



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 March 2024*

(Reference for a preliminary ruling – Approximation of laws – Directive 91/477/EEC – Control of the acquisition and possession of weapons – Firearms prohibited or subject to authorisation – Semi-automatic firearms – Directive 91/477, as amended by Directive (EU) 2017/853 – Article 7(4a) – Power of Member States to confirm, renew or prolong authorisations – Presumed impossibility of using that power in respect of semi-automatic firearms converted to fire blanks or into salute or acoustic weapons – Validity – Article 17(1) and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union – Principle of the protection of legitimate expectations)

In Case C-234/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour constitutionnelle (Constitutional Court, Belgium), made by decision of 25 March 2021, received at the Court on 12 April 2021, in the proceedings

Défense Active des Amateurs d'Armes ASBL,

NG,

WL

v

Conseil des ministres,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev (Rapporteur), K. Jürimäe, C. Lycourgos, T. von Danwitz, Z. Csehi and O. Spineanu-Matei, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, A. Kumin, I. Ziemele, D. Gratsias, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Krausenböck, Administrator, and subsequently I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 19 September 2022,

* Language of the case: French.

after considering the observations submitted on behalf of:

- Défense Active des Amateurs d'Armes ASBL, NG and WL, by F. Judo, advocaat,
- the Belgian Government, by C. Pochet and L. Van den Broeck, acting as Agents, and by S. Ronse and G. Vyncke, advocaten,
- the European Parliament, by J. Étienne, M. Menegatti and R. van de Westelaken, acting as Agents,
- the Council of the European Union, by J. Lotarski, K. Pleśniak and L. Vétillard, acting as Agents,
- the European Commission, by R. Tricot and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 November 2022,

having regard to the order of 28 February 2023 reopening the oral part of the procedure and further to the hearing on 8 May 2023,

after considering the observations submitted on behalf of:

- the Belgian Government, by C. Pochet, acting as Agent, and by S. Ronse and G. Vyncke, advocaten,
- the European Parliament, by M. Menegatti and R. van de Westelaken, acting as Agents,
- the Council of the European Union, by K. Pleśniak and L. Vétillard, acting as Agents,
- the European Commission, by R. Tricot and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 September 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity of Article 7(4a) of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ 1991 L 256, p. 51), as amended by Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 (OJ 2017 L 137, p. 22).
- 2 The request has been made in proceedings between Défense Active des Amateurs d'Armes ASBL, NG and WL (together, 'DAAA and Others') and the Conseil des ministres (Council of Ministers, Belgium) concerning, inter alia, the validity of a provision of Belgian law which does not provide for the possibility, as a transitional measure, of continuing to possess semi-automatic firearms which have been converted either to fire blanks or into salute or acoustic weapons and which were lawfully acquired and registered before 13 June 2017, but which provides for such a possibility where such semi-automatic firearms have not been converted in this way.

Legal context

European Union law

3 The fifth recital of Directive 91/477 states:

‘Whereas the mutual confidence in the field of the protection of the safety of persons which these rules will generate between Member States will be the greater if they are underpinned by partially harmonised legislation; whereas it would therefore be useful to determine [categories] of firearms whose acquisition and possession by private persons are to be prohibited, or subject to authorisation, or subject to declaration’.

4 Article 1(1) of Directive 91/477, 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), was worded as follows:

‘For the purposes of this Directive, “firearm” shall mean 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 classified in Part II of Annex I.

For the purposes of this Directive, an object shall be considered as capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if:

- it has the appearance of a firearm, and
- as a result of its construction or the material from which it is made, it can be so converted.’

5 Under point A of Part II of Annex I to Directive 91/477, as amended by Directive 2008/51, ‘Category B – Firearms subject to authorisation’ covered inter alia:

‘1. Semi-automatic or repeating short firearms.

...

4. Semi-automatic long firearms whose magazine and chamber can together hold more than three rounds.

5. Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds.

6. Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length.

7. Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms.’

6 Part III of Annex I to Directive 91/477, as amended by Directive 2008/51, provided:

For the purposes of this Annex, objects which correspond to the definition of a “firearm” shall not be included in that definition if they:

(a) have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification that would permit the firearm to be reactivated in any way;

...’

7 Article 1(1) of Directive 91/477, as amended by Directive 2017/853, contained, in points 1 and 3 to 5, the following definitions:

(1) “firearm” means 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 from that definition for one of the reasons listed in Part III of Annex I. Firearms are classified in Part II of Annex I.

An object shall be considered to be capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if:

(a) it has the appearance of a firearm; and

(b) as a result of its construction or the material from which it is made, it can be so converted;

...

(3) “ammunition” means the complete round or the components thereof, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorisation in the Member State concerned;

(4) “alarm and signal weapons” means devices with a cartridge holder which are designed to fire only blanks, irritants, other active substances or pyrotechnic signalling rounds and which are not capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant;

(5) “salute and acoustic weapons” means firearms specifically converted for the sole use of firing blanks, for use such as in theatre performances, photographic sessions, film and television recordings, historical re-enactments, parades, sporting events and training’.

8 Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, provided:

‘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 ...’

9 Under point A of Part II of Annex I to Directive 91/477, as amended by Directive 2017/853, 'Category A – Prohibited firearms' covered:

1. Explosive military missiles and launchers.
2. Automatic firearms.
3. Firearms disguised as other objects.
4. Ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition.
5. Pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them.
6. Automatic firearms which have been converted into semi-automatic firearms, without prejudice to Article 7(4a).
7. Any of the following centre-fire semi-automatic firearms:
 - (a) short firearms which allow the firing of more than 21 rounds without reloading, if:
 - (i) a loading device with a capacity exceeding 20 rounds is part of that firearm; or
 - (ii) a detachable loading device with a capacity exceeding 20 rounds is inserted into it;
 - (b) long firearms which allow the firing of more than 11 rounds without reloading, if:
 - (i) a loading device with a capacity exceeding 10 rounds is part of that firearm; or
 - (ii) a detachable loading device with a capacity exceeding 10 rounds is inserted into it.
8. 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.
9. Any firearm in this category that has been converted to firing blanks, irritants, other active substances or pyrotechnic rounds or into a salute or acoustic weapon.'

10 Recitals 20 and 31 of Directive 2017/853 stated:

'(20) The risk of acoustic weapons and other types of blank-firing weapons being converted into real firearms is high. It is therefore essential to address the problem of such converted firearms being used in the commission of criminal offences, in particular by including them within the scope of [Directive 91/477]. Furthermore, to avoid the risk of alarm and signal weapons being manufactured in such a way that they are capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant, the Commission should adopt technical specifications in order to ensure that they cannot be so converted.

...

(31) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union [{"the Charter"}].'

- 11 Directive 91/477 was repealed and replaced by Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (OJ 2021 L 115, p. 1).

Belgian law

- 12 Articles 151 to 163 of the loi portant des dispositions diverses en matière pénale et en matière de cultes, et modifiant la loi du 28 mai 2002 relative à l'euthanasie et le Code pénal social, du 5 mai 2019 (Law laying down various provisions on criminal and religious matters and amending the Law of 28 May 2002 on euthanasia and the Social Criminal Code, of 5 May 2019 (*Moniteur belge* of 24 May 2019, p. 50023; 'the Law of 5 May 2019') amended several provisions of the Loi réglant des activités économiques et individuelles avec des armes, du 8 juin 2006 (Law regulating economic and individual activities with weapons, of 8 June 2006 (*Moniteur belge* of 9 June 2006, p. 29840; 'the Law of 8 June 2006'), with a view, in particular, to the partial transposition of Directive 2017/853 into the Belgian legal order.

- 13 Thus, Article 153(3) of the Law of 5 May 2019 was adopted in order to transpose into that legal order points 6 and 8 of category A, contained in point A of Part II of Annex I to Directive 91/477, by amending Article 3(1) of the Law of 8 June 2006 as follows:

'The following shall be deemed to be prohibited weapons:

...

19° automatic firearms which have been converted into semi-automatic firearms;

20° semi-automatic long firearms 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.'

- 14 Article 153(5) of the Law of 5 May 2019 amended the abovementioned Article 3 by inserting a paragraph 4, which provides:

'Firearms that have been converted to fire blanks, irritants, other active substances or pyrotechnic rounds, or that have been converted into salute or acoustic weapons, and firearms that have not been converted for that purpose and are used solely for firing the abovementioned rounds or substances shall remain in the category in which they have been placed on the basis of paragraphs 1 and 3.'

- 15 That law also amended the Law of 8 June 2006 by inserting, in Article 2 of that law, paragraph 26(1) defining the concept of 'salute and acoustic weapons' as 'firearms specifically built or converted for the sole use of firing blanks, for use such as in theatre performances, photographic sessions, film and television recordings, historical re-enactments, parades, sporting events and training'.

- 16 By Article 163 of the Law of 5 May 2019, the Belgian legislature made use of the possibility available under Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, by inserting into the Law of 8 June 2006 Article 45(2), which provides:

'Persons who have lawfully acquired and registered, before 13 June 2017, a weapon referred to in Article 3(1)(19) and (20), either with authorisation or by registration on the basis of a hunting licence,

a private security guard certificate or a target shooter's licence, or by registration in the register of an authorised person, may continue to possess that weapon, provided that the other legal conditions concerning the possession of weapons are fulfilled. That weapon may be sold only to target shooters ... and dealers, collectors or museums authorised for that purpose. The firearm may also be deactivated ... or may be handed over.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 17 By application of 22 November 2019, DAAA and Others brought an action before the Cour constitutionnelle (Constitutional Court, Belgium) for annulment of, inter alia, Article 153(5) of the Law of 5 May 2019. In their view, that provision infringes, inter alia, several provisions of the Belgian Constitution, Article 49 of the Charter and the principle of the protection of legitimate expectations, in so far as it provides, in essence, that firearms which were freely sold in Belgium until 3 June 2019, namely weapons which have been converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into salute or acoustic weapons, and non-converted firearms used solely for firing the abovementioned rounds or substances, shall, from that date, be subject to authorisation or prohibited, without providing for any transitional provision for persons who have lawfully acquired and registered such firearms before that date. From the same date, those persons would thus be at risk of criminal prosecution on the ground that they possess such firearms, even though they did not have the opportunity to prepare themselves with a view to complying with Article 153(5).
- 18 In addition, according to DAAA and Others, Article 153(5) establishes a difference in treatment between the holders of such converted firearms and holders of other firearms which also become prohibited weapons following the entry into force of the Law of 5 May 2019, but which fall within the scope of the transitional arrangements provided for in Article 163 of that law. That difference in treatment is not relevant in the light of the objective of promoting legal certainty, nor is it reasonably justified, because the holders of converted firearms do not have the possibility of complying with the new rules and of avoiding possible criminal prosecution.
- 19 In addition, DAAA and Others take the view that that provision equates to de facto expropriation, since the effect of that provision is that the holders of a lawfully acquired firearm are suddenly no longer entitled to possess it. Since such an infringement of the right to property is not accompanied by full and prior compensation, that provision infringes that right.
- 20 The Cour constitutionnelle (Constitutional Court) notes that Article 153(5) of the Law of 5 May 2019, read in conjunction with Article 163 of that law, does not provide for a transitional regime for persons who, before 13 June 2017, lawfully acquired and registered a firearm specifically converted for the sole use of firing blanks. Nor does that law regulate the manner in which persons who, before that date, lawfully acquired such a weapon may comply with its new status under that law, namely as either a prohibited weapon or a weapon subject to authorisation. Where the legislature tightens an existing system, it should ensure that persons who have lawfully acquired such a weapon under the old system have the possibility to comply with the new rules.
- 21 In that regard, the referring court states that, before the entry into force of Article 153(5) of the Law of 5 May 2019, firearms specifically converted for the sole use of firing blanks were sold freely in Belgium, irrespective of the category to which they would have belonged in the absence of such a conversion. After the entry into force of that provision, persons who had acquired and

registered, before 13 June 2017, such a firearm falling, without that conversion, within the category of prohibited weapons, suddenly found themselves in possession of a prohibited weapon, which they could not, in particular, retain or dispose of.

- 22 Similarly, after the entry into force of that provision, persons who did not have the authorisation required for a firearm specifically converted for the sole use of firing blanks and who had, before 13 June 2017, acquired and registered such a firearm, which, without that conversion, fell within the category of weapons subject to authorisation, suddenly possessed a firearm which they were not entitled to hold under Article 11(1) of the Law of 8 June 2006. Given that the latter provision requires such an authorisation to be obtained 'prior' to the acquisition of the weapon in question, the persons concerned are, moreover, unable to regularise their situation.
- 23 The Cour constitutionnelle (Constitutional Court) considers that Article 153(5) of the Law of 5 May 2019, read in conjunction with Article 163 of that law, establishes a difference in treatment between, on the one hand, persons who, before 13 June 2017, had lawfully acquired and registered a semi-automatic weapon within the meaning of Article 3(1)(19) and (20) of the Law of 8 June 2006 and, on the other hand, those who, before that date, had lawfully acquired and registered a firearm specifically converted for the sole use of firing blanks, within the meaning of Article 3(4) of that law. Although both of those categories of persons lawfully acquired and registered their firearm when they were not yet expected to know that its status would be changed, only persons belonging to the first category benefit from transitional arrangements allowing them to continue to possess their semi-automatic firearms, which are currently prohibited, provided that the other legal requirements relating to the possession of weapons are satisfied.
- 24 According to the referring court, that difference in treatment arises from Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, which allows Member States to provide for transitional arrangements for persons who lawfully acquired and registered, before 13 June 2017, a semi-automatic weapon within the meaning of points 6 to 8 of 'Category A – Prohibited firearms', contained in point A of Part II of Annex I to Directive 91/477, as amended by Directive 2017/853 ('categories A.6 to A.8'), whereas no provision of Directive 91/477, as amended by Directive 2017/853, allows transitional arrangements to be laid down for persons who lawfully acquired and registered, before that date, a firearm specifically converted for the sole use of firing blanks.
- 25 Therefore, the question arises as to whether Article 7(4a) is compatible with Article 17(1) and Articles 20 and 21 of the Charter and with the principle of the protection of legitimate expectations, in that it does not authorise Member States to provide for transitional arrangements for the firearms referred to in point 9 of 'Category A – Prohibited firearms', contained in point A of Part II of Annex I to Directive 91/477, as amended by Directive 2017/853 ('category A.9'), which were lawfully acquired and registered before 13 June 2017, whereas it does authorise them to provide for transitional arrangements for firearms referred to in categories A.6 to A.8, which were lawfully acquired and registered before that date.
- 26 In those circumstances, the Cour constitutionnelle (Constitutional Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 7(4a) of Directive [91/477, as amended by Directive 2017/853], read in conjunction with [points 6 to 9 of 'Category A – Prohibited weapons', contained in point A of Part II of Annex 1 to that] directive, infringe [Article] 17(1) [and Articles] 20 and 21 of the [Charter] and the principle of the protection of legitimate expectations in that it does not allow Member States

to provide for transitional arrangements for firearms covered by category A.9 which were lawfully acquired and registered before 13 June 2017, whereas it allows them to provide for transitional arrangements for firearms covered by categories A.6 to A.8 which were lawfully acquired and registered before 13 June 2017?’

Admissibility of the request for a preliminary ruling

- 27 The European Commission maintains, first, that Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, authorises the Member States only to confirm, renew or prolong existing authorisations and, secondly, that it is apparent from the request for a preliminary ruling that, in Belgium, semi-automatic firearms which were converted to fire blanks were not, before the transposition of Directive 2017/853 into the Belgian legal order, subject to authorisation, but were sold freely.
- 28 In those circumstances, even assuming that Article 7(4a) also covers firearms classified in category A.9, the Kingdom of Belgium was not in a position to exercise the power afforded by that provision with regard to those firearms. The answer to the question referred for a preliminary ruling would therefore have no bearing on the situation of the applicants in the main proceedings, as described in the order for reference, which renders that question hypothetical.
- 29 In that regard, in view of the presumption of relevance enjoyed by questions concerning EU law, it must be held that where, as in the present case, it is not obvious that the interpretation or assessment of the validity of a provision of EU law bears no relation to the actual facts of the main action or its purpose, the objection alleging that that provision is inapplicable to the case in the main proceedings does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the question referred for a preliminary ruling (see, to that effect, judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 114 and the case-law cited).
- 30 It follows that the request for a preliminary ruling is admissible.

Consideration of the question referred

- 31 By its question, the referring court asks, in essence, whether Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, read in conjunction with points 6 to 9 of ‘Category A’ – Prohibited firearms’, contained in point A of Part II of Annex I to Directive 91/477, as amended by Directive 2017/853, is valid in the light of Article 17(1) and Articles 20 and 21 of the Charter and the principle of the protection of legitimate expectations.
- 32 As is apparent both from the explanations provided by that court and from the wording of the question, that question is based on the premiss that Article 7(4a) authorises Member States to provide for transitional arrangements for firearms classified in categories A.6 to A.8 which were lawfully acquired and registered before 13 June 2017, but does not authorise them to do so in the case of firearms classified in category A.9.
- 33 In those circumstances, it is necessary to ascertain at the outset whether Article 7(4a) must be interpreted as not authorising Member States to provide for transitional arrangements for firearms in category A.9, which were lawfully acquired and registered before 13 June 2017.

- 34 In order to determine whether that is the case, it is necessary, in accordance with the Court's settled case-law, to interpret that provision by considering not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 1 August 2022, *Sea Watch*, C-14/21 and C-15/21, EU:C:2022:604, paragraph 115 and the case-law cited).
- 35 In addition, in accordance with a general principle of interpretation, an EU act must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with EU primary law as a whole and, in particular, with the provisions of the Charter. Thus, where a provision of secondary EU legislation is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with EU primary law rather than to the interpretation which leads to its being incompatible with EU primary law (judgment of 21 June 2022, *Ligue des droits humains*, C-817/19, EU:C:2022:491, paragraph 86 and the case-law cited).
- 36 In the first place, as regards the wording of Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, it should be recalled that that provision allows Member States, inter alia, to '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 [that] Directive'.
- 37 It follows from that wording that the power afforded to Member States by that provision, namely to confirm, renew or prolong authorisations, applies only to semi-automatic firearms in categories A.6 to A.8 which were, before the entry into force of Directive 2017/853, classified in 'Category B – Firearms subject to authorisation', contained in point A of Part II of Annex I to Directive 91/477, as amended by Directive 2008/51 ('category B'), and which had been lawfully acquired and registered before 13 June 2017. Furthermore, it is apparent from that wording that that power is afforded only subject to compliance with the other conditions laid down in Directive 91/477, as amended by Directive 2017/853.
- 38 In the present case, first of all, it is apparent from the order for reference that the aspect of the dispute in the main proceedings to which the question referred relates concerns semi-automatic firearms which fall within category A.9 and were lawfully acquired and registered before 13 June 2017.
- 39 Next, it must be observed that the views of the parties to the proceedings before the Court differ as to whether semi-automatic firearms which have been converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into salute or acoustic weapons were, before the entry into force of Directive 2017/853, classified in category B. In particular, referring to divergent interpretations of Directive 91/477 by the Member States, the Council of the European Union submits that, prior to the addition of category A.9 by Directive 2017/853, it was not clear whether or not those firearms fell within the scope of category B.
- 40 By contrast, and finally, all the participants in the hearing of 8 May 2023 maintained that firearms falling within category A.9 which satisfy both the criteria of that category and those of one of categories A.6 to A.8 may also fall within the latter categories.

- 41 In those circumstances, for the purposes of taking into account, in the second place, the context of Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, it is necessary to ascertain whether the firearms concerned (i) were, before the entry into force of Directive 2017/853, classified in category B and (ii) may fall both within category A.9 and within one of categories A.6 to A.8.
- 42 First, as regards the question whether the firearms concerned were, before the entry into force of Directive 2017/853, classified in category B, it should be noted that, as the Advocate General observed, in essence, in points 52 to 55 of his Opinion of 24 November 2022, semi-automatic firearms which fall within category A.9, that is to say, weapons converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into salute or acoustic weapons, despite their conversion, satisfy the criteria defining the concept of ‘firearm’ laid down both in Article 1(1)(1) of Directive 91/477, as amended by Directive 2017/853, and in Article 1(1), in the version prior to the entry into force of Directive 2017/853.
- 43 It is apparent from the wording of each of those provisions that, subject to certain exceptions, a firearm constitutes, *inter alia*, not only any portable barrelled weapon that is designed to expel a shot, bullet or projectile by the action of a combustible propellant, but also any portable barrelled weapon which may be converted for that purpose, it being understood that an object is considered to be capable of being converted in that way if it has the appearance of a firearm and, as a result of its construction or the material from which it is made, it can be so converted.
- 44 In that regard, recital 20 of Directive 2017/853 states that the risk of acoustic weapons and other types of blank-firing weapons being converted into real firearms is high. In addition, as regards semi-automatic firearms falling within, *inter alia*, one of categories A.6 to A.8, in so far as they were designed to expel a shot, bullet or projectile by the action of a combustible propellant, and then converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into a salute or acoustic weapon, thereby falling within category A.9, it is common ground that they can return to their previous level of danger by being reconverted to expel a shot, bullet or projectile by the action of a combustible propellant.
- 45 Such an assessment is supported by Part III of Annex I to Directive 91/477, as amended by Directive 2008/51, since the EU legislature expressly excluded from the definition of a firearm, *inter alia*, objects that have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification that would permit the firearm to be reactivated in any way. Part III of Annex I, on the other hand, did not provide for any such exclusion in respect of weapons converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into salute or acoustic weapons.
- 46 It is true that recital 20 of Directive 2017/853 also states that it is essential to address the problem posed by such converted firearms by including them within the scope of Directive 91/477. It cannot, however, be inferred from this that those converted firearms fall within the scope of that directive only since the entry into force of Directive 2017/853. Given that those weapons satisfy the definition of a firearm set out in Article 1(1) of Directive 91/477, as amended by Directive 2008/51, the clarification in that recital of Directive 2017/853 must be understood as meaning that, in the light of the divergent interpretations referred to in paragraph 39 of the present judgment, it seeks to confirm that converted firearms fall within the scope of Directive 91/477, as amended by Directive 2017/853.

- 47 It follows from the foregoing considerations that the firearms concerned must be regarded as having been, before the entry into force of Directive 2017/853, classified in category B, which referred, in points 1 and 4 to 7, to semi-automatic firearms.
- 48 Secondly, as regards the question whether semi-automatic firearms which have been converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into salute or acoustic weapons may fall within both category A.9 and one of categories A.6 to A.8, it should be noted that, as stated in category A.9, that category includes 'any firearm in this category' that has been converted to firing blanks, irritants, other active substances or pyrotechnic rounds or into a salute or acoustic weapon.
- 49 Accordingly, it follows from the wording of category A.9 that, in order for a firearm to fall within that category, such a firearm must, first, satisfy the criteria set out in point 2, 3, 6, 7 or 8 of 'Category A – Prohibited firearms', contained in point A of Part II of Annex I to Directive 91/477, as amended by Directive 2017/853 ('category A.2, A.3, A.6, A.7 or A.8'), and, secondly, have been converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into a salute or acoustic weapon.
- 50 That wording thus seems to indicate that the fact that such a conversion took place on a weapon, involving its inclusion in category A.9, does not have the effect of removing it from its classification in category A.2, A.3, A.6, A.7 or A.8. First, weapons in category A.9 satisfy, as indicated in paragraph 42 of the present judgment, the criteria defining the concept of a 'firearm' contained in Article 1(1)(1) of Directive 91/477, as amended by Directive 2017/853, and, secondly, those categories A.2, A.3, A.6, A.7 and A.8 make no distinction between whether the firearms they cover have been converted or not.
- 51 In the third place, as regards the objectives pursued by Directives 91/477 and 2017/853, first, it is apparent from recital 20 of the latter directive and from the information concerning the legislative procedure that led to the adoption of Directive 2017/853, which was available to the Court, that the addition, in the course of that legislative procedure, of category A.9 was intended to clarify, in the light of a disparate situation in the Member States, that firearms converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into salute or acoustic weapons fell within the scope of Directive 91/477.
- 52 By contrast, as submitted, in particular, by the Commission, none of that information indicates that the EU legislature intended, by that addition, to exclude firearms which have undergone such a conversion from category A.2, A.3, A.6, A.7 or A.8 or from the scope of Article 7(4a) of Directive 91/477, as amended by Directive 2017/853. In particular, it does not follow from any of the recitals of Directive 2017/853 that weapons falling within category A.9 are excluded from those categories or from that scope.
- 53 Secondly, since the EU legislature noted, in recital 31 of Directive 2017/853, that that directive respects the fundamental rights and observes the principles recognised, in particular, by the Charter, it must be held that Article 7(4a) seeks to ensure respect for acquired rights and, in particular, that of the right to property guaranteed in Article 17(1) of the Charter, in that it allows, in essence, Member States to retain authorisations already granted for firearms in categories A.6 to A.8, which, before the entry into force of that directive, were classified in Category B and had been lawfully acquired and registered before 13 June 2017, with the result

that Directive 91/477, as amended by Directive 2017/853, does not require expropriation of the holders of such weapons (see, to that effect, judgment of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 135).

- 54 In the light of that objective to ensure observance of the rights to personal possessions which have been acquired, Article 7(4a), while it provides for an exception to the principle of prohibition of possession of firearms classified in categories A.6 to A.8, cannot be interpreted as excluding from its scope such weapons where they also satisfy the additional criteria set out in category A.9. As the present request for a preliminary ruling demonstrates, such an interpretation would raise queries as to whether Article 7(4a) complies with Article 17 of the Charter, whereas the former Article seeks specifically to ensure observance of the right to property.
- 55 Thirdly, by adopting Directive 2017/853, the EU legislature continued to pursue, in the context of risk developments in the area of security, the stated objective of the fifth recital of Directive 91/477 of reinforcing mutual confidence between Member States in the field of the protection of the safety of persons by determining, to that end, categories of firearms whose acquisition and possession by private persons are prohibited or subject to authorisation or declaration, respectively, an objective which in turn aims to ensure the proper functioning of the internal market (judgment of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 54).
- 56 Furthermore, Directive 91/477 pursues the objective of ensuring public safety and security for Union citizens (see, to that effect, judgment of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C:2019:1035, paragraphs 49 and 126).
- 57 None of those objectives precludes the holders of firearms falling within both categories A.6 to A.8 and category A.9 from benefiting from the transitional regime provided for in Article 7(4a) of Directive 91/477, as amended by Directive 2017/853.
- 58 First, such an interpretation is capable of achieving the objective of facilitating the functioning of the internal market.
- 59 Secondly, as regards the objective of ensuring the public safety and security of Union citizens, first of all, as the Advocate General observed in point 72 of his Opinion of 24 November 2022, firearms satisfying the criteria in category A.9 appear to present a less immediate danger than those falling exclusively within categories A.6 to A.8, in that those categories are immediately capable of firing bullets or projectiles, whereas the former only detonate and expel gases, so that the former pose a current risk while the others pose only a potential risk in the event of further conversion.
- 60 Next, it is apparent from the wording of Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, that the power provided for in that provision applies only to firearms which were lawfully acquired and registered before 13 June 2017. That means, inter alia, that the requirements, in particular those relating to safety, laid down in that regard by Directive 91/477, in the version applicable before the entry into force of Directive 2017/853, have been complied with.
- 61 Lastly, that wording entails, at the time when a Member State intends, pursuant to that provision, to confirm, renew or prolong an authorisation for a semi-automatic firearm classified in categories A.6 to A.8, that the other conditions, in particular those relating to safety, laid down in Directive 91/477, as amended by Directive 2017/853, are satisfied.

- 62 Accordingly, as the European Parliament, the Council and the Commission maintained at the hearing on 8 May 2023, it does not appear that the objective of ensuring the public safety and security of Union citizens can be compromised by the fact that holders of firearms classified in both one of categories A.6 to A.8 and category A.9 may benefit from maintaining, under Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, authorisations already granted for weapons falling within categories A.6 to A.8.
- 63 In the fourth place, such an interpretation of Article 7(4a), which is consistent, as is apparent from the foregoing considerations, with the wording of that provision and its context and with the scheme and objectives of the legislation of which it forms part, likewise does not deprive that provision or the addition, by Directive 2017/853, of category A.9 of all effectiveness.
- 64 First, as has been noted, in particular, in paragraphs 53 and 54 of the present judgment, that interpretation ensures, on the contrary, the effectiveness of Article 7(4a), in that it seeks to ensure respect for acquired rights, in particular, for the right to property guaranteed in Article 17(1) of the Charter.
- 65 Secondly, that interpretation in no way affects the objective of clarification, referred to in paragraph 51 of the present judgment, which the EU legislature sought to achieve by way of the addition of category A.9. Furthermore, as is apparent from the very wording of that category, it covers not only firearms in categories A.6 to A.8 that have been converted to fire blanks, irritants, other active substances or pyrotechnic rounds or into salute or acoustic weapons, but also those in categories A.2 and A.3 that have undergone such conversions, which were not covered by the power afforded to the Member States by Article 7(4a) of Directive 91/477, as amended by Directive 2017/853.
- 66 Consequently, in the light of all the foregoing considerations, Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, must be interpreted as authorising Member States to exercise the power which it provides for all semi-automatic firearms in categories A.6 to A.8, including those falling at the same time within those categories and category A.9.
- 67 It follows that the premiss on which the question is based, as set out in paragraph 32 of the present judgment, is incorrect.
- 68 In those circumstances, it must be held that the consideration of the question referred for a preliminary ruling has not revealed any factor capable of affecting the validity of Article 7(4a) of Directive 91/477, as amended by Directive 2017/853, in the light of Article 17(1) and Articles 20 and 21 of the Charter and of the principle of the protection of legitimate expectations.

Costs

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

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

The consideration of the question referred for a preliminary ruling has not revealed any factor capable of affecting the validity of Article 7(4a) of Council Directive 91/477/EEC of

18 June 1991 on control of the acquisition and possession of weapons, as amended by Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017, in the light of Article 17(1) and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union and of the principle of the protection of legitimate expectations.

[Signatures]