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COURT OF JUSTICE OF THE EUROPEAN UNION
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CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH
SUD EUROPSKE UNIE
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HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Grand Chamber)

23 January 2018 *

(Reference for a preliminary ruling — Territorial scope of EU law — Article 355(3) TFEU — Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the Adjustments to the Treaties — Article 29 — Point 4 of Section I of Annex I — Exclusion of Gibraltar from the customs territory of the European Union — Implications — Directive 91/477/EEC — Article 1(4) — Article 12(2) — Annex II — European firearms pass — Hunting and target shooting activities — Applicability to the territory of Gibraltar — Obligation to transpose — No such obligation — Validity)

In Case C-267/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of Gibraltar, made by decision of 6 May 2016, received at the Court on 13 May 2016, in the proceedings

The Queen on the application of:

Albert Buhagiar and Others

v

Minister for Justice,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič (Rapporteur), A. Rosas and C.G. Fernlund, Presidents of Chambers, E. Juhász, A. Borg Barthet, M. Safjan, D. Šváby, M. Berger, E. Jarašiūnas and M. Vilaras, Judges,

Advocate General: P. Mengozzi,

* Language of the case: English.

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 16 May 2017,
after considering the observations submitted on behalf of:

- Mr Buhagiar and Others, by L. Baglietto QC and C. Bonfante, Barrister,
- the Minister for Justice, by M. Llamas QC and Y. Sanguinetti, Barrister,
- the United Kingdom Government, by G. Brown and C. Brodie, acting as Agents, M. Demetriou QC and M. Birdling, Barrister,
- the European Parliament, by P. Schonard, R. van de Westelaken and I. McDowell, acting as Agents,
- the Council of the European Union, by S. Petrova, E. Moro and I. Lai, acting as Agents,
- the European Commission, by E. Manhaeve, K. Mifsud-Bonnici, E. White and G. Braga da Cruz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 29 of the Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the Adjustments to the Treaties (OJ, English Special Edition of 27 March 1972, p. 14; ‘the 1972 Act of Accession’), read in conjunction with point 4 of Section I of Annex I thereto, and the interpretation and validity of Article 12(2) of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ 1991 L 256, p. 51), 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) (‘Directive 91/477’).
- 2 The request has been made in proceedings brought by Albert Buhagiar and six other claimants (‘Mr Buhagiar and Others’) against the Minister for Justice of Gibraltar (‘the Minister’) concerning the Minister’s refusal of the request for a European firearms pass (‘pass’) made by Mr Buhagiar and Others.

Legal context

3 Article 28 of the 1972 Act of Accession provides:

‘Acts of the institutions of the [European Union] relating to the products in Annex II to the EEC Treaty and the products subject, on importation into the [European Union], to specific rules as a result of the implementation of the common agricultural policy, as well as the acts on the harmonisation of legislation of Member States concerning turnover taxes, shall not apply to Gibraltar unless the Council, acting unanimously on a proposal from the Commission, provides otherwise.’

4 Article 29 of the 1972 Act of Accession states that ‘the acts listed in Annex I to this Act shall be adapted as specified in that Annex’.

5 In Annex I to the 1972 Act of Accession, which contains the list referred to in the previous paragraph, Section I is entitled ‘Customs legislation’. Point 4 of that section sets out the amendments made to Regulation (EEC) No 1496/68 of the Council of 27 September 1968 on the definition of the customs territory of the [European Union] (OJ, English Special Edition 1968 (II), p. 436). Article 1 of that regulation was thereby replaced by the following provision:

‘The customs territory of the [European Union] shall comprise the following territories:

...

– the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.’

6 Section VIII, entitled ‘Commercial policy’, of Annex I to the 1972 Act of Accession replaced the list of countries set out in Annex II to Regulation (EEC) No 1025/70 of the Council of 25 May 1970 establishing common rules for imports from third countries (OJ, English Special Edition 1970 (II), p. 309), as amended by Regulations (EEC) No 1984/70 of the Council of 29 September 1970 (OJ, English Special Edition 1970 (II), p. 616), (EEC) No 724/71 of the Council of 30 March 1971 (OJ, English Special Edition 1971 (I), p. 202), (EEC) No 1080/71 of the Council of 25 May 1971 (OJ, English Special Edition 1971 (I), p. 287), (EEC) No 1429/71 of the Council of 2 July 1971 (OJ, English Special Edition 1971 (II), p. 469) and (EEC) No 2384/71 of the Council of 8 November 1971 (OJ, English Special Edition 1971 (III), p. 901), with a new list no longer including Gibraltar.

7 Section VI, also entitled ‘Commercial policy’, of Annex II to the 1972 Act of Accession provides in respect of Regulation No 1025/70:

‘The problem created by the deletion of the reference to Gibraltar in Annex II is to be solved in such a way as to ensure that Gibraltar is in the same position with

regard to the [European Union]’s import liberalisation system as it was before accession.’

8 The version of Directive 91/477 applicable at the material time is the version resulting from the amendments that were made to the directive’s original wording by Directive 2008/51 after the European Union acceded to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, annexed to the United Nations Convention against Transnational Organised Crime and adopted by Resolution 55/255 of the General Assembly of 8 June 2001. Directive 2008/51 was adopted on the basis of Article 95(1) EC, the content of which corresponds, in essence, to that of Article 100a(1) of the EEC Treaty, on which Directive 91/477 is based, and to that of Article 114(1) TFEU which is currently in force.

9 The second to seventh recitals of Directive 91/477 state:

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

... in its white paper ‘Completing the internal market’ the Commission stated that the abolition of controls on the safety of objects transported and on persons entails, among other things, the approximation of weapons legislation;

... abolition of controls on the possession of weapons at intra-Community frontiers necessitates the adoption of effective rules enabling controls to be carried out within Member States on the acquisition and possession of firearms and on their transfer to another Member State ...

... the mutual confidence in the field of the protection of the safety of persons which these rules will generate between Member States will be the greater if they are underpinned by partially harmonised legislation; ... it would therefore be useful to determine [categories] of firearms whose acquisition and possession by private persons are to be prohibited, or subject to authorisation, or subject to declaration;

... passing from one Member State to another while in possession of a weapon should, in principle, be prohibited; ... a derogation therefrom is acceptable only if a procedure is adopted that enables Member States to be notified that a firearm is to be brought into their territory;

... however, more flexible rules should be adopted in respect of hunting and target shooting in order to avoid impeding the free movement of persons more [than] is necessary.’

10 Article 1 of Directive 91/477 provides:

‘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 ... Firearms are classified in part II of Annex I.

...

1d. For the purposes of this Directive, “tracing” shall mean the systematic tracking of firearms and, where possible, their parts and ammunition from manufacturer to purchaser ...

...

2. For the purposes of this Directive, “dealer” shall mean any natural or legal person whose trade or business consists ... in the manufacture, trade, exchange, hiring out, repair or conversion of firearms, parts and ammunition.

...

4. A “[pass]” shall be issued on request by the authorities of a Member State to a person lawfully entering into possession of and using a firearm. It shall be valid for a maximum period of five years, which may be extended, and shall contain the information set out in Annex II. It shall be non-transferable and shall record the firearm or firearms possessed and used by the holder of the pass. It must always be in the possession of the person using the firearm and any change in the possession or characteristics of the firearm, as well as the loss or theft thereof, shall be indicated on the pass.’

11 Article 4 of Directive 91/477 is worded as follows:

‘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.

...

4. Member States shall ... ensure the establishment and maintenance of a computerised data-filing system ... which guarantees to authorised authorities access to the data-filing systems in which each firearm subject to this Directive shall be recorded. ...

...

5. Member States shall ensure that all firearms may be linked to their owner at any moment. ...’

12 Article 4a of Directive 91/477 states:

‘Without prejudice to Article 3, Member States shall allow the acquisition and possession of firearms only by persons who have been granted a licence or, with respect to categories C or D, who are specifically permitted to acquire and possess such firearms in accordance with national law.’

13 Article 5 of Directive 91/477 provides:

‘Without prejudice to Article 3, Member States shall permit the acquisition and possession of firearms only by persons who have good cause and who:

- (a) are at least 18 years of age, except in relation to the acquisition, other than through purchase, and possession of firearms for hunting and target shooting, provided that in that case persons of less than 18 years of age have parental permission ...
- (b) are not likely to be a danger to themselves, to public order or to public safety. Having been convicted of a violent intentional crime shall be considered as indicative of such danger.

Member States may withdraw authorisation for possession of a firearm if any of the conditions on the basis of which it was granted are no longer satisfied.

...’

14 Article 6 of Directive 91/477 is worded as follows:

‘Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition classified in category A. ...

...’

15 Article 7 of Directive 91/477 states:

‘1. No one may acquire a firearm classified in category B within the territory of a Member State unless that Member State has so authorised him.

...

2. No one may be in possession of a firearm classified in category B within the territory of a Member State unless that Member State has so authorised him. If he is a resident of another Member State, that other Member State shall be informed accordingly.

...’

16 Article 8 of Directive 91/477 provides:

‘1. No one may be in possession of a firearm classified in category C unless he has declared it to the authorities of the Member State in which that firearm is held.

...

3. If a Member State prohibits or makes subject to authorisation the acquisition and possession within its territory of a firearm classified in category B, C or D, it shall so inform the other Member States, which shall expressly include a statement to that effect on any [pass] they issue for such a firearm, pursuant to Article 12(2).’

17 Article 11 of Directive 91/477 is worded as follows:

‘1. Firearms may, without prejudice to Article 12, be transferred from one Member State to another only in accordance with the procedure laid down in the following paragraphs. These provisions shall also apply to transfers of firearms following a mail order sale.

...

3. In the case of transfer of the firearms, ... each Member State may grant dealers the right to effect transfers of firearms from its territory to a dealer established in another Member State without the prior authorisation referred to in paragraph 2. To that end it shall issue an authorisation valid for no more than three years, which may at any time be suspended or cancelled by reasoned decision. ...

...’

18 Article 12 of Directive 91/477 provides:

‘1. If the procedure provided for in Article 11 is not employed, the possession of a firearm during a journey through two or more Member States shall not be permitted unless the person concerned has obtained the authorisation of each of those Member States.

Member States may grant such authorisation for one or more journeys for a maximum period of one year, subject to renewal. Such authorisations shall be entered on the [pass], which the traveller must produce whenever so required by the authorities of the Member States.

2. Notwithstanding paragraph 1, hunters, in respect of categories C and D, and marksmen, in respect of categories B, C and D, may, without prior authorisation, be in possession of one or more firearms during a journey through two or more Member States with a view to engaging in their activities, provided that they are in possession of a [pass] listing such firearm or firearms and provided that they are able to substantiate the reasons for their journey, in particular by producing an invitation or other proof of their hunting or target shooting activities in the Member State of destination.

Member States may not make acceptance of a [pass] conditional upon the payment of any fee or charge.

However, this derogation shall not apply to journeys to a Member State which prohibits the acquisition and possession of the firearm in question or which, pursuant to Article 8(3), makes it subject to authorisation; in that case, an express statement to that effect shall be entered on the [pass].

...’

- 19 Part II(A) of Annex I to Directive 91/477 sets out a list of objects, divided into ‘*Category A* — Prohibited firearms’, ‘*Category B* — Firearms subject to authorisation’, ‘*Category C* — Firearms subject to declaration’, and ‘*Category D* — Other firearms’, and which must on that basis in principle be regarded as ‘firearms’ within the meaning of that directive.
- 20 Annex II to Directive 91/477 specifies the information that a pass must contain and requires it to state the following:

“‘The right to travel to another Member State with one or more of the firearms in categories B, C or D mentioned in this pass shall be subject to one or more prior corresponding authorisations from the Member State visited. This or these authorisations may be recorded on the pass.

The prior authorisation referred to above is not in principle necessary in order to travel with a firearm in categories C or D with a view to engaging in hunting or with a firearm in categories B, C or D for the purpose of taking part in target shooting, on condition that the traveller is in possession of the [pass] and can establish the reason for the journey.”

Where a Member State has informed the other Member States, in accordance with Article 8(3), that the possession of certain firearms in categories B, C or D is prohibited or subject to authorisation, one of the following statements shall be added:

“A journey to ... (State(s) concerned) with the firearm ... (identification) shall be prohibited.”

“A journey to ... (State(s) concerned) with the firearm ... (identification) shall be subject to authorisation.”

- 21 Recital 1 of Directive 2008/51 states:

‘Directive [91/477] established an accompanying measure for the internal market. It creates a balance between on the one hand the undertaking to ensure a certain freedom of movement for some firearms within the [European Union], and on the other the need to control this freedom using security guarantees suited to this type of product.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 22 Mr Buhagiar and Others are members of the Gibraltar Target Shooting Association. On 19 May 2015, Mr Buhagiar, as president of that association, wrote to the Minister requesting that he issue a pass to each of the claimants in the main proceedings.
- 23 On 2 June 2015 the Minister replied that, in the light of the position of both the Commission and the United Kingdom Government that Directive 91/477 does not apply on the territory of Gibraltar because it is intended to facilitate the free movement of goods, the Gibraltar Government had decided not to transpose it. Consequently, his response was that he was unable to issue the passes requested. In view of that refusal, Mr Buhagiar and Others brought proceedings before the Supreme Court of Gibraltar.
- 24 According to that court, EU law applies fully on the territory of Gibraltar, on the basis of Article 355(3) TFEU, subject to the exceptions laid down in Articles 28 to 30 of the 1972 Act of Accession. By virtue of Article 29 of the 1972 Act of Accession, read in conjunction with point 4 of Section I of Annex I thereto, Gibraltar is excluded from the customs territory of the European Union and the Court has already stated in this connection that the application of directives which have Article 114 or Article 115 TFEU as their legal basis and the free movement of goods as their principal objective is excluded on the territory of Gibraltar.
- 25 However, the claimants in the main proceedings maintain, first of all, that, in the light of the objective of the exclusions laid down by the 1972 Act of Accession, which have to be interpreted restrictively, measures of EU law on the free movement of goods that do not undermine the purpose of those exclusions must apply on the territory of Gibraltar. That is so in the case of the provisions of Directive 91/477 relating to the pass which are intended to benefit hunters and sports target shooters, as such a document is issued for the exclusive purpose of travel to and from Member States, in order to enable those persons to participate in sporting events. Issue of the pass is unrelated to commercial transactions in respect of the goods that it concerns, namely firearms.
- 26 The claimants in the main proceedings submit, next, that the provisions of Directive 91/477 relating to the pass are intended to facilitate the freedom of hunters and sports target shooters to provide services and receive services between Member States. On that ground, those provisions are applicable on the territory of Gibraltar, which means that the competent authorities are obliged to transpose them in a national legal measure applicable on that territory. The failure to transpose them results in discrimination against hunters and sports target shooters resident in Gibraltar, who have to incur extra expenditure and administrative delays when travelling in the European Union with their firearms in order to take part in hunting or target shooting events and competitions, which amounts to an infringement of Article 56 TFEU. The firearms used in such a context cannot be

viewed as goods involved in trade, but must be regarded as sporting equipment necessary for the purpose of such events or competitions.

- 27 Finally, Mr Buhagiar and Others contend that the provisions of Directive 91/477 relating to the pass concern the free movement of persons, as its seventh recital confirms. To that extent, Directive 91/477, since it was adopted on the basis of Article 100a(1) of the EEC Treaty, is founded on an incorrect legal basis. In accordance with Article 100a(2) of the EEC Treaty, the content of which corresponds, in essence, to that of Article 95(2) EC and that of Article 114(2) TFEU, the legislative procedure referred to in paragraph 1 of each of those articles cannot be followed for the adoption of EU acts relating to the free movement of persons. Consequently, the claimants in the main proceedings dispute the validity of the provisions of Directive 91/477 relating to the pass, or even that of the directive in its entirety.
- 28 In those circumstances, the Supreme Court of Gibraltar decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) If the ... provisions [of Directive 91/477 concerning the pass] concern only the free movement of goods, can they nonetheless apply [on the territory of] Gibraltar on the basis that they do not involve a trade or commercial transaction and are therefore outside the scope of the derogations granted to Gibraltar under the 1972 Act of Accession?
- (2) Are the provisions of [Directive 91/477] concerning the [pass], as regards hunters and sports target shooters, applicable [on the territory of] Gibraltar on the ground that they concern the free movement of services?
- (3) Are the provisions of [Directive 91/477] concerning the [pass], as regards hunters and sports target shooters, invalid on the ground that they concern the free movement of persons and have therefore been adopted under the wrong legal basis?’

Consideration of the questions referred

- 29 By its three questions, which it is appropriate to examine together, the referring court requests the Court to specify the implications of Gibraltar’s exclusion from the customs territory of the European Union, as referred to in Article 29 of the 1972 Act of Accession, read in conjunction with point 4 of Section I of Annex I thereto, and to examine, in that context, whether the provisions of Directive 91/477 relating to the pass are applicable on the territory of Gibraltar in so far as they concern hunters and sports target shooters.
- 30 As preliminary points, it should be stated, first, in the light of the subject matter of the main proceedings, namely the refusal of the request of Mr Buhagiar and Others to be issued with passes in order to be able to rely on them under the

simplified procedure for the transfer of firearms between Member States by hunters and sports target shooters, that the provision of Directive 91/477 which, according to them, should have been transposed on the territory of Gibraltar is the provision relating to use of the pass in such a context, that is to say, Article 12(2) of that directive, read in conjunction with Article 1(4) thereof and Annex II thereto. The latter two provisions define, respectively, the concept of the pass and its content.

- 31 Second, whilst EU law applies, in principle, on the territory of Gibraltar pursuant to Article 355(3) TFEU, certain EU acts do not, however, apply there, under the 1972 Act of Accession, on account of the special legal position of that territory, in particular its status as a free port (see, to that effect, judgments of 21 July 2005, *Commission v United Kingdom*, C-349/03, EU:C:2005:488, paragraph 41, and of 13 June 2017, *The Gibraltar Betting and Gaming Association*, C-591/15, EU:C:2017:449, paragraphs 29 and 30).
- 32 As the Court has already held in paragraph 59 of the judgment of 23 September 2003, *Commission v United Kingdom* (C-30/01, EU:C:2003:489), the exclusion of Gibraltar from the customs territory of the European Union, laid down in Article 29 of the 1972 Act of Accession, read in conjunction with point 4 of Section I of Annex I thereto, implies that neither the Treaty rules on the free movement of goods nor the rules of secondary EU legislation intended, as regards the free movement of goods, to ensure approximation of the laws, regulations and administrative provisions of the Member States pursuant to Articles 94 and 95 of the EC Treaty, now Articles 114 and 115 TFEU, are applicable to Gibraltar.
- 33 That conclusion was not affected by the fact that the directives at issue in the case giving rise to that judgment, whose main objective was to remove barriers to trade in goods and which were based on Articles 94 and 95 of the EC Treaty, contained provisions relating to environmental protection, a field in which rules of EU law apply, in principle, on the territory of Gibraltar (see, in that regard, judgment of 23 September 2003, *Commission v United Kingdom*, C-30/01, EU:C:2003:489, paragraphs 61 and 62).
- 34 The Court has explained in that regard that it is true that failure to apply such directives on the territory of Gibraltar is liable to endanger the coherence of other EU policies when those directives also pursue, albeit as an ancillary aim, objectives connected with those other policies, such as environmental protection policy. Nevertheless, the existence of such a risk cannot lead to the extension of the territorial scope of those directives — which pursue, as their main aim, objectives connected with the free movement of goods — beyond the limits imposed by the Treaties and by the 1972 Act of Accession (see, to that effect, judgment of 23 September 2003, *Commission v United Kingdom*, C-30/01, EU:C:2003:489, paragraph 63).
- 35 It follows from those considerations that, first, where the main aim of an EU act is to ensure approximation of the laws, regulations and administrative provisions of

the Member States as regards the free movement of goods, in accordance with Articles 114 and 115 TFEU, that act cannot be applicable on the territory of Gibraltar even if it pursues, as an ancillary aim, one or more objectives connected with other EU policies.

- 36 Second, contrary to the view that Mr Buhagiar and Others seem to hold, and as the Advocate General has observed in points 54 and 55 of his Opinion, examination of the main objective of an EU act is relevant for the purpose of determining whether that act is applicable on a territory excluded from the territorial scope of EU law in a given field.
- 37 The referring court's questions must be examined in the light of the foregoing considerations.
- 38 By its questions, the referring court asks, in essence, whether Article 29 of the 1972 Act of Accession, read in conjunction with point 4 of Section I of Annex I thereto, must be interpreted as meaning that Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, applies on the territory of Gibraltar, either on the ground that it is intended to facilitate the freedom to provide services or the free movement of persons or on the ground that, although it concerns the free movement of goods, it relates neither to trade nor to commercial transactions concerning firearms.
- 39 Should Article 12(2) of Directive 91/477 be interpreted as pursuing the objective of facilitating the free movement of persons, the referring court expresses doubts as to the validity of that provision, or even of Directive 91/477 as a whole, inasmuch as the legal basis chosen for that directive is said to be incorrect since it is founded on Article 100a(1) of the EEC Treaty, which became Article 95(1) EC — on whose basis Directive 2008/51 which amended Directive 91/477 was adopted — and, subsequently, Article 114(1) TFEU, whereas Article 100a(2) of the EEC Treaty, which became Article 95(2) EC and, subsequently, Article 114(2) TFEU, rules out the adoption of provisions relating to the free movement of persons on the basis of paragraph 1 of each of those articles.
- 40 As regards, in the first place, the issue whether Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, is applicable to Gibraltar on the ground that it is intended to facilitate the freedom to provide services or the free movement of persons, the main objective of that directive should be examined, as has been pointed out in paragraph 36 of the present judgment.
- 41 In addition, since the referring court expresses doubts regarding the choice of the legal basis on which Directive 91/477 is founded, it should be noted that, in accordance with the Court's settled case-law, the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include the aim and content of that measure. If examination of the measure concerned reveals that it pursues a twofold purpose or that it has a twofold

component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component (judgment of 6 May 2014, *Commission v Parliament and Council*, C-43/12, EU:C:2014:298, paragraphs 29 and 30 and the case-law cited).

- 42 Accordingly, in order to provide the referring court with a useful answer to its questions, it is necessary to identify the main purpose of Directive 91/477 and to examine its content.
- 43 As regards the aim of Directive 91/477, it is apparent from its second to fourth recitals that it was adopted in order to establish the internal market and that, in that context, the abolition of controls on the safety of objects transported and of those on persons entailed, among other things, the approximation of legislation by means of effective rules on firearms designed to establish controls, within Member States, on their acquisition, possession and transfer (see, to that effect, judgment of 4 September 2014, *Zeman*, C-543/12, EU:C:2014:2143, paragraphs 42 and 43). Such partially harmonised rules would, according to the directive's fifth recital, generate greater mutual confidence between Member States in the field of the protection of the safety of persons.
- 44 The sixth recital of Directive 91/477 states that passing from one Member State to another while in possession of a weapon should be prohibited and that a derogation from that principle is acceptable only if a procedure exists that enables Member States to be notified that a firearm is to be brought into their territory. The seventh recital states that more flexible rules should, however, be adopted in respect of hunting and target shooting in order to avoid impeding the free movement of persons more than is necessary.
- 45 So far as concerns the content of Directive 91/477, Article 1, which is in Chapter 1 relating to the directive's scope, defines a number of terms used in the directive, such as 'firearm' and 'dealer', as well as the concept of 'pass', defined in Article 1(4) as being, in essence, a document issued by the authorities of a Member State at the request of a person lawfully entering into possession of and using a firearm. That provision further states that a pass is to be non-transferable and is to record the firearm or firearms possessed and used by its holder, and that it must always be in the possession of the person using the firearm, whilst its content is further defined in Annex II to the directive.
- 46 Chapter 2 of Directive 91/477, entitled 'Harmonisation of legislation concerning firearms', contains provisions for harmonisation of Member State legislation relating to the possession and acquisition of firearms.
- 47 In Chapter 3, entitled 'Formalities for the movement of weapons within the [European Union]', Directive 91/477 lays down the principle that the transfer of firearms from one Member State to another is prohibited, unless the procedure set down in Article 11 is followed, a procedure under which it is necessary for the

Member State in which the firearms are situated to give prior authorisation for the proposed transfer, after it has examined the conditions of the transfer relating to security. Article 12(1) of the directive provides that, if the procedure provided for in Article 11 is not employed, the possession of a firearm during a journey through two or more Member States is not to be permitted unless the person concerned has obtained the authorisation of each of those Member States, and such authorisation must be entered on the pass.

- 48 The first subparagraph of Article 12(2) of Directive 91/477 provides that, notwithstanding Article 12(1), hunters, in respect of categories C and D, and marksmen (sports target shooters), in respect of categories B, C and D, may, without prior authorisation, be in possession of one or more firearms during a journey through two or more Member States with a view to engaging in their activities, provided that they are in possession of a pass listing such firearm or firearms and provided that they are able to substantiate the reasons for their journey.
- 49 It is apparent from those elements of Directive 91/477 that, as recital 1 of Directive 2008/51 confirms, it was adopted as an ‘accompanying measure for the internal market’ which, whilst ensuring a high level of safety for European citizens, contributes to the creation of conditions enabling controls at the borders between Member States to be abolished by establishing a minimum harmonised framework relating to the acquisition and possession of firearms for civilian use and their transfer between Member States.
- 50 It is clear in particular from its content that Directive 91/477, first, is designed to approximate the provisions of the Member States so far as concerns the conditions on which various categories of firearms may be acquired and held, whilst laying down, on the basis of requirements of public safety, that the acquisition of certain types of firearm must be prohibited.
- 51 Second, Directive 91/477 contains rules intended to harmonise the Member States’ administrative measures relating to the movement of firearms for civil use, the basic principle being — again in order to ensure a high level of public safety — that the movement of weapons is prohibited, unless the procedures laid down by the directive for that purpose are followed.
- 52 It follows from the foregoing that Directive 91/477 is a measure intended to ensure, as regards the free movement of goods, namely of firearms for civilian use, approximation of the laws, regulations and administrative provisions of the Member States, whilst circumscribing that freedom with safety guarantees suited to the nature of those goods.
- 53 Doubt is not cast on that finding by the arguments of the claimants in the main proceedings that Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, is intended to facilitate either the

freedom of hunters and sports target shooters to provide and to receive services or the free movement of persons.

- 54 In that regard, it must be stated that, in the light of the risk for the safety of persons that firearms pose, their free movement could be achieved only by laying down strict conditions for their transfer between Member States, one of which is the principle that prior authorisation is to be issued by Member States concerned by a transfer of such goods.
- 55 Nonetheless, the EU legislature wished certain transfers of firearms not necessarily to be the subject of such an authorisation, since it may be established that they pose a lesser risk for public safety. These include the transfers envisaged in Article 11(3) of Directive 91/477, carried out by certain dealers. Enjoyment of that regime is conditional upon the grant of a specific authorisation, which is additional to the rigorous controls on the activity of dealers that are provided for in Article 4(3) of the directive. Similarly, the transfers envisaged in Article 12(2) of the directive are effected by hunters and sports target shooters, that is to say, a category of persons in possession of firearms who are deemed, on account of their respective activities, to have legitimate reasons that can be easily checked — in particular by means of the pass which they are obliged to have with them — for transferring firearms.
- 56 Accordingly, the EU legislature, while taking account of the requirements of public safety, has laid down more flexible conditions so far as concerns transfers of firearms intended to be used for hunting and target shooting, since, as is apparent from the seventh recital of Directive 91/477, the harmonised framework established by that directive is liable to have an adverse effect on the exercise of the other fundamental freedoms by persons wishing to transfer their firearms for legitimate purposes.
- 57 In that respect, the Court has explained that the pass has the purpose of facilitating the free movement of hunters and sports target shooters in possession of their weapons from one Member State to another, while pointing out that Article 1(4) of Directive 91/477, read in conjunction with Article 12(2) thereof, is intended mainly to facilitate the movement of weapons used for hunting or sporting purposes (see, to that effect, judgment of 4 September 2014, *Zeman*, C-543/12, EU:C:2014:2143, paragraphs 39, 52 and 57).
- 58 Consequently, although a simplified procedure for the transfer of firearms, such as that laid down in Article 12(2) of Directive 91/477, involving the pass, may have a positive effect on the freedom to provide services and the free movement of persons in the field of hunting and target shooting, the fact remains that that provision contributes to the main objective of that directive, which is not to facilitate those freedoms but to lay down a framework for the acquisition and possession of firearms for civilian use and their free movement within the European Union.

- 59 The view cannot therefore be taken that Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, is applicable to Gibraltar on the ground that that provision is not intended to facilitate the free movement of goods.
- 60 Likewise, the analysis of Directive 91/477 consisting, in accordance with the case-law recalled in paragraph 41 of the present judgment, in identifying its main purpose and examining its content has disclosed no factor of such a kind as to affect its validity owing to the choice of the EU legislature to base it on Article 100a(1) of the EEC Treaty and, so far as Directive 2008/51 is concerned, on Article 95(1) EC.
- 61 As regards, in the second place, the question whether Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, is applicable to Gibraltar on the ground that, although it concerns the free movement of goods, it relates neither to trade nor to commercial transactions concerning firearms, the referring court certainly agrees with the premiss that the exclusion of Gibraltar laid down in Article 29 of the 1972 Act of Accession, read in conjunction with point 4 of Section I of Annex I thereto, implies, in principle, that EU acts whose main aim is to ensure, as regards the free movement of goods, approximation of the provisions of the Member States do not apply on the territory of Gibraltar, in accordance with the case-law resulting from the judgment of 23 September 2003, *Commission v United Kingdom* (C-30/01, EU:C:2003:489).
- 62 However, it has doubts as to the decision to be reached on the arguments of the claimants in the main proceedings that the general principle that exceptions are to be interpreted restrictively renders provisions such as Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, applicable on that territory, on the ground that they do not concern the free movement of goods in a commercial context and, therefore, fall within a category of measures relating to the free movement of goods which does not adversely affect the interests, specified in paragraph 31 of the present judgment, which that exclusion is intended to protect.
- 63 In that regard, it is common ground that Article 29 of the 1972 Act of Accession is an exception to the rule, laid down in Article 355(3) TFEU, that EU law is to apply to Gibraltar, an exception which, as the Court has pointed out in paragraphs 43 and 51 of the judgment of 21 July 2005, *Commission v United Kingdom* (C-349/03, EU:C:2005:488), must be interpreted restrictively, in the sense that its scope is limited to that which is strictly necessary to safeguard the interests which it allows Gibraltar to protect.
- 64 Nevertheless, in the case which gave rise to that judgment the Court was not called upon to rule on the status of EU acts falling within the free movement of goods in the light of that exception, in contrast to the case which gave rise to the

judgment of 23 September 2003, *Commission v United Kingdom* (C-30/01, EU:C:2003:489).

- 65 It follows that the need, recalled in paragraph 63 of the present judgment, to interpret Article 29 of the 1972 Act of Accession restrictively does not mean that EU provisions exist which, even though they contribute to the main objective of an act intended to ensure, as regards the free movement of goods, harmonisation of the provisions of the Member States, would be applicable on the territory of Gibraltar, as the claimants in the main proceedings seem to think.
- 66 In that respect, it is to be noted that, under Article 28(1) TFEU, which is in Title II, relating to the free movement of goods, of Part Three of the FEU Treaty, the customs union is to cover all trade in goods. That union necessarily implies that the free movement of goods should be ensured between Member States and, in more general terms, within that union (judgment of 23 September 2003, *Commission v United Kingdom*, C-30/01, EU:C:2003:489, paragraph 53).
- 67 The Court has consistently held that ‘goods’ for the purposes of that provision means goods which can be valued in money and which are capable, as such, of forming the subject of commercial transactions. However, the provisions of the FEU Treaty on the free movement of goods apply, in principle, irrespective of whether the goods concerned are being transported across borders for the purposes of sale or resale, or rather for personal use or consumption (see, to that effect, judgments of 7 March 1989, *Schumacher*, 215/87, EU:C:1989:111, paragraph 22, and of 3 December 2015, *Pfotenhilfe-Ungarn*, C-301/14, EU:C:2015:793, paragraph 47).
- 68 Therefore, since secondary EU legislation has in principle the same field of application as the Treaties themselves (see, by analogy, judgment of 15 December 2015, *Parliament and Commission v Council*, C-132/14 to C-136/14, EU:C:2015:813, paragraph 77) and a strict interpretation of Gibraltar’s exclusion from the common customs territory of the European Union cannot, if the uniform application of EU law is not to be undermined, result in an interpretation under which the free movement of goods would have a more limited scope in relations with Gibraltar than that which results from the provisions of the FEU Treaty, the provisions of Directive 91/477 relating to the transfer of firearms for civilian use must be regarded as falling within the free movement of goods, irrespective of whether the transfers are effected in a commercial context, including through dealers or in a mail order sale, or outside such a context, that is to say, by individuals, in particular by hunters and sports target shooters in order to be used in their respective activities.
- 69 It follows that Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, does not apply on the territory of Gibraltar, even if that provision of EU law relates neither to trade nor to commercial transactions concerning firearms.

- 70 Moreover, contrary to what the claimants in the main proceedings suggest in their written observations, the applicability on the territory of Gibraltar of EU acts harmonising the Member States' provisions relating to the free movement of goods cannot depend on the reasons for transferring the goods concerned. If that were so, it would create — as has been observed by the Gibraltar Government and the Commission at the hearing before the Court and by the Advocate General in point 73 of his Opinion — a situation of legal uncertainty as to determination of the rules of EU law relating to the free movement of goods that are applicable on the territory of Gibraltar, and this would also be liable to affect adversely the interests which the regime that Gibraltar was granted by the 1972 Act of Accession is intended to protect.
- 71 Furthermore, it follows from the foregoing, first, that application of the procedure provided for in Article 12(2) of Directive 91/477 cannot be envisaged outside the partially harmonised legislative framework relating to controls on the acquisition and possession of firearms that is established by the directive.
- 72 Second, transposition on the territory of Gibraltar of the provisions of Directive 91/477 that are necessary to ensure that the pass operates effectively and reliably in the context of that procedure and that the objective of guaranteeing a high level of safety of persons is achieved would mean that a significant number of the directive's provisions would have to be transposed, which would improperly extend the territorial scope of EU law.
- 73 In the light of all the foregoing considerations, the answer to the questions referred is that Article 29 of the 1972 Act of Accession, read in conjunction with point 4 of Section I of Annex I thereto, must be interpreted as meaning that Article 12(2) of Directive 91/477, read in conjunction with Article 1(4) thereof and Annex II thereto, does not apply on the territory of Gibraltar. Examination of the questions has disclosed no factor of such a kind as to affect the validity of that directive.

Costs

- 74 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Article 29 of the Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the Adjustments to the Treaties, read in conjunction with point 4 of Section I of Annex I thereto, must be interpreted as meaning that Article 12(2) 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, read in conjunction with Article 1(4) thereof and Annex II thereto, does not apply on the territory of Gibraltar.

- 2. Examination of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Directive 91/477, as amended by Directive 2008/51.**

[Signatures]