Reports of Cases

OPINION OF ADVOCATE GENERAL
PITRUZZELLA
delivered on 17 June 2021 [1]

Case C-340/20

Bank Sepah
v
Overseas Financial Limited,
Oaktree Finance Limited

(Request for a preliminary ruling from the Cour de cassation (Court of Cassation, France))

(Reference for a preliminary ruling – Common foreign and security policy – Restrictive measures taken against Iran – Regulation (EC) No 423/2007 – Freezing of funds of persons, entities or bodies recognised by the Council of the European Union as being engaged in nuclear proliferation – Definition of 'freezing of funds' and 'freezing of economic resources' – Possibility of implementing a protective measure in respect of frozen funds and economic resources – Claim pre-dating the freezing of funds and unrelated to Iran's nuclear and ballistic programme)

I. Introduction

1. Can the creditor of a person or entity targeted by measures to freeze funds and economic resources implemented within the framework of the European Union's Common Foreign and Security Policy, introduce, without prior authorisation from the competent national authority, protective measures with no earmarking effect intended to guarantee the recovery of the claim, such as a judicial lien or preventive attachment, in respect of the frozen assets?

2. This novel question arises in the context of the present proceedings concerning the interpretation of Article 1(h) and (j) and Article 7(1) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran, [2] and Regulations (EU) Nos 961/2010 [3] and 267/2012 [4] ('the successive regulations').

1 Original language: French.

2 OJ 2007 L 103, p. 1.

3 Council Regulation of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1).

4 Council Regulation of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1).

3. The request for a preliminary ruling has been made by the Cour de cassation (Court of Cassation, France) in proceedings between Bank Sepah, an Iranian bank whose assets were made the subject of a measure to freeze funds and economic resources, and two creditors of that bank, Overseas Financial and Oaktree Finance Limited. It provides the Court with the opportunity to clarify subsequently the scope of the concepts of 'freezing of funds' and 'freezing of economic resources'.

II. Legal context

4. As part of the measures adopted to put pressure on the Islamic Republic of Iran to end its proliferation sensitive nuclear activities and the development of nuclear weapon development delivery systems, the Council of the European Union implemented United Nations Security Council ('Security Council') Resolution 1737 (2006) of 23 December 2006, which provided for the freezing of funds and economic resources of persons and entities involved in Iran's nuclear or ballistic missiles activities, by adopting Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran. [5]

5. Article 5(1) of the Council Common Position provided for the freezing of funds and economic resources which belong to, are owned, held or controlled, directly or indirectly, by persons and entities designated in the annex to Resolution 1737 (2006) or designated in accordance with that resolution. Those persons and entities were listed in Annex I to the Council Common Position.

6. The list set out in the annex to Resolution 1737 (2006) has been updated by several successive resolutions, in particular, by Security Council Resolution 1747 (2007) of 24 March 2007. Following the adoption of that resolution, the Council adopted Common Position 2007/246/CFSP. [6]

7. On the basis of Common Position 2007/140, the Council adopted Regulation No 423/2007.

8. Article 1(h) and (j) of Regulation No 423/2007 provides:

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

…

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

…

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

[5] OJ 2007 L 61, p. 49.

[6] Common Position of 23 April 2007 amending Common Position 2007/140 (OJ 2007 L 106, p. 67).

9. Article 7 of that regulation states:

‘1. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IV shall be frozen. …

…

3. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes IV and V.

4. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1, 2 and 3 shall be prohibited.’

10. Under Article 8 of Regulation No 423/2007:

‘By way of derogation from Article 7, the competent authorities of the Member States, as indicated in the websites listed in Annex III, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources are the subject of a judicial, administrative or arbitral lien established before the date on which the person, entity or body referred to in Article 7 has been designated by the Sanctions Committee, the Security Council or by the Council or of a judicial, administrative or arbitral judgment rendered prior to that date;

…’

11. Commission Regulation (EC) No 441/2007 of 20 April 2007 amending Regulation No 423/2007 [7] included Bank Sepah in the list set out in Annex IV to Regulation No 423/2007.

12. Regulation No 423/2007 was then replaced by Regulation No 961/2010, followed by Regulation No 267/2012 which is still in force. Article 1(h) and (i), Article 16 and Article 17 of Regulation No 961/2010 and Article 1(j) and (k), Article 23 and Article 24 of Regulation No 267/2012 are, in essence, identical to Article 1(h) and (j), as well as Article 7 and Article 8 of Regulation No 423/2007. Bank Sepah is included in the list set out in Annex VII to Regulation No 961/2010 and that in Annex VIII to Regulation No 267/2012. For the sake of brevity, in the rest of my Opinion I will refer only to the provisions of Regulation No 423/2007, it being understood that the same legal considerations apply to the corresponding provisions of the successive regulations.

III. Facts, procedure in the main proceedings and the questions referred

13. Pursuant to Resolution 1747 (2007) implemented by Common Position 2007/246 and by Regulation No 441/2007, Bank Sepah was included in the list of entities involved in nuclear or ballistic missile activities whose assets were to be frozen.

[7] OJ 2007 L 104, p. 28.

14. By judgment of 26 April 2007, the Cour d'appel de Paris (Court of Appeal, Paris, France) ordered Bank Sepah to pay Overseas Financial the EUR equivalent of 2 500 000 US dollars (USD) (approximately EUR 2 050 000) and to pay Oaktree Finance the EUR equivalent of USD 1 500 000 (approximately EUR 1 230 000), plus interest at the statutory rate from the date of that judgment.

15. After receiving partial payment on 2 December 2011, Overseas Financial and Oaktree Finance requested that the French Minister of the Economy and Finance authorise, in accordance with Article 8 of Regulation No 423/2007, the release of the outstanding balance. After the Minister of the Economy and Finance failed to reply, Overseas Financial and Oaktree Finance brought an action for annulment of the implied rejection of their request. The Tribunal administratif de Paris (Administrative Court, Paris, France) dismissed the action on the ground that any release under Article 8 of that regulation should be the subject of a judgment rendered prior to 23 December 2006, the date of adoption of Resolution 1737 (2006), although the order for payment in respect of Bank Sepah was issued after that date.

16. In view of the fact that, following the removal of Bank Sepah from the list of entities subject to restrictive measures, on 23 January 2016,[8] administrative approval was no longer required to obtain payment of the amount due, on 21 October 2016, the cour administrative d'appel de Paris (Administrative Court of Appeal, Paris, France), hearing the case on appeal, ruled that there was no need to adjudicate.[9]

17. On 17 May 2016, Overseas Financial and Oaktree Finance issued formal notices of attachment and sale against Bank Sepah then, having received no payment, they attached, on 5 July 2016, receivables, shareholder rights and transferable securities. By judgment of 9 January 2017, the court responsible for enforcement validated those notices of attachment and their amount, plus interest as provided for by the judgment of the Cour d'appel de Paris (Court of Appeal, Paris) 26 April 2007. Bringing an appeal against that decision, Bank Sepah argued that it could not be held liable for interest, in so far as the freezing of its assets under Regulation No 423/2007 constituted a case of force majeure which prevented it from fulfilling its payment obligation, resulting in the suspension of the accrual of interest.

18. By judgment of 8 March 2018, the Cour d'appel de Paris (Court of Appeal, Paris), first of all, dismissed the appeal brought by Bank Sepah and, second, noted, however, that the circumstances of the case were subject to a limitation period of five years. According to that court, there was nothing to preclude Overseas Financial and Oaktree Finance from initiating enforcement measures on a preventive basis capable of interrupting the limitation period. In so far as such measures had not been taken prior to the formal notices of attachment and sale of 17 May 2016, the Cour d'appel de Paris (Court of Appeal, Paris) held that the interest that Overseas Financial and Oaktree Finance could claim was therefore limited to the interest accrued from 17 May 2011, that is to say five years prior to those demands for payment.

19. Both Bank Sepah and Overseas Financial and Oaktree Finance lodged an appeal on a point of law before the referring court. In particular, Overseas Financial and Oaktree Finance contest the part of the judgment under appeal concerning the five-year limitation period in respect of interest.

[8] See Article 1 of Council Implementing Regulation (EU) 2016/74 of 22 January 2016 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2016 L 16, p. 6).

[9] Following an appeal brought against the judgment of the Paris Administrative Court before the Paris Administrative Court of Appeal, that court made a reference for a preliminary ruling to the Court of Justice concerning the validity of Article 17 of Regulation No 961/2010, worded, in essence, in identical terms to Article 8 of Regulation No 423/2007. Following the removal of Bank Sepah from the list of entities subject to restrictive measures, the Court of Justice, by order of 23 March 2016, *Overseas Financial and Oaktree Finance* (C-319/15, not published, EU:C:2016:268), ruled that there was no need to adjudicate.

20. With regard to that point of law, the referring court reasons that the outcome of the dispute in the main proceedings hinges on whether Overseas Financial and Oaktree Finance could have interrupted the limitation period by implementing protective or enforcement measures in respect of Bank Sepah's frozen assets.

21. In that regard, the referring court notes that neither Regulation No 423/2007 nor the successive regulations contain any provision expressly prohibiting a creditor from implementing protective or enforcement measures in respect of a debtor's frozen property and that, in the light of the definition of 'freezing of funds' set out in those regulations, the implementation of measures which do not fall within any of the prohibitions provided for in those regulations cannot be excluded in respect of frozen assets. The referring court considers that the question arises whether protective measures which do not have an earmarking effect, such as a judicial lien and preventive attachment provided for by the French Code des procédures civiles d'exécution (Code of Civil Enforcement Proceedings), [10] may be implemented, without prior authorisation, in respect of frozen assets.

22. The referring court asks, first, whether, despite the lack of earmarking effect, judicial liens and preventive attachments entail a change in the 'destination' of the funds to which they apply, within the meaning of the definition of 'freezing of funds' set out in Regulation No 423/2007 and in the successive regulations and, more generally, whether they could enable the 'use of' the funds and economic resources to which they apply, within the meaning of those regulations.

23. The referring court notes that those measures, by ensuring that the person implementing them will be paid on a priority basis out of the assets, rights and claims attached as a preventive measure, once the freezing has been lifted, could be regarded as likely to encourage an economic operator to conclude contracts with the person or entity whose assets are frozen, which would be tantamount to the use by that person or entity of the economic value of their assets classified as funds, or to obtaining, as a result of the economic value of their assets classified as economic resources, funds, goods or services.

24. Second, the referring court observes, however, that there is no such risk in the present case, since Overseas Financial and Oaktree Finance are seeking to recover a claim established by a court decision subsequent to the freezing of Bank Sepah's assets, based on grounds unrelated to Iran's nuclear and ballistic programme and which pre-date the imposition of the freezing order. According to the referring court, the question therefore arises whether the possibility of implementing, without prior authorisation, a measure in respect of frozen assets must be assessed by reference to the type of measure, without regard to the specific features of the case, or whether, on the contrary, those specific features may be taken into account.

[10] Under Article 523 of the code des procédures civiles d'exécution (Code of Civil Enforcement Proceedings), the *preventive attachment* of claims is to produce the effects of a consignment provided for in Article 2350 of the Code civil français (French Civil Code), which entails a special appropriation for the property seized and the right to be paid in preference to his or her other creditors out of a tangible movable asset or a set of tangible movable assets, whether present or future. The referring court notes that preventive attachments have no earmarking effect, in so far as the attached property, claims and rights remain within the debtor's estate. Under Article 531 of the code des procédures civiles d'exécution, *judicial liens* can be imposed on immovable property (mortgage), on business assets or on shares or transferable securities (collateral security); under that same article, the assets on which the lien was imposed remain transferrable. Their only effect is that the claim held by the party which established the judicial lien must be paid on a priority basis out of the transfer price in the event of transfer of the assets and rights on which the lien was imposed. According to the referring court, judicial liens and preventive attachments have no earmarking effect, in so far as there is no obligation on the holder of the assets or rights in question to transfer them, and have no bearing on the right to choose to whom they are transferred.

25. In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Article 1(h) and (j) and Article 7(1) of Regulation (EC) No 423/2007, Article 1(i) and (h) and Article 16(1) of Regulation (EU) No 961/2010, and Article 1(k) and (j) and Article 23(1) of Regulation (EU) No 267/2012 to be interpreted as precluding a measure with no earmarking effect, such as a judicial lien or preventive attachment, provided for in the French Code of Civil Enforcement Proceedings, from being implemented, without prior authorisation from the competent national authority, in respect of frozen assets?

(2) Is it relevant to the answer to the first question that the grounds for the claim to be recovered from the person or entity whose assets are frozen are unrelated to Iran's nuclear and ballistic programme and pre-date United Nations Security Council Resolution 1737 (2006) of 23 December 2006?'

IV. Legal analysis

A. The first question referred

26. By its first question, the referring court asks, in essence, whether the concepts of 'freezing of funds' and 'freezing of economic resources', as provided for in Regulation No 423/2007 and in the successive regulations, must be interpreted as precluding a measure with no earmarking effect, such as a judicial lien or preventive attachment under French law, from being implemented, without prior authorisation from the competent national authority, in respect of frozen assets.

27. The parties which have submitted observations to the Court have adopted different positions as to the answer to be given to that question. On the one hand, the French Government and Overseas Financial and Oaktree Finance submit that authorisation from the competent national authority is required before implementing a measure such as those referred to by the referring court in respect of frozen assets. On the other, Bank Sepah considers, by contrast, that such protective measures may be implemented, without prior authorisation from the competent national authority, in respect of frozen assets. As for the European Commission, it takes the view that prior authorisation from the competent national authority is not required to implement protective measures such as those referred to by the referring court in respect of frozen assets, but that the party intending to implement such measures must first inform the national competent authority as a matter of course.

28. The answer to the first question referred presupposes that, in order to determine their scope, the concepts of 'freezing of funds' and 'freezing of economic resources' must be interpreted in line with the definitions set out in Article 1(h) and (j) of Regulation No 423/2007 and in the corresponding provisions of the successive regulations. The interpretation of those provisions must verify whether protective measures with no earmarking effect, such as those referred to by the referring court, fall within the scope of those concepts.

29. In that regard, I should point out that, according to settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context, the objectives pursued by the rules of which it is part and, where appropriate, its origins. [11]

30. As regards the literal interpretation of the provisions in question, it must be observed that, as noted by the referring court, neither Regulation No 423/2007, nor the successive regulations, expressly prohibit the implementation of protective measures in respect of frozen funds or resources. However, the concepts of 'freezing of funds' and 'freezing of economic resources' are defined broadly by those regulations so as to freeze in full the assets of the persons listed at the date of designation.

31. First and foremost, the concept of 'freezing of funds' thus covers 'any moving, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management'.

32. It is clear from that definition that the freezing of funds not only precludes measures likely to change the extent of the assets of sanctioned persons and entities, but also precludes transactions involving those funds intended solely to change their character or destination. It is also apparent that that definition includes measures with no earmarking effect in the concept of 'freezing of funds', in so far as such measures do not entail a change of ownership or possession of the funds in question.

33. As to the means provided for preventing those measures, they are defined broadly to include 'any moving, transfer, alteration, use of, access to, or dealing with' funds. I take the view that the use of the indefinite pronoun 'any' is evidence of the intention of the EU legislature to define the concept of 'freezing of funds' broadly.

34. It follows that the definition of the concept of 'freezing of funds' is worded in such a way as to cover any use of funds that would result, inter alia, in a change in their destination, that is to say their appropriation, use or purpose, without transferring ownership or even possession of the funds. It therefore also covers measures with no earmarking effect that enable the use of the funds.

35. With regard, next, to the concept of 'freezing of economic resources', it is defined, in Article 1(j) of Regulation No 423/2007 and in the corresponding provisions of the successive regulations, as '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'.

36. It is apparent from the wording of that provision that the EU legislature also intended to define the concept of 'freezing of economic resources' fairly broadly, as shown by the use of the term 'in any way'.

37. In addition, that definition contains a list – expressly provided by way of example and is thus broad – of measures which cannot be implemented in respect of economic resources; it is clear from the provision in question that 'mortgaging them' is one of those measures. As noted by the French Government and Overseas Financial and Oaktree Finance, mortgages constitute – in

[11] See, inter alia, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 113 and the case-law cited).

French law but also in the law of other Member States [12] – security over immovable property of a legal, contractual, or judicial nature, which gives the creditor a preferential right over that property including a resale right, but which does not entail any transfer of ownership or possession of the encumbered property. It is therefore a measure which has no earmarking effect.

38. It is clear from the literal interpretation of the provisions at issue that they define the concepts of 'freezing of funds' and 'freezing of economic resources' fairly broadly so as to include in those concepts the widest possible range of economic transactions in respect of the frozen funds and economic resources. Moreover, the definitions of those concepts set out in the provisions in question expressly cover measures with no earmarking effect.

39. The requirement for a broad interpretation of the concepts of 'freezing of funds' and 'freezing of economic resources', which do not exclude measures imposed in respect of frozen funds and economic resources with no earmarking effect, is, moreover, confirmed by the contextual analysis and by the objectives pursued by Regulation No 423/2007 and the successive regulations.

40. From a contextual point of view, such a broad interpretation is consistent with the broad scope of the wording of Article 7(1) of Regulation No 423/2007 and the corresponding provisions of the successive regulations aimed at freezing all the funds and economic resources of the persons and entities concerned.

41. It is also consistent with the broad scope of the concepts of 'funds and economic resources' [13], on the one hand, and 'made available' [14], on the other, recognised in the Court's case-law with regard to the implementation of restrictive measures adopted in respect of legal and natural persons targeted by measures to freeze funds and economic resources.

42. It is thus apparent from the Court's settled case-law that the concept of 'funds and economic resources' is wide in scope, covering assets of every kind, however acquired. [15]

43. As for the expression 'made available', it is apparent from the Court's settled case-law that it also has a wide meaning, encompassing all the acts necessary if a person, a group or an entity targeted by measures to freeze funds or economic resources is effectively to obtain full power of disposal in respect of the funds, other financial assets or economic resources concerned. [16]

44. In addition, the broad interpretation referred to in point 39 above is necessary in view of the prohibition on circumvention set out in Article 7(4) of Regulation No 423/2007. [17]

[12] See Article 2393 et seq. of the French Civil Code. See also, by way of example, with regard to Italian law, Article 2808 et seq. of the Codice civile (Civil Code), so far as concerns Spanish law, Article 1874 et seq. of the Código Civil (Civil Code) and Article 104 et seq. of the Ley Hipotecaria (Mortgage Law) and, as for German law, Paragraph 1113 et seq. of the Bürgerliches Gesetzbuch (Civil Code).

[13] Defined in Article 1(g) and (i) of Regulation No 423/2007. See also Article 1(f) and (j) of Regulation No 961/2010 and Article 1(h) and (l) of Regulation No 267/2012.

[14] Under Article 7(3) of Regulation No 423/2007, 'no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes IV and V'. See also Article 16(3) of Regulation No 961/2010 and Article 23(3) of Regulation No 267/2012 that have a similar provision.

[15] See, by analogy, judgments of 29 June 2010, *E and F* (C-550/09, EU:C:2010:382, paragraph 69) and of 17 January 2019, *SH* (C-168/17, EU:C:2019:36, paragraph 53).

[16] See, by analogy, 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 67); and of 21 December 2011, *Afrasiabi and Others* (C-72/11, EU:C:2011:874, paragraph 40).

[17] With regard to that prohibition, see judgment of 21 December 2011, *Afrasiabi and Others* (C-72/11, EU:C:2011:874, paragraph 62 and the case-law cited).

45. From a teleological point of view, the broad interpretation of the concepts of 'freezing of funds' and 'freezing of economic resources', referred to in point 39 above, is consistent with the objectives pursued by the regulations implementing restrictive asset freezing measures and, specifically, with the aim pursued by Regulation No 423/2007 and the successive regulations in the context of restrictive measures taken against Iran.

46. On the one hand, in general, the Court stated that the objective of the measures to freeze the assets of persons or entities suspected of involvement in activities covered by such rules is to stop those persons having access to economic or financial resources, whatever their nature, that they could use to support their activities. [18] From that point of view, the restrictive measures should be targeted in a way that has maximum impact on those whose behaviour we want to influence. [19]

47. On the other, as regards, specifically, the objectives of Regulation No 423/2007 and the successive regulations, it must be observed that they ensure the implementation of Common Position 2007/140 adopted in order to fulfil the objectives of Security Council Resolution 1737 (2006) and to implement them within the European Union. [20]

48. It is clear from the terms both of Resolution 1737 (2006) and of Common Position 2007/140, [21] that the restrictive measures adopted against the Islamic Republic of Iran are intended to be preventive in that they seek to prevent the development of nuclear proliferation by putting pressure on Iran to end its proliferation sensitive nuclear activities. [22]

49. Measures to freeze funds and economic resources are thus intended to prevent the asset in question from being used to obtain funds, goods or services capable of contributing to nuclear proliferation in Iran, which Security Council Resolution 1737 (2006), Common Position 2007/140 and Regulation No 423/2007 seek to combat. [23]

50. To attain those ends, it is not only legitimate but also essential that the definitions of the concepts of 'freezing of funds' and 'freezing of economic resources' be interpreted broadly, because it is necessary to prevent any use of frozen assets for the purpose of circumventing the law and exploiting loopholes in the system. [24]

51. Both the objective pursued by Regulation No 423/2007 and by the successive regulations, and the need to ensure the effectiveness of those regulations in combating nuclear proliferation in Iran thus require the concepts of 'freezing of funds' and 'freezing of economic resources' to be defined broadly encompassing protective measures with no earmarking effect. [25] By contrast, a restrictive interpretation of the concepts of 'freezing of funds' and 'freezing of economic resources' allowing

[18] See, by way of example, to that effect and by analogy, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 169) and of 29 April 2010, *M and Others* (C-340/08, EU:C:2010:232, paragraph 54).

[19] See, in that regard, paragraph 6 of the Basic Principles on the Use of Restrictive Measures, adopted by the Council of the European Union on 7 June 2004, 10198/1/04, available at: https://www.consilium.europa.eu/fr/policies/sanctions/.

[20] See recital 3 of Regulation No 423/2007, recital 4 of Regulation No 961/2010 and recital 25 of Regulation No 267/2012. It is apparent from the case-law that account should therefore be taken of the text and purpose of Resolution 1737 (2006) for the purposes of interpreting those regulations. See, by analogy, judgment of 16 November 2011, *Bank Melli Iran* v *Council* (C-548/09 P, EU:C:2011:735, paragraphs 102 and 103).

[21] See, in particular, paragraphs 2 and 12 of Resolution 1737 (2006) and the recitals 1 and 9 of Common Position 2007/140.

[22] See, to that effect, judgment of 21 December 2011, *Afrasiabi and Others* (C-72/11, EU:C:2011:874, paragraph 44).

[23] See, to that effect, judgment of 21 December 2011, *Afrasiabi and Others* (C-72/11, EU:C:2011:874, paragraph 46).

[24] See, to that effect, point 48 in the Opinion of Advocate General Bot in *Afrasiabi and Others* (C-72/11, EU:C:2011:737).

[25] See, to that effect, judgment of 21 December 2011, *Afrasiabi and Others* (C-72/11, EU:C:2011:874, paragraph 54).

for the implementation, without prior authorisation, of such protective measures with no earmarking effect, would risk undermining the effectiveness and practical effect of restrictive freezing measures.

52. In the present case, it is for the referring court to establish, in this particular case, whether the measures referred to by the referring court – judicial liens and preventive attachments – as provided for by national law, amount to protective measures with no earmarking effect which fall within the scope of the concepts of 'freezing of funds' and 'freezing of economic resources' such that they cannot be implemented without prior authorisation from the competent national authority.

53. In that regard, however, it is apparent from the case-law that the Court may, in the framework of the judicial cooperation provided for by Article 267 TFEU and on the basis of the material presented to it, provide the national court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions.[26] In those circumstances, the following observations are relevant.

54. In the first place, it follows from the foregoing considerations that the fact that the protective measures covered by the question referred have no earmarking effect does not preclude the application of the concepts of 'freezing of funds' and 'freezing of economic resources' included in Regulation No 423/2007.

55. In the second place, it is apparent from the information provided by the referring court that the protective measures in question result in a change in the destination of the funds in respect of which those measures have been adopted.

56. On the one hand, as noted by the referring court, in French law, preventive attachments entail a special appropriation for the property seized and the right to be paid in preference to his or her other creditors out of a tangible movable asset or a set of tangible movable assets, whether present or future. In that light, preventive attachments seem to fix the destination of the property seized.

57. On the other, the referring court notes that a judicial lien, in the same way as the attachment order, has the effect that the claim held by the party which established the judicial lien must be paid on a priority basis out of the transfer price in the event of transfer of the assets and rights on which the lien was imposed.

58. It can be considered that, since the assets on which the lien was imposed give a preferential right, they are used to pay the secured claim. Consequently, it appears that judicial liens also result in a change in the destination of the frozen funds.

59. In the third place, since preventive attachments and judicial liens in respect of frozen assets allow the creditor to obtain payment as soon as the conditions for the release of those funds or economic resources are met, those measures could also be tantamount to the use of the encumbered assets.

[26] See, to that effect, judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria* (C-83/14, EU:C:2015:480, paragraph 71).

60. In so far as those measures guarantee that the person implementing them will be paid on a priority basis once the assets have been released, an economic operator could decide to conclude a contract with the person or entity whose assets have been frozen in the light of the fact that the possibility of implementing protective measures constitutes, to some extent, a guarantee of payment of the contract concluded with that person or entity.

61. Such protective measures thus appear to enable the person or entity subject to restrictive measures to exploit the economic value of their frozen assets, which could be considered use of the frozen funds or economic resources to obtain funds, goods or services.

62. In the fourth place, it must be observed that the effects of judicial liens are very similar to those of mortgages, in so far as mortgages, whilst they have no earmarking effect, offer the creditor the right to be paid on a priority basis out of the sale price. However, as noted in point 37 of this Opinion, in accordance with Article 1(j) of Regulation No 423/2007 and the corresponding provisions of the successive regulations, the freezing of economic resources expressly prohibits mortgaging those resources.

63. In conclusion, it follows from all the foregoing considerations that, in my opinion, the answer to the first question referred is that Article 1(h) and (j) and Article 7(1) of Regulation No 423/2007, Article 1(i) and (h) and Article 16(1) of Regulation No 961/2010, and Article 1(k) and (j) and Article 23(1) of Regulation No 267/2012 must be interpreted as precluding protective measures with no earmarking effect from being implemented, without prior authorisation from the competent national authority, in respect of frozen funds or economic resources. It is for the referring court to establish, in the particular case, whether a judicial lien or preventive attachment, as provided for by national law, amount to protective measures with no earmarking effect which require prior authorisation from the competent national authority.

B. The second question referred

64. By its second question, the referring courts asks whether it is relevant to the answer to the first question that the grounds for the claim to be recovered from the person or entity whose assets are frozen are unrelated to Iran's nuclear and ballistic programme and pre-date Resolution 1737 (2006).

65. The referring court notes that, although the grounds for the claim consist of a court decision taken subsequent to the freezing of Bank Sepah's assets, the grounds are both unrelated to Iran's nuclear and ballistic programme and pre-date the introduction of the freezing measures.

66. In that regard, it must be observed, first of all, that neither Article 7(1) of Regulation No 423/2007, nor the corresponding provisions of the successive regulations, makes any distinction, with regard to the freezing of funds and economic resources, according to the reason for the use of the frozen assets by the person concerned and, in particular, according to the grounds for the claim to be recovered from the person subject to those restrictive measures.

67. Then, the definitions of the concepts of 'freezing of funds' and 'freezing of economic resources' set out in Article 1(h) and (j) of Regulation No 423/2007 and in the corresponding provisions of the successive regulations, make no distinction according to the grounds for the claim.

68. In those circumstances, I take the view that the possibility of implementing a measure in respect of frozen assets – such as a protective measure – must be assessed solely on the basis of the legal effects of that measure, analysed in the light of the text of the relevant regulations. By contrast, in cannot be assessed on the basis of the specific characteristics of the claim that the measure in question seeks to protect.

69. Accordingly, the answer to the first question referred set out in points 26 to 63 above is apparent from the nature and effects of the freezing of funds and economic resources, on the one hand, and from the protective measures in question, on the other, without regard to the characteristics or nature of the claim at issue.

70. Moreover, as the French Government rightly pointed out in its observations, to assess the measure at issue not in terms of its legal effects but in the light of the characteristics or nature of the claim that the measure seeks to protect could create uncertainty for market players and regulatory authorities.

71. The institutions holding the accounts of the persons and entities targeted by freezing measures might find it impossible to establish whether the protective measure adopted in respect of them is permitted, since that assessment would depend on the nature of the claim that the measure seeks to protect and the relationship between the applicant and the person whose assets have been frozen. Such uncertainty could give rise to significant disputes before national courts.

72. However, Regulation No 423/2007 and the successive regulations have provided for and detailed the restrictive conditions under which certain measures the effect of which is contrary to the freezing of assets – like preventive measures – could be authorised by the national competent authorities.

73. Article 8 et seq. of Regulation No 423/2007 and the corresponding provisions of the successive regulations thus constitute the only legal basis for authorising the unfreezing of assets. The derogations which are clearly listed must be interpreted strictly, to the effect that a person who does not meet any of the conditions set out by those provisions cannot impose measures infringing the provisions relating to the freezing of funds and economic resources.

74. The fact that the grounds for the claim to be recovered are unrelated to Iran's nuclear and ballistic programme and pre-date Resolution 1737 (2006) are not such as to justify derogation from the rules on the freezing of assets set out in the successive regulations. It follows that, in the present case, the fact that it is not possible, owing to the freezing of assets, to implement measures with no earmarking effect – such as a judicial lien or preventive attachment – is unconnected with the grounds for the claim to be recovered from the person or entity whose assets have been frozen.

75. It is clear from the foregoing considerations that, in my opinion, the answer to the second question referred is that it is not relevant to the answer to the first question that the grounds for the claim to be recovered from the person or entity whose assets are frozen are unrelated to Iran's nuclear and ballistic programme and pre-date Resolution 1737 (2006).

V. Conclusion

76. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Cour de cassation (Court of Cassation, France) as follows:

(1) Article 1(h) and (j) and Article 7(1) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran, Article 1(i) and (h) and Article 16(1) of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007, and Article 1(k) and (j) and Article 23(1) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 must be interpreted as precluding protective measures with no earmarking effect from being implemented, without prior authorisation from the competent national authority, in respect of frozen funds or economic resources. It is for the referring court to establish, in each specific case, whether a judicial lien or preventive attachment, as provided for by national law, amount to protective measures with no earmarking effect which require prior authorisation from the competent national authority.

(2) It is not relevant to the answer to the first question that the grounds for the claim to be recovered from the person or entity whose assets are frozen are unrelated to Iran's nuclear and ballistic programme and pre-date United Nations Security Council Resolution 1737 (2006) of 23 December 2006'