Melnichenko, a Russian industrialist who transferred his effective ownership and benefit of the major fertiliser producer EuroChem Group and the coal company SUEK to her on 9 March 2022.
> Aleksandra Melnichenko takes advantage of the fortune and benefits from the wealth of her husband. In March 2022, Aleksandra Melnichenko replaced her husband as the beneficial owner of Firstline Trust, managed by Linetrust PTC Ltd, a company which represents the ultimate owner of EuroChem Group.
> Therefore, she is an immediate family member benefitting from her husband Andrey Melnichenko and linked to him by common financial interests."

32. On 15 March 2022, Mr Melnichenko was designated under UK sanctions regulations; and, later, he was also made subject to US sanctions. However, because payment under the Bonds in this case would not involve any acts in the UK/USA, nor any UK/US companies or persons, it is only the EU sanctions that are directly relevant – primarily Regulation 269, but potentially also Regulation 833.

33. It is important to note that the reasons given when a person is added to the list at Annex I have no legislative effect. It is procedurally necessary for the European Council to give reasons, when designating someone. However, the only operative part of the designation is the inclusion or maintenance of a person's name on the list. Thus, the fact that (for example) the reasons given in relation to Mrs Melnichenko describe her as the beneficial owner of the Firstline Trust is not a legal determination that this is so. It does not mean that the trust assets (including both the Claimants and all their individual assets) must be frozen. All questions of ownership and control, for the purposes of Article 2, remain to be established. This is clear from the decision of the

General Court in *EuroChem v Council* T-1111/23 (EU:T:2024:751), at [56]-[57], and was common ground before me.

VII: Termination of the Contracts [34]-[37]

34. On 11 and 24 May 2022 (respectively), each of Tecnimont and MT Russia notified EuroChem NW2 that it was suspending its services under the Contracts.

35. On 4 August 2022, EuroChem NW2 wrote to Tecnimont and MT Russia, terminating the Contracts and asserting that they were in default under the Contracts.

36. The issues between EuroChem NW2 and Tecnimont have been referred to arbitration and do not fall to be determined by me. However, I have been told that one of the issues that the arbitrators will decide is whether the performance of the Contracts was affected by Regulation 833; no doubt because Tecnimont relies on Regulation 833 and will contend that the effect of Regulation 833 was to relieve Tecnimont of the obligation to provide services under the Contracts, such that Tecnimont was not in default.

37. This is relevant because, as noted, one of the arguments raised by the Banks relates to Regulation 833. Very sensibly, the parties agreed that I should proceed on the assumed basis (without prejudice to any findings that may subsequently be made in the arbitration) that the underlying construction Contracts are or include a "contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under Regulation 833."

VIII: EuroChem NW2's demands on the Bonds [38]-[40]

38. EuroChem NW2's initial demands under the Bonds were made on 4 August 2022. All except the demand made to SocGen Milan were rejected on the basis that they were technically non-compliant with the terms of the Bonds.

39. In respect of all the Bonds except that issued by SocGen Milan, EuroChem NW2 served fresh demands on 10 and 11 August 2022. They were all in similar form and all notifying the respective Bank that "… a Contractor has defaulted in its obligations under a Contract…" In ING's case, the demand then went on by giving some details about the nature of the alleged defaults, including the contractual provisions which were said to have been breached by Tecnimont and/or MT Russia.

40. In each instance, EuroChem NW2 instructed that payment be made to its Euro account with Gazprombank in Moscow, via a correspondent bank in Luxembourg.

IX: Rejection of the demands [41]-[45]

41. EuroChem NW2's demands were rejected by the Banks, by messages of 10 August 2022 in the case of the SocGen Milan Bond, 16 August 2022 in the case of the other SocGen Bonds, and 17 August 2022 in the case of the ING Bond. The SocGen rejections all stated:

> "… we are unable to honour the claim due to the presence of international sanctions directly impacting the transaction. Paying under the above-mentioned claim will indeed constitute a breach of these international sanctions."

42. The rejection from ING went into much more detail:

> "Our decision is prompted by the need to comply with mandatory EU sanctions restrictions, as further clarified below. By means of such further clarification we firstly note that it recently became apparent to ING that one of the contracting parties of whom certain services and contractual obligations vis-A-vis EuroChem which are covered by the Bond, Tecnimont SpA ('Tecnimont'), strongly disputes the legality of your claim as they deem it '(..) abusive, improper and fails to comply with the express terms of the Bond'. We furthermore understand that Tecnimont 'has not(actually) defaulted in its obligations under a Contract (as this term is defined in the Bond) and/or has failed to make any payment in accordance with a contract', yet they were in fact (shortly summarized) 'entitled to suspend the provision of the (respective services): (...) to the extent that performance of (all or part of) the Services by Contractor(s) in accordance with (the) Contract(s) would cause Contractor(s) to be in breach of any restrictions imposed by embargo or sanctions laws or regulations issued by (inter alia) European Union.
> In this context, reference is made to EU sanctions restrictions under: (i) Council Regulation (EU) 833/2014 (as amended from to time: "Reg. 833/2014"), and (ii) Council Implementing Regulation (EU) 878/2022, implementing Regulation (EU) No. 269/2014 ("Reg. 269/2014, collectively with Reg. 833/2014: "EU Sanctions Regulations"). Lastly, we understand that the legal counsel of Tecnimont has informed you accordingly, thereby explaining their position that "there is no basis for EuroChem to assert that MT Russia and/or Tecnimont have defaulted or failed to make a payment under a Contract", and the suspension of their services under the respective contract(s) with EuroChem serves the purpose of acting in compliance with EU Sanctions Regulations. As you may appreciate, ING is given this situation currently not in the position to grant your claim under the Bond. From a EU sanctions perspective, reference is not only made to the restrictions and legal provisions under the EU Sanctions Regulations which formed the basis for Tecnimont to suspend their services under the respective contract(s), but also to article 11 of both EU Sanctions Regulations, (shortly summarized) prescribing that ING shall not satisfy any claims that are made in connection with any contract or transaction, the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under the respective EU Sanctions Regulation, in the view of ING including your claim under the Bond."

43. In due course it became clear that the principal sanctions instrument relied on by both SocGen and ING was Regulation 269. However, they both also rely on Regulation 833.

44. I should say, for completeness, that EuroChem NW2 made further demands under the SocGen Bonds on or around 7 September 2023 and under all the Bonds on or around 14 August 2024. Nothing turns on these further demands, which did not add anything material to any party's case.

45. I should also note that, notwithstanding the Assignment, no demands have ever been made by EuroChem AG. EuroChem AG's case is that its right to payment derives from the demands made by EuroChem NW2. These were essentially made in August 2022. Even the later demands were still made long before the Assignment, which did not occur until December 2024.

PART C: THE ISSUES AND THE WITNESSES [46]-[98]

X: Outline of the main issues [46]-[58]

46. The essential case advanced by EuroChem NW2 and EuroChem AG was straightforward: valid demands were made under the Bonds, which the Banks are obliged to pay.

47. In defending this claim, the Banks advanced a number of positive arguments.

48. The Banks' primary case was that, in each of France, Italy and the Netherlands, the relevant National Competent Authority ("NCA") had made determinations that led to the Bonds being frozen under Article 2(1) of Regulation 269. In itself, this meant it would be illegal for them to pay, under the laws of France, Italy and/or the Netherlands (or, if relevant, any other EU country).

49. Next, the Banks said that, even if the views of any or all of the NCAs is not determinative, the Bonds in fact fall to be frozen under the terms of Article 2(1), because the Bonds in fact belong to or are owned, held or controlled by Mr Melnichenko.

50. Next, the Banks said that payment under the Bonds would make funds or economic resources available to Mr and/or Mrs Melnichenko and so would be contrary to Article 2(2) of Regulation 269.

51. Alternatively, payment would make funds available to sanctioned Russian banks, again contrary to Article 2(2).

52. In so far as necessary, the Banks also relied on illegality under Article 11 of each of Regulation 269 and Regulation 833.

53. The Banks said that because payment would be illegal in the place of performance, on any of the bases summarised above, the Bonds are unenforceable as a matter of English law, by reason of the rule in *Ralli Bros v Compania Naviera Sota y Aznar* [1920] 2 KB 287; alternatively as a matter of public policy.

54. Alternatively, the Banks said that, under their terms, the Bonds excused payment if it would constitute a breach of sanctions law.

55. The Banks said that the Assignment could not cure the unenforceability of the Bonds, being a mere assignment of the proceeds of the (ex hypothesi) unenforceable Bonds. They said that the Assignment was in any event invalid under the terms of the Bonds. They also said that the Assignment failed by reason of Article 9 of Regulation 269.

56. Finally, the Banks said that the Bonds had now expired.

57. Also before me is a Part 20 claim brought by ING against Tecnimont. This arises under the Facility Agreement between ING and Tecnimont, pursuant to which ING agreed to issue its Bond and Tecnimont agreed to indemnify ING.

58. In summarising the issues in this way, I have conveyed that most of the positive arguments were raised by the Banks (with the support of Tecnimont), rather than by the Claimants. This is indeed the reality. However, it is important to note that the statements of case disclose lesser but significant positive arguments raised by the Claimants – in particular in their Reply, where (for example) positive allegations were made to the effect that neither EuroChem NW2 nor EuroChem AG is either owned or controlled by Mr or Mrs Melnichenko.

XI: The Claimants' EuroChem AG witnesses [59]-[66]

59. A striking feature of many of the Claimants' witnesses was that their evidence related to EuroChem AG, rather than to the entities above it in the ownership structure, or, below it, to MCC EuroChem or EuroChem NW2. This was apparent from their witness statements, and was highlighted in the oral evidence.

Mr Valters and Mr Solzhenitsyn

60. Two of the Claimants' witnesses were not required to attend for cross-examination. Mr Janis Valters described himself as "the Head of KYC and CDD [i.e., know your client and customer due diligence] for Europe at ECAG". From the context, it is apparent that "Europe" meant the EU and Switzerland and did not include Russia. Mr Valters' statement explained the systems EuroChem AG has in place to manage counterparties and payments to them. These systems ensure that payments cannot be made by EuroChem AG to Mr or Mrs Melnichenko. Mr Valters was subordinate to Mr Collishe, who was cross-examined.

61. The other witness whose evidence was not challenged was Mr Stephan Solzhenitsyn, who has been a member of the EuroChem AG board of directors since 20 December 2021, and Chairman since 9 January 2025. His statement referred to written commitments signed by him on 16 March and 9 June 2022 and confirmed that he has not entered into any agreement or other arrangement, legal or factual, that would allow Mr or Mrs Melnichenko to assert any influence over the conduct of EuroChem AG.

Mr Hechler

62. Mr Marc Hechler is CEO of EuroChem AG and a board member. Before that he held various senior positions within EuroChem AG, notably as Head of Europe from May 2022 to June 2024. Once again, it was apparent, and he confirmed orally, that "Europe" meant Switzerland and the EU, but did not include Russia.

63. Mr Hechler was a careful witness. He sometimes was reluctant to accept the obvious, but I attribute this more to nervousness and natural caution than anything more sinister. He too gave evidence about the checks EuroChem AG has in place, and confirmed how seriously he and EuroChem AG's managers as a whole take their personal commitments not to allow Mr or Mrs Melnichenko to assert any influence over the conduct of EuroChem AG.

64. However, his knowledge was confined to EuroChem AG's European affairs. He said that he could not speak to matters outside Europe. Indeed, his evidence was that EuroChem AG has no real involvement in the management of MCC EuroChem or EuroChem NW2 or any of EuroChem AG's subsidiaries outside the EU, especially not those in Russia. He did not know who the directors of MCC EuroChem are. Nor could he speak to what happened higher up the structure, at the level of the trusts.

Mr Collishe

65. Mr Philip Collishe was EuroChem AG's Chief Compliance Officer, until February 2025. His evidence, which I accept, was broadly similar to that of Mr Valters. However, it was also apparent from his evidence that no meaningful scrutiny is applied to entities and transactions outside the EU and Switzerland and that EuroChem AG's sanctions policies do not apply in countries where no sanctions are legally in force.

Ms Basyrova

66. Ms Dilyara Basyrova is EuroChem AG's Head of Accounting. She said that responsibility for the consolidated group accounts rests with EuroChem AG, but she also said that the preparation of group accounts has been outsourced to a firm in Russia, and she had no personal knowledge of EuroChem NW2's financial position. Her familiarity with what happens beyond EuroChem AG itself seemed, in general, limited.

XII: The Claimants' EuroChem NW2 witness [67]-[73]

67. The Claimants' only witness from EuroChem NW2, or at any level below EuroChem AG, was Mr Ilya Beloborodov. When he made his witness statement, and when he gave his oral evidence (on days 3 and 5 of the trial), he was the General Director of EuroChem NW2, which I understood to be equivalent to CEO. He seems to have been removed from this position within a few days of completing his evidence, before the service of written closing submissions. I was very sorry to learn this, as Mr Beloborodov was a particularly engaging witness, being transparently honest and extremely candid in his oral evidence.

68. Mr Beloborodov's focus in his job was entirely on the completion and commissioning of the new Kingisepp plant. He had no real interest in company politics or strategy, beyond this task.

69. His witness statement revealed nothing about the reporting structure above EuroChem NW2, but his oral evidence revealed that MCC EuroChem had full control over EuroChem NW2. He reported initially to Mr Oleg Shiryaev, the former General Director of MCC EuroChem; more recently, to the current General Director of MCC EuroChem, Mr Andrey Vanyushin. He had no contact with EuroChem AG and seemed not to know any of the individuals at EuroChem AG.

70. He said that Mr Melnichenko was generally referred to and understood as "the beneficiary" and was "right at the top" of the EuroChem structure. He also said that, from his perspective, nothing much changed after sanctions were imposed.

71. He confirmed that, following the withdrawal of Tecnimont, the contractor constructing the new plant is Velesstroy. The decision to engage Velesstroy was taken by MCC EuroChem (specifically, Mr Shiryaev).

72. MCC EuroChem was also responsible for all financing decisions, including the decision to raise finance with sanctioned Russian banks. Mr Beloborodov said that this decision also involved "the lawyers that support EuroChem NW2" – which I took to mean (or at least include) Mr Konstantin Kryazhevskikh, who was the only lawyer Mr Beloborodov identified by name, and who is a lawyer associated with EuroChem AG's immediate owner, AIM Capital.

73. Mr Beloborodov was the individual who signed the Claimants' disclosure certificates. However, he had no knowledge of or familiarity with any of the detailed information that they contained. In this regard, he seems to have acted as suggested by Mr Kryazhevskikh.

XIII: The Claimants' Trust witnesses [74]-[94]

74. The Claimants called two witnesses with roles in positions above EuroChem AG in the ownership structure, who therefore were in a position to say something about the Firstline Trust. They were both markedly less satisfactory than the other witnesses.

Mr Fokin

75. Mr Andrei Fokin is a Russian citizen resident in Cyprus. His current position is protector of the Firstline Trust, having been appointed to this position on 17 March 2022. Until 22 January 2024, he was a director of AIM Capital. He acknowledged these roles in his witness statement.

76. It became apparent from Mr Fokin's oral evidence that, although no longer a director of AIM Capital, the other directors asked him to remain an advisor to the board; thus, he in fact still has a role within AIM Capital. It also became apparent that, from 31 March 2020 until 18 March 2022, he was also a director of Linetrust PTC. Indeed, from 9 to 18 March 2022 he was the sole director of Linetrust PTC, and from 9 March to 22 June 2022 he was the sole director of AIM Capital. From 25 February to 18 March 2022, he was also the sole director of Linea. He said that, during these periods, it was difficult to find anyone else willing to serve in these roles – evidently, because of the sanctions imposed on Mr Melnichenko.

77. Mr Fokin accepted in cross-examination that he was also the manager of Mr Melnichenko's family office. He said that he did not continue in this role after March 2022, but I have seen no documentation relating to this and Mr Fokin refused to say who the current manager of the family office is, if not him. In these circumstances, it is not clear to me that Mr Fokin no longer has any role within Mr Melnichenko's family office. Mr Fokin accepted that he travels frequently to the UAE (specifically, Dubai) (where Mr Melnichenko is now resident) and it is apparent that he is sometimes there for substantial periods. It is not obvious to me why he needs to travel to the UAE, as mere protector of the Firstline Trust.

78. It also became apparent that Mr Fokin was involved in the appointment of those who succeeded him as directors of Linetrust PTC – i.e., the individuals who are responsible

for the trustee of the Firstline Trust – and he said in evidence that he discussed these appointments with Mr Melnichenko. In particular, he was involved in the appointment of Ms Irina Skittides and Mr Yorgios Lillikas, and, I infer, Mr Ioannis Constantinides, all of whom I discuss below.

79. None of these details was set out in Mr Fokin's witness statement. That witness statement was confined to perfunctory and anodyne assertions regarding various written commitments he has made, in similar form to those made by various others (notably within EuroChem AG), to the effect that, as protector of the Firstline Trust, he would not allow Mr Melnichenko to exert any influence over the Firstline Trust assets.

80. When Mr Fokin's witness statement was served by the Claimants, they indicated that he would not be called, being beyond the seas. They did not offer to make Mr Fokin available for cross-examination remotely. Mr Fokin also refused repeated requests to produce documents. Mr Fokin only came to give evidence because ING issued a Letter of Request to the Cypriot court, with the result that Mr Fokin was compelled (under threat of arrest) to attend by videolink from Cyprus.

81. Mr Fokin was always polite, but his reluctance to give evidence was palpable and his answers were frequently evasive or obfuscatory. It would lengthen this judgment unnecessarily to detail every unsatisfactory aspect of his evidence, but two items were especially significant.

82. First, he was asked about an email he sent to Mr Melnichenko on 10 March 2022, which referred to an attachment setting out bank balances, but was disclosed with all information regarding these bank balances redacted. He initially said that he did not know what this was about, then claimed (knowing that the relevant information was redacted) that the cash available was very near zero. Soon after this, I required the redactions to be removed. They showed that cash transfers for over US$132 million had been executed on 9 March 2022. The relevant accounts were said to be Mrs Melnichenko's, or to be subject to trusts in her favour, but it is apparent from the context that they were treated by Mr Fokin and Mr Melnichenko as if they belong to Mr Melnichenko.

83. Second, Mr Fokin was asked about a restructuring which was undertaken in respect of other trusts belonging to Mr and Mrs Melnichenko in which Mr Fokin was involved ("the Valla trusts"). The Valla trustees refused to act without an indemnity from Mr Melnichenko, as was apparent from an email from Mr Fokin to Mr Melnichenko of 9 March 2022. A draft of the indemnity was disclosed, initially in redacted form. I again required the redactions to be removed. It was then apparent that the draft indemnity referred to the restructuring as something done by Mr Fokin pursuant to a power of attorney in order to allow Mr and Mrs Melnichenko to continue to enjoy the benefit of the trust assets. Furthermore, it was drafted so as to bear the date of 28 February 2022 (i.e., before sanctions were imposed on Mr Melnichenko), even though it was not signed until after 9 March 2022. In evidence, Mr Fokin denied that he had any such power of attorney or that the restructuring took place. However, it is apparent from documents filed in legal proceedings in Italy and in the EU that, contrary to his evidence, the restructuring did take place. This means that, contrary to his evidence, Mr Fokin must have had the power of attorney. It was also apparent, as Mr Fokin accepted, that the indemnity was signed with an incorrect date.

84. These two matters are of particular significance, not only because they were occasions when Mr Fokin was being deliberately untruthful in evidence, but also because of their subject-matter:

(1) The cash transfers of 9 March 2022 show that Mr Fokin was working closely with Mr Melnichenko in the immediate aftermath of the imposition of sanctions, specifically to evade those sanctions.
(2) The documentation relating to the restructuring of the other trusts again shows Mr Fokin working with Mr Melnichenko to negate the effects of sanctions. It also shows that those involved deliberately backdated the documentation to 28 February 2022: i.e., a date before sanctions were imposed. This backdating is relevant to the issues regarding the date of Mr Melnichenko's resignation as discretionary beneficiary of the Firstline Trust.

85. Notwithstanding the difficulties with Mr Fokin's evidence, Mr Fenwick KC submitted that some of Mr Fokin's evidence was not challenged in cross-examination, and so must be accepted. I sensed that this submission was advanced more in hope than expectation. The cross-examination was conducted by Mr Kitchener KC, with exceptional skill, and in circumstances where the time difference between this country and Cyprus, and the need to make progress with the trial as a whole, meant that his time with Mr Fokin was limited. It was nevertheless clear to everyone in court, including Mr Fokin, that Mr Kitchener KC was seeking to explore Mr Fokin's general honesty and reliability as a witness. In my view, it was no less clear that Mr Kitchener KC established that Mr Fokin was neither honest nor reliable. By the end, I felt unable to rely on any of Mr Fokin's evidence, save to the extent that it was clearly supported by documents or was inadvertently helpful to the Banks.

Mr Noble

86. The other witness who gave evidence for the Claimants at the level of the Firstline Trust was Mr Ronald Noble. Mr Noble is a US citizen, now resident in Dubai. From June 2022 until 26 February 2024, he was a director of Linea and of Linetrust PTC.

87. Mr Noble had a long and impressive career before this, notably as the Secretary-General of Interpol from 2000 to 2014. Before the start of his oral evidence, I therefore was hopeful that Mr Noble would be objectively interested in advancing the cause of the international rule of law, and so would be keen to assist the court. I was sadly disappointed. Like Mr Fokin, Mr Noble was a very unsatisfactory witness.

88. Mr Noble said in his witness statement that he was invited to take up his positions with Linea and with Linetrust PTC by Ms Skittides, who said that it was considered desirable to reinforce compliance mechanisms and corporate governance. Being aware of the issues arising from the sanctions imposed on Mr Melnichenko, Mr Noble said that he only took up his positions having met and discussed matters with Mr Melnichenko, and also with Mrs Melnichenko. He said that he was satisfied by Mr Melnichenko that he had divested himself of his assets in favour of the trust as early as 2006, and since then had reduced and limited his involvement and control, leading up to his resignation as discretionary beneficiary in March 2022, so that he no longer had any involvement at all. Mrs Melnichenko told him that she had no interest or involvement in the business and left all trust matters in the hands of the protector, Mr Fokin.

89. Mr Noble also said in his witness statement that Mr Melnichenko is a principled and honest man. He also praised Ms Skittides and Mr Lillikas. He gave no evaluation of Mr Fokin, but said that he had many interactions with Mr Fokin, and got to know him when they were both in Dubai in May-June 2022, from which I infer that he was comfortable dealing with Mr Fokin.

90. Having made this witness statement, Mr Noble then declined to give evidence. He only did so after a Letter of Request was issued by the Claimants, giving his evidence remotely from Dubai.

91. In his oral evidence, Mr Noble was combative, evasive and obstructive. He seemed to regard it as his duty to avoid giving a direct answer to almost any question.

92. Furthermore, given his stated interest in ensuring compliance, it was interesting that Mr Noble (unlike the EuroChem AG witnesses) insisted that the policy of complying with sanctions applied to all EuroChem companies, no matter where they operated, that such compliance was monitored by robust procedures, and that he had no reason to suspect breaches even by EuroChem's Russian entities. When confronted with the fact that EuroChem NW2 (about which he appeared to know nothing whatsoever) dealt with sanctioned Russian banks and had engaged a US-sanctioned contractor, he appeared to be neither surprised nor disappointed; nor, even, interested.

93. There were, nevertheless, some striking things that emerged from his evidence:

    (1) Mr Noble said that it was his general practice not to allow notes to be made of any one-to-one meeting he attended, and that he used only "disappearing messages" (on WhatsApp and Signal), evidently because he did not want to leave a paper trail.
    (2) Although he sought to portray the discussions that he had with Mr Melnichenko before he accepted the directorships as his own due diligence exercise, my impression was that Mr Melnichenko was interviewing Mr Noble, in order to satisfy himself that Mr Noble was someone Mr Melnichenko wanted at the helm of the trust companies.
    (3) In this context (i.e., the appointment of Mr Noble to the boards of Linetrust PTC and Linea and the interviews that preceded this), Mr Noble described Mr Melnichenko as "the decision-maker". When it was pointed out to him that he had said this, he then denied that he regarded Mr Melnichenko as a decision-maker. I found this rapid back-track utterly unconvincing.
    (4) It emerged that, prior to appearing to give evidence, Mr Noble asked Mr Kryazhevskikh for documents, who duly produced them. It seems from a letter from the Claimants' solicitors that these documents had been held by AIM Capital, on whose behalf Mr Kryazhevskikh was evidently acting when he assisted Mr Noble in this way. The documents included a letter dated 17 April 2023, which Mrs Melnichenko had sent to Mr Noble in his capacity of Chairman of Linetrust PTC. This, together with some other indications that I refer to below, suggested that AIM Capital effectively acted as the document repository for the Firstline Trust.

94. Overall, I did not consider Mr Noble a reliable witness.

XIV: The Banks' witnesses [95]-[98]

95. The Banks' witnesses were straightforward, but the significance of their evidence was limited.

96. It was clear from the evidence of SocGen's main witness, Mr Michel Colbert, that SocGen's decisions in relation to the Bonds were entirely reliant on the position of the French authority, discussed in Section XXXVIII below. Mr Renato Caviglia of SocGen Milan said that SocGen Milan relied on the views of SocGen's head office in Paris.

97. I understood from ING's witness, Mr Enrico Falcone, that the ING branch in Milan deferred to ING's head office in Amsterdam.

98. It was apparent that all three of the Banks' witnesses were concerned to comply properly with the EU sanctions. They were conscious not merely that this was an important part of their jobs, but that they, personally, might face criminal prosecution if they did not comply. Mr Colbert, in particular, mentioned the possibility of SocGen facing a fine of 10 times the sum involved, and of individuals facing up to five years in prison.

PART D: THE FACTS RE OWNERSHIP AND CONTROL [99]-[211]

XV: The ownership structure before sanctions [99]-[109]

99. As already stated, my understanding is that Mr Melnichenko founded the EuroChem group in about 2001. At some point he also founded the SUEK group, specialising in coal mining and trading, and in logistics. One of the leading companies in this group is Siberian Coal Energy Company AG ("SUEK AG"– since renamed Terra Brown AG).

The Trusts above EuroChem AG

100. While I do not know the details, it seems that, at some point in 2006, Mr Melnichenko transferred all his EuroChem and SUEK assets into a private trust in Bermuda – the Firstline Trust.

101. I have no direct evidence as to when AIM Capital entered the ownership structure. However, I have seen a certificate stating that it was incorporated on 22 September 2010. I assume that it became the owner of EuroChem AG and SUEK AG on or around that date, and that the shares in AIM Capital were from that point held by the Firstline Trust.

102. In 2015, the original Firstline Trust was dissolved. A new trust was established, also in Bermuda and also called the Firstline Trust, but this time a discretionary trust, subject to the law of Bermuda. The new Firstline Trust was administered by Linetrust PTC (which at that time was incorporated in Bermuda), pursuant to a Declaration of Trust dated 24 September 2015. The Declaration of Trust acknowledged the receipt on that date of US$100, but noted that further assets might subsequently be transferred in. Although I was given no direct evidence of this, it seems that, at some point, this happened to all the assets previously held by the original Firstline Trust.

103. Under the terms of the Declaration of Trust, Mr Melnichenko was the sole discretionary beneficiary, being the sole named First Beneficiary; in the event of his death or

resignation, Mrs Melnichenko would automatically become the sole discretionary beneficiary, being named as Secondary Beneficiary. The trustees (i.e., Linetrust PTC) could only add or remove a beneficiary with the consent of the protector, and the protector had the power to remove trustees and to appoint a new protector. There was no protector so long as Mr Melnichenko remained First Beneficiary; in the event of Mrs Melnichenko succeeding him, she would automatically become the protector.

104. On 20 October 2015, the Lineboro Trust was constituted. At this point, the trustee was a Bermudian company called Meritus Trust Company Limited ("Meritus"), and Mr Melnichenko was the appointor. The purposes of the Lineboro Trust relate to the administration of Linetrust PTC.

105. In December 2017, Linetrust PTC was discontinued as a company in Bermuda, and registered as a company continuing in Cyprus. Shortly after this, on 18 January 2018, Linea was incorporated in Cyprus. I assume that the shares in Linea were then transferred into the Firstline Trust, with Linea simultaneously receiving from the Trust the shares in AIM Capital.

106. On the basis set out above, I take it that, from about 2018, the structure above EuroChem AG was broadly as shown in Appendix 1.

The structure from EuroChem AG downwards

107. From EuroChem AG downwards, the position before March 2022 was slightly more complicated, in that MCC EuroChem owned 10% of the shares in EuroChem AG.

108. Furthermore, the directorships were not as shown in Appendix 1. In particular, Mr Melnichenko was a non-executive director of EuroChem AG until 9 March 2022.

109. There is evidence suggesting that Mr Melnichenko was actively interested and involved in the operation of the Firstline and Lineboro Trusts, and in EuroChem's business, during the period prior to sanctions being imposed. His involvement in the business in this period, I discuss in Section XVIII below. As regards the Trusts, in June 2020, as Appointor of the Lineboro Trust, he appointed Mr Fokin as protector of the Lineboro Trust – for a specific purpose (the appointment of a new trustee) and only for three days.

XVI: The ownership structure after sanctions [110]-[123]

Changes at the Firstline Trust level

110. For the purposes of the proceedings before me, the change most directly relevant to the ownership structure of EuroChem NW2 and EuroChem AG, in the context of sanctions, was the retirement of Mr Melnichenko from the position of discretionary beneficiary of the Firstline Trust.

111. There was an issue before me as to the precise date, which I consider in Section XX below, but it was clear that it happened no earlier than 8 March 2022, and no later than 10 March 2022 – on any view, at around the time when Mr Melnichenko was designated by being added to the list at Annex I to Regulation 269.

112. The immediate effect of Mr Melnichenko's retirement was that Mrs Melnichenko automatically became the discretionary beneficiary. She also automatically became the protector.

113. On 10 March 2022, Mr Melnichenko signed a letter resigning his non-executive directorship of EuroChem AG. The letter was dated 9 March 2022 (i.e., the same day that he was designated), but it was common ground that Mr Melnichenko did not sign it until the following day.

114. On 17 March 2022, Mrs Melnichenko appointed Mr Fokin as protector of the Firstline Trust, and, herself, resigned from the position of protector.

115. On 7 May 2022, by a board resolution of Linetrust PTC – in the person of its then directors, Ms Skittides and Mr Constantinides, and with the consent of Mr Fokin as protector – 8,750 shares in Linea and 2,000 shares in AIM Capital were transferred to Mrs Melnichenko. These were minority shareholdings, but their value was substantial – several billion US$ (or €).

116. As already noted, Mrs Melnichenko was designated under Regulation 269 on 3 June 2022.

Changes at the level of EuroChem AG

117. It seems that, at some point in late 2022 or early 2023 (but probably on or shortly after 16 December 2022), the 10% shareholding in EuroChem AG that had been held by MCC EuroChem was transferred back to EuroChem AG. This took place in the context of a series of other group structural changes going well beyond the ownership merely of the two Claimants, i.e. EuroChem NW2 and EuroChem AG (and, therefore, not apparent from Appendix 1). I discuss these other group structural changes in Section XVII below.

Changes in directorships

118. There were also changes in directorships.

119. At the level of Linetrust PTC, Mr Fokin was the sole director until 18 March 2022. For some months thereafter the directors were Ms Skittides and Mr Constantinides. Ms Skittides was educated at Moscow State University before qualifying to practise as a lawyer in Cyprus. She is a professional trustee and corporate service provider and has worked for and with various significant Russian/CIS corporations, including Cargotrans and several Russian banks.

120. Mr Noble was appointed as director of Linetrust PTC on 10 June 2022. Mr Lillikas was appointed on 28 June 2022. At some point (I do not know the date), Mr Constantinides resigned. Mr Lillikas was previously a politician in Cyprus. In that capacity, he was well-known to be pro-Russian, arguing publicly that Cyprus should not enforce EU sanctions against Russia and that Cyprus should allow Russia a military base on the island.

121. As already noted, Mr Fokin was a director of Linea until 18 March 2022, and a director of AIM Capital until 22 January 2024.

122. At the level of EuroChem AG, Mr Samir Brikho, who had been Chairman of EuroChem AG and the CEO of the EuroChem Group, resigned. So did Mr Vladimir Rashevsky, who had also been CEO, but was himself added to the list at Annex I to Regulation 269 on 15 March 2022. Mr Hechler assumed the position of CEO in June 2024 and became a director in October 2024.

123. I am not aware of any relevant changes at the levels of MCC EuroChem or EuroChem NW2. At some point, Mr Shiryaev was succeeded by Mr Vanyushin as the person with the head title at MCC EuroChem, but I do not know precisely when or why this occurred. I have no reason to suppose that this change related to sanctions.

XVII: Other group structural changes [124]-[144]

124. The main focus before me was, rightly, the ownership and control of EuroChem NW2 and EuroChem AG. This meant that most of the evidence regarding ownership structure and the changes that were made after March 2022 related, narrowly, to the ownership structure upward from EuroChem NW2 to EuroChem AG, and then upward from EuroChem AG to the Trust level.

125. However, the issues in relation to control (as distinct from ownership) meant that there was also some evidence regarding changes that were made after March 2022 in relation to other parts of the EuroChem group. Most of this evidence was obtained by the Banks and Tecnimont.

126. Such changes were necessary because most of EuroChem's manufacturing capacity was and is in Russia. Sanctions threatened the ability of EuroChem AG and any subsidiaries in the EU, or any nationals of EU countries, to do business with the Russian group entities. Similar problems would arise for subsidiaries in, or nationals of, other countries that imposed sanctions, notably the USA.

127. Significant changes therefore were required, and in due course were made over 2022/2023. The evidence relevant to this fell into four broad segments.

The "Future of EuroChem" memorandum

128. First, considerable attention was paid by the Banks to a memorandum entitled "The Future of EuroChem". It was co-written by a number of senior managers, including Mr Hechler (who, however, maintained in evidence that he had limited involvement and remembered very little about it). It was undated, but it was circulated by an email of 14 March 2022 to a number of others within the group, notably board members including the then-CEO, Mr Rashevsky.

129. The Future of EuroChem memorandum proposed dividing the group into three clusters, each with independent management and ownership, but with internal agreements to preserve existing synergies so far as possible. The three clusters proposed were: (i) a Russian/CIS cluster, based in Moscow; (ii) an international business cluster, based in Switzerland; and (iii) an international trading cluster, which could be based in various possible locations where there were no sanctions affecting business with Russia, including the UAE. The international trading cluster would enable the Russian cluster and the international business cluster to do business with each other, via the intermediary trading companies in this third cluster.

130. The document deprecated the fact that sanctions had been imposed (repeatedly referring to them as "nonsense"). It referred to the need to preserve and realise value for "the historic owner", while recognising that business continuation would be "in the form timing and shape as per shareholder's desires". It ended stating that the senior management team had a duty to oppose the value-destruction resulting from sanctions, "… jointly with the Shareholders". Mr Hechler was ambivalent as to whether these were references to Mr Melnichenko – he initially accepted this, at least in relation to "the historic owner", then changed his mind. However, I have no doubt that they did indeed relate to Mr Melnichenko. Those writing the document intended to appeal to him, through Mr Rashevsky.

131. Mr Rashevsky responded to the email that sent him the Future of EuroChem memorandum, by an email saying that the memorandum would be discussed with the Chairman (Mr Brikho) and "representatives of shareholders". There was no disclosure of such discussions, however, and Mr Hechler said he did not know what, if anything, had come of the proposals in the memorandum.

132. I find this remarkable. Even if the changes being proposed had not been adopted in any form, they must at least have been discussed, both at board level (as Mr Hechler accepted) and with "representatives of shareholders" (as Mr Rashevsky had promised). However, they were adopted, at least in large measure. This means that the discussions must have been extensive and detailed. In all the circumstances, it is both surprising and disappointing that no disclosure has been forthcoming; in particular, as regards discussions with the "shareholders" or their "representatives". Identifying the relevant individuals who took part in these discussions, and assessing their capacity to influence decision-making, would have gone to the heart of some of the fundamental issues in the case.

The transfers to MCC EuroChem

133. On 2 December 2022, MCC EuroChem applied to the Russian Ministry of Industry and Trade for the transfer of two subsidiaries, with an apparent total value of over US$3 billion. One was LLC EuroChem North-West ("ECNW1"), a similar entity to EuroChem NW2 which owned an existing, smaller plant at Kingisepp (already operating), and which until then had been directly owned by EuroChem AG. The other was a potash plant elsewhere in Russia, which MCC EuroChem wished to acquire from another group company presently based in Cyprus. The transfer of ECNW1 was to be set off by the transfer back to EuroChem AG of the 10% shareholding that, to this point, had been held by MCC EuroChem. The transfer of the potash plant was to involve a series of set-offs of mutual claims.

134. The application explained in express terms that it was made as a result of sanctions, and that its main purpose was to transfer Russian assets into Russian ownership. It also stated that EuroChem AG was unable to participate fully in decision-making in respect of Russian companies. It is clear from this that the intention was to establish precisely the Russian cluster that the "Future of EuroChem" memorandum had proposed.

135. MCC EuroChem's application was not disclosed by the Claimants – the Banks obtained it by other means. However, the transfer of ECNW1 to MCC EuroChem, in exchange for the 10% of EuroChem AG formerly held by MCC EuroChem, undoubtedly took

place, as Mr Hechler confirmed. The application therefore must have been approved by the Russian authorities.

136. As well as requiring MCC Eurochem's application to the Russian authorities, this transaction was discussed at board level within EuroChem AG, and was approved at shareholder level. None of the Claimants' witnesses gave evidence about this (save that Mr Hechler confirmed that it must have been approved by EuroChem AG's board). The Claimants disclosed a handful of important documents at a very late stage, as I discuss in Section XXII below.

The UAE trading cluster

137. Some time in late 2022 or early 2023, the EuroChem group trading and logistics operations were re-located from Switzerland to the UAE, through the establishment of two Dubai-based subsidiaries: EuroChem Trading Middle East DMCC and Corrigo Fertilizers FZ-LLC. A number of (non-EU national) senior managers relocated to Dubai at the same time, as did a branch of AIM Capital. Once again, this broadly reflected the "Future of EuroChem" memorandum.

138. Furthermore, at some point (it is not clear when), Mr and Mrs Melnichenko moved to Dubai, as did the Melnichenko Foundation (which I understand to be their private charitable foundation). Mr Noble said that Mr Melnichenko's personal office is in the same complex as the Dubai offices of AIM Capital and EuroChem.

Changes within EuroChem AG and the EU subsidiaries

139. The "Future of EuroChem" memorandum suggested a number of possible structural changes for EuroChem AG and the Swiss/EU cluster, including a management buy-out. In the event, that did not come to pass and the ownership of EuroChem AG remains unchanged, save for the 10% of its shares that were transferred from MCC EuroChem.

140. Instead, at every level within Switzerland and the EU, board members and senior executives have signed written commitments that they have not entered into any agreement or other arrangement, legal or factual, that would allow Mr or Mrs Melnichenko to assert any influence over the conduct of EuroChem AG.

141. Furthermore, the group as a whole has adopted a series of compliance policies which require every subsidiary of EuroChem AG to comply with applicable sanctions. However, as noted, Mr Collishe confirmed that these policies do not apply in countries where no sanctions are legally in force (i.e., not outside the EU/USA/UK, in particular not in Russia or the UAE). Furthermore, it is apparent that EuroChem NW2, in particular, is willing to contract with sanctioned counterparties.

142. EuroChem AG also engaged a French audit and regulatory services provider, Advolis SAS ("Advolis"). Advolis has conducted audits of EuroChem AG and all its EU subsidiaries, to check for compliance by those companies with the EU sanctions regime, including the prohibition on making funds or economic resources available to or for the benefit of Mr and Mrs Melnichenko. Advolis has now issued a series of reports, each confirming that EuroChem AG and its EU subsidiaries have complied with sanctions and have not made any funds or other economic resources available to any designated person.

143. The purpose of the written commitments and policies to which I have referred, and the Advolis audits, was not only to enforce but also to demonstrate EuroChem AG's independence from Mr Melnichenko and, more generally, from Russian influence. The intention was to satisfy the relevant EU authorities that EuroChem AG had put in place appropriate safeguards – referred to in regulatory jargon as "firewalls" – to prevent Mr Melnichenko from exercising control. Importantly, however, it is clear from the Advolis reports, and Mr Hechler ultimately confirmed, that the Advolis audits do not cover any EuroChem companies that are outside Switzerland and the EU. The firewall measures therefore do not extend to (in particular) the EuroChem companies in Russia or in the UAE.

144. Mr Beloborodov gave evidence that EuroChem NW2's expenditure is subject to independent quarterly audits by an auditor he identified as RTK. These audits monitor EuroChem NW2's financing and spending and have consistently confirmed that funds provided to EuroChem NW2 have only been used for the purpose of the new Kingisepp plant. However, these audits do not check for compliance with EU or any other sanctions. My impression was that they were intended to root out mis-spending in the form of theft or corruption. If someone with proper corporate authority (e.g. Mr Vanyushin) were to direct payment to Mr Melnichenko, I am doubtful that an RTK audit would subsequently flag this, let alone prevent it before the event.

XVIII: Mr Melnichenko's involvement before March 2022 [145]-[151]

145. Before March 2022, numerous sources, both within the EuroChem group and outside it, referred to Mr Melnichenko as if he were the shareholder or beneficial owner of the group. Many of these utterances were informal and unofficial in nature, and I pay them no regard. However, it is of some interest that EuroChem AG's 2019 Annual Report referred to Mr Melnichenko as EuroChem AG's "beneficiary shareholder", noting that he "is actively involved in the business". The 2020 Annual Report referred to Mr Melnichenko as "the beneficiary…of EuroChem Group". The 2021 Annual Report described him as being "the ultimate beneficial owner" prior to his resignation.

146. Of more significance is an email chain from January 2022 relating to the EuroChem group budget. The budget was a long document (certainly well over 100 pages) and was shared with Mr Melnichenko, who evidently read it carefully and then provided a long and very detailed set of comments. This is of interest, not only because it demonstrates the great attention being paid by Mr Melnichenko and his confidence that others would take account of his views, but also because of the reaction of one of the recipients, Mr Vasiliev. He sent a humorous message to various colleagues, telling them that, this year, "the Shareholder's questions about the budget are not 69, but only 50 (so far)!... this may indicate a 38% improvement in the quality of budget preparation!" It is clear from this that such interventions by Mr Melnichenko were a regular occurrence, indeed they were expected; and that significance was attached to them because he was regarded by EuroChem's managers as (in Mr Vasiliev's phrase) "the Shareholder".

147. Similarly, a separate email chain from January 2022 related to the minutes of a recent meeting of the EuroChem strategy committee. It included detailed comments from Mr Melnichenko on group strategy specific to EuroChem NW2 and the new Kingisepp plant. Mr Melnichenko stated that, in his view, the strategy committee had missed the main point, explaining precisely why and concluding "I cannot agree". He sent these

comments to the main board of EuroChem AG, who then pondered how to proceed "taking into account AIM's comments below". Mr Melnichenko was again referred to as the "Shareholder".

148. Again, on 6 March 2022, Mr Shiryaev (then the General Manager of MCC EuroChem) sent Mr Melnichenko an email with detailed calculations relevant to the return on investment on ammonia production. Mr Melnichenko responded on the following day in withering terms ("gibberish") and insisted that the calculation be re-done.

149. Such interventions demonstrate that, immediately prior to Mr Melnichenko's designation, he was actively involved in the EuroChem group business at a granular level, and that he fully expected people to do as he said – which they did. In both respects, they are characteristic of the conduct of a hands-on owner, someone who was (as Mr Beloborodov accepted) "right at the top".

150. They all went way beyond anything that might be expected, or accepted, from a mere non-executive director with no ownership interest. In his evidence, Mr Noble was taken to these examples and said he saw no issue, given that Mr Melnichenko was a director. I thought this reflected very badly on Mr Noble.

151. This makes it necessary to consider how matters altered, after March 2022, given the structural changes that I have summarised above. Before coming back to this, it is first convenient to address at this point the issues that arose regarding the date of Mr Melnichenko's retirement as discretionary beneficiary under the Firstline Trust, and the relationship between Mr Melnichenko and Mrs Melnichenko.

XIX: The Claimants' first pleading point [152]-[154]

152. Mr Melnichenko's retirement as discretionary beneficiary was accomplished by a formal Deed of Retirement, bearing the date 8 March 2022. It states that it was signed by Mr Melnichenko in the presence of a witness, Mr Harry William Tree.

153. Mr Fenwick KC submitted that there was no pleaded issue as to the date of Mr Melnichenko's retirement, and it therefore was not open to the Banks or Tecnimont to challenge the authenticity of the date shown on the document. As to this:

    (1) In its Defence, Tecnimont disputed the date of the Deed and put the Claimants to proof.
    (2) Before the first CMC in this action, there had been related anti-suit proceedings in which the date of the Deed had been disputed. At the CMC, therefore, there were submissions about backdating, and the issue was acknowledged by the Judge (Foxton J).
    (3) The date of Mr Melnichenko's resignation was specifically ordered as Issue 3 in the List of Issues for Disclosure.
    (4) ING served a Notice to Prove on 31 January 2025. This was approximately three weeks before the Claimants served their witness evidence.

154. I therefore reject Mr Fenwick KC's submissions that the point was not open to the Banks or Tecnimont.

XX: The date of the Deed of Retirement [155]-[165]

155. 8 March 2022 was, of course, the very day before Mr Melnichenko was added to the list at Annex I to Regulation 269. It also happened to be his 50th birthday, and he was taking a break, trekking in Tanzania on Mount Kilimanjaro. Against this background, the Banks and Tecnimont contended that it was inherently unlikely that Mr Melnichenko would have had both the immediate foresight that he would be sanctioned on the very next day, and the wherewithal to sign the Deed of Retirement.

156. The first disclosed document that refers to the Deed of Retirement is an email dated 10 March 2022, sent by Ms Giovana Papamichael (an in-house lawyer with an AIM Capital email address, who elsewhere described herself as writing on behalf of AIM Capital) to Mr Alexei Podkholzin (whose email address suggests he worked for AIM Management LLC, a separate company, incorporated in Russia, which provides management services to the EuroChem group and others). Ms Papamichael's email stated:

> "The Firstline Trust provides under Clause 5.1 that "Any Beneficiary (not being a minor) may by deed declare irrevocably that he shall cease to be a Beneficiary". Mr. M being the sole Beneficiary of the Firstline Trust informed the trustees on the 8th of March 2022 about his resignation. Upon his resignation, Mrs. M is automatically appointed as protector and Beneficiary of the Trust."

157. The email attached a pdf of the Deed of Retirement. I was told that the metadata of that pdf indicated a date of 10 March 2022.

158. This email raises a number of questions: How, when and in what words did Mr Melnichenko inform "the trustees" on 8 March 2022? Who did Ms Papamichael mean by "the trustees" – (i) Linetrust PTC, (ii) its directors, (iii) AIM Capital as the Firstline Trust's document repository? How, and when, was the Deed of Retirement transmitted from Tanzania to (i) "the trustees" or (ii) AIM Capital/Ms Papamichael? I should note at this point that Linetrust PTC and AIM Capital appear to have the same address in Cyprus; this, together with the terms of Ms Papamichael's email, tends to confirm that AIM Capital provided office space and services to the Firstline Trust, and held its documents.

159. Furthermore, when Mrs Melnichenko resigned as protector and appointed Mr Fokin to replace her, she did so by a further Deed of Retirement dated 17 March 2022. This too was witnessed by Mr Tree, but it was common ground that, on 17 March 2022, Mrs Melnichenko and Mr Fokin (who also signed it) were in the UAE. Thus, further questions arise: Who is Mr Tree? Where was he on 8 March 2022 and on 17 March 2022? Why did Mr Melnichenko take him to Tanzania to join in the 50th birthday celebrations?

160. Given that this issue concerns the authenticity of the date of a document signed by one person and witnessed by another, the most obvious way to respond to the notice to prove would have been to call a witness: ideally Mr Melnichenko or (perhaps still better) Mr Tree. The questions arising from Ms Papamichael's email would have best been

addressed by calling evidence from Ms Papamichael. No such evidence was called and none of these individuals was offered as a witness.

161. Moreover, in order for Ms Papamichael to be able to attach it to her email on 10 March 2022, Mr Melnichenko's Deed of Retirement must first have been transmitted to Cyprus, presumably as a pdf attachment to an email, probably to someone at AIM Capital or with an AIM Capital email address. Scrutiny of that original communication (including metadata, as well as the text of the covering message) would inevitably have been revealing. However, it has not been disclosed.

162. Furthermore, in assessing this issue, I have in mind that the letter by which Mr Melnichenko resigned his directorship of EuroChem AG (purportedly, 9 March 2022) and the indemnity in favour of the Valla trustees (purportedly 28 February 2022) were both backdated.

163. Taking all these factors together, in my judgment, the Claimants have failed to prove the date of the Deed of Retirement. I do not accept that it was signed by Mr Melnichenko on 8 March 2022, or before he was added to the list at Annex I to Regulation 269. It seems to me more likely that it was created on 9 or 10 March 2022 and backdated.

164. The dispute as to the date of Mr Melnichenko's retirement as discretionary beneficiary attracted a good deal of attention at the trial, but it is important to put it into context in terms of the issues that I have to determine. If Mr Melnichenko's Deed of Retirement did not in fact come into existence until after Mr Melnichenko had been designated under Regulation 269, and if Linetrust PTC and its directors knew this but nevertheless acted on the Deed as if it had taken effect before sanctions were imposed on Mr Melnichenko, that might have significant consequences for them. However, on no view is the Deed a nullity. Its effect has been real: Mr Melnichenko has in fact retired as discretionary beneficiary and he has been replaced by Mrs Melnichenko.

165. The significance of the point to these proceedings is, therefore, oblique. If, as I have concluded, Mr Melnichenko's Deed of Retirement was backdated, this was done by him deliberately, in an attempt to evade or at least minimise the effects of his designation on 9 March 2022. Furthermore, this must have been known to those who knew the true date – which must include not only the directors of Linetrust PTC (because they must be aware that, contrary to Ms Papamichael's email of 10 March 2022, Mr Melnichenko had not informed them on 8 March 2022), but also, in all likelihood, AIM Capital – almost certainly in the person of Mr Fokin, who was then a director of AIM Capital as well as being very close to Mr Melnichenko. The fact that none of these individuals objected to Mr Melnichenko's ploy to evade EU sanctions is concerning, and of some relevance to the points that I have to consider later in relation to Mr Melnichenko's ability to control the Claimants.

XXI: The role of Mrs Melnichenko [166]-[175]

166. I have already noted that, in March 2022, Mr Fokin was involved in dealings with bank balances and trust assets that appeared on their face to belong to Mrs Melnichenko, but which he and Mr Melnichenko disposed of as if they were Mr Melnichenko's. I have also noted Mr Noble's evidence that Mrs Melnichenko told him that she had no interest or involvement in the business, and left such matters in the hands of Mr Fokin.

167. On 17 April 2023, Mrs Melnichenko wrote to Mr Noble stating that she wanted to relinquish her status as beneficiary of the Firstline Trust and to reverse the status quo as of 7 March 2022 – in other words, to give up her rights and to formally restore Mr Melnichenko.[3] In fact, this never happened. However, the only credible explanation for the fact that the letter was sent at all is that Mr Melnichenko's resignation in March 2022, in favour of his wife, was a manoeuvre that he and his advisers hoped would enable both the EuroChem group and the Melnichenko family to evade sanctions. After it became clear that this would not work (not least because sanctions were then imposed on Mrs Melnichenko), the switch to Mrs Melnichenko seemed pointless; hence Mrs Melnichenko's letter.

168. I can only assume that those involved then realised that to re-instate Mr Melnichenko as discretionary beneficiary would make it obvious that the switch to Mrs Melnichenko had been a mere stratagem, and that Mr Melnichenko had, throughout, remained the real power behind the Firstline Trust. The letter therefore was not actioned. However, its significance is very substantial.

169. It seems clear that, in March 2022, Mr Melnichenko gave up his rights as discretionary beneficiary under the Firstline Trust in the knowledge that Mrs Melnichenko would automatically replace him. He intended her to act as his proxy; which is what, in reality, she is.

170. It is striking that no protector was considered necessary for the Firstline Trust while Mr Melnichenko was the discretionary beneficiary, but a protector was considered necessary after he resigned and Mrs Melnichenko became discretionary beneficiary. It is also striking that the person appointed was Mr Fokin; who had been working for Mr Melnichenko for some years and must have been highly regarded since he was trusted to run Mr Melnichenko's family office.

171. When Mr Melnichenko had needed someone to act briefly as protector of the Lineboro Trust, in June 2020, he appointed Mr Fokin. I have no doubt that Mr Melnichenko was also behind the appointment of Mr Fokin as protector of the Firstline Trust, on 17 March 2022. Furthermore, I have no doubt that, despite his denials, Mr Fokin remains in close contact with Mr Melnichenko. As protector, he is able to ensure that the Firstline Trust is managed by the Trustee (i.e., in reality, by Ms Skittides and Mr Lillikas) in accordance with Mr Melnichenko's wishes.

172. The Claimants acknowledged that the Banks' case was that Mrs Melnichenko was Mr Melnichenko's proxy, but made no attempt to persuade me to the contrary. All they said in closing was:

> "The Claimants are not in a position to assess the nature of the relationship between Mr and Mrs Melnichenko. In any case, the allegation goes nowhere…"

173. The assertion that the Claimants were not in a position to make any assessment of this is remarkable, given that they called evidence from two witnesses, Mr Fokin and Mr Noble, who saw this relationship first-hand, but whose evidence ultimately supported

[3] This is the letter that Mr Kryazhevskikh later provided to Mr Noble: Section XIII above.

the Banks on this point. Furthermore, it is not right that the allegation was of no importance.

174. First, it follows that the fact that Mr Melnichenko ceased to be the discretionary beneficiary of the Firstline Trust, whether on 8 or 10 March 2022, made no real difference to the ownership structure. Matters have to be looked at as if Mr Melnichenko always remained the discretionary beneficiary.

175. Second, the fact that Mrs Melnichenko was Mr Melnichenko's proxy must have been evident to Linetrust PTC, in the person of Ms Skittides and Mr Constantinides, and to Mr Fokin as protector, when shares in Linea and AIM Capital were transferred to Mrs Melnichenko on 7 May 2022. The fact that Linetrust PTC and these individuals felt able to transfer such valuable shareholdings to the proxy of someone who was subject to EU sanctions is extremely disturbing.

XXII: Mr Melnichenko's involvement after March 2022 (1) [176]-[187]

176. It is necessary to separate Mr Melnichenko's involvement in the structural changes that I have summarised in Sections XVI and XVII above from his involvement in the business affairs of the group.

177. On the basis that Mrs Melnichenko has always acted as his proxy, that Mr Fokin is his appointee and trusted deputy, that Ms Skittides and Mr Lillikas were appointed because of their pro-Russian background and that Mr Noble was interviewed by Mr Melnichenko before his appointment, it seems clear that Mr Melnichenko was involved in the changes to the Claimants' ownership structure that I have summarised in Section XVI above.

178. As regards the structural changes to the EuroChem group overall, summarised in Section XVII above, I received very limited evidence during the course of the hearing about the discussions that resulted in these changes, and none about the decisions that will have been required – i.e., who made these decisions and when. Mr Hechler gave evidence (no doubt correctly) that in so far as such decisions affected EuroChem AG itself (such as the transfer of 10% of its shares from MCC EuroChem), this must have been discussed at board level. However, there was no disclosure from the Claimants about this or about any of the other decisions that these structural changes will have required.

179. Nevertheless, it is telling that Mr Rashevsky's response to the "Future of EuroChem" memorandum was that it would be discussed with "representatives of shareholders". This suggested that the memorandum was discussed with Mr Melnichenko or those representing him (such as Mr Fokin) and that the important changes that ensued only occurred with his agreement and approval.

180. After the hearing had ended, in response to a question from me asking for confirmation whether any documents relating to the transaction which resulted in EuroChem AG acquiring 10% of its shares from MCC EuroChem had been disclosed, the Claimants spontaneously provided documents which confirmed (i) that the transaction was approved by the EuroChem AG board, at a meeting on 16 December 2022, and (ii) that it was approved at an extraordinary Shareholders Meeting, also on 16 December 2022. At the shareholders' meeting, AIM Capital was represented by a proxy, Ms Anna

Burdina, who had been authorised to vote on AIM Capital's behalf, as 90% shareholder, by Mr Fokin. As 10% shareholder, MCC EuroChem was represented by Ms Basyrova.

181. This very late disclosure generally provoked more questions than it answered. Above all, it shed no light on how or why Mr Fokin came to the view that the transaction should be approved, what instructions or information he gave Ms Burdina or, more importantly, whom he had consulted before doing so. These are all matters on which the Banks would no doubt have wished to question Mr Fokin, had the documents been made available in time for them to do so. However, given my view of Mr Fokin's evidence, I have no doubt that those consultations included Mr Melnichenko, who was involved not only in this transaction but in the associated structural changes that occurred in 2022/2023.

182. My confidence on this point is redoubled by the fact that these documents included an extract of EuroChem AG's shareholders' register, as at 28 October 2022. This recorded the 90% holding of AIM Capital and the 10% holding of MCC EuroChem, and, under the heading "BO" (i.e., beneficial owner), identified Mrs Melnichenko in relation to all these holdings. Thus, it is apparent that, at any rate up until about mid-December 2022, everyone involved in the transaction was treating Mr Melnichenko's proxy as the beneficial owner of AIM Capital, of MCC EuroChem and (therefore, through them) of EuroChem AG. Whatever else this may signify[4], it must at least confirm that Mr Fokin's instructions in relation to this transaction will have come from Mr Melnichenko.

183. How involved Mr Melnichenko has been since the implementation of those changes, is much more opaque. The written commitments given, and the sanctions compliance policies, as audited by Advolis, seem likely to have prevented him from having any involvement in the affairs of EuroChem AG or its EU subsidiaries, at least from about 2023 onwards. These firewall measures were designed to protect EuroChem AG and its EU subsidiaries from Mr Melnichenko's influence, and appear to have done so. However, it is impossible to be sure what involvement he may continue to have in EuroChem group businesses activities conducted by group companies outside the EU, and especially in countries where sanctions are not applicable and the firewall has no effect; above all, Russia and the UAE.

184. It seems unlikely to be nothing more than coincidence that the location selected as the new centre for all the EuroChem group's trading activities was Dubai, and that Mr and Mrs Melnichenko also moved to Dubai; the more so as Mr Melnichenko's personal office is physically close to the offices of AIM Capital and EuroChem. This suggests at least a degree of involvement in the business activities centred in the UAE cluster.

185. As to Mr Melnichenko's involvement in EuroChem's activities in Russia, I received no direct evidence at all.

186. Mr Beloborodov gave evidence that he had no communication with Mr Melnichenko, but I do not find this surprising. Mr Beloborodov was responsible for the construction

[4] The reader will not have forgotten that Mrs Melnichenko, herself, had, by this time, been designated under Regulation 269 for over six months. The fact that the board of EuroChem AG felt able to carry out a transaction affecting assets worth €Euro billions, with the deliberate intention of putting some of them outside EU jurisdiction, expressly on the basis that these assets were owned by a designated person, is not directly relevant to my decision, but it may or may not interest the SECO.

and commissioning of the new plant, but he appears to have had no involvement in strategic or financial decisions. I therefore would not expect Mr Beloborodov to have had communications with Mr Melnichenko, no matter how involved Mr Melnichenko was in the business affairs of EuroChem's Russian entities: Mr Beloborodov simply did not hold the kind of position that would require communications to/from Mr Melnichenko.

187. Mr Beloborodov's evidence was that the strategic and financial decisions affecting EuroChem NW2 were taken at the level of MCC EuroChem (for example, the decision to engage Velesstroy as the new contractor). I know nothing of how MCC EuroChem makes such decisions, except that it is apparent from the evidence of Mr Hechler and Mr Collishe that they are made without any input from EuroChem AG, and without any regard to sanctions. It therefore is entirely possible that Mr Melnichenko may be involved, whether directly or via deputies such as Mr Fokin or Mr Kryazhevskikh. Indeed, the exchange between Mr Shiryaev and Mr Melnichenko in March 2022, which I set out in Section XVIII above, suggests that this is likely.

XXIII: The Claimants' second pleading point [188]-[197]

188. Mr Fenwick KC submitted that it was not open to the Banks or Tecnimont to argue that, even though Mr Melnichenko exerted no control at the level of EuroChem AG, he might do at the level of MCC EuroChem. Mr Fenwick KC said that this should have been specifically pleaded.

189. It is right that neither of the Banks specifically pleaded that EuroChem NW2 is under the control of Mr Melnichenko, via MCC EuroChem, even though EuroChem AG is protected from his control by the firewall. Tecnimont came closest to doing so in its Defence at paragraph 65F(4), although that focussed rather on the flow of funds to Russia via the UAE. However, the Banks and Tecnimont all certainly alleged that EuroChem NW2 is subject to Mr Melnichenko's control.

190. The Claimants responded to this, in paragraph 21.c of their Reply, by alleging that Mr Melnichenko does not exercise legal control over EuroChem NW2, or de facto control "whether through [EuroChem AG], the Firstline Trust or anyone else." This was a positive case, which was necessarily in issue at trial, that Mr Melnichenko did not control EuroChem NW2 through anyone – including MCC EuroChem (which, in the Reply, was positively alleged to be EuroChem NW2's immediate parent). The result was that issue 12 in the agreed list of issues for trial was:

> "12. Is EuroChem NW2 a legal person associated with owned and/or controlled… by Mr and/or Mrs Melnichenko?"

191. Issue 12 therefore was not confined to control via EuroChem AG. It accommodated a case that Mr Melnichenko's control was exerted only via MCC EuroChem.

192. That said, I should ultimately be less interested in the niceties of pleading than in the need for a fair trial. Mr Fenwick KC's submission was that it would be unfair to the Claimants to allow the Banks or Tecnimont to run this case. Assessing fairness makes it necessary to take into account how the relevant case came to be run; when it became apparent to the Claimants that their opponents intended to run it; and what difficulties it has caused the Claimants that they only realised this at a late stage.

193. The case came to be run because the Claimants' own case, in the Reply and in the evidence of their witnesses, made it apparent that, while there are firewall measures in place in relation to EuroChem AG, there are no such firewall measures for EuroChem NW2 and no control by EuroChem AG of either EuroChem NW2 or MCC EuroChem. The Claimants' Reply contains a structure diagram very similar to Appendix 1 to this Judgment, which conspicuously failed to identify any of the directors or other people in charge of MCC EuroChem (thus presenting a very distinct contrast with EuroChem AG, AIM Capital and Linea). The Claimants' witness statements (in particular, those of the EuroChem AG witnesses) all implied that the firewall operated only within the EU and that EuroChem AG had only limited control if any over companies in Russia; which then was duly confirmed by their oral evidence.

194. In short, it was the way that the Claimants presented their own case that gave the idea to the Banks and Tecnimont that Mr Melnichenko might exercise control at the level of MCC EuroChem. The Claimants' case made it apparent that MCC EuroChem was not in reality controlled by EuroChem AG; ergo, it might very well be controlled by Mr Melnichenko.

195. Mr Fenwick KC said that it became apparent to the Claimants that the Banks and Tecnimont intended to run this case upon receipt of their written opening submissions. This was on 4 June 2025 – precisely one month before the final day of the trial. Given that the idea for this case was suggested by the Claimants' own evidence, it is arguable that the Claimants should have foreseen the possibility somewhat earlier, especially given the open-ended terms of paragraph 21.c of the Reply. Be that as it may, it then falls to the Claimants to show that 4 June 2025 did not leave them sufficient time to respond.

196. That is where the Claimants' argument really runs into the sand. It is commonplace in litigation that, as the trial goes on, points acquire a new significance, or new points emerge, and the parties respond with additional evidence. To persuade the court that it would be unfair to allow the Banks and Tecnimont to run the case that they wanted, Mr Fenwick KC would have had to give at least some indication of why it was not possible to provide the documentary evidence or to produce the witnesses that he otherwise would have. Mr Fenwick KC did not seek to discharge this burden and in fact there is no obvious reason why (for example) Mr Shiryaev or Mr Vanyushin could not have been produced to give evidence, if necessary, by videolink. Similarly, the Claimants could have produced further disclosure at any point during the weeks before the last day of the trial.

197. Rather than trying to establish real unfairness, Mr Fenwick KC instead confined himself to the contention that the point was simply not in play on the statements of case. Considered in this very limited manner, the Claimants' objection is not tenable, in the light of paragraph 27.c of the Reply and issue 12 of the agreed issues for trial.

XXIV: Mr Melnichenko's involvement after March 2022 (2) [198]-[204]

198. I therefore come back to the question of Mr Melnichenko's involvement in the business affairs of the EuroChem entities in Russia, for which the head Russian holding company was MCC EuroChem, after March 2022.

199. As noted, I received no direct evidence about this. Indeed, I know nothing about the corporate governance of MCC EuroChem, save that Mr Shiryaev was the General Director for some time, and save that, more recently, the General Director has been Mr Vanyushin. Mr Fenwick KC said that he was unable to tell me who the directors of MCC EuroChem were or are. I know that decisions that affect EuroChem NW2 are made at the level of MCC EuroChem, because Mr Beloborodov confirmed this. However, I received no evidence that demonstrates how such decisions are made, or by whom. Even Mr Beloborodov did not appear to know.

200. In the absence of direct evidence, the Banks and Tecnimont relied on a series of comments and indications, generally published by various media outlets, suggesting that Mr Melnichenko was and is still the ultimate beneficial owner of the EuroChem group. For example, in an interview on a US talk-show on 3 July 2024, Mr Melnichenko was asked if he owned EuroChem ("one of the world's biggest fertilizer companies") and said "… it's a little more complicated but yes..." On 7 July 2022, a German news weekly quoted him as referring to EuroChem and SUEK as "my companies". The Banks also referred to a press release, issued in March 2025 by Plekhanov Russian University of Economics, stating that the university had commenced a partnership with EuroChem, with the "direct participation" of Mr Melnichenko. I do not consider it safe to place more than minimal reliance on such informal utterances, given in contexts in which forensic precision is not a priority.

201. Although not highlighted for this purpose by the Banks or Tecnimont, I am much more impressed by the terms of Mr Melnichenko's continued designation in the list at Annex I to Regulation 269, set out in Section VI above. I have in mind, in particular, the references to his being among the leading Russian businesspersons who participated in the congress of the Russian Union of Industrialists and Entrepreneurs, in March 2023; and to his having participated in the congress of the Russian Union of Industrialists and Entrepreneurs, in April 2024.

202. I should make it clear what I do not take from the designation, as well as what I do. I have no regard to the fact that the designation states that Mr Melnichenko "continues to control major fertiliser producer EuroChem Group": that is an issue that I have to decide; the opinion of the European Council is not material to my decision (as already noted in Section VI). I also have no regard to the political context of these meetings or the fact that President Putin was also present: Mr Melnichenko's political views and affiliations are not relevant.

203. What is significant is the simple fact that Mr Melnichenko is said to have attended these events. I recognise that the references in Annex I are only hearsay evidence of this, but at a purely factual level, and in relation to primary facts of this kind, I consider it likely that what is said by the European Council in Annex I is correct. Accepting, therefore, that on the balance of probabilities it is likely that Mr Melnichenko attended the events in March 2023 and April 2024, I regard this as important.

204. Mr Melnichenko will not have been invited to attend, and will not have attended, in the capacity of a wealthy former businessman who has no current involvement in any of EuroChem's affairs and is merely enjoying a quiet retirement in Dubai. He will have been invited to attend, and will in fact have attended, because on the relevant dates he still remained "among the leading Russian businesspersons" and therefore qualifies as a member of "the congress of the Russian Union of Industrialists and Entrepreneurs".

It is said that, at the March 2023 event, President Putin urged those present to "put patriotism before profit". Mr Melnichenko was there because he is someone who is in a position to do this, by controlling or at least influencing the affairs of profitable Russian business enterprises – i.e., the EuroChem and SUEK interests in Russia.

XXV: The Assignment [205]-[211]

205. As set out above, under clause 9 of each Bond, the Bond itself could be assigned in certain circumstances, if the rights, obligations and benefits under the Contracts had been assigned. However, clause 9 also permitted the assignment of "the proceeds arising from the possible drawdown" of each Bond; in which case a request of payment to the assignee was to be executed by the Issuer, provided that this would not constitute a breach of the sanctions law of (among others) the EU.

206. As noted above, the Assignment that EuroChem NW2 and EuroChem AG entered into on 23 December 2024 was an assignment of the proceeds. The operative provision is clause 2, providing as follows:

> "2 Assignment of Proceeds
> With effect from the date of this Deed:
> (a) the Assignor hereby assigns to the Assignee the Assignor's proceeds arisen from possible drawdown of the Bonds, including benefits, interests, rights and claims in and to the Claimed Amounts and the Assignee hereby agrees to accept such assignment from the Assignor; and
> (b) the Assignee shall have all the rights and benefits of a beneficiary with respect to the Claimed Amounts, the Assignee shall have the right to seek enforcement with respect to the Claimed Amounts and pursue all claims and demands (future or existing) whatsoever arising out of or in this respect as if references to the Assignor in the Bonds in this part had been references to the Assignee from the date of issuance of the relevant Bond."

207. The "Claimed Amounts" were defined as all EuroChem NW2's rights to Bond proceeds, including any moneys or proceeds deriving from that Bond and any payment demand.

208. On 9 January 2025, EuroChem NW2 and EuroChem AG entered into a side letter to the Assignment (the "Side Letter"), which provided at clauses 2 and 3 as follows:

> "2 Consideration under Deed of Assignment
> 2.1 The Parties hereby agree that, as equivalent consideration for the assignment pursuant to Clause 2 of the Deed of Assignment (which sufficiency the Parties hereby acknowledge), the Assignee undertakes to pay to the Assignor the fixed amount of USD 62,358,000.00 (sixty two million three hundred fifty eight thousand US dollars (being an agreed equivalent to EUR 60,000,000.00 (sixty million Euro) based on the European Central Bank Euro Foreign Exchange Reference Rates as of 23.12.2024) (the "Consideration"). The Parties agree that such

Consideration reflects the risks, prospects and costs of the court proceedings and potential enforcements of the assigned proceeds in a balanced way.

2.2 The Consideration shall be payable to the Assignor at any date at the Assignee's discretion but in any event not later than within 1 (one) year from the date of this Side Letter and, in any event, only after the following conditions have been met:
(a) The Assignee becoming a party to the Proceedings;
(b) all the necessary Governmental Authority approvals are obtained if required for such payment; and

2.3 The Parties agree that payment of the Consideration shall be made strictly from funds of the Assignee which do not constitute any proceeds from the Bonds.

2.4 If the Conditions set out in Clause 2.2. herein are not met within 1 (one) year from the date hereof, the Parties shall agree in good faith further course of action, including any necessary amendments to the Deed of Assignment and this Side Letter.

2.5 The Assignor undertakes that any amounts received by it as the Consideration will be used solely for the purposes of financing its capital expenditure under the Project. The Assignee shall be entitled to monitor and verify the application of any amount received by the Assignor under or pursuant to the Deed of Assignment and this Side Letter by carrying out audit, as notified to the Assignor in advance, and the Assignor shall cooperate with the Assignee and provide the Assignee, upon request, with such documents, information and assistance necessary for such audit.

2.6 The Assignor shall not directly or indirectly provide, transfer, loan, allow access to or otherwise make available any amounts received by it under or pursuant to the Deed of Assignment and this Side Letter to any Sanctions Restricted Person in violation of the applicable laws, including, but not limited to Sanctions Laws.

2.7 All payments within the Consideration shall be made in Euro or in any other currency as may be agreed by the Parties.

2.8 The Parties shall jointly use their best efforts for the purposes of the Assignee becoming the party to the Proceedings as soon as possible after the date hereof.

3 Reversal of Deed of Assignment in Certain Circumstances
3.1 Each of the Assignee or the Assignor shall have the right to require that the other Party enters into a Deed to reverse the Assignment by a written request in the event that the Assignee does not become a party to the Proceedings within 8 (eight)

> months from the date hereof and/or in the event that a Court of competent jurisdiction (specifically the English Court) issues a final and binding judgment determining that the Assignment is unlawful and/or void.
>
> 3.2 The Assignor shall have the right to require the Assignee to transfer back to it the rights transferred by the Deed of Assignment by giving written notice to the Assignee in the event that the English court refuses to enter judgment in favour of the Assignee in respect of the claims against the Banks under the Proceedings.
>
> 3.3 In the event of either Party giving notice under clause 3.1 or of the Assignor giving written notice under clause 3.2 hereof, the Parties shall enter into a further deed re-assigning the rights constituting the subject matter of the Deed of Assignment to the Assignor and the Assignor shall pay to the Assignee the Consideration actually received from the Assignee (if any) and the Assignor shall become the sole and beneficial owner of all such rights."

209. The Assignment and the Side Letter were both subject to English law.

210. As a matter of English law, the distinction between assignment of the Bonds and the assignment of the proceeds is correctly explained in G Affaki and R Goode, 'Guide to ICC Uniform Rules for Demand Guarantees URDG 758' (2011), at paragraphs 33.20-21:

> "33.20 An assignment of the proceeds of a guarantee is to be distinguished from the transfer of the guarantee itself. When the guarantee itself is transferred… the transferee replaces the transferor as beneficiary, and it is the transferee as the new beneficiary that is entitled to present any future demand. By contrast, in the case of an assignment of the proceeds, there is no contractual relationship between the assignee and the guarantor whose engagement is solely with the assignor, so that the demand and the statement of breach have to be presented by or on behalf of the assignor. The sole effect of the assignment, if agreed to by the guarantor, is that the proceeds, instead of being paid to the assignor, have to be paid to the assignee. Accordingly, the assignee cannot collect until the guarantor has received a complying demand from the assignor. If the assignor fails to present a complying demand prior to the expiry of the guarantee, the assignee has no claim against the guarantor and it has to rely on whatever is available under the applicable law against the assignor.
>
> 33.21 An assignment of proceeds also differs from a novation in that the assignee acquires its rights subject to any claims and defences that would have been available against the assignor and subject to rights of set-off as arising under the applicable law.

> This typically relates to set-off in respect of cross-claims by the debtor (the guarantor) against the assignor arising prior to the guarantor's receipt of notice of assignment of closely connected to the claim on the guarantee."

211. Notice of the Assignment was given to ING on 15 January 2025, and to SocGen on 20 January 2025. EuroChem AG has requested that payment be made to it at its €Euro bank account in Russia.

PART E: REGULATION 269 [212]-[305]

XXVI: The provisions of Regulation 269 [212]-[219]

212. The provisions of Regulation 269 that are relevant to this judgment are set out in full in Appendix 2. As already noted, the key provision in Regulation 269 is Article 2, which provides as follows:

> "Article 2
>
> 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.
>
> 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."

213. A number of important definitions are provided in Article 1. In particular:

(1) "Funds" is defined as:

> "(g) … financial assets and benefits of every kind, including, but not limited to… (v)… performance bonds"

(2) "Economic resources" is defined as:

> "(d) … 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"

(3) "Freezing of funds" is defined as:

> "(f) … 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"

(4) "Freezing of economic resources" is defined as:

> "(e) … 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".

214. There is no definition of "belonging to, owned, held or controlled", as used in Article 2(1).

215. Many of the individual Articles that follow specify circumstances in which the NCAs of member states may authorise the release of frozen funds or economic resources, by way of derogation from Article 2. These include Article 6e, which permits NCAs to make funds or economic resources available, under such conditions as they consider appropriate, in the following circumstances:

> "… after having determined that such funds or economic resources are necessary for the purchase, import or transport of agricultural and food products, including wheat and fertilisers."

216. Article 7(2) permits payments to be credited or added to frozen accounts in certain circumstances, by providing that Article 2(2) does not apply.

217. Article 9 prohibits knowingly and intentionally seeking to circumvent Regulation 269.

218. Article 10 provides that freezing of funds and economic resources (etc.) shall not give rise to liability if carried out in good faith, unless it resulted from negligence.

219. Article 11 provides that no claims in connection with a contract or transaction affected by the Regulation shall be satisfied if made by a designated person or a person or entity acting through or on behalf of a designated person.

XXVII: The supplementary EU materials [220]-[225]

220. As well as Regulation 269 itself, there are several important supplementary materials published by the EU Council and/or Commission. It was common ground that they are not definitive, and only have the status of opinions; but they should be taken into account.

221. The EU Council has published a series of updated documents giving guidance to member states and others as to best practices on "restrictive measures" (i.e., sanctions), the most recent iteration being dated 3 July 2024 (the "Best Practices" document). This Best Practices document includes, in particular, guidance relevant to the meaning of "owned" and "held or controlled" in Article 2(1) of Regulation 269. It also discusses the significance of a finding of ownership or control, in the context of Article 2(2).

222. The EU Commission has published two Opinions on Regulation 269, both responding to questions from the NCAs of member states.

(1) The first, dated 19 June 2020 (the "June 2020 Opinion"), addressed specific questions relating to Article 2 generally, i.e. both Article 2(1) and Article 2(2).
(2) The second, dated 8 June 2021 (the "June 2021 Opinion"), addressed specific questions relating only to Article 2(2).

223. On 29 November 2023, the EU Commission published guidance on the implementation of firewalls in cases of EU entities owned or controlled by a designated person (the "Firewall Guidance").

224. On 24 March 2025, the EU Commission published consolidated guidance in response to frequently asked questions in relation to Regulation 269 and Regulation 833 (the "Consolidated FAQ" document). It covered a wide range of topics, including questions relating to Article 2 of Regulation 269.

225. I was also shown the EU Commission's Notice dated 1 September 2017, addressing frequently asked questions on EU sanctions relating to Syria (the "Syria FAQ" document). This also contained some relevant guidance on ownership and the significance of a finding of ownership or control for Article 2(2), and it was referred to and adopted in both the 2020 Opinion and the 2021 Opinion.

XXVIII: Decisions of the CJEU [226]-[229]

226. There are several decisions of the European Court of Justice that are relevant to the interpretation and application of Regulation 269. It is not necessary to list them all here, in advance of referring to them as appropriate in the course of discussing the specific issues that arise. However, it is worth noting some that relate specifically to the EuroChem group and/or to Mr and Mrs Melnichenko:

    (1) *EuroChem Group AG v Council* T-1111/23 (EU:T:2024:751): EuroChem AG sought the annulment of the designation of Mr and Mrs Melnichenko under Regulation 269, in so far as the grounds given referred to EuroChem AG. The action was dismissed by the order of the General Court of 21 October 2024.
    (2) *Andrey Melnichenko v Council* T-1114/23 (ECLI:EU:T:2024:599): Mr Melnichenko sought the annulment of his designation. EuroChem AG applied to intervene. The application to intervene was permitted by the order of the General Court of 30 August 2024.
    (3) *Andrey Melnichenko v Council* T-271/22 (ECLI:EU:T:2025:47): Mr Melnichenko sought the annulment of his designation. His case was dismissed by order of the General Court of 22 January 2025, although I understand that an appeal has been filed.
    (4) *Aleksandra Melnichenko v Council* T-498/22 (ECLI:EU:T:2025:180): Mrs Melnichenko sought the annulment of her designation. Her case was dismissed by order of the General Court of 26 February 2025.

227. There have also been some relevant decisions of the national courts of member states. In particular, I was taken to a decision of the Helsinki Court of Appeal, File No. U 24/498, on an appeal by SUEK AG concerning the decision of the Finnish Enforcement Office to seize its assets, on the basis that Mr Melnichenko neither owned nor controlled SUEK AG. Although the case involved SUEK AG, rather than the EuroChem group, many of the same issues arose as are before me, because SUEK AG has been owned by EuroChem AG since 2024. By its decision of 31 January 2025, the Court of Appeal concluded that SUEK AG is controlled by Mr Melnichenko, but that the firewall safeguards implemented by EuroChem AG had been accepted by the relevant NCAs, and the asset seizure therefore was not justified.

228. I was also taken to three references by which courts in Italy have lodged a request for a preliminary ruling from the European Court of Justice: C-483/23 (lodged on 26 July 2023), C-428/24 (lodged on 13 June 2024) and C-476/24 (lodged on 5 July 2024). The copies of the requests provided to me are all anonymised, but it is objectively obvious that at least one of them (C-428/24) relates to Mr Melnichenko and the EuroChem group. All the parties before me, including the Claimants, addressed me in open court on that basis, so it would be artificial for me not to acknowledge this and proceed on the same basis. The questions in C-428/24 are as follows:

> 1. Does Article 2(1) of Regulation (EU) No 269/2014 preclude an interpretation according to which – in the case of assets or resources held in a discretionary trust (the beneficiary of which is listed in Annex I to that regulation) – those assets and/or resources are nevertheless to be regarded as 'belonging' to the beneficiary of the trust, even if the national law applicable to the trust (or a contractual safeguard clause contained in the trust deed) expressly prohibits the beneficiary from performing any act of enjoyment or disposal of the trust assets or resources for as long as the beneficiary is listed in Annex I to Regulation (EU) No 269/2014, or in any event for as long as the use or disposal of such assets or resources would constitute an infringement of [EU] law?
>
> 2. If the answer to the first question is in the affirmative, does Article 2(1) of Regulation (EU) No 269/2014 preclude an interpretation according to which – in the case of assets or resources held in a discretionary trust (the beneficiary of which is listed in Annex I to the above-mentioned EU regulation) – those assets and/or resources are nevertheless to be regarded as subject to the 'control' of the beneficiary of the trust, even if the national law applicable to the trust (or a contractual safeguard clause contained in the trust deed) expressly prohibits the beneficiary from performing any act of enjoyment or disposal of the trust assets or resources for as long as the beneficiary is listed in Annex I to Regulation (EU) No 269/2014, or in any event for as long as the use or disposal of such assets or resources would constitute an infringement of [EU] law?"

229. These questions are highly germane to the issues before me. The questions in the two other cases are similar and/or raise similar points. I was told that, in each case, a response from the European Court of Justice is still pending.

XXIX: How to interpret Regulation 269 [230]-[240]

230. Following the UK's departure from the EU, issues regarding the meaning and effect of any EU instrument remain questions of law to be determined without expert evidence: European Union (Withdrawal) Act 2018, Section 15(2) and Schedule 5, paragraph 3.

231. It has long been recognised that, when interpretating any EU instrument, the court must be less concerned with textual analysis, and must place more emphasis on the underlying purpose, than it would when interpreting an English statute: *Customs and*

Excise Commissioners v ApS Samex [1983] 1 All ER 1042, at p.1056a (Bingham J); see further *Re Olympus UK Ltd* [2014] EWHC 1350 (Ch), at [47]-[49] (Hildyard J).

232. Of particular relevance in this regard is the decision of the House of Lords in *Shanning International Ltd v Lloyds TSB Bank Plc* [2001] UKHL 31, because it was also a sanctions case. Lord Bingham, Lord Steyn and Lord Hope all gave reasoned speeches; they all emphasized the need for a purposive approach, so as to give effect to the obvious intent of the Regulation in question: per Lord Bingham at [18]; per Lord Steyn at [23]-[24]; per Lord Hope at [33].

233. In the context of sanctions, it therefore must be borne in mind that they are a foreign policy tool intended to coerce a change in behaviour. As set out in the 'Policy Background' section of the Explanatory Notes to the UK Sanctions and Anti-Money Laundering Act 2018:

> "Sanctions are an important foreign policy and national security tool. They are restrictive measures, which are designed to be temporary and can be used to coerce a change in behaviour, to constrain behaviour, or to communicate a clear political message to other countries or persons … The UK and its international partners have also imposed and implemented sanctions in situations where the UN has chosen not to act … Often this has involved close cooperation between the EU ..."

234. It is unfortunate that this trial took place before the European Court of Justice has yet provided the preliminary rulings sought by the three requests from Italy, noted in Section XXVIII above. When given, those preliminary rulings are bound to shed great light on the issues that I have to decide. However, all the parties agreed that it is not practical for this court to wait for the European Court of Justice to complete its processes, because there is no certainty about when that might be.

235. Mr Handyside KC suggested that, in this situation, I should proceed in accordance with the approach to foreign law indicated in *Suppipat v Narongdej* [2023] EWHC 1988 (Comm), at [908], where Calver J considered the position in cases where the foreign law is proved by expert evidence:

> "[908] The proper approach to expert evidence of foreign law has been helpfully summarised recently in see *Deutsche Bank AG London v Comune di Busto Arsizio* [2021] EWHC 2706 (Comm) at [104]-[108] (Cockerill J) and *Banca Intesa Sanpaolo SpA v Comune di Venezia* [2022] EWHC 2586 (Comm) at [120]-[127] (Foxton J). Extracting some of the key principles derived from those authorities, I bear in mind and apply throughout this judgment the following principles in particular:
>
> a. The Court is not entitled to construe a foreign code itself; it is the function of the expert witness to interpret its legal effect.
>
> b. The task for the English court is to evaluate the expert evidence of foreign law and to predict the likely decision of the highest court in the relevant foreign system of law, rather

> than imposing his/her personal views as to what the foreign law should be, or allowing the expert to press upon the English judge his personal views of what the foreign law might be.
>
> c. This Court may decide what conclusion a foreign court would reach on a developing area of law but it is not, however, seeking to make findings which go beyond the present state of foreign law and to anticipate a rational development of it.
>
> d. The more senior the court which gives the relevant court decision, or the greater the number of foreign court decisions to a particular effect, the more difficult it will be for the English court to conclude that, nonetheless, those decisions do not reflect the law of the relevant jurisdiction.
>
> e. If there is a clear decision of the highest foreign court on the issue of foreign law, other evidence will carry little weight against it. That is generally so even if the decisions are unworkable in commercial practice or their reasoning illogical or inconsistent. When it falls to an English court to ascertain the content of foreign law, that means the law with whatever imperfections, policy-orientated determinations and impracticalities it manifests."

236. My task cannot be quite the same, because (as already noted) I interpret Regulation 269 as a question of law, not fact, and without expert evidence. However, Mr Handyside KC submitted that it nevertheless remains the case that I should seek to predict what the highest court in any relevant foreign jurisdiction would decide. Mr Fenwick KC did not challenge this, and I understood Mr Kitchener KC and Mr Maclean KC to agree with Mr Handyside KC.

237. I am assisted in this task by the supplementary EU materials identified in Section XXVII above. Such materials are published with the intention that they should be referred to and used. They all have some significance, but there is a distinction between materials such as the Best Practices document and materials such as the 2020 and 2021 Opinions (which responded to requests from NCAs on specific legal issues). This is especially clear from the 2020 Opinion, because one of the questions posed to the EU Commission by NCAs concerned the application of an earlier EU Best Practices document. As the 2020 Opinion explained in an introductory paragraph (under "Preliminary observations"):

> "EU Best Practices are non-binding recommendations reflecting the common understanding by the Member States and the Commission of certain provisions of EU restrictive measures, which aim to promote uniform implementation. The Commission's interpretative role is limited to provisions of EU law. Consequently, the Commission's assessment will not concern the interpretation of the EU Best Practices, but the relevant provisions of the Regulation only."

238. There can be no doubt that it is right to take account of an EU Commission opinion, and the Court of Appeal did so in *Mints v PJSC National Bank Trust* [2023] EWCA Civ 1132. However, even guidance documents must be considered:

(1) A guidance document "although not binding, may serve to clarify the general scheme" of an EU instrument: Judgment 22 February 2024 *Anklagemyndigheden v Moesgaard Meat 2012* Case C-311/22 (ECLI:EI:2024:145), at [55]. There are many similar dicta in other cases; see, for example, Judgment 18 January 2018 *INEOS Köln GmbH v Germany* Case C-58/17 (ECLI:EU:C:2018:19), at [41].

(2) Accordingly, they must be taken into account: Judgment 13 December 1989 *Grimaldi v Fonds des Maladies Professionnelles* Case 322/88 **(**ECLI:EU:C:1989:646**)** at [18], discussing an EU Commission Recommendation to member states:

> "… in order to give a comprehensive reply to the question asked by the national court, it must be stressed that the measures in question cannot therefore be regarded as having no legal effect. The national courts are bound to take recommendations into consideration in order to decide disputes submitted to them, in particular where they cast light on the interpretation of national measures adopted in order to implement them or where they are designed to supplement binding Community provisions."

(3) See also Judgment 15 July 2021 *Fédération Bancaire Française v Autorité de Contrôle Prudentiel et de Résolution* Case C-911/19 (ECLI:EU:C:2021:599), at [66]-[71], discussing guidelines published by the European Banking Authority:

> "[66] By its third question, the referring court asks, in essence, whether the contested guidelines are valid in the light of the provisions of Regulation No 1093/2010 establishing the EBA's powers.
>
> [67] Since it is apparent from Regulation No 1093/2010 that the EU legislature has precisely delineated the EBA's power to issue guidelines, on the basis of objective criteria, the exercise of that power must be amenable to stringent judicial review in the light of those objective criteria (see, to that effect, judgment of 22 January 2014, *United Kingdom* v *Parliament and Council*, C-270/12, EU:C:2014:18, paragraphs 41 and 53).
>
> [68] The fact that the contested guidelines do not produce any binding legal effects, as is apparent from paragraphs 39 to 49 above, is not such as to affect the scope of that review.
>
> [69] As was observed in paragraphs 43 and 48 of this judgment, the issuance by the EBA of the contested guidelines is intended to exert a power of exhortation and persuasion on the competent authorities and on financial institutions, since those authorities and those institutions must make every effort to comply with

> those guidelines and those authorities must indicate whether they comply or intend to comply with those guidelines and, if that is not the case, state the reasons for their position.
>
> [70] In particular, such guidelines may lead the competent authorities to adopt, like the APCR in the case at issue in the main proceedings, acts of national law exhorting financial institutions to alter their practices significantly or to take account, as the Advocate General noted in point 51 of his Opinion, of compliance with EBA Guidelines when examining the individual situation of those institutions.
>
> [71] It is also for the national courts to take into consideration EBA Guidelines in order to resolve the disputes submitted to them, in particular when those guidelines are, like the contested guidelines, intended to supplement binding provisions of European Union law (see, to that effect, judgments of 13 December 1989, *Grimaldi*, C-322/88, EU:C:1989:646, paragraph 18, and of 25 March 2021, *Balgarska Narodna Banka*, C-501/18, EU:C:2021:249, paragraph 80)."

239. There is one further point that I should emphasise, before I embark on the process of analysing Regulation 269. Article 2(1) relates to funds and economic resources that are "belonging to, owned, held or controlled" by a designated person. Furthermore, as I explain in Section XXXI below, the same concept is also highly relevant to Article 2(2). In submissions, the parties before me generally compressed this to "owned or controlled". They did so, very sensibly, for brevity. I note that the EU Commission and the European Court of Justice have also sometimes used this phrase. So do I, in this judgment.

240. This is a familiar phrase to English lawyers which has been discussed in many English cases. It is vital, however, to remember two things:

(1) In the context of Regulation 269, it must be given an autonomous, EU meaning. English authorities are capable of shedding light on what amounts to ownership or control, but any authority applying these terms as purely English law concepts cannot be decisive for the purposes of Regulation 269.
(2) The actual words of Article 2(1) are not limited to "ownership" and "control". They also include "belonging to" and "holding", and these extra words must be intended to add something. "Holding" seems likely to be intended to make it clear that the phrase includes things held by or through (say) a nominee or trustee. I assume that the intended effect of "belonging to" is to encompass a relationship that falls short of ownership. On any view, the net effect must be to widen the meaning of the overall phrase. The autonomous EU meaning is, therefore, likely to be something more expansive than English lawyers may associate with "ownership" and "control".[5]

[5] I should mention that the Claimants advanced an argument that all the other words are merely a sub-set of "belonging to", based on the legislative history of a separate and unrelated Regulation, which was said to imply this. The only justification given for this assertion, even in the context of that other Regulation, was the fact that the relevant provision began only with "belonging to" and the other words were added later. I do not see why this

XXX: Article 2(1) [241]-[248]

241. The background to Regulation 269 appears from the recitals. Recital (1) referred to Russia's invasion of Ukraine and its condemnation by the heads of state and governments of all the member states, which had called on Russia to withdraw. Recital (3) then said that the member states underlined that the crisis should be resolved by negotiations between Ukraine and Russia, and then continued:

> "… in the absence of results within a limited timeframe the Union will decide on additional measures, such as travel bans, asset freezes and the cancellation of the EU-Russia summit."

242. Regulation 269 represents one of these additional measures – asset-freezing. Its purpose, therefore, was as part of a strategy to exert pressure on Russia of a kind that might help to resolve the crisis, and bring about Russia's withdrawal from Ukraine. Its provisions therefore have to be interpreted consistently with this ambitious purpose.

243. Subject to the phrase "belonging to, owned, held or controlled by", the effect of Article 2(1) is clear. If funds or an economic resource fall within that phrase, they are frozen.

244. The definition of "funds" expressly includes, at Article 1(g)(v), "performance bonds or other financial commitments". Mr Fenwick KC submitted that the Bonds in this case did not fall within that definition, but I did not understand the basis on which he advanced that submission, and I was not sure that he did either. The Bonds are clearly within Article 1(g)(v).

245. Even if the Bonds were not within Article 1(g)(v), they must be within the definition of "economic resources". I note, moreover, that the 2020 Opinion states that "economic resources" must be given a broad interpretation, citing in support the judgment of the European Court of Justice in *Möllendorf v Möllendorf-Niehuus* Case C-117/06 (ECLI:EU:C:2007:565), [56] and [62].

246. The definition of "freezing of funds" (and, if relevant, the definition of "freezing of economic resources") is comprehensive. It does not merely prohibit moves and transfers. It prohibits any alteration; and any dealing with funds in any way that would result in any specified change; or any dealing with funds that would result in any change that would enable the funds to be used.

247. Furthermore, given that the definition of "funds" includes performance bonds, this definition of "freezing of funds" is intended to apply effectively to performance bonds.

248. It follows that the real issue under Article 2(1) is whether the Bonds fall within the phrase "belonging to, owned, held or controlled by".

XXXI: Article 2(2) [249]-[259]

249. Article 2(2) prohibits making funds or economic resources (as explained above) available to designated persons – "directly or indirectly". The inclusion of the word

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implies that the additional words were merely a sub-set of "belonging to". It seems more likely that they were added because they brought in something extra. Still less do I see how this assists the interpretation of Article 2(1) of Regulation 269.

"indirectly" is critical to Article 2(2). If it only prohibited direct transactions, it would not serve the intended purpose. Necessarily, therefore, it also prohibits indirect transactions, which would make funds or economic resources indirectly available to designated persons.

250. The significance of the prohibition on making funds "indirectly" available was highlighted by the European Court of Justice in *SH v TG* Case-168/17 (ECLI:EU:C:2019:36), which dealt with the equivalent provision in the EU's Libya sanctions, at [51]-[52]:

> "[51] It should be noted that the prohibition laid down in that provision on making funds or economic resources available to any person on the list of persons targeted by the restrictive measures is framed in particularly broad terms, as evidenced by the use of the words 'directly or indirectly', and therefore encompasses all the acts necessary under the applicable national law if that person is in fact to obtain full power of disposal in relation to the funds or economic resources concerned (see, to that effect, judgments of 11 October 2007, *Möllendorf and Möllendorf-Niehuus*, C-117/06, EU:C:2007:596, paragraphs 50 and 51; of 29 June 2010, *E and F*, C-550/09, EU:C:2010:382, paragraphs 66 and 74, and of 21 December 2011, *Afrasiabi and Others*, C-72/11, EU:C:2011:874, paragraphs 39 and 40).
>
> [52] The broad and unambiguous terms of that provision apply to any mode of making available an economic resource and therefore also to any act which flows from the execution of a contract imposing mutual obligations and which has been agreed in exchange for payment of pecuniary consideration (judgment of 11 October 2007, *Möllendorf and Möllendorf-Niehuus*, C-117/06, EU:C:2007:596, paragraph 56)."

251. Once again, the Court emphasised the breadth of the provision, this being required in order to achieve the intended purpose of the Regulation.

252. It is in relation to indirect transactions that ownership and control become relevant to Article 2(2). If an entity – typically, a company – is owned or controlled by a designated person, there is a risk that any funds or economic resources that are available to that entity will thereby become available to the designated person that owns or controls it. This is explained in the EU Council "Best Practices" document, at paragraph 68, as follows:

> "68. If the ownership or control is established…, the making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will in principle be considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, including the criteria below, that the funds or economic resources

> concerned will not be used by or be for the benefit of that listed person or entity."

253. Similarly, the Syria FAQ document states in answer to question 9:

> "The concept of making funds or economic resources available indirectly to or for the benefit of a designated person refers to a situation in which funds are made available to a person or entity who or which is directly or indirectly owned or controlled by a listed entity. [6]
> …
> If ownership or control is established on the basis of appropriate due diligence, the making available of funds or economic resources to non-designated legal persons or entities which are owned or controlled by a listed person or entity will in principle be considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, that the funds or economic resources concerned will not be used by or be for the benefit of that designated person or entity."

254. The 2020 Opinion and the 2021 Opinion adopt and expand on what was said in the Syria FAQ document. In particular, they state that, if a designated person controls an entity, it can be presumed that the control extends to all the entity's assets. The 2021 Opinion cites both the Syria FAQ and the 2020 Opinion in setting out the position as follows (in answer to Question 1.2):

> "As generally parent companies exercise control and direction over the activities of their subsidiaries, in the Commission's view, once control by a designated person over a non-designated entity is determined, it can be presumed that the control also extends to the subsidiaries and the assets of the non-designated entity. This presumption can be rebutted on a case-by-case basis by the EU Subsidiary, if it can demonstrate that some or all of its assets are outside the control of the parent entity, or that the latter is, in fact, not controlled by the designated person.
>
> It follows that making funds or economic resources available to such a subsidiary would amount to making them indirectly available to the designated person, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all the relevant circumstances, that the funds or economic resources concerned will not be used by or be for the benefit of that designated person."

[6] There is a footnote to this text, citing the ECJ Judgment 13 March 2012 *Melli Bank v Council*, C-380/09P (EU:C:2012:137). I am not sure that this decision provides support for the proposition in the text, but I nevertheless accept the correctness of the answer to question 9.

255. The existence of this presumption is also apparent from the jurisprudence of the European Court of Justice. In particular, in *SH v TG* Case-168/17, the Court expressly stated at [62] that all that is required is the possibility that funds may be passed to the designated person:

> "[62]… in order for funds to be regarded as being made indirectly available to a person whose name is on the list…, it must be possible for those funds to be passed on to that person or for that person to have the ability to dispose of them, in the light, inter alia, of the existence of financial or legal links between the beneficiary of the funds and such a person."

256. The Firewall Guidance is also helpful on this point. It states:

> "If a designated person has control over an entity, there is a rebuttable presumption that the control extends to all assets owned by the latter. Such assets must be frozen. Otherwise, designated persons could circumvent the asset freeze imposed on them by continuing to have access to funds or economic resources through the non-designated third parties that they control. In a similar vein, the making available of funds or economic resources to a non-designated entity, which [is] controlled by a designated person, amounts to making them indirectly available to the latter."

257. Firewalls are relevant to this, because they can enable an entity that would otherwise be affected by Article 2(1) or 2(2) to continue to trade, by: (i) removing the designated person from day-to-day operations; and (ii) ringfencing its assets so as to prevent its funds or economic resources from being made available to a designated person. Effective firewalls will negate the presumption that would otherwise follow from the entity being controlled by the designated person.

258. None of this was really in dispute before me. It follows that Article 2(2) prohibits making funds available to an entity that is owned or controlled by a designated person, subject to it being shown that the funds would not be used by or for the benefit of that designated person – in particular, because of a firewall.

259. Once again, therefore, the issue of ownership and control is central. If either ownership or control is established, it is necessary to consider whether the presumption is displaced; for which the firewall measures implemented by EuroChem AG may be relevant, at least as regards EuroChem AG.

XXXII: "Ownership" [260]-[278]

260. The Syria FAQ document explains the criteria of ownership as follows:

> "Ownership
> When assessing whether a legal person or entity is owned by another person or entity, the relevant criterion is the possession, directly or indirectly of all or almost all of the share capital. Where the share capital is entirely owned by the listed entity, this

> will suffice to establish ownership and this applies even if there are intermediary companies. In instances where there is a lesser shareholding, it will be necessary to examine the factual situation to see whether there is control."

261. The Claimants argued that "ownership" in this context is limited to direct, legal ownership. If correct, this would be surprising, because it is obvious that such a restricted approach to "ownership" would effectively neuter Article 269 entirely, and so would frustrate its purpose.

262. On the question whether direct ownership is required, I have already set out the explanation in the Syria FAQ document, which states that indirect possession of share capital is sufficient. That document cites the decision of the European Court of Justice in *Melli Bank v Council* C-380/09P (ECLI:EU:C:2012:137), but a clearer judgment of that court is that in *HTTS Hanseatic Trade Trust & Shipping GmbH v Council* Case C-123/18P (ECLI:EU:C:2019:173; EU:C:2019:694).[7] In the context of sanctions under a different EU Regulation, intended to prevent nuclear proliferation, the Court said at [69]-[71]:

> "[69] The use by Regulation No 961/2010 of the terms "owned" and "controlled" reflects the need to enable the Council to adopt executive measures against all persons, entities or bodies linked to companies involved in nuclear proliferation. It follows that the ownership or control may be direct or indirect. If that link had to be established solely on the basis of the direct ownership or control of those persons, the measures could be circumvented by numerous contractual or de facto possibilities of control, possibilities which would confer on a company opportunities to exert influence over other entities that are as extensive as in the case of direct ownership or control.
>
> [70] Thus, as the General Court pointed out in para 55 of the judgment under appeal, the concept of a company owned or controlled does not have, in the area of restrictive measures, the same meaning as it generally has in company law, where it serves to ascertain the commercial liability of a company which is legally subject to the control, as regards decision-making, of another commercial entity.
>
> [71] In para 56 of the judgment under appeal, the General Court held that, in the context of assessing the legality of a restrictive measure, what is contemplated by that concept is a situation in which the natural or legal person involved in nuclear proliferation is able to influence the commercial decisions of another person with which it has a commercial relationship, even in the absence of any legal tie between the two economic entities, or any link in terms of ownership or equity participation."

[7] See also *Petropars Iran Co. v Council Case* T-433/13 (ECLI:EU:T:2015:255), at [68]-[69]

263. This illustrates how the purpose of the Regulation affects the interpretation of "ownership", and indeed of "control". A broad meaning is required.

264. As regards the question whether beneficial ownership will suffice, I note that the Italian courts' requests for preliminary rulings specifically address the position of a beneficiary under a trust, including a discretionary beneficiary, and suggest that such a person may be said to "hold" the relevant asset or entity within the meaning of Article 2(1). In relation to a conventional, bare beneficial interest, this must be correct, although I would add that such an interest would also fall within the words "belonging to".

265. In fact, the Claimants' arguments on ownership largely focussed on the fact that Mr and Mrs Melnichenko have only ever been discretionary beneficiaries. They said that a beneficiary of a discretionary trust has no proprietary interest in the assets of the trust, but only the right to have the trustees administer the trust according to its terms. They cited *Gartside v IRC* [1968] A.C. 553, at p. 607; *Pearson v IRC* [1981] AC 753, at p.773.

266. I accept that a discretionary beneficiary does not have a proprietary interest, as a matter of English law – at any rate, subject to *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2017] EWHC 2426 (Ch), which I consider in Section XXXIV below. I also accept that the same position applies as a matter of Bermudian law, which governs the Firstline Trust Deed. It may follow that a discretionary beneficiary cannot be said to be the "owner" of the trust property, as a matter of English law or Bermudian law.

267. However, that is not the right question. It cannot be assumed that the test to be applied under Article 2(1) (or Article 2(2)) is the same as under English law or Bermudian law.

268. Whether an entity that is indirectly subject to a discretionary trust can be said to be owned by the discretionary beneficiary of that trust – or to belong to or be held by that discretionary beneficiary – will presumably be addressed by the preliminary rulings requested by the Italian courts. However, at least in a general sense, this question has in fact already been answered by the General Court, in the context of the case brought by Mr Melnichenko, T-271/22, and the further case brought by Mrs Melnichenko, T-498/22. I note that the decisions of the General Court in these cases both post-date the requests lodged by the Italian courts, which is why they were not taken into account in those requests.

269. In T-271/22, one of Mr Melnichenko's main arguments was that he had neither owned nor controlled the EuroChem group or the SUEK group since 2016, when the original Firstline Trust had been established; he also relied on his retirement as discretionary beneficiary in March 2022. He said that, because he had neither owned nor controlled the groups at any relevant time, he could not be considered a "leading Russian businessman" and so should not have been designated.

270. These arguments were rejected by the General Court at [70]-[71] and [73]:

> "[70] In the present case, it should be noted that the trust FirstLine Trust was created, as the applicant acknowledges, in order to protect and safeguard his substantial wealth. It is common ground that, in 2006, the applicant transferred to the trustees of that trust all his shares in SUEK and EuroChem which

> enabled him to control those two companies, and that he became the first beneficiary of the trust. Thus, between 2006 and 8 March 2022, the applicant was both the settlor and the first beneficiary of FirstLine Trust which is, according to Annex A.10 produced by the applicant, the owner, through two companies established in Cyprus, of a portfolio of majority shareholdings in EuroChem and SUEK.
>
> [71] Therefore, by setting up the trust and designating himself as its beneficiary, the applicant retained, through the companies and intermediate structures referred to in paragraph 70 above, economic interests in EuroChem and SUEK. The fact that the appellant used an intermediate legal structure, such as a trust, is not such as to prevent it from being regarded as the holder of the shareholdings managed by that trust for the purposes of the application of criterion (g). It follows that it may be considered that the applicant, in his capacity as settlor and beneficiary of FirstLine Trust, continued to hold, from an economic point of view, shareholdings in EuroChem and SUEK."
>
> "[73] Therefore, since the applicant was the settlor and beneficiary of the trust which manages his shareholdings in EuroChem and SUEK, the Council did not make an error of assessment in considering, in the grounds for the initial acts, that he was the owner of those two companies."

271. Similar reasoning was repeated at [97], again resulting in the conclusion that Mr Melnichenko was (or had been, prior to March 2022) "the holder of the shareholdings" managed by the Firstline Trust.

272. Then at [106]-[107] the General Court considered a legal opinion concerning the Firstline Trust, which was produced and relied on by Mr Melnichenko. I have not seen this opinion, but I have no doubt that it explained the nature of the trust in similar terms to those relied on before me by the Claimants – i.e., that a discretionary beneficiary does not have a proprietary interest, and cannot be said to be the "owner" of the trust property, as a matter of English law or Bermudian law. The General Court did not accept this, saying at [107]:

> "[107] Moreover, it is apparent from the analysis set out in that document that the concept of ownership in a formal sense is discussed, without considering whether the fact that the applicant was designated as the first beneficiary of the trust may indicate that his economic interests in the companies concerned remain."

273. The General Court also dismissed the arguments relating to Mr Melnichenko's retirement as discretionary beneficiary, in March 2022; see in particular at [74], [98] and [102], where the General Court queried the timing of the retirement and effectively treated Mrs Melnichenko as her husband's proxy.

274. The judgment of the General Court in T-498/22 does not seem to me to advance matters greatly, but it is consistent with the General Court's earlier judgment in T-271/22.

275. I acknowledge that in neither case was the General Court required to focus on Article 2(1) of Regulation 269. Nevertheless, in T-271/22 it clearly stated, in the general context of the Regulation and with the purpose of that Regulation firmly in its mind, that Mr Melnichenko still was the "holder" of the Firstline Trust's indirect shareholding in the EuroChem group, and was its "owner". It seems to me likely that the European Court of Justice will adopt this reasoning when it provides the preliminary rulings requested by the Italian courts.

276. The Claimants referred me to the Best Practices guidance at paragraph 63, which states as follows:

> "63. 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 50% or more 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."

277. It seems unlikely that this was written with trust issues in mind, and especially not the English/Bermudian law analysis of the rights of a discretionary beneficiary. Furthermore, while informative, it does not have the status of a judgment of the General Court (and, especially, one that post-dates it). In any event, to focus only on black-letter textual points such as the words "proprietary rights", rather than considering the purpose of the Regulation, would be precisely the wrong approach to interpreting Article 2.

278. I therefore do not accept the Claimants' case on "ownership", for the purposes of Article 2. A beneficiary under a discretionary trust is the owner of the trust assets (alternatively, is the person to whom the assets belong or is their holder), for the purposes of Article 2, even if not as a matter of English or Bermudian law.

XXXIII: The Claimants' third pleading point [279]-[282]

279. Mr Fenwick KC submitted that the Banks and Tecnimont were in effect seeking to argue that the Firstline Trust is not in reality a discretionary trust but a bare trust. He said that it was not open to them to advance this argument, because it had not been pleaded.

280. This submission was incorrect as regards the content of the Defendants' statements of case. SocGen's Defence alleged in several places, but most prominently in paragraph 4, that Mr Melnichenko was the ultimate beneficial owner of EuroChem AG through the Firstline Trust. ING's Defence alleged Mr Melnichenko's de facto ownership of the Claimants at paragraph 21. Tecnimont's Defence alleged at paragraph 28 that Mr Melnichenko retained control of the trust assets through Mr Fokin. These were all clear challenges to the Claimants' case as to the nature of the Firstline Trust.

281. Furthermore, it was clear that the Claimants expected such challenges to be made at the trial, and were prepared to meet them. Mr Fenwick KC went so far as to acknowledge

in his oral opening that, where there was a discretionary trust of this kind, it was incumbent on the party relying on it to meet at least an evidential burden that there was no de facto control, i.e. that the arrangements were genuine.

282. I therefore reject this third pleading point.

XXXIV: The *MP Bank v Pugachev* point [283]-[293]

283. The argument that Mr Fenwick KC wished to shut out was one derived from *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2017] EWHC 2426 (Ch), where Birss J made the following suggestion:

> "[182] In the example of an unscrupulous person seeking to use a discretionary trust to protect assets from creditors, a trust which includes a role for that unscrupulous person as a protector with very wide powers of veto and to remove and appoint trustees may perhaps achieve the desired result. The unscrupulous person is only a discretionary beneficiary and so can truly state to a court that they do not hold any of the assets beneficially. However consider a protector who is not a fiduciary. In the capacity of such a protector, the unscrupulous person can prevent the trustees from distributing the money to anyone but himself (or herself) and can remove recalcitrant trustees who fail to do his or her bidding and replace them with trustees willing to do what the unscrupulous person wants. Viewed in that way, perhaps the discretionary trust is not really a discretionary trust at all; the unscrupulous person has retained effective control of the assets or at least can recover that control whenever they like. That is the claimants' case on the facts."

284. Birss J's ultimate conclusion in that case, at [278], was that, on the terms of the trusts, the settlor had indeed retained effective control of the assets, because the trust deeds allowed him to retain his beneficial ownership.

285. The facts of this case are different, in that Mr Melnichenko was never the protector of the Firstline Trust. Indeed, until 9 or 10 March 2022, there was no protector.

286. However:

(1) Mr Melnichenko's trusted deputy, Mr Fokin, was the chairman of the company that acted as trustee, until 18 March 2022. In that position, he was responsible for the appointment of Ms Skittides (still a current director of the trustee) and Mr Constantinides (subsequently replaced by Mr Lillikas).
(2) Mr Fokin stepped down from his position with the trustee the day after he had assumed the position of protector, with the extensive powers that the terms of the Trust Deed conferred on the protector. These included the power the power to remove trustees, and it was as protector that Mr Fokin was involved in the appointment of Mr Lillikas.
(3) Mr Fokin was appointed to the position of protector by Mrs Melnichenko, who is Mr Melnichenko's proxy.

(4) Mrs Melnichenko acquired the power to appoint Mr Fokin as protector because the terms of the Trust Deed meant that, on Mr Melnichenko's retirement, she automatically became not only the new discretionary beneficiary, but also the protector. She then could resign as protector and choose her successor – which she promptly did.

287. Thus, by retiring, Mr Melnichenko was able to seem to disappear from the trust structure. However, he thereby automatically became entitled (via his wife) to appoint Mr Fokin as protector.

288. For reasons that I have already explained, Mr Fokin was someone that Mr Melnichenko could rely on to do as he wished. Having Mr Fokin act, first as chairman of Linetrust PTC, then as protector, meant that Mr Melnichenko at all times retained effective control.

289. Accordingly, this, too, is a case where the trust was not really a discretionary trust, under the terms of the Trust Deed. Those terms gave Mr Melnichenko the ability to secure the appointment of Mr Fokin to the various roles that he has played over time. Furthermore, it is a case where it is justifiable to use Birss J's adjective "unscrupulous" to characterise not only Mr Melnichenko but also Mr Fokin.

290. These conclusions about the nature of the Firstline Trust, which are in part factual and in part legal, add to and confirm my view that Mr Melnichenko falls to be regarded as the "owner" of the Firstline Trust assets, including EuroChem AG, for the purposes of Article 2(1) and Article 2(2) of Regulation 269.

291. They are conclusions that I have reached with the benefit of factual evidence which does not appear to have been available to the General Court in T-271/22 – for example, evidence as to the peculiarities regarding Mr Melnichenko's Deed of Retirement, as to the shareholdings transferred to Mrs Melnichenko on 7 May 2022 and as to her attempt to reverse Mr Melnichenko's retirement on 17 April 2023; evidence regarding the restructuring that occurred after March 2022 and the indications that Mr Melnichenko was involved in the decisions that must have been required; and, above all, the oral evidence that I received from Mr Fokin and Mr Noble, which shed very considerable light on Mr Fokin's relationship with Mr Melnichenko and the influence that Mr Melnichenko has over him as protector and over the directors of Linetrust PTC. If such evidence had been available to the General Court, I apprehend that this would have confirmed its view.

292. Although it was not relied on by the Claimants, I should refer here to the decision of the Helsinki Court of Appeal in relation to SUEK AG. The Court of Appeal concluded that SUEK AG was controlled by Mr Melnichenko, for the purposes of Article 2(1), but that it was not owned by him. Section 4.2 of the judgment indicates that the conclusion as to ownership was arrived at on the basis of two opinions as to the nature of a discretionary trust under Bermudian law, which were consistent with the English law analysis that I have summarised above (and, I suspect, with the opinion referred to by the General Court in T-271/22), as well as a letter from Mr Noble. This evidence stated, and the Court of Appeal accepted, that the only rights a discretionary beneficiary has are to be taken into account when the trustees exercise their discretion, and the right to resign; and that Mrs Melnichenko is the new beneficiary, following Mr Melnichenko's resignation.

293. While I can understand why the Helsinki Court of Appeal formed the view that it did, on the limited evidence it appears to have received, my view as to ownership is very different.

XXXV: "Control" [294]-[305]

294. The EU Council Best Practices document sets out criteria for assessing control of an entity at paragraph 64, as follows:

> "64. 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, de facto, exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right [footnote: including, for example, by means of a front company];
> 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."

295. The application of these criteria is expanded on at paragraph 67, which includes the following examples (said to be non-exhaustive) of circumstances that may indicate that a designated person has control:

> "d) Use of front persons
> • A new owner is closely connected to the designated previous owner, e.g. a family member or former employee/business partner, and, possibly, the sale price was too low or otherwise abnormal, or

> • The entity has an advisor (or a board of advisors) with ultimate decision power over the activity of the entity, even though from the title or function this does not seem self-evident, or
> • There is a written agreement from which it is clear that a non-shareholder or a shareholder with minor shareholdings is given the authority to solely decide on the business of the entity, or
> • The persons who are supposed to be in charge of an entity have their decisions made by designated persons.
> e) Use of trusts, shell companies and limited liability companies
> • An entity is part of a needlessly complex corporate structure, potentially involving entities such as shell companies, limited liability companies and/or trusts linked to a designated person. Some of these entities were set up or changed their identity shortly before or after (if allowed by the relevant Council Regulations) the adoption of the sanctions regime or the person's designation, and/or have no credible business activity.
> • One or several trusts are used as receiver(s) of assets from an entity owned or controlled by a designated person. The management of the trusts involves professionals from the jurisdiction where the trusts was/were formed."

296. The criteria at paragraph 64 are similar to the equivalent explanation in the Syria FAQ document:

> "Control
> 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, it is necessary to carry out a factual assessment of all the organisational, structural and economic links between the two undertakings/entities.
>
> The determining factor is whether the listed entity is able to and effectively asserts a decisive influence over the conduct of the other entity in question. Whilst a significant shareholding is one factor that may suggest control, there is no minimum threshold. Even a minority shareholding may be sufficient if it is allied to rights greater than those normally granted to minority shareholders and if 'consistent legal or economic indicia' show that the listed entity is in fact influencing the other entity.
>
> The indicia of decisive influence include:
> a. 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. using all or part of the assets of a legal person or entity;
> c. sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them;

> d. having influence as regards corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters;
> e. putting in place or maintaining mechanisms to monitor the commercial conduct of the legal person or entity;
> f. other indicia such as sharing a business address or using the same name which could cause third parties to have the impression that the two entities are in fact part of the same undertaking."

297. The criteria set out in the Syria FAQ document were endorsed in both the 2020 Opinion and the 2021 Opinion, which also commented on the similarity between these criteria and those set out in the Best Practices document.

298. The most relevant criterion in each is (e) – essentially, de facto control. This falls to be considered in the light of the circumstances highlighted at (d) and (e) of paragraph 67 of the Best Practices guidance. Both of these are present:

(1) As to circumstances within (d) of paragraph 67, there is the involvement of Mrs Melnichenko and Mr Fokin.
(2) As to circumstances within (e), there is a needlessly complex structure, including the use of multiple trusts. Above all, there is the discretionary Firstline Trust, under which there has only ever been a single identified beneficiary in whose favour the discretion can be exercised – initially Mr Melnichenko, then Mrs Melnichenko.

299. In the light of the shared addresses in Cyprus of Linetrust PTC and AIM Capital, and Mr Noble's evidence that the Dubai offices of AIM Capital and EuroChem, and Mr Melnichenko's personal office, are all in the same complex, criterion (f) in the Syria FAQ document is also of some relevance.

300. The decision of the European Court of Justice in *HTTS Hanseatic Trade Trust & Shipping GmbH v Council* Case C-123/18P is, once again, also helpful. At [75], it confirms that no legal relationship is required for control – i.e., de facto control is sufficient:

> "[75] …the General Court did not err in law when it held that a company may be classified as a 'company owned or controlled by another entity' where the latter is in a situation in which it is able to influence the decisions of the company concerned, even in the absence of any legal tie between the two economic entities, or any link in terms of ownership or equity participation".

301. At [77], the Court then equiparated acting under the control of a person and acting on behalf of that person.

302. In some cases, analysing control in this context may be complex. For example, in *Litasco SA v Der Mond Oil & Gas Africa SA* [2023] EWHC 2866 (Comm), Foxton J had to consider whether a Russian company could be said to be under the control of President Putin, if the company is one that he is able to direct in principle, but is one that he may never in fact have heard of or troubled himself with. Foxton J suggested at

[70] that what was required under the relevant provision (in his case, the UK sanctions in respect of Russia – the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2019) is existing influence by the designated person over the entity. In *Hellard & Ors v OJSC Rossiysky Kredit Bank* [2024] EWHC 1783 (Ch), this led the Judge (Mr Nicholas Thompsell) to set out at [76] a taxonomy of control, breaking it down into four types of actual/present de jure/de facto control.

303. I found the judgments in these cases interesting. However, no such complexity arises here. It is clear that, despite the corporate structure that I have set out, and despite the involvement of the Firstline Trust, Mr Melnichenko had actual control over the EuroChem group prior to March 2022; he continued to exercise actual control over the group as a whole in the course of the decisions involved in the restructuring that followed in 2022/2023; and, at least in Russia (and probably in relation to the UAE EuroChem companies), I have no doubt that he continues to exercise actual control. I do not imagine that he does so on a daily basis or by direct contact (except, possibly, with senior individuals at MCC EuroChem such as Mr Vanyushin). However, I am certain that, like Mr Beloborodov, EuroChem employees in Russia continue to regard Mr Melnichenko as the man at the top, to whom they are ultimately answerable. Indeed, it is not clear to whom the senior managers and/or directors of MCC EuroChem are answerable, if not to Mr Melnichenko.

304. The position is different in relation to EuroChem AG and its subsidiaries in the EU. The firewall measures that have been implemented appear to mean that Mr Melnichenko does not control this part of the EuroChem group. In this regard, I note that the Consolidated FAQ document states on p. 31 (in the answer to question 9 on that page):

> "If control of the listed person over the group as a whole is determined, then the conclusion can extend to all subsidiaries within the group. If control of the listed person was determined over a single entity in the group (e.g. the listed entity), then this would impact its own subsidiaries, but not other subsidiaries in the wider group."

305. This is a case where, following the implementation of EuroChem AG's firewall measures, neither Mr Melnichenko nor Mrs Melnichenko has control over the group as a whole. However, I am satisfied that Mr Melnichenko retained and still has control over MCC EuroChem, and (therefore) over the companies below it in the group ownership structure.

PART F: THE NCAS [306]-[347]

XXXVI: The role of NCAs [306]-[311]

306. The implementation of Regulation 269 and its enforcement is delegated to the EU member states, under Article 15. In this regard, each member state appoints its own NCA. Under the provisions of Regulation 269, such NCAs have the function, at the domestic level in each member state, of making decisions in respect of derogation (under Articles 2a and 4 to 6b) and the release of frozen funds and economic resources (under Articles 6d and 6e), and of receiving and disseminating information about listed persons and frozen funds and economic resources (under Articles 7, 8 and 9).

307. The enforcement powers that NCAs receive at the domestic level mean that they are able to determine, for the purposes of the Regulation qua the national law of each member state, that particular assets are frozen under Article 2(1) or that funds/economic resources should not be made available under Article 2(2). Because such a determination is inevitably likely to depend on issues of ownership and control, that means that those issues are in fact determined by NCAs, for the purposes of the law of the relevant member state.

308. This is recognised by the 2020 Opinion and the 2021 Opinion:

(1) The 2020 Opinion sets out the criteria for assessing control, and then says that NCAs are competent to determine control (p. 3):

> "The NCA is competent to determine, in light of the above clarifications, taking into account all the elements at its disposal and the specific circumstances of the case, whether the designated person has control over the Entity."

(2) A little later, it then acknowledges the legal status of such a determination by an NCA, and for this reason recommends that such determinations be published (p. 4):

> "In order to ensure legal certainty, the NCAs should publish their conclusions on the relationship of control between designated persons and controlled entities. This will allow economic operators to become aware of the determinations made by the NCA and, consequently, to comply with the freezing obligations under Article 2(1) of the Regulation. In order to avoid over-compliance, the NCAs could also publicly indicate the assets of these entities that they have determined are not controlled by the designated persons and therefore do not need to be frozen, if any."

(3) It next states that such a determination means that the assets of the entity must be frozen under Article 2(1) (which had been referred to at the beginning of the relevant passage) (p. 4):

> "In light of the foregoing, if the designated person is determined to have control over the Entity, the Commission takes the view that the assets of the Entity must be frozen. The Entity may obtain the lifting of the freeze on some or all of its assets by showing that they are in fact not "controlled" by the designated person. The way to do so depends on national procedures. NCAs should make the conclusions regarding the existence of such control public."

(4) Thus, it is for the NCA to determine control, in which case an asset-freeze must follow. If the relevant entity wishes to have the freeze lifted, it must apply to have it lifted in the relevant member state, in accordance with the procedures in that member state. In practice, such an application is likely to involve the NCA.

(5) The 2021 Opinion contained a similar explanation, but this time stated that only the NCAs (and not the Commission) can make the relevant determination (p. 3):

> "The NCA is competent to factually determine whether the elements that it has identified as linking the designated person to Entity A amount to meeting any of these criteria or others which may prove that the designated person has control over Entity A. This determination should be made in light of the above clarifications, taking into account all the elements at the NCA's disposal and the specific circumstances of the case. The Commission is not empowered to make this factual determination on behalf of the NCAs."

(6) The 2021 Opinion then proceeds to consider whether Article 2(2) prohibits payments to an EU subsidiary of Entity A, if the relevant NCA's factual assessment is that the designated person controls Entity A. It concludes:

> "… the Commission takes the view that making payments to an EU Subsidiary controlled by Entity A amounts to making them available to the latter. To the extent Entity A is controlled by the designated person, the payments can be considered as made indirectly available to the designated person. Such payments are therefore prohibited, unless authorised by the NCA pursuant to one of the derogations provided for in the Regulation, or unless it is reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, that the funds will not be used by or be for the benefit of the designated person. EU banks must apply the appropriate due diligence procedures to avoid that a payment made to a certain non-designated entity results in the indirect making available of funds to a designated person."

(7) The Claimants suggested that the meaning of the penultimate sentence is that payment is prohibited unless (i) authorised by the NCA pursuant to a derogation under the Regulation or (ii) the paying party makes its own determination that the funds will not be used by or be for the payment of the designated person. It seems much more likely from the context that the 2020 Opinion anticipated that such a case-by-case determination would be made by the NCA, as the domestic enforcement body in the relevant member state. This is primarily because it would be surprising if the presumption that follows under Article 2(2) from the NCA's determination that an entity/subsidiary in the member state is controlled by a designated person could be displaced by a decision by the very person whose action in paying would otherwise be a criminal offence under the domestic law of that state, rather than by the body whose role is to enforce that law. However, it is also because it must be borne in mind that the 2020 Opinion and the 2021 Opinion both responded to questions from NCAs. They are all about what NCAs can, cannot, should and should not do, in the course of enforcing Regulation 269.

309. Two decisions of the General Court confirm that issues of ownership and control fall to be determined by NCAs:

(1) In *Andrey Melnichenko v Council* T-1114/23 (ECLI:EU:T:2024:599), the Court stated at [26]:

> "The question whether EuroChem is controlled by the applicant within the meaning of Article 2 of Decision 2014/145, as amended, and Article 2 of Regulation No 269/2014, as amended, does not form part of the subject matter of the case, since the examination of that question falls, in particular, to the competent authorities of the Member States when they are called upon to rule on whether or not to order the freezing of that company's funds and economic resources."

(2) In *EuroChem v Council* T-1111/23, the Court stated at [56]:

> "… the fact that a legal person or an entity is owned, held or controlled by a person whose name is included on the lists at issue must be established, in the case of the freezing of funds and economic resources, by the authorities of the Member States…"

310. I therefore accept the case of the Banks and Tecnimont that the decision of an NCA (i) that specific assets, or the assets of a specific entity, are frozen, or (ii) that a specific entity is owned or controlled by a designated person, is determinative, at least for the purposes of the domestic law of the relevant member state.

311. The Claimants' case was, to the contrary, that such a decision by an NCA is not determinative; in which case the relevant matter – here, in essence, ownership or control by Mr Melnichenko or by Mrs Melnichenko – must be proved in the trial of this action and decided by me. My conclusion in favour of the Banks and Tecnimont on this point means that, if it can be shown that the relevant matter has been decided by the relevant NCA, then that is the end of it, and it is not necessary for me to decide ownership or control. However, in case I may be wrong about the role of NCAs, in this judgment I have nevertheless made clear my own decision, in the light of the facts set out in Part D above and my conclusions as to the meaning of "ownership" and "control" in Sections XXXII, XXXIV and XXXV above.

XXXVII: Firewalls and the NCAs [312]-[313]

312. The NCAs also have a role in relation to firewalls. The Firewall Guidance notes that, because the process of obtaining derogations is complex, the EU Commission supports the implementation of firewalls, to enable an entity to operate, under strict conditions, unimpeded by the ownership or control of a designated person. It then sets out guidance in relation to such firewalls. Where they are implemented by an "operator" (i.e., a business concern such as EuroChem), the Guidance recommends using an auditor (as EuroChem AG did with Advolis).

313. Ultimately, however, it remains up to the relevant NCA to recognise the firewalls, and to grant authorisation to release the frozen assets. The Firewall Guidance refers to the role of the NCA in a number of passages, in particular as follows:

(1) On p. 5:

> "If a firewall is not effectively established, the presumption is not rebutted and the NCA must not grant an authorisation to release the entity's assets frozen. In addition, in the event of non-compliance with the firewall commitments, the entity and the relevant individuals must be held accountable according to Member State penalties applicable to infringements of the provisions of the relevant EU Regulation."

(2) On p. 5:

> "For the sake of clarity and to avoid adverse effects, the NCA where the 'owned or controlled' entity is incorporated should be the one in charge of creating and/or monitoring the implementation of the firewall."

(3) On p. 6:

> "As set out in section 2.2 (b), an operator that sets up a firewall may resort to an external third party, such as an auditor, to implement and/or certify the effectiveness of the changes to the entity's corporate governance.
>
> In addition, a Member State must also organise an authentication process by which it would recognise the removal of control. In this case, an NCA must carry out the necessary checks to guarantee that the letter and spirit of this guidance have been respected. The NCA should also receive assurance that the designated person is no longer involved in the entity, for example by written statements from senior management.
>
> A Member State may condition the authentication of a firewall upon the conduct of an external audit. In this case, the NCA should have the possibility to engage directly with the auditor to carry out its authentication and access all audit and corporate documents. The NCA may amend the scope of the audit as appropriate and reserve its right to refuse recognition where the auditor was not suitable or competent to perform such a mission.
>
> Once the compliance of the firewall is established, the NCA must issue an official written confirmation. This document can be circulated by the entity as necessary to other Member States or any relevant party."

XXXVIII: The French NCA: the DGT [314]-[326]

314. On 8 June 2022 (i.e., before any of EuroChem NW2's demands under the Bonds), the NCA in France (the Direction générale du Trésor, "DGT") issued a "Call for Vigilance" to controlling bodies in the field of anti-money laundering, which was later

disseminated through the French Association of credit institutions and investment firms to French banks, including SG Paris. In English translation, it stated as follows:

> "Legal persons considered to be owned or controlled by a sanctioned natural or legal person
>
> On the basis of the information available at the date of transmission/publication of this call for vigilance, the Directorate General of the Treasury points out for the purposes of application of Regulation (EU) No 269/2014 of 17 March 2014 that the legal persons referred to below are considered to be owned or controlled by a sanctioned natural or legal person.
> …
>
> Entities reported as owned or controlled by natural or legal persons sanctioned under Regulation (EU) No 269/2014 of 17 March 2014 as of the date of this due diligence call

Legal person owned or controlled	Sanctioned natural or legal person(s) in a position of control or ownership
EuroChem Group AG and its subsidiary EuroChem Agro France	MELNICHENKO Andrey lgorevich MELNICHENKO Aleksandra

> Making funds or economic resources available to entities identified under this call for vigilance will in principle be considered as indirectly making funds or economic resources available to the sanctioned natural or legal persons who own or control them.
>
> Nevertheless, under certain conditions expressly listed in Regulation 269/2014, accompanying measures (authorisations to unfreeze and make available) may make it possible to use some of the frozen assets with the authorisation of the Treasury Directorate-General. It is also recalled that frozen bank accounts may continue to be credited.
>
> Setting up a monitoring system
>
> If they can reasonably demonstrate, on a case-by-case basis and risk-based approach, taking into account all the circumstances, that the funds or economic resources in question will not be used by or for the benefit of a sanctioned person, the entities reported under this alert may request the establishment of a monitoring mechanism from the Treasury Directorate-General (sanctions-russie@dgtresor.gouv.fr).
>
> The addressees of this call for vigilance may make this possibility known to the entities concerned".

315. As already noted, EuroChem NW2's demands followed in August 2022, and were rejected by the Banks.

316. On 26 August 2022, SocGen approached the DGT seeking confirmation as to whether EuroChem AG was still considered to be owned or controlled by natural persons who are sanctioned under Regulation 269, referencing EuroChem NW2's denial that this was the case. On 9 September 2022, the DGT replied as follows:

> "There is no evidence at this stage that EuroChem Group AG and its subsidiary EuroChem Agro France SAS are neither owned nor controlled by Mr. and Mrs. Melnichenko, persons subject to an asset freeze measure under the amended EU Regulation 269/2014."

317. By a letter from its solicitors of 9 June 2023, SocGen wrote to the DGT in respect of payment to EuroChem NW2 under the Bonds. The letter set out the general background, including the differing views of the parties, and then referred to the provisions of Regulation 269 permitting derogation in certain circumstances. It then said:

> "It is not apparent to Société Générale that any of those derogations would apply to the current situation. Nevertheless, Société Générale wishes to be certain of the position and therefore formally requests that the DGT considers whether there is a basis for granting Société Générale a licence to pay EuroChem NW in all of the circumstances described above and, if so, to grant the relevant licence."

318. The DGT responded on 8 September 2023, as follows:

> "No derogation on the basis of Regulation 2014/269 is applicable to Société Générale's payments to [EuroChem NW2]. [EuroChem NW2's] situation prevents indeed funds or economic resources from being made available for its benefit as this would have the consequence of indirectly making these funds available to a designated person, namely Mr and Mrs Melnichenko."

319. On 18 October 2023, the DGT refused a request by EuroChem Agro France for permission for the proceeds of the SocGen Bonds to be paid to it (if necessary into a frozen account), rather than to EuroChem NW2, rejecting EuroChem Agro France's suggestion that what it proposed was a simple payment to it, which would avoid making funds available for Mr or Mrs Melnichenko. The DGT then said:

> "The issue is not only that of the restrictive measures against the Russian subsidiary of EuroChem because of its situation vis-à-vis Mr. and Mrs. Melnichenko, but also because under Articles 11 of Regulations 269/2014 and 833/2014 it is impossible to make such a payment."

320. By about the end of 2023, EuroChem AG had put in place the firewall arrangements, and had commissioned the audits from Advolis. Having reviewed the situation, the DGT wrote on 24 May 2024, as follows:

> "The French Treasury Department considers that, on the one hand, the guarantees provided by the company EuroChem A.G. and, on the other hand, the verification procedures put in place are such as to enable the French Treasury Department to ensure that funds or economic resources are not made available directly or indirectly for the benefit of sanctioned persons.
>
> The asset freezing measures with regard to persons sanctioned by the aforementioned Regulation 269/2014 do not therefore apply to the company EuroChem A.G. and there is thus no obligation to freeze the Company's funds or economic resources, nor any prohibition on making funds or economic resources available to or for the benefit of the company EuroChem A.G.
>
> The same applies to all subsidiaries established in the territory of the European Union. However, in the absence of an adequate measure to verify the activities of subsidiaries established outside the European Union, these remain subject to the asset freezing measures against Mr and Mrs Melnichenko".

321. The Call for Vigilance stated in clear and unambiguous terms that the DGT pointed out (or indicated - in French, "signale") that EuroChem AG was considered to be owned or controlled by Mr and Mrs Melnichenko. It necessarily followed from this that the same must apply to EuroChem NW2.

322. The Claimants drew attention to the fact that the Call for Vigilance said that making funds or economic resources available to EuroChem AG would "in principle" be considered as indirectly making funds available to Mr or Mrs Melnichenko. I do not see that the words "in principle" in any way negate or even soften the clarity of the earlier text. Rather, those words have to be read in the context of the very next passages in the document, which acknowledge the possibility of derogations and of firewalls (referred to as "a monitoring system", for which the entity – i.e. EuroChem AG – would have to make a request to the DGT).

323. The Claimants also placed emphasis on the sentence in the DGT's message of 9 September 2022 which included a double negative – "There is no evidence at this stage that EuroChem Group AG and its subsidiary EuroChem Agro France SAS are neither owned nor controlled by Mr. and Mrs. Melnichenko." The Claimants said that this was not suggestive of a conclusion that EuroChem AG was owned or controlled by Mr or Mrs Melnichenko. Especially in the light of the earlier Call for Vigilance, it seems clear to me that the sentence in question was doing no more than stating, in classically bureaucratic language, that no new information had been provided which changed matters. That was certainly how SocGen understood this message, as Mr Colbert confirmed.

324. The correctness of this understanding is put beyond any doubt by the DGT's messages of 8 September 2023 and 18 October 2023.

325. The DGT's message of 24 May 2024 is equally clear. The firewall measures have changed the position, as regards EuroChem AG and its subsidiaries in the EU. However, there has been no change as regards EuroChem NW2, which remains subject to asset-freezing.

326. On 13 May 2025, SocGen's solicitors made a further application to the DGT, in the light of the Assignment, seeking a licence for payment to EuroChem AG. The DGT has not yet responded.

XXXIX: The Italian NCA: the CSF [327]-[332]

327. The NCA in Italy is the Comitato di Sicurezza Finanziaria ("CSF"), within the Ministry of the Economy and Finance. By a notice of 27 September 2022, the CSF froze the assets of EuroChem Agro Italy, on the basis that it was controlled by Mrs Melnichenko, via EuroChem AG.

328. On 13 June 2023, SocGen Milan applied to the CSF for a licence, in similar terms to SocGen's application to the DGT of 9 June 2023. The CSF responded on 24 November 2023, as follows:

> "… the undersigned Committee is of the opinion that:
>
> - the funds and economic resources of the LLC EuroChem North-West 2 entity, including the guarantees in question, should be subject to the sanction of the freezing of funds, as they are directly attributable to the two above-mentioned sanctioned persons, and for the same reason, there is a prohibition on making funds or economic resources available to the entity itself within the meaning of paragraphs I and 2, respectively, of Article 2 of Regulation (EU) No 269/2014.
>
> - SG Milan is prohibited, pursuant to Articles 2-ter(2)(b), 3-ter(2)(b), 2-duodecies(2)(b) and 3(2) of Regulation (EU) No 833/2014, from complying with the guarantees, and in any event from directly or indirectly providing financing or financial assistance to LLC EuroChem Northwest 2 and from making any payments thereunder, including with a view to the suspension of the performance of the underlying contracts; and in general, it is not possible for SG Milan to take LLC EuroChem NorthWest 2's request further pursuant to Article 11 of Regulation (EU) No 833/2014.
>
> - None of the derogations provided for under Regulation (EU) No 269/2014 and Regulation (EU) No 833/2014 are available for the payment of the above-mentioned guarantees."

329. On 12 July 2023, ING applied to the CSF for guidance as to whether it could pay under its Bond. The CSF responded on 22 September 2023, as follows:

> "… the' Committee's view is that:

> - the funds and economic resources of the entity EuroChem North-West. Z including the ING bond, must be subject to the sanction of the freezing of funds, insofar as directly linked to the two sanctioned persons mentioned above. For the same reason a prohibition applies to the making available of funds or economic resources to the same entity under, respectively, paragraph 1 and 2 of Article 2 of Regulation (EU) No. 269/2014.
>
> - The bank is prohibited, under Articles 2b(2)(b), 3b(2)(4), 21(2)(b) and 3(2) of Regulation (EU) No. 833/1014, from complying with the INC.. Bond, and in any case from providing financing or financial assistance directly or indirectly to LLC EuroChem North-West 2 and from instructing any payment in this context,, also in light of the suspension of the performance of the Tender Contracts and the assignment and the related pledge to Sberbank Europe AG and Sberbank Russia. In general, it is not possible for your bank to act upon any request from EuroChem North-West 2 under Article 11 of Regulation (EU)No. 833/2014."

330. On 28 April 2025, following correspondence with the Claimants' Italian lawyers in relation to the Bonds which I have not seen, but in which the Claimants appear to have raised both the EuroChem AG firewall measures and the Assignment, the CSF wrote as follows:

> "The Committee is aware of the existence of the "firewalls" recognized to EuroChem group companies in other countries, which are already provided for in the Commission's Guidance of 29 November 2023, and takes this into account when examining applications for exemption authorizations to unfreeze funds.
>
> With regard to ENW2's right to receive the countervalue of the guarantees, backed by specific counter-guarantees, provided by several banking intermediaries and recently transferred to the parent company EAG, the Committee confirms the opinion already expressed in its note of 30 July 2024 referred to above.
>
> It should be noted that the funds and economic resources of ENW2 are still frozen pursuant to Article 2 of Regulation (EU) No. 269/2014 and that Article 11 of Regulation (EU) No. 833/2014 prohibits the fulfilment of obligations arising from any contract that has been affected, directly or indirectly, by the restrictive measures."

331. Accordingly, the CSF has also made a clear determination that the funds and economic resources of EuroChem NW2 are frozen, despite EuroChem AG's firewall measures.

332. On 8 May 2025 and 19 May 2025, ING and SocGen Milan (respectively) made further applications to the CSF. In the course of closing submissions, I was shown a message from the CSF dated 1 July 2025 in relation to EuroChem Agro Italy, indicating that the

CSF still regards that company as indirectly owned by Mrs Melnichenko, and that the evaluation of the firewall measures was still ongoing.

XL: The Swiss NCA: the SECO [333]-[337]

333. The position in Switzerland arose because EuroChem AG is incorporated in Switzerland. The NCA in Switzerland is the State Secretariat for Economic Affairs ("SECO"). It is common ground that the SECO has accepted EuroChem AG's firewalls, in relation to EuroChem AG.

334. On 14 November 2024, EuroChem AG wrote to the SECO seeking confirmation that no specific authorisation was required from the SECO for the Assignment. On 27 November 2024, the SECO confirmed that it had no objection provided that EuroChem AG complied with its firewall commitments.

335. I should say that I understand this confirmation to relate only to EuroChem AG's entering into the Assignment – not to its performance of the Assignment; in particular, not to the payment of the agreed consideration of US$62,358,000 to EuroChem NW2. In its letter of 14 November 2024, EuroChem AG did not in fact inform the SECO of the amount of the consideration, nor of the full terms of the Side Letter, so it cannot have been expecting authorisation to pay, as opposed to authorisation to enter into the Assignment.

336. The payment of such a substantial sum to a non-EU subsidiary, which is not behind the firewall and which (as I have found, and on the basis of Mr Hechler's evidence EuroChem AG knows no different) is controlled by a designated person, in circumstances where the payment does not take place in the course of the ordinary business of either company, must require specific authorisation. Such payment would not comply with EuroChem AG's firewall commitments, as EuroChem AG must be well aware. I come back to this in Sections LXV and LXVI below.

337. In any event, clause 2.2(b) of the Assignment Side Letter provides that the consideration of US$62,358,000 will only be payable when "all the necessary Governmental Authority approvals are obtained if required for such payment". Mr Fenwick KC told me that EuroChem AG will not pay the consideration to EuroChem NW2 unless and until it has applied specifically for approval to do so. Given the views that I have expressed in the preceding paragraph, I was not surprised to be told this. It would be extremely foolish of EuroChem AG to pay the consideration without having sought specific approval.

XLI: The Cypriot NCA: the SEOK [338]-[341]

338. The position in Cyprus arose because AIM Capital, Linea and Linetrust PTC are all incorporated in Cyprus. The NCA in Cyprus is the Advisory Committee on Economic Sanctions ("SEOK"). It froze the assets of AIM Capital.

339. AIM Capital appears to have challenged this. On 8 February 2023, the SEOK wrote to AIM Capital's Cypriot lawyers, rejecting their application. The SEOK stated that Linetrust PTC, Linea and AIM Capital were "owned, possessed and/or controlled" by Mr and Mrs Melnichenko, but that those companies were all "considered as entities

under a special sanctions regime, provided that no financial resources/capital shall be made available directly or indirectly to" Mr or Mrs Melnichenko.

340. On 20 July 2023, the SEOK noted that the Swiss NCA had taken a similar approach to the functioning of EuroChem AG, as had the DGT in relation to EuroChem Agro France.

341. In short, the SEOK regards the EuroChem group companies as owned and controlled by Mr and Mrs Melnichenko, but accepts the EuroChem AG firewall measures as satisfactory, in relation to the Cypriot entities.

XLII: The Dutch NCA: the BTI [342]-[347]

342. The NCA in the Netherlands is the Investment Assessment Office of the Ministry of Economic Affairs, the Bureau Toetsing Investeringen ("BTI"). On 13 December 2022, the BTI sent an email to ING which stated as follows:

> "We have coordinated the sanctioning status of EuroChem Group AG (Switzerland) and its companies with the Ministry of Economic Affairs and Climate Policy (EZK). The Ministry of Economic Affairs and Climate Policy confirms that these entities are not directly or indirectly owned by, or controlled by, sanctioned persons. As a result, payments to these entities do not qualify as the indirect provision of funds to sanctioned persons, and the freezing obligation does not apply to these entities. For example, in the view of the Ministry of Economic Affairs and Climate Policy, there is sufficient distance between these entities and the sanctioned persons mentioned in your request to conclude that no exemption is required under EU sanctions for payments to these entities or release of their assets.
>
> This position may change if the authorities of Cyprus come to different conclusions with regard to the ownership and control structure of the EuroChem group, or if further guidance from the European Commission so requires.
>
> The foregoing applies to acts under Dutch jurisdiction and does not affect the fact that authorities in other EU Member States may assess the sanction status of the entities in question differently. It is ING's responsibility to follow the instructions of the local competent sanctioning authorities in each Member State."

343. On 20 February 2023, the BTI added a message to this email chain, stating that it had changed its position, in the light of the view of the SEOK in Cyprus:

> "In the email message of 13 December 2022 below, we shared information about the sanction status of EuroChem Group AG (Switzerland) and companies that fall under it, as coordinated with the Ministry of Economic Affairs and Climate Policy (EZK) at the time. It states that '[t]his position may change if the

> authorities of Cyprus come to different conclusions with regard to the ownership and control structure of the EuroChem group'.
>
> In the meantime, the Cyprus authorities have come to different conclusions. This means that the vision in our email below no longer applies.
>
> We are consulting with the Ministry of Economic Affairs and Climate Policy about the consequences for our view on the sanction status of the aforementioned companies. We will inform you about the outcome of this consultation."

344. Thereafter, the BTI has provided formal opinions to ING on a number of occasions in relation to EuroChem AG and certain specific EU subsidiaries. For example, on 17 May 2024, it wrote:

> "Within the powers of the BTI, I have assessed the information you have submitted and come to the following opinion based on this information:
>
> I. EuroChem International Holding B.V. is not subject to the freezing measures set out in EU Regulation 2014/269.
> II. To the extent that their transactions and activities take place within the applicability of Dutch law, the following are subsidiaries not subject to freezing measures under the said regulation:
> a. EuroChem Group AG (Switzerland)
> b. EuroChem Trading GmbH (Switzerland)
> c. EuroChem Agro GmbH (Germany)
> d. EuroChem International Holding B.V. (Netherlands)
> e. Societe EuroChem Agro France (France)
> f. EuroChem Antwerp N.V. (Belgium)
>
> The combination of measures in relevant countries regarding these companies puts them at a sufficient distance from sanctioned persons to conclude that no waiver is required under EU sanctions for payments to these entities or release of their assets.
>
> The above applies only to the six entities mentioned and to acts under Dutch jurisdiction, and does not affect the fact that authorities in other EU member states may assess the sanction status of the said entity differently. This judgment is strictly based on the facts and circumstances as stated by you and the documents as submitted by you. Any change therein may affect the sanctions status of the six entities mentioned above.
>
> This judgment may also change if the intended measures were to change in those countries, if authorities of relevant states were to determine that these entities were not adequately implementing the intended measures, if new EU sanctions relevant to this case

> were to emerge, or if further guidance from the European Commission were to so require.
>
> The foregoing is without prejudice to the legal obligation and own responsibility of all parties under EU jurisdiction, including EuroChem Group AG, its subsidiaries and its directors, to comply with EU sanctions. It is your own responsibility to follow the instructions of the competent sanctioning authorities in each Member State or, if necessary, to apply for an exemption."

345. The position of the BTI is more cautious than that of some other NCAs. Its statements carefully say that they are based on the information provided; and its position over time has, at least to some extent, consciously reflected that of other NCAs. Above all, they are expressly limited to the position in the Netherlands and to entities and acts under Dutch jurisdiction.

346. The BTI clearly accepts that EuroChem AG and its subsidiaries within the firewall are not subject to asset-freezing or payment restrictions (i.e., under Article 2(1) or 2(2) of Regulation 269). The BTI has not made a direct statement of the position in relation to subsidiaries that are not behind the firewall, such as EuroChem NW2, presumably on the basis that it does not regard such entities as subject to its jurisdiction.

347. The logical implication of the BTI's apparent acceptance of the views of the SEOK is that such non-EU subsidiaries are or may be subject to asset-freezing and payment restrictions under Article 2(1) and Article 2(2) of Regulation 269. However, this has not been directly stated by the BTI.

PART G: APPLYING REGULATION 269 [348]-[411]

XLIII: The burden of proof [348]-[359]

348. It was common ground that, in general terms, the burden of proof was on the Banks and Tecnimont to show that the Bonds were frozen under Article 2(1) and/or that payment under them was prohibited under Article 2(2): *Celestial Aviation Services Ltd v UniCredit Bank AG* [2024] EWCA Civ 628, at [121]-[124]. There are three qualifications to this.

349. First, the incidence of the burden of proof was explained by Snowden LJ in *Brendon International Ltd v Water Plus Limited* [2024] EWCA Civ 220 at [50]:

> "[50] The general rule in civil litigation is that they who assert must prove. So, where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the burden of proving such allegation to the civil standard of proof rests on that party at all times. …"

350. This is why, in general terms, the burden is on the Banks to show that it would be illegal for them to pay under the Bonds, this being the positive case they have asserted in response to the Claimants' claims for payment. However, it follows in just the same

way that, in so far as the Claimants have made positive assertions in their statements of case, the burden is on them to prove those assertions, in so far as they need to do so.

351. Second, as noted in Section XXXI above, if it is established that an entity is under the control of a designated person, then there is a rebuttable presumption that the control extends to all the entity's assets. It was common ground that the burden of rebutting the presumption would fall on the Claimants.

352. Third, in the light of my conclusion in Section XXXVI above, the burden on the Banks and Tecnimont is not to prove ownership or control as such. It is sufficient for them to show a determination of ownership or control by the relevant NCA.

353. As regards the standard, the relevant elements of Article 2, including as to ownership or control, must be proved on the ordinary civil standard of balance of probabilities. This is not disturbed by Article 10(2), which provides that a person bound by Regulation 269 is not liable for breaches of any prohibition therein, including Article 2, unless they "know" or "had reasonable cause to suspect" the same: see *Vneshprombank LLC v Bedzhamov* [2024] EWHC 1048 (Ch), at [71]-[72].

354. Tecnimont sought to go further, suggesting that assets must be frozen under Article 2(1), not only if they are in fact owned or controlled by the designated person, but also if there are merely reasonable grounds to believe this. In support of this submission, they cited the Consolidated FAQ document at p. 29 (in the answer to Question 5 in Section B, Individual Financial Measures).

355. I regard this as a mis-reading. Unlike the 2020 Opinion and the 2021 Opinion, which provide answers to questions from NCAs, the Consolidated FAQ document is intended to assist "economic operators" – i.e., EU businesses such as the Banks in this case. The text on the first page explains that the purpose of the document is "to facilitate economic operators' compliance with the restrictive measures". In other words: to help such parties avoid falling foul of the EU sanctions and so getting into trouble.

356. The passage relied on by Tecnimont begins by stating, uncontroversially, that Article 2(1) "requires the freezing of all assets currently belonging to, or held, owned or controlled by listed persons." On its face, this means, in fact belonging to, or held, owned or controlled by.

357. The next sentence reads:

> "If, at the time of the assessment, there are reasonable grounds to believe that certain assets "belong to" or are "controlled by" the listed person, even if they are nominally owned by someone else, then these assets must be frozen under Article 2(1)."

358. This is what Tecnimont relies on. However, I understand this not as a statement of the law as it must be applied by a court (or by an NCA making the relevant determination for the purposes of the law of the relevant member state), but as advice to economic operators about what they should do. If they have reasonable grounds to believe that the assets are owned or controlled by the designated person, they should treat them as frozen, at least pending a determination by the NCA (to whom they have to report). If it turns out that their reasonable belief was correct, they will have done the right thing.

If not, they will have a defence under Article 10 to any claim. This is the prudent course, which avoids the risk of either (i) committing a criminal offence or (ii) liability in damages.

359. Tecnimont suggested that Cockerill J mischaracterised the standard of proof in *Vneshprombank LLC v Bedzhamov*. In my judgment, she was right. Article 2(1) applies only to assets that in fact belong to or are held, owned or controlled by a designated person, at the relevant time. Reasonable belief on the part of the economic operator is not sufficient.

XLIV: Inferences [360]-[369]

360. Few cases turn on the burden of proof. The reason why the topic attracted the attention that it did in this case was that the various parties each wanted to lay the ground for their submissions as to whether or not it was proper for the court to draw inferences from the absence of witnesses or from documentary shortcomings. Ultimately, however, all the parties accepted that the position here was explained by Lord Leggatt in *Efobi v Royal Mail Group* [2021] UKSC 33, at [41]:

> "[41] The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

361. Submissions about inferences were made in relation to a number of people and matters. Above all, it was repeatedly suggested by the Banks and Tecnimont that I should draw inferences from the fact that Mr Melnichenko was not called by the Claimants and did not give evidence.

362. Given that the Claimants' case is that they have no real relationship with Mr Melnichenko, who does not control them or vice versa, it is in a sense unsurprising that they did not call him: if they had, this would no doubt have been relied on by the other

parties as evidence of his interest in the Claimants. In any event, I could only draw any inference from the non-appearance of Mr Melnichenko if I first assumed that the Claimants were in a position to call him; but that, in effect, is what I have to decide. I have not drawn any such inference, on this basis.

363. The Claimants were also criticised for not calling any witnesses who currently hold positions at Linetrust PTC or AIM Capital. I agree that each of these companies appears to have played a very significant part. However, while it is fair to note that the Claimants did not call the current directors of Linetrust PTC (Ms Skittides and Mr Lillikas) or any current officer of AIM Capital, they did call evidence from Mr Fokin and Noble. They were both directors of Linetrust PTC over much of the relevant period. Mr Fokin was also formerly a director of AIM Capital. There is a limit to the number of overlapping witnesses any party can be expected to call. Rather than drawing an adverse inference because the Claimants did not call any additional witnesses who could give evidence in relation to Linetrust PTC or AIM Capital, it seems to me more realistic to assume that the evidence of any such witnesses would have been similar to that of Mr Fokin and Mr Noble. I therefore repeat the comments made in Section XIII above.

364. I have been rather more impressed by the fact that, before and during the hearing, no information was forthcoming from the Claimants about how and by whom decisions were made about the re-structuring that took place in 2022/2023; and that no information has been forthcoming about how or by whom decisions have been made at the level of MCC EuroChem (or above) regarding EuroChem NW2 and the progression of the Kingisepp project (notably, the decisions about contracting with a new construction company and new finance-providers).

365. Given that the Claimants pleaded a positive case as to the control of EuroChem NW2, and given issue 12 in the agreed list of issues, it seems to me reasonable to expect that the Claimants might have thought to demonstrate how these decisions were made. Even if this had not occurred to them before the exchanges of written opening submissions (which I think it should), it certainly must have been apparent to them from that stage that they would be challenged on this, at trial, if they produced no evidence. I have already noted that I was not told of any reason why evidence could not be led from (say) Mr Shiryaev or Mr Vanyushin.

366. It should have been possible, at the very least, to produce documents evidencing these decisions. The ease with which the Claimants produced documents relating to the transaction involving the 10% holding in EuroChem AG previously held by MCC EuroChem, within days after the hearing had ended and without being required (or even invited) to do so, confirms this.

367. In these circumstances, I consider it legitimate, in principle, to draw an inference that such evidence was not produced because it would have been unhelpful to the Claimants, in relation to control of MCC EuroChem. This was certainly the case with the very late evidence regarding the 10% transaction.

368. However, I must stress that this is not something that has made a material difference to my decision on any of the issues before me. I have been much more impressed by the other matters that I have identified in Sections XVIII, XX, XXI, XXII, and XXIV

above; and, especially, by the evidence of Mr Beloborodov and by the opinion that I formed of Mr Fokin and of Mr Noble.

369. Furthermore, as set out in Section XXXVI above, it generally falls to the NCAs to make the relevant determinations, for the purposes of Article 2. Whether or not any particular NCA has made such a determination, or to what effect, is not something that can be decided by drawing the kind of inferences that were pressed on me in submissions. Rather, it necessitates examining what the various NCAs have said and done.

XLV: Article 2(1) and the Bonds [370]-[378]

370. The Bonds fall within the definition of "funds" in Article 1(g)(v), and in any event fall within the definition of "economic resources".

371. Subject to the Assignment, the Bonds are funds/economic resources that belong to or are owned, held or controlled by EuroChem NW2. EuroChem NW2 is contractual counterparty and named Beneficiary. It is the direct owner of the bundle of rights and obligations bound up in the Bonds, which it and only it can exercise.

372. EuroChem NW2 itself belongs to or is owned, held or controlled by Mr Melnichenko.

(1) This has been determined by a number of NCAs, in particular the DGT and the CSF.
(2) It is also the conclusion that I have reached, for the reasons set out in Sections XVIII, XX, XXI, XXII, XXIV, XXXII, XXXIV and XXXV above.

373. It follows that the Bonds are subject to the asset-freezing provided for in Article 2(1) – whether "freezing of funds", defined in Article 1(f) or "freezing of economic resources" defined in Article 1(e).

374. On the basis that the Bonds are "funds", so that the relevant definition is that in Article 1(f), it follows that the relevant NCAs, and the Banks, must prevent:

> "… 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…"

375. Each of EuroChem NW2's demands under the Bonds was a "use" and/or an "access to" and/or a "dealing with" the relevant Bonds, on the part of EuroChem NW2. In any event, for the Banks to proceed on the basis of any of the demands would have been an "alteration" and/or "use of" and/or "dealing with" the Bonds. It follows that Article 2(1), by freezing the Bonds, prevented the Banks from proceeding on the basis of the demands.

376. Above all, it prevented the Banks from paying pursuant to the demands, or even agreeing to do so. It is difficult to conceive a more dramatic "alteration" to the Bonds than paying under them. Payment would extinguish all the primary rights and obligations that the Bonds comprise. It would also be a "use of" the Bonds or a "dealing with" them.

377. Furthermore, the Claimants' focus only on the act of payment is not, in my view, appropriate. Even acting on a valid demand by receiving the demand, accepting it and agreeing to pay, must, in my view, be prohibited by Article 2(1) and the definition of "freezing of funds". This is thrown into very sharp relief by the Assignment, in this case, which is carefully drafted not as an assignment of the Bonds, but as an assignment of their "proceeds". Proceeds come into existence as the result of a process. Before a demand is made by EuroChem NW2, then honoured by the Bank, there are no "proceeds".

378. Furthermore, it is important that, by the combination of Article 1(g)(v) and Article 1(f), performance bonds have been deliberately included as funds that must be frozen. These provisions have to be interpreted purposively. Freezing a performance bond must mean prohibiting the course of events that would normally be followed in relation to a performance bond if it were not frozen – i.e., for the beneficiary to make a valid demand, and for the bank to honour it.

XLVI: The *LIA v Maud* point [379]-[399]

379. I have set out my reasoning process in Section XLV above in elementary steps, in order to show that the conclusion that the Banks were prevented from paying is one that, at first sight, seems straightforward, given both the terms of Article 2 and the purpose of Regulation 269. I now have to consider the decision of the Court of Appeal in *Libyan Investment Authority v Maud* [2016] EWCA Civ 788.

380. That case concerned sanctions against Libya, which affected the Libyan Investment Authority ("LIA"). These sanctions had their origin in UN Resolution 1970 (2011), which imposed sanctions on Libya, which included a freeze on assets belonging to the various persons and entities. The LIA was designated with effect from 11 April 2011.

381. The UN resolution was implemented in the EU by Regulation (EU) No. 204/2011 ("Regulation 204/2011"). Article 1 of that regulation had definitions of "funds" and "freezing of funds" which were materially identical to Article 1 of Regulation 269; and its Article 5 was materially identical to Article 2 of Regulation 269.

382. Furthermore, Article 9 of that Regulation was materially identical to Article 7 of Regulation 269, in that it provided that Article 5(2) (i.e., the equivalent of Article 2(2)) did not apply to payments into frozen accounts, in certain circumstances.

383. Regulation 204/2011 was made part of UK domestic law by the Libya (Asset-Freezing) Regulations 2011 (the "domestic regulations").

384. Mr Maud provided the LIA with a guarantee in respect of a loan made by the LIA to a third party. The guarantee fell within the definition of "funds" in Article 1 of Regulation 204/2011. The third party defaulted, and the LIA made a compliant demand under the guarantee.

385. On 16 September 2011, following the fall of Colonel Gadaffi and the establishment of the National Transitional Council of Libya, the UN Security Council wanted assets frozen pursuant to Resolution 1970 (2011) to be made available to and for the benefit of the people of Libya. By UN Resolution 2009 (2011), funds outside Libya that were already frozen continued to be frozen, but the prohibition on making new assets in the

form of funds, financial assets or economic resources available to the LIA was lifted, as was the freeze on any newly acquired assets.

386. The EU gave effect to this by removing the LIA from the list annexed to Regulation 204/2011, but adding a new provision at Article 5(4):

> "4. All funds and economic resources belonging to, or owned, held or controlled by the following on 16th September 2011:
>
> (a) Libyan Investment Authority
>
> … and located outside Libya on that date shall remain frozen."

387. The UK domestic regulations were amended so as to reflect this.

388. The LIA's case was that the guarantee was not frozen so as to prevent payment; and that such payment would give rise to funds that had not belonged to or been owned, held or controlled by it before 16 September 2011 and so were not frozen.

389. The leading judgment was given by Moore-Bick LJ, with whom the others agreed. I find it necessary to quote his judgment at some length, at [15]-[21]:

> "*The effect of Article 5 of Regulation (EU) No. 204/211*
>
> 15. Mr. Swift Q.C. submitted that the key to a proper understanding of Regulation (EU) No. 204/2011, as amended by Regulation (EU) No. 965/2011, lay in the Security Council Resolutions to which they were intended to give effect. He submitted that paragraph 17 of Resolution 1970 (2011) dealt separately with assets of two kinds: funds and economic resources owned or controlled by Libyan persons and entities and funds and economic resources that might be made available to such persons or entities. That distinction was reflected in article 5 of the Regulations as originally adopted, which drew a distinction between the freezing of funds and economic resources belonging to the LIA in article 5(1) and the prohibition in article 5(2) on making funds or economic resources available to it. The freezing of assets was, however, subject to the provisions of paragraph 20 of the resolution, which permitted payments into frozen accounts of sums due in respect of obligations that had arisen before the date on which the accounts became frozen, provided that they remained frozen in accordance with the resolution. That provision, he submitted, was reflected in article 9 of the Regulations and its effect was to allow Mr. Maud to make payment under the guarantee, provided the money was paid into a frozen account. The relaxation of the sanctions in relation to the LIA in September 2011 limited their effect to maintaining the freeze only on those assets which it owned outside Libya at the date of the resolution, but even those remained frozen subject to the provisions of paragraph 20. In Mr. Swift's submission, following its amendment by Regulation

(EU) No. 965/2011, Regulation (EU) No. 204/2011 as a whole was to be construed in a way that gave effect to the Security Council resolutions.

16. Mr. Maclean Q.C. submitted that the language of article 5(4) was clear: all funds belonging to the LIA on 16th September 2011 and located outside Libya on that date were to remain frozen. For this purpose, by virtue of article 1(a) "funds" included the guarantee given by Mr. Maud and by virtue of article 1(b) "frozen" meant that any form of dealing with the guarantee which would enable the funds to be used was prohibited. Payment of the guarantee was a form of dealing with it and was the most obvious way of enabling the funds to be used. Article 9 of the Regulation could be disregarded; it no longer had any effect as far as the LIA was concerned, because the LIA was no longer subject to the provisions of articles 5(1) or 5(2).

17. I think there is little doubt that the successive EU Regulations were intended to reflect and give effect to the Security Council resolutions rather than to establish a parallel but independent regime of a potentially more extensive nature. That appears clearly from the recitals to the Regulations themselves. Accordingly, I think they must be construed as far as possible compatibly with the Security Council resolutions. The purpose behind those resolutions is clear from their terms: Resolution 1970/2011 was intended to freeze economic assets owned by certain Libyan persons and entities and to prevent new economic assets from being made available to them. But even that all-embracing regime was subject to certain exceptions, the most important of which for present purposes was that contained in paragraph 20, which permitted the payment of frozen debts into frozen bank accounts, thus substituting one form of frozen asset for another. The relaxation of sanctions following the overthrow of Colonel Gaddafi's regime was intended to allow the LIA to deal with assets outside Libya acquired after 16th September 2011 and to allow it to obtain new assets free of sanctions. It would have been very surprising if the Security Council had intended at the same time to tighten the sanctions insofar as they applied to assets which remained frozen, and the terms of Resolution 2009 (2011) make it clear that it did not. In my view Regulation (EU) No. 204/2011 as amended must be construed with that in mind.

18. I can see the force of Mr. Maclean's argument that paying a debt involves dealing with the chose in action in a way that enables the funds it represents to be used, but in my view the Regulations must be read and understood as a coherent whole against the background of the Security Council Resolutions. The extensive definition of "funds" and the expression "freezing of funds" in article 1 makes it easy to elide the difference between

the asset and the funds into which it can be turned. Mr. Swift submitted that, under the Regulation in its original form, enabling the LIA to deal with the guarantee, for example, by way of assignment, would have contravened article 5(1), whereas paying the debt due under it would have involved making funds available to the LIA, contrary to article 5(2). I think that that is right. Article 1(a) is concerned with dealing with the asset itself, in this case the guarantee, which could be discounted or used as security in order to obtain new funds. Paying the debt is not dealing with the instrument itself in any real sense; it is simply performing the obligation to which it gives rise. That can be seen as providing funds which are otherwise not available to the recipient.

19. This approach to the construction of article 1(a) may appear rather technical, but paragraph 20 of Resolution 1970 (2011) and article 9(1)(b) of the Regulation in my view point clearly to that conclusion. The two limbs of paragraph 17 are reflected in articles 5(1) and 5(2) of Regulation (EU) No. 204/2011, but article 9, which reflects paragraph 20, states in terms that it provides an exception to article 5(2), not article 5(1). It follows, therefore, that the payment of debts arising under obligations which came into existence before sanctions were imposed is to be regarded as falling within article 5(2) and thus as making new funds available rather than dealing with existing assets. That in turn strongly suggests that debts arising under frozen assets continue to be recoverable, although they no longer need to be paid into frozen accounts, and that the correct understanding of article 5(4) is that the payment of debts due under obligations such as the guarantee in this case does not involve dealing with the obligation but represents the provision of new or additional funds.

20. That interpretation of the Regulation is reinforced by two further considerations. First, it is apparent from the recitals to Resolution 2009 (2011) that the Security Council intended to relax the sanctions regime to enable the Libyan people to have the benefit of most of the assets to which it had previously related. It is not surprising, therefore, that the funds frozen at the date of that resolution should remain frozen, and thus incapable of being alienated, but that LIA should be allowed to obtain payment of sums due under them without restriction. Second, the argument put forward on behalf of Mr. Maud proves too much, since, if it were correct, it would make it impossible for any payments to be recovered under paragraph 20 of Resolution 1970 (2011) and article 9(1)(b) of Regulation (EU) No. 204/2011 by any party which remained subject to article 5(2). That can hardly have been the intention of the Security Council or the EU Council of Ministers.

> 21. The judge thought that the expressions "funds" and "economic resources" had to be given the same meaning wherever they appeared in articles 5(1), 5(2) and 5(4). With that I respectfully agree. However, she also considered that payment under the guarantee would amount to an alteration which would result in a change of character that would enable it to be used. There, with respect, I think she went wrong, confusing "funds" in the sense of the guarantee with "funds" in the sense of the proceeds of payment. She appears to have thought that the limited scope of article 9(1)(b) was to be explained by an error on the part of the draftsman in failing to state expressly that article 9 as a whole provided an exception to article 5(1) as well as article 5(2), but for the reasons I have given I do not think that can be correct."

390. Thus, the Court of Appeal concluded that paying under the guarantee did not involve an "alteration" of the guarantee or any other activity within Article 5(1) (equivalent to Article 2(1) of Regulation 269). It involved only Article 5(2) (equivalent to Article 2(2) of Regulation 269), and so could be made subject to Article 9 (equivalent to Article 7 of Regulation 269).

391. Mr Handyside KC submitted that *Libya Investment Authority v Maud* was distinguishable, because the EU Regulation in that case fell to be considered against the background of UN Resolution 1970 (2011), whereas there is no such UN Resolution in this case. I do not regard this difference as significant. It is certainly striking that Moore-Bick LJ drew as much as he did from that UN Resolution, but what it revealed about the purpose of the EU Regulation was not really anything that cannot be said about Regulation 269.

392. A more significant difference, albeit not one that readily justifies distinguishing the judgment, is the change that occurred after the fall of Colonel Gaddafi and desire to make assets that would otherwise have been frozen available to the Libyan people. This is reflected in the judgment at [17] and [20].

393. If this were a case under Regulation 204/2011 and the UK domestic regulations, I would naturally be bound by *Libya Investment Authority v Maud*. If it were a case involving a different sanctions regime, considered as a matter of UK domestic law, where materially identical provisions fell to be applied in an English law context, I again would consider myself bound. In such a case, I would make no observations regarding the Court of Appeal's judgment. It would be impertinent and inappropriate to do so.

394. However, in the present case I am concerned with Regulation 269 as it applies as part of the law of various foreign countries – in particular, France and Italy. I have to do so in accordance with the approach that I identified in Section XXIX above – i.e., I must seek to predict what the highest court in any relevant foreign jurisdiction would decide. I do not know how likely it is that *Libya Investment Authority v Maud* would be cited in France or Italy. If it were cited, it would no doubt be considered respectfully, but not with any deference. It would be evaluated critically. I therefore find myself in the unhappy position of being obliged to consider how the judgment might be criticised.

395. I confess that I find the reasoning of the Court of Appeal in *Libya Investment Authority v Maud* difficult to follow at some points. I am particularly struck by the words used by Moore-Bick LJ at [18], where he said that it was "… easy to elide the difference between the asset and the funds into which it can be turned". Of course, it is right that one must bear in mind the difference between the asset and the funds into which it can be turned. In this case, this means the difference between the Bonds and their proceeds, this difference being highlighted by the fact that the Assignment concerns only the proceeds. But it seems to me very telling that Moore-Bick LJ made this point by talking about a process by which the frozen asset is "turned into" something else. I struggle to see how this is not an "alteration".

396. Later in [18], Moore-Bick said that paying under an instrument such as a guarantee (or bond) is not dealing with it. But honouring such an instrument, following a demand for payment, involves personnel employed by the issuer (here, the Banks) processing the demand and giving payment instructions. I find it quite difficult not to see these banking processes as a form of dealing with the instrument. My impression is that employees such as Mr Colbert and NCAs such as the DGT and the CSF take the view that payment would involve Bank staff performing functions in relation to the Bonds which are not consistent with an asset-freeze.

397. Then, at [19], Moore-Bick LJ said that the fact that Article 9 (in this case, Article 7) provides an exception to Article 5(2) but not to Article 5(1) (in this case, Article 2(2) and Article 2(1), respectively) means that the payment of debts under obligations that preceded sanctions is to be regarded only as payment under Article 5(2) (in this case, Article 2(2)). I confess that this seems circular.

398. I am concerned that the reasoning here is perhaps influenced by the first point that follows at [20] – i.e., the UN's desire to relax sanctions for the benefit of the Libyan people. That is noble, but not a logical basis for the interpretation of provisions that (i) were drafted before Colonel Gaddafi fell and that desire arose, (ii) were not amended thereafter and (iii) have been used again in the context of a number of other sanctions regimes. In the specific context of Regulation 269, the underlying purpose is not to relax sanctions for the benefit of the Russian people. It is to exert sufficient economic pressure on the government of Russia to make it withdraw from Ukraine and thus bring an end to the war. This purpose cannot be achieved by interpreting the provisions of Regulation 269 narrowly and with a view to enabling the performance of payment obligations.

399. With extreme diffidence and no little discomfort, my conclusion is that the courts of France and Italy (and, if relevant, of any other EU country) probably would not be persuaded by *Libya Investment Authority v Maud*. They are more likely to apply their own reasoning, to regard the Bonds as frozen, and to take the view that this precludes payment, which would necessarily require "alteration, use of, access to, or dealing with" the Bonds. I note that this is in fact the view of the relevant NCAs, in particular the DGT and the CSF.

XLVII: Article 2(1) and the Assignment [400]

400. In the light of my conclusions in Sections XLV and XLVI above, the significance of Article 2(1) for the Assignment is that it means that there are and can be no proceeds of the Bonds. Accordingly, there is nothing for the Assignment to bite on.

XLVIII: Article 2(2) and payment to EuroChem NW2 [401]-[403]

401. In the light of my conclusions as to Mr Melnichenko's ownership and control of EuroChem NW2, Article 2 prevents any payment under the Bonds to EuroChem NW2. This is the clear view of the DGT and of the CSF. It is also my view.

402. There is a presumption that any funds provided to EuroChem NW2 may be transferred to Mr Melnichenko. In the case of EuroChem NW2 (as distinct from EuroChem AG), the Claimants made no attempt to displace the presumption. Doing so would have required them (at least) to call evidence from MCC EuroChem.

403. The Assignment makes this academic, at least for the time being, because the Banks are not presently being asked to pay EuroChem NW2. However, if the Assignment were to be reversed under clause 3 of the Side Letter, it would again be relevant.

XLIX: Article 2(2) and payment to EuroChem AG [404]-[408]

404. In the light of my conclusion that the Assignment has no effect, because there are and can be no proceeds under the Bonds, this is academic.

405. If that were not the case, Article 2(2) would not prevent payment to EuroChem AG. This follows from the fact that the SECO – as the NCA where EuroChem AG is incorporated – has approved EuroChem AG's firewall. This determination has been noted and expressly followed in France, by the DGT, as well as in other countries such as Cyprus and the Netherlands.

406. The position of the CSF in Italy in relation to the firewall has not been expressly stated, because the CSF's message of 28 April 2025 focusses solely on the fact that the premise of this hypothesis is invalid. That message simply confirms that the Bonds are frozen, being part of EuroChem NW2's funds/economic resources; which means that the Assignment has no effect.

407. Thus far, the CSF has not said clearly whether it accepts EuroChem AG's firewall measures. I suspect that this is because the CSF, rightly, considers that to be a determination to be made by the SECO.

408. In any event, I accept the Claimants' evidence as to the firewall. This means (among other things) that the presumption that would otherwise arise under Article 2(2) is displaced, as regards EuroChem AG.

L: The pending applications to the DGT and the CSF [409]-[411]

409. It is worth noting that the pending applications to the DGT and CSF are unlikely to change the conclusions that I have set out above. These NCAs have been asked (in essence) for authorisation for the Banks to pay EuroChem AG, in the light of the Assignment. It is for them to say whether or not the relevant transfers of funds would be consistent with Regulation 269, in the light of the firewall. I expect them to say that such transfers would be acceptable, in principle.

410. However, it is not for them to say whether the Assignment has any practical effect in so far as the Bonds themselves have not been assigned and remain frozen. In particular,

it is not for them to opine on the meaning and effect, under English law, of an assignment that is limited to proceeds.

411. The position will be different if the outcome of any pending application is a determination that, contrary to the previous determinations, the Bonds themselves are not frozen.

PART H: REGULATION 833 [412]-[473]

LI: Article 11 of Regulation 833 [412]-[415]

412. Regulation 833 contains various prohibitions on the sale, supply, transfer, or export (directly or indirectly) of certain "dual-use" goods or technology to or for use in Russia, as well as prohibitions on the provision of "financing or financial assistance" related to those items.

413. I heard only brief submissions in relation to Regulation 833, because anything more extensive was unnecessary in light of the parties' agreement that I should proceed on the assumed basis that the underlying construction Contracts are or include a "contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under Regulation 833". Whether that is so, or not, will be decided in the arbitration proceedings between EuroChem NW2 and Tecnimont.

414. On the basis of the assumption, the only provision of Regulation 833 that I was asked to consider was Article 11, which provides as follows:

> "Article 11
>
> 1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:
>
> (a) legal persons, entities or bodies listed in the Annexes to this Regulation or legal persons, entities or bodies established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by them;
>
> (b) any other Russian person, entity or body;
>
> (c) any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in points (a) or (b) of this paragraph.

> 2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim."

415. It being assumed that the performance of the underlying Contracts between EuroChem NW2 and Tecnimont have been affected by Regulation 833, the main issue arising for my decision is whether the claims under the Bonds are claims "in connection with" those underlying Contracts.

LII: Are the claims "in connection with" the Contracts? [416]-[429]

416. The Claimants submitted that claims under the Bonds are not claims "in connection with" the Contracts, because of the autonomous nature of on-demand bonds. They relied on the summary of the law in *Power Projects Sanayi Insaat Ticaret Limited Sirketi v Star Assurance Company Limited* [2024] EWHC 2798 (Comm), per Mr Richard Millett KC at [31]:

> "31. The basic principles are well established, and I take them, with all due deference and some adjustment, from PP's skeleton argument.
>
> (i) On-demand bonds (and similar instruments) are the "life-blood of international commerce" (*Harbottle v NatWest* [1978] QB 146 at 155); they are to be treated as "an autonomous contract, independent of disputes between the seller and the buyer as to their relative entitlements pursuant to the different contract between themselves" (*Wuhan Guoyu Logistics Group Co Ltd v Emporiki Bank of Greece SA* [2014] 1 All ER (Comm) 870 (CA) at [21].
>
> (ii) Liability under the bond is separate from liability under the underlying contract: *Edward Owen v Barclays Bank* [1978] Q.B. 159 at 171 (per Lord Denning MR):
>
> "A bank which gives a performance guarantee … is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contracted obligation or not; nor with the question whether the supplier is in default or not. The bank must pay according to its guarantee, on demand, if so stipulated, without proof or conditions."
>
> (iii)Any lack of correlation between payment made under an on-demand bond and liability in the underlying contractual relationship is a matter for resolution between the parties to that relationship, not for the bond issuer and beneficiary:
>
> "By agreeing to provide a bond which is payable on demand, a party agrees that the bond may be called pending resolution of any dispute with the counterparty beneficiary. He thereby agrees to assume the risk of payment being made notwithstanding that

> he can subsequently establish in litigation or arbitration that the dispute is to be resolved in his favour": *Ouais Group v. Saipem* [2013] EWHC 990 (Comm) at [45].
>
> (iv)The only exception to the rule in Edward Owen in relation to contractual obligations as between the beneficiary and issuer of an on-demand bond is "when there is a clear fraud of which the bank has notice" (Lord Denning MR again, at 171). Accordingly:
>
> a. The issuer is required to plead and prove dishonesty on the part of the beneficiary, or absence of any good-faith belief that the relevant amount is due. An honest but mistaken belief will not suffice: see *AES-3C v. Credit Agricole* [2011] BLR 249 (TCC) at [48], nor will the fact that the underlying contractual claim is contested: see Wuhan Guoyu at [21].
>
> b. Fraud alone does not do; the bond issuer must have notice of the fraud at the time of the demand. As Tomlinson LJ said in Wuhan Guoyu at [22]:
>
> "It is critical to the efficacy of these financial arrangements that as between beneficiary and bank the position crystallises as at presentation of documents or demand as the case may be, and that it is only in the case of fraudulent presentation or demand by the beneficiary that the bank can resist payment against an apparently conforming presentation or demand."
>
> (v) The rule in Edward Owen and the status of the fraud exception as the sole defence as between issuer and beneficiary was reiterated by the Court of Appeal in *National Infrastructure v. Banco Santander* [2018] 1 All ER (Comm) 156 at [17] to [19]. In that case Longmore LJ made it plain that a defence will only exist where:
>
> "'the only realistic inference is that [the claimant] could not honestly have believed in the validity of its demands' (the emphasis is mine but none the less crucial for that)."
>
> (vi) In the context of on-demand bonds, in applying the summary judgment test, "the Court must be mindful of the principle that banks … need particularly cogent evidence to establish the fraud exception": Banco Santander, Longmore LJ at [22] quoting Teare J in *Enka Insaat Ve Sanayi AS v Banca Popolare Dell' Alto Adige SpA* [2009] EWHC 2410 at [25]."

417. The dicta cited in this passage have all been cited and relied on in many other judgments, and the principles that they stand for are well-established.

418. The Banks submitted that it cannot be said that the Bonds are not connected with the Contracts. They referred me to a passage in the Claimants' Reply, which (at paragraph 65(ii)(b)) denied that the claims under the Bonds fell within Article 11(1) of Regulation 833 and then said that they "at most are claims in connection with contracts (namely, the Contracts), which wrongfully have not been performed by the Third Parties…" This is an alternative plea and on no view a positive averment that the claims are "in connection with" the Contracts. I therefore reject the Banks' pleading point.

419. More broadly, the Banks said that it was undeniable that the Bonds are connected to the Contracts, because they refer to the Contracts in their recitals. This is true. A further connection between the Bonds and the Contracts is that the Bonds were issued because the Contracts required this.

420. However, the question here is not whether there is a connection of some kind between (i) the Bonds and (ii) the Contracts. It is whether there is a connection between (i) the claims under the Bonds and (ii) the Contracts.

421. As the Claimants rightly say, the entitlement to bring claims under the Bonds depends solely on valid demands having been made. Such demands have to refer to the Contracts, but their validity does not depend on the factual accuracy of anything they say, as was made clear by the dicta cited in *Power Projects Sanayi Insaat Ticaret Limited Sirketi v Star Assurance Company Limited*. Furthermore, fraud is not alleged in this case, so that exception to the general position in respect of on-demands does not apply.

422. It follows that, in the context of the claims under the Bonds, the Banks are (in Lord Denning MR's words in *Edward Owen*) "not concerned in the least with the relations between the supplier and the customer". The relations between Tecnimont and EuroChem NW2 are embodied in the Contracts – with which, as Lord Denning MR observed, the Banks are not in the least concerned.

423. The Claimants summarised their argument as follows:

> "Put differently: could the performance of the Banks' obligations to pay under the Bonds be affected by non-performance under the Contracts, whether on the basis of sanctions compliance or not? The answer is 'no'. That is the nature of on-demand bonds: it goes to their basic function of security unconnected to the performance of the underlying contract; and it is what distinguishes them from a guarantee."

424. There is much force in this. However, it is, once again, an approach which does not take sufficient account of the purpose of the relevant instrument – on this occasion, Regulation 833.

425. A similar issue arose in *Celestial Aviation Services Ltd v Unicredit Bank AG* [2024] EWCA Civ 628, which concerned the Russia (Sanctions) (EU Exit) Regulations 2019 Pt 5(2) reg. 28(3), which prohibits the provision of financial services or funds "in connection with" arrangements to supply aircraft for use in Russia. The case concerned claims under letters of credit that supported aircraft finance leases which the claimants entered into with a Russian airline.

426. Falk LJ, giving the lead judgment with which the others agreed, noted at [52]-[53] the importance of the statutory purpose, which was "to put pressure on Russia". The purpose of Regulation 833 was the same, and (as already noted) the purpose of the instrument is, if anything, even more significant for the interpretation of EU instruments than it is for domestic legislation (Falk LJ did not rely on the EU origins of the Russia (Sanctions) (EU Exit) Regulations 2019 in reaching her conclusion).

427. Falk LJ then said, at [55]:

> "[55] The words "in connection with" are broad. As Rix LJ said in *Campbell v Conoco (UK) Ltd* [2003] 1 All ER (Comm) 35 at para 19, the words in connection with "… are widely regarded as being as wide a connecting link as one can commonly come across". Their use in conjunction with "in pursuance of" indicates a clear intention to cast the net more broadly than financial services or funds provided under or in accordance with the terms of the relevant arrangements (which would be covered by the natural sense of "in pursuance of"). I would also agree with UniCredit that the words "in connection with" do not require any form of legal dependence, for example by reference to principles of causation. Rather, the question is one of factual connection."

428. A little later, at [60], Falk LJ referred to the autonomy principle – essentially, the point raised by the Claimants in this case. She then said at [61]:

> "[61] However, it is important to understand what the scope of the principle is. Obligations under letters of credit are autonomous in the sense that they do not depend on whether the beneficiary has a claim on the underlying contract financed by the credit, or (for a confirming bank) on the position of the issuing bank. So in this case, for example, payment under the LCs depended on an asserted default under the leases and not on whether there was in fact a relevant default. But that does not mean that the factual reality of a connection with the leases can be ignored. That connection undoubtedly exists, and indeed is recognised in the reference in article 4(a) to the "contract on which [the letter of credit] may be based"[8]. The LCs were issued only because of, and no doubt in amounts determined by reference to, the leases and they were triggered by an assertion of default under them."

429. Falk LJ concluded by rejecting the claimants' argument that the claims were not in connection with arrangements to supply aircraft. It is right to note that the provision in that case, and the facts, raised a number of features that Falk LJ relied on, in addition to her observations about the words "in connection with". Nevertheless, I do not

[8] This was a reference to Article 4 of the UCP, which enshrines the autonomy principle: see per Falk LJ at [60]. Cf. Article 5 of the URDG, incorporated into the ING Bond, which refers to "the underlying relationship".

consider her reasoning at [53], [55] and [61] to be properly distinguishable. I therefore accept the Banks' case on Regulation 833.

LIII: Are the claims by or on behalf of a Russian entity? [430]-[433]

430. In the light of the Assignment, a further question also arises in relation to Article 11(1) of Regulation 833. It provides that claims in connection with any contract which has been affected by Regulation 833 shall not be satisfied, if they are made by any persons within categories (a), (b) or (c), as set out.

431. The claims under the Bonds were originally made by EuroChem NW2, which is a Russian entity. I understand the Claimants' case to be that the claims are now made by EuroChem AG. They rely on clause 2(b) of the Assignment, which provides that they "have the right to seek enforcement with respect to the Claimed Amounts and pursue all claims and demands".

432. However, the correct analysis is that set out in 'Guide to ICC Uniform Rules for Demand Guarantees URDG 758' at paragraphs 33.20-21, which I have set out in Section XXV above. As a mere assignment of proceeds, the Assignment did not make EuroChem AG a party to the Bonds or entitled to make a demand in its own name. Nor did it in fact purport to do so. It has at all times relied on the demands made by EuroChem NW2. At most, the assignment may have conferred beneficial rights, so that EuroChem AG became entitled (if necessary) to require EuroChem NW2 to allow EuroChem AG to use its name for the purpose of pursuing claims under the Bonds, with a view to recovering the proceeds.

433. As that work notes at paragraph 33.21, EuroChem AG acquired its rights under the Assignment "…subject to any claims and defences that would have been available against the assignor". In principle, this includes any defence arising from Regulation 833.

LIV: Conclusion on Regulation 833 [434]-[435]

434. Accordingly, I accept the Banks' case that, on the assumption that the Contracts have been affected by Regulation 833, payment under the Bonds is prohibited, and the Claimants' claims are precluded, by Article 11.

435. I was not specifically addressed by the parties on the position of the NCAs in relation to Regulation 833, but it is notable that the pronouncements made by the DGT on 18 October 2023 and by the CSF on 22 September 2023, 24 November 2023, and 28 April 2025 all referred to Article 11 of Regulation 833, as well as Regulation 269, as a bar to payment under the Bonds.

PART I: THE RULE IN RALLI BROTHERS [436]-[473]

LV: Would payment be illegal in France/Italy? [436]-[437]

436. Payment would be illegal in France and in Italy, because (as matters presently stand) the NCA in each country has determined that the Bonds are frozen under Article 2(1) of Regulation 269. The DGT and the CSF have both made clear statements to this

effect. Payment would require the Banks to deal with the Bonds as if they were not frozen. This would be illegal, under the law of France and under the law of Italy.

437. Payment would also be illegal in France and in Italy under Article 11 of Regulation 833.

LVI: The rule in *Ralli Brothers* [438]-[440]

438. The rule in *Ralli Brothers v Companie Naviera Sota y Aznar* [1920] 2 KB 287 is a well-established principle derived from the Court of Appeal's adoption in that case of the principle, now set out in Dicey, Morris & Collins on the Conflict of Laws (16th ed) at 32-257, that:

> "… a contract (whether lawful by its governing law or not) [is], in general, invalid in so far as the performance of it [is] unlawful by the law of the country where the contract [is] to be performed."

439. The principle was very recently summarised by the Court of Appeal in *Celestial Aviation* at [105]-[106] as follows:

> "[105] The Ralli Bros principle is well-established. It is a limited exception to the general principle that the enforceability of a contract governed by English law is determined without reference to illegality under any other law. The exception applies where contractual performance necessarily requires an act to be done in a place where it would be unlawful to carry it out: see for example *Dana Gas PJSC v Dana Gas Sukuk Ltd* [2018] 1 Lloyd's Rep 177 at [79] per Leggatt J and *Banco San Juan Internacional Inc v Petróleos de Venezuela SA* [2021] 2 All ER (Comm) 590 ("*Banco San Juan*") at [62], [77] and [79] per Cockerill J.
>
> [106] A distinction has been drawn in the case law between situations where performance is illegal in the jurisdiction where performance must take place, where the principle applies, and cases where the illegality relates to a preparatory step to performance, or "equipping to perform": *Banco San Juan* at [80]–[83], where the illegality does not excuse non-performance. Further, it is not in dispute that a party will not be excused if performance would be legal if a licence was obtained, unless that party shows that they either made reasonable efforts to obtain a licence or that any such efforts would have been in vain because a licence would have been refused."

440. This summary of the law was not challenged. There were two main issues that arose from it:

(1) Whether performance by the Banks would require an act to be done in a place where it would be unlawful to carry it out, bearing in mind the distinction

between (i) performance and (ii) a mere preparatory step or "equipping to perform".

(2) Whether the Banks have taken reasonable steps to obtain a licence (or some analogous relief) or whether such steps would have been in vain.

LVII: The place of performance under the Bonds [441]-[461]

441. The Claimants said that the place of performance was Russia. This was primarily on the basis that performance consisted of payment, and the general presumption under English law is that the debtor must follow the creditor, such that, where no express place for payment is specified, the place for payment will be where the creditor is located. For this general principle, the Claimants referred to an old case and a recent one:

(1) *The Eider* [1893] P 119, at pp. 136–137: "The general rule is that where no place of payment is specified, either expressly, or by implication, the debtor must seek his creditor."

(2) *Litasco SA v Banque El Amana SA* [2025] EWHC 312 (Comm), per Ms Louise Hutton KC at [69] (citing *Mann and Proctor on The Law of Money* (8th ed.) at paragraph 7.117).

442. The Claimants also referred to the terms of EuroChem NW2's demands, which instructed that payment should be made to its account with Gazprombank in Moscow. In addition, they referred to the more recent instructions from EuroChem AG, also for payment in Russia.

443. There are a number of problems with this approach.

444. First, the fact that the demands and the more recent instructions from EuroChem AG sought payment in Russia is irrelevant. The Banks were under no obligation to pay either EuroChem NW2 or EuroChem AG in accordance with those instructions. The only authority cited by the Claimants on this point did not support them. It stated that post-contractual payment instructions are irrelevant as an aid to construction: *Canyon Offshore Ltd v GDF Suez E&P Nederland BV* [2014] EWHC 3810 (Comm), per HHJ Mackie KC at [38].

445. Second, following the Assignment, payment must be to EuroChem AG as assignee of the proceeds. By making payment to EuroChem AG, the Banks would discharge their obligations under the Bonds to EuroChem NW2. This could be achieved by paying EuroChem AG in Switzerland – if necessary (e.g. if EuroChem AG refused to nominate a bank account in Switzerland), by delivering banknotes to its headquarters in Zug. This might be what would be required, on the basis of the general presumption relied on by the Claimants.

446. Third, the presumption is, as the Claimants accept, only a presumption. It will be displaced if the express or implied terms of the contract so provide, or if the contract has relevant features or there are other circumstances that lead to this result. In the context of on-demand instruments, if the instrument specifies the place where the demand must be made, this is generally regarded as the place for payment, because the instrument requires payment on demand.

447. In the case of the ING Bond, this result cannot be disputed, because that Bond incorporated the URDG. Under Article 20(c), payment was to be made at ING's branch in Milan, which was where the Bond was issued and was also where the demand had to be made.

448. In the case of the SocGen Bonds, there was no expressly stipulated place for payment. However, they all provided expressly that demands had to be made at SocGen's headquarters in Paris.

449. There are a number of cases that deal with the place for payment under other species of on-demand instruments, in particular letters of credit. The authority that deals with the point in the context of an instrument closest in nature to the Bonds in this case is *Britten Norman Ltd v State Ownership Fund of Romania* [2000] Lloyd's Rep. (Banking) 315, per Mr Peter Leaver QC at p. 319 lhc:

> "In my judgment, the matter should be approached in the following way. Until a demand was made, Barclays was under no actual liability to SOF. Its liability was only a potential liability. When the demand was made, in conformity with the terms of the Letter of Guarantee, Barclays' potential liability crystallised into an actual liability. That liability, absent any contractual term as to the place of payment, was to make payment at the place where the demand was made and where the liability crystallised. The fact that SOF, in its demand, requested that payment should be made into a stipulated account at a Romanian bank was simply an administrative, or mechanical, request, and not a contractual requirement. It would have been perfectly possible for SOF to have stipulated for payment in Romania, but it did not do so. While it is true that, in English law, a debtor is under an obligation to seek out his creditor in order to make payment of his debt, so that Barclays was under an obligation to seek out SOF, that obligation has little to do with the place of payment under a document such as the Letter of Guarantee."

450. Mr Leaver QC relied on a line of authority that can be traced back to the decision in *Offshore International SA v Banco Central SA* [1977] 1 WLR 399, which concerned a letter of credit. In that case, Ackner J relied on a passage in Gutteridge & Megrah 'The Law of Bankers' Commercial Credits' (5th ed.), relating the law of such an instrument to the place of performance:

> "… the presumption must be that matters connected with the performance by the banker of his contract under a commercial credit are to be regulated by the law prevailing at the place of performance, i.e. the law of the territory in which the seller's draft is presented to the banker for acceptance or payment."

451. The decision of Ackner J was endorsed by the Court of Appeal, both as to place for payment and as to presumed proper law, in *Power Curber International Ltd v National Bank of Kuwait* [1981] 2 Lloyd's Rep 394 and (after *Britten Norman*) in *Marconi Communications International Limited* v *PT Pan Indonesia Bank Limited TBK* [2005]

EWCA Civ 422. The reasoning in *Britten Norman* therefore was based on longstanding authorities relating to letters of credit, as well as reflecting the commercial practice which had been drawn on by Ackner J, and which was described in Gutteridge & Megrah as applying "under a commercial credit".

452. The Claimants naturally drew attention to the criticism of *Britten Norman* in the judgment in *Commercial Marine & Piling Ltd v Pierse Contracting Ltd* [2009] EWHC 2241 (TCC), where Ramsey J suggested that *Britten Norman* might be inconsistent with the decision of the Court of Appeal in *Samcrete Egypt Engineers and Contractors SAE v Land Rover Exports Ltd* [2001] EWCA Civ 2019 – which was a case in respect of a guarantee. However, Ramsey J rightly noted that the position is not clear, because the report in *Samcrete Egypt Engineers and Contractors SAE v Land Rover Exports Ltd* does not make it clear whether or not there was an express provision as to the place of payment. I would add that Ramsey J seems not to have had *Power Curber International Ltd v National Bank of Kuwait* drawn to his attention; that neither *Offshore International* nor *Power Curber* is referred to in *Samcrete* itself; and that the subsequent Court of Appeal decision in *Marconi Communications International Limited* v *PT Pan Indonesia Bank Limited TBK* went the other way.

453. *Samcrete* was discussed at some length in *Marconi Communications International*, which post-dated the other decisions in this series. However, the discussion of *Samcrete* in *Marconi Communications International* was mostly on another issue (the presumption in article 4.2 of the Rome Convention 1980, i.e. the Rome I Regulation). Potter LJ, who had given the lead judgment in *Samcrete*, delivered the judgment of the Court of Appeal in *Marconi Communications International*, but does not appear to have considered that there was any tension between the cases. His endorsement of *Offshore International* and *Power Curber* is at [42] and [43]; and the reasoning at [49] also seems to assume that the place of the demand and the place for payment will be the same – as it was for the Bank of Baroda in *Bank of Baroda v Vysya Bank Ltd* [1994] 2 Lloyd's Rep 87, considered at [50] ff. See also at [62] (where the place of presentation of documents is also treated as the place where payment is to be made against those documents).

454. I accept that *Offshore International*, *Power Curber* and *Marconi Communications International* focussed on letters of credit, rather than on-demand bonds. However, I note that, although Ramsey J in *Commercial Marine & Piling* criticised *Britten Norman* in a number of respects, he did not suggest that Mr Leaver QC had been wrong to look at cases on letters of credit. I am not persuaded that there is any material difference between letters of credit and on-demand bonds. In both situations, there is an autonomous obligation to pay, which arises upon the presentation of specified documents to the issuer. Such payment is intended to be immediate, which is why it is commonplace to speak of payment "against" documents. In days gone by, such payment would have been effected by handing over physical currency, at the bank's counter, in exchange for the documents. The fact that payment now occurs virtually, by way of a stream of electrons, cannot alter, and should not obscure, the nature of the transaction.

455. The state of the law in this area is not wholly satisfactory. However, on balance I prefer the line of authority leading up to *Britten Norman* and thence to *Marconi Communications International*, in part because it has the stronger and more recent support from the Court of Appeal, and in part because it seems to me to reflect better

the reality of on-demand instruments. Payment is intended to be the direct and immediate consequence of the demand. Absent any contractual indication to the contrary, the place for the demand is the obvious place for payment. This seems to me to apply to on-demand bonds no less than it does to letters of credit.

456. It follows that, in relation to the SocGen Bonds, the place for payment was Paris.

457. I should add that the Claimants observed that *Power Curber International Ltd v National Bank of Kuwait* had been overturned by the decision of the Supreme Court in *Taurus Petroleum Limited v State Oil Marketing Company of the Ministry of Oil* [2017] UKSC 64. This is true, but it was overturned in relation to the situs of the debt – not in relation to the place for payment.

458. It follows that, as a matter of English law, the place for payment under the Bonds was in France as regards the SocGen Bonds and in Italy as regards the ING Bond. Payment was clearly central to the Banks' performance of their obligations under the Bonds, and it follows that performance by them would therefore be illegal in the relevant jurisdictions, for the purpose of the rule in *Ralli Brothers*.

459. However, I would add that, even if I had been persuaded that payment had to be performed in Russia, I would not have accepted that no element of performance, but only preparatory steps, had to be taken in Paris and Milan. In the context of on-demand bonds, (i) the making of the demands for payment and (ii) the issuer's response to such demands are both crucial. Even if these actions are treated as separate from payment, they are still essential to the obligations under such bonds and their performance. They are what it means to honour the obligations under an on-demand bond.

460. Furthermore, it would seem to me artificial and unfair to ignore this reality when the NCAs in France and Italy, whose decisions are critical, clearly take the view that the actions that the Banks take in respect of the Bonds in their jurisdictions are critical. The DGT and the CSF, like Ackner J, regard the Banks' obligation to respond to the demands, when made, as central to the way the Bonds operate. This can only happen when and where the demands are made. That is where the Bonds fall to be honoured – not in Russia, but within the jurisdiction of the DGT and the CSF. If the Banks were to ignore the views of the DGT and the CSF and make payment in Russia, they would face prosecution in France and Italy (respectively), and Mr Colbert and others might face the risk of imprisonment. That is not something that this court should be quick to ignore, when considering whether the EU sanctions mean that the Banks must be required to pay under the Bonds.

461. I therefore am not convinced that the Banks' receipt of and response to the demands can or should be characterised as merely preparatory for the purposes of the *Ralli Brothers* rule, rather than being a necessary part of contractual performance.

LVIII: Licence applications and Article 7 [462]-[465]

462. The Banks have in fact applied for licences, as set out in Sections XXXVIII and XXXIX above – so far, to no avail. The Claimants' pleaded case included complaints that the applications to the DGT and the CSF for licences were insufficiently neutral, but I am not conscious of any inaccuracies or any significant omissions.

463. In any event, the only provision of Regulation 269 under which the Claimants felt able to say a licence might be granted was Article 6e(1a). This permits NCAs to make funds or economic resources available, if "necessary for the purchase, import or transport of agricultural and food products, including wheat and fertilisers." The funds in this case are not necessary for the purchase, import or transport of fertilisers and the Claimants do not propose to use them for any of these purposes, if the Bonds were unfrozen. The Banks and Tecnimont express concern that their use would be uncontrolled and might simply benefit Mr Melnichenko. The Claimants have consistently denied this, but even on their case such funds would be used in relation to the financing of the construction of the new Kingisepp plant. That is not a purpose within Article 6e(1a).

464. Furthermore, it is apparent that EuroChem NW2 does not need the Bonds in order to complete the construction of the plant. Mr Beloborodov's evidence was that the project will be completed, with or without the Banks' money, in time to start operating in 2026. Accordingly, there is no basis for a licence to be granted under Article 6e(1a) of Regulation 269.

465. In a similar vein, the Claimants said that the proceeds of the Bonds could be paid into a frozen bank account, pursuant to Article 7(2) of Regulation 269. This would only help in relation Article 2(2); it has no bearing on the freezing of the Bonds under Article 2(1). Furthermore, my understanding is that EuroChem NW2 does not have a bank account in the EU or even in Switzerland (i.e., one that is or can be frozen). The Banks were not obliged to open new frozen bank accounts for EuroChem NW2 (or EuroChem AG), in order to make payment under the Bonds pursuant to Article 7.

LIX: Public policy [466]-[470]

466. The Banks submitted that, even if the case did not fall squarely within the rule in *Ralli Brothers* (in particular, if the Claimants were right about the place of performance being Russia), the court should still not enforce the Bonds, because to do so would be contrary to public policy. They relied on a dictum from the judgment of Lord Collins, sitting in the Hong Kong Court of Final Appeal, in *Ryder Industries Ltd v Chan Shui Woo* (2015) 18 HKCFAR 544, at [57], suggesting that this was a possible basis on which enforcement could be refused even outside the rule in *Ralli Brothers*:

> "[56] It has been suggested (obiter) that a contract which is valid by the governing law of the forum, English law, or in this case, Hong Kong law, may be refused enforcement if it has been 'performed in such a way that one party (or both parties) commits a legal wrong': *Barros Mattos Jnr v MacDaniels Ltd* [2004] EWHC 1188, [2005] 1 WLR 247, [30] (Laddie J). But, …, this obiter suggestion states the principle much too widely.
>
> [57] There may nevertheless be cases in which a sufficiently serious breach of foreign law which reflects important policies of the foreign state or separate law district may be such that it would be contrary to public policy to enforce a contract. But there is no basis in authority or principle for holding that every breach of foreign law would come into this category."

467. This dictum was approved as part of English law and applied in *Magdeev v Tsvetkov* [2020] EWHC 887 (Comm), at [317], albeit Cockerill J concluded at [341] that the breach of foreign law in that case was not sufficiently serious to engage English public policy. *Magdeev v Tsvetkov* was itself followed in *Haddad v Rostamani* [2021] EWHC 1892 (Ch), per Zacaroli J at [88], albeit the court again did not consider the breach of foreign law so serious as to justify a refusal to enforce the contract. All these cases recognise that the underlying rationale is comity.

468. The Banks said that the facts of this case were very different from those in *Ryder Industries Ltd v Chan Shui Woo*, *Magdeev v Tsvetkov* or *Haddad v Rostamani*, and that the breach of French/Italian/EU law was much more serious, so the principle of comity is more strongly engaged. They also said that it is significant that the foreign laws in question (i.e., Regulation 269 and Regulation 833) have counterparts in UK law, enacted for precisely the same policy objectives (i.e., the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2019).

469. Given that this point was raised only as an alternative argument, I can deal with it briefly, but I have no doubt that the Banks are right. Regulation 269 and Regulation 833 are an important part of EU legislation and of French and Italian domestic law. They were enacted as part of an EU-wide strategy, at the behest of the heads of state and governments of all the member states. Their purpose is as grave as any imaginable. It is evident from the exchanges with the DGT and the CSF that the Regulations are applied and enforced with extreme care and strictness. The punishments available are severe. Moreover, I consider that the Banks are right to suggest that the fact that UK/English public policy on this point is precisely aligned with that of the EU is an important pointer to the very great significance that should be attached to comity, on the facts of this case.[9]

470. Accordingly, if I had not been in the Banks' favour on the application of the rule in *Ralli Brothers*, I would have found in their favour on this basis.

LX: Implied term [471]-[472]

471. The Banks alleged that by reason of an implied term, or as a matter of construction, the Banks are not obliged to pay if this would be unlawful under EU sanctions. Although not pleaded strictly as an alternative, this case also has to be seen in the light of the arguments concerning the rule in *Ralli Brothers*.

472. If the Banks succeed in their case on the rule in *Ralli Brothers*, or on the related argument concerning public policy, the implied term contended for is not necessary. If they fail on both those arguments, this will be because the rule in *Ralli Brothers* and the public policy argument derived from *Ryder Industries Ltd v Chan Shui Woo* are too narrow to accommodate the facts of the case. If so, I do not see how it can be said that the parties' unexpressed but obvious mutual intention was that the effect of the Bonds should be different from the result that would be arrived at merely by applying the law to the facts.

[9] See the passage quoted in Section XXIX above from the 'Policy Background' section of the Explanatory Notes to the UK Sanctions and Anti-Money Laundering Act 2018.

LXI: Conclusion on the rule in *Ralli Brothers* [473]

473. It follows that the Bonds are unenforceable, under the rule in *Ralli Brothers*, because performance by the Banks would be unlawful under the law of the countries where the relevant steps (above all, payment) would have to be carried out. Alternatively, they are unenforceable as a matter of public policy.

PART J: OTHER ARGUMENTS [474]-[494]

LXII: Article 11 of Regulation 269 [474]-[475]

474. In addition to Article 2 of Regulation 269, the Banks also relied on Article 11. This prohibits the satisfaction of any claim in connection with any contract or transaction the performance of which has been affected by Regulation 269, if it is made by a designated person or entity.

475. Article 11 can only apply if the Bonds are affected by Regulation 269. If so, this provision adds nothing to the other arguments. I understood Mr Handyside KC, in particular, to accept this.

LXIII: The Bonds' expiry dates [476]-[478]

476. The Banks alleged that the claims must fail because the Bonds all expired some time ago – most in September 2023; two in August 2024. They said that, under clause 3.2 of the Bonds, they were obliged to pay immediately upon receipt of a valid demand, and in any case no more than four days later. If they were prohibited from paying when the demand was made and for the next four days, that demand ceased to have effect. Upon expiry, no further demands could be made.

477. The Claimants pointed out that clause 6(a) of the Bonds provides that the obligations are irrevocable and primary, and clause 6(b) provides that on expiry the Bond "shall cease to have effect save in connection with any demand notified to the Issuer on or prior to the said date." They also said that the effect of the rule in *Ralli Brothers* is to suspend, not extinguish, a payment obligation, referring to *Banco San Juan Internacional Inc v Petroleos De Venezuela SA* [2020] EWHC 2937 (Comm), per Cockerill J at [77]:

> "[77] The rule in *Ralli Bros*… provides that an obligation under an English law contract is invalid and unenforceable, or suspended in the case of a payment obligation, insofar as the contract requires performance in a place where it is unlawful under the law of that required place of performance."

478. I consider that the Claimants are right on both their points. If the effect of sanctions was to suspend payment for so long as to frustrate the purpose of the Bonds, the Banks' obligation to pay might be discharged for that reason. However, the effect in this case has not been such as to amount to legal frustration. If sanctions are lifted within the reasonably near future, or if the position of one of the relevant NCAs changes, the Banks will be obliged to pay by reason of the original demands.

LXIV: Validity of the Assignment [479]-[482]

479. The Banks argued that the Assignment was invalid under the terms of the Bonds, in that EuroChem NW2 could only assign the proceeds of the Bonds in circumstances where a demand had not already been made. They said that this followed from the language of clause 9.1, which refers to the assignment of "the proceeds arising from the possible drawdown of this bond… to EuroChem AG". They said that the word "possible" was only consistent with a demand not yet having been made.

480. The fallacy in this argument is illustrated by the facts of this case. There have been demands, which are valid and which, if the Claimants were otherwise right, would oblige the Banks to pay. However, the Banks have not paid, with the result that there has been no "drawdown", and no "proceeds arising from" such drawdown. On the assumption that the Claimants' case is otherwise correct, they must be entitled to the occurrence of the drawdown and to the arising of the proceeds – in the form of cash. However, because the Banks have not accepted the demands, that legal entitlement currently represents only an abstract possibility. There are as yet no proceeds, i.e. no cold, hard cash that the Claimants can identify as rightfully theirs.

481. Accordingly, if a beneficiary under a Bond makes a valid demand, which the Bank wrongfully refuses to pay, I do not see how the wording of clause 9.1 can be read as preventing the beneficiary from making an assignment of the proceeds. As at the date of assignment, they are (in the language of the clause) "possible proceeds". They will become actual proceeds only if and when the claim is accepted by the Bank, or succeeds at trial.

482. The Banks also argued that because the original demands were accompanied by payment instructions requesting payment to EuroChem NW2's own bank account, it was not possible for EuroChem NW2 subsequently to request payment to EuroChem AG, following the Assignment, and this too was inconsistent with clause 3 and/or clause 9.1. This argument does not reflect the language of either provision, and I cannot accept it.

LXV: The Assignment and Article 9 [483]-[486]

483. The Banks also attacked the Assignment on the basis that it was an attempt to circumvent Article 2 of Regulation 269, and therefore prohibited under Article 9.

484. Mr Hechler was personally involved in the Assignment and gave evidence that it was done "after careful consideration of the legality of the assignment and in compliance with international sanctions" and "after a long analytical process". He also pointed to the fact that, before it was completed, EuroChem AG wrote to the SECO, who said there were no objections. In cross-examination he seemed reluctant to accept that there was any causal connection whatsoever between the imposition of sanctions and the Assignment, which I thought unrealistic. However, he steadfastly refused to accept that the Assignment was intended to circumvent the sanctions, and I accept that this evidence was honestly given. I am sure that EuroChem AG only entered into the Assignment because it was satisfied that it was legal and proper to do so.

485. In submissions, the main focus of the Banks' case on this point related to the Side Letter, because of the very substantial consideration that it provided for EuroChem AG to pay

to EuroChem NW2. The Banks said (in my view, rightly) that the fact that clause 2.3 recorded the parties' agreement that it should be paid from funds "which do not constitute any proceeds from the Bonds" was meaningless, given the fungibility of money. They said that this demonstrated that the Assignment was merely a way for EuroChem AG to funnel back to EuroChem NW2 US$62,358,000 which could not be paid to EuroChem NW2 directly by the Banks.

486. I would have seen some force in this, were it not for clause 2.2(b), which provides that the Consideration is only payable if all necessary approvals are obtained. In context, this means the approval of the SECO, as the relevant NCA. As I have already noted, Mr Fenwick KC assured me that EuroChem AG will apply for authorisation to pay, if the Claimants succeed in their claims in this action and if EuroChem AG therefore receives the assigned proceeds. On this basis, I do not see that the Assignment can be said knowingly and intentionally to have the effect of circumventing Regulation 269. Clause 2.2(b) suggests, and I have been told, that EuroChem AG will pay EuroChem NW2 only if authorised to do so.

LXVI: The sanctioned Russian banks [487]-[491]

487. I have already noted that, after March 2022, EuroChem NW2 obtained alternative finance from Russian banks. This was by way of a Syndicated Loan Agreement dated 30 December 2020, as amended and restated from time to time, with amongst others (i) VTB Bank (ii) VEB.RF (iii) Otkritie FC Bank (iv) Gazprombank and (v) Sberbank. All these banks except Gazprombank are subject to EU sanctions.[10] From the outset of the proceedings, the Banks said that it followed that payment to EuroChem NW2 would be used by EuroChem NW2, if not to pass funds to Mr Melnichenko, then to repay the Russian banks. This gave rise to debate between the Claimants and the Banks as to whether the Russian banks would have any rights over or interest in such funds.

488. The Assignment alters the perspective from which this point must be considered. If the Banks have to pay under the Bonds, the proceeds will not pass to EuroChem NW2 but to EuroChem AG. If the SECO gives the necessary authorisation, there will in due course follow a separate payment by EuroChem AG to EuroChem NW2.

489. If this happens, that payment will be subject to clause 2.5 of the Side Letter – it will be used by EuroChem NW2 "solely for the purposes of financing its capital expenditure under the Project". Given the Syndicated Loan Agreement, whose existence was known to both EuroChem NW2 and EuroChem AG when they entered into the Assignment and Side Letter, this means that EuroChem NW2 will use the money to repay the Russian banks.

490. The question whether the Russian banks would have any right over or interest in the Consideration under the Side Letter therefore has become irrelevant. EuroChem NW2 has a contractual obligation to EuroChem AG to use the Consideration for this sole purpose. It therefore is inevitable that much of it will go to sanctioned Russian banks. It may be thought unlikely that this is something that the SECO would feel able to authorise.

[10] Gazprombank is not subject to EU sanctions, but it is subject to UK sanctions

491. Nevertheless, if, knowing all this, the SECO were to authorise EuroChem AG to pay US$62,358,000 to EuroChem NW2, then for EuroChem AG to do so would not be unlawful. On the basis that this is the only circumstance in which the Consideration will be paid, I do not see that any of this assists the Banks in the context of this action.

LXVII: ING's Part 20 claim against Tecnimont [492]-[494]

492. ING's claim against Tecnimont arises under the Facility Agreement that they entered into on 5 August 2015, by which Tecnimont agreed to indemnify ING against any liability arising from ING's issuance of any Guarantees (as defined).

493. ING issued the ING Bond pursuant to Tecnimont's request of 2 November 2020, and increased its value pursuant to Tecnimont's request of 4 February 2021. It is common ground that the ING Bond is a Guarantee within the terms of the Facility Agreement.

494. However, ING's claim to be indemnified does not arise, in the light of my conclusion that the ING Bond cannot be enforced by the Claimants against ING.

PART K: CONCLUSION [495]-[514]

LXVIII: Overall conclusion and outcome [495]-[497]

495. In conclusion:

(1) As the beneficiary under the Firstline Trust, Mrs Melnichenko is Mr Melnichenko's mere proxy: Section XXI.
(2) Indirect ownership is sufficient, for the purposes of Article 2 of Regulation 269: Section XXXII.
(3) Further, the beneficiary under a discretionary trust is the owner of the trust assets, for the purposes of Article 2 of Regulation 269: Section XXXII.
(4) The Firstline Trust was, in any case, not a true discretionary trust per *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev*: Section XXXIV.
(5) It follows that Mr Melnichenko is the owner of EuroChem NW2 and of EuroChem AG, and of their assets including the Bonds, for the purposes of Article 2.
(6) Mr Melnichenko has de facto control of EuroChem NW2, and of its assets including the Bonds, for the purposes of Article 2: Section XXXV.
(7) Mr Melnichenko does not have control of EuroChem AG, because of the firewall.
(8) The Bonds are frozen under Article 2(1). This has been determined by the DGT: Section XXXVIII; and by the CSF: Section XXXIX. It is also my view.
(9) The Banks therefore are prohibited from honouring the Bonds and paying under them: Sections XLV and XLVI.
(10) This means that there are and can be no proceeds for the Assignment to bite on: Section XLVII.
(11) Article 2(2) would in any event prohibit payment to EuroChem NW2: Section XLVIII; but not to EuroChem AG: Section XLIX.
(12) On the assumption that the Contracts are affected by Regulation 833, payment under the Bonds is also prohibited under Article 11 of Regulation 833.
(13) Payment under the Bonds would be unlawful under the law of both France and Italy: Section LV.

(14) The place of performance for the ING Bond is Italy. The place of performance of the SocGen Bonds is France: Section LVII.
(15) The Bonds are unenforceable pursuant to the rule in *Ralli Brothers*, alternatively as a matter of public policy: Sections LXI.

496. The Claimants' claims therefore fail.

497. ING's Part 20 claim against Tecnimont also largely falls away, although there are some residual elements that will require further submissions in due course.

LXIX: Coda: the Claimants' disclosure [498]-[514]

498. In Section XIII above, in the context of the oral evidence of Mr Fokin, I mentioned two documents that were the subject of significant redactions. While it has not been necessary to go into details in order to set out my conclusion on the issues that arose for determination, these were not isolated examples. A considerable number of documents disclosed by the Claimants were the subject of redactions, so that the Banks and Tecnimont, and the court, could not read their full text. A considerable number of further documents were disclosed into a confidentiality club, so that access to them (or their full text) was restricted to lawyers and a limited number of client representatives. In some cases, this occurred on the basis of a decision by the court that redaction or disclosure into the confidentiality club was appropriate. In many cases, it occurred without such a decision, or (at most) on the basis that documents should be disclosed into the confidentiality club on a provisional basis, subject to determination in the future.

499. In the course of the proceedings, and including the trial period, the status of a number of documents came to my attention. I had to rule on some of them (including the two documents discussed in Section XIII), in general deciding that they should not be redacted and were not confidential. For others (an important example being the Future of EuroChem memorandum), when the issue was raised, Mr Fenwick KC agreed that all redactions should be removed, without there being any need for argument. However, I am conscious that similar points have arisen in relation to many other documents which have not been brought to my attention.

500. I am also conscious that the fact that many documents were subject to redactions, and that others were subject to confidentiality restrictions that meant they could not be referred to in open court, at least until access to these documents had been raised with me in the course of the trial, has been problematic. It has made the parties' preparation for trial more complex than would otherwise have been necessary. It has disrupted the trial process, slowing things down and requiring the use of additional time. In some instances, it came close to causing unfairness: here I have in mind the two documents already referenced, the redactions to which were removed only part-way through Mr Fokin's evidence, in a way that prevented Mr Kitchener KC from cross-examining on them as fully as he would have wanted, because of the limited time that was practically available for Mr Fokin's evidence (although I should say that Mr Kitchener KC managed extremely capably and with great forensic pragmatism, in difficult circumstances).

501. My overall impression was that the Claimants' approach to disclosure was that any material that they did not wish to be seen, or at least to be seen by the general public,

could be dealt with by redaction and/or the Confidentiality Club, on the basis that it would then be up to the Banks and Tecnimont to challenge the treatment of each relevant document, should they wish to do so, on a case-by-case basis.

502. This resulted in some documents being disclosed only in heavily redacted form, and many having to be treated as confidential, unless and until challenged. In some instances, the redactions affected entire sections of a document. In others, specific words or phrases were redacted in an otherwise unaffected sentence.

503. The fact that the redactions were carried out in this way is crucial to much of what I have to say:

(1) The fact that each document in question had been disclosed at all meant that it was accepted that the document was relevant; ergo, the unredacted text was relevant. The other parties were entitled not merely to have it disclosed to them, but to have it disclosed on a basis that made it readily understandable.
(2) Redacting a discrete section or paragraph may in many cases not affect the reader's ability to make sense of the unredacted text.
(3) By contrast, if a particular sentence or passage is relevant, but individual words or phrases in it are redacted, this is in general likely to make it difficult for the reader to understand the (ex hypothesi) relevant text.
(4) It must be borne in mind that context is essential to achieving a proper understanding. Stripping out part of the text therefore will often cause problems, unless what is redacted is entirely severable and has no impact on the reader's ability to understand what remains.
(5) The problem is well illustrated, in the slightly different context of statements of case, by the recent judgment of Constable J in *Various Claimants v Mercedes-Benz Group AG* [2025] EWHC 1931 (KB): see the examples given by Constable J at [33] to [37], and Constable J's observation at [48] that this made the relevant materials "wholly impossible to follow".

504. In relation to some documents – the obviously important documents that had been disclosed only in redacted form, and the handful of truly significant documents in the Confidentiality Club that were referred to repeatedly – it was a practical necessity for challenges to be made by the Banks and/or Tecnimont. However, in relation to many other documents in the Confidentiality Club, it would have been excessively time-consuming to make such challenges. The Banks and Tecnimont preferred to muddle through, with the documents remaining in the Confidentiality Club.

505. This was so even though it meant that all the parties had (for example) to prepare both confidential and non-confidential versions of their written submissions. It also meant that everyone had to take great care when cross-examining and making submissions in open court, not to reveal the contents of documents that were still treated as being in the Confidentiality Club.

506. I should say that I am not making the lazy and unfair assumption that none of the documents that went into the Confidentiality Club truly belonged there, or that none of the redactions made were justified. I know that in many instances the Claimants had good reasons for behaving as they did. However, I am aware that by far the majority of the documents that I had to rule on were documents that I did not consider confidential; and that a significant number of documents went into the Confidentiality

Club without it having been positively determined that they belonged there. This makes me concerned, without being sure either way, that there may have been many more documents in the Confidentiality Club, which I have not seen or ruled on, that should not have been there.

507. Against this background, it is necessary to say two separate things.

508. First, a fundamental long-standing feature of the judicial system of this country is the commitment to open justice. This has been remarked on in many cases (such as *Scott v Scott* [1913] AC 417 and *Dring v Cape Intermediate Holdings Ltd* [2019] UKSC 38), and is enshrined in (for example) CPR Part 39. Parties who come to this country seeking justice are obliged to respect and share our commitment to open justice. It is part of the price of litigating here.

509. Under CPR Practice Direction 57AD, paragraph 16(1), redactions can only be made to non-privileged documents if the redacted material is (i) irrelevant and (ii) confidential. Both these criteria have to be satisfied.

510. The test for relevance is, in general, the text for standard disclosure in CPR 31.6, i.e. whether the relevant information adversely affects one party's case or supports the other's: see for example *WH Holding Limited v E20 Stadium LLP* [2018] EWHC 2578 (Ch), per Snowden J at [44]. However, where the relevance of a document is accepted, I consider that the disclosing party needs to think carefully before making redactions to the particular passages that make the document relevant. They must assess whether the redaction of any words or phrases in the relevant passages will adversely affect the reader's understanding. In my view they must do so cautiously and, if in doubt, should not redact. Words that are necessary for the proper understanding of any relevant passage must, themselves, be relevant.

511. The test for confidentiality has been authoritatively considered and explained by an earlier judgment in *Cavallari v Mercedes-Benz Group AG* – that of Cockerill J: [2024] EWHC 190 (KB), at [34]-[50]. I do not attempt to summarise or paraphrase any of the important observations made by Cockerill J, but it is worth emphasizing the significance of her point at [41] that confidentiality can be lost. Something that may originally be confidential may lose its confidentiality; sometimes because it enters the public domain, but also because the simple passage of time may mean that it loses topicality and will no longer be capable of conferring any advantage on a competitor. In the context of this case, details of EuroChem's current business activities and future intentions may have been confidential at one time, but not after they had passed into recorded history. In particular, a plan may be confidential while it is still being discussed and implemented, but when it has been acted on, with results that are visible to the world, its confidentiality is over. The five-year 'rule of thumb' referred to by Cockerill J at [42] is not a strict legal principle (certainly not in English law), and it has no application here.

512. Second, these criteria have to be applied scrupulously. It is not acceptable for the party giving disclosure to decide to err on the side of redactions and confidentiality, and then wait to see if any receiving party wishes to challenge its decisions.

513. To do so is not only inconsistent with the principle of open justice and the rules prescribed in the CPR, it has real consequences. It transfers the real decision-making

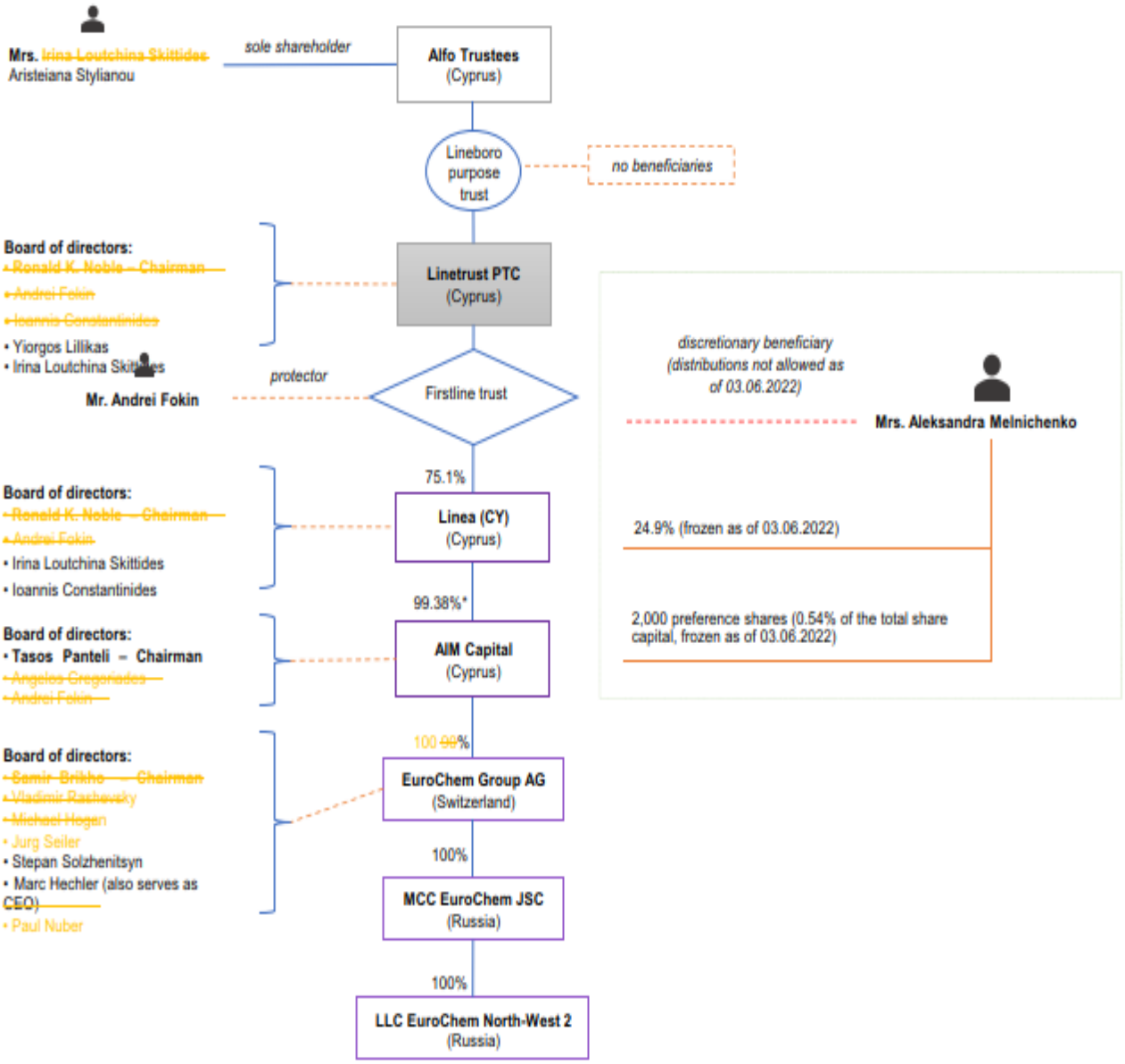
burden to the receiving parties. It adds to the costs of those parties, and to the costs overall. In so far as it results in additional applications or interruptions to the trial, it leads to the loss of time. It thereby causes inconvenience to the court, and to other court users. These matters all have financial implications, which in an appropriate case ought to be reflected in the court's approach to costs.

514. I do not know whether this is such a case. To what extent, if any, such consequences have been occasioned in this case, beyond the instances of the few specific documents that I have identified above or that I have ruled on in earlier interlocutory decisions, is something on which I will require further assistance from the parties. I look forward to receiving such assistance in due course, in their submissions on costs.

LLC EuroChem NW2 v SocGen

Judgment Appendix 1

The Claimants' current ownership structure



LLC EuroChem NW2 v SocGen

Judgment Appendix 2

The relevant provisions of Regulation 269

Article 1

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

(a) 'claim' means any claim, whether asserted by legal proceedings or not, made before or after 17 March 2014, under or in connection with a contract or transaction, and includes in particular:

(i) a claim for performance of any obligation arising under or in connection with a contract or transaction;

(ii) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;

(iii) a claim for compensation in respect of a contract or transaction;

(iv) a counterclaim;

(v) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

(b) 'contract or transaction' means any transaction of whatever form, whatever the applicable law, and whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;

(c) 'competent authorities' means the competent authorities of the Member States as identified on the websites listed in Annex II;

(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 anyway, 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:

(i) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(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 or value accruing from or generated by assets;

(v) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(vi) letters of credit, bills of lading, bills of sale; and

(vii) documents showing evidence of an interest in funds or financial resources;

(h) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2
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.
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.

Article 6e
1. By way of derogation from Article 2, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources belonging to the entities listed under entry numbers 53, 54, 55, 79, 80, 81, 82, 108, 126, 127, 198, 199, 200, 214, 215 and 270 under the heading 'Entities' in Annex I, or the making available of certain funds or economic resources to those entities, under such conditions as the competent authorities deem appropriate and after having determined that such funds or economic resources are necessary for the purchase, import or transport of agricultural and food products, including wheat and fertilisers.
…

Article 7
1. Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties onto the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.
2. Article 2(2) shall not apply to the addition to frozen accounts of:
(a) interest or other earnings on those accounts;
(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; or
(c) payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in the Member State concerned;
provided that any such interest, other earnings and payments are frozen in accordance with Article 2(1).

Article 9
1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in this Regulation, including by participating in such activities without deliberately seeking that object or effect but being aware that the participation may have that object or effect and accepting that possibility.
…

Article 10
1. 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

2. Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.

Article 11
1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, particularly a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:
(a) designated natural or legal persons, entities or bodies listed in Annex I;
(b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).
2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the natural or legal person, entity or body seeking the enforcement of that claim.
3. This Article is without prejudice to the right of natural or legal persons, entities or bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.