

JUDGMENT OF THE COURT (Grand Chamber)

16 November 2021 (*)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Article 50 TEU – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community – Article 217 TFEU – Trade and Cooperation Agreement with the United Kingdom – Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Continuation under the Withdrawal Agreement, on a transitional basis, of the European arrest warrant regime in respect of the United Kingdom – Application to a European arrest warrant of provisions relating to the surrender mechanism established by the Trade and Cooperation Agreement with the United Kingdom – Regimes binding on Ireland)

In Case C 479/21 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 30 July 2021, received at the Court on 3 August 2021, in proceedings relating to the execution of European arrest warrants issued in respect of

SN,

SD,

intervening parties:

Governor of Cloverhill Prison,

Ireland,

Attorney General,

Governor of Mountjoy prison,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, E. Regan, I. Jarukaitis, N. Jääskinen, I. Ziemele and J. Passer, Presidents of Chambers, M. Ilešič, J.–C. Bonichot, M. Safjan (Rapporteur), F. Biltgen, N. Piçarra, L.S. Rossi and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 September 2021,

after considering the observations submitted on behalf of:

- SN, by M. Hanahoe and R. Purcell, Solicitors, S. Guerin and C. Donnelly, Senior Counsel, and by M. Lynam and S. Brittain, Barristers,
- SD, by C. Mulholland, Solicitor, S. Guerin and C. Donnelly, Senior Counsel, M. Lynam and S. Brittain, Barristers, and by E. Walker, Barrister-at-Law,

- Ireland, by P. Gallagher, A. Morrissey and C. McMahon, acting as Agents, by M. Gray and R. Kennedy, Senior Counsel, and by A. Carroll, L. Masterson and H. Godfrey, Barristers-at-Law,
- the Kingdom of Denmark, by L. Teilgård, acting as Agent,
- the Council of the European Union, by A. Stefanuc, K. Pleśniak, A. Antoniadis and J. Ciantar, acting as Agents,
- the European Commission, by H. Leupold, L. Baumgart and H. Krämer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 November 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 50 TEU, Article 217 TFEU, 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 ('Protocol (No 21)'), the 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') and the 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').
- 2 The request has been made in connection with the execution, in Ireland, of two arrest warrants issued by the judicial authorities of the United Kingdom of Great Britain and Northern Ireland seeking the surrender of, respectively, SD for the purposes of executing a criminal penalty and SN for the purposes of conducting a criminal prosecution.

Legal context

European Union law

The Treaties

- 3 Article 50 TEU provides:

'1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) [TFEU]. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) [TFEU].

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.'

4 Article 82 TFEU, which forms part of Title V, relating to the 'Area of Freedom, Security and Justice' ('the AFSJ'), of Part Three of that treaty, provides:

'Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

...

(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.'

5 Article 217 TFEU, which appears in Title V, relating to 'International Agreements', of Part Five of that Treaty – which itself relates to the European Union's external action – is worded as follows:

'The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.'

Protocol (No 21)

6 Under Article 1 of Protocol (No 21):

'Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the [TFEU]. The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the [TFEU].'

7 Article 2 of that protocol provides:

'In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title V of Part Three of the [TFEU], no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to the United Kingdom or Ireland.'

8 The first subparagraph of Article 3(1) of that protocol is worded as follows:

‘The United Kingdom or Ireland may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title V of Part Three of the [TFEU], that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so.’

9 Article 4a of Protocol (No 21) provides:

‘1. The provisions of this Protocol apply for the United Kingdom and Ireland also to measures proposed or adopted pursuant to Title V of Part Three of the [TFEU] amending an existing measure by which they are bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of the United Kingdom or Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge them to make a notification under Article 3 or 4. For the purposes of Article 3 a further period of two months starts to run as from the date of such determination by the Council.

...’

10 Article 6 of Protocol (No 21) provides:

‘Where, in the cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title V of Part Three of the [TFEU], the relevant provisions of the Treaties shall apply to that State in respect of the measure in question.’

The Withdrawal Agreement

11 Article 62 of the Withdrawal Agreement is set out in Part Three of that agreement, containing the ‘separation provisions’, and is entitled ‘Ongoing judicial cooperation proceedings in criminal matters’. The first paragraph of that article provides:

‘In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts shall apply as follows:

...

(b) 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)] shall apply in respect of European arrest warrants where the requested person was arrested before the end of the transition period for the purposes of the execution of a European arrest warrant, irrespective of the decision of the executing judicial authority as to whether the requested person is to remain in detention or be provisionally released;

...’

12 Under Article 126 of the Withdrawal Agreement, which appears in Part Four thereof, relating to the ‘transition’, and which is entitled ‘Transition period’:

‘There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.’

13 Article 127 of the Withdrawal Agreement, which is entitled ‘Scope of the transition’ and appears in Part Four of that agreement, provides:

‘1. Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.

...

6. Unless otherwise provided in this Agreement, during the transition period, any reference to Member States in the Union law applicable pursuant to paragraph 1, including as implemented and applied by Member States, shall be understood as including the United Kingdom.

...'

14 Article 185 of the Withdrawal Agreement, which is contained in Part Six thereof, containing 'institutional and final provisions', and which is entitled 'Entry into force and application', provides, in its fourth paragraph:

'Parts Two and Three, with the exception of Article 19, Article 34(1), Article 44, and Article 96(1), as well as Title I of Part Six and Articles 169 to 181, shall apply as from the end of the transition period.'

The TCA

15 Recital 23 of the TCA states:

'Considering that cooperation between the United Kingdom and the Union relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, will enable the security of the United Kingdom and the Union to be strengthened'.

16 Article 1 of that agreement, entitled 'Purpose', provides:

'This Agreement establishes the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties' autonomy and sovereignty.'

17 Article 2 of that agreement, entitled 'Supplementing agreements', provides:

'1. Where the Union and the United Kingdom conclude other bilateral agreements between them, such agreements shall constitute supplementing agreements to this Agreement, unless otherwise provided for in those agreements. Such supplementing agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of the overall framework.

2. Paragraph 1 also applies to:

- (a) agreements between the Union and its Member States, of the one part, and the United Kingdom, of the other part; and
- (b) agreements between the European Atomic Energy Community, of the one part, and the United Kingdom, of the other part.'

18 Article 6 of the TCA, entitled 'Definitions', provides in paragraph 1(g) that 'the transition period' means the transition period provided for in Article 126 of the Withdrawal Agreement.

19 Part Three of that agreement, entitled 'Law enforcement and judicial cooperation in criminal matters', includes, inter alia, Title VII, entitled 'Surrender', which contains Articles 596 to 632 of that agreement.

20 Article 596 of the TCA, entitled 'Objective', provides:

'The objective of this Title is to ensure that the extradition system between the Member States, on the one side, and the United Kingdom, on the other side, is based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Title.'

21 Article 632 of that agreement, entitled ‘Application to existing European arrest warrants’, provides:

‘This Title shall apply in respect of European arrest warrants issued in accordance with [Framework Decision 2002/584] by a State before the end of the transition period where the requested person has not been arrested for the purpose of its execution before the end of the transition period.’

Irish law

22 The European Arrest Warrant Act 2003 transposed Framework Decision 2002/584 into Irish law. Section 3 of that Act permits the Minister for Foreign Affairs to designate, by order, for the purposes of that Act, a relevant Member State that has, under its national law, given effect to that framework decision. The European Arrest Warrant Act 2003 (Designated Member States) Order 2004 designated the United Kingdom for the purposes of Section 3 of the European Arrest Warrant Act 2003.

23 The European Arrest Warrant (Application to Third Countries amendment) and Extradition (Amendment) Act 2012 permits the Minister for Foreign Affairs to order that the European Arrest Warrant Act 2003 is to apply in relation to a third country, provided, as stated in Section 2(3) thereof, that there is an agreement in force between the third country concerned and the European Union for the surrender of persons wanted for prosecution or punishment.

24 For the purposes of implementing, as regards European arrest warrants issued by a judicial authority of the United Kingdom, (i) the provisions of the Withdrawal Agreement concerning the continued application of Framework Decision 2002/584 during the transition period and (ii) the provision of the TCA providing for the application of the surrender mechanism established by Title VII of Part Three of the TCA to certain European arrest warrants issued before the end of that transition period, Ireland adopted successively:

- the European Arrest Warrant Act 2003 (Designated Member State) (Amendment) Order 2020 and the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019, concerning European arrest warrants issued before the end of the transition period in respect of persons arrested before the end of that period,
- the European Arrest Warrant (Application to Third Countries) (United Kingdom) Order 2020, concerning arrest warrants issued before the end of the transition period in respect of persons not yet arrested at the end of that period.

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

25 On 9 September 2020, SD was arrested in Ireland pursuant to a European arrest warrant issued by the United Kingdom judicial authorities on 20 March 2020, seeking his surrender to serve a prison sentence of eight years. SN was arrested in Ireland on 25 February 2021 pursuant to a European arrest warrant issued by the same authorities on 5 October 2020, seeking his surrender for the purposes of conducting a criminal prosecution. The persons concerned were remanded in custody in Ireland pending the decision on their surrender to the United Kingdom authorities and are currently in custody.

26 On 16 February 2021 and 5 March 2021, respectively, SD and SN applied to the High Court (Ireland) for an inquiry into, in essence, the legality of their detention, arguing that Ireland could no longer apply the European arrest warrant regime in respect of the United Kingdom. The High Court determined that the detention of SD and SN was lawful and therefore refused to order their release. SD and SN then brought two separate appeals before the referring court.

27 According to that court, the European Arrest Warrant Act 2003, which transposes Framework Decision 2002/584 into Irish law, may apply in relation to a third country provided that there is an agreement in force between that third country and the European Union for the surrender of persons wanted for

prosecution or punishment. However, in order for that legislation to apply, the agreement in question must be binding on Ireland.

- 28 Accordingly, if the provisions of the Withdrawal Agreement and the TCA concerning the European Arrest Warrant regime were not binding on Ireland, the national measures providing for the continuation of that regime in respect of the United Kingdom would be invalid and, consequently, the continued detention of the persons concerned would be unlawful. Accordingly, the lawfulness of their detention depends on whether the Withdrawal Agreement and the TCA are validly binding on Ireland, which may not be the case since they contain measures within the AFSJ, from which Ireland is exempt under Protocol (No 21).
- 29 According to SN and SD, neither Article 50 TEU nor Article 217 TFEU, which constitute the legal basis for the Withdrawal Agreement and the TCA respectively, can justify the inclusion in those agreements of measures within the AFSJ. For each of those agreements, it was also necessary to have recourse to point (d) of the second subparagraph of Article 82(1) TFEU, and the addition of that provision to the legal basis for those agreements would trigger the application of Protocol (No 21).
- 30 The referring court notes, however, that Ireland acceded to Framework Decision 2002/584 at a time when the United Kingdom was an integral part of the regime established by that decision. Accordingly, the respective provisions of the Withdrawal Agreement and the TCA do not impose any new obligations on Ireland but rather provide for the continued application of existing obligations. Furthermore, the two agreements are binding on the United Kingdom and the European Union under international law.
- 31 In those circumstances, the Supreme Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘Having regard to the fact that Ireland has the benefit of retaining sovereignty in the ASFJ subject to Ireland’s entitlement to opt into measures adopted by the Union in that area made pursuant to Title V of Part Three TFEU;

Having regard to the fact that the stated substantive legal basis for the Withdrawal Agreement (and the Decision on the conclusion of same) is Article 50 TEU;

Having regard to the fact that the stated substantive legal basis for the [TCA] (and the Decision on the conclusion of same) is Article 217 TFEU; and

Having regard to the fact that it followed that it was not considered that an opt in was required or permitted from Ireland so that no such opt in was exercised:-

[(1)] Can the provisions of the Withdrawal Agreement, which provide for the continuance of the [European arrest warrant (EAW)] regime in respect of the United Kingdom, during the transition period provided for in that agreement, be considered binding on Ireland having regard to its significant AFSJ content; and

[(2)] Can the provisions of the [TCA] which provide for the continuance of the EAW regime in respect of the United Kingdom after the relevant transition period, be considered binding on Ireland having regard to its significant AFSJ content?’

The urgent procedure

- 32 The referring court requested that the case be dealt with under the urgent preliminary ruling procedure, provided for in Article 107 of the Court’s Rules of Procedure, or, in the alternative, under the accelerated procedure provided for in Article 105 of those rules. In support of its request, it referred, inter alia, to the fact that SN and SD are currently deprived of liberty pending the decision on their respective surrender to the United Kingdom authorities.

- 33 It should be noted, in the first place, that the present reference for a preliminary ruling concerns, in essence, the question whether Ireland is required to execute European arrest warrants issued under Framework Decision 2002/584, which fall within the areas covered by Title V of Part Three of the TFEU, relating to the AFSJ. It may therefore be dealt with under the urgent preliminary ruling procedure.
- 34 In the second place, it is necessary, according to the case-law of the Court, to take into account the fact that the person concerned in the case in the main proceedings is currently deprived of his or her liberty and that the question whether he or she may continue to be held in custody depends on the outcome of the dispute in the main proceedings (judgments of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C 354/20 PPU and C 412/20 PPU, EU:C:2020:1033, paragraph 28 and the case-law cited, and of 26 October 2021, *Openbaar Ministerie (Right to be heard by the executing judicial authority)*, C 428/21 PPU and C 429/21 PPU, EU:C:2021:876, paragraph 32).
- 35 It is apparent from the order for reference that SN and SD are currently in custody. Furthermore, in the light of the explanations provided by the referring court summarised in paragraph 28 above, the question whether they may continue to be held in custody in Ireland depends on the Court's decision in the present case, since, depending on the answer given by the Court, SN and SD may be released or surrendered to the United Kingdom authorities.
- 36 In those circumstances, the First Chamber of the Court of Justice, on 17 August 2021, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.
- 37 It was also decided to remit this case to the Court in order for it to be assigned to the Grand Chamber.

Consideration of the questions referred

- 38 By its questions, which it is appropriate to examine together, the referring court seeks to ascertain, in essence, whether (i) the provisions of the Withdrawal Agreement which provide for the continuation of the European arrest warrant regime in respect of the United Kingdom during the transition period and (ii) the provision of the TCA which provides for the application of the surrender regime established by Title VII of Part Three of the TCA to European arrest warrants issued before the end of that transition period in respect of persons not yet arrested for the purpose of the execution of those warrants before the end of that period, are binding on Ireland.
- 39 It should be noted, as a preliminary point, that the referring court does not identify the specific provisions of those agreements under which the European arrest warrants at issue in the main proceedings are to be executed. Nevertheless, that does not mean that the Court may not provide the referring court with all the guidance on points of interpretation that may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to those points in its questions. It is, in this regard, for the Court to extract from all the information provided by the referring court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute (see, to that effect, judgments of 7 March 2017, *X and X*, C 638/16 PPU, EU:C:2017:173, paragraph 39, and of 17 June 2021, *Simonsen & Weel*, C 23/20, EU:C:2021:490, paragraph 81).
- 40 In the present case, it is clear from the file before the Court that the questions referred concern, first, Article 62(1)(b) of the Withdrawal Agreement, read together with the fourth paragraph of Article 185 thereof, and, secondly, Article 632 of the TCA.
- 41 Article 62(1)(b) and the fourth paragraph of Article 185 of the Withdrawal Agreement provide for the continuation of the obligation to execute, after the end of the transition period, European arrest warrants

issued in accordance with Framework Decision 2002/584 where the requested person was arrested before the end of that period, stipulated in Article 126 of that agreement as 31 December 2020.

- 42 Article 632 of the TCA makes the execution of European arrest warrants issued in accordance with that framework decision before the end of the transition period subject to the surrender regime provided for in Title VII of Part Three of that agreement where the requested person has not been arrested for the purpose of executing the European arrest warrant before the end of that period.
- 43 It is therefore more specifically with regard, first, to Article 62(1)(b) of the Withdrawal Agreement, read in conjunction with the fourth paragraph of Article 185 thereof and, secondly, to Article 632 of the TCA, that it is necessary to ascertain whether the inclusion of those provisions in the Withdrawal Agreement and the TCA respectively should have triggered the applicability of Protocol (No 21), thereby rendering those provisions inapplicable, in principle, to Ireland, without prejudice to the possibility offered by that protocol to that Member State to participate in measures falling under Title V of Part Three of the TFEU.
- 44 In those circumstances, and in the light of the explanations provided by the referring court in its request for a preliminary ruling, it must be considered that, by its question, the referring court asks the Court to determine whether Article 50 TEU, Article 217 TFEU and Protocol (No 21) must be interpreted as meaning that Article 62(1)(b) of the Withdrawal Agreement, read in conjunction with the fourth paragraph of Article 185 thereof, and Article 632 of the TCA are binding on Ireland.
- 45 In that regard, it should be borne in mind that Protocol (No 21) provides that Ireland is not to take part in the adoption by the Council of proposed measures under Title V of Part Three of the TFEU and that no measure adopted pursuant to that title and no provision of any international agreement concluded by the European Union pursuant to that title are to be binding on or applicable to Ireland unless Ireland decides to take part in the adoption of such measures or to accept them.
- 46 However, the Withdrawal Agreement and the TCA were not concluded on the basis of that title, but on the basis of Article 50(2) TEU and Article 217 TFEU respectively. Accordingly, it must be determined whether those legal bases were, by themselves, appropriate for the purpose of establishing, first, the inclusion in the Withdrawal Agreement of provisions relating to the continued application of Framework Decision 2002/584 concerning European arrest warrants issued by the United Kingdom, and, secondly, the inclusion in the TCA of a provision providing for the application of the surrender regime established by Title VII of Part Three of the latter agreement to European arrest warrants issued before the end of the transition period in respect of persons not yet arrested for the purpose of executing the European arrest warrant before the end of that period, or whether, as SD and SN submit, point (d) of the second subparagraph of Article 82(1) TFEU should have also been included in the substantive legal basis for the conclusion of those agreements, thus triggering the application of Protocol (No 21).
- 47 It is the legal basis for a measure – the appropriateness or otherwise of which falls to be assessed in accordance with objective factors such as the purpose of the measure and its content – which determines the protocols to be applied, and not vice versa (judgment of 22 October 2013, *Commission v Council*, C 137/12, EU:C:2013:675, paragraph 74).
- 48 As regards, in the first place, Article 50 TEU, the chosen legal basis for the Withdrawal Agreement, it is apparent from paragraphs 2 and 3 thereof that that agreement sets out a withdrawal procedure consisting of, first, notification to the European Council of the intention to withdraw, secondly, negotiation and conclusion of an agreement setting out the arrangements for withdrawal, taking into account the future relationship between the State concerned and the European Union and, thirdly, the actual withdrawal from the Union on the date of entry into force of that agreement or, failing that, two years after the notification given to the European Council, unless the latter, in agreement with the Member State concerned, unanimously decides to extend that period (judgment of 10 December 2018, *Wightman and Others*, C 621/18, EU:C:2018:999, paragraph 51 and the case-law cited).

- 49 It follows that Article 50 TEU pursues two objectives, namely, first, enshrining the sovereign right of a Member State to withdraw from the European Union and, secondly, establishing a procedure to enable such a withdrawal to take place in an orderly fashion (judgment of 10 December 2018, *Wightman and Others*, C 621/18, EU:C:2018:999, paragraph 56).
- 50 It is in order to be able to attain that objective effectively that Article 50(2) TEU confers on the European Union alone competence to negotiate and conclude an agreement laying down the detailed rules for withdrawal, since that agreement is intended to regulate, in all the areas covered by the Treaties, all questions relating to the separation between the European Union and the State withdrawing from it.
- 51 It was therefore pursuant to that competence that the European Union was able to negotiate and conclude the Withdrawal Agreement, which provides, inter alia, in relations with the United Kingdom, for the continued application of a significant part of the EU *acquis*, in order to reduce uncertainty and, to the extent possible, minimise disruption caused by the fact that, on the date of withdrawal, the Treaties cease to apply to the departing State, as is apparent from point 4 of the guidelines adopted by the European Council at its special meeting of 29 April 2017 following the United Kingdom's notification under Article 50 TEU.
- 52 In particular, Article 127 of the Withdrawal Agreement provides that, unless otherwise provided for in that agreement, EU law, of which Framework Decision 2002/584 forms part, is to be applicable to and in the United Kingdom and its territory during the transition period. In addition, under the fourth paragraph of Article 185 of that agreement, that framework decision is to apply, in relations with the United Kingdom, in the situations referred to in Article 62(1)(b) of that agreement.
- 53 Furthermore, as the Advocate General stated in points 52 and 53 of her Opinion, the procedure for the conclusion of international agreements provided for in Article 218 TFEU may prove to be incompatible with that laid down in Article 50(2) and (4) TEU, for example because, pursuant to Article 218 TFEU, the Council is to conclude the agreement unanimously and not, as is the case with the conclusion of a withdrawal agreement, by qualified majority and, moreover, without the participation of the withdrawing Member State's representative.
- 54 Since the withdrawal agreement is intended to cover all of the fields and issues referred to in paragraph 50 above, and 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 of that article (see, to that effect, judgment of 2 September 2021, *Commission v Council (Agreement with Armenia)*, C 180/20, EU:C:2021:658, paragraph 34 and the case-law cited), it must be concluded that only Article 50 TEU, as an autonomous legal basis independent of any other legal basis set out in the treaties, can ensure that all of the fields falling within the scope of those treaties are treated consistently in the Withdrawal Agreement, thus enabling the withdrawal to take place in an orderly manner.
- 55 It should also be noted that Article 62(1)(b) of the Withdrawal Agreement refers to measures which were binding on the territory of Ireland before the date of entry into force of that agreement. To add point (d) of the second subparagraph of Article 82(1) TFEU to the substantive legal basis for the Withdrawal Agreement would give rise to uncertainty since, because of the resulting applicability of Protocol (No 21), Ireland, which had chosen to be bound by the European arrest warrant regime, including with regard to the United Kingdom, would be treated as if it had never participated in it. Such a situation would be difficult to reconcile with the objective of reducing uncertainty and limiting disruption so as to enable an orderly withdrawal, noted in paragraph 51 above.
- 56 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 in that context.
- 57 As regards, in the second place, Article 217 TFEU, the chosen legal basis for the TCA, the Court has already clarified that it empowers the European Union to guarantee commitments towards third countries in all the fields covered by the TFEU (judgment of 18 December 2014, *United Kingdom v Council*, C 81/13, EU:C:2014:2449, paragraph 61 and the case-law cited).

- 58 Agreements concluded on the basis of that provision may therefore 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 Title V of Part Three of the TFEU, measures falling within that area of competence may be included in an association agreement based on Article 217 TFEU, such as the TCA.
- 59 Since it is common ground that the surrender mechanism established by Title VII of Part Three of the TCA and which applies to the European arrest warrants referred to in Article 632 of that agreement does indeed fall within that area of competence, it is necessary to examine whether the inclusion of such a mechanism in an association agreement also requires the addition of a specific legal basis such as point (d) of the second subparagraph of Article 82(1) TFEU.
- 60 In that respect, it is true that the Court has held that the Council may, on the basis of Article 217 TFEU, adopt a measure in the framework of an association agreement only on condition that that measure relates to a specific area of EU competence and is also founded on the legal basis corresponding to that area (see, to that effect, judgment of 18 December 2014, *United Kingdom v Council*, C 81/13, EU:C:2014:2449, paragraph 62).
- 61 However, that requirement was formulated in a case which concerned not the conclusion of an association agreement but the adoption of a decision on the position to be taken, on behalf of the European Union, within a body set up by such an agreement. As the Advocate General observed in point 70 of her Opinion, it is in that particular context – namely that of a decision adopted, in accordance with Article 218(8) and (9) TFEU, by qualified majority without the participation of the European Parliament – that the addition of a specific legal basis was necessary in order to ensure that any more stringent procedural requirements specific to the area concerned would not be circumvented.
- 62 By contrast, since the conclusion of an agreement such as the TCA does not relate to a single specific area of action but, on the contrary, a wide range of areas of EU competence with a view to achieving an Association between the European Union and a third State, and the conclusion of such an agreement requires, in any event – in accordance with point (a)(i) of the second subparagraph of Article 218(6) TFEU and the first sentence of the second subparagraph of Article 218(8) TFEU – a unanimous vote and the consent of the European Parliament, there is no risk, as regards the conclusion of such an agreement, of more stringent procedural requirements being circumvented.
- 63 It should be added that a requirement to add a specific legal basis under Title V of Part Three of the TFEU to the legal bases of the provisions of an association agreement which fall under the EU competence covered by that title also cannot be inferred from the Court’s case-law according to which, exceptionally, measures which simultaneously pursue a number of objectives or have several components that are inextricably linked, without one’s being incidental in relation to the other, must be founded on the various corresponding legal bases (see, to that effect, judgment of 2 September 2021, *Commission v Council (Agreement with Armenia)*, C 180/20, EU:C:2021:658, paragraph 34 and the case-law cited).
- 64 In that regard, the Court has held, in relation to development cooperation agreements, that to require that such an agreement also be based on a provision other than its generic legal basis whenever the agreement touches on a specific area would, in practice, be liable to render the competence and procedure set out in that legal basis devoid of substance (see, to that effect, judgment of 2 September 2021, *Commission v Council (Agreement with Armenia)*, C 180/20, EU:C:2021:658, paragraph 51 and the case-law cited).
- 65 Those considerations also apply *mutatis mutandis* to association agreements whose objectives are designed in a broad manner, in the sense that the measures required in order to pursue those objectives concern a wide range of areas of EU competence.
- 66 That is precisely the case with regard to the TCA, since, as the Council submitted in its observations, in order to ensure an appropriate balance of rights and obligations between the parties to the agreement and to secure the unity of the 27 Member States, that agreement had to have a sufficiently wide scope.

- 67 Accordingly, in view of the wide scope of the TCA, the context of its adoption and the unequivocal declarations made by all the institutions and Member States involved throughout the negotiations on the withdrawal of the United Kingdom from the European Union, the inclusion in that agreement, alongside rules and measures falling within many other areas of EU law, of provisions falling within Title V of Part Three of the TFEU forms part of the general objective of that agreement, which is to establish the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties' autonomy and sovereignty.
- 68 The surrender mechanism established by the TCA contributes to the pursuit of that objective, the Parties having indicated, in recital 23 thereof, that their cooperation relating to, inter alia, the investigation, detection and prosecution of criminal offences and the execution of criminal penalties would enable the security of the United Kingdom and the European Union to be strengthened. It follows that the TCA cannot be regarded as pursuing a number of objectives or as having several components, within the meaning of the case-law referred to in paragraph 63 above.
- 69 Consequently, the rules set out in the TCA concerning the surrender of persons on the basis of an arrest warrant, in particular Article 632 thereof relating to the application of those rules to existing European arrest warrants, could be included in that agreement on the basis of Article 217 TFEU alone, without the provisions of Protocol (No 21) being applicable to them.
- 70 In the light of all the foregoing, the answer to the question referred for a preliminary ruling is that Article 50 TEU, Article 217 TFEU and Protocol (No 21) must be interpreted as meaning that Article 62(1) (b) of the Withdrawal Agreement, read in conjunction with the fourth paragraph of Article 185 thereof, and Article 632 of the TCA are binding on Ireland.

Costs

- 71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

Article 50 TEU, Article 217 TFEU and 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, must be interpreted as meaning that Article 62(1)(b) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, read in conjunction with the fourth paragraph of Article 185 thereof, and Article 632 of the 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, are binding on Ireland.

Lenaerts

Bay Larsen

Arabadjiev

Regan

Jarukaitis

Jääskinen

Ziemele

Passer

Ilešič

Bonichot

Safjan

Biltgen

Piçarra

Rossi

Wahl

Delivered in open court in Luxembourg on 16 November 2021.

A. Calot Escobar

K. Lenaerts

Registrar

President

* Language of the case: English.