



Press and Information

Court of Justice of the European Union

PRESS RELEASE N° 49/19

Luxembourg, 11 April 2019

Advocate General's Opinion in Case C-482/17
Czech Republic v Parliament and Council

Advocate General Sharpston: the Court should dismiss the Czech Republic's action against EU legislation introducing more stringent rules for the acquisition and possession of firearms

This legislation aims to ensure the free movement of firearms whilst duly taking account of the enhanced public safety concerns linked to the trade of these goods

In the wake of a series of tragic events in 2015 which included the terrorist attacks that took place in Paris and Copenhagen, the Commission adopted a proposal to amend the EU Firearms Directive¹. In May 2017, by way of adopting an Amending Directive², the European Parliament and the Council modified the Firearms Directive with a view to introducing more stringent rules for the acquisition and possession of firearms, including the prohibition of certain semi-automatic weapons for civilian use.

The Czech Republic is contesting the validity of the Amending Directive before the Court of Justice. It argues that the Amending Directive does not aim to ensure the free movement of firearms in their capacity as specific goods traded in the internal market within the meaning of Article 114 TFUE³ but rather seeks to harmonise the area of crime prevention, in breach of the Treaties. In addition, the Czech Republic alleges that, when adopting the Amending Directive, the EU legislature totally failed to address the question of the proportionality of the measures at issue, which are, moreover, manifestly disproportionate, and that the Amending Directive also breaches the principles of legal certainty, legitimate expectations and equal treatment.

In today's Opinion, Advocate General Eleanor Sharpston first recalls that although Article 114 TFUE constitutes a legal basis for the adoption of measures aiming to eliminate existing obstacles to the free movement of goods or to prevent such obstacles from emerging in the future, recourse to this article as a legal basis cannot be invalidated solely on the grounds that other matters, such as public safety, are also affected by the measures adopted.

In this regard, the Advocate General considers that, like the Firearms Directive, **the Amending Directive also aims to ensure a degree of freedom of movement for some firearms and their essential components within the EU** and, to this end, provides for security guarantees suited to these products. The Advocate General stresses that, following the terrorist attacks that took place in Europe in 2015, Member States were likely to adopt divergent national protective measures, which could have impaired the free circulation of firearms within the EU. For this reason, it was necessary for the EU legislature to act in order to adjust, at EU level, the balance struck between free movement of goods and public safety in the EU Firearms Directive.

The Advocate General is therefore of the view that **the Amending Directive actually and predominantly aims to ensure the free movement of firearms and that, whilst it indubitably**

¹ Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ 1991 L 256, p. 51) as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 (OJ 2008 L 179, p. 5).

² 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).

³ Article 114 TFEU allows the EU legislature to adopt harmonising measures regarding the establishment and functioning of the internal market.

affects the sector of crime prevention, it does not harmonise the latter in any material sense. Consequently, the Advocate General is of the opinion that **the EU legislature was entitled to adopt the Amending Directive on the basis of Article 114 TFUE.**

The Advocate General then refutes the Czech Republic's argument that the Amending Directive infringes the principle of proportionality and should be annulled because the EU legislature failed to conduct an impact analysis in accordance with the **Inter-Institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making** prior to adopting the Amending Directive. Although that Agreement binds the institutions, an impact assessment is not a mandatory element of the legislative procedure in all circumstances. In this context, the Advocate General points out that the need promptly to address the challenges resulting from the terrorist attacks of 2015 constituted a situation of urgency and that the EU legislature had drawn on other reports and studies to inform its analysis of the proportionality of the proposed measures.

Moreover, the Advocate General finds that in preparing its proposal for the adoption of the Amending Directive the Commission, in accordance with the principle of proportionality, duly took account of both the internal market objectives and the security imperatives linked to these objectives. The mere fact that the application of the Amending Directive might in certain circumstances give rise to the confiscation of certain firearms possessed by individuals **does not interfere with the right to property** as this latter right may be restricted in the public interest and under the conditions provided by law: there is no fundamental right in EU law to possess guns.

The Advocate General also considers **that the specific provision of the Amending Directive permitting Switzerland⁴ to authorise army reservists, in their capacity as target shooters, to keep the firearm they used during their mandatory military service also meets the criterion of proportionality.**

Likewise, the Advocate General considers that **the re-categorisation in the Amending Directive of certain semi-automatic weapons from firearms subject to authorisation to prohibited firearms is not at odds with the principle of proportionality.** In that connection, she notes that Member States remain entitled to confirm, renew, or prolong authorisation for such weapons which were lawfully acquired and registered before 13 June 2017, subject to appropriate supervision.

Finally, the Advocate General finds that the Amending Directive respects the principles of legal certainty, legitimate expectations and equal treatment.

The Advocate General therefore proposes that **the Court should dismiss the Czech Republic's action in its entirety.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

⁴ As regards Switzerland, Directive 2017/853 and Directive 91/477 constitute a development of the provisions of the Schengen acquis. See further the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the areas referred to in Article 1 of Council Decision 1999/437/EC (OJ 1999 L 176, p. 31) read in conjunction with Article 3 of Council Decision 2008/146/EC (OJ 2008 L 53, p. 1). The Amending Directive thus also applies to Switzerland.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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