



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 205/21
Luxembourg, 16 November 2021

Judgment in Case C-479/21 PPU
Governor of Cloverhill Prison and Others

The provisions in the Withdrawal Agreement concerning the European arrest warrant regime with respect to the United Kingdom and the provision in the Trade and Cooperation Agreement between the EU and the United Kingdom concerning the new surrender mechanism are binding on Ireland

The inclusion of those provisions in those agreements did not justify the addition of a legal basis relating to the Area of Freedom, Security and Justice for the purpose of concluding those agreements, with the result that those provisions did not require, under Protocol No (21), that Ireland have the choice whether or not to opt in to them

In September 2020, SD was arrested in Ireland pursuant to a European arrest warrant ('EAW') issued by the United Kingdom judicial authorities in March 2020, seeking his surrender to serve a prison sentence. SN was arrested in Ireland in February 2021, pursuant to an EAW issued by the same authorities in October 2020, seeking his surrender for the purposes of conducting a criminal prosecution. SD and SN have been detained in Ireland since their arrest, pending the decision on their respective surrender to those authorities. The High Court (Ireland) having found that their detention was lawful and having refused to order their release, SD and SN appealed to the Supreme Court (Ireland).

According to the Supreme Court, the Irish law transposing the Framework Decision on the EAW ¹ may be applied in respect of a third country provided that there is an agreement in force between that country and the European Union for the surrender of requested persons. However, for that legislation to apply, the agreement concerned, namely, in the present case, the Agreement on the Withdrawal of the United Kingdom from the European Union ² and the Trade and Cooperation Agreement between the European Union and the United Kingdom, ³ must be binding on Ireland. That might not be the case since those agreements contain measures – concerning respectively the EAW regime and the new surrender mechanism between the European Union and the United Kingdom – falling within the Area of Freedom, Security and Justice ('the AFSJ') and which are therefore, in principle, not binding on Ireland under Protocol (No 21). ⁴ Ireland has not made use of the possibility, offered by Protocol (No 21), to opt in to the provisions of those agreements relating

¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7) ('the Withdrawal Agreement').

³ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ 2021 L 149, p. 10) ('the TCA').

⁴ 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 TEU and the TFEU (OJ 2012, C 326, p. 295) ('Protocol (No 21)'). According to that protocol, Ireland is not bound by measures within the AFSJ unless it has expressed its wish to apply one of them.

to those measures, either when the United Kingdom withdrew from the European Union or when the TCA was concluded.⁵

In its judgment, the Court rules, in particular, on the question whether the legal bases of the Withdrawal Agreement and of the TCA, that is to say, Article 50(2) TEU (which provides for the European Union's external competence to conclude a withdrawal agreement) and Article 217 TFEU (which lays down the competence to establish an association agreement), are by themselves appropriate as a basis for the inclusion of those measures in those agreements. Otherwise, a substantive legal basis relating to the AFSJ would be required, which would trigger the applicability of Protocol (No 21) and mean that those measures would not, in principle, be applicable to Ireland.

Findings of the Court

In the context of the urgent preliminary ruling procedure (PPU), the Court, sitting as the Grand Chamber, finds that **the provisions of the Withdrawal Agreement which provide for the continuation of the EAW regime in respect of the United Kingdom during the transition period and the provision of the TCA which provides for the application of the surrender regime established by that agreement to EAWs issued before the end of the transition period in respect of persons not yet arrested before the end of that period are binding on Ireland.**

Examining, in the first place, the choice of Article 50 TEU as the legal basis for the Withdrawal Agreement, the Court notes that paragraph 2 of that provision confers on the European Union alone the competence to conclude an agreement setting out the arrangements for the withdrawal of a Member State from the European Union in order to be able to attain the objective of enabling that withdrawal to take place in an orderly manner. That agreement is intended to regulate, in all areas covered by the Treaties, all questions relating to the withdrawal. It was therefore pursuant to that competence that the European Union was able to conclude the Withdrawal Agreement, which provides inter alia that, unless otherwise provided in that agreement, EU law, including the Framework Decision on the EAW, is to apply in the United Kingdom during the transition period.

The Court adds that, since it is not possible to add to Article 50(2) TEU legal bases laying down procedures which are incompatible with the procedure laid down in paragraphs 2 and 4 thereof, it must be inferred that only Article 50 TEU can ensure that all of the fields falling within the scope of the treaties are treated consistently in the Withdrawal Agreement, thus enabling the withdrawal to take place in an orderly manner. Accordingly, since Article 50(2) TEU constitutes the only appropriate legal basis for concluding the Withdrawal Agreement, the provisions of Protocol (No 21) could not apply.

Examining, in the second place, the choice of Article 217 TFEU as the legal basis of the TCA, the Court observes that agreements concluded on the basis of that provision may contain rules concerning all the fields falling within the competence of the European Union. Given that, under Article 4(2)(j) TFEU, the European Union has shared competence as regards the AFSJ, measures falling within that area may be included in an association agreement such as the TCA.

Since the surrender mechanism established by the TCA does indeed fall within that area of competence, the Court next examines whether the inclusion of that mechanism in an association agreement also requires the addition of a specific EU legal basis relating to the AFSJ.⁶ In that respect, in view of, inter alia, the wide scope of the TCA, the inclusion in that agreement of provisions falling within the AFSJ forms part of the general objective of that agreement, which is to establish the basis for a broad relationship between the European Union and the United Kingdom.

⁵ Under Article 62(1)(b) of the Withdrawal Agreement, read in conjunction with the fourth paragraph of Article 185 thereof, the EAW regime provided for in the Framework Decision on the EAW is applicable to the United Kingdom during the transition period, that is to say, until 31 December 2020. Pursuant to Article 632 of the TCA, the provisions relating to the surrender regime provided for in the TCA are applicable to EAWs issued before the end of the transition period, where the person sought has not been arrested for the purpose of executing the EAW before the end of that period.

⁶ Point (d) of the second subparagraph of Article 82(1) TFEU is cited.

Since the surrender mechanism introduced by the TCA pursues that objective alone, it is not necessary, as the case-law on acts pursuing several objectives provides, to add another legal basis. Consequently, the rules of the TCA concerning surrender could be based solely on Article 217 TFEU, without the provisions of Protocol (No 21) being applicable.

Under Article 632 of the TCA, the provisions on surrender laid down by the TCA are to apply to EAWs issued in accordance with the Framework Decision on the EAW before the end of the transition period, where the person sought has not been arrested for the purpose of executing an EAW before the end of that period.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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