



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

3 December 2019\*

(Action for annulment — Approximation of laws — Directive (EU) 2017/853 — Control of the acquisition and possession of weapons — Validity — Legal basis — Article 114 TFEU — Amendment of an existing directive — Principle of proportionality — Absence of impact assessment — Interference with the right to property — Proportionality of the measures adopted — Measures creating barriers in the internal market — Principle of legal certainty — Principle of the protection of legitimate expectations — Measures obliging Member States to adopt legislation with retroactive effect — Principle of non-discrimination — Derogation for the Swiss Confederation — Discrimination affecting Member States of the European Union or Member States of the European Free Trade Association (EFTA) other than that State)

In Case C-482/17,

ACTION for annulment under Article 263 TFEU, brought on 9 August 2017,

**Czech Republic**, represented by M. Smolek, O. Serdula and J. Vlácil, acting as Agents,

applicant,

supported by:

**Hungary**, represented by M.Z. Fehér, G. Koós and G. Tornyai, acting as Agents,

**Republic of Poland**, represented by B. Majczyna, M. Wiącek and D. Lutostańska, acting as Agents,

interveners,

v

**European Parliament**, represented by O. Hrstková Šolcová and R. van de Westelaken, acting as Agents,

**Council of the European Union**, represented initially by A. Westerhof Löfflerová, E. Moro and M. Chavrier, subsequently by A. Westerhof Löfflerová and M. Chavrier, acting as Agents,

defendants,

supported by:

**French Republic**, represented by A. Daly, E. de Moustier, R. Coesme and D. Colas, acting as Agents,

\* Language of the case: Czech.

**European Commission**, represented by M. Šimerdová, Y.G. Marinova and E. Kružiková, acting as Agents,

interveners,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev (Rapporteur), A. Prechal, M. Vilaras, M. Safjan and I. Jarukaitis, Presidents of Chambers, T. von Danwitz, C. Toader, D. Šváby and F. Biltgen, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 5 March 2019,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2019,

gives the following

### **Judgment**

- 1 By its application, the Czech Republic seeks, principally, 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 on control of the acquisition and possession of weapons (OJ 2017 L 137, p. 22; ‘the contested directive’) or, in the alternative, the partial annulment of Article 1(6), (7) and (19) of that directive.

### **Legal context**

#### ***Directive 91/477/EEC***

- 2 According to the first to fifth recitals 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):

‘Whereas Article 8a of the Treaty provides that the internal market must be established not later than 31 December 1992; whereas the internal market is to comprise 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;

Whereas, at its meeting in Fontainebleau on 25 and 26 June 1984, the European Council expressly set the objective of abolishing all police and customs formalities at intra-Community frontiers;

Whereas the total abolition of controls and formalities at intra-Community frontiers entails the fulfilment of certain fundamental conditions; whereas in its white paper “Completing the internal market” the Commission stated that the abolition of controls on the safety of objects transported and on persons entails, among other things, the approximation of weapons legislation;

Whereas abolition of controls on the possession of weapons at intra-Community frontiers necessitates the adoption of effective rules enabling controls to be carried out within Member States on the acquisition and possession of firearms and on their transfer to another Member State; whereas systematic controls must therefore be abolished at intra-Community frontiers;

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; 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.’

- 3 Part II of Annex I to Directive 91/477 provides for firearm categories A, B, C and D. Article 6 of that directive prohibits, in principle, the acquisition and possession of category A weapons, Article 7 thereof requires an authorisation for category B weapons and Article 8 thereof lays down the obligation to declare category C weapons. Article 5 of that directive defines the conditions to be met by persons wishing to acquire or possess a firearm and, under Chapter 3 of Directive 91/477, Articles 11 to 14 thereof determine the formalities required for the movement of firearms between Member States.

### ***Directive 2008/51/EC***

- 4 Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Directive 91/477 (OJ 2008 L 179, p. 5) amended the latter, in particular with a view to incorporating into EU law the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, annexed to the United Nations Convention against transnational organised crime, which was signed, on behalf of the European Community, on 16 January 2002, by the Commission, in accordance with Council Decision 2001/748/EC of 16 October 2001 (OJ 2001 L 280, p. 5).
- 5 The amendments made include the establishment of detailed requirements concerning the marking and registration of firearms in Article 4 of Directive 91/477, as amended by Directive 2008/51, and harmonisation of the rules applicable to the deactivation of firearms in the second paragraph of Part III of Annex I to that directive, as amended. Directive 2008/51 also inserted, in Article 17 of Directive 91/477, the obligation for the Commission to submit a report to the European Parliament and to the Council of the European Union, by 28 July 2015 at the latest, on the situation resulting from the application of that directive, accompanied, if appropriate, by proposals.
- 6 On that basis, the Commission adopted a communication addressed to the Council and the European Parliament on 21 October 2013, entitled ‘Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking’ (COM(2013) 716 final), which described certain problems posed by firearms in the European Union and announced the establishment of a series of studies and consultations with stakeholders, which were to be followed, if necessary, by the presentation of a legislative proposal.
- 7 By the publication of the report from the Commission to the European Parliament and the Council of 18 November 2015, entitled ‘Evaluation of Directive [91/477], as amended by Directive [2008/51]’ (COM(2015) 751 final) (‘the REFIT evaluation’), the Commission completed its examination of the implementation of Directive 91/477 and paired it with a proposal for a directive of the European Parliament and of the Council of 18 November 2015 amending Directive 91/477 (COM(2015) 750 final), which included an explanatory memorandum and became the contested directive.

*The contested directive*

8 According to recitals 1, 2, 6, 9, 15, 20, 21, 23, 27, 33 and 36 of the contested directive:

‘(1) [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.

(2) Certain aspects of [Directive 91/477] 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. In this context, the Commission called in its communication of 28 April 2015 on the European Agenda on Security, for the revision of that Directive and for a common approach on the deactivation of firearms to prevent their reactivation and use by criminals.

...

(6) 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.

...

(9) In view of the dangerous nature and durability of firearms and essential components, in order to ensure that competent authorities are able to trace firearms and essential components for the purpose of administrative and criminal proceedings and taking into account national procedural law, it is necessary that records in the data-filing systems be retained for a period of 30 years after the destruction of the firearms or essential components concerned. Access to those records and all related personal data should be restricted to competent authorities and should be permitted only up until 10 years after the destruction of the firearm or essential components concerned for the purpose of granting or withdrawing authorisations or for customs proceedings, including the possible imposition of administrative penalties, and up until 30 years after the destruction of the firearm or essential components concerned where that access is necessary for the enforcement of criminal law.

...

(15) 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. Where those rules are not respected, Member States should take all appropriate measures, which might include the impounding of those firearms.

...

(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.

(21) 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]. ...

...

(23) 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, semi-automatic firearms with a fixed loading device allowing a high number of rounds to be fired, as well as semi-automatic firearms in combination with a detachable loading device having a high capacity, should be prohibited for civilian use. The mere possibility of fitting a loading device with a capacity exceeding 10 rounds for long firearms and 20 rounds for short firearms does not determine the classification of the firearm in a specific category.

...

(27) Where Member States have national laws regulating antique weapons, such weapons are not subject to [Directive 91/477]. However, reproductions of antique weapons do not have the same historical importance or interest attached to them and may be constructed using modern techniques which can improve their durability and accuracy. Therefore, such reproductions should be brought within the scope of Directive [91/477]. [Directive 91/477] is not applicable to other items, such as airsoft devices, which do not correspond to the definition of a firearm and are therefore not regulated by that Directive.

...

(33) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

...

(36) As regards Switzerland, this Directive and [Directive 91/477] constitute a development of the provisions of the Schengen *acquis* within the meaning of 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* [OJ 2008 L 53, p. 52] which fall within Article 1 of [Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ 1999 L 176, p. 31)], read in conjunction with Article 3 of [Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of 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* (OJ 2008 L 53, p. 1)].'

9 According to Article 1(6) of the contested directive:

‘Articles 5 and 6 are replaced by the following:

*“Article 5*

...

3. 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).

...

*Article 6*

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.

3. Member States may choose to grant to collectors, in individual special cases, exceptionally and in a duly reasoned manner, authorisations to acquire and possess firearms, essential components and ammunition classified in category A, subject to strict conditions on security, including the demonstration to the national competent authorities that measures are in place to address any risks to public security or public order and that the firearms, essential components or ammunition concerned are stored with a level of security proportionate to the risks associated with unauthorised access to such items.

Member States shall ensure that collectors authorised under the first subparagraph of this paragraph are identifiable within the data-filing systems referred to in Article 4. Such authorised collectors shall be obliged to maintain a register of all firearms in their possession classified in category A, which shall be accessible to the national competent authorities. Member States shall establish an appropriate monitoring system with respect to such authorised collectors, taking all relevant factors into account.

4. Member States may authorise dealers or brokers, in their respective professional capacities, to acquire, manufacture, deactivate, repair, supply, transfer and possess firearms, essential components and ammunition classified in category A, subject to strict conditions regarding security.



5. Member States may authorise museums to acquire and possess firearms, essential components and ammunition classified in category A, subject to strict conditions regarding security.

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:

- (a) a satisfactory assessment of relevant information arising from the application of Article 5(2);
- (b) provision of proof that the target shooter concerned is actively practising for or participating in shooting competitions recognised by an officially recognised shooting sports organisation of the Member State concerned or by an internationally established and officially recognised shooting sport federation; and
- (c) provision of a certificate from an officially recognised shooting sports organisation confirming that:
  - (i) the target shooter is a member of a shooting club and has been regularly practising target shooting in it for at least 12 months; and
  - (ii) the firearm in question fulfils the specifications required for a shooting discipline recognised by an internationally established and officially recognised shooting sport federation.

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.

7. Authorisations granted under this Article shall be reviewed periodically at intervals not exceeding 5 years.”

10 Article 1(7) of the directive provides:

‘Article 7 is amended as follows:

...

(b) the following paragraph is inserted:

“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 [the contested directive].”

11 Article 1(13) of the contested directive provides:

‘Article 12(2) is amended as follows:

...

(b) the third paragraph is replaced by the following:

“However, this derogation shall not apply to journeys to a Member State that, pursuant to Article 8(3), either prohibits the acquisition and possession of the firearm in question or makes it subject to authorisation. In that case, an express statement to that effect shall be entered on the European firearms pass. Member States may also refuse the application of this derogation in the case of firearms classified in category A for which an authorisation has been granted under Article 6(6) or for which the authorisation has been confirmed, renewed or prolonged under Article 7(4a).”

12 Article 1(19) of the contested directive amends Part II of Annex I to Directive 91/477 as follows:

‘...

(ii) in category A, the following points are added:

- “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.”

...

(iv) category C is replaced by the following:

“Category C — Firearms and weapons subject to declaration

...

3. Semi-automatic long firearms other than those listed in category A or B.

...

5. 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.
6. Firearms classified in category A or B or this category that have been deactivated in accordance with Implementing Regulation (EU) 2015/2403.

...”

(v) category D is deleted;

...’



### *The interinstitutional agreement*

- 13 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 (OJ 2016 L 123, p. 1; ‘the interinstitutional agreement’) refers, in points 12 to 18 thereof, to impact assessments and states, in points 12 to 15 thereof:

‘12. The three Institutions agree on the positive contribution of impact assessments in improving the quality of Union legislation.

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-legislators’ capacity to propose amendments.

Impact assessments should cover the existence, scale and consequences of a problem and the question whether or not Union action is needed. They should map out alternative solutions and, where possible, potential short- and long-term costs and benefits, assessing the economic, environmental and social impacts in an integrated and balanced way and using both qualitative and quantitative analyses. The principles of subsidiarity and proportionality should be fully respected, as should fundamental rights. Impact assessments should also address, whenever possible, the “cost of non-Europe” and the impact on competitiveness and the administrative burdens of the different options, having particular regard to [small and medium-sized enterprises (SMEs)] (“Think Small First”), digital aspects and territorial impact. Impact assessments should be based on accurate, objective and complete information and should be proportionate as regards their scope and focus.

13. The Commission will carry out impact assessments of its legislative initiatives ... 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.

In its own impact assessment process, the Commission will consult as widely as possible. The Commission’s Regulatory Scrutiny Board will carry out an objective quality check of its impact assessments. The final results of the impact assessments will be made available to the [Parliament], the Council and national parliaments, and will be made public along with the opinion(s) of the Regulatory Scrutiny Board at the time of adoption of the Commission initiative.

14. The [Parliament] and the Council, upon considering Commission legislative proposals, 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 [Parliament] and the Council of the choices made by the Commission.
15. The [Parliament] and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission’s proposal. The [Parliament] and the Council will, as a general rule, take the Commission’s impact assessment as the starting point for their further work. The definition of a “substantial” amendment should be for the respective Institution to determine.’

### Forms of order sought and procedure before the Court

- 14 The Czech Republic claims that the Court should:
- primarily, annul the contested directive and order the Parliament and the Council to pay the costs or,
  - in the alternative,
    - annul Article 1(6) of the contested directive 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 the contested directive in so far as it inserts Article 7(4a) into Directive 91/477;
    - annul Article 1(19) of the contested directive in so far as:
      - into Part II of Annex I to Directive 91/477, it inserts points 6 to 8 of category A;
      - in that Part II of Annex I, it amends category B;
      - into that Part II of Annex I, it inserts point 6 of category C;
      - it amends Part III of the same Annex I, and
    - order the Parliament and the Council to pay the costs.
- 15 The Parliament and, as its primary claim, the Council request the Court to dismiss the action and order the Czech Republic to pay the costs. In the alternative, should the Court annul the contested directive, the Council requests the Court to order that the directive's effects be maintained for a sufficient period of time to allow the adoption of the necessary measures.
- 16 By decision of the President of the Court of 5 January 2018, Hungary and the Republic of Poland were granted leave to intervene in support of the form of order sought by the Czech Republic.
- 17 By decision of the President of the Court of the same day, the French Republic and the Commission were granted leave to intervene in support of the form of order sought by the Parliament and the Council.
- 18 In tandem with the bringing of the present action, the Czech Republic lodged an application for interim measures by which it requested the Court to order a stay of execution of the contested directive.
- 19 By order of 27 February 2018, *Czech Republic v Parliament and Council* (C-482/17 R, not published, EU:C:2018:119), the Vice-President of the Court dismissed that application for interim measures, the Czech Republic having failed to demonstrate fulfilment of the condition of urgency, and reserved the costs relating to that procedure.

## The action

- 20 In support of its claims, the Czech Republic raises four pleas in law alleging breach, for the first, of the principle of conferral of powers, for the second, of the principle of proportionality, for the third, of the principles of legal certainty and of protection of legitimate expectations and, for the fourth, of the principle of non-discrimination.

### *First plea, alleging breach of the principle of conferral of powers*

#### *Arguments of the parties*

- 21 By its first plea, the Czech Republic submits that, if Directive 91/477 pursued the aim of harmonising the disparate national rules on the acquisition and possession of firearms in order to eliminate obstacles to the internal market, that is not the case with the contested directive. It appears from the content of and the reasons for that directive that the objectives it pursues consist exclusively in ensuring a higher level of public security in relation to the terrorist threat and other forms of crime. In particular, it is apparent from the explanatory memorandum of the contested directive that the directive is justified neither by existing obstacles nor by the risk of obstacles to the functioning of the internal market, but is justified solely by the fight against the misuse of firearms for criminal or terrorist purposes.
- 22 In those circumstances, the Czech Republic is of the view that Article 114 TFEU cannot constitute an appropriate legal basis for the adoption of the contested directive. It follows from the case-law of the Court that the approximation of the laws of the Member States relating to the free movement of goods must be the main objective of the EU legislation adopted on the basis of that article, any other objectives needing only to be ancillary. Prohibiting the possession of certain semi-automatic firearms and their magazines, which is the main novelty of the contested directive, has no link, however, with the isolated shortcomings in the functioning of the internal market identified by the Commission.
- 23 Moreover, there is currently no legal basis in the Treaties for the adoption of such a prohibition. Indeed, in the field of prevention of crime and terrorism, harmonisation is specifically excluded by Article 84 TFEU. That echoes Article 4(2) TEU, pursuant to which Member States are solely responsible for national security in their territory and must have the possibility of maintaining law and order in that territory. In adopting the contested directive, therefore, the EU legislature exceeded its powers and infringed Article 5(2) TEU.
- 24 The Czech Republic emphasises that it does not question the right of the EU legislature to amend directives currently in force. Amendments to them should nevertheless be adopted on a legal basis consistent with their objectives and within the limits of the European Union's powers, excluding measures that could not have been contained in the original text, which do not have their own legal basis and which go beyond the Union's powers.
- 25 Hungary supports the Czech Republic's argument and adds that, if it is appropriate, in order to determine the legal basis for amending legislation, to examine as a whole the act in which the legislation in question is incorporated, it does not follow that the legal basis of the amending act must be established having regard only to the purposes and content of the amended act. That would allow the EU legislature to derogate from the procedural rules laid down by the Treaties, such as qualified majority or unanimous voting, and, as in the case at hand, circumvent the principle of conferral of powers.

- 26 In the present case, even if it were accepted that, in view of the original objectives of Directive 91/477, the purpose of the contested directive is not entirely irrelevant to the objectives pursued by Article 114 TFEU, those objectives would be, as regards the contested directive, at most ancillary to the main objective of the amendments contained therein, namely, the prevention of crime. Consequently, Article 114 TFEU cannot serve as the legal basis for that directive.
- 27 The Republic of Poland also supports the Czech Republic's argument and adds that the very essence of the principle of conferral is called into question when an amendment to an EU act is adopted on the legal basis originally used for the adoption of such an act, irrespective of the objective and content of the amendment thus made.
- 28 In addition, the Republic of Poland argues that only ammunition — and not firearms — constitutes dangerous goods under EU law, meaning that no argument can be drawn from the supposedly dangerous nature of firearms to justify measures consisting in prohibiting the marketing of certain firearms or in harmonising their conditions of acquisition, possession and movement within the internal market.
- 29 Moreover, prohibiting the marketing of specific categories of firearms does not facilitate the functioning of the internal market. On the contrary, the contested directive creates new obstacles to that functioning, in so far as it has failed to harmonise the date from which firearms are considered to be antiques and has introduced not only new ambiguous definitions, but also rules including elements capable of leading to a different transposition into the national law of the Member States.
- 30 The Parliament and the Council, supported by the French Republic and the Commission, dispute the arguments of the Czech Republic as well as those put forward in support of it by Hungary and the Republic of Poland.

#### *Findings of the Court*

- 31 It must be recalled, as a preliminary point, that the settled case-law of the Court holds that 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 (judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraph 41 and the case-law cited).
- 32 Moreover, it follows from the case-law of the Court that, to determine the appropriate legal basis, the legal framework within which new rules are situated may be taken into account, in particular in so far as that framework is capable of shedding light on the purpose of those rules (judgment of 3 September 2009, *Parliament v Council*, C-166/07, EU:C:2009:499, paragraph 52).
- 33 Article 114(1) TFEU establishes that the Parliament and the Council are to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
- 34 As regards the conditions for the application of that provision, it is settled case-law that, while a mere finding of disparities between national rules is not sufficient to justify 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 (judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 32 and the case-law cited).

- 35 In addition, although 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 (judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 33 and the case-law cited).
- 36 The Court has also held that, 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 ground that the safeguarding of general interests referred to in paragraph 3 of that article, which include safety, is a decisive factor in the choices to be made (see, to that effect, judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 34 and the case-law cited).
- 37 It follows from the foregoing that 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 that are such as to bring about different levels of protection and thereby to 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 FEU Treaty or identified in the case-law, in particular the principle of proportionality (judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 36 and the case-law cited).
- 38 Furthermore, it follows from settled case-law that, where an act based on Article 114 TFEU has already removed any obstacle to trade in the area that it harmonises, the EU legislature cannot be denied the possibility of adapting that act to any change in circumstances or development of knowledge having regard to its task of safeguarding the general interests recognised by the Treaty (judgment of 8 June 2010, *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraph 34 and the case-law cited).
- 39 In such a situation, the EU legislature can properly carry out its task of safeguarding the general interests recognised by the Treaty only if it has the freedom to amend the relevant EU legislation so as to take account of such changes (see, to that effect, judgment of 10 December 2002, *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraph 77).
- 40 It is apparent from the case-law of the Court, however, 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 security (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).
- 41 In the case at hand, while the Czech Republic, supported by Hungary and the Republic of Poland, claims, in essence, that the legal basis of the contested directive must be identified by examining that directive in isolation, the Parliament and the Council, supported on this point by the French Republic, argue that that examination must be carried out by taking into account, in particular, Directive 91/477, which the contested directive seeks to amend.
- 42 In that respect, it should be noted, first, that it follows *inter alia* from the case-law referred to in paragraphs 32, 38 and 39 of the present judgment that, in the case of an act amending existing rules, it is important to take into account also, for the purposes of identifying its legal basis, the existing rules which it amends and, in particular, their objective and content.
- 43 Since the contested directive is a directive that amends Directive 91/477, in particular by inserting new provisions, the latter forms the legal framework of the contested directive. That is demonstrated, in particular, by recitals 1 and 2 of the contested directive, which refer to the balance created by Directive



91/477 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, as well as the need to adjust that balance, in order to address the misuse of such firearms for criminal purposes and considering ‘recent terrorist acts’.

- 44 Second, the approach advocated by the Czech Republic, supported by Hungary and the Republic of Poland, could lead to a paradoxical result, namely that, whereas the amending act could not be adopted on the basis of Article 114 TFEU, it would nevertheless be possible for the EU legislature to achieve the same normative result by repealing the initial act and fully recasting it into a new act, adopted on the basis of that provision.
- 45 It follows that, contrary to what those Member States claim and as the Parliament and the Council rightly argue, it is necessary to identify, in this case, the legal basis on which the contested directive had to be adopted by taking into account, in particular, both the context constituted by Directive 91/477 and the rules stemming from the amendments made to it by the contested directive.
- 46 In the first place, as far as Directive 91/477 is concerned, it is apparent from its second to fourth recitals that it was adopted in order to establish the internal market and that, in that context, the abolition of controls on the safety of objects transported and of those on persons entailed, among other things, the approximation of legislation by means of effective rules on firearms designed to establish controls, within Member States, on their acquisition, possession and transfer. According to the fifth recital of that directive, such rules generate greater mutual confidence between Member States in the field of the protection of the safety of persons (judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraph 43).
- 47 As regards the content of Directive 91/477, it establishes a harmonised minimum framework for the possession and acquisition of firearms and their transfer between Member States. To that end, that directive lays down provisions concerning the conditions subject to which various categories of firearms may be acquired and held, while laying down, on the basis of requirements of public safety, that the acquisition of certain types of firearm must be prohibited. In addition, that directive contains rules intended to harmonise the Member States’ administrative measures relating to the movement of firearms for civilian use, the basic principle being that the movement of weapons is prohibited, unless the procedures laid down by the same directive for that purpose are followed (see, to that effect, judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraphs 49 to 51).
- 48 Thus, the Court has found that Directive 91/477 is a measure intended to ensure, as regards the free movement of goods, namely of firearms for civilian use, approximation of the laws, regulations and administrative provisions of the Member States, whilst circumscribing that freedom with safety guarantees suited to the nature of those goods (judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraph 52).
- 49 In the second place, as regards the purpose of the contested directive, first of all, it is apparent from recital 2 of that directive that it aims to improve further certain aspects of Directive 91/477 and to adjust the balance between the free movement of the goods in question and security guarantees, in particular considering ‘recent terrorist acts’. While it follows in particular from recitals 9, 15, 20, 21 and 23 of the contested directive — which concern, inter alia, the most dangerous, deactivated and semi-automatic firearms — that security concerns associated with those different types of firearms led the EU legislature to lay down stricter rules for them, the fact remains that it also intended, by adopting that directive, to facilitate the free movement of certain weapons, as is attested by recital 6 of that directive in particular, which concerns the marking of firearms and their essential components.



- 50 Next, regarding the content of the contested directive, it should be noted that Article 1(1) of the directive contains precise definitions, particularly of the persons, objects and activities that are subject to the new rules. Paragraph 3 of that article establishes a new system for marking firearms and their essential components, regulates the activity of dealers and brokers and specifies the data to be filed in the Member States' databases, their storage and their accessibility. Paragraph 6 of that article sets out the conditions under which authorisations to acquire and possess firearms are granted and are to be withdrawn, contains rules on the supervision of firearms in order to minimise the risk of their being accessed by unauthorised persons, prohibits the acquisition and possession of category A firearms and specifies the derogations from that prohibition. Paragraph 7 of the same article imposes regular monitoring of authorisations for possession of firearms and provides for the possibility for Member States to grant another derogation from the prohibition on the possession of category A firearms. Article 1(8) of the contested directive recalls that Member States may prohibit the acquisition or possession of firearms in categories B and C. Paragraph 9 of that article subjects ammunition and certain loading devices to the same rules as those applicable to the acquisition and possession of the firearms for which they are intended. Paragraph 10 of that article regulates alarm, signal and deactivated weapons. Paragraph 12 of that article prohibits, in principle, the transfer of firearms from one Member State to another and paragraph 13 thereof lays down the derogations applicable to such transfer. Article 1(14) of the contested directive concerns the exchange of information between Member States and paragraph 19 of that article amends Annex I to Directive 91/477 by listing the classification of weapons in categories A to C.
- 51 The contested directive, therefore, like Directive 91/477, contains provisions relating to the possession and acquisition of firearms and their transfer between Member States. In particular, those provisions govern the acquisition and possession of firearms by individuals by providing, *inter alia*, that certain of those weapons are prohibited, whereas others are subject to authorisation or declaration. They also harmonise the administrative measures taken by the Member States relating to the movement of firearms for civilian use.
- 52 Last, it is apparent from a number of documents used in the preparation of the contested directive and brought to the attention of the Court that, in adopting that directive, the EU legislature was indeed seeking to ensure, within a changed security framework, the security of EU citizens while facilitating the functioning of the internal market in firearms by providing solutions to identified problems. In particular, the REFIT evaluation highlighted that the proper functioning of the internal market in firearms for civilian use was undermined by normative disparities between the Member States in the classification of firearms in categories C and D and by disparities in the application of the provisions on the European firearms pass.
- 53 In so adjusting the balance between the free movement of goods and security guarantees, however, the EU legislature merely adapted the rules on the possession and acquisition of firearms set out in Directive 91/477 to changes in circumstances.
- 54 First, as the Parliament and the Council rightly submit, in adopting the contested directive, the EU legislature has 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.
- 55 In that respect, it is not disputed that circumstances have evolved significantly since the adoption of Directive 91/477, given, first of all, that the European Union has been enlarged on several occasions, next, that the Schengen area has been established and extended to cover a significant part of the Union and, last, that terrorist threats and cross-border crime have increased.

- 56 It follows from the case-law cited in paragraphs 38 to 40 of this judgment, however, that the EU legislature cannot be denied the possibility of adapting, on the basis of Article 114 TFEU, an act such as Directive 91/477 to any change in circumstances or development of knowledge having regard to its task of safeguarding the general interests recognised by the Treaties, including the maintenance of public security.
- 57 Second, as the Advocate General noted in points 46 and 47 of her Opinion, harmonisation of aspects relating to the safety of goods is one of the essential elements for the proper functioning of the internal market, disparate rules in that area being such as to create obstacles to trade. Given that the specificity of firearms resides, contrary to what the Republic of Poland claims, in the danger that they pose not only to users but also to the public at large, as the Court found in paragraph 54 of the judgment of 23 January 2018, *Buhagiar and Others* (C-267/16, EU:C:2018:26), public safety considerations are, as the fifth recital of Directive 91/477 recalls, essential in the context of rules on the acquisition and possession of those goods.
- 58 Third, it is by no means established, in the light of the elements of the file submitted to the Court, that the EU legislature would have breached the legal basis constituted by Article 114 TFEU and, therefore, would have exceeded the limits of the powers conferred on the Union, if it had, instead of adopting the contested directive, recast Directive 91/477 incorporating, by that alternative legislative means, the amendments made by the contested directive.
- 59 On the contrary, it is apparent from those same elements that the measure resulting from the amendments made to Directive 91/477 by the contested directive includes rules governing the internal market in firearms for civilian use that are adapted to the particular features of those goods and that continue to ensure, in line with what the Court found in paragraph 52 of its judgment of 23 January 2018, *Buhagiar and Others* (C-267/16, EU:C:2018:26), as regards the free movement of goods, approximation of the laws, regulations and administrative provisions of the Member States, whilst circumscribing that freedom with safety guarantees that are suited to the nature of the goods at issue.
- 60 In the third place, to the extent that the Republic of Poland submits that the prohibition on the marketing of certain categories of firearms does not facilitate the functioning of the internal market and that the contested directive gives rise to new obstacles to the free movement of firearms for civilian use, first, it should be recalled that, by using the words ‘measures for the approximation’ in Article 114 TFEU, the authors of the Treaty intended to confer on the EU 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, in particular in fields with complex technical features (judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 37 and the case-law cited).
- 61 Depending on the circumstances, those measures may consist in requiring all the Member States to authorise the marketing of the product or products concerned, subjecting such an obligation of authorisation to certain conditions, or even provisionally or definitively prohibiting the marketing of a product or products (judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 38 and the case-law cited).
- 62 In the present case, however, in the light of the factors set out in paragraphs 54 to 57 of the present judgment, it does not appear that the EU legislature exceeded the margin of discretion conferred on it by the legal basis of Article 114 TFEU as regards the method of approximation, when it adopted, in order to ensure the maintenance of a limited degree of free movement of firearms for civilian use within the internal market, the measures consisting in adding certain semi-automatic firearms to category A — those firearms that are prohibited by Directive 91/477 — and in introducing the other provisions that, in the Republic of Poland’s view, give rise to new obstacles.

- 63 Second, to the extent that that line of argument is aimed at disputing the fact that the measures criticised are appropriate for achieving the objectives of Article 114 TFEU, it should be pointed out that such a line of argument converges with that put forward by the Czech Republic in support of the second part of its second plea, so it is appropriate to assess them together under that part.
- 64 In the light of all of the foregoing considerations, the first plea must be dismissed as unfounded.

***Second plea, alleging breach of the principle of proportionality***

*First part of the second plea, relating to the EU legislature's examination of the proportionality of certain of the provisions of the contested directive*

*– Arguments of the parties*

- 65 By the first part of its second plea, the Czech Republic claims that the EU legislature adopted the contested directive even though it clearly did not have sufficient information on the potential impact of the measures adopted. It therefore could not fulfil its obligation to investigate whether those measures complied with the principle of proportionality.
- 66 First of all, neither the formal finding in recital 33 of the contested directive nor the corresponding passages in the explanatory memorandum contain a sufficiently specific consideration on the proportionality of certain provisions of that directive.
- 67 Next, the Commission is required to carry out an impact assessment of the proposed rules in all cases where a significant impact on the rights and obligations of persons is to be expected. Carrying out an impact assessment of the proposed rules is thus an obligation laid down in the interinstitutional agreement. In particular, the second paragraph of point 12 of that agreement cannot be interpreted as authorising the Commission to abandon the carrying out of an impact assessment as soon as it considers it opportune, but should be understood as requesting the Commission to ensure that an impact assessment does not lead to a delay in the legislative process.
- 68 The contested directive's adoption, however, was not preceded by any impact assessment, even though it has a significant impact in all Member States, particularly on citizens' property rights. In particular, the REFIT evaluation cannot be regarded as a substitute for such an assessment, given that it does not concern the impact of the new measures adopted.
- 69 In addition, the Czech Republic's experience raises doubts as to whether the measures adopted are appropriate for achieving the objective of combating the misuse of firearms, given that, in that Member State and over the last 10 years, only a single offence — which was moreover unintentional — has been committed with a weapon now falling within category A, the marketing and possession of which are in principle prohibited.
- 70 Similarly, regarding the possibility of converting semi-automatic firearms into automatic firearms, the REFIT evaluation itself found that no case of misuse of such converted firearms for criminal purposes has been identified. In addition, the conversions mentioned therein were carried out either using accessories not regulated by the contested directive or by installing the essential components of automatic firearms already prohibited by Directive 91/477 before its amendment by the contested directive.
- 71 Last, while the Czech Republic is able to accept that an assessment of the potential impact of the measures adopted can be carried out other than by means of a formal impact assessment, the EU legislature cannot completely abandon it. Nor did it have, in this case, sufficient information from

other sources to enable it to assess the proportionality of certain of the measures introduced by the contested directive, none of the studies cited to that end by the defendant institutions and by the Commission concerning the impact of those measures.

- 72 Those measures include the prohibition of semi-automatic firearms covered by points 6 to 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, in view of the absence of information on the rate of use in crime of weapons covered by those points and lawfully held as a proportion of the number of non-problematic owners who are subject to that prohibition. The EU legislature also banned certain loading devices for semi-automatic firearms, even though there is no evidence that that measure is appropriate for achieving the objective pursued.
- 73 In addition, it tightened the rules applicable to other types of firearms, including replicas of antique firearms, without having at its disposal data on the risk of those weapons being used in activities related to terrorism and serious crime or having assessed that risk against the impact of such tightening on the rights of non-problematic owners.
- 74 Hungary supports the Czech Republic's argument and adds that, pursuant to the second sentence of the first paragraph of point 13 of the interinstitutional agreement, an impact assessment must in principle accompany the initiatives included in the Commission's Work Programme. Consequently, the Commission acted against that provision by presenting its proposal for a directive without carrying out an impact assessment and by not subsequently remedying it. Moreover, no impact assessment was carried out by the defendant parties in the later stages of the legislative process, either. Consequently, and also taking into account the fact that neither the REFIT evaluation nor the other studies cited contain such assessments, the EU legislature did not have sufficient information to examine the proportionality of the measures contained in the contested directive.
- 75 The Parliament and the Council, supported by the Commission, dispute the argument of the Czech Republic as well as that put forward in support of it by Hungary.

– *Findings of the Court*

- 76 According to settled case-law, the principle of proportionality is one of the general principles of EU law and requires that the means employed by EU law provisions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (judgment of 8 June 2010, *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraph 51 and the case-law cited).
- 77 With regard to judicial review of compliance with those conditions, the Court has accepted that in the exercise of the powers conferred on it the EU legislature must be allowed a broad discretion in areas in which its action involves political, economic and social choices and in which it is called upon to undertake complex assessments and evaluations. 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 objective which the competent institution is seeking to pursue (judgment of 8 June 2010, *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraph 52 and the case-law cited).
- 78 Further, the EU legislature's broad discretion, which implies limited judicial review of its exercise, applies not only to the nature and scope of the measures to be taken but also, to some extent, to the finding of the basic facts (judgment of 21 June 2018, *Poland v Parliament and Council*, C-5/16, EU:C:2018:483, paragraphs 151 and the case-law cited).



- 79 Even where it has broad discretion, the EU legislature must base its choice on objective criteria and examine whether the aims pursued by the measure chosen are such as to justify even substantial negative economic consequences for certain operators. Under Article 5 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the EU Treaty and the FEU Treaty, draft legislative acts must take account of the need for any burden falling upon economic operators to be minimised and commensurate with the objective to be achieved (judgment of 4 May 2016, *Poland v Parliament and Council*, C-358/14, EU:C:2016:323, paragraphs 97 and 98).
- 80 Moreover, the Court has consistently held that the legality of an EU act must be assessed in the light of the information available to the EU legislature at the time of the adoption of the rules in question (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary v Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 221).
- 81 Furthermore, even judicial review of limited scope requires that the EU institutions that have adopted the act in question must be able to show before the Court that in adopting the act they actually exercised their discretion, which presupposes the taking into consideration of all the relevant factors and circumstances of the situation the act was intended to regulate. It follows that the institutions must at the very least be able to produce and set out clearly and unequivocally the basic facts which had to be taken into account as the basis of the contested measures of the act and on which the exercise of their discretion depended (judgment of 21 June 2018, *Poland v Parliament and Council*, C-5/16, EU:C:2018:483, paragraphs 152 and 153 and the case-law cited).
- 82 In the case at hand, it is appropriate, in the first place, to find, as the Advocate General did in points 94 to 97 of her Opinion, that the obligation to carry out an impact assessment in every circumstance does not follow — contrary to what the Czech Republic, supported by Hungary, claims — from the wording of points 12 to 15 of the interinstitutional agreement.
- 83 Those points show, first, that the Parliament, the Council and the Commission recognise the contribution of impact assessments in improving the quality of EU legislation and that those assessments are a tool to help the three institutions concerned reach well-informed decisions. Second, those points stipulate that impact assessments must not lead to undue delays in the law-making process or prejudice the co-legislators' capacity to propose amendments, for which it is moreover provided that additional impact assessments may be carried out when the Parliament and the Council consider it to be appropriate and necessary. Third, those same points note that the Commission will carry out impact assessments of its legislative initiatives which are expected to have significant economic, environmental or social implications. Fourth, it is stated that the Parliament and the Council, when examining the Commission's legislative proposals, are to take full account of the Commission's impact assessments.
- 84 It follows that the preparation of impact assessments is a step in the legislative process that, as a rule, must take place if a legislative initiative is liable to have such implications.
- 85 Not carrying out an impact assessment cannot be regarded as a breach of the principle of proportionality where the EU legislature is in a particular situation requiring it to be dispensed with and has sufficient information enabling it to assess the proportionality of an adopted measure.
- 86 In that regard and in the second place, in order to exercise their discretion properly, co-legislators must take into account, during the legislative procedure, the available scientific data and other findings that became available, including scientific documents used by the Member States during Council meetings that the Council itself does not have (see, to that effect, judgment of 21 June 2018, *Poland v Parliament and Council*, C-5/16, EU:C:2018:483, paragraphs 160 to 163).

- 87 As regards the information available when the Commission prepared its legislative initiative leading to the adoption of the contested directive, that institution indicated that it had taken into account, first of all, a comprehensive study on the functioning of the system instituted by Directive 91/477, entitled 'Evaluation of the Firearms Directive' and dated December 2014, and the REFIT evaluation, which highlighted stark differences between the Member States in the application of that directive, particularly in terms of the classification of firearms, suggested defining uniform criteria for alarm or acoustic weapons to prevent them from being converted into functioning firearms, proposed harmonising the rules on the deactivation of firearms, underlined that, in the majority of Member States, it was not possible to trace the original owner of a firearm, proposed adapting the rules on the marking of firearms and improving the functioning of the exchange of information between Member States or introducing provisions governing the activities of brokers, highlighted concerns about the possible conversion of semi-automatic firearms into automatic firearms and made recommendations on areas in which the functioning of the internal market in civilian firearms should be improved.
- 88 Next, that institution relied on nine studies, on improving the rules on the deactivation of firearms and authorisation procedures in the European Union, on alarm weapons and replicas, on possible options for combating the trafficking of firearms within the European Union, on homicides, the latter study having been prepared by the United Nations Office on Drugs and Crime, on the relationship between violent deaths and the accessibility of firearms, on the impact of control of the acquisition and possession of firearms on deaths caused by them, on the rules applicable to the deactivation of firearms, to the conversion of them, to alarm weapons and antique firearms as well as on the firearms used in mass shootings in Europe.
- 89 Those studies highlighted in particular, taking into account the security context, the increased risk that deactivated firearms might be converted into functioning firearms and the problems of identifying the owners of those firearms, indicated that the marking and deactivation of firearms had not been harmonised by Directive 91/477 and, therefore, proposed a revision of that directive with a view to harmonising the rules on marking firearms and strengthening the authorisation rules for the acquisition and possession of firearms, suggested introducing rules applicable to deactivated firearms, indicated the need to establish technical standards for the conversion of alarm and acoustic weapons and replicas, deemed it necessary to improve the collection of data on the production, acquisition and possession of firearms and on deactivated firearms, alarm weapons and replicas, recommended improvements to the rules applicable to the deactivation of firearms, to their conversion and to alarm and antique weapons, mentioned the need to regulate the activities of arms dealers and brokers, found a correlation between the quantities of handguns held in a State, on the one hand, and the rate of crimes involving firearms, on the other, indicated that the introduction of more restrictive rules on access to firearms was likely to reduce significantly both the number of crimes committed and the number of homicides involving firearms, noted that virtually all the firearms used in mass shootings in Europe were held lawfully, indicated that those weapons were automatic, semi-automatic or reactivated firearms or firearms composed of parts of different weapons and recommended *inter alia* limiting lawful access to such firearms.
- 90 Last, the Commission relied on information obtained in a public consultation, in particular the consultation with the authorities of the Member States, dealers, weapons experts, representatives of European associations of manufacturers of firearms and ammunition for civilian use, marksmen, collectors, non-profit organisations and research organisations. It also referred to the information obtained in the consultation with the Member States and the States of the European Economic Area and in the context of the work of the committee established by Directive 91/477, the Commission having invited Member States' experts to formulate opinions and observations on the main conclusions contained in the REFIT evaluation.



- 91 As regards the data collected during the legislative procedure, the Parliament makes reference to consultations with stakeholders, to visits to a museum that collects weapons, to a public hearing, to technical and statistical data requested from the Commission and to a conference on Directive 91/477.
- 92 Last, the Council stated that it carried out its work on the basis of the Commission's proposal and the studies referred to by that institution, of consultations with Members of the Parliament and of impact assessments of the measures presented by Member States.
- 93 The elements referred to in paragraphs 87 to 92 of the present judgment thus enable the Court to hold that, during the legislative procedure that led to the adoption of the contested directive, first of all, the three institutions concerned had at their disposal detailed analyses of the functioning of the internal market in firearms for civilian use, as followed from Directive 91/477 before its amendment by the contested directive, including specific recommendations to improve that functioning. Next, they benefited from numerous analyses and recommendations covering inter alia all the security issues raised in the Czech Republic's arguments, as summarised in paragraphs 69 to 73 of the present judgment, taking into account experience acquired, in particular, in relation to the dangerous nature of certain firearms in the security context assessed. Last, those three institutions supplemented those data with consultations with experts and with stakeholder representatives and with assessments by Member State authorities.
- 94 In the light of the foregoing considerations, the first part of the second plea must be dismissed as unfounded.

*Second part of the second plea, relating to the proportionality of certain of the provisions of the contested directive*

*– Arguments of the parties*

- 95 By the second part of its second plea, the Czech Republic considers, primarily, that, in the first place, the measures taken by the contested directive are not appropriate for attaining the objective of ensuring a higher level of public security, which cannot be achieved by means of an additional restriction on the legal possession of firearms. On the contrary, a real risk to public security is caused by lawfully held firearms becoming unlawful due to the tightening of the applicable rules.
- 96 In particular, as regards the prohibition of certain semi-automatic firearms, no terrorist attack has been committed in EU territory in the last 10 years using such lawfully held weapons nor does any existing study indicate that those weapons have been used in mass shootings. The prohibition of semi-automatic firearms permanently converted from automatic firearms, referred to in point 6 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, makes no sense from a technical point of view, either, since converting them into automatic firearms is more difficult and more costly than acquiring a new ordinary semi-automatic firearm and then converting it into an automatic firearm.
- 97 Similarly, there is virtually no risk of irreversibly deactivated firearms and replicas of old firearms being misused, since reactivating such weapons requires the use of professional tools and is at least as complex and costly as manufacturing a new weapon. The fact that irreversibly deactivated firearms will fall into the same category as the same type of functioning weapons reflects the disproportionate nature of that measure.
- 98 In the second place, the Czech Republic takes the view that the measures taken by the contested directive are not necessary to achieve the objective of ensuring a higher level of public safety and security. Prohibiting the possession of the semi-automatic firearms classified in points 6 to 8 of

category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, is the strictest possible measure and concerns all current and potential holders of such weapons, despite there being no risk of them committing a criminal offence. Tightening the rules for other types of firearms, including replicas of antique firearms, is not necessary, either, given the minimal danger associated with those weapons.

- 99 There therefore exist less restrictive measures, including systematically tackling the unlawful possession of firearms, strengthening cooperation in the investigation of serious criminal offences, improving the exchange of information between Member States and tightening the rules for alarm weapons and similar weapons.
- 100 In the third place, the Czech Republic submits that the measures taken in the contested directive are contrary to the principle of proportionality *stricto sensu*. Those measures have a major impact on the property rights of a large number of non-problematic firearm owners and the EU legislature has in no way mitigated — or even examined — that impact.
- 101 In the alternative, to the extent that the contested directive must be regarded as pursuing the aim of eliminating obstacles to the proper functioning of the internal market, the Czech Republic submits, by the second part of its second plea, that the measures taken by that directive do not comply with the conditions of appropriateness, necessity and proportionality *stricto sensu*, either. Those measures, which lay down ambiguous rules that are impossible to implement in practice, are not appropriate for eliminating those obstacles.
- 102 First of all, point 7 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, now includes semi-automatic firearms fitted with a loading device exceeding the prescribed limits. In accordance with Article 6(1) of Directive 91/477, as amended by the contested directive, Member States are thus required to seize those weapons. Recital 23 of the contested directive, however, states that the possibility of fitting such a loading device does not determine the classification of the weapons in question. Thus, the same weapon would, depending on the case, be a weapon falling under category A or under category B, the transfer from one category to another being possible by changing the loading device. At the same time, the possession of such a loading device is penalised, in accordance with Article 5(3) of Directive 91/477, as amended by the contested directive, by withdrawing the authorisation to acquire and possess category B firearms, which differs from the penalty prescribed in Article 6(1) of that same directive.
- 103 Second, the Czech Republic notes that it is without specifying how they must be identified that the contested directive now classifies, in point 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, semi-automatic firearms originally intended to be fired from the shoulder that can be reduced to a length of less than 60 centimetres without losing functionality by means of a folding or telescoping stock. Almost all those weapons, however, are designed to work with or without such stocks, such that there is no way to identify what they were originally designed for. Nor is it specified how to establish the length of those weapons, in particular with or without the muzzle attachments or the various extensions. Under those conditions, screwing in a compensator or a silencer can result in a change of category.
- 104 Last, as regards the transfer of certain firearms to category A, namely, prohibited firearms, the contested directive authorises Member States to choose a different approach in respect of the current holders of those weapons, which means that, in some Member States, there will always be a large number of authorised holders, while, in others, possession of such weapons will be prohibited. That situation, however, creates new obstacles that cannot be overcome by the European firearms pass. The third subparagraph of Article 12(2) of Directive 91/477, as amended by the contested directive, makes the possibility of travelling with those weapons dependent on the decision of the other Member States, which can now refuse to apply the derogation provided for in the first subparagraph of that Article 12(2) and make travel subject to the grant of prior authorisation.

- 105 So far as concerns the necessity and the proportionality *stricto sensu* of the measures taken by the contested directive, the Czech Republic refers to the argument summarised in paragraphs 98 to 100 of the present judgment. It also considers that annulment of the contested provisions of that directive must entail annulment of the directive as a whole.
- 106 Hungary doubts, first, the proportionality of the marking of the various parts of firearms, which could cause major disruptions during airport checks.
- 107 Second, in the context of the extension of expiring authorisations, that Member State deems the obligation to review all conditions for their issue contrary to the objectives pursued.
- 108 Third, Hungary considers it unjustified that deactivated firearms acquired or held lawfully before the end of the transposition period of the contested directive, even in the absence of an official authorisation, are classified in the category of firearms that require an authorisation. Strengthening the rules in no way alters the lack of danger of those weapons, meaning that the new rules place the holders of those weapons under new obligations, without justification by any overriding reason.
- 109 Fourth, Hungary argues that the length of the mandatory retention period for data contained in the official firearms registers of the Member States, from the date of the destruction of those data, constitutes a disproportionate interference with the right to protection of personal data, as guaranteed by Article 16 TFEU and Article 8 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 110 The Republic of Poland considers, first, that, given that there has been no evidence that automatic firearms converted into lawfully held semi-automatic firearms have been used for criminal purposes in EU territory, prohibiting such weapons from being held does not enhance the safety or security of EU citizens.
- 111 Second, prohibiting centre-fire semi-automatic firearms, when they are fitted with a loading device with a capacity exceeding prescribed limits, is also inappropriate for ensuring the safety and security of EU citizens. First of all, those loading devices not being linked to a specific weapon, it is impossible to prove that such a device is part of such a firearm, that it belongs to the person who holds that weapon or that a person is holding a weapon in accordance with the authorisation issued. Next, the said capacity has no significant impact either on the rate of fire or the number of rounds that can be fired. Last, the prohibition disproportionately affects persons in possession of category B firearms, even when they do not have the possibility of fitting their weapons with such loading devices.
- 112 Third, on account of the considerations already set out in paragraphs 97 and 103 of the present judgment, the Republic of Poland considers that there is no link between, on the one hand, the classification in points 6 and 7 of category C of Part II of Annex I to Directive 91/477, as amended by the contested directive, deactivated firearms and reproductions of antique firearms and the prohibition of the firearms defined in point 8 of category A of Part II of that annex and, on the other hand, the guarantee of a high level of safety and security for EU citizens.
- 113 Fourth, the Republic of Poland submits that the classification of firearms referred to in paragraphs 110 to 112 of the present judgment is disproportionate *stricto sensu*, since there are more effective and less restrictive preventive measures to enhance public safety and security, such as mandatory and uniform psychiatric and psychological examinations for the purchasers and holders of firearms and examinations on the rules on using such weapons and on the regulations concerning their possession and use.
- 114 The Parliament and the Council, supported by the Commission, dispute the arguments of the Czech Republic as well as those put forward in support of it by Hungary and the Republic of Poland.

115 In particular, the Parliament and the Council argue that the argument of Hungary alleging breach of Article 16 TFEU and Article 8 of the Charter is inadmissible, since it constitutes a new plea. The same applies to the arguments of both Hungary and the Republic of Poland by which those Member States call into question the proportionality of provisions of the contested directive, which the Czech Republic does not dispute.

– *Findings of the Court*

116 In the first place, it should be recalled that a party which, pursuant to Article 40 of the Statute of the Court of Justice of the European Union, is granted leave to intervene in a case submitted to the Court may not alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by the main parties. It follows that arguments submitted by an intervener are not admissible unless they fall within the framework provided by those forms of order and pleas in law (judgment of 7 October 2014, *Germany v Council*, C-399/12, EU:C:2014:2258, paragraph 27).

117 Since the argument of Hungary summarised in paragraphs 106, 107 and 109 of the present judgment, as the Parliament and the Council rightly submit, calls into question the proportionality of provisions of the contested directive other than those disputed by the Czech Republic, that argument must be considered to be such as to alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by that latter Member State and must therefore be rejected as inadmissible.

118 In the second place, as regards the subject matter of the judicial review to be carried out by the Court, it is important to note that it follows from the case-law cited in paragraphs 77 to 79 of the present judgment that it is not for the Court to substitute its own assessment for that of the EU legislature.

119 Under that case-law, it is for the Court to determine whether the EU legislature manifestly exceeded its broad discretion with regard to the complex assessments and evaluations it was called upon to conduct in the present case, by opting for measures that were manifestly inappropriate with regard to the objective pursued.

120 In the third place, with regard to the proportionality of the prohibition of the semi-automatic firearms classified in points 6 to 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, first, as the Parliament and the Council, supported by the Commission, argue, it appears in particular from the studies referred to in paragraphs 88 and 89 of the present judgment that a correlation can be found between the numbers of firearms held in a State, on the one hand, and the rate of crime involving such weapons, on the other hand, that the introduction of rules limiting access to firearms is liable to have a significant impact on reducing both the number of crimes committed and the number of homicides involving firearms, that virtually all the firearms used in mass shootings in Europe were held lawfully and that those weapons were automatic, semi-automatic or reactivated firearms or firearms composed of parts from different weapons.

121 Moreover, while it is true that some of those studies also recommend the measures referred to by the Czech Republic and, in support of that State, by the Republic of Poland, as summarised in paragraphs 99 and 113 of the present judgment, those measures are, as the Parliament has noted, recommended in those studies as a supplement to the tightening of the regime for the acquisition and possession of firearms — particularly the most dangerous of them — and not as alternatives of equal effectiveness to the prohibition of the firearms concerned.

122 Second, the prohibition of the firearms classified in points 6 to 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, is accompanied, as submitted by the Parliament and the Council, supported by the Commission, by the multiple exceptions and



derogations referred to in Article 6(2) to (6) of Directive 91/477, as amended by the contested directive, which reduce the impact of that prohibition on a large number of potential holders or purchasers of those weapons and thus aim to guarantee the proportionality of that prohibition.

- 123 Third, with regard to the definition of the firearms classified in points 7 and 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, those points, as the Parliament and the Council, supported by the Commission, maintain, clearly identify prohibited firearms according to either the capacity of the inserted loading device or the length of the weapon. In particular, nothing stands in the way of the interpretation proposed by those institutions, namely, that weapons built to allow both shoulder fire and freehanded fire must be regarded as having been originally designed for shoulder fire, such that they fall within point 8 of that category A.
- 124 Similarly, with regard to recital 23 of the contested directive and Article 5(3) and Article 6(1) of Directive 91/477, as amended by the contested directive, first, it is clear that, as the Parliament and the Council have noted, it is in order to prevent attempts to circumvent the classification of certain firearms in the various categories that that Article 5(3) prohibits, in essence, the possession of both a semi-automatic firearm falling under category B of Part II of Annex I to Directive 91/477, as amended by the contested directive, and a loading device exceeding the limits prescribed in point 7 of category A of Part II of that annex. Second, that recital 23 and that Article 6(1), respectively, merely provide an explanation for the classification in question and impose the prohibition at issue.
- 125 Fourth, given that the Member States were already able to prohibit firearms falling, *inter alia*, under categories B and C of Part II of Annex I to Directive 91/477, before the contested directive classified those weapons in category A, the three institutions concerned are right to maintain that the provisions relating to the European firearms pass and Article 12(2) of Directive 91/477, as amended by the contested directive, do not alter the state of the law but merely take note of it.
- 126 In those circumstances, it must be held that those institutions do not appear to have exceeded their broad discretion. Indeed, contrary to what the Czech Republic, supported by Hungary and the Republic of Poland, claims, the measures criticised cannot be considered manifestly inappropriate in relation to the objectives of ensuring public safety and security for EU citizens and facilitating the functioning of the internal market.
- 127 In the fourth place, as regards the proportionality of including deactivated firearms and reproductions of antique firearms in category A or C of Part II of Annex I to Directive 91/477, as amended by the contested directive, first, the Parliament and, in support of it, the Commission have stated that experts certified, during the hearings referred to in paragraphs 90 and 91 of the present judgment, that the risk of a deactivated firearm being reactivated cannot be completely ruled out. It has already been noted, in paragraph 120 of the present judgment, however, that it appears in particular from the studies referred to in paragraphs 88 and 89 of this judgment that the firearms used in mass shootings in Europe included firearms reactivated from deactivated firearms or firearms composed of parts from different weapons and held lawfully.
- 128 Second, as the Parliament and the Council, supported by the Commission, note, it is settled that the inclusion of deactivated firearms in category C of Part II of Annex I to Directive 91/477, as amended by the contested directive, merely creates, in essence, the obligation to declare them and that, to the extent that such weapons must be included in category A of Part II of that Annex I, the exceptions and derogations referred to in Article 6(2) to (6) of Directive 91/477, as amended by the contested directive, are applicable. Moreover, neither the Czech Republic nor, in support of it, Hungary or the Republic of Poland has put forward any concrete evidence calling into question the Parliament's argument that the fact that failing to declare a deactivated firearm makes possessing it unlawful does not in itself increase the risk to public safety and security.

- 129 Third, so far as concerns reproductions of antique weapons, it must also be pointed out that neither the Czech Republic nor, in support of it, Hungary or the Republic of Poland has put forward any concrete evidence calling into question the findings, made in recital 27 of the contested directive and relied on by the Parliament and the Council, and supported by the Commission, that such reproductions, first, do not have the same historical importance or interest as genuine antique weapons and, second, can be built using modern techniques that improve their durability and accuracy, suggesting that such weapons can be more dangerous than real antique weapons.
- 130 Fourth, with regard to the alternatives mentioned by the Czech Republic and, in support of it, by the Republic of Poland, it is sufficient to refer to the finding made in paragraph 121 of the present judgment.
- 131 In these circumstances, it should also be noted that the three institutions do not appear to have exceeded their broad discretion and that, contrary to what the Czech Republic, supported by Hungary and the Republic of Poland, claims, the measures criticised cannot be considered manifestly inappropriate in relation to the objective of ensuring public safety and security for EU citizens.
- 132 In the fifth place, the Czech Republic, supported by Hungary and the Republic of Poland, submits that, in particular, the prohibition of the semi-automatic firearms referred to in points 6 to 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, constitutes an excessive interference with the property rights of their holders.
- 133 In that regard, it should be recalled that, while Article 17(1) of the Charter does not lay down an absolute prohibition on persons being deprived of their possessions, that provision does, however, provide that such deprivation may occur only where it is in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary in the general interest.
- 134 As regards those requirements, account must also be taken of the provision made by Article 52(1) of the Charter, under which limitations may be imposed on the exercise of the rights recognised by the Charter, as long as the limitations are provided for by law, respect the essence of those rights and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgments of 21 December 2016, *Tele2 Sverige and Watson and Others*, C-203/15 and C-698/15, EU:C:2016:970, paragraph 94 and the case-law cited, and of 21 May 2019, *Commission v Hungary (Rights of usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 88).
- 135 In the present case, first of all, it is not disputed that Article 1(7)(b) of the contested directive adds to Article 7 of Directive 91/477 a paragraph 4a which essentially allows the Member States to maintain the authorisations already granted for such weapons, provided that they were legally acquired and registered before 13 June 2017. Consequently, first, the contested directive does not require the expropriation of the holders of such weapons that were acquired before its entry into force and, second, any deprivation of ownership of such weapons as a result of the transposition of the contested directive into the law of the Member States must be regarded as being effected by reason of the choice of the Member States.
- 136 Next, in so far as the Member States are required, under that directive, to prohibit, in principle, the acquisition and possession of such weapons after the entry into force of that directive, such a prohibition merely prevents, in principle, the acquisition of ownership of property and is subject to all the exceptions and derogations referred to in Article 6(2) to (6) of Directive 91/477, as amended by the contested directive, which are aimed in particular at the protection of critical infrastructure, high-value convoys and sensitive locations as well as the specific situation of collectors, dealers, brokers, museums and target shooters.



- 137 Last, to the extent that the Czech Republic and, in support of it, Hungary and the Republic of Poland, seek, by their respective arguments, to call into question, in the light of property law, the prohibition on acquiring ownership of certain weapons and measures of the contested directive other than those prohibitions, it is sufficient to note that those other measures constitute regulation of the use of property in the general interest within the meaning of the third sentence of Article 17(1) of the Charter and that, having regard to the factors set out in paragraphs 120 to 131 of the present judgment, it is not demonstrated that these measures would exceed, in that regard, what is necessary to that end.
- 138 It follows that it has not been established, from the elements in the file before the Court, that the limitations placed by the contested directive on the exercise of the right to property recognised by the Charter, in particular with regard to the semi-automatic firearms referred to in points 6 to 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, constitute a disproportionate interference with that right.
- 139 In the light of all the foregoing considerations, the second part of the second plea must be dismissed as unfounded as must, accordingly, the second plea in its entirety.

***Third plea, alleging breach of the principles of legal certainty and of protection of legitimate expectations***

*Arguments of the parties*

- 140 By its third plea, the Czech Republic considers, first of all, that the circumstances set out in paragraphs 102 and 103 of the present judgment do not satisfy the requirements of clarity and precision required by the principle of legal certainty.
- 141 Next, the circumstances set out in paragraph 104 of the present judgment constitute a breach of the principles of legal certainty and of protection of legitimate expectations. If a Member State were to make use of the derogation for the possession of certain firearms now prohibited by persons who held that authorisation on the date of entry into force of the contested directive, it would be required to continue to grant authorisations requested on the basis of the national legislation in force, between the time of that entry into force and the time of the adoption of the transposition measures, but would then have to withdraw those authorisations and remove the firearms themselves from those persons, since they would not be entitled to benefit, *ratione temporis*, from that derogation.
- 142 That would mean, however, that the Member State concerned must, in breach of those principles, retroactively apply the new prohibition to situations existing before its entry into force or give the contested directive direct effect, to the detriment of the individuals concerned. Therefore, the possibility of applying that derogation ceases on the date on which the contested directive enters into force, although the Member States cannot, under EU law, limit it to that date.
- 143 Last, the Czech Republic is of the view that the foregoing considerations must lead to the annulment of Article 1(6), (7) and (19) of the contested directive and, accordingly, of that directive in its entirety.
- 144 Hungary argues that the circumstances set out in paragraphs 102 and 111 of the present judgment infringe the principle of legal certainty since they are not sufficiently clear to enable the rights and obligations of the persons concerned to be determined unambiguously. Thus, it is not possible to determine clearly whether the authorisation to acquire and possess a firearm classified in category B of Part II of Annex I to Directive 91/477, as amended by the contested directive, must be withdrawn

irrespective of whether the person concerned has been found to be in possession of a loading device exceeding the prescribed limits, when that person is in possession of centre-fire semi-automatic firearms.

- 145 That Member State is also of the view that Article 10(2) of Directive 91/477, as amended by the contested directive, under which dealers and brokers may refuse to complete any transaction for the acquisition of complete rounds or components of ammunition which they reasonably consider suspicious owing to its nature, is not compatible with the principle of legal certainty, either. That provision, to the extent that it allows professionals to cast doubt on the issuing authority's decision, could lead to discrimination and misuse.
- 146 The Parliament and the Council, supported by the Commission, dispute the argument of the Czech Republic as well as that put forward in support of it by Hungary.

### *Findings of the Court*

- 147 In the first place, it is appropriate to reject as inadmissible, having regard to the case-law cited in paragraph 116 of the present judgment, the argument of Hungary summarised in paragraph 145 of this judgment, in so far as it calls into question the legality of a provision of the contested directive other than those disputed by the Czech Republic and thus seeks to alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by that Member State.
- 148 In the second place, as regards the conformity of the definitions in points 7 and 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, with the principle of legal certainty, it should be recalled that, according to settled case-law, 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 (judgment of 5 May 2015, *Spain v Council*, C-147/13, EU:C:2015:299, paragraph 79 and the case-law cited).
- 149 So far as concerns the conformity with that principle of the definitions set out in points 7 and 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, it must be held, as has already been noted in paragraphs 123 and 124 of the present judgment, that those points 7 and 8 identify in a clear, precise and foreseeable manner prohibited firearms according to either the inserted loading device or the length of the weapon. In particular, as the Parliament and the Council rightly argue, if firearms are built to allow both shoulder fire and freehanded fire, they can be regarded as having been originally designed for shoulder fire, such that they fall within point 8 of that category A.
- 150 Moreover, contrary to what the Czech Republic, supported by Hungary, claims, a combined reading of point 7 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, with recital 23 of that directive and with Article 5(3) and Article 6(1) of Directive 91/477, as amended by the contested directive, is in no way likely to give rise to any confusion.
- 151 Indeed, as the Parliament and the Council, supported by the Commission, rightly claim, it is in order to tackle attempts to circumvent the new prohibitions resulting from the inclusion of the said point 7 of category A of Part II of Annex I to Directive 91/477 that Article 5(3) prohibits, in essence, the simultaneous possession of both a semi-automatic firearm falling under category B of Part II of Annex I to Directive 91/477, as amended by the contested directive, and a loading device exceeding the limits prescribed in that point. Moreover, recital 23 and Article 6(1) merely provide an explanation for the classification in question and impose the prohibition in question.
- 152 It follows that neither the Czech Republic — nor Hungary, which supports it — has established that those provisions entail a breach of the principle of legal certainty.

- 153 In the third place, as regards the conformity of the derogation set out in Article 7(4a) of Directive 91/477, as amended by the contested directive, with the principle of the protection of legitimate expectations, it must be recalled that the right to rely on the principle of the protection of legitimate expectations extends, as a corollary of the principle of legal certainty recalled in paragraph 148 of the present judgment, to any individual in a situation where European Union authorities have caused him to entertain legitimate expectations. 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 expectations. However, a person may not plead breach of the principle unless he or she has been given precise assurances by the administration. Similarly, if a prudent and alert economic operator can foresee that the adoption of an EU measure is likely to affect his or her interests, he or she cannot plead that principle if the measure is adopted (judgment of 30 April 2019, *Italy v Council (Mediterranean swordfish fishing quota)*, C-611/17, EU:C:2019:332, paragraph 112 and the case-law cited).
- 154 In the case at hand, it should be noted, first of all, that the provision criticised is intended to prevent an increase, between the entry into force of the contested directive on 13 June 2017 and the expiry of the period for its transposition into Member States' law on 14 September 2018, in the acquisitions of prohibited firearms from the latter date.
- 155 Next, as the contested directive was published in the *Official Journal of the European Union* 20 days before its entry into force, any person wishing to acquire, after its entry into force, such a weapon could know that, under that directive, his Member State would be required, at the end of the directive's transposition period at the latest, to revoke any authorisation granted in respect of such a weapon.
- 156 Last, there was nothing preventing the Member States from amending their legislation to limit to 14 September 2018 the validity of authorisations granted after 13 June 2017.
- 157 In those circumstances, it has not been established, in the light of the case-law cited in paragraph 153 of the present judgment, that the EU legislature has created legitimate expectations on the part of individuals wishing to acquire after 13 June 2017 weapons falling within points 7 and 8 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, or that it imposed any retroactive application of the contested directive on Member States.
- 158 Accordingly, the third plea in law must be dismissed as unfounded.

#### ***Fourth plea, alleging breach of the principle of non-discrimination***

##### *Arguments of the parties*

- 159 By its fourth plea, the Czech Republic submits that the derogation set out in the second subparagraph of Article 6(6) of Directive 91/477, as amended by the contested directive, is tailor-made for the Swiss Confederation, for which the contested directive constitutes, by virtue of recital 36 thereof, a development of the provisions of the Schengen *acquis* within the meaning of 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*. The conditions for applying that provision being devoid of any reasoning in terms of the objectives of the contested directive, however, it constitutes a discriminatory provision that must be annulled.

- 160 Indeed, the condition relating to the existence of a military system based on general conscription and having had in place over the last 50 years a system of transfer of military firearms to persons leaving the army, in addition to the condition that the firearms must be ones falling within point 6 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, cannot be justified by any of the objectives of the contested directive and ensures that that derogation applies only to the Swiss Confederation, an objective that was expressly recognised during the legislative procedure.
- 161 As no Member State can benefit from the derogation referred to, owing to the historical condition thus set, it introduces a difference in treatment between, on the one hand, the Swiss Confederation and, on the other hand, the Member States of the European Union and the Member States of the European Free Trade Association (EFTA) other than the Swiss Confederation, which cannot be justified objectively. Indeed, the very duration of the system of conservation of firearms after the end of military duties in no case ensures a higher level of security guarantees. Even if it is conceded that the duration of such a system might be of some relevance, using the period of the last 50 years is nevertheless arbitrary and disproportionate.
- 162 Hungary notes that, if the second subparagraph of Article 6(6) of Directive 91/477, as amended by the contested directive, were to be read as merely clarifying the consequences of the first subparagraph of that Article 6(6) for those States which, following long-standing tradition, allow former conscripts, once their military duties have been fulfilled, to keep their weapon, that provision would impose an unjustified additional requirement on persons falling within its scope, taking into account the fact that it would have to be checked periodically whether those persons, unlike target shooters who do not come from military service and who hold a licence on the basis of that first subparagraph, constitute a threat to public security.
- 163 The Parliament and the Council, supported by the Commission, dispute the argument of the Czech Republic as well as that put forward in support of it by Hungary.

#### *Findings of the Court*

- 164 It is important to recall that, according to settled case-law, observance of the principle of equality requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment of 29 March 2012, *Commission v Poland*, C-504/09 P, EU:C:2012:178, paragraph 62 and the case-law cited).
- 165 Consequently, while it is not disputed that, as the Czech Republic, supported by Hungary, claims, the conditions for benefiting from the derogation set out in the second subparagraph of Article 6(6) of Directive 91/477, as amended by the contested directive, are fulfilled only by the Swiss Confederation, it would still be necessary, in order for the fourth plea to succeed, that the Swiss Confederation, on the one hand, and the Member States of the European Union and the Member States of EFTA other than the Swiss Confederation, on the other hand, be in a comparable situation as regards the subject matter of that derogation.
- 166 As the Advocate General pointed out in points 139 and 140 of her Opinion, however, the condition relating to the existence of 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 takes into account both the culture and traditions of the Swiss Confederation and the fact that, owing to those traditions, that State has the proven experience and ability to trace and monitor the persons and weapons concerned, which gives reason to assume that the public security and safety objectives pursued by the contested directive will, despite that derogation, be achieved.

- 167 Since that cannot be assumed to be the case for States that have neither the tradition of a system of transfer of military firearms nor, therefore, the proven experience and ability to trace and monitor the persons and weapons concerned, it should be found that only those States that also have such a long-standing system are in a situation comparable to that of the Swiss Confederation. The file submitted to the Court, however, does not contain any indications to that end or, consequently, any elements capable of establishing discrimination against the Member States of the European Union or of EFTA.
- 168 To the extent that the Czech Republic criticises as arbitrary the fact that the EU legislature has retained the condition of the last 50 years relating to the existence of a system of transfer of military firearms, in addition to the condition that they may only be firearms falling within point 6 of category A of Part II of Annex I to Directive 91/477, as amended by the contested directive, it is sufficient to note that that Member State has not mentioned any other State that has had a system of transfer of military firearms — or even weapons other than those in that category — for less than 50 years, meaning that that criticism must, in any event, be rejected as ineffective.
- 169 Finally, to the extent that Hungary claims that the second subparagraph of Article 6(6) of Directive 91/477, as amended by the contested directive, imposes, over the first subparagraph of that Article 6(6), the ‘additional’ requirement to check periodically that the persons concerned do not represent a risk to public security, it is sufficient to note that the said second subparagraph provides for a derogation distinct from that contained in the first subparagraph and that that distinct derogation is subject to specific conditions. Consequently, since those subparagraphs pertain to distinct situations, the fact that they lay down separate conditions does not constitute discrimination.
- 170 In the light of the foregoing considerations, the fourth plea must be dismissed as unfounded.
- 171 Accordingly, the action must be dismissed in its entirety.

### **Costs**

- 172 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the Parliament and the Council have applied for costs to be awarded against the Czech Republic, and the latter has been unsuccessful, it must be ordered to pay the costs, including the costs relating to the proceedings for interim measures.
- 173 Pursuant to Article 140(1) of the same rules, the French Republic, Hungary, the Republic of Poland and the Commission, as interveners, must bear their own costs.

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

- 1. Dismisses the action;**
- 2. Orders the Czech Republic to pay, in addition to its own costs, the costs incurred by the European Parliament and the Council of the European Union;**
- 3. Orders the French Republic, Hungary, the Republic of Poland and the European Commission to bear their own costs.**

[Signatures]