

JUDGMENT OF THE COURT (Grand Chamber)

6 May 2014 (\*)

(Action for annulment — Directive 2011/82/EU — Cross-border exchange of information on road safety related traffic offences — Choice of legal basis — Article 87(2)(a) TFEU — Article 91 TFEU — Maintenance of the effects of the directive in case of annulment)

In Case C-43/12,

APPLICATION for annulment under Article 263 TFEU, brought on 27 January 2012,

**European Commission**, represented by T. van Rijn and R. Troosters, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**European Parliament**, represented by F. Drexler and A. Troupiotis and by K. Zejdová, acting as Agents,

and

**Council of the European Union**, represented by J. Monteiro and E. Karlsson, acting as Agents,

defendants,

supported by:

**Kingdom of Belgium**, represented by J.-C. Halleux, T. Materne, acting as Agents, assisted by S. Rodrigues and F. Libert, avocats,

**Ireland**, represented by E. Creedon, acting as Agent, and by N. Travers, Barrister-at-Law,

**Hungary**, represented by M.Z. Fehér and by K. Szíjjártó and K. Molnár, acting as Agents,

**Republic of Poland**, represented by B. Majczyna and M. Szpunar, acting as Agents,

**Slovak Republic**, represented by B. Ricziová, acting as Agent,

**Kingdom of Sweden**, represented by A. Falk and C. Stege, acting as Agents,

**United Kingdom of Great Britain and Northern Ireland**, represented by C. Murrell and S. Behzadi-Spencer, acting as Agents, and by J. Maurici and J. Holmes, Barristers,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano (Rapporteur), L. Bay Larsen, T. von Danwitz, M. Safjan, Presidents of Chambers, A. Rosas, E. Levits, A. Ó Caoimh, J.C. Bonichot, A. Arabadjiev, C. Toader, D. Šváby, M. Berger and C. Vajda, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 June 2013,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2013,

gives the following

## **Judgment**

1 By its application, the European Commission requests the Court, first, to annul Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences (OJ 2011 L 288, p. 1) and, second, should it annul that directive, to state that its effects are to be considered as definitive.

### **Legal context**

#### *FEU Treaty*

2 Article 87 TFEU, which is part of Chapter 5, concerning ‘Police cooperation’ of Title V, entitled ‘Area of Freedom, Security and Justice’ of Part Three of the FEU Treaty, reads as follows:

‘1. The Union shall establish police cooperation involving all the Member States’ competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:

a) the collection, storage, processing, analysis and exchange of relevant information;

...’

3 Article 91(1) of the TFEU, which is part of Title VI, entitled ‘Transport’, of Part Three of that treaty, provides:

‘(1) For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

...

- (c) measures to improve transport safety;
- (d) any other appropriate provisions.’

*Directive 2011/82*

4 Recitals 1, 6, 7, 8, 22, 23 and 26 in the preamble to Directive 2011/82 read as follows:

‘(1) Improving road safety is a prime objective of the Union’s transport policy. The European Union is pursuing a policy to improve road safety with the objective of reducing fatalities, injuries and material damage. An important element of that policy is the consistent enforcement of sanctions for road traffic offences committed in the Union which considerably jeopardise road safety.

...

(6) In order to improve road safety throughout the Union and to ensure equal treatment of drivers, namely resident and nonresident offenders, enforcement should be facilitated irrespective of the Member State of registration of the vehicle. To this end, a system of cross-border exchange of information should be put in place for certain identified road safety related traffic offences, regardless of their administrative or criminal nature under the law of the Member State concerned, granting the Member State of the offence access to vehicle registration data (VRD) of the Member State of registration.

(7) A more efficient cross-border exchange of VRD, which should facilitate the identification of persons suspected of committing a road safety related traffic offence, may increase the deterrent effect and induce more cautious behaviour by the driver of a vehicle that is registered in a Member State other than the Member State of the offence, thereby preventing casualties due to road traffic accidents.

(8) The road safety related traffic offences covered by this Directive are not subject to homogeneous treatment in the Member States. Some Member States qualify such offences under national law as ‘administrative’ offences while others qualify them as ‘criminal’ offences. This Directive should apply regardless of how those offences are qualified under national law.

...

(22) In accordance with Articles 1 and 2 of the Protocol (No 21) on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(23) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(26) Since the objective of this Directive, namely to ensure a high level of protection for all road users in the Union by facilitating the cross-border exchange of information on road safety related traffic offences, where they are committed with a vehicle registered in a Member State other than the Member State where the offence took place, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. ...’

5 Article 1 of Directive 2011/82, entitled ‘Objective’, provides:

‘This Directive aims to ensure a high level of protection for all road users in the Union by facilitating the cross-border exchange of information on road safety related traffic offences and thereby the enforcement of sanctions, where those offences are committed with a vehicle registered in a Member State other than the Member State where the offence took place.’

6 Article 2 of that directive, entitled ‘Scope’, provides:

‘This Directive shall apply to the following road safety related traffic offences:

- (a) speeding;
- (b) non-use of a seat-belt;
- (c) failing to stop at a red traffic light;
- (d) drink-driving;
- (e) driving under the influence of drugs;
- (f) failing to wear a safety helmet;
- (g) use of a forbidden lane;
- (h) illegally using a mobile telephone or any other communication devices while driving.’

7 Articles 4 and 5 of that directive govern the procedure for exchange of information between Member States and the provision of information on the offences concerned.

8 Under Article 12(1) of that directive, Member States were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 7 November 2013.

### **Factual background to the dispute**

9 On 19 March 2008, the Commission submitted to the Parliament and to the Council a proposal for a directive seeking, in essence, to facilitate the exchange of information concerning certain road traffic offences and the crossborder enforcement of the sanctions attached to them. The legal basis of that proposal was Article 71(1)(c) EC, the provisions of which are reproduced in Article 91(1)(c) TFEU.

10 On 25 October 2011, the Parliament and the Council adopted Directive 2011/82, using however Article 87(2) TFEU as the legal basis of the directive.

11 The Commission published a statement on the legal basis of that directive underneath the text of the directive itself. That declaration (OJ 2011 L 288, p. 15) reads as follows:

‘The Commission notes that both Council and European Parliament agree on the replacement of the legal basis proposed by the Commission, namely Article 91(1)(c) TFEU, by Article 87(2) TFEU. While the Commission shares the view of both co-legislators about the importance of pursuing the aims of the proposed Directive to improve road safety, it considers however from a legal and institutional perspective that Article 87(2) TFEU does not constitute the appropriate legal basis and therefore reserves its right to use all legal means at its disposal.’

12 Taking the view that the directive had been adopted on the wrong legal basis and should have been based on Article 91(1)(c) TFEU, the Commission brought the present action.

### **Forms of order sought by the parties and the procedure before the Court**

13 The Commission claims that the Court should:

- annul Directive 2011/82;
- state that the effects of that directive are to be considered as definitive;
- order the Parliament and the Council to pay the costs.

14 The Parliament contends that the action should be dismissed and that the applicant should be ordered to pay the costs.

15 The Council claims that the Court should:

- first, dismiss the action as unfounded;
- in the alternative, state that the effects of Directive 2011/82 are to be maintained for a period of six months;
- order the Commission to pay the costs.

16 By order of the President of the Court of 13 June 2012, first, Ireland, the Republic of Poland, the Slovak Republic and the Kingdom of Sweden were granted leave to intervene in support of the forms of order sought by the Parliament and the Council and, second, the Kingdom of Belgium, Hungary and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the form of order sought by the Council.

### **The action**

#### *Arguments of the parties*

17 The Commission seeks the annulment of Directive 2011/82 on the ground that, having been adopted on the basis of Article 87(2) TFEU, it was adopted on the wrong legal basis. That provision, which covers police cooperation between the competent services in relation to the prevention, detection and investigation of ‘criminal offences’, may be used as a legal basis only for measures specifically related to the prevention or detection of ‘criminal offences’. Thus, it cannot be inferred simply because an ‘offence’ is punitive in nature or seeks to achieve deterrence, that it can automatically be regarded as a ‘criminal’ offence within the meaning of Article 87 TFEU.

18 Admittedly, in the context of the fundamental rights recognised by the European Convention on the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, in particular in Article 6 thereof, the ‘substantive scope’ of the concept of ‘criminal’ conduct is necessarily broader and is capable of embracing offences of a different kind, such as offences of an administrative nature. By contrast, in the specific context of Chapters 4 and 5 of Title V of Part Three of the FEU Treaty, that concept marks the boundaries applicable to the adoption of legislative measures and must therefore be defined with reference to EU competence in the criminal field. Consequently, taking into account, first, the scheme of Title V of Part Three of the FEU Treaty and, second, the institutional consequences arising from the adoption of Article 87 TFEU as the legal basis of a legislative measure, a more ‘strict’ notion of what is a criminal offence should be adopted.

19 That being so, the Commission considers that both the goal and the content of Directive 2011/82 fall within the field of transport policy and, in particular, of Article 91 TFEU, which should, therefore, have been used as the legal basis of that directive.

20 By putting in place a mechanism for the exchange of information between the Member States on road safety related traffic offences, whether of an administrative or criminal nature, Directive 2011/82 aims to improve road safety. From the point of view of content, the directive confines itself to organising an exchange of information with regard to certain conduct bearing upon road safety, without adopting harmonising measures in relation to that conduct and, above all, without obliging the Member States to criminalise such conduct.

21 Assuming that the Court were to decide to annul Directive 2011/82, the Commission nevertheless requests that, pursuant to Article 264 TFEU and for reasons of legal certainty, its effects be maintained and considered as definitive.

22 On the contrary, the Parliament and the Council as well as the Kingdom of Belgium, Ireland, Hungary, the Republic of Poland, the Slovak Republic, the Kingdom of Sweden and the United Kingdom — though their arguments differ to some extent — claim that Article 87(2) TFEU was in fact the appropriate legal basis for the adoption of Directive 2011/82.

23 The Parliament submits that recourse to Article 87(2) TFEU as a basis for the adoption of acts of the European Union cannot be limited only to situations concerning the adoption of measures falling under the concept of ‘criminal matters’, since Chapter 5 of Title V of Part Three of the FEU Treaty concerning ‘Police Cooperation’, of which that provision forms part, does not contain any indication or statement to that effect. In any case, the application of that provision cannot be excluded on the grounds supported by the Commission, which are based, wrongly, on an excessively restrictive interpretation of that concept.

24 That being so, the Parliament, supported in that regard by the majority of the intervening Member States, considers that, to the extent that Directive 2011/82 pursues, principally, the objective of establishing a system of exchange of information and only indirectly objectives related to road safety, that directive could not have been based on Article 91 TFEU.

25 The Council points out that Directive 2011/82 provides for rules relating to the enforcement of sanctions concerning certain road safety related traffic offences. While those offences may be of an administrative or criminal nature, depending on the legal system of each Member State, the means for enforcing those sanctions must be regarded as falling, in all cases, within the category of rules of criminal procedure. However, the question as to what is a ‘criminal matter’ must be interpreted in an autonomous manner under EU law, irrespective of the internal organisation of each Member State and of the corresponding national terminology.

26 In that regard, the Council states that all norms which aim to protect legal interests usually protected by criminal law, such as life, physical and mental health and property, must be considered to be ‘criminal’ within the meaning of the FEU Treaty and of Title V of Part Three thereof in particular. In that context, provisions such as those in Directive 2011/82, the aim of which is to improve road safety by deterring certain types of behaviour regarded as dangerous, are necessarily ‘criminal’ matters and cannot be classified as road safety related norms within the meaning of Article 91 TFEU.

27 That directive thus falls entirely within the objectives of Article 87(2) of the TFEU. In the first place, even if the improvement of road safety falls, according to the Council, under transport policy, the measure envisaged seeks specifically to facilitate the detection of persons who have committed cross-border offences relating to road safety. Second, that directive aims precisely to collect information concerning offences, in order to help deter them, which are measures for which the European Union has competence under Article 87 of the TFEU. Third, the reference to ‘all the ... competent authorities’ in Article 87(1) TFEU confirms that it is immaterial, for the purposes of determining the applicability of that provision, whether the services at issue are, in each Member State concerned, administrative or criminal in nature.

28 Were the Court to annul Directive 2011/82, the Council, supported inter alia by Ireland, the Slovak Republic, the Kingdom of Sweden and the United Kingdom, requests the Court, in the alternative, to order that the effects of that directive be maintained for a period of six months so that a new text can be submitted with a view to negotiation on the basis of Article 91 TFEU. In that regard, Ireland and the United Kingdom nevertheless add that the possible maintenance of the effects of that directive until the adoption of a new text on a different legal basis should not apply to those Member States which are entitled to rely on Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice and Protocol No 22 on the position of Denmark, annexed to the EU Treaty and the FEU Treaty, but only to those which are already bound by that directive.

#### *Findings of the Court*

29 According to settled case-law of the Court, the choice of legal basis for a European Union measure must rest on objective factors that are amenable to judicial review; these

include the aim and content of that measure (see, to that effect, Case C-411/06 *Commission v Parliament and Council* EU:C:2009:518, paragraph 45 and the case-law cited, and Case C-130/10 *Parliament v Council* EU:C:2012:472, paragraph 42 and the case-law cited).

30 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 based on a single legal basis, namely that required by the main or predominant purpose or component (Case C-137/12 *Commission v Council* EU:C:2013:675, paragraph 53 and the case-law cited).

31 In order to assess whether the present action is well founded, both the aim and the content of Directive 2011/82 must therefore be examined, in order to determine whether that directive could have been validly adopted — as contended by the Council and the Parliament — on the basis of Article 87(2) TFEU rather than on the basis of Article 91(1)(c) TFEU, which is relied on by the Commission as the appropriate legal basis.

32 In the present case, with regard to the aim of Directive 2011/82, Article 1 thereof, entitled ‘Objective’ and restating the wording of recital 26 in the preamble to the directive, states expressly that that directive ‘aims to ensure a high level of protection for all road users in the Union by facilitating the cross-border exchange of information on road safety related traffic offences’.

33 As is clear from recitals 1 and 6 in the preamble to that directive, such an aim of improving road safety throughout the European Union must be pursued precisely by setting up a system of cross-border exchange of information regarding vehicle registration in order to facilitate the identification of persons who have committed certain identified road safety related traffic offences, regardless of whether those offences are of an administrative or criminal nature under the law of the Member State concerned.

34 As stated in recital 2 in the preamble to Directive 2011/82, the directive is based on the EU legislature’s finding that financial sanctions for certain road traffic offences are often not enforced if those offences are committed with a vehicle which is registered in a Member State other than the Member State in which the offence took place.

35 In that context, such a system of information exchange may, as stated in recital 7 in the preamble to Directive 2011/82, increase deterrence in relation to road traffic offences and induce more cautious behaviour by the driver of a vehicle that is registered in a Member State other than the Member State of the offence, thereby helping to reduce the number of casualties due to road traffic accidents.

36 It follows clearly from the above that the main aim of Directive 2011/82 is to improve road safety which, as stated in recital 1 in the preamble to that directive, is a prime objective of the European Union’s transport policy.

37 While it is certainly true that that directive sets up a system for the cross-border exchange of information on road safety related traffic offences, the fact remains that the precise aim of establishing that system is to enable the European Union to pursue the goal of improving road safety.

38 With regard to the content of Directive 2011/82, it should first of all be noted that that directive sets up a procedure for the exchange of information between Member States in relation to eight identified road safety related traffic offences, listed in Article 2 of the directive and defined in Article 3 thereof, that is to say, speeding, non-use of a seat-belt, failing to stop at a red traffic light, drink-driving, driving under the influence of drugs, failing to wear a safety helmet, use of a forbidden lane and illegally using a mobile telephone or any other communication devices while driving.

39 Second, the operation of the information exchange procedure is governed by Article 4 of Directive 2011/82. Paragraph 1 of that article provides that Member States are to grant each other's national contact points access to their vehicle registration data with power to conduct automated searches concerning data relating to vehicles and to their owners or holders. In accordance with the third subparagraph of Article 4(2) of the directive, the Member State where the offence was committed is to use the data obtained in order to establish the person liable for the road safety related traffic offences referred to in that directive.

40 Once the owner or holder of the vehicle or any other person suspected of having committed such a road safety related traffic offence has been identified, it is for the Member State on whose territory that offence has been committed to decide whether to initiate follow-up proceedings. To that end, Article 5 of Directive 2011/82 lays down how the offence in question is to be notified to the person concerned and provides for a letter to be sent, drafted preferably in the language of the registration document, containing any relevant information, notably the nature of the road safety related traffic offence, the place, date and time of the offence, the title of the texts of the national law infringed and the sanction and, where appropriate, data concerning the device used for detecting the offence.

41 Finally, Article 11 of Directive 2011/82 provides that, by 7 November 2016 at the latest, the Commission is to submit a report to the Parliament and the Council on the application of that directive by the Member States, with a view to its possible revision. The report should *inter alia* assess the effectiveness of the directive in reducing the number of fatalities on European Union roads, consider whether the Commission should adopt road safety guidelines at Union level, within the framework of the common transport policy, in order to ensure greater convergence of the enforcement of road traffic rules by Member States, and look at the possibility of harmonising traffic rules where appropriate.

42 The examination of the content of the provisions of Directive 2011/82 undertaken above confirms that the system for the exchange of information between the competent authorities of the Member States set up by the directive provides the means of pursuing the objective of improving road safety referred to in paragraphs 32 to 43 above and enables the European Union to attain that aim.

43 The Court has already held that measures seeking to improve road safety form part of transport policy and may therefore be adopted on the basis of Article 91(1)(c) TFEU in so far as they are 'measures to improve transport safety' within the meaning of that provision (see Joined Cases C-184/02 and C-223/02 *Spain and Finland v Parliament and Council* EU:C:2004:497, paragraph 30).

44 It must therefore be concluded that since, both in respect of its aims and its content, Directive 2011/82 is a measure to improve transport safety within the meaning of Article 91(1)(c) TFEU, it should have been adopted on the basis of that provision.

45 The above analysis is not undermined by the arguments of the Council and of the Parliament that Directive 2011/82 could validly be adopted on the basis of Article 87(2) TFEU.

46 That provision must be interpreted in its context, that is to say first in the context of Chapter 5, entitled ‘Police Cooperation’, of Title V of Part Three of the FEU Treaty.

47 While it is true that, since the entry into force of the Lisbon Treaty, the scope of police cooperation is greater than under the former Article 30 of the Treaty on European Union, the fact remains that, as provided for in Article 87(1) TFEU, that cooperation continues to concern, as was provided for in the former Article 30(1)(a) of the Treaty on European Union, the competent authorities of the Member States, including the police, customs and other specialised law enforcement services of the Member States ‘in relation to the prevention, detection and investigation of criminal offences’.

48 Second, Article 87(2) TFEU must be understood in the light of the ‘General Provisions’ of Chapter 1 of Title V of Part Three of the FEU Treaty, in particular Article 67 TFEU, which opens that chapter and provides, in paragraph 2, that the European Union ‘shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control’ and, in paragraph 3, that it ‘shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws’.

49 Accordingly, it must be held that a measure such as Directive 2011/82, in the light of its aim and its content, as described in paragraphs 32 to 43 above, is not directly linked to the objectives referred to in the preceding paragraph of this judgment.

50 Having regard to all the foregoing considerations, it must be held that Directive 2011/82 could not validly be adopted on the basis of Article 87(2) TFEU.

51 Thus, since the action is well founded, Directive 2011/82 must be annulled.

### **Limitation of the effects of annulment**

52 The Commission and the Council request the Court, in the event that it should annul the contested directive, to maintain its effects. In that regard, while the Council takes the view that a period of six months should suffice for the adoption of a new directive, the Commission requested, at the hearing, that the effects of the act annulled be maintained for a longer period.

53 In that regard, it must be borne in mind that, under the second paragraph of Article 264 TFEU, the Court may, if it considers this necessary, state which of the effects of the act which it has declared void are to be considered as definitive.

54 In the present case, it must be admitted that, given the importance of the pursuit of the aims of Directive 2011/82 concerning the improvement of road safety, the annulment of the directive without maintaining its effects could have negative consequences for European Union transport policy.

55 Furthermore, account must be taken of the fact that the period provided for in Article 12(1) of that directive for the bringing into force, by the Member States, of the laws, regulations and administrative provisions necessary to comply with the directive, expired on 7 November 2013.

56 Accordingly, there are important grounds of legal certainty why the Court should maintain the effects of that directive until the entry into force, within a reasonable period of time — which may not exceed twelve months as from the date of delivery of the present judgment — of a new directive based on the correct legal basis, that is to say, Article 91(1)(c) of the TFEU.

### **Costs**

57 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Parliament and the Council have been unsuccessful, they must be ordered to pay the costs. Pursuant to Article 140(1) of the Rules of Procedure, the Kingdom of Belgium, Ireland, Hungary, the Republic of Poland, the Slovak Republic, the Kingdom of Sweden and the United Kingdom will bear their own costs.

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

1. **Annuls Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences;**
2. **Maintains the effects of Directive 2011/82 until the entry into force within a reasonable period of time — which may not exceed twelve months as from the date of delivery of the present judgment — of a new directive based on the correct legal basis, that is to say, Article 91(1)(c) of the TFEU;**
3. **Orders the European Parliament and the Council of the European Union to pay the costs;**
4. **Orders the Kingdom of Belgium, Ireland, Hungary, the Republic of Poland, the Slovak Republic, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**