



Reports of Cases

PROVISIONAL TEXT OF 9/09/2019
OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 11 April 2019¹

Case C-482/17

Czech Republic
v
European Parliament

Council of the European Union

(Action for annulment — Directive (EU) 2017/853 of the European Parliament and of the Council amending Directive 91/477/EEC on control of the acquisition and possession of weapons — Breach of the principles of conferral, proportionality, legal certainty and non-discrimination — Interinstitutional Agreement on Better Law-Making — Impact assessments)

1. In the wake of a series of tragic events which included the attacks that took place in Paris and Copenhagen,² the European Commission adopted a proposal³ to amend EU legislation on the control, acquisition and possession of weapons.⁴ By an application of 9 August 2017,⁵ made on the basis of Article 263 TFEU, the Czech Republic seeks the annulment of Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC, which contains the relevant EU rules governing that matter.⁶

2. The Czech Republic raises four pleas in support of its application. It claims that in adopting Directive 2017/853 the Parliament and the Council ('the EU legislature') breached the following principles of EU law: conferral of powers, in so far as it used Article 114 TFEU as the legal basis for a measure that in reality pursues the objectives of preventing crime, in particular terrorism (the first plea); proportionality (the second plea); legal certainty and legitimate expectations (the third plea); and non-discrimination (the fourth plea).

¹ Original language: English.

² On 14 and 15 February 2015, three separate shootings occurred in Copenhagen, Denmark. Two victims and the perpetrator were killed, while five police officers were wounded. On 13 November 2015, 120 people died in a series of coordinated terrorist attacks carried out in Paris, France.

³ COM(2015) 750 final: Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons of 18 November 2015 ('COM(2015) 750').

⁴ Council Directive 91/477/EEC of 18 June 1991 (OJ 1991 L 256, p. 51) as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 (OJ 2008 L 179, p. 5).

⁵ In parallel and on the same date the Czech Republic lodged an application for interim measures under Article 278 TFEU seeking the suspension of the operation of Directive 2017/853. That request was rejected by order of the Vice-President of the Court of 27 February 2018, *Czech Republic v Parliament and Council*, C-482/17 R, not published, EU:C:2018:119.

⁶ Directive on control of the acquisition and possession of weapons (OJ 2017 L 137, p. 22).

Legal background

Treaty on European Union

3. In accordance with Article 4(2) TEU the European Union respects the equality of the Member States before the Treaties. It also respects ‘their essential State functions’ including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, the latter remains the sole responsibility of each Member State.

4. Article 5(2) TEU states that under the principle of conferral the European Union is to act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.

5. In accordance with the principle of proportionality enshrined in Article 5(4) TEU, EU action is not to exceed what is necessary to achieve the objectives of the Treaties.

Treaty on the Functioning of the European Union

6. Article 18 TFEU prohibits discrimination on the grounds of nationality within the scope of application of the Treaties.

7. It is well known that the European Union adopts measures with the aim of establishing or ensuring the functioning of the internal market (which comprises an area without internal frontiers) in accordance with the Treaties, pursuant to Article 26 TFEU.

8. Article 84 TFEU provides that whilst the EU legislature may establish measures to promote and support the action of Member States as regards crime prevention, the harmonisation of the laws and regulations of Member States in that domain is expressly excluded from the European Union’s scope of action.

9. Article 114(1) TFEU lays down the detailed provisions for the achievement of the objectives set out in Article 26 TFEU. The EU legislature is thereby empowered to adopt measures for the approximation of laws regarding the establishment and functioning of the internal market. Article 114(3) TFEU states that the Commission in its proposals concerning health, safety, environmental protection and consumer protection and the Parliament and the Council in the exercise of their respective powers will take as a base a high level of protection, taking account in particular of any new development based on scientific facts.

The Charter of Fundamental Rights of the European Union

10. Article 17 of the Charter of Fundamental Rights of the European Union⁷ states that everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. That right is qualified in that individuals may be deprived of their possessions in the public interest and in the cases and under the conditions provided for by law. Also, the use of property may be regulated by law in so far as is necessary for the general interest.

⁷ OJ 2010 C 83, p. 391.

Directive 91/477

11. The following statements are made in the recitals to Directive 91/477.⁸ The internal market comprises an area without internal frontiers in which the free movement of, inter alia, goods, is ensured in accordance with the Treaties. The total abolition of controls on the possession of weapons at Member States' borders entails certain fundamental conditions, including the approximation of weapons legislation.⁹ Mutual confidence regarding the protection of the safety of persons between Member States would increase as a result of harmonising legislation determining the categories of firearms whose acquisition and possession by private persons would be prohibited, or subject to authorisation or a declaration.¹⁰

12. Chapter I concerns the scope of Directive 91/477. The first subparagraph of Article 1(1) defines a firearm as 'any portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded ... for one of the reasons listed in Part III of Annex I'. Firearms are listed in four categories in Part II of Annex I: prohibited firearms (category A); firearms subject to authorisation (category B); firearms subject to declaration (category C); and other firearms (category D).

13. In accordance with Article 3, Member States may adopt provisions more stringent than those set out in Directive 91/477.

14. Chapter 2 sets out provisions on the harmonisation of firearms legislation including rules on the acquisition, possession, movement and transfer of different categories of firearms for civilian use in the European Union,¹¹ while granting more flexible rules for weapons used for hunting and target shooting.¹² Directive 91/477 does not apply to the acquisition or possession of weapons and ammunition by the armed forces, police, public authorities, collectors and bodies concerned with the cultural and historical aspects of weapons, nor does it concern commercial transfers of weapons and ammunition of war.¹³

15. Chapter 3 lays down provisions governing the formalities for the movement of weapons within EU territory. Pursuant to Article 11, firearms may be transferred from one Member State to another subject to the conditions laid down therein. Those conditions include the provision of information, such as the names and addresses of the seller and purchaser of the firearms and the issuance of a licence incorporating the necessary information by the Member State which authorises the transfer. Under Article 12, where the procedure provided in Article 11 is not used, the possession of a firearm during a journey through two or more Member States is prohibited unless the person concerned has obtained authorisation from the relevant Member States. The authorisation is to be entered on the European firearms pass which the traveller must produce if so required.

8 The preamble to Directive 2008/51 also refers expressly (in recitals 2 and 3) to Directive 91/477, which was amended following the European Union's decision to sign the Protocol against the Illicit Manufacturing of and Trafficking of Firearms, their Parts and Components and Ammunition, in accordance with Council Decision 2001/748/EC of 16 October 2001 (OJ 2001 L 280 p. 5), hereafter 'the UN Protocol against the Illicit Manufacturing of and Trafficking of Firearms'; see Article 1 of Directive 2008/51 and footnote 2 above.

9 The first to third recitals of Directive 91/477.

10 The fifth recital of Directive 91/477.

11 Those provisions are principally: Article 4 (provisions concerning the placing of firearms on the market); Article 5 (provisions concerning the authorisation to acquire and possess firearms); Article 6 (the prohibition as regards acquisition and possession of category A firearms); Article 7 (rules governing the acquisition of category B firearms); and Article 8 (rules governing the possession of category C firearms). Category D firearms are mentioned in Article 4(5) (prior to amendment by Directive 2017/853: see point 24 below), which states that from 28 July 2010 Member States are to put into place appropriate tracing measures enabling them to link such products at any moment to the owner.

12 Article 2(1).

13 Article 2(2).

16. In accordance with Article 17 (part of Chapter 4), the Commission had to submit reports and/or studies to the Parliament and the Council: (i) by 28 July 2015, on the situation resulting from the application of Directive 91/477; (ii) by 28 July 2012, on the advantages and disadvantages of reducing the categories of prohibited or authorised firearms (respectively category A and B weapons) with a view to the better functioning of the internal market; and (iii) by 28 July 2010, on the issue of placing replica firearms on the market in order to determine whether the inclusion of such products within the scope of Directive 91/477 was possible and desirable.

Directive 2017/853

17. The following statements are made in the recitals to Directive 2017/853:

- Directive 91/477 established an accompanying measure for the internal market. It created a balance between, on the one hand, the commitment to ensure a certain freedom of movement for some firearms and their essential components within the European Union and, on the other hand, the need to control that freedom using security guarantees suited to those products.¹⁴
- Certain aspects of that directive need to be further improved in a proportionate way, in order to address the misuse of firearms for criminal purposes, and considering recent terrorist acts.¹⁵
- In order to increase the traceability of all firearms and essential components and to facilitate their free movement, those products should be marked with a clear, permanent and unique marking and registered in the data-filing systems of the Member States.¹⁶
- In view of the dangerous nature and durability of firearms (and essential components) and to ensure that competent authorities are able to trace such products for the purpose of administrative and criminal proceedings, it is necessary to retain records in data-filing systems.¹⁷
- For the most dangerous firearms, stricter rules should be introduced into Directive 91/477 in order to ensure that those firearms are, with some limited and duly reasoned exceptions, not allowed to be acquired, possessed or traded.¹⁸
- As the risk of converting acoustic weapons and other types of blank-firing weapons into real firearms was considered to be high, such weapons were brought within the scope of Directive 91/477.¹⁹
- Taking into consideration the high risk of reactivating improperly deactivated firearms and in order to enhance security across the European Union, such firearms should be covered by Directive 91/477.²⁰

¹⁴ Recital 1.

¹⁵ Recital 2; see also footnote 2 above.

¹⁶ Recital 6.

¹⁷ Recital 9.

¹⁸ Recital 15.

¹⁹ Recital 20.

²⁰ Recital 21.

- Some semi-automatic firearms can be easily converted to automatic firearms, thus posing a threat to security. Even in the absence of such conversion, certain semi-automatic firearms might be very dangerous when their capacity, in terms of the number of rounds, is high. Therefore, weapons such as semi-automatic firearms with a fixed loading device allowing a high number of rounds to be fired should be prohibited for civilian use.²¹
- Directive 2017/853 respects fundamental rights and observes the principles recognised in particular by the Charter.²²
- As regards Switzerland, Directive 2017/853 and Directive 91/477 constitute a development of the provisions of the Schengen acquis.²³

18. Article 1(3) states that, with respect to firearms manufactured or imported into the European Union on or after 14 September 2018, Member States are to ensure that such products bear a clear, permanent and unique marking and are registered in accordance with Directive 91/477. A new paragraph 2a is inserted into Article 4 of that directive. Pursuant to that provision the Commission is to adopt implementing acts establishing technical specifications for the marking of firearms. Article 4(4) of Directive 91/477 governs the establishment and maintenance of a computerised data-filing system. The amended text provides that Member States are to ensure that the record of firearms which is needed to trace and identify those products is retained by the competent authorities for a period of 30 years after their destruction.

19. Article 1(6) replaces the previous text of Articles 5 and 6 of Directive 91/477. In so far as is relevant to the present proceedings, the revised text of Article 5(1) provides that Member States are to permit the acquisition and possession of firearms only by persons who have good cause and who are at least 18 years of age. Persons under the age of 18 may acquire firearms for hunting and target shooting in certain circumstances, such as where they have parental permission, or are under parental guidance or the guidance of an adult with a valid firearms or hunting licence. Pursuant to Article 5(2), Member States must have a monitoring system in place to ensure that the conditions of authorisation set by national law are met throughout the duration of the authorisation and, *inter alia*, relevant medical and psychological information is assessed. Article 5(3) states:

‘Member States shall ensure that an authorisation to acquire and an authorisation to possess a firearm classified in category B shall be withdrawn if the person who was granted that authorisation is found to be in possession of a loading device apt to be fitted to centre-fire semi-automatic firearms or repeating firearms, which:

- (a) can hold more than 20 rounds; or
- (b) in the case of long firearms, can hold more than 10 rounds,

unless that person has been granted an authorisation under Article 6 or an authorisation which has been confirmed, renewed or prolonged under Article 7(4a).’

²¹ Recital 23.

²² Recital 31.

²³ Recital 36; see further the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis which fall within the areas referred to in Article 1 of Council Decision 1999/437/EC (OJ 1999 L 176, p. 31) read in conjunction with Article 3 of Council Decision 2008/146/EC (OJ 2008 L 53, p. 1). Liechtenstein, Iceland and Norway also participate (together with Switzerland) in the Schengen *acquis* pursuant to bilateral agreements with the European Union (‘the four Schengen States’).

20. The amendments made to Article 6 of Directive 91/477 that are particularly relevant to the present proceedings are as follows:

‘(1) Without prejudice to Article 2(2), Member States shall take all appropriate measures to prohibit the acquisition and possession of the firearms, the essential components and the ammunition classified in category A. They shall ensure that those firearms, essential components and ammunition unlawfully held in contravention of that prohibition are impounded.

(2) For the protection of the security of critical infrastructure, commercial shipping, high-value convoys and sensitive premises, as well as for national defence, educational, cultural, research and historical purposes, and without prejudice to paragraph 1, the national competent authorities may grant, in individual cases, exceptionally and in a duly reasoned manner, authorisations for firearms, essential components and ammunition classified in category A where this is not contrary to public security or public order.

...

(6) Member States may authorise target shooters to acquire and possess semi-automatic firearms classified in point 6 or 7 of category A, subject to the following conditions: ...

As regards firearms classified in point 6 of category A, Member States applying a military system based on general conscription and having in place over the last 50 years a system of transfer of military firearms to persons leaving the army after fulfilling their military duties may grant to those persons, in their capacity as a target shooter, an authorisation to keep one firearm used during the mandatory military period. The relevant public authority shall transform those firearms into semi-automatic firearms and shall periodically check that the persons using such firearms do not represent a risk to public security. The provisions set out in points (a), (b) and (c) of the first subparagraph shall apply.²⁴

...’

21. Article 1(7) inserts the following paragraph into Article 7 of Directive 91/477 ‘... 4a. Member States may decide to confirm, renew or prolong authorisations for semi-automatic firearms classified in point 6, 7 or 8 of category A in respect of a firearm which was classified in category B, and lawfully acquired and registered, before 13 June 2017, subject to the other conditions laid down in this directive. Furthermore, Member States may allow such firearms to be acquired by other persons authorised by Member States in accordance with this directive, as amended by Directive (EU) 2017/853 ...’.

22. Article 8 of Directive 91/477 prior to amendment prohibited possession of a category C firearm unless the person concerned had declared the weapon to the competent authorities.²⁵ Article 1(8) of Directive 2017/853 now amends Article 8 of Directive 91/477 by inserting a new Article 8(3) which provides that if a Member State prohibits or makes subject to authorisation the acquisition and possession within its territory of a firearm classified in category B or C, it shall inform the other Member States, which are to include an express statement to that effect on any European firearms pass they issue for such a firearm. Article 1(12) inserts amendments into Article 11 of Directive 91/477. It provides procedures for firearms to be transferred from one Member State to another. Article 1(13) modifies Article 12 of that directive by laying down new arrangements for hunters and

²⁴ I shall refer to the second subparagraph of Article 6(6) in this Opinion as the ‘Swiss derogation’.

²⁵ See footnote 11 above.

historical re-enactors to travel between Member States to carry out their activities with certain firearms. Article 1(14) amends Article 13 of Directive 91/477, and enables Member States' competent authorities to exchange information by electronic means on authorisations granted for the transfer of firearms between Member States.

23. Under Article 1(18) (which replaces Article 17 of Directive 91/477), the Commission is instructed to submit a report to the Parliament and the Council by 14 September 2020 and thereafter every five years on the application of Directive 91/477 as amended by Directive 2017/853, in particular on the various categories of firearm, the European firearms pass, the marking of products and the impact of new technology, such as 3D printing.²⁶

24. Article 1(19) amends Annex I to Directive 91/477. As a result of the changes introduced, the four categories of firearm (A to D) are reduced to three. The following changes made to Part II of Annex I to Directive 91/477 in accordance with Article 1(19) are particularly relevant to the present proceedings, in so far as the scope of the provisions at issue is extended to include a number of weapons:

- New points 6, 7 and 8 are inserted into category A (prohibited firearms). Accordingly, the following weapons are now in that category: automatic firearms which have been converted into semi-automatic weapons; certain short and long firearms without re-loading and detachable loading devices with a capacity exceeding 10 rounds; and semi-automatic long firearms (i.e. firearms that are originally intended to be fired from the shoulder) that can be reduced to a length of less than 60 cm without losing functionality by means of a folding or telescoping stock or by a stock that can be removed without using tools;
- Category B (firearms subject to authorisation) now includes semi-automatic short firearms and any category B firearm that has been converted to firing blanks, irritants, other active substances or pyrotechnic rounds or into a salute or acoustic weapon;
- Category C (firearms subject to declaration) now includes category A, B or C firearms that have been deactivated pursuant to Regulation (EU) 2015/2403;²⁷ and
- The wording of Part III of Annex I to Directive 91/477 was replaced by the following text: ‘... objects which correspond to the definition of a “firearm” shall not be included in that definition if they: (a) are designed for alarm, signalling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes provided that they can be used for the stated purpose only; (b) are regarded as antique weapons where these have not been included in the categories set out in Part II and are subject to national laws. ...’

Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making

25. The Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 was adopted by the three EU institutions on the basis of Article 295 TFEU.²⁸ In accordance with that agreement those three institutions are committed to sincere and transparent cooperation throughout the entire legislative cycle.²⁹ They recall the European Union's obligation to legislate in accordance with, in

²⁶ See further Article 1(15) and the amended Article 13a and inserted Article 13b.

²⁷ Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (OJ 2015 L 333, p. 62).

²⁸ OJ 2016 L 123, p. 1 ('the Interinstitutional Agreement').

²⁹ Recital 1.

particular, the principle of proportionality.³⁰ In Part I (entitled ‘Common Commitments and Objectives’) the three institutions agree to pursue ‘better law-making’ pursuant to the Agreement and in exercising their powers to observe the Treaties and the general principles of EU law which include the principle of proportionality.³¹ Part III (entitled ‘Tools for better law-making’) sets out statements regarding impact assessments in the legislative process. Point 12 states that impact assessments are tools to help the three institutions reach well-informed decisions. However, they must not lead to undue delays in the law-making process or prejudice the co-legislatures’ capacity to propose amendments. The Commission will carry out impact assessments of, inter alia, its legislative and non-legislative initiatives which are expected to have significant economic, environmental or social impacts. The Parliament and the Council upon considering Commission legislative proposals will take full account of the Commission’s impact assessments. The Parliament and the Council will, when they consider it to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to Commission proposals.³² In accordance with point 18, ‘the Commission’s initial impact assessment and any additional impact assessment work conducted during the legislative process by the institutions will be made public by the end of the legislative process and taken together, can be used as the basis for evaluation’.

The procedure before the Court and the forms of order sought by the parties

26. The Czech Republic claims that the Court should:

- annul Directive 2017/853;
- order the Parliament and the Council to pay the costs.

In the alternative, the Czech Republic asks the Court to:

- annul Article 1(6) of Directive 2017/853 in so far as it inserts Article 5(3) and the second subparagraph of Article 6(6) into Directive 91/477;
- annul Article 1(7) of Directive 2017/853 in so far as it inserts Article 7(4a) into Directive 91/477;
- annul Article 1(19) of Directive 2017/853 in so far as it makes the following changes to Directive 91/477:
 - inserts points 6, 7 and 8 into Category A of Part II of Annex I;
 - amends Category B of Part II of Annex I;
 - inserts point 6 into Category C of Part II of Annex I;
 - amends Part III of Annex I;
- order the Parliament and the Council to pay the costs.

27. The Parliament contends that the Court should:

- dismiss the action; and

³⁰ Recital 3.

³¹ Points 1 and 2 respectively.

³² The respective roles of the three EU institutions (the Parliament, the Council and the Commission) are set out in points 13 to 17.

– order the Czech Republic to pay the costs.

28. The Council contends that the Court should:

- dismiss the action in its entirety; and
- order the Czech Republic to pay the costs;
- strictly in the alternative, if the Court considers that Directive 2017/853 should be annulled, order that the directive's effects should be maintained for a period of sufficient time to allow the adoption of the necessary measures.

29. By order of the President of the Court of 5 January 2018, Hungary and Poland were granted leave to intervene in support of the forms of order sought by the Czech Republic. By order of the same date, France was accorded leave to intervene in support of the Parliament and the Council. The Commission was granted leave to intervene in support of the defendants by a decision of the Registrar dated 10 November 2017.

30. Written observations were submitted by the Governments of the Czech Republic, France, Hungary and Poland and by the Parliament, the Council and the Commission.

31. At the hearing on 5 March 2019, oral submissions were made by all parties.

First plea: principle of conferral and legal basis

Arguments

32. By its first plea the Czech Republic claims that the EU legislature breached the principle of conferral of powers enshrined in Article 5(2) TEU, as Article 114 TFEU is not a valid legal basis for Directive 2017/853. The Czech Republic submits that Directive 2017/853 does not pursue the objectives of eliminating obstacles to the internal market. Rather, it aims solely to prevent crime and terrorism and thereby enhance public safety and security. It follows from Article 84 TFEU that whilst the EU legislature may establish measures to support Member States' actions in the sphere of crime prevention, the Treaties do not confer powers on the European Union itself to adopt harmonising measures to that effect.

33. The Czech Republic states that the choice of the legal basis for a measure must be determined by objective factors, amenable to judicial review, which include the aim and content of the measure at issue. Whilst Directive 2017/853 was adopted on the basis of Article 114 TFEU (the successor legal basis to Article 100a EEC, on which Directive 91/477 was based), the surrounding circumstances and aims of Directive 2017/853 are substantially different to those of Directive 91/477. Furthermore, the fact that Directive 91/477 was adopted by reference to an internal market legal basis does not justify the choice of the same legal basis for Directive 2017/853, as the latter pursues very different objectives. Last, whilst it is true that Directive 2008/51 amended Directive 91/477 with the aim of improving public safety, Directive 2008/51 introduced essentially technical amendments as a result of the European Union's international obligations arising from the UN Protocol against the Illicit Manufacturing of and Trafficking of Firearms. The impact of Directive 2017/853, however, goes far beyond such mere technical amendments.

34. The European Parliament and the Council counter those claims by arguing that the Czech Republic is wrong in law and misconstrues Article 114 TFEU and Directive 2017/853. Guaranteeing public security (and likewise public health) is a general interest recognised by EU law and constitutes a valid ground for adopting such a measure. To assess whether the correct legal basis was applied, it is necessary to examine Directive 91/477 as well as Directive 2017/853. Even if Directive 2017/853 is considered separately from Directive 91/477, however, the EU legislature was not obliged to invoke reasons relating to the elimination of obstacles to the internal market in order validly to adopt the former. Directive 2017/853 does not change the objectives of Directive 91/477. It aims simply to adjust the balance between free movement and public security, with a view to taking account of (what were at the date of adoption) recent terrorist attacks whilst continuing to ensure the smooth functioning of the internal market. The Council argues further that the public safety objective is not a subsidiary aim of Directive 2017/853.

35. In support of the Czech Republic, Hungary and Poland submit that Directive 2017/853 is aimed exclusively at the prevention of crime. Both Member States take the view that in examining the legality of an amending directive, such as Directive 2017/853, it is necessary to look at that act in its entirety, but it does not follow that it is necessary also to take account of the aims of the measure being amended (here, Directive 91/477). Such an approach would create a worrying precedent which could widen the scope of the EU legislature's discretion. Hungary states that the correct way of interpreting Directive 2017/853 is that, in reality, the aim of ensuring the functioning of the internal market is ancillary to the main objective of crime prevention. Poland argues that there is really no link between the objectives of that directive and the functioning of the internal market. Rather, Directive 2017/853 introduces obstacles which are contrary to that purpose, since it impedes the circulation of firearms which are not dangerous goods for the purposes of EU law.

36. In support of the Parliament and the Council, France submits that, on the contrary, it is apparent from the legislative preparatory material that Directive 2017/853 is aimed at removing obstructions to fundamental freedoms which have a direct effect on the functioning of the internal market. The fact that Directive 2017/853 also aims to enhance public safety does not undermine its internal market objectives. That approach is reflected in other measures adopted on the basis of Article 114 TFEU.

37. Also in support of the defendants, the Commission submits, first, that the EU legislature enjoys a wide margin of discretion regarding the measures it can adopt under Article 114 TFEU. Second, in exercising its functions the legislature cannot be prevented from using an internal market legal basis merely because the measure at issue is also aimed at protecting public safety. Third, a number of studies and reports demonstrate the internal market grounds for the adoption of Directive 2017/853.

Assessment

38. In my view the Czech Republic's first plea is based upon an erroneous interpretation of Article 114 TFEU and a misreading of Directive 2017/853. It is therefore unfounded.

Preliminary remarks

39. The issues raised in these proceedings concerning the scope of Article 114 TFEU and the legislature's powers to adopt harmonising measures regarding the establishment and functioning of the internal market are not entirely new.³³ Considerations such as public safety (along with, for example, the environment and consumer protection) will self-evidently have some impact on the

³³ In that respect, see the Court's line of case-law on tobacco products and the advertising of such products. In its judgment of 5 October 2000, *Germany v Parliament and Council*, C-376/98, EU:C:2000:544, paragraph 82, the Court held that the internal market is an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty; and that it is characterised by the abolition as between Member States of all obstacles to the free movement of those factors.

operation of that market. But where should the line be drawn, in using the various legal bases available under the Treaties, between internal market measures and measures to further some other (desirable) objective? Does Article 114 TFEU properly encompass legislation adopted to enhance public safety in the immediate aftermath of acts of terrorism in 2015 carried out within the territory of the Member States?³⁴

40. The powers to regulate the internal market touch on a plethora of other matters. The scope of Article 114 TFEU therefore has particular significance for Member States for two main reasons. First, whether acts based on that provision encroach upon matters for which the Treaties do *not* confer competence on the EU legislature (as the Czech Republic argues here) is a sensitive issue. Second, EU acts are adopted under that provision following the ordinary legislative procedure (thus, employing qualified majority voting), which means that no one Member State is able to veto any proposed act.

41. It is common ground that Article 84 TFEU would not have been an appropriate legal basis for Directive 2017/853. Powers were not conferred upon the EU legislature under that Treaty provision to adopt harmonising legislation in the sector of crime prevention. That remains within the Member States' competence. Thus, if Article 114 TFEU is *not* the appropriate legal basis for Directive 2017/853, that measure must be annulled.

42. It is also common ground that the legal basis for enacting Directive 91/477 (the original measure in this field) is not impugned.³⁵ Moreover, Directive 91/477 is a minimum harmonisation measure laying down rules on the control, acquisition and possession of firearms.³⁶ Thus, the Member States enjoyed a degree of discretion to adopt divergent rules in that sphere as regards those matters which prior to amendment were not governed by that directive,³⁷ such as measures concerning deactivated firearms.

Article 114 TFEU

43. This Court's case-law regarding legislative measures adopted on the basis of Article 114(1) TFEU establishes the following points. First, while a mere finding of disparities between national rules is not sufficient to justify having recourse to Article 114 TFEU, it is otherwise where there are differences between the laws, regulations or administrative provisions of the Member States which are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market. Second, recourse to Article 114 TFEU as a legal basis is possible if the aim is to prevent the emergence of future obstacles to trade as a result of divergences in national laws (the emergence of such obstacles must be likely and the measure in question must be designed to prevent them). Third, provided that the conditions for recourse to Article 114 TFEU as a legal basis are fulfilled, the EU legislature cannot be prevented from relying on that legal basis on the grounds that other matters, such as public health protection, are decisive factors in the choices to be made.³⁸

44. In accordance with Article 114 TFEU, the legislature has competence to eliminate obstacles to free movement and to improve the functioning of the internal market. The latter essentially refers to eliminating distortions in competition, which are not at issue here. Rather, it is the first element, namely whether Directive 2017/853 eliminates obstacles to free movement and/or prevents the emergence of future obstacles that is the crux of the Czech Republic's first plea.

³⁴ See footnote 2 above.

³⁵ See further judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraph 60.

³⁶ See Article 3 of Directive 91/477 and see point 13 above.

³⁷ See by way of analogy judgment of 10 December 2002, *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraph 66.

³⁸ Judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraphs 57 to 60 and the case-law cited.

45. By using the words ‘measures for the approximation’ in Article 114 TFEU, the authors of the Treaty intended to confer on the legislature a discretion, depending on the general context and the specific circumstances of the matter to be harmonised, as regards the method of approximation most appropriate for achieving the desired result. Depending on the circumstances, those measures may consist in requiring all the Member States to introduce provisions: here, ensuring that goods which are intrinsically dangerous (firearms) are marked for the purpose of traceability, regulating the acquisition of such goods, or even tightening controls for weapons considered to be particularly dangerous.³⁹

46. Other measures adopted on the basis of Article 114 TFEU that have aims which are bound up inseparably with the functioning of the internal market are listed in what was known as the ‘New Approach’ legislation.⁴⁰ Those measures comprise a number of acts ranging from toy safety⁴¹ to explosives for civil uses⁴² to personal protective equipment.⁴³ Article 114 TFEU (or the equivalent provision in earlier versions of the Treaty) is cited systematically as the legal basis. Each of those measures makes provision for other aspects, such as consumer protection and public safety, or health and safety at work, to be taken into account to balance and complement the free movement of goods. Whilst a review of such measures does not necessarily demonstrate that the objectives of Directive 2017/853 likewise fall within the scope of Article 114 TFEU, the existence of that corpus of EU legislation illustrates the broad scope for action that the EU legislature enjoys under that Treaty provision.

47. Here, I draw attention also to Article 114(3) TFEU, which envisages that in its proposals concerning harmonisation the Commission should take account of matters such as, inter alia, safety.

48. Thus, when there are obstacles to trade, or it is likely that such obstacles will emerge in the future, because the Member States have taken, or are about to take, divergent measures with respect to a product or a class of products such as to bring about different levels of protection and thereby prevent the product or products concerned from moving freely within the European Union, Article 114 TFEU authorises the EU legislature to intervene by adopting appropriate measures, in compliance with Article 114(3) TFEU and with the legal principles mentioned in the TFEU (or identified in the case-law), to regulate the internal market.⁴⁴

49. The Court’s case-law concerning tobacco products provides particularly useful guidance on the scope of Article 114 TFEU which can be applied by analogy here, since as well as the internal market objective that legislation is also aimed at protecting public health and consumer protection.⁴⁵ It is of course true that in *Germany v Parliament and Council*⁴⁶ the Court made it clear that the powers to

39 See by way of analogy judgments of 12 December 2006, *Germany v Parliament and Council*, C-380/03, EU:C:2006:772, paragraphs 42 and 43, and of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraphs 37 and 38.

40 What was known as the ‘New Approach’ covered approximately 22 EU measures which aim to improve the internal market and strengthen the conditions for placing a wide range of products on the EU market. In essence, the European Union adopts legislation that defines essential requirements in relation to safety and other aspects of public interest which should be satisfied by products being sold within the internal market: see for example COM(2003) 240 final ‘Enhancing the Implementation of the New Approach Directives’. Those directives now fall within the scope of the ‘New Legislative Framework’ governed by, inter alia, Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products and repealing Council Decision 93/465/EEC (OJ 2008 L 218, p. 82).

41 Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170, p. 1).

42 Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (OJ 2014 L 96, p. 1).

43 Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (OJ 2016 L 81, p. 51).

44 Judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 61. The legal principles to which that citation relates are, inter alia, proportionality, legal certainty and non-discrimination.

45 See footnote 38 above.

46 Judgment of 5 October 2000, C-376/98, EU:C:2000:544.

legislate under Article 114 TFEU are not without limits.⁴⁷ That case concerned legislation adopted under the former Article 95 EC (now Article 114 TFEU) which introduced a ban on all tobacco advertising. The Court ruled that such an absolute interdiction could not be considered to facilitate trade and that, accordingly, the directive at issue in that case went further than was necessary to protect public health.⁴⁸ Here, the position is clearly different inasmuch as Directive 2017/853 introduces no such absolute ban on the free movement of firearms.⁴⁹

50. Accordingly, the test by which Directive 2017/853 is to be assessed is whether, having regard to its content and taken as a whole, that directive eliminates obstacles to free movement and/or prevents the emergence of future obstacles.

Directive 2017/853

51. In accordance with the Court's settled case-law, the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include the aim and content of that measure. If examination of the measure concerned reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component.⁵⁰ Accordingly, it is necessary to identify the main purpose of Directive 2017/853 and to examine its content.⁵¹

52. As the Czech Republic, Hungary and Poland point out, recitals 2 and 23 in particular emphasise the public safety aims of Directive 2017/853 in the light of 'the misuse of firearms for criminal purposes' and the 2015 terrorist attacks.⁵²

53. Does it follow that in pursuing those aims the EU legislature exceeded its powers by adopting legislation which harmonises the laws and regulations of Member States in the sphere of crime prevention?

54. I do not think so.

55. In order to ascertain the main purpose of Directive 2017/853 it is first necessary to construe the preamble and the enacting provisions as a whole.⁵³

56. Certain recitals state aims that are readily associated with the internal market. Thus, recital 1 recalls that '... Directive 91/477 established an accompanying measure for the internal market'. In so doing that directive 'created a *balance* between, on the one hand, *the commitment to ensure a certain freedom of movement* for some firearms and their essential components within the Union and, on the other hand, the *need to control that freedom* using *security guarantees suited to those products*'

47 In its judgment of 14 December 2004, *Swedish Match*, C-210/03, EU:C:2004:802, the Court took a different approach. There, it rejected the argument that a ban on all tobacco for oral use which included snus (a type of tobacco placed between the lip and the gum popular in Sweden) did not contribute to the internal market. The Court ruled that national laws concerning such tobacco products were developing in different directions which created obstacles to trade. In such circumstances, it was in principle lawful to have recourse to Article 95 EC (the forerunner to Article 114 TFEU) as a legal basis (see paragraphs 37 to 42).

48 Judgment of 5 October 2000, *Germany v Parliament and Council*, C-376/98, EU:C:2000:544, paragraphs 99 to 105.

49 See points 18 to 21 above.

50 Judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraph 42 and the case-law cited.

51 See judgment of 21 June 2018, *Poland v Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 49.

52 The Czech Republic refers to a number of documents prepared before Directive 2017/853 was adopted which mention crime prevention and security as objectives. These include the 'Evaluation of the Firearms Directive' prepared for the Commission by Technopolis, dated 11 December 2014, and the Commission's proposal COM(2015) 750 final.

53 Judgment of 27 January 2000, *DIR International Film and Others v Commission*, C-164/98 P, EU:C:2000:48, paragraph 26.

(emphasis added). Recital 6 explains that the purpose of requiring all firearms or their essential components to be marked with a ‘clear, permanent and unique marking’ and registered in the data-filing systems of the Member States is ‘in order to increase the traceability of all firearms and essential components and to facilitate their free movement’.

57. That said, there is undoubtedly a safety objective to certain recitals. Thus, recital 15 states that, ‘for the most dangerous firearms, stricter rules should be introduced in Directive 91/477 in order to ensure that those firearms are, with some limited and duly reasoned exceptions, not allowed to be acquired, possessed or traded’. Recitals 16 to 18 indicate that provision will be made for exceptions to tighter firearm controls in respect of collectors, brokers and dealers. Recital 20 states that the scope of Directive 91/477 should extend to cover blank-firing weapons which might be converted into real firearms. Last, recital 21 recognises the high risk posed by the reactivation of improperly deactivated firearms and the need to take account of the UN Protocol against the Illicit Manufacturing of and Trafficking of Firearms.⁵⁴

58. So what do the substantive provisions of Directive 2017/853 actually do?

59. Article 1(1) introduces a number of new definitions into the text of Article 1 of Directive 91/477, such as ‘deactivated firearms’, ‘collector’, ‘broker’, ‘dealer’ and ‘illicit manufacturing’.⁵⁵ Article 1(3) amends Article 4 of Directive 91/477 by harmonising provisions concerning the marking of firearms placed on the market. An obligation is imposed on the Commission to adopt implementing acts establishing technical specifications for the purposes of marking firearms.⁵⁶

60. The provisions in Article 1(6) of Directive 2017/853 replace the former Articles 5 (acquisition and possession of firearms) and 6 (prohibition for category A firearms) of Directive 91/477 in their entirety. Member States are required to put in place a monitoring system to ensure that national authorisation conditions are met and to withdraw such authorisation where those conditions are no longer fulfilled. Where category A, B or C firearms are acquired by means of distance contracts the identity and authorisation of the purchaser are to be checked. The new Article 6 introduces a general prohibition on the acquisition and possession of firearms, essential components and ammunition that are classified in category A. Provision is made for Member States to grant a number of limited exceptions (for individual cases, exceptionally and in a duly reasoned manner). These new arrangements cover the protection of the security of critical infrastructure, commercial shipping, high-value convoys and sensitive premises (where that would not be contrary to public security or public order); specific authorisations granted to collectors, dealers or brokers acting in a professional capacity; authorisations for museums; and permits for target shooters. The latter are subject to certain conditions.⁵⁷

54 A number of reports have been prepared including COM(2013) 716 final, Communication from the Commission to the Council and the European Parliament Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking of 21 October 2013; ‘Study to support an Impact Assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures of firearms in the EU as well as alarm weapons and replicas’ of June 2014 prepared for the European Commission; and COM(2015) 751 final, Report from the Commission to the European Parliament and the Council, ‘Evaluation of Council Directive 91/477/EC of 18 June 1991, as amended by Directive 2008/51/EC of 21 May 2008, on control of the acquisition and possession of weapons’ (‘COM(2015) 751’) of 18 November 2015.

55 See respectively Article 1(1)(6), (8), (9), (10), and (11) of Directive 2017/853.

56 Article 4(2a) of Directive 91/477, as amended by Directive 2017/853.

57 Those conditions include the following: confirmation that the person concerned has had his medical and psychological state assessed in accordance with Article 5(2) of Directive 91/477; proof of participation in shooting competitions recognised by an officially recognised sports organisation; and confirmation that he is a member of a sporting club, has regularly practised target shooting for at least 12 months and that the firearm in question fulfils the necessary specifications.

61. Article 1(7) of Directive 2017/853 amends Article 7 of Directive 91/477, which prohibits acquisition of category B firearms in the absence of a prior authorisation. Following the adoption of Directive 2017/853, semi-automatic firearms are no longer classified in category B: they are now in category A. Article 1(7)(b) inserts a new Article 7(4a) into Directive 91/477 which allows Member States to confirm, renew or prolong authorisations for semi-automatic firearms which were classified in category B and lawfully acquired and registered before 13 June 2017 (the date Directive 2017/853 entered into force).

62. Article 1(8) of Directive 2017/853 amends the provisions of Directive 91/477 concerning category C firearms. Article 1(12) lays down rules for the transfer of firearms from one Member State to another. Article 1(13) specified the conditions under which individuals, such as hunters, may 'be in possession of one or more firearms during a journey through two or more Member States with a view to engaging in their activities'.⁵⁸ Article 1(14) makes arrangements for cooperation between the Member States.⁵⁹ Article 1(18) instructs the Commission to submit a report on the application of Directive 2017/853 reviewing its provisions in the light of technological developments, such as 3D printing.

63. It seems to me that the *preponderance* of the legislative effects of Article 1(3), (6), (7), (8), (12) to (14) and (18) is to introduce harmonised rules with a view to ensuring that Member States do not need to take individual (and therefore possibly disparate) action. They are therefore in my view aimed primarily at ensuring the functioning of the internal market.

64. Article 1(19) introduces amendments to Annex I to Directive 91/477. For present purposes, the notable changes are the insertion into category A of automatic firearms which have been converted into semi-automatic arms, centre-fire semi-automatic weapons and semi-automatic long weapons. As mentioned, certain semi-automatic weapons move from category B to A, deactivated weapons are now classified in category C and the definition of firearms excluded from the scope of Directive 91/477 has been changed.⁶⁰

65. In my view, it follows from an analysis of those provisions and the general content of Directive 2017/853 that the *overall* balance struck in Directive 91/477 between, on the one hand, ensuring the functioning of the internal market and, on the other hand, preserving public safety and security has not shifted fundamentally. The fact that the Commission states in its proposal that the security of citizens and businesses is a key concern and refers to the fatalities suffered in terrorist attacks carried out in Paris on 13 November 2015 and that certain recitals emphasise the public safety aim does not undermine that conclusion. Ultimately, what matter are the legal effects of Directive 2017/853.

66. I add that it is settled case-law that the fight against international terrorism in order to maintain international peace and security constitutes an objective of general interest. The same is true of the fight against serious crime in order to ensure public safety.⁶¹ Both of those elements fall squarely within the purview of Article 114 TFEU.

67. First (an obvious point): firearms are intrinsically dangerous goods. They give rise to safety concerns not only for their users but for the wider public. That is why the legislature has introduced marking and authorisation obligations together with provisions that restrict the possession and acquisition of such weapons.⁶² Directive 2017/853 principally contains classic measures used to

58 See point 22 above.

59 Other provisions of Directive 2017/853 make formal changes. Thus, for example, the Commission is empowered to adopt delegated legislation (Article 1(14)) and the word 'Community' is replaced by the word 'Union' (Article 1(17)).

60 See point 24 above.

61 Judgment of 8 April 2014, *Digital Rights Ireland and Others*, C-293/12 and C-594/12, EU:C:2014:238, paragraph 42 and the case-law cited.

62 Judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraph 54.

promote the establishment of the internal market in circumstances where it is necessary to place restrictions on a product (because safety is an issue) to avoid the establishment of border controls and to promote the free circulation of goods and persons.⁶³ It follows that I emphatically reject Poland's submission that firearms are not dangerous goods for the purposes of EU law.

68. Second, a key aspect of establishing the internal market has been removing physical barriers to the free movement of goods, the most visible example of which were customs posts at frontiers.⁶⁴ The safety of EU citizens vulnerable to the threat of international terrorism is linked inseparably with the circulation of intrinsically dangerous goods such as firearms in an area of 28 Member States (512.6 million people). After the terrorist attacks in Paris in January 2015, EU Interior and/or Justice Ministers adopted the 'Paris declaration' in which they reiterated a commitment to reduce the illicit supply of firearms throughout Europe. In response, the Commission adopted the European Agenda on Security to ensure an effective and coordinated response at EU level to security threats.⁶⁵ The European Agenda on Security also highlighted differences between national legislation as an obstacle to effective controls and police cooperation across the European Union. It seems to me that, given that context, divergent national measures would have impeded the free circulation of goods. The EU legislature had to act in order to adjust, at EU level, the balance being struck between free movement of goods and public safety.⁶⁶ Moreover, precisely because Directive 2017/853 further harmonises controls on firearms, it adds to the provisions promoting mutual confidence between Member States contained in Directive 91/477 and thereby reduces the need for Member States to act individually.⁶⁷

69. Third, the obligation placed upon the Commission in Article 1(3) of Directive 2017/853 to adopt implementing acts to provide technical specifications is one such confidence-promoting measure. The harmonisation of technical barriers to trade (which include technical specifications) is a long established aim of the internal market.⁶⁸ The insertion of a new provision into Directive 91/477 regulating distance contracts is a further example of the way in which Directive 2017/853 regulates commerce within the internal market.⁶⁹

70. Fourth, Directive 2017/853 provides for improved cooperation between Member States to monitor and exchange information about transfers of firearms between States in the internal market.⁷⁰

71. Finally, on a fair reading it cannot be said that the actual content of Directive 2017/853 harmonises crime prevention in any material sense.

72. The Parliament and the Council stated at the hearing (and indeed observation confirms this) that it is standard EU legislative practice for the text of an amending act to be drafted in a manner which indicates that it is to be inserted into or to replace the provisions of the act to be amended.⁷¹ For that reason, statements in the recitals to the earlier measure (Directive 91/477) are not reproduced in the statement of reasons for Directive 2017/853, even though those statements apply equally to that act. I

63 See points 60 and 61 above.

64 See the White Paper on the completion of the internal market of 14 June 1985 COM(85) 310, paragraph 10 et seq.

65 COM(2015) 185 final, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Agenda on Security' of 28 April 2015.

66 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1) allows Member States to temporarily reintroduce border control at internal borders in the event that a serious threat to public policy or internal security has been established. Whilst it is not cited in the preamble to Directive 2017/853, it is also possible that the EU legislature was aware that certain Member States (France and Malta) had reintroduced border controls in 2015, on the grounds that there was a threat to internal security posed by the risk of further terrorist attacks in the case of France or the threat of such acts in relation to Malta (see 'Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 et seq. of the Schengen Borders Code', points 54 and 48).

67 See point 11 above and the fifth recital to Directive 91/477 and Article 1(14) of Directive 2017/853.

68 See the White Paper on the completion of the internal market of 14 June 1985 COM(85) 310, paragraphs 57 to 59.

69 See Article 1(6) of Directive 2017/853 which inserts a new provision, Article 5b, into Directive 91/477.

70 See point 62 above.

71 See the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions, in particular paragraph 18.12.

add in passing that it might assist those reading amending legislation if some brief statement were nevertheless to be included in the preamble confirming that the statement of reasons for the original act remains unchanged and that it applies equally to the amending act, since that is not readily apparent from current practice.

73. Hungary and Poland submit that it is not necessary to examine the aims of Directive 91/477 when assessing the legality of Directive 2017/853. Such an approach, they fear, could lead to an unwarranted extension of the legislature's scope of discretion under Article 114 TFEU.

74. Directive 2017/853 is the contested act. It follows that in reviewing whether that measure was adopted *ultra vires*, judicial scrutiny must focus on Directive 2017/853 and its legal effects. That said, it is equally clear that Directive 2017/853 amends Directive 91/477; and nothing in its recitals suggests that it seeks to remove the internal market aims of the earlier directive. In my view, it would therefore be artificial to assess the amending directive as if the amended act did not exist.⁷²

75. In summary, I consider that the EU legislature has laid down in Directive 2017/853 measures which on balance promote the objectives of the internal market whilst taking account of the need to enhance provision for public safety.

76. I therefore conclude that the first plea is not well founded and should be rejected.

Second plea: proportionality

77. The Czech Republic's second plea is divided into two parts. First, it alleges that when adopting Directive 2017/853 the EU legislature totally failed to address the question of the proportionality of the measures at issue and deliberately did not obtain sufficient information (for example, by carrying out an impact assessment) in order to make an informed appraisal as to whether that principle of EU law was respected. Second, it alleges that the EU legislature proceeded to adopt manifestly disproportionate measures consisting in: (i) the prohibition placed on certain kinds of semi-automatic weapons which were not used to commit the terrorist acts in 2015; (ii) stricter regulation of certain minimally dangerous weapons (historical replicas or weapons shown to have been permanently deactivated); and (iii) restrictions placed on the possession of certain magazines.

First part

Arguments of the parties

78. The Czech Republic submits that the wide discretion which the EU legislature enjoys is not without limits. The EU legislature did not have the necessary information at its disposal during the legislative process to assess the proportionality of Directive 2017/853. In principle the legislature is obliged to conduct an impact assessment (or an equivalent study). The absence of such an assessment meant that there was no analysis of the interference with the right to property of those individuals owning and possessing firearms which Directive 2017/853 would cause. The various studies and reports mentioned by the Commission in its proposal did not put forward sufficient data to demonstrate a link between legal civilian possession of weapons and the abusive use of such weapons for criminal purposes or terrorism.

⁷² See judgment of 10 February 2009, *Ireland v Parliament and Council*, C-301/06, EU:C:2009:68, paragraphs 65 to 72.

79. Hungary argues that the Interinstitutional Agreement is legally binding on the three EU institutions. Here, the Commission failed to meet its obligation to prepare an impact assessment in relation to its proposal for Directive 2017/853. Also, certain provisions of that directive are disproportionate. These include Article 1(3), which amends Article 4(4) of Directive 91/477 by introducing requirements to record all information relating to firearms needed in order to trace and identify those products. Following that amendment, the competent authorities are allowed to retain records of firearms and their essential components including the related personal data for 30 years. Those records can be accessed for a period of 10 years or for a period of 30 years in the case of prevention, detection or prosecution of criminal offences or the execution of criminal penalties, after the destruction of firearms and their essential components. The former Article 4(4) of Directive 91/477 did not make such provision: it merely allowed the competent authorities to record and maintain a data-filing system for 20 years.

80. Poland adds that the Interinstitutional Agreement has both binding and non-binding provisions. An impact assessment should generally be conducted subject to the derogation set out in that Agreement which applies in cases of urgency.

81. The Parliament, the Council and the Commission all maintain that the Interinstitutional Agreement does not impose a legal obligation to conduct an impact assessment during the EU legislative process. The aim of Directive 2017/853 is to strike an appropriate new balance between the free circulation of certain firearms and maintaining public safety. The criterion the Court should apply in determining whether Directive 2017/853 is compatible with the principle of proportionality is whether the restrictions it introduces are manifestly inappropriate in relation to the objective pursued.

Admissibility

82. I agree with the Parliament and the Council that Hungary's argument that Directive 2017/853 is disproportionate in so far as Article 1(3) amends Article 4 of Directive 91/477 is inadmissible. Article 129(1) of the Rules of Procedure of the Court of Justice states that an intervention is limited to supporting in whole or in part the form of order sought. Article 129(3) adds that the intervener must accept the case as he finds it at the time of his intervention.

83. Here, the Czech Republic has *not* included Article 1(3) of Directive 2017/853 within the scope of the order sought.⁷³ I therefore conclude that Hungary's submissions regarding Article 1(3) of Directive 2017/853 and the principle of proportionality are inadmissible and I shall not consider them further.

Substance

84. It is settled case-law that the principle of proportionality (one of the general principles of EU law) requires that measures implemented through EU legislation should be appropriate for attaining the legitimate objectives pursued and must not go beyond what is necessary to achieve them. The Court has accepted, in exercising the powers of judicial review conferred on it under the Treaties, that the EU legislature must be allowed a broad discretion in areas in which its action involves a complex evaluation of political, economic and social choices.⁷⁴ Thus, the criterion to be applied is not whether a measure adopted in such an area was the only or the best possible measure, since its legality can be affected only if the measure is manifestly inappropriate having regard to the objectives which the competent institution(s) seek to pursue.⁷⁵

⁷³ See point 26 above.

⁷⁴ Judgment of 8 June 2010, *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraphs 51 and 52 and the case-law cited.

⁷⁵ Judgment of 21 June 2018, *Poland v Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 150.

85. However, even though the EU legislature has a broad discretion, it must base its choice on objective criteria. Furthermore, in assessing the burdens associated with various possible measures, it must examine whether the objectives pursued by the measure chosen are such as to justify even negative personal, social or economic consequences for certain individuals as a result of the adopted measures.⁷⁶

86. It follows from the views that I have expressed in relation to the first plea that I consider that Directive 2017/853 pursues legitimate objectives.⁷⁷ Thus, the real issue in relation to proportionality is whether the measures adopted are appropriate and necessary with a view to attaining the functioning of the internal market whilst at the same time seeking to achieve an avowed objective of general interest (here, the fight against terrorism in order to maintain peace and security).

87. Firearms are intrinsically dangerous. The EU legislature accordingly decided to regulate the entire lifecycle of a weapon, from production to trade, ownership and possession, deactivation and destruction.⁷⁸

88. The Czech Republic is right to assert that, even though judicial review in this instance is of limited scope, the EU institutions must be able to show that in adopting Directive 2017/853 they actually exercised their discretion. That in turn requires that they should have taken into consideration all the relevant factors and circumstances surrounding the situation that the new legislative measure was intended to regulate. It follows that the institutions must, as a minimum, be able to produce and set out clearly and unequivocally the essential facts which required to be taken into account as the basis for Directive 2017/853.

89. In carrying out its review it is not necessary, in my view, for the Court to carry out its own assessment as to whether certain firearms for which Directive 2017/853 tightens controls were actually used in the 2015 terrorist attacks; or whether such weapons are precisely as dangerous as the three institutions claim. Rather, the yardstick for the assessment is the stated aims of Directive 2017/853, the act whose validity is impugned (rather than Directive 91/477).

90. A novel feature of the present case is that in adopting Directive 2017/853, the EU legislature dispensed with an impact assessment. Normally, the EU institutions would be able to rely on such an assessment to demonstrate that the measures adopted are both suitable and necessary. By definition, they cannot do so here.

91. Does it automatically follow that the measures introduced by Directive 2017/853 should be annulled because the three institutions did not carry out an impact assessment pursuant to the Interinstitutional Agreement?

92. I do not think so.

93. The Interinstitutional Agreement was adopted on the basis of Article 295 TFEU, which provides that the three institutions are to consult each other and by common agreement make arrangements for their cooperation. To that end they may conclude Interinstitutional Agreements which may be of a binding nature.⁷⁹ Whether the Interinstitutional Agreement at issue here is binding is to be determined by consideration of the wording and the context of that agreement. The Court has certainly held that cooperation arrangements between the Council and the Commission in the past

⁷⁶ Judgment of 8 June 2010, *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraph 53 and the case-law cited.

⁷⁷ See points 75 and 76 above.

⁷⁸ COM(2015) 750, p. 2.

⁷⁹ See for example, the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (OJ 2013 C 373, p. 1).

have given rise to binding commitments.⁸⁰ It seems to me that the three institutions did intend to enter into binding commitments as between themselves in relation to the Interinstitutional Agreement on Better Law-Making.⁸¹ However, it does not necessarily follow in my opinion that the Interinstitutional Agreement introduces a binding obligation to conduct an impact assessment in each and every case.

94. The rules concerning impact assessments are set out in Part III of the Interinstitutional Agreement ('Tools for better law-making'). The second paragraph of point 12 states that, 'impact assessments are a tool to help the three institutions reach well-informed decisions and not a substitute for political decisions within the democratic decision-making process. Impact assessments must not lead to undue delays in the law-making process or prejudice the co-legislatures' capacity to propose amendments'. Point 13 states that 'the Commission will carry out impact assessments of its legislative and non-legislative initiatives, delegated acts and implementing measures which are expected to have significant economic, environmental or social impacts. The initiatives included in the Commission Work Programme or in the joint declaration will, as a general rule, be accompanied by an impact assessment'. (It would seem to follow, *a contrario*, that legislative initiatives which are *not* 'expected to have significant economic, environmental or social impacts' do not need to be accompanied by an impact assessment – one can, of course, debate where exactly the boundary between the two categories would lie.)

95. Point 14 states that, 'upon considering Commission legislative proposals, [the Parliament and the Council] will take full account of the Commission's impact assessments. To that end, impact assessments shall be presented in such a way as to facilitate the consideration by the European Parliament and the Council of the choices made by the Commission'. The Parliament and the Council are able, where they consider it to be appropriate and necessary, to carry out impact assessments if they make substantial amendments to a Commission proposal (point 15).⁸²

96. Thus, the provisions of the Interinstitutional Agreement regarding impact assessments do not speak in mandatory terms. The words 'shall' or 'must' – which would create an obligation to carry out an impact assessment in each and every case – are not used. It is of course perfectly true that impact assessments are an important and useful tool in the 'Better Regulation' process. They facilitate the process of well-reasoned and transparent law-making. That said, the Interinstitutional Agreement does *not* cast them as a prior condition to proposing or adopting legislation in *all* circumstances.

97. It therefore cannot be right that, absent an impact assessment, the EU legislature cannot act. Such an absolute construction of the Interinstitutional Agreement would be an unjustified fetter on the discretion conferred on the legislature under the Treaties. It would make it impossible to take legislative action even where the circumstances clearly demonstrate the need for urgent action.⁸³ I add, for good measure, that the Court has already ruled that an impact assessment is not binding on either the Parliament or the Council.⁸⁴

98. It follows that I do not consider that the absence of an impact assessment automatically renders invalid EU legislation subsequently adopted.

80 See by way of analogy judgment of 19 March 1996, *Commission v Council*, C-25/94, EU:C:1996:114, paragraph 49. In relation to those cases where arrangements for interinstitutional cooperation may not be binding see my Opinion in Joined Cases *VG Wort*, C-457/11 to C-460/11, EU:C:2013:34, point 32, concerning the Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation (of 22 December 1998 (OJ 1999 C 73, p. 1)).

81 See recitals 1 and 2 and points 1 and 2, set out in point 25 above.

82 The text of the Interinstitutional Agreement of 2016 replaced the previous 2003 agreement and the Interinstitutional accord on impact assessment of 2005. The text of the latter was likewise not expressed in mandatory terms.

83 See by analogy, Opinion of Advocate General Kokott in *Pillbox* 38, C-477/14, EU:C:2015:854, point 72.

84 Judgment of 21 June 2018, *Poland v Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 159.

99. Rather, pursuant to the Interinstitutional Agreement, the three institutions agree that when proposing and/or adopting EU legislation carrying out an impact assessment is an expected (or normal) step in the process. Where that step is omitted two questions arise regarding the procedural and substantive consequences, as the absence of an impact assessment makes the EU institutions' task, in the event of a challenge, significantly harder. First, they must show that there was good reason for not following the normal rules and carrying out an impact assessment. Second, they must draw on other material in order to satisfy the judicial review scrutiny of this Court.⁸⁵

100. As to the first condition, the second paragraph of point 12 of the Interinstitutional Agreement allows the institutions to dispense with an impact assessment in conditions of urgency. The Commission stated expressly in the explanatory memorandum to the proposal for Directive 2017/853 that, 'due to the urgency of the proposal in the light of recent events, it is submitted without an impact assessment'.⁸⁶ On the basis of the material before the Court, I see no reason to quarrel with that statement. Accordingly, I consider the first condition to be satisfied.

101. As to the second condition, the three institutions point to various reports and studies which they claim show that Directive 2017/853 is both suitable and necessary.⁸⁷ Article 17 of Directive 91/477 had already placed an obligation on the Commission to submit reports on the application of that directive at regular intervals.⁸⁸ Certain reports cited by the institutions were prepared pursuant to those obligations. As Directive 2017/853 is an amending act it falls within the context of the 'Better Regulation' initiative known as 'REFIT' (the Commission's Regulatory Fitness programme which examines the best way to amend EU legislation). A number of reports on the application of Directive 91/477 were thus prepared prior to the adoption of Directive 2017/853.⁸⁹

102. The recitals to Directive 2017/853 refer to the general objective of creating a balance between freedom of movement and the need to control that freedom using security guarantees suited to what are dangerous and durable products which can be misused for criminal purposes.⁹⁰ Given those aims, it seems to me that in so far as Directive 2017/853 tightens controls on placing firearms on the market, the acquisition and possession of firearms, rules on marking and traceability, arrangements for the classification of firearms, arrangements for the deactivation of firearms and the transfer of such products between Member States, the measures adopted are suitable and do not go beyond what is necessary. The legislature has not imposed an outright ban on any category of firearms. Even the general prohibition against category A firearms (those which the legislature considers to be the most dangerous) is subject to exceptions. Moreover, the preparatory material indicates that in preparing its proposal the Commission took account of the internal market objectives as well as the security imperatives in the conception of the measures at issue.⁹¹

103. I therefore reject the submission that the EU legislature failed to assess whether Directive 2017/853 was proportionate in the course of the legislative process. That conclusion is not altered by the submission that Directive 2017/853 constitutes an unwarranted interference with the right to property of those individuals who own firearms.

85 In the absence of an impact assessment the institutions are obviously unable to refer to such a document as providing the Court with the basis for evaluation of a contested act as foreseen in point 18 of the Interinstitutional Agreement.

86 COM(2015) 750, p. 7. The significance of the impact assessment is specifically mentioned in the European Parliament's report on the Commission's proposal: the rapporteur there expresses regret at the lack of an impact assessment and states (I respectfully add, entirely reasonably) that if such an assessment had been available, it would have made the Parliament's task easier.

87 See for example COM(2015) 750, p. 5.

88 See point 16 above.

89 See for example COM(2015) 751 and the report prepared for the European Commission by Technopolis: 'Evaluation of the Firearms Directive' of 11 December 2014 mentioned in footnote 52 above.

90 See recitals 1, 2 and 9.

91 See COM(2015) 751, in particular points 20, 27 and 34.

104. First, Directive 2017/853 does not sequester all lawfully held civilian firearms. It merely tightens controls over such weapons. Thus, Directive 2017/853 does not purport to deprive individuals of their rights to property (here, firearms). I note in passing that a fundamental right to possess guns does not figure in EU law as such, nor does it form part of ‘the constitutional traditions common to the Member States’. Second, the right to property laid down in Article 17 of the Charter is a qualified right.⁹² As well as protecting property rights, that article also provides that individuals may be deprived of their possessions in the public interest and in the cases and under the conditions provided for by law. In so far as Directive 2017/853 provides that firearms held in breach of certain of its provisions are to be impounded, it seems to me to meet fully those conditions. I consider the individual provisions challenged by the Czech Republic below.⁹³

105. I am therefore of the view that the first part of the second plea must fail.

Second part

106. In the alternative, the Czech Republic asks the Court to annul certain provisions enacted in Article 1(6), Article 1(7) and Article 1(19) of Directive 2017/853.⁹⁴

107. The Czech Republic argues that Article 1(6) is invalid in so far as it inserts Article 5(3) and the second subparagraph of Article 6(6) into Directive 91/477. Article 5(3) lays down rules for the withdrawal of authorisation to acquire and possess category B firearms if the person concerned is in possession of a loading device apt to be fitted to centre-fire semi-automatic or repeating firearms which can hold more than 20 rounds (or, in the case of long firearms, can hold more than 10 rounds). That provision is subject to the exceptions in Article 6 and Article 7(4a) of Directive 91/477 as amended.

108. The purpose of Article 5(3) as amended is explained in recital 23 of Directive 2017/853. That recital states that ‘certain semi-automatic firearms might be very dangerous when their capacity, in terms of the number of rounds, is very high’. During the course of the first reading before the Parliament, new text was added to the Commission’s proposal stating that the authorisation to acquire and possess firearms was to be withdrawn if the conditions in Article 5 were not met (in essence the holder had to be 18 and demonstrate that he was not a danger to himself or the public). The text was changed in order to fill a gap which was identified in the Commission’s proposal during the course of negotiations in Council.⁹⁵ The wording of recital 23 was introduced following the conciliation process between the three institutions. While recital 23 undeniably points to security and safety concerns, those issues are invariably bound up with considerations relating to the functioning of the internal market,⁹⁶ such as the aim of adding precision to Directive 91/477 in order to ensure that Member States do not apply divergent rules. In the light of such factors, the introduction of stricter provisions concerning category B firearms was suitable for attaining that aim.

109. Article 6 of Directive 91/477 as amended by Article 1(6) of Directive 2017/853 allows the Member States to authorise target shooters to acquire and possess certain semi-automatic firearms. The second subparagraph of Article 6(6) provides a particular exception for Member States which have a military system based on general conscription and which have, over the last 50 years, operated

⁹² Judgment of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraphs 49 to 51 and the case-law cited. The right to property in Article 17 of the Charter corresponds to the right protected by Article 1 of Protocol No 1 to the European Convention of Human Rights.

⁹³ See point 106 et seq. below.

⁹⁴ See points 18, 19, 20 and 23 above.

⁹⁵ See Interinstitutional file 2015/0269 (COD) of 8 June 2016 9841/16.

⁹⁶ See COM(751) 2015, pp. 11 and 13.

a system of transfer of military firearms to ex-army personnel. In those circumstances, the Member State concerned may grant such persons – if they are also ‘target shooters’ – an authorisation to keep one firearm used during the period of military service. It is common ground that the only country that meets those criteria is Switzerland.⁹⁷

110. That provision was inserted during the course of negotiations in the Council. It is to be read in the light of the more general exception to the prohibition in respect of category A firearms in Article 6(2) of Directive 91/477 (as amended), which allows the competent authorities to grant authorisations in specified contexts ‘where this is not contrary to public security or public order’. It was considered that specific provision should also be made for army reservists as those countries would have an existing system in place to check that persons holding category A firearms did not present a risk to public security.⁹⁸

111. It therefore seems to me that the EU legislature took account of relevant factual, social and cultural considerations in determining whether to make specific provision for army reservists and, accordingly, that it adopted suitable measures to ensure a balance between the aims of facilitating the operation of the internal market and guaranteeing a high level of public safety.

112. Article 7 of Directive 91/477 prohibits the acquisition of category B firearms without authorisation from the competent authorities of the Member State concerned. Prior to the amendments introduced by Directive 2017/853, category B weapons included semi-automatic weapons. That directive changed the position. Semi-automatic weapons were re-categorised as prohibited firearms and now fall within category A (which also includes automatic firearms that have been converted to semi-automatic weapons).

113. During the negotiations in Council the Presidency took into account the fact that many Member States opposed the change in category for semi-automatic firearms.⁹⁹ A revised text was therefore proposed on 8 June 2016 which allowed Member States to renew an authorisation for a firearm which was formerly classified in category B and was now re-classified in category A. That text was revised further and incorporated into the text of Directive 2017/853. Thus, Article 1(7) of Directive 2017/853 as enacted amends Article 7 of Directive 91/477 by, inter alia, inserting Article 7(4a) which essentially allows Member States to confirm, renew, or prolong authorisation for semi-automatic weapons which were previously in category B and lawfully acquired and registered before 13 June 2017.

114. Against that background it seems to me that the EU legislature took appropriate account of relevant factual circumstances in so far as it introduced what is now Article 7(4a). By adopting that measure the legislature *reduced* the severity of the consequences of extending the prohibition of weapons for civilian use to semi-automatic firearms. It allowed lawful owners of such weapons, who in essence had acquired them before Directive 2017/853 entered into force, to keep them subject to supervision by Member States’ competent authorities. In my view, that solution not only complies with the principle of proportionality but also respects the related principle of subsidiarity.

115. The Czech Republic also seeks the annulment of Article 1(19) of Directive 2017/853 in so far as it tightens controls on certain firearms. The specific arrangements challenged are as follows: (i) certain semi-automatic firearms are brought within the category of prohibited weapons; (ii) category B now includes repeating short firearms, certain semi-automatic long and short firearms, and any category C

⁹⁷ See point 17 and footnote 23 above.

⁹⁸ See Interinstitutional file 2015/0269 (COD) of 8 June 2016 9841/16.

⁹⁹ See Interinstitutional file 2015/0269 (COD) of 8 June 2016 9841/16.

firearms converted to fire blanks, irritants, or other active substances or pyrotechnic rounds or into a salute or acoustic weapon; (iii) deactivated firearms are now subject to declaration (category C); and (iv) deactivated firearms are no longer excluded from the definition of a firearm for the purposes of Directive 91/477.¹⁰⁰

116. Concerns relating to semi-automatic weapons are set out in detail in the preparatory material.¹⁰¹ The Presidency indicated that the proposal as regards semi-automatic weapons was controversial. On the one hand, such weapons could be very dangerous where their capacity (number of rounds) is high and they can easily be converted into automatic weapons. On the other hand, many Member States considered that such weapons should remain in category B. Accordingly, the Presidency invited the Member States to submit evidence on the matter which was taken into account during the legislative procedure.¹⁰² In relation to the changes to the scope of category B, the legislature had access to a number of reports on the classification of firearms under Directive 91/477 and the risks to the smooth functioning of the internal market.

117. The insertion of deactivated firearms into point 6 of category C and the change to the definition of a firearm to include such weapons are two sides of the same coin and I shall deal with them together. The reactivation of deactivated firearms was highlighted as an issue by the Commission.¹⁰³ A particular issue arises as regards the smooth functioning of the internal market inasmuch as States party to the UN Protocol against the Illicit Manufacturing of and Trafficking of Firearms (which include the 28 EU Member States) may classify a deactivated firearm as a firearm under national law and take the necessary measures on those grounds. As a consequence, different Member States could easily introduce diverging provisions, thus compromising the objectives of the internal market.¹⁰⁴ Furthermore, certain specific security risks were identified: conversion of alarm weapons into fully active weapons; conversion of semi-automatic weapons into automatic weapons; reactivation of deactivated firearms; erasing of marking; and illegal use of inherited arms. All those activities are a cause of security concerns at Member State level.

118. It seems to me clear that the EU legislature did indeed take account of the relevant technical factors and circumstances when formulating the amending provisions contained in Directive 2017/853 and that none of those provisions is vitiated by a manifest error of appraisal.

119. It follows that in my view the second part of the second plea is without merit in its entirety; and that the second plea is accordingly unfounded.

Third plea: legal certainty

120. The Czech Republic submits that by adopting certain provisions of Directive 2017/853 the EU legislature contravened the principle of legal certainty. In that connection, the Czech Republic identifies the following: Article 1(6) (inserting Article 5(3)); Article 1(7)(b) (inserting Article 7(4a)); and Article 1(19) (adding points 7 and 8 to category A in Annex I, Part II).¹⁰⁵ The Czech Republic submits that the substantive effects of the provisions at issue are such that if the Court decides to annul them, it necessarily follows that Directive 2017/853 should be annulled in its entirety.

¹⁰⁰ See point 24 above.

¹⁰¹ See COM(2015) 751, p. 13.

¹⁰² See Interinstitutional file 2015/0269 (COD) of 8 June 2016 9841/16, see further COM(2012) 415, Report from the Commission to the European Parliament and the Council 'Possible advantages and disadvantages of reducing the classification to two categories of firearms (prohibited or authorised) with a view to improving the functioning of the internal market for the products in question through simplification' of 26 July 2012 ('COM(2012) 415').

¹⁰³ See COM(2015) 751 at point 22, see further the observations of the rapporteur in the European Parliament's report A8-0251/2016 of 2 August 2016 at p. 65.

¹⁰⁴ See COM(2015) 751 at points 28 and 30.

¹⁰⁵ I shall refer to those articles of Directive 2017/853 as 'the provisions at issue', see points 19, 20 and 24.

121. In support of that claim the Czech Republic argues, first, that the provisions at issue are altogether unclear from the point of view of legal certainty. They therefore do not enable the persons concerned unambiguously to discern their rights and obligations. Second, it argues that Article 7(4a) of Directive 91/477, as inserted by Directive 2017/853 ('the grandfathering clause'), effectively forces Member States to adopt national legislation that will have retroactive effects. That is also therefore incompatible with the principle of legitimate expectations.

122. The Parliament and the Council disagree with the Czech Republic's interpretation of the provisions at the issue and submit that the third plea should be rejected.

123. I am of the same opinion.

124. The principle of legal certainty requires that rules of law be clear and precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law.¹⁰⁶

125. Article 5(3) of Directive 91/477 is to be read in the light of recital 23 of Directive 2017/853. That recital states in essence that certain semi-automatic firearms might be very dangerous if their capacity in terms of rounds is very high.¹⁰⁷ The EU legislature was concerned to ensure that firearms which are not prohibited are not converted into significantly more dangerous weapons. The aim of Article 5(3) of Directive 91/477 as amended is thus to close a potential loophole by providing that authorisation for such firearms is to be withdrawn if the person authorised to acquire or possess those weapons is able to increase the firing capacity as laid down in that provision.¹⁰⁸ The same concerns apply to centre-fire semi-automatic firearms and semi-automatic long firearms, as listed respectively in point 7 and point 8 of Part II of Annex I to Directive 2017/853.

126. I regard the wording of those texts taken together as sufficiently clear and precise to meet the requirements of the principle of legal certainty.

127. The Czech Republic next seeks to argue in essence that the new Article 7(4a) of Directive 91/477, as inserted by Article 1(7) of Directive 2017/853, is incompatible with the principle of legitimate expectations. Its retroactive effects prejudice the rights of individuals who lawfully acquired and possessed semi-automatic firearms for civilian use under Directive 91/477 prior to its amendment by Directive 2017/853. Those weapons are now prohibited.

128. It is well established that the principle of the protection of legitimate expectations is among the fundamental principles of the European Union and that it is a corollary of the principle of legal certainty.¹⁰⁹ The right to rely on that principle extends to any person with regard to whom an EU institution has given rise to justified hopes. In whatever form it is given, information which is precise, unconditional and consistent and comes from authorised and reliable sources constitutes assurances capable of giving rise to such hopes. However, a person may not plead breach of that principle unless he has been given such precise assurances by the administration.¹¹⁰

129. I consider that there is no evidence of such assurances here.

¹⁰⁶ Judgment of 5 May 2015, *Spain v Council*, C-147/13, EU:C:2015:299, paragraph 79.

¹⁰⁷ See point 17 above.

¹⁰⁸ Article 5(3) applies unless the person concerned has been granted an authorisation under Article 6 or an authorisation which has been confirmed, renewed or extended under Article 7(4a) of Directive 91/477 as amended by Directive 2017/853.

¹⁰⁹ Judgment of 14 March 2013, *Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraph 23 and the case-law cited.

¹¹⁰ Judgment of 14 March 2013, *Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraphs 24 and 25 and the case-law cited.

130. First, no evidence has been adduced to suggest that the EU institutions issued *any* assurances regarding the classification of arms which might have suggested that semi-automatic firearms would not be re-categorised as prohibited weapons. Rather, the preparatory material for Directive 2017/853 points to the opposite conclusion. The categorisation of firearms is a matter that was considered for some time and in considerable detail prior to the introduction of Directive 2017/853.¹¹¹

131. Second, Article 7(4a) should be read within the context of Article 6 of Directive 91/477 as amended. The latter provision introduces a number of exceptions to the prohibition against category A firearms.¹¹² Article 7(4a) provides a further possible exception. It allows Member States to confirm, renew or prolong authorisations for semi-automatic weapons which were formerly in category B (prior to amendment). Article 7(4a) therefore *reduces* the effects of the prohibition arising from the change in category by allowing the individuals concerned, under appropriate supervision, to continue to keep those weapons. That seems to me to be the very antithesis of introducing unlawful retroactive effects. I add that Article 7(4a) is in any event a discretionary provision. Thus, if a Member State is of the view that transposing Article 7(4a) might create particular challenges because of existing national rules, it is not obliged to allow individuals holding what have become prohibited weapons to benefit from that exception.

132. Third, the Court has ruled consistently that the principle of legitimate expectations cannot be extended to the point of generally preventing a new rule from applying to the future effects of situations which arose under earlier rules.¹¹³

133. I therefore consider that the third plea should be rejected as unfounded.

Fourth plea: equal treatment

134. By its final plea the Czech Republic claims that Directive 2017/853 is invalid on the grounds that it breaches the principle of equal treatment. That argument is based on the fact that the second subparagraph of Article 6(6) of Directive 91/477 (as amended) makes specific provision for an exception to the prohibition against the use of category A firearms for Switzerland.

135. The Parliament and the Council argue to the contrary.

136. I agree with the Parliament and the Council.

137. The principle of equal treatment, as a general principle of EU law, requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified.¹¹⁴

138. Pursuant to Article 4(2) TEU, the EU legislature is required in its acts to respect both the equality of the Member States and their national identities. In my opinion that is precisely what the legislature sought to achieve by the ‘Swiss exception’.

¹¹¹ See COM(2012) 415.

¹¹² See point 20 above, in particular as regards the exceptions in Article 6(2) to (6).

¹¹³ Judgments of 18 April 2002, *Duchon*, C-290/00, EU:C:2002:234, paragraph 21, and of 11 December 2008, *Commission v Freistaat Sachsen*, C-334/07 P, EU:C:2008:709, paragraph 43 and the case-law cited.

¹¹⁴ Judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 23.

139. The first subparagraph of Article 6(6) as amended by Directive 2017/853 provides the framework for a general exception, in appropriate circumstances, to the prohibition against acquisition and possession of category A firearms classified in points 6 or 7.¹¹⁵ The second subparagraph of Article 6(6) simply makes specific provision for a country which has had for many years a reserve army based on conscription. It is common ground that only Switzerland fulfils that condition. The purpose of the exception is to take account of the fact that such a State is able to trace and monitor the persons (as well as the weapons) concerned for the purposes of ensuring public security and safety.

140. The position of each Member State is particular. It varies according to culture and tradition. I cannot therefore agree that the situation of all the Member States together with the four Schengen States (of which Switzerland is one) is automatically fully comparable in all respects. I therefore consider that Article 6(6) is not discriminatory.

141. I conclude that the fourth plea is unfounded and I propose that the Court should reject it.

Conclusion

142. In the light of all the foregoing considerations and applying Articles 138(1) and 140(1) of the Court's Rules of Procedure concerning the allocation of costs, I propose that the Court should:

- dismiss the action of the Czech Republic;
- order the Czech Republic to pay its own costs and those of the European Parliament and the Council of the European Union;
- order the French, Hungarian and Polish Governments and the European Commission to bear their own costs.

¹¹⁵ See point 24 above.