

Case C-296/21**Request for a preliminary ruling****Date lodged:**

7 May 2021

Referring court:

Korkein hallinto-oikeus (Finland)

Date of the decision to refer:

26 April 2021

Appellant:

A

Other parties:

Helsingin poliisilaitos

Poliisihallitus

**INTERLOCUTORY ORDER OF THE KORKEIN HALLINTO-OIKEUS
(SUPREME ADMINISTRATIVE COURT, FINLAND)**

Concerning Request to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU)

Appellant A, Helsinki

Other parties Helsingin poliisilaitos
Poliisihallitus

Contested decision

No 19/0507/4 of the Helsingin hallinto-oikeus (Administrative Court, Helsinki) of 26 June 2019

Subject matter of the proceedings and relevant facts

1. The case pending before the Korkein hallinto-oikeus (Supreme Administrative Court) raises the question of the interpretation of Council Directive 91/477/EEC of 18 June 1991 on control of the

acquisition and possession of weapons ('Weapons Directive') and Articles 3 and 7 of Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable ('Deactivation Regulation').

2. The case concerns the transfer of deactivated firearms within the Union. The appellant A transferred deactivated firearms from Austria to Finland and submitted to the Finnish authorities a deactivation certificate for the firearms which was issued in Austria and refers to the Weapons Directive and the Deactivation Regulation. The Finnish police did not recognise the certificate and reverified the deactivation because the issuer of the certificate was not an authority, as required by the legislation, and was also not included in the Commission's list referred to in the Deactivation Regulation. A submitted a statement issued by Austrian authorities regarding the issuer of the certificate. **[Or. 2]**

3. In the present case, the Supreme Administrative Court is called on to rule on the question of whether the deactivation certificate for the firearms transferred from Austria to Finland complied with Article 3 of the Deactivation Regulation and whether it should have been recognised in Finland in accordance with Article 7(2) of the Deactivation Regulation.

4. A, who runs a business specialising in the sale of military historical collectables, transferred three assault rifles, which he presented as having been deactivated, from Austria to Finland on 17 October 2017. A presented the assault rifles and the accompanying deactivation certificates issued by the company B and dated 9 October 2017 to the Helsingin poliisilaitos (Helsinki Police Department) in accordance with Paragraph 112a of the Ampuma-aselaki (Law on firearms) on 24 October 2017 and again on 23 November 2017 at the request of the police.

5. On 15 February 2018, the *Helsinki Police Department* issued Decision No 2018/8575 on the seizure of weapons in accordance with Paragraph 91(2) of the Law on firearms. The Police Department took the view that the deactivation of the assault rifles did not meet the technical requirements for deactivation of firearms set out in Annex I to the Deactivation Regulation (EU) 2015/2403 in the following respects: 1) Disassembly of the firearms and closing system had not been prevented. 2) The trigger mechanism of the firearms had not been welded to the frame. The hammer had been welded to the sear, which did not prevent the trigger from moving or parts of the trigger mechanism from being removed from the firearm. 3) Only five holes

spanning the whole diameter of the bore had been drilled into the barrel of the weapons instead of the six holes required by the regulation. 4) All welding was done by MIG welding with normal steel and not by TIG welding with stainless steel type ER 316 L as required by the regulation. The Police Department therefore took the view that the weapons are to be regarded as firearms requiring a licence within the meaning of the Law on firearms. Since A did not hold a permit entitling him to possess the firearms in question, the weapons had to be seized.

6. A contested the decision before the Helsingin hallinto-oikeus (Administrative Court, Helsinki). In so doing, A stated, in essence, that the Finnish police should not have verified the deactivation of the weapons, as it was not a question of deactivating weapons in Finland, but of transferring deactivated weapons to Finland. In accordance with Article 7(2) of the Deactivation Regulation, the police should have recognised the deactivation certificate issued by the verifying entity designated by Austria, the company B. In addition, A submitted evidence to prove that the deactivation of the weapons met the technical requirements for the deactivation of firearms set out in Annex I to the Deactivation Regulation (EU) 2015/2403.

7. The *Helsinki Police Department* and the *Poliisihallitus (Police Directorate)* submitted observations to the Administrative Court, Helsinki. In the observations of the Helsinki Police Department, it was stated, inter alia, that the weapons could not have been considered to be deactivated not only because of the defective deactivation, but also because [Or. 3] the company B, which had issued the deactivation certificate, was not an authority within the meaning of Article 3(1) of the Deactivation Regulation and was not included in the Commission's list referred to in Article 3(3) of that regulation. The Commission's list states that Austria has designated the Austrian Ministry of Interior as the verifying entity.

8. A submitted a reply to the Administrative Court, Helsinki. He submitted, inter alia, some email correspondence with the Austrian Ministry of Defence and Sports in which the latter confirmed that the company B was a verifying entity designated by Austria within the meaning of Article 3(1) of the Deactivation Regulation. Austria has designated a total of 16 verifying entities within the meaning of the abovementioned provision.

9. The *Administrative Court, Helsinki* dismissed A's appeal by decision of 26 June 2019. According to the grounds for its decision, the Administrative Court, Helsinki took the view that, taking into account the fact that, in accordance with Article 3 of the Deactivation Regulation, the Member States are required to designate the competent

authorities (verifying entities), of which the Commission publishes a list on its website, and that, in accordance with Article 8 of the Deactivation Regulation, the Member States are also required to notify to the Commission any measures they adopt in the field covered by that regulation, only a deactivation certificate issued by a verifying entity included in the list established by the Commission can, in principle, be regarded as a certificate within the meaning of the Deactivation Regulation. Therefore, a national authority is only required to accept a deactivation certificate issued by a verifying entity on the Commission's list. The court stated that, since B, which issued the deactivation certificate, has not been named as the Austrian verifying entity on the Commission's website, the deactivation certificates presented by A therefore did not meet the requirements of the Deactivation Regulation, and the Police Department had therefore also been permitted to carry out a technical inspection of the weapons. Furthermore, on the basis of the facts established in the case, the Administrative Court took the view that the weapons imported by A did not comply with the technical deactivation provisions of the Deactivation Regulation. The Police Department had therefore been permitted to treat the weapons as firearms requiring a licence. Since A did not hold the abovementioned licence, the police authority had been entitled to seize the weapons on the basis of Article 91(2) of the Law on firearms.

10. A applied to the Supreme Administrative Court for leave to appeal against the decision of the Administrative Court and requested that the decisions of the police authority and the Administrative Court be set aside. A submitted, inter alia, an email from the Austrian Ministry of Interior dated 11 March 2020, according to which the Austrian Ministry of Defence, in accordance with Austrian legislation, authorises traders to verify the deactivation of firearms to be regarded as *militaria* and the deactivation of firearms intended for civil use by the Austrian Ministry of Interior. **[Or. 4]**

11. The *Helsinki Police Department* and the *Police Directorate* submitted observations in the case. The Police Directorate stressed the need for a ruling from the Supreme Administrative Court, as the number of verifications of deactivated weapons is increasing and deactivated weapons that have been verified by authorities in other countries are also entering Finland.

12. A submitted a reply to those observations.

Relevant provisions of EU law

Directive 91/477

13. In accordance with Article 4(1) of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (corrigendum in OJ 2014 L 334, p. 104), as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008, Member States are to ensure that firearms or components thereof placed on the market have either been provided with a marking and registered, or rendered inoperable, in accordance with that directive.

14. Annex I to the directive states:

‘(---)

III. For the purposes of this Annex, objects which correspond to the definition of a ‘firearm’ shall not be included in that definition if they:

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

(b) (---)

(c) (---)

Member States shall make arrangements for the deactivation measures referred to in point (a) to be verified by a competent authority in order to ensure that the modifications made to a firearm render it irreversibly inoperable. Member States shall, in the context of this verification, provide for the issuance of a certificate or record attesting to the deactivation of the firearm or the apposition of a clearly visible mark to that effect on the firearm. The Commission shall, acting in accordance with the procedure referred to in Article 13a(2) of the Directive, issue common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.’ **[Or. 5]**

Deactivation Regulation (EU) 2015/2403

15. Article 3 (‘Verification and certification of deactivation of firearms’) of Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable provides as follows in paragraphs 1, 3 and 4:

‘1. Member States shall designate a competent authority to verify that the deactivation of the firearm has been carried out in accordance with the technical specifications set out in Annex I (‘the verifying entity’).

(---)

3. The Commission shall publish on its website a list of the verifying entities designated by Member States, including detailed information on and the symbol of the verifying entity as well as contact information.

4. Where the deactivation of the firearm has been carried out in accordance with the technical specifications set out in Annex I, the verifying entity shall issue to the owner of the firearm a deactivation certificate in accordance with the template set out in Annex III. All information included in the deactivation certificate shall be provided both in the language of the Member State where the deactivation certificate is issued as well as in English.

(---)’

16. Article 7 of the Deactivation Regulation, entitled ‘Transfer of deactivated firearms within the Union’, provides as follows:

‘1. Deactivated firearms may only be transferred to another Member State provided they bear the common unique marking and are accompanied by a deactivation certificate in accordance with this Regulation.

2. Member States shall recognise the deactivation certificates issued by another Member State if the certificate fulfils the requirements set out in this Regulation. However, Member States which have introduced additional measures in accordance with Article 6 may require proof that the deactivated firearm to be transferred to their territory complies with those additional measures.’

17. According to Article 8 of the Deactivation Regulation, Member States are to notify to the Commission any measures they adopt in the field covered by that Regulation as well as any additional measure [Or. 6] introduced in accordance with Article 6. For that purpose, Member States are to apply the notification procedures laid down in Directive (EU) 2015/1535.

18. Both Directive 91/477 and the Deactivation Regulation 2015/2403 were subsequently amended, but the versions specified above apply to the main proceedings now under consideration.

Provisions of national law relied on

19. According to Paragraph 112a ('Transfer and import of deactivated firearms to/into Finland') of the Ampuma-aselaki (1/1998,¹ Law on firearms No 1/1998), any person who transfers or imports a deactivated firearm to/into Finland must, within 30 days of the transfer or import, present the firearm to a police department or the Police Directorate for the purposes of verification.

20. According to subparagraph 2 of Paragraph 112b ('Deactivation of firearms') of the Law on firearms, the Deactivation Regulation lays down provisions on persons and entities authorised to deactivate firearms, on the technical specifications for the deactivation of firearms, on the marking, inspection and verification of deactivated firearms, on requests for assistance in carrying out deactivations, on additional deactivation measures and on the transfer of firearms within the European Union.

21. According to Paragraph 91 of the Law on firearms, if a firearms trade licence or a licence authorising possession for private use expires or is revoked, the police must issue an order for the seizure by the police of the firearms, parts of firearms, cartridges and particularly dangerous ammunition, unless they have already been handed over to a holder of an appropriate licence. The police must also issue a seizure order if an owner of unauthorised firearms or parts of firearms, unauthorised cartridges or particularly dangerous ammunition reports the object to the police on his or her own initiative and surrenders it to the police for safekeeping. (---)

22. Neither the Law on firearms nor any other national legislation makes provision for the introduction within Finnish territory of measures that supplement the technical specifications [Or. 7] set out in Annex I to the Deactivation Regulation. In the government bill on an amendment to the Law on firearms, HE 11/2016 vp,² presented to Parliament following the entry into force of the Deactivation Regulation, it is stated that the deactivation procedures under the Deactivation Regulation of the Commission can be considered to be sufficient to ensure that deactivated firearms and components of weapons are rendered irreversibly inoperable.

¹ <https://www.finlex.fi/fi/laki/ajantasa/1998/19980001>

² <https://www.finlex.fi/fi/esitykset/he/2016/20160011>

The need for the preliminary ruling

23. The question before the Supreme Administrative Court is whether the certificate of deactivation issued in Austria in respect of the weapons transferred from Austria to Finland, which was submitted in the present case, complied with Article 3 of the Deactivation Regulation and whether the Finnish authorities should have recognised it in accordance with Article 7(2) of that regulation, even though the verifying entity that had issued the certificate in question and is clearly not an authority but a company in the legal form of a limited liability company (GmbH), was not included in the Commission's list³ pursuant to Article 3(3) of the Deactivation Regulation, published at that time. The list was not available on the Commission's website at the time when the request for a preliminary ruling was drawn up. The Supreme Administrative Court was informed by the Commission's Directorate-General for Migration and Home Affairs (DG HOME), via the Europe Direct Contact Centre, that the list is currently being revised. The updated version will be accessible by the end of 2021.

24. The EU legislation is neither clear nor complete in the respects explained above. In the present case, the impression that emerges is that the Austrian and Finnish authorities have assessed the provisions of EU law differently as regards the legal significance of the Commission's list. The Austrian authorities explained that Austria has designated the company B as the verifying entity within the meaning of Article 3(1) of the Deactivation Regulation. The Finnish police, on the other hand, stated that the verifying entity that issued the deactivation certificate in Austria was not named in the list pursuant to Article 3(3) of the Deactivation Regulation, and the Finnish police therefore did not recognise the certificate, but instead verified the deactivation of the weapons.

25. The Finnish police and the company B assessed the regularity of the deactivation differently. The Finnish police found numerous deficiencies in the deactivation of the weapons in the course of its verification and concluded that the weapons presented as deactivated were to be categorised as firearms requiring a licence. The company B approved the deactivation of the weapons in its inspection. **[Or. 8]**

26. There are various situations in the context of EU legislation where reference is made to a list of actors notified by the Member States, which is drawn up and published by the Commission. The basis

³ List of entities authorised by EU Member States to verify deactivation of firearms – Document date: 10/05/2016 – Created by GROW.DDG3.I.3 – Publication date: 13/01/2017. (Finnish-language version not available), https://ec.europa.eu/growth/sectors/firearms/additional-legal-acts_en, retrieved in November 2020.

for the drawing up of such lists, the associated decision-making process of the Commission, and the legal effects and other rules relating to a list entry vary.

27. In particular, arrangements establishing mutual recognition systems, in which reference is made to lists published by the Commission, can be found in several areas of EU legislation. For example, in systems for assessing conformity with CE markings, the assessments can be carried out only by bodies notified in accordance with a strictly regulated notification procedure, of which the Commission keeps a publicly accessible list, and it ensures that that list is updated (for example, schemes for making personal protective equipment,⁴ pressure equipment,⁵ pressure vessels⁶ or radio equipment⁷ available on the market). Similarly, for example, for foods and food ingredients treated with ionising radiation, Directive 1999/2/EC provides that food may only be irradiated in facilities approved by the Member States of the EU, a list of which is published by the Commission. Accordingly, for example, Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market provides that an electronic identification means issued in another Member State is to be recognised in the first Member State for the purposes of cross-border authentication for that service online, provided that the electronic identification means is issued under an electronic identification scheme that is included in the list published by the Commission pursuant to Article 9. It should be added that there are extremely detailed rules relating to a so-called 'black list' of air carriers, which is the subject of Regulation (EC) No 2111/2005 of the European Parliament and of the Council and Regulation (EC) 474/2006, which has been amended several times.⁸ **[Or. 9]**

⁴ Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC.

⁵ Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment.

⁶ Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels.

⁷ Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC.

⁸ See (1) and, in particular, Article 4(2) of Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport

28. It is clear that the Weapons Directive and the Deactivation Regulation aimed to create a system of mutual recognition. Nevertheless, that system lacks clarity. The legal status of the list published by the Commission is not clear, and it is not apparent from the legal framework whether the Commission checks whether an entity notified by a Member State complies with the requirements of the regulation, whether it takes an express decision on the inclusion of an entity designated by a Member State in the list or whether it automatically includes the entity notified by the Member State in the list. It is unclear whether the omission from that list of a verifying entity designated by a Member State is attributable to action taken by the designating Member State or by the Commission. The legal effects of the list published on the Commission's website are also unclear and it is not possible to determine whether the list serves as an announcement (informative effect) or whether the mere designation of an entity in that list establishes the status of an entity within the meaning of the Deactivation Regulation whose decision is to be recognised in the other Member States of the EU in accordance with the applicable rules of EU law (constitutive effect). Furthermore, the Deactivation Regulation does not make any provision for the updating of the list. The list was not even available on the Commission's website at the time when the present request for a preliminary ruling was drawn up.

29. The ambiguities as to interpretation are problematic not only for national authorities and courts, but also for economic operators who transfer deactivated firearms within Member States. From the point of view of an economic operator, the situation is unreasonably uncertain if he or she obtains confirmation from the authority of one Member State that the deactivation certificate has been issued by a verifying entity designated by the Member State in question, whereas the same certificate is not recognised in another Member State because the verifying entity is not on the Commission's list. The situation is unsatisfactory if verifying authorities of different Member States interpret commonly agreed deactivation standards differently and thus assess the compliance of deactivation measures with the regulation differently. The internal market cannot function if its practice is not uniform.

30. Moreover, a situation of uncertainty may jeopardise the uniform application of EU law throughout the territory of the EU. According to the information obtained in the case, it appears that uniform

passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC, and Commission Implementing Regulation (EU) 2020/1992 of 2 December 2020 amending Regulation (EC) No 474/2006 as regards the list of air carriers banned from operating or subject to operational restrictions within the Union.

application is already jeopardised, as the Deactivation Regulation has been applied differently by the authorities in Austria and Finland. This situation is particularly unsatisfactory given that it involves a regulation adopted by an institution of the Union which, in accordance with Article 288 TFEU, has general application, is binding in its entirety and directly applicable in all Member States. A directly applicable regulation of the Union should be drafted with particular care and thought through in terms of its content, especially where the Member States do not have competence to supplement or clarify it. **[Or. 10]**

31. Furthermore, the Weapons Directive and the Deactivation Regulation are inconsistent in expressing whether a certificate can be issued by a party other than an authority. According to the information obtained from the Austrian authorities and submitted by the appellant, the company, constituted in the legal form of a limited liability company (GmbH), which issued the deactivation certificate is one of several verifying entities designated by the Austrian authorities for that task. The company, like the other companies, is not included as a verifying entity designated by Austria in the Commission's list previously published on the Commission's website.

32. At this stage of the proceedings, the Supreme Administrative Court considers that the more justifiable interpretation is that Member States are required to recognise a deactivation certificate issued by a verifying entity designated by another Member State only if the verifying entity is included in the Commission's list. The Supreme Administrative Court takes the view that there is a departure from patterns of action otherwise expressed in the provisions of EU law, in the manner explained in greater detail above, and that it would be problematic in terms of mutual recognition if a designated verifying entity cannot be clearly identified from the Commission's list referred to in the Deactivation Regulation.

Questions referred for a preliminary ruling

33. The Supreme Administrative Court has ordered that the proceedings be stayed and the following question be referred to the Court of Justice for a preliminary ruling pursuant to Article 267 TFEU:

1. In the case of transfers of deactivated firearms within the Union, taking into account the provisions of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008, and the provisions of Commission Implementing Regulation (EU)

2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable, in particular Article 3(1) of that regulation:

(a) can a verifying entity which has been confirmed by a national authority and has issued a deactivation certificate be regarded as an entity within the meaning of the Weapons Directive and Articles 3 and 7 of the Deactivation Regulation even though it is not included in the list published by the Commission pursuant to Article 3(3), where various authorities of that Member State have notified the transferor of the weapons that the verifying entity, operating in the legal form of a limited liability company (GmbH), which issued the certificate is authorised to do so under that regulation; and

(b) can a verifying entity designated by a Member State for the purposes of the deactivation of weapons also be validated by means of other evidence obtained from a national authority instead of by means of inclusion **[Or. 11]** in the list published on the Commission's website within the meaning of Article 3(3) of the regulation, such that a deactivation certificate issued by that verifying entity meets the requirements laid down in that regulation to the effect that a Member State must recognise a deactivation certificate issued in another Member State in accordance with Article 7(2) of the regulation?

... **[Or. 12]**

...