



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-482/17  
Czech Republic v Parliament and Council

## **The Court of Justice dismisses the action of the Czech Republic against the directive reinforcing control of the acquisition and possession of firearms**

*That directive could validly be based on the principles of the FEU Treaty on the proper functioning of the internal market*

By the judgment in *Czech Republic v Parliament and Council (C-482/17)*, delivered on 3 December 2019, the Court dismissed the action for whole or partial annulment of Directive 2017/853<sup>1</sup> ('the contested directive') by which the European Parliament and the Council amended Council Directive 91/477/EEC on control of the acquisition and possession of weapons<sup>2</sup> ('the Firearms Directive'). The Court held that the measures taken by the European Parliament and the Council in the contested directive do not entail breaches of the principles of conferral of powers, proportionality, legal certainty, protection of legitimate expectations or non-discrimination as alleged by the Czech Republic in support of its action.

With a view to abolishing border controls within the Schengen area, the Firearms Directive established 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 response to certain terrorist acts, the European Parliament and the Council adopted, in 2017, the contested directive in order to introduce stricter rules for the most dangerous, deactivated and semi-automatic firearms. At the same time, that directive also intends to facilitate the free movement of certain weapons by laying down inter alia marking rules.

So far as concerns automatic firearms converted into semi-automatic firearms, which are in principle prohibited, the contested directive contains a derogation whose conditions are fulfilled only by Switzerland, which is part of the Schengen area and to which the Firearms Directive applies. It involves 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.

The Czech Republic brought an action before the Court of Justice seeking the annulment, in whole or in part, of the contested directive. In those proceedings, the Czech Republic was supported by Hungary and Poland, while the European Parliament and the Council were supported by France and the European Commission.

As regards the alleged breach of the principle of conferral of powers, first of all, the Court recalled that, even where an act based on Article 114 TFEU, such as the Firearms Directive, 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, on the basis of that provision, to any change in circumstances

<sup>1</sup> 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).

<sup>2</sup> Council Directive 91/477/EEC of 18 June 1991 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons (OJ 1991 L 256, p. 51).

having regard to its task of safeguarding the general interests recognised by the Treaties. Those general interests include the fight against international terrorism and serious crime and the maintenance of public security.

Next, in the case of an act which amends existing rules, the Court stated that it is important to take into account, for the purposes of identifying its legal basis, the existing rules which it amends and, in particular, their objective and content. Examining the amending act in isolation could lead to the paradoxical result that that act could not be adopted on the basis of Article 114 TFEU, whereas it would be possible for the EU legislature to achieve the same normative result by repealing the initial act and, on the basis of that provision, fully recasting it into a new act. Consequently, the Court held that it was necessary to identify the legal basis on which the contested directive had to be adopted by taking into account both the context constituted by the Firearms Directive and the rules stemming from the amendments made to it by the contested directive.

Last, after comparing the objective and the content of the Firearms Directive with those of the contested directive, the Court found that the two directives are intended to ensure approximation of the provisions of the Member States on the free movement of firearms for civilian use, whilst circumscribing that freedom with safety guarantees suited to the nature of those goods, and that the contested directive simply adjusts the balance created by the Firearms Directive between those two objectives in order to adapt it to changes in circumstances.

On that point, the Court recalled that the 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 in the danger they pose not only to users but also to the public at large, public safety considerations are essential in the context of rules on the acquisition and possession of those goods.

In those circumstances, the Court held that the EU legislature did not exceed the margin of discretion conferred on it by Article 114 TFEU in having adopting the contested directive on the basis of that provision.

As regards the alleged breach of the principle of proportionality, the Court examined whether the Interinstitutional Agreement on Better Law-Making<sup>3</sup> formally required the Commission to carry out an impact assessment of the measures envisaged by the adoption of the contested directive so as to enable the proportionality of those measures to be assessed. In that respect, the Court noted that the preparation of impact assessments is a step in the legislative process that, as a rule, must take place if the legislative initiative is liable to have significant economic, environmental or social implications. An obligation to carry out such an assessment in every circumstance, however, does not follow from the wording of that agreement.

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, provided, however, that it has sufficient information enabling it to assess the proportionality of the envisaged measures.

Later in the judgment, the Court found that the EU legislature had at its disposal numerous analyses and recommendations covering all the issues raised in the Czech Republic's argument and that, contrary to what that Member State claimed, the measures criticised did not appear, in the light of those analyses and recommendations, manifestly inappropriate in relation to the objectives of ensuring public safety and security for EU citizens and facilitating the functioning of the internal market in firearms for civilian use.

Consequently, the Court held that, in the case at hand, the EU institutions had not exceeded their wide discretion when called upon to conduct such complex assessments and evaluations of political, economic or social nature. Last, the Court further rejected the arguments of the Czech

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<sup>3</sup> 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).

Republic directed more specifically against certain provisions of the contested directive which that Member State deemed to be contrary to the principles of proportionality, legal certainty and protection of legitimate expectations of categories of owners or holders of weapons potentially subject to a stricter regime under the contested directive and, last, non-discrimination.

Regarding that latter principle, the Court notes inter alia that the derogation enjoyed by Switzerland takes into account both the culture and traditions of that country and the fact that, owing to those traditions, it 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. Given that no Member State of the EU appears to be in a comparable situation to that of Switzerland, there is no discrimination.

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**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

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