Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 7 July 2022 [1]

Case C-296/21

A

(Request for a preliminary ruling
from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland))

(Preliminary-ruling proceedings – Acquisition and possession of firearms – Transfer of deactivated firearms within the European Union – Directive 91/477/EEC – Implementing Regulation (EU) 2015/2403 – Article 7(2) – Mutual recognition – Article 3(1) – Verifying entity designated by the Member States – Article 3(3) – Verifying entity which is not included in the list of verifying entities of the Member States published by the Commission)

1. Directive 91/477/EEC, [2] following its amendment by Directive 2008/51/EC, [3] reflected, among other concerns of the EU legislature, the concern to regulate the arrangements for the deactivation of firearms.

2. Implementing Regulation (EU) 2015/2403 [4] is aimed at ensuring that deactivated firearms are rendered irreversibly inoperable, as proposed by Directive 2008/51. For that purpose, that regulation requires that a competent authority must verify that deactivation has been carried out in accordance with certain technical specifications (laid down in Annex I to Implementing Regulation 2015/2403) and issue the owner of the weapon with a certificate attesting to this.

3. Essentially, the referring court has two questions regarding the interpretation of Directive 91/477 and Implementing Regulation 2015/2403:

– first, it seeks to ascertain whether an entity governed by private law and incorporated as a limited liability company is authorised to act as a 'verifying entity' and to issue a deactivation certificate;

– secondly, it asks whether the recognition by a Member State of firearms deactivation certificates issued in another Member State is conditional upon the European Commission

[1] Original language: Spanish.

[2] Council Directive of 18 June 1991 on control of the acquisition and possession of weapons (OJ 1991 L 256, p. 51). It was repealed by Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (OJ 2021 L 115, p. 1).

[3] Directive of the European Parliament and of the Council of 21 May 2008 amending Directive 91/477 (OJ 2008 L 179, p. 5). In this Opinion, citations of Directive 91/477 will, unless otherwise stated, refer to the version as amended by Directive 2008/51.

[4] Commission Implementing Regulation of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (OJ 2015 L 333, p. 62).

having included, in the list provided for in Article 3(3) of Implementing Regulation 2015/2403, the entity which issued the certificate.

I. Legal framework

A. European Union law

1. Directive 91/477

4. In accordance with Article 1:

‘1. For the purposes of this Directive, “firearm” shall mean any portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded for one of the reasons listed in Part III of Annex I. Firearms are classified in part II of Annex I.

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

– it has the appearance of a firearm, and

– as a result of its construction or the material from which it is made, it can be so converted.

1a. For the purposes of this Directive, “part” shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm.

1b. For the purposes of this Directive, “essential component” shall mean the breach-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.

…’

5. Article 4 reads:

‘1. Member States shall ensure either that any firearm or part placed on the market has been marked and registered in compliance with this Directive, or that it has been deactivated.

…’

6. Article 14, in Chapter 3 (‘Formalities for the movement of weapons within the Community’), provides:

‘Member States shall adopt all relevant provisions prohibiting entry into their territory:

— of a firearm except in the cases defined in Articles 11 and 12 and provided the conditions laid down therein are met,

…’

7. Pursuant to Annex I:

‘…

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;

…

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.

…’

2. Implementing Regulation 2015/2403

8. Article 2 (‘Persons and entities authorised to deactivate firearms’) is worded as follows:

‘Deactivation of firearms shall be carried out by public or private entities or by individuals authorised to do so in accordance with national legislation.’

9. Article 3 (‘Verification and certification of deactivation of firearms’) states:

‘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”).

2. Where the verifying entity is also authorised to deactivate firearms, Member States shall ensure a clear separation of those tasks and of the persons carrying them out within that 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.

…'

10. Article 7 ('Transfer of deactivated firearms within the Union') states:

'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.'

11. Article 8 ('Notification requirements') provides:

'Member States shall notify to the Commission any measures they adopt in the field covered by this Regulation …'

12. Annex I ('Technical specifications for the deactivation of firearms') defines the deactivation operations to be performed in order to render firearms irreversibly inoperable, on the basis of three tables:

– Table I lists the different types of firearm;

– Table II describes the operations to be performed to render each essential component of firearms irreversibly inoperable;

– Table III sets out the specific operations per essential components of each type of firearm.

13. Annex III contains the 'Model certificate for deactivated firearms'.

B. Finnish law. Ampuma-aselaki (1/1998)[5]

14. In accordance with Paragraph 112a ('Transfer and import of deactivated firearms to/into Finland'):

'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.'

15. Pursuant to Paragraph 91:

'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,

[5] Law on firearms No 1/1998 ('the Law on 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. …'

16. Paragraph 112b ('Deactivation of firearms') provides in subparagraph 2 thereof:

'Implementing Regulation 2015/2403 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 firearms, on requests for assistance in carrying out deactivations, on additional deactivation measures and on the transfer of deactivated firearms within the European Union.'

II. Facts, dispute and questions referred for a preliminary ruling

17. A, who runs a business specialising in the sale of military historical collectables, acquired three assault rifles in Austria, which, according to certificates issued by company B on 9 October 2017, had been deactivated.

18. Company B is recognised by the Austrian authorities as a verifying entity within the meaning of Article 3 of Implementing Regulation 2015/2403, although its name does not appear on the list to which Article 3(3) refers.

19. On 17 October 2017, A transferred the assault rifles to Finland and, on 24 October 2017, in accordance with Paragraph 112a of the Law on firearms, he presented them to the Helsinki Police, together with the accompanying deactivation certificates. [6]

20. On 15 February 2018, the Helsinki Police issued decision No 2018/8575, in which it took the view that the deactivation of the assault rifles did not meet the technical requirements set out in Annex I to Implementing Regulation 2015/2403. The Helsinki Police considered that the deactivation operations on the firearms were deficient. [7]

21. The Helsinki Police took the view that the assault rifles had to be regarded as weapons requiring a licence within the meaning of the Law on firearms. Since A did not hold a licence entitling him to possess those weapons, the police ordered that they be seized.

22. A brought an administrative action contesting that decision before the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland), arguing that:

– the Finnish Police were not competent to verify the deactivation of weapons;

[6] At the request of the police, A presented them again on 23 November 2017.

[7] The deactivation operations were found to have the following defects: (1) disassembly of the firearms and closing system had not been prevented; (2) the trigger mechanism had not been welded to the frame and, although the hammer had been welded to the sear, it allowed the trigger to move and parts of the trigger mechanism could be removed from the firearms; (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 Implementing Regulation 2015/2403; (4) 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 Implementing Regulation.

– in accordance with Article 7(2) of Implementing Regulation 2015/2403, the Police should have recognised the deactivation certificate issued by company B, a verifying entity designated by the Republic of Austria;

– the evidence submitted proved that the deactivation of the weapons satisfied the technical requirements set out in Annex I to Implementing Regulation 2015/2403.

23. The Helsinki Police and the Poliisihallitus (Central Police Authority) lodged observations in that action, arguing that the weapons could not be regarded as deactivated because:

– the deactivation had not been carried out correctly;

– company B was not an authority within the meaning of Article 3(1) of Implementing Regulation 2015/2403 and nor was it included in the list referred to in Article 3(3) of that regulation;

– that list merely stated that the Republic of Austria had designated the Austrian Interior Ministry as the verifying entity.

24. A lodged a reply to which he annexed some correspondence with the Austrian Ministry of Defence and Sports in which the latter confirmed that company B was a verifying entity designated by the Republic of Austria within the meaning of Article 3(1) of Implementing Regulation 2015/2403. A also stated that the Republic of Austria has designated a total of 16 verifying entities. [8]

25. On 26 June 2019, the Helsingin hallinto-oikeus (Administrative Court, Helsinki) dismissed the action brought by A on the grounds that:

– company B was not listed as an Austrian verifying entity on the Commission's website. Therefore, the deactivation certificates did not comply with Implementing Regulation 2015/2403;

– the imported weapons did not satisfy the deactivation technical specifications laid down in Implementing Regulation 2015/2403.

26. A appealed against the first-instance judgment to the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), claiming that that judgment should be set aside and the decision of the Helsinki Police annulled. [9]

[8] Documents 3 and 4 of the annex submitted with A's written observations.

[9] In support of the forms of order sought, A submitted an email from the Austrian Interior Ministry dated 11 March 2020, according to which, under national law, the Ministry of Defence (for weapons considered to be military) and the Interior Ministry (for weapons intended for civilian use) authorised certain professional operators to verify the deactivation of firearms.

27. The Helsinki Police and the Poliisihallitus (Central Police Authority) contested the appeal and pointed out the need to seek a preliminary ruling; the Korkein hallinto-oikeus (Supreme Administrative Court) agreed with the latter point and has referred the following questions to the Court of Justice for a preliminary ruling:

'In the case of transfers of deactivated firearms within the Union, taking into account the provisions of … [Directive 91/477] … and the provisions of Commission Implementing Regulation (EU) 2015/2403 … 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 [Directive 91/477] and Articles 3 and 7 of [Implementing Regulation 2015/2403] 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?

(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 in the list published on the Commission's website within the meaning of Article 3(3) of [Implementing Regulation 2015/2403], 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 that regulation?'

III. Procedure before the Court of Justice

28. The request for a preliminary ruling was received at the Registry of the Court on 7 May 2021.

29. Written observations were lodged by A, the Poliisihallitus (Central Police Authority), the Finnish Government and the Commission, who all participated in the hearing held on 18 May 2022.

30. The Austrian Government replied in writing to the questions addressed to it by the Court.

IV. Assessment

A. Preliminary point

31. The definition of 'deactivated weapon' has undergone a significant evolution in legislation:

– In connection with the deactivation of firearms, the original wording of Directive 91/477, in Part III of Annex I thereto, merely referred to national law.

– Directive 2008/51 amended Article 4 of Directive 91/477, imposing on Member States the obligation to ensure 'either that any firearm or part placed on the market has been marked and registered in compliance with this Directive, or that it has been deactivated'.

– Directive 2008/51 made the Commission responsible for issuing 'common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable'. The outcome was the adoption of Implementing Regulation 2015/2403. [10]

– However, deactivated weapons remained outside the definition of firearm until the adoption of Directive (EU) 2017/853, [11] which included deactivated weapons within its scope.

32. Although Directive 2017/853 is not applicable *ratione temporis* to this case, it confirms the legislative trend towards strengthening the guarantees necessary to ensure that the deactivation of firearms becomes irreversible, so that firearms may not be reactivated. [12]

B. The first question

33. The referring court wishes to know whether, in the cross-border context of the present case, the verifying entity which issued a deactivation certificate is authorised to do so, even though it does not appear on the list published by the Commission [13] in accordance with Article 3(3) of Implementing Regulation 2015/2403 and that entity is in the form of a limited liability company.

34. The question referred for a preliminary ruling, which concerns the formal aspects of the movement of deactivated firearms, therefore encompasses two features of the applicable regulation:

– first, whether Article 3(1) of Implementing Regulation 2015/2403 precludes a body governed by private law from being a verifying entity;

– secondly, whether the verifying entities which each Member State designates must be included in the list which the Commission has to publish under Article 3(3) of Implementing Regulation 2015/2403.

1. Bodies governed by private law as verifying entities

35. Pursuant to Article 3(1) of Implementing Regulation 2015/2403, in conjunction with the second paragraph of Part III of Annex I to Directive 91/477, the Member States are required to designate a 'competent authority' to verify that the deactivation of a firearm has been carried out in accordance with the technical specifications set out in Annex I.

[10] The requirement to fulfil those obligations complied with an international commitment entered into by the European Union as a party to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime, concluded by Council Decision 2014/164/EU (OJ 2014 L 89, p. 7).

[11] Directive of the European Parliament and of the Council of 17 May 2017 amending Directive 91/477 (OJ 2017 L 137, p. 22).

[12] 'The stakeholders consulted by the Commission believed that the reactivation of deactivated weapons was a relevant source of weapons for criminal use and considered the harmonisation of deactivation rules to be a priority in order to fight this practice' (paragraph 2.7 of the Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons'; COM(2015) 750 final – 2015/0269 (COD)).

[13] The referring court states (paragraph 23 of its order) that, at the time when the request for a preliminary ruling was drawn up, the list was not available on the Commission's website. The Commission's Directorate-General for Migration and Home Affairs (DG HOME) informed the referring court, via the Europe Direct Contact Centre, that the list was being revised and that the updated version would be available by the end of 2021.

36. The last part of that provision adds that the 'competent authority' is also to be known as 'the verifying entity'. The (conventional) synonymy of those two terms creates a number of difficulties of interpretation to which I shall now refer.

37. The parties' observations present opposing views on the nature of verifying entities:

– the Finnish Government and the Finnish police service take a strict approach, such that only *public* bodies may perform verification tasks;

– the Commission and A take the opposite view: there are no obstacles preventing a *private* undertaking from being entrusted with the task of verifying and certifying the deactivation of firearms.

38. The use of the word 'authority' in Article 3(1) of Implementing Regulation 2015/2403 evokes, in principle, the 'public' nature of whoever takes on the task of verification. By definition, the characteristic trait of an 'authority' is that it participates in the functions *iure imperii* of the public authorities. [14]

39. That approach is bolstered in recital 3 of Implementing Regulation 2015/2403: Member States must 'make arrangements for the deactivation measures to be verified by a competent authority'.

40. On the same lines, and now from a systematic point of view, Articles 2 and 3 of Implementing Regulation 2015/2403 differentiate between:

– *Deactivation* of firearms which, as a material operation, may be carried out by public or private entities without distinction.

– *Verification* that firearms have been deactivated correctly, a task which is the exclusive responsibility of a 'competent authority'. As regards verification, no mention is made of private entities, which, in contrast to material deactivation operations, would appear to suggest that verification may be carried out only by public entities.

41. Legislative developments subsequent to the provisions applicable here follow the same line. Implementing Regulation (EU) 2018/337 [15] gives new wording to Article 3(1) of Implementing Regulation 2015/2403, stating that 'Member States shall designate a competent public authority to verify that the deactivation of the firearm has been carried out in accordance with the technical specifications set out in Annex I …'.

42. The aim was, therefore, to create a *public* system of supervision to verify the deactivation of firearms and that function was entrusted to State *authorities*.

[14] On the classic distinction between acts carried out *iure gestionis* and *iure imperii*, see the judgment of 7 May 2020, *Rina* (C-641/18, EU:C:2020:349), in connection with Article 1(1) of the Brussels I Regulation (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)).

[15] Commission Implementing Regulation of 5 March 2018 amending Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (OJ 2018 L 65, p. 1). It aims to ensure that 'the rules on deactivation of firearms laid down in Implementing Regulation (EU) 2015/2403 should reflect and be consistent with the new rules on deactivation introduced by Directive (EU) 2017/853' (recital 5). It was pointed out at the hearing that a number of the language versions of Implementing Regulation 2018/337 did not add the adjective 'public' to the noun 'authority' when amending Article 3(1).

43. The EU legislation does not go so far as to impose on Member States the obligation to create, within their administrative structures, technical services capable of fulfilling the verification remit. I shall endeavour to explain why, in my view, Member States may entrust that task to entities (whether called by that name or by other synonymous names) [16] which adopt private legal forms, provided that certain guarantees are respected.

44. None of the EU provisions referred to in this field defines how, specifically, public authorities are to ensure fulfilment of the criteria in Annex I to Implementing Regulation 2015/2403. It is for the Member States to identify which authorities will perform the task of verification and the manner in which they will do so.

45. In the absence of a provision to the contrary in EU law, the Member States retain their power of self-organisation. In general terms, nothing prevents them from assigning the performance of public duties to private entities, including where those duties have their origins in EU provisions which do not preclude such assignment. [17]

46. In the same vein, Member States may authorise their authorities to delegate certain powers to private entities, [18] or to create mechanisms for collaboration with private sector undertakings in order to entrust them with the exercise of those powers, subject to the appropriate controls. [19]

47. In my view, Implementing Regulation 2015/2403 permits the use of the same techniques. The sole limit on organisational autonomy is that Member States should not reach the point of *rendering nugatory* the model of a public authority as having ultimate responsibility for the process of verifying the deactivation of firearms.

48. To put it another way, as regards verifying entities, that task carried out in the public interest may be delegated to a private undertaking if the conditions under which the task is delegated do not distort the public legal framework of Directive 91/477 and Implementing Regulation 2015/2403.

49. It is, therefore, my understanding that private entities may verify the deactivation of firearms, provided that they are under the mandate and effective supervision of a *genuine* public authority. The latter has the power to monitor how the deactivation was carried out, but may delegate the performance of that task to private entities.

[16] The different language versions use both the noun 'body' ('organisme' in the French, 'organismo' in the Italian) and the noun 'entity' ('entidad' in the Spanish; 'entity' in the English; 'entidade' in the Portuguese; 'entitatea' in the Romanian; 'entiteit' in the Dutch). The German version uses the word 'Behörde'.

[17] In a general sphere like that of the legal rules applicable to provisions of a directive which have direct effect, the Court of Justice accepted that those provisions may be relied on against 'a body or an organisation, even one governed by private law, to which a Member State has delegated the performance of a task in the public interest and which possesses for that purpose special powers beyond those which result from the normal rules applicable to relations between individuals' (judgment of 10 October 2017, *Farrell*, C-413/15, EU:C:2017:745, paragraph 35).

[18] Delegation does not automatically mean that the activities concerned are carried out in the 'exercise of official authority'. The case-law of the Court on that point states that an auxiliary and preparatory role cannot be regarded as direct and specific participation in the exercise of official authority within the meaning of Article 51(1) TFEU, and that the scope of that provision must be limited to what is strictly necessary. From a different perspective, the judgment of 7 May 2020, *Rina* (C-641/18, EU:C:2020:349, paragraph 39), states that 'the mere fact that certain powers are delegated by an act of a public authority does not imply that those powers are exercised *iure imperii*'.

[19] EU law expressly permits the presence of private entities to carry out public tasks in some sectors. See, for example, Article 4(2) of Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC (OJ 2014 L 127, p. 51): 'Roadworthiness tests shall be carried out by the Member State of registration of the vehicle, by a public body entrusted with the task by that Member State or by bodies or establishments designated and supervised by that Member State, *including authorised private bodies*.' Italics added.

50. The Austrian Government, in its reply of 22 April 2022 to questions from the Court, stated that national legislation allows the Interior Ministry and the Defence Ministry to authorise certain professional operators to verify that weapons have been deactivated. Such verification means that the authorised individual performs by delegation, under the direction of those ministries, a task which is the responsibility of the public authorities. [20]

51. At the hearing, the Finnish authorities and the Commission took a critical view of the Austrian model, drawing attention to the number of private verifying entities recognised (16) [21] and the fact that their details were not included in the list sent to the Commission, which refers only to the Interior Ministry.

52. However that model should be judged (at the hearing, the Commission stated that it is examining it [22] in order to decide whether to take any measures in that regard), the first question referred for a preliminary ruling is worded in abstract terms and, therefore, does not require any assessment by the Court of the system established in a particular Member State.

2. The list referred to in Article 3(3) of Implementing Regulation 2015/2403

53. In accordance with Article 3(3) of Implementing Regulation 2015/2403, 'the Commission shall publish on its website a list of the verifying entities designated by Member States …'.

54. The referring court asks whether inclusion in that list is a prerequisite in order for verifying entities to be regarded as such or whether, far from having constitutive effect, its function is merely informative.

55. In my view, Article 3(1) and (3) of Implementing Regulation 2015/2403 lends support to the second position: the power to designate verifying entities rests with Member States, whereas the list reflects (or should reflect) the entities already designated by Member States, in a merely declaratory rather than constitutive manner. [23]

56. As the Commission points out in its written observations, neither Annex I, Part III, to Directive 91/477 nor Article 3(3) of Implementing Regulation 2015/2403 grants it the power to decide who are 'verifying entities'. Nor do they stipulate that only entities which have been designated by a Member State and are then included in the list published on the Commission's website may be verifying entities. [24]

[20] According to the Austrian Government (paragraph 17 of its reply), the delegated professional operator acts functionally as an organ of the delegating public authority. The latter is responsible for the execution of tasks carried out in the public interest by the professional operator. In accordance with Austrian constitutional case-law, the delegation must be subject to strict conditions and there must be a guarantee that an administrative body (in this case, the Defence Ministry and Interior Ministry, which exercise authority and may give instructions to the verifying entities) has the power of instruction and the power of supervision or control.

[21] According to the information provided by the Commission, no other Member State uses that model.

[22] The Commission appears to be particularly concerned about the number of private verifying entities and about the *real* likelihood that these come under the control of the public authorities.

[23] In actual fact, inclusion in the list does not, strictly speaking, affect the compatibility of each Member State's conduct with the provisions of Implementing Regulation 2015/2403. The reasoning I put forward in the Opinion in *Poltorak* (C-452/16 PPU, EU:C:2016:782, points 64 to 66), appears to me to be applicable, by analogy, to the present dispute. That case concerned notification to the General Secretariat of the Council of which authorities were competent under the national law of a Member State to issue or execute European arrest warrants.

[24] Paragraph 26 of the Commission's written observations, confirmed at the hearing.

57. It is true that, in a cross-border situation, the principle of legal certainty calls for the identification of verifying entities to be based on a system in which publication makes it possible to know with certainty which entities each Member State has recognised.

58. Naturally, the promotion of 'a certain freedom of movement', to which recital 1 of Directive 2008/51 refers, is better attained by a mechanism which reduces barriers to trade between the Member States. The assessment, by the authorities of the destination country to which a deactivated weapon is presented, is easier if the deactivation has been verified and certified in the country of origin by an entity whose nature is not in dispute precisely because it is included in the list.

59. However, those considerations cannot override what is inferred from the wording or the context of the provision: inclusion in the list referred to in Article 3(3) of Implementing Regulation 2015/2403 is not a condition of validity for obtaining the status of verifying entity.

60. That status is not acquired as a result of inclusion in the list but rather as a result of authorisation by the Member State concerned. The power to designate entities having competence to verify and certify the deactivation of firearms lies exclusively with the Member State and the Commission's role in publishing the list is merely ancillary.

61. Once that authorisation has been granted by a Member State, the list will, I repeat, constitute the preferred, but not the only, method of establishing that the deactivation certificate was issued by an authorised verifying entity.

62. On that basis, if a verifying entity is not included in the list, there is nothing to preclude a weapons importer from providing a deactivation certificate and proving, by other valid legal methods, that the verifying entity which issued the certificate lawfully holds that status (in other words, that it has been designated as such by a Member State).

63. The considerations set out above should not be taken as a *trivialisation* of the force of the list to which Article 3(3) of Implementing Regulation 2015/2403 refers. That provision, like the other provisions of that regulation, must not be a 'dead letter'. Knowing in advance and for certain which are the verifying entities of each Member State improves the reliability of the system as a whole.

64. Moreover, Article 8 of Implementing Regulation 2015/2403 imposes on Member States the duty to cooperate in good faith with the Commission and to notify to it 'any measures they adopt in the field covered by this Regulation'. These include the notification of 'detailed information on and the symbol of the verifying entity as well as contact information', as provided for in Article 3(3).

65. Failure to notify constitutes not only an additional difficulty when it comes to establishing that the deactivation certificate was issued by a verifying entity but also a breach of a legal duty by the Member State concerned. It is for the Commission to take the necessary action to counter the breach of that duty.

C. The second question

66. By its second question, the referring court asks:

– whether 'a verifying entity designated by a Member State … [can] also be validated by means of other evidence obtained from a national authority …';

– whether, in those circumstances, a deactivation certificate issued by that verifying entity 'must' be recognised in another Member State in accordance with Article 7(2) of Implementing Regulation 2015/2403.

1. Validation of the verifying entity

67. The first part of the second question, as worded by the referring court, overlaps to a large extent with the first question.

68. If, as I suggest, the inclusion of a verifying entity in the Commission's list is not an essential condition for the acquisition of that status, it seems logical to me to allow other evidence establishing that that entity has been designated by a Member State.

69. In my view, there is nothing to preclude that fact from being established by means of official documents issued in the State of origin by that State's authorities, even if, for various reasons, the appointment has not been reflected in the list published by the Commission.

2. Recognition of the deactivation certificate

70. The second part of the second question concerns the *duty* of a Member State to recognise a deactivation certificate issued by the verifying entity of another Member State.

71. The general rule is that deactivated firearms may be transferred to another Member State only if they carry the common unique marking and are accompanied by a deactivation certificate.

72. In accordance with Article 7(2) of Implementing Regulation 2015/2403, 'Member States shall recognise the deactivation certificates issued by another Member State if the certificate fulfils the requirements set out in this Regulation'. [25]

73. The wording of that article is certainly prescriptive: 'Member States *shall recognise* …' (italics added). However, that requirement is immediately qualified by the condition that certificates should fulfil 'the requirements set out in this Regulation'.

[25] At the hearing, all the participants agreed that that article provides for a system of mutual recognition of certificates, based on mutual trust between the Member States.

74. Consequently, recognition of a certificate by a Member State other than the issuing State is not automatic or unconditional. Rather, recognition occurs only if the certificate fulfils the requirements laid down in Implementing Regulation 2015/2403, which may be both procedural and substantive:

– The procedural requirements concern the model form used (deactivation certificate in Annex III to the regulation) and the competence of the verifying entity which issued it. The certificate is presented to the competent authority of the receiving State so that that authority can satisfy itself that the certificate was issued by a verifying entity designated by the State of origin.

– The substantive requirements concern the deactivation operations, which must comply with the technical specifications laid down in Annex I to the regulation. However, certain difficulties are raised by the checks, carried out by the authorities of the State of destination, to ensure that those specifications were complied with in the State of origin. Although the questions from the referring court do not refer to the substantive requirements,[26] I consider that it is helpful to refer to those requirements in order to define properly the principles and interests at stake in the present case.

75. On first consideration, it might be thought that the intra-Community trade in deactivated firearms comes within the *classic* scheme of mutual recognition applicable to similar documents in the context of the movement of goods and the supply of services.

76. However, I consider that that similarity of treatment must be qualified.

77. First of all, Directive 2008/51 points out that it creates a balance between 'on the one hand the undertaking to ensure a *certain* freedom of movement for some firearms within the Community, and on the other the need to *control* this freedom using security guarantees …'.[27]

78. Article 12(3) of Directive 91/477, as originally worded, reflected the fact that limitations on the free movement of firearms were intentional and that, 'under agreements for the mutual recognition of national documents, two or more Member States may provide for arrangements more flexible than those prescribed in this Article for movement with firearms within their territories'.

79. Secondly, the regulation of the intra-Community movement of firearms, in respect of which Directive 91/477 'establishes a harmonised minimum framework',[28] contrasts with other provisions on full harmonisation which govern the cross-border trade in goods the movement of which could create some risk.

80. In the latter cases, the overriding principle is that of freedom of movement, pursuant to which Member States are precluded from prohibiting, limiting or hindering the placing on the market or the putting into service on their territory of objects which comply with the provisions of the relevant legislation.

[26] As I have already observed (footnote 13), the national court points out that the Helsinki Police found that there were significant defects in the deactivation of the firearms.

[27] Recital 1 of Directive 2008/51. Italics added.

[28] Judgment of 3 December 2019, *Czech Republic* v *Parliament and Council* (C-482/17, EU:C:2019:1035, paragraph 47).

81. Even in a fully harmonised framework, national authorities are granted certain powers of retrospective scrutiny to identify flaws or anomalies in the system. To that end, a number of safeguard clauses were created which prevent or correct failures at EU level by activating a process in which the Commission and all the Member States participate. [29]

82. The reason why Directive 91/477, as amended by Directive 2008/51, and Implementing Regulation 2015/2403 do not specifically grant those powers of scrutiny to the Member States in connection with deactivated weapons is because they are not essential, specifically in the light of the restrictions to which the *ordinary* circulation of such weapons are made subject.

83. As a result of the procedure for transferring weapons between Member States, the authority of the receiving State conducts a full inspection of the weapons *before* definitively allowing those weapons to enter its territory. The power to do this flows from Directive 91/477.

84. Under Article 14, first indent, of Directive 91/477, 'Member States shall adopt all relevant provisions prohibiting entry into their territory … of a firearm except in the cases defined in Articles 11 and 12 and provided the conditions laid down therein are met'. [30]

85. Those two articles govern the process for the movement of different types of firearm within the European Union, which is subject to a complex procedure (Article 11) [31] or, in the case of the possession of a firearm during a journey through two or more Member States, to the grant of authorisation by those Member States (Article 12).

86. As was pointed out at the hearing, the formalities for transferring deactivated firearms within the European Union involve the presentation of those firearms and their deactivation certificates to the authorities of the receiving State, which have to examine the firearms and the certificates in all cases in order to examine whether they correspond to one another and whether the prescribed conditions have been met. [32]

87. During that declaration and presentation procedure (which is not incompatible with the *relative* freedom of movement of firearms, as restricted in the light of their obvious danger), the authorities of the receiving State will not be able to *close their eyes* to the existence of certificates which it is clear at first sight do not comply with the requirements laid down in Implementing Regulation 2015/2403.

[29] In the Opinion in *Fédération des entreprises de la beauté* (C-4/21, EU:C:2022:221), I dealt with the application of safeguard clauses in relation to Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ 2009 L 342, p. 59), the aim of which is to harmonise in full the EU provisions in that sector. Although, under that regulation, Member States must not refuse, prohibit or restrict the making available on the market of cosmetic products which comply with the requirements of the regulation, they may apply those clauses on a provisional basis where they respect the unity of the internal market in those products, while leaving the final decision to the Commission.

[30] The sixth recital of Directive 91/477 declared that 'passing from one Member State to another while in possession of a weapon should, in principle, be prohibited'.

[31] If the Member State where the weapon is situated before dispatch authorises the transfer, it will issue a licence setting out all the particulars listed in the first subparagraph of Article 11(2). That licence must accompany the firearm until it reaches its destination and it must be produced whenever so required by the authorities of the Member States.

[32] A fortiori, the receiving authorities may check whether deactivated weapons comply with any 'additional measures' which go further than the technical specifications laid down in Annex I to Implementing Regulation 2015/2403, and to which Article 6 of the regulation refers. It was made clear at the hearing that neither the Republic of Austria nor Finland has adopted measures of that kind.

88. In such situations, where the receiving authorities have serious grounds to suspect that certificates issued by a verifying entity in the State of origin do not satisfy those requirements, they may carry out the appropriate checks (including a request for assistance under Article 4 of Implementing Regulation 2015/2403) and may, possibly, disregard those certificates if the defects identified are serious. [33]

89. It may be thought that since deactivated weapons do not come within the definition of firearms, they are not subject to those procedures for transfer from one Member State to another. However, I do not consider that that is the case, for a number of reasons:

– Any weapon includes certain 'essential components'. The aim of deactivation is precisely to ensure 'that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification'. [34]

– A number of those essential components themselves constitute firearms, in accordance with the definition in Article 1b of Directive 91/477, which incorporates into the provisions of the directive the wording originally laid down in Annex I, Part II(b).

– In that context, it is hard to deny that the competent authority of the receiving State lacked the power to inspect and categorise deactivated weapons in so far as these include 'essential components of firearms', the deactivation of which must also be established.

90. In summary, in the receiving State, checks carried out by the authorities of that State to ensure that the certificate verifying the deactivation of a weapon satisfies the applicable procedural and substantive requirements, negate the risk and enable the protection of public safety: weapons, such as deactivated weapons, will not be brought into its territory until such time as it is confirmed that they are genuinely deactivated.

V. Conclusion

91. In the light of the foregoing considerations, I propose that the Court of Justice should reply to the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) as follows:

(1) Article 3 of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons and Article 3 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 are to be interpreted as meaning that:

– they do not preclude a Member State from designating a company governed by private law, under the supervision and direction of a public authority, to verify that the deactivation of a

[33] Naturally, the same solution may be reached where a deactivation certificate has been obtained and relied on fraudulently. As much was acknowledged in the judgments of 6 February 2018, *Altun and Others* (C-359/16, EU:C:2018:63), and of 2 April 2020, *CRPNPAC and Vueling Airlines* (C-370/17 and C-37/18, EU:C:2020:260), relating to the issue of E 101 certificates for the application of social security schemes to workers moving within the European Union, provided that the procedure culminating in the action of the Administrative Commission to reconcile the points of view of the administrative authorities concerned has been followed first. Since Implementing Regulation 2015/2403 does not provide for such conciliation mechanisms in the case of weapons deactivation certificates, the assessment of possible fraud may be carried out by the authorities of the receiving State.

[34] Annex I, Part III(a) of Directive 91/477.

firearm has been carried out in accordance with the technical specifications laid down in Annex I to Implementing Regulation 2015/2403;

– inclusion in the list of verifying entities designated by the Member States, which is published on the Commission's website, is not a substantive requirement for establishing such designation, which may be proved by any method permitted in law.

(2) Article 7(2) of Implementing Regulation 2015/2403 must be interpreted as meaning that the authorities of a Member State to which an attempt is made to transfer deactivated weapons may check, where they have serious grounds for doing so, that deactivation certificates issued by the verifying entities of another Member State satisfy the formal and substantive requirements laid down in that regulation.