

JUDGMENT OF THE COURT (Third Chamber)

21 December 2011 *

In Case C-72/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Oberland-
esgericht Düsseldorf (Germany), made by decision of 11 February 2011, received at
the Court on 18 February 2011, in the criminal proceedings against

Mohsen Afrasiabi,

Behzad Sahabi,

Heinz Ulrich Kessel,

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, J. Malenovský,
E. Juhász, G. Arestis and T. von Danwitz, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 5 October 2011,

after considering the observations submitted on behalf of:

- the Generalbundesanwalt beim Bundesgerichtshof, by R. Griesbaum, S. Morweiser and S. Heine, acting as Agents,

- Mr Afrasiabi, by K. Aminyan, Rechtsanwalt,

- Mr Kessel, by T. Elsner, Rechtsanwalt,

- the French Government, by E. Ranaivoson, acting as Agent,

- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,

- the European Commission, by F. Erlbacher, M. Konstantinidis and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 November 2011,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 7(3) and (4) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

- 2 The reference has been made in criminal proceedings brought against Mr Afrasiabi, Mr Sahabi and Mr Kessel ('the defendants'), who are suspected of having infringed the provisions of Regulation No 423/2007 by having participated in the supply and installation in Iran of a ceramic sintering furnace coming from Germany.

Legal context

International law

- 3 In order to apply pressure on the Islamic Republic of Iran to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems, on 23 December 2006 the United Nations Security Council ('the Security Council') adopted, on the basis of Article 41 of Chapter VII of the United Nations Charter,

Resolution 1737 (2006), which institutes a certain number of restrictive measures against that State.

4 Under paragraphs 2 and 12 of that resolution, the Security Council:

‘2. *Decides*, in this context, that Iran shall without further delay suspend the following proliferation sensitive nuclear activities ...

...

12. *Decides* that all States shall freeze the funds, other financial assets and economic resources which are on their territories at the date of adoption of this resolution or at any time thereafter, that are owned or controlled by the persons or entities designated in the Annex, as well as those of additional persons or entities designated by the Security Council or by the [Sanctions] Committee as being engaged in, directly associated with or providing support for Iran’s proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them, including through illicit means ..., and *decides further* that all States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of these persons and entities.’

European Union law

Common position 2007/140/CFSP

- 5 In order to give effect to Resolution 1737 (2006), the Council of the European Union adopted Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49).
- 6 According to recitals 1 and 9 in the preamble to that Common Position:

‘(1) On 23 December 2006, the United Nations Security Council adopted Resolution 1737 (2006) ..., urging Iran to suspend without further delay some proliferation-sensitive nuclear activities and introducing certain restrictive measures against Iran.

...

(9) UNSCR 1737 (2006) furthermore imposes a freezing of funds, other financial assets and economic resources, belonging to, owned, held or controlled, directly or indirectly, by the persons or entities designated by the Security Council or by the [Sanctions] Committee as being engaged in, directly associated with, or providing support for, Iran’s proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems, or by persons or entities acting on their

behalf or at their direction, or by entities owned or controlled by them, including through illicit means; it also imposes an obligation that no funds, financial assets or economic resources be made available to, or for the benefit of, such persons or entities.'

7 Article 5(2) of that Common Position states:

'No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of persons and entities referred to in paragraph 1.'

Regulation No 423/2007

8 On the basis of Common Position 2007/140/CFSP, the Council adopted Regulation No 423/2007, which entered into force on 20 April 2007.

9 According to recital 3 in the preamble to that regulation:

'[The restrictive] measures [provided for by Common Position 2007/140/CFSP] fall within the scope of the Treaty establishing the European Community and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary in order to implement them as far as the Community is concerned.'

10 Article 1(i) of that regulation provides, inter alia:

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

...

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but which may be used to obtain funds, goods or services.’

11 Article 7(3) and (4) of Regulation No 423/2007 provides:

‘(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.’

12 Under Article 12(2) of that regulation, ‘[t]he prohibitions set out in Articles 5(1)(c) and 7(3) shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.’

- 13 Annex II to Regulation No 423/2007, entitled ‘Goods and technology referred to in Article 3’, identified, under the heading II.A2.005, ‘[c]ontrolled atmosphere heat treatment furnaces, as follows: Furnaces capable of operation at temperatures above 400 °C.’
- 14 Among the legal persons, entities and bodies identified in Annex IV, Title A, to that regulation is listed, in paragraph 10 thereof, ‘Shahid Hemmat Industrial Group (SHIG); with the following information: ‘Other information: (a) subordinate entity of AIO [Aerospace Industries Organisation], (b) Involved in Iran’s ballistic missile programme.’
- 15 Article 16(1) of that regulation provides:

‘Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.’

- 16 On 23 April 2007, the Council adopted Common Position 2007/246/CFSP amending Common Position 2007/140/CFSP (OJ 2007 L 106, p. 67). On 5 June 2007, it adopted Regulation (EC) No 618/2007 amending Regulation No 423/2007 (OJ 2007 L 143, p. 1). Regulation No 618/2007, which entered into force on 6 June 2007, did not amend the provisions of Regulation No 423/2007 relevant to the main proceedings.
- 17 On 26 July 2010, the Council adopted Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39). On 25 October 2010, it adopted Regulation (EU) No 961/2010

on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1). Regulation No 961/2010, which entered into force on 27 October 2010, sets out, in Article 16(3) and (4), prohibitions corresponding to those laid down in Article 7(3) and (4) of Regulation No 423/2007.

National law

- 18 Infringements of legislative acts of the European Union, such as Regulation No 423/2007, are punishable by criminal penalties pursuant to Paragraph 34 of the German Law on Foreign Trade (Außenwirtschaftsgesetz).

The background to the main proceedings and the questions referred for a preliminary ruling

- 19 The criminal proceedings against the defendants are based on an indictment drawn up by the Generalbundesanwalt beim Bundesgerichtshof ('the Generalbundesanwalt') on 19 March and 27 July 2010, which contain the following allegations as to fact.
- 20 The Islamic Republic of Iran has been making efforts since at the latest the end of the 1990s to develop long range missiles, which can be used as delivery systems for weapons of mass destruction. Construction of those missiles requires vacuum sintering furnaces, enabling the application of refractory linings to the guidance components and to the heads thereof. The competent entity as regards the development

of the Iranian missile technology programme is AIO, together with its subordinate entities, including SHIG as central procurement agent.

- 21 In spring 2004 at the latest, Mr Afrasiabi was instructed, in Iran, by the director of a concealed research establishment for missile production to acquire a ceramic sintering furnace for SHIG. He acted as director of Emen Survey Engineering Co Teheran ('Emen Survey') in order to make purchases for that company itself and for the benefit of SHIG and the Iranian missile industry. At an undetermined date, he made contact, in Germany, with Mr Sahabi, an acquaintance of long standing, in order to obtain a vacuum sintering furnace, since Mr Sahabi, as an engineer, possessed the necessary technical knowledge as regards 'ceramic processes'.
- 22 Mr Sahabi, who had for many years had a business relationship with Mr Kessel, director of the German manufacturing company FCT Systeme GmbH ('FCT'), put Mr Afrasiabi in contact with Mr Kessel. The defendants had, at the latest in early 2004, reached an agreement for supply by FCT to Emen Survey of a vacuum sintering furnace with related equipment. Mr Sahabi was in charge of coordinating the progress of the project in Germany and acting as an intermediary between Mr Kessel and Mr Afrasiabi. In addition, he advised them in connection with the draft supply contract and the arrangements for payment.
- 23 On 20 July 2006, Mr Kessel, applied to the Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, 'BAFA') for an export authorisation for the supply of a sintering furnace to Emen Survey. On that date at the latest, he was aware of the fact that, using that furnace, Emen Survey intended to sinter missile components destined for an end user in the Iranian missile programme. He concealed that information from BAFA which, being unaware of it, sent FCT a decision on 16 January 2007 stating that the export of the furnace did not require authorisation (a 'zero decision').

- 24 Having regard to the entry into force of Regulation No 423/2007, and in particular to the inclusion of AIO and SHIG in the entities listed in Annexes IV and V to that regulation and to the reference to sintering furnaces in Annex II to that regulation, the ‘zero decision’ of BAFA became inoperative, of which Mr Kessel was informed. Mr Kessel and Mr Afrasiabi were aware of the fact that, behind Emen Survey, which appeared to be the end user of the goods to be manufactured, there was, in reality, an arms company to which supply of equipment suitable for missiles had been prohibited with effect from the entry into force of Regulation No 423/2007.
- 25 The supply of the furnace by FCT to Emen Survey took place on 20 July 2007. In March 2008, in accordance with the agreement with Mr Afrasiabi, Mr Kessel sent two engineers to Teheran, who installed the furnace but not the software necessary for its operation.
- 26 On 13 March 2008, BAFA notified FCT that Emen Survey was suspected of carrying out procurement for the Iranian missile technology programme. Mr Kessel had therefore refrained from making the furnace at Emen Survey ready for use. Consequently, in the end, the manufacturing for SHIG planned by Mr Afrasiabi did not commence.
- 27 The national court, which is asked to rule on the opening of the substantive criminal proceedings, is doubtful as to the interpretation to be given to Article 7(3) and (4) of Regulation No 423/2007.
- 28 Firstly, it asks whether an economic resource can be regarded as being made available, within the meaning of Article 7(3) of Regulation No 423/2007, to an entity listed in that regulation when that resource remains in the possession of a third party which intends to use it to manufacture products which are to be delivered to that entity only after they have been completed.

- 29 Secondly, the national court asks whether the prohibition on circumvention, within the meaning of Article 7(4) of Regulation No 423/2007, refers solely to conduct which is different from the infringement of the rule prohibiting making an economic resource available and is adopted to give a formal appearance of lawfulness to an act which does not comply with that rule, or whether it refers instead to any act which has the effect or object of 'making available' when that is prohibited.
- 30 On the first interpretation, the constituent elements of an infringement of Article 7(3) of Regulation No 423/2007 and those of an infringement of Article 7(4) of that regulation are mutually exclusive. The second interpretation could, in the view of the national court, on the one hand, give rise to doubts as to its compliance with the European Union law principles of precision, predictability and legal certainty and, on the other, be contrary to the wording of Article 7(4).
- 31 Thirdly, the national court has doubts as to the mental element of the terms 'knowingly' and 'intentionally', used in Article 7(4) of Regulation No 423/2007. It points out, firstly, that, in German criminal law, the element of intent implies necessarily that of knowledge, such that the term 'knowingly' has no meaning independently of the term 'intentionally'. Thus, when committed knowingly or intentionally, circumvention should be punishable.
- 32 Secondly, the national court asks whether the German term 'vorsätzlich' means 'absichtlich', so that the prohibition on circumvention refers only to conduct adopted by someone knowing for certain that its object or effect is to circumvent the prohibitions set out in Article 7(3) of Regulation No 423/2007, or whether that term covers, more widely, any act in respect of which its author realises and accepts the possibility that it is aimed at or will result in a circumvention of the prohibition on 'making available'. In that regard, both the English-language version of Article 7(4) of

Regulation No 423/2007 and the German-language version of Article 16(4) of Regulation No 961/2010 tend to confirm the first interpretation of that term, since there they use the terms ‘intentionally’ – which could be translated ‘absichtlich’ – and the term ‘absichtlich’ respectively.

33 In those circumstances, the Oberlandsgericht Düsseldorf decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

1. In order to make available an economic resource within the meaning of Article 7(3) of [Regulation No 423/2007], is it necessary that it can be used immediately by the listed person/entity for the purposes of acquiring funds or services? Or must Article 7(3) of [Regulation No 423/2007] be interpreted as meaning that the prohibition on indirectly making available an economic resource encompasses the supply and installation of a functional, but not yet ready-to-use economic resource (in this case: a vacuum furnace) to a third party in Iran, who intends, at a later date, to manufacture products with that resource for a legal person, entity or body listed in Annexes IV and V to the regulation?

2. Must Article 7(4) of [Regulation No 423/2007] be interpreted as meaning that circumvention can occur only where the offender formally adapts his conduct – albeit only ostensibly – to the prohibitions arising from Article 7(1) to (3) of [Regulation No 423/2007], with the effect that even applying the broadest interpretation that conduct is no longer covered by the prohibitions? Are the elements of the prohibitions on circumvention and on making available economic resources thus mutually exclusive? If answered in the affirmative: can conduct which would not (yet) be covered by the prohibition on making available economic resources (indirectly) nevertheless constitute circumvention within the meaning of Article 7(4) of [Regulation No 423/2007]?

Or does Article 7(4) of [Regulation No 423/2007] constitute a catch-all clause, under which any act is covered which is intended to lead to an economic resource being made available to a listed person or entity?

3. Does the subjective condition “knowingly and intentionally” in Article 7(4) of [Regulation No 423/2007] require on the one hand actual knowledge that the effect or object of the activities is circumvention of the prohibition on making available economic resources and in addition a more extensive volitional component, at least in the sense that the offender accepts the possibility that circumvention of the prohibition might occur? Or must he in fact wish to circumvent the prohibition and thus to that extent act intentionally?’

Or is it not necessary that the prohibition be knowingly circumvented, it being sufficient instead that the offender merely considers circumvention possible and accepts that possibility?’

The questions referred

Preliminary considerations

- ³⁴ As a preliminary point, it is appropriate to state that Article 7(3) and (4) of Regulation No 423/2007, referred to in the present reference for a preliminary ruling, contains two separate prohibitions. Article 7(3) prohibits making available, directly or indirectly, funds or economic resources to or for the benefit of the natural or legal

persons, entities or bodies listed in Annexes IV and V of that regulation. Article 7(4) prohibits the participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to, *inter alia*, in Article 7(3).

³⁵ Each of those measures has its own scope in that infringement of either of them is of itself capable of independently forming the basis for the imposition of penalties, including criminal penalties, under the applicable national law, in accordance with Article 16(1) of Regulation No 423/2007.

³⁶ Article 12(2) of Regulation No 423/2007, from which may be inferred the subjective element of liability, possibly criminal, for infringement of the prohibition laid down in Article 7(3) of that regulation, confirms that the European Union legislature regards infringement of Article 7(3) as separate from an infringement of Article 7(4) of the regulation.

The first question

³⁷ By its first question, the national court asks, in essence, whether the concept of ‘making available’, within the meaning of Article 7(3) of Regulation No 423/2007, requires that the economic resource in question, namely, in the present case, a vacuum sintering furnace, can be used immediately by a person, entity or body listed in Annexes IV and V to that regulation to obtain funds or services or whether that concept instead covers the supply and installation in Iran of such a resource, in working condition but

not yet ready for use, for a third party which intends later to manufacture, using that resource, products for the benefit of such a person, entity or body.

- 38 As a preliminary point, it is appropriate to point out that a sintering furnace such as that at issue in the main proceedings constitutes an 'asset', within the meaning of the definition set out in very broad terms in Article 1(i) of Regulation No 423/2007 of the concept of 'economic resources'.
- 39 That preliminary comment having been made, it is necessary to point out that the prohibition laid down in Article 7(3) of Regulation No 423/2007 is framed in particularly broad terms, as evidenced by the use of the words 'directly or indirectly' (see, by analogy, Case C-117/06 *Möllendorf and Möllendorf-Niehuus* [2007] ECR I-8361, paragraph 50, and Case C-550/09 *E and F* [2010] ECR I-6213, paragraph 66).
- 40 In addition, the expression 'made available' in that provision has a wide meaning: rather than denoting a specific legal category of act, it encompasses all the acts necessary under the applicable national law if a person is effectively to obtain full power of disposal in relation to the asset concerned (see, by analogy, *Möllendorf and Möllendorf-Niehuus*, paragraph 51, and *E and F*, paragraph 67).
- 41 As the Generalbundesanwalt, the French and Italian Governments and the European Commission submit, in those circumstances it is appropriate to take the view that acts consisting in supplying from a Member State and installing in Iran, for the benefit of a person, an asset such as that at issue in the main proceedings, and acts relating, inter alia, to the preparation of and follow-up to the supply or installation of that asset or the organisation of contacts between the parties involved are capable of falling within the concept of 'making available' within the meaning of Article 7(3) of Regulation No 423/2007.

- 42 In its question, the national court refers to the situation where an economic resource, such as a sintering furnace, is supplied and installed in Iran in working condition but not yet ready for use.
- 43 In that regard, it must be pointed out that, according to recital 3 in the preamble thereto, Regulation No 423/2007 ensures the implementation of Common Position 2007/140/CFSP, adopted to implement in the European Union the objectives of Resolution 1737 (2006), and thus seeks to implement that resolution (see, by analogy, *Möllendorf and Möllendorf-Niehuus*, paragraph 54, and *E and F*, paragraph 72). Accordingly, the wording and object of that resolution must be taken into account in order to interpret that regulation.
- 44 It is clearly apparent from the terms both of Resolution 1737 (2006), in particular paragraphs 2 and 12 thereof, and of Common Position 2007/140/CFSP, in particular recitals 1 and 9 in the preamble thereto, that the restrictive measures adopted against the Islamic Republic of Iran are intended to be preventive in that they seek to prevent a risk of proliferation-sensitive nuclear activities in that State. In accordance with the general scheme and purpose of both the international and European Union legislation, including Article 7(3) of Regulation No 423/2007, the existence of such a risk must be assessed at the time when the acts in question are committed.
- 45 Having regard precisely to the preventive nature of the restrictive measures adopted against the Islamic Republic of Iran, the concept of 'economic resources', for the purposes of Regulation No 423/2007, is defined in Article 1(i) of that regulation as covering assets of every kind which are not funds but which 'may be used' to obtain, inter alia, goods capable of contributing to nuclear proliferation in Iran.

- 46 Thus, it is clear that the relevant criterion, for the purposes of the application of that concept, particularly in the context of the prohibition laid down in Article 7(3) of Regulation No 423/2007, is whether there is a possibility that the asset in question may be used to obtain funds, goods or services capable of contributing to nuclear proliferation in Iran, which Resolution 1737 (2006), Common Position 2007/140/CFSP and Regulation No 423/2007 seek to combat.
- 47 Having regard to the fact that an asset, within the meaning of Article 1(i) of Regulation No 423/2007, in a situation such as that in the main proceedings, entails in itself a danger that it may be diverted in order to support proliferation-sensitive nuclear activities in Iran (see, by analogy, Case C-340/08 *M and Others* [2010] ECR I-3913, paragraph 57, and *E and F*, paragraph 77), it is not therefore required, for the purposes of the application of Article 7(3) of that regulation, that such an asset be immediately ready for use upon completion of the act at issue.
- 48 The economic resource inherent in a sintering furnace such as that at issue in the main proceedings is therefore, for the purposes, in particular, of the application of Article 7(3) of Regulation No 423/2007, its potential for use in the manufacture of nuclear missile components and, therefore, for contributing to nuclear proliferation in Iran, independently of the fact that it is not immediately ready for use following its supply and installation.
- 49 It follows that the fact that such a furnace, once installed in Iran, was not yet ready for use cannot, as such, rule out an economic resource having been made available within the meaning of the combined provisions of Articles 1(i) and 7(3) of Regulation No 423/2007.
- 50 As is expressly apparent from the second part of the first question, the national court refers more specifically to the concept of 'indirectly making available' an economic resource, within the meaning of Article 7(3) of Regulation No 423/2007. In accordance with the information in the decision for reference, that is explained by the fact

that the sintering furnace at issue in the main proceedings was supplied and installed at Emen Survey, managed at the material time by Mr Afrasiabi. Although the name of that person is not listed in Annexes IV and V to that regulation, it is apparent from the indictment of the Generalbundesanwalt that Mr Afrasiabi acted for the benefit of SHIG, an entity listed in Annex IV, Title A, paragraph 10 to that regulation, and intended to manufacture, at a later date, using that furnace, nuclear missile components for that entity.

- 51 In that regard, it must be noted that, in recital 9 in its preamble, Common Position 2007/140/CFSP, which Regulation No 423/2007 is intended to implement, identifies, as does paragraph 12 of Resolution 1737 (2006), a series of elements which justify the listing of other persons or entities alongside the persons or entities which the Security Council or Sanctions Committee have designated as participants in proliferation-sensitive nuclear activities in Iran, due to their being directly associated with or providing support for it. Amongst those elements is the fact that the person or entity in question has acted on behalf, under the control or on the instructions of a person or an entity designated by the Security Council or the Sanctions Committee.
- 52 The same elements are also relevant to the assessment of whether supply of an economic resource to a person or entity not listed in Annexes IV and V to Regulation No 423/2007 corresponds to 'indirectly making available' that economic resource, within the meaning of Article 7(3) of that regulation, to a person or entity listed in those annexes, for the purposes of the application of the prohibition laid down in that provision and the penalties which the applicable national law applies to infringement of that prohibition.
- 53 Consequently, if, which it is for the national court to ascertain, in the case giving rise to the main proceedings, Mr Afrasiabi acted on behalf, under the control or on the instructions of SHIG and intended to use the asset in question for the benefit of SHIG, that court is entitled to conclude that an economic resource was indirectly made available within the meaning of Article 7(3) of Regulation No 423/2007.

- 54 It is also appropriate to state, firstly, that both the objective pursued by Regulation No 423/2007 and the need to ensure the effectiveness of that regulation in combating nuclear proliferation in Iran require that the prohibition laid down in Article 7(3) of that regulation encompass all persons implicated in acts prohibited by that provision.
- 55 Secondly, it is necessary to point out that Article 12(2) of Regulation No 423/2007 exonerates from all liability 'of any kind', including, accordingly, criminal liability, persons who did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition on making available an economic resource laid down in Article 7(3) of that regulation.
- 56 Consequently, as appropriate, it is for the national court to assess, in respect of each defendant, whether, at the time of performing the acts at issue in the main proceedings, he knew or, at least, should reasonably have suspected that those acts would be contrary to such a prohibition.
- 57 Having regard to the foregoing, the answer to the first question referred is that Article 7(3) of Regulation No 423/2007 must be interpreted as meaning that the prohibition on indirectly making available an economic resource, within the meaning of Article 1(i) of that regulation, encompasses acts relating to the supply and installation in Iran of a sintering furnace in working condition but not yet ready to use for the benefit of a third party which, acting on behalf, under the control or on the instructions of a person, an entity or a body listed in Annexes IV and V to that regulation, intends to use that furnace to manufacture, for the benefit of such a person, entity or body, goods capable of contributing to nuclear proliferation in that State.

The second and third questions

- 58 By its second and third questions, which it is appropriate to examine together, the national court seeks an interpretation of Article 7(4) of Regulation No 423/2007. In particular, it wishes to know, firstly, whether the constituent elements of an infringement of Article 7(3) of that regulation and those of an infringement of Article 7(4) thereof are mutually exclusive in that an act can fall foul of the prohibition on circumvention in the latter provision only inasmuch as it does not, by reason of its formal appearance, fall within the scope of the prohibition laid down in Article 7(3), or whether instead that prohibition on circumvention encompasses any act leading finally to the making available of an economic resource to a person, entity or body covered by that regulation.
- 59 Secondly, the national court wishes to obtain clarification of the terms ‘knowingly’ and ‘intentionally’ used in Article 7(4) of Regulation No 423/2007.
- 60 In that regard, it must be borne in mind, firstly, that, by referring, in Article 7(4) of Regulation No 423/2007, to activities which have the direct or indirect object or effect of ‘circumventing’, in particular, the prohibition laid down in Article 7(3), the European Union legislature refers to activities which have the aim or result of enabling their author to avoid the application of that prohibition (see, by analogy, Case 33/74 *van Binsbergen* [1974] ECR 1299, paragraph 13; Case 229/83 *Association des Centres distributeurs Leclerc and Thouars Distribution* [1985] ECR I, paragraph 27; and Case C-23/93 *TV10* [1994] ECR I-4795, paragraph 21). Such activities are distinguished from acts which formally infringe the prohibition on making available an economic resource laid down in Article 7(3).

- 61 Only such a reading, namely that Article 7(4) of Regulation No 423/2007 refers to activities which cannot be regarded as acts of making available prohibited under Article 7(3) of that regulation, is able to ensure the effectiveness of the first provision and an autonomous scope as regards the second provision in the context of the combating of nuclear proliferation in Iran.
- 62 As the Generalbundesanwalt, the French and Italian Governments and the Commission submit, in essence, the prohibition laid down in Article 7(4) of Regulation No 423/2007 must therefore be understood as covering activities in respect of which it appears, on the basis of objective factors, that, under cover of a formal appearance which enables them to avoid the constituent elements of an infringement of Article 7(3) of the regulation (see, by analogy, Case C-110/99 *Emsland-Stärke* [2000] ECR I-11569, paragraph 52, and Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 74 and 75), none the less they have, as such or by reason of their possible link to other activities, the aim or result, direct or indirect, of frustrating the prohibition laid down in Article 7(3).
- 63 As regards, secondly, the mental element of the participation referred to in Article 7(4) of Regulation No 423/2007, it must, firstly, be pointed out that, as the Italian Government and the Commission have stated, in accordance with settled case-law, it follows, in particular, from the need for uniform application of European Union law that the terms of a provision of that law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (Case C-34/10 *Brüstle* [2011] ECR I-9821, paragraph 25 and the case-law cited).
- 64 Secondly, as the Italian Government and the Commission point out, the use of the coordinating conjunction 'and' in that provision shows unequivocally the cumulative nature of the factors corresponding to 'knowingly' and 'intentionally' respectively.

65 Thirdly, in view of the divergences noted by the national court between the language versions of Article 7(4) of Regulation No 423/2007, some of which, as the Advocate General noted in point 80 of his Opinion, use the term ‘wilfully’ or ‘deliberately’ in place of ‘intentionally’, it is appropriate, in order to ensure a uniform interpretation of that provision, to make that interpretation by reference to the purpose and general scheme of the rules of which it forms a part (*M and Others*, paragraphs 44 and 49).

66 The terms ‘knowingly’ and ‘intentionally’ imply, for the purposes of Article 7(4) of Regulation No 423/2007, firstly an element of knowledge and secondly an element of intent.

67 Those two cumulative requirements of knowledge and intent are met where the person participating in an activity covered by Article 7(4) of Regulation No 423/2007 deliberately seeks the object or the effect, direct or indirect, of circumvention connected therewith. They are also met where the person in question is aware that his participation in such an activity can have that object or effect and accepts that possibility.

68 Having regard to the foregoing, the answer to the second and third questions referred is that Article 7(4) of Regulation No 423/2007 must be interpreted as meaning that:

- it covers activities which, under cover of a formal appearance which enables them to avoid the constituent elements of an infringement of Article 7(3) of the regulation, none the less have the object or effect, direct or indirect, of frustrating the prohibition laid down in that provision;

- the terms ‘knowingly’ and ‘intentionally’ imply cumulative requirements of knowledge and intent, which are met where the person participating in an activity having such an object or such an effect deliberately seeks that object or effect or is at least aware that his participation may have that object or that effect and he accepts that possibility.

Costs

- ⁶⁹ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

- 1. Article 7(3) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran must be interpreted as meaning that the prohibition on indirectly making available an economic resource, within the meaning of Article 1(i) of that regulation, encompasses acts relating to the supply and installation in Iran of a sintering furnace in working condition but not yet ready to use for the benefit of a third party which, acting on behalf, under the control or on the instructions of a person, an entity or a body listed in Annexes IV and V to that regulation, intends to use that furnace to manufacture, for the benefit of such a person, entity or body, goods capable of contributing to nuclear proliferation in that State;**

2. Article 7(4) of Regulation No 423/2007 must be interpreted as meaning that:

- it covers activities which, under cover of a formal appearance which enables them to avoid the constituent elements of an infringement of Article 7(3) of the regulation, none the less have the object or effect, direct or indirect, of frustrating the prohibition laid down in that provision;**

- the terms ‘knowingly’ and ‘intentionally’ imply cumulative requirements of knowledge and intent, which are met where the person participating in an activity having such an object or such an effect deliberately seeks that object or effect or is at least aware that his participation may have that object or that effect and he accepts that possibility.**

[Signatures]