Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

4 July 2024*

(Reference for a preliminary ruling – Harmonisation of laws – Transport – Road transport – Directive 2014/31/EU – Scope – Non-automatic weighing instruments for the purpose of determining the mass of vehicles – Use of weighing instruments for the purposes of applying national criminal legislation)

In Case C-283/23 [Marhon],[i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, Belgium), made by decision of 26 April 2023, received at the Court on 2 May 2023, in the criminal proceedings against

FB,

JL Sàrl

intervening parties:

Procureur du Roi près le tribunal de première instance d'Eupen,

THE COURT (Sixth Chamber),

composed of T. von Danwitz, President of the Chamber, A. Arabadjiev (Rapporteur), President of the First Chamber, acting as Judge of the Sixth Chamber, and I. Ziemele, Judge,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Belgian Government, by S. Baeyens, P. Cottin and C. Pochet, acting as Agents,

– the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

– the European Commission, by J. Flett and G. Wils, acting as Agents,

* Language of the case: French.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1, Article 2(3) and Article 3 of Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (OJ 2014 L 96, p. 107).

2 The request has been made in criminal proceedings brought against FB and JL Sàrl, concerning two offences which FB allegedly committed by driving a transport vehicle belonging to JL exceeding the maximum authorised mass.

Legal context

European Union law

3 Recitals 4, 5 and 47 of Directive 2014/31 state:

‘(4) This Directive covers non-automatic weighing instruments which are new to the [European] Union market when they are placed on the market; that is to say they are either new non-automatic weighing instruments made by a manufacturer established in the Union or non-automatic weighing instruments, whether new or second-hand, imported from a third country.

(5) Member States should have the responsibility of protecting the public against incorrect results of weighing operations by means of non-automatic weighing instruments when used for certain categories of applications.

…

(47) Since the objective of this Directive, namely to ensure that non-automatic weighing instruments on the market fulfil the requirements providing for a high level of protection of public interests covered by this Directive while guaranteeing the functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.’

4 Article 1 of that directive, entitled ‘Scope’, provides as follows:

‘1. This Directive shall apply to all non-automatic weighing instruments.

2. For the purposes of this Directive, the following categories of use of non-automatic weighing instruments shall be distinguished:

…

(b) determination of mass for the calculation of a toll, tariff, tax, bonus, penalty, remuneration, indemnity or similar type of payment;

(c) determination of mass for the application of laws or regulations or for an expert opinion given in court proceedings;

…

(g) all applications other than those listed in points (a) to (f).'

5 Article 2 of that directive, entitled 'Definitions', provides:

'For the purposes of this Directive, the following definitions shall apply:

(1) "weighing instrument" means a measuring instrument serving to determine the mass of a body by using the action of gravity on that body. A weighing instrument may also serve to determine other mass-related magnitudes, quantities, parameters or characteristics;

(2) "non-automatic weighing instrument" or "instrument" means a weighing instrument requiring the intervention of an operator during weighing;

(3) "making available on the market" means any supply of an instrument for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

(4) "placing on the market" means the first making available of an instrument on the Union market;

…'

6 Under Article 3 of that directive, entitled 'Making available on the market and putting into service':

'1. Member States shall take all steps to ensure that only instruments that meet the applicable requirements of this Directive may be made available on the market.

2. Member States shall take all steps to ensure that instruments may not be put into service for the uses referred to in points (a) to (f) of Article 1(2) unless they meet the requirements of this Directive.

3. Member States shall take all steps to ensure that instruments put into service for the uses referred to in points (a) to (f) of Article 1(2) continue to conform to the applicable requirements of this Directive.'

7 The first paragraph of Article 4 of Directive 2014/31, entitled 'Essential requirements', provides:

'Instruments used or intended to be used for the applications listed in points (a) to (f) of Article 1(2) shall satisfy the essential requirements set out in Annex I.'

Belgian law

8 Article 1 of the arrêté royal du 12 octobre 2010 relatif à l'approbation, à la vérification et à l'installation des instruments de mesure utilisés pour surveiller l'application de la loi relative à la police de la circulation routière et des arrêtés pris en exécution de celle-ci (Royal Decree of 12 October 2010 on the approval, verification and installation of measuring instruments used to monitor the application of the Law on the regulation of road traffic and the decrees adopted pursuant thereto) (*Moniteur belge* of 25 October 2010, p. 63130; 'the Royal Decree of 2010'), provides:

'Subject to the application of other legislation relating to specific instruments, this Decree shall apply to instruments which are used to monitor the application of the Law on the regulation of road traffic, coordinated on 16 March 1968 and the decrees adopted pursuant thereto, and which adopt measures, directly or indirectly, referred to in this "Instruments" decree.'

9 Article 1 of the arrêté royal du 12 avril 2016 relatif aux instruments de pesage à fonctionnement non automatique (Royal Decree of 12 April 2016 on non-automatic weighing instruments) (*Moniteur belge* of 19 April 2016, p. 26487), entitled 'Purpose', provides:

'This Decree transposes [Directive 2014/31].'

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

10 On 28 February 2019, in Saint-Vith (Belgium), the Belgian police carried out an inspection of a vehicle for transporting timber belonging to JL.

11 The weighing operation carried out by the police during that inspection ('the weighing operation') revealed that the mass of that vehicle greatly exceeded the maximum authorised mass of 20 856 kilograms.

12 Consequently, FB, the driver of the vehicle, was prosecuted before the tribunal de police d'Eupen, section de Saint-Vith (Police Court, Eupen, Saint-Vith section, Belgium), first, for transporting goods by road using a vehicle whose total mass exceeded that authorised and, secondly, as a shipper carrying goods, giving instructions or taking measures which resulted in the maximum authorised masses and dimensions being exceeded. JL, the employer of FB, was made a party to the proceedings as a party liable under civil law.

13 By judgment of 2 February 2021, that court acquitted FB, on the ground that the weight tickets relating to the weighing operation did not contain any indication as to the person who performed that operation or an indication of the make and serial number of the weighing instrument used, so that it was not possible to determine whether those tickets actually referred to that instrument.

14 Hearing an appeal brought by the procureur du Roi (Public Prosecutor, Belgium) against that judgment, the tribunal de première instance d'Eupen, (Eupen Court of First Instance, Criminal Chamber, Belgium), first, rejected the argument of FB and JL that the weighing operation had been carried out in breach of the Royal Decree of 2010.

15 Secondly, that court held that that operation was governed not by the Royal Decree of 2010, but by the regulation transposing Directive 2014/31 into Belgian law, namely the Royal Decree of 12 April 2016 on non-automatic weighing instruments.

16 In those circumstances, by judgment of 23 March 2022, that court, inter alia, ordered FB to pay a fine and disqualified him from driving any motor vehicle for a period of three months.

17 Hearing the appeal brought by FB and JL against that judgment, the Cour de cassation (Court of Cassation, Belgium), the referring court, notes that, in order to establish the conditions under which the weighing operation should have been carried out, it is necessary to clarify the scope of Directive 2014/31 and, in particular, to determine whether, as FB and JL argued before the appeal court, that directive applies only to weighing operations carried out in the course of the commercial activity of the user of the non-automatic weighing instrument at issue.

18 The referring court observes, first, that Article 1(2) of Directive 2014/31 provides, in point (c) thereof, that that directive is applicable, inter alia, to the 'determination of mass for the application of laws or regulations' and, in point (g), to 'all applications other than those listed in points (a) to (f)'. Thus, since the use of the non-automatic weighing instrument at issue appears to fall within one of those categories, that provision appears to indicate that the weighing operation falls within the scope of that directive.

19 In addition, the referring court points out that Article 3(2) and (3) of that directive, when it refers to the putting into service of those weighing instruments and to the requirements that they must continue to comply with after that time, does not provide that those instruments must necessarily be used in the course of a commercial activity of their user.

20 Secondly, the title of Directive 2014/31 suggests a more restrictive interpretation of the scope of that directive, in that it refers to the harmonisation of the laws of the Member States relating to the 'making available on the market' of non-automatic weighing instruments. Such a reference would appear to indicate that that directive applies only in the context of a commercial activity of the user of those instruments.

21 Similarly, according to the referring court, the wording of Article 3(1) of that directive, relating to the obligations of the Member States when making those instruments available on the market, supports a priori such an interpretation of Directive 2014/31. Indeed, the definition of the concept of 'making available on the market', referred to in Article 2(3) of that directive, would indicate that it must be carried out in the context of the commercial activity of the user of a non-automatic weighing instrument.

22 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'[Are Article 1, Article 2(3) and Article 3 of Directive 2014/31] applicable to the use, by judicial or police authorities, of non-automatic weighing instruments for the purposes of determining the mass of vehicles for the application of national legislation or regulations which are subject to

criminal penalties, and which – such as (i) Article 41(3)(1) and Article 43(3)(1) of the Law of 15 July 2013 on road haulage and implementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC and implementing Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market [(*Moniteur belge* of 18 February 2014, p. 13108)] and (ii) Article 21, first paragraph, point 5 and Article 35(4) of the Royal Decree of 22 May 2014 on road haulage [(*Moniteur belge* of 15 July 2014, p. 53667)] – prohibit the use on the road of vehicles whose measured mass exceeds the maximum authorised mass?'

Consideration of the question referred

23 By its question, the referring court seeks to obtain from the Court, in essence, clarification concerning the delimitation of the scope of Directive 2014/31. In particular, that court asks whether that directive is applicable where non-automatic weighing instruments are used not by an economic operator in the course of a commercial activity, but by judicial or police authorities to determine the mass of a vehicle, for the purposes of the application of national legislation relating to criminal matters.

24 While the referring court seeks, by that question, the interpretation of several provisions of that directive, the definition of its scope is set out in Article 1(1) thereof.

25 Accordingly, it is necessary to reformulate the question referred for a preliminary ruling as seeking to determine whether Article 1(1) of Directive 2014/31 must be interpreted as meaning that that directive applies to non-automatic weighing instruments where those instruments are used, by the judicial or police authorities, to determine the mass of a vehicle, for the purposes of the application of national legislation relating to criminal matters.

26 According to settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (judgment of 18 April 2024, *Citadeles nekustamie īpašumi*, C-22/23, EU:C:2024:327, paragraph 30 and the case-law cited).

27 It should be noted, in the first place, that the wording of Article 1(1) of Directive 2014/31 defines the scope of that directive very broadly. According to that provision, that directive shall apply to 'all non-automatic weighing instruments'.

28 Thus, neither the intended use of a non-automatic weighing instrument nor the fact that its user is a judicial or police authority appear, in the light of the wording of the provision at issue, to constitute relevant factors, within the meaning of Article 1(1) of Directive 2014/31, to determine whether the instrument in question falls within the scope of that directive.

29 Such a finding is, in the second place, supported by an examination of the context in which Article 1(1) of Directive 2014/31 is placed and the objective of that directive.

30 In that regard, it should be noted, first, that Article 2(1) and (2) of that directive defines the concept of 'non-automatic weighing instrument' by referring, inter alia, to the function performed by those instruments, without taking into consideration the manner in which they are used or the areas in which they are used.

31 Secondly, it should be borne in mind that Directive 2014/31 lists, in points (a) to (f) of Article 1(2), several categories of use of non-automatic weighing instruments.

32 The categories referred to in Article 1(2) include, in point (b), determination of mass for the calculation of a toll, tariff, tax, bonus, penalty, remuneration, indemnity or similar type of payment and, in point (c), determination of mass for the application of laws or regulations.

33 The use of a non-automatic weighing instrument such as that at issue in the main proceedings is capable of falling within one of those two categories of use expressly referred to by Directive 2014/31.

34 Furthermore, point (g) of Article 1(2) of that directive establishes a residual category of use of such an instrument, referring to 'all applications other than those listed in points (a) to (f)' of Article 1(2). It follows that even where a non-automatic weighing instrument is intended to be used for purposes other than those mentioned in points (a) to (f) of Article 1(2), that instrument falls within the scope of that directive.

35 Thirdly, as regards, in particular, instruments put into service for the uses referred to in points (a) to (f) of Article 1(2) of Directive 2014/31, it must be recalled that Article 3(3) of Directive 2014/31 requires Member States to take all steps to continue to conform to the applicable requirements of that directive.

36 It is apparent from an analysis of Directive 2014/31 that it does not lay down a requirement that non-automatic weighing instruments be used, after they have been put into service, for commercial purposes.

37 As regards, in the third place, the objective of Directive 2014/31, it is apparent from recital 47 thereof that that objective is to ensure that non-automatic weighing instruments on the market fulfil the requirements providing for a high level of protection of public interests covered by that directive.

38 As is apparent from paragraph 33 above, a use of those instruments such as that at issue in the main proceedings could, subject to the assessment of the referring court, fall within the categories of use expressly taken into consideration in points (b) and (c) of Article 1(2) of that directive. Thus, any exclusion of those instruments from the scope of that directive on the sole ground that they are used by judicial or police authorities, for the purposes of the application of a criminal provision, would mean that those instruments, in one of those categories of use, could be placed on the market without complying with the requirements intended to safeguard the public interests pursued by Directive 2014/31 and, therefore, adversely affect those interests.

39 In the light of all those considerations, the answer to the question referred is that Article 1(1) of Directive 2014/31 must be interpreted as meaning that that directive applies to non-automatic weighing instruments where those instruments are used, by the judicial or police authorities, to determine the mass of a vehicle, for the purposes of applying national criminal legislation.

Costs

40 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 (Sixth Chamber) hereby rules:

Article 1(1) of Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments

must be interpreted as meaning that that directive applies to non-automatic weighing instruments where those instruments are used, by the judicial or police authorities, to determine the mass of a vehicle, for the purposes of applying national criminal legislation.

[Signatures]